Software Services Agreement

This Software Services Agreement ("**Agreement**") is between **Next Technik Ltd**, ("**Next Technik**"), and the entity which has accepted this Agreement through a document which references this Agreement ("**Customer**"). Capitalized terms not defined elsewhere in this Agreement have the meaning given to them in the Definitions section below. This Agreement sets forth the terms and conditions that govern orders placed under this Agreement.

Definitions.

"**Access**" means obtaining access to the Software Program via Customer's NetSuite Cloud Service subscription.

"**Affiliate**" means any entity that is under the effective control of the entity that ultimately has effective control of the first mentioned entity**.**

"**Confidential Information**" means all information concerning, or held by, a party's business, including information marked as confidential, that the discloser treats as confidential or which the recipient knows or ought to know is confidential, but does not include information that: (a) is in the public domain (except through unauthorized disclosure); (b) the recipient already possesses at the time of disclosure (unless the information was received through unauthorized disclosure or is subject to prior confidentiality obligations); or (c) is independently developed or acquired by the recipient (except through unauthorized disclosure). Next Technik's Confidential Information includes all business plans, marketing information, market strategies, business practices, financial information, budgets, product roadmaps and details of future developments, products or strategies, details relating to customers, prospects, channel partners, contractors, suppliers and advisers, Next Technik's intellectual property rights, the Software Program, User Documentation, any Configuration, the Agreement, product and service pricing and business models.**"Configuration"** means any translation, adaptation or derivative work of the Software Program or User Documentation, and any configuration or settings of the Software Program whether or not they involve changes to the underlying code.

"**Customer Data**" means all electronic data or information submitted by Customer through the Software Program and stored in the NetSuite Cloud Service by Users.

"**Electronic Communications**" means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the NetSuite Cloud Service incidental to Customer's Access of the Software Program.

"**Estimate/Order Form**" means a Next Technik estimate, renewal notification or order form in the name of and executed by Customer and accepted by Next Technik which specifies the Software Program, and any Support Services and/or Professional Services to be provided by Next Technik subject to the terms of this Agreement.

"**Managed Bundle**" means a customization and/or Configuration bundle including lists, records, fields, documents, scripts, workflows, help, searches, reports and other objects that are installed, updated and/or maintained by the author.

"**NetSuite Cloud Service**" means, collectively, the NetSuite online business application suite (and any optionally procured modules) that used by Customer under an agreement between Oracle and Customer from time to time, and which includes the SuiteFlex and SuiteBundler programs and the NetSuite Hosting Environment.

"**NetSuite Cloud Service Agreement**", means, Customer's separate agreement with Oracle or an Oracle Affiliate for use of the NetSuite Cloud Service, and includes, without limitation, any data privacy agreement or addendum applicable thereto.

"**NetSuite Hosting Environment**" means the hardware, software and network infrastructure owned or operated by Oracle America, Inc. or an Oracle Affiliate that is used to host the Software Program via the NetSuite Cloud Service.

"**Next Technik Written Materials**" means, collectively, the Next Technik Privacy Policy, the URL Terms, the User Documentation, and any other Next Technik documents that are referenced in, or incorporated into, Customer's Estimate/Order Form for Services.

"**New Release**" means a version of the Software Program that has been produced primarily to extend, alter or improve the Software Program by providing additional functionality or performance enhancements (whether or not defects are also corrected). New Release does not include any software product or service that is marketed by Next Technik as a different product or module. Next Technik will determine at its discretion whether a software product or service is a New Release or a different product or module.

"**Oracle**" means Oracle America, Inc., its Affiliates, successors and assigns.

"**Personal Information**" means Customer Data that may be used to readily identify, locate or contact a natural person.

"Professional Services" means the general consulting, implementation and/or training services to be provided to Customer pursuant to the terms hereof as specified in an Estimate/Order Form or Statement of Work, as applicable.

"Service Period" means the period for which Customer is permitted to Access and use the Software Program and/or be provided Support Services in accordance with the Agreement as set out in an Estimate/Order Form.

"Software Program" means the software program(s) specified in an Estimate/Order Form and any Updates and New Releases thereto. The term Software Program does not include any beta, pre-release or other special release programs. The Software Program is a "Managed Bundle" that is installed into the Customer's NetSuite account and is managed and maintained by Next Technik in accordance with this Agreement.

"Statement of Work" or "**SOW**" means a separate document or Estimate/Order Form between Next Technik and Customer that details the Professional Services to be delivered by Next Technik.

"Support Services" means the supplemental, technical support services to be provided to Customer for the Software Product pursuant to the terms hereof and the applicable version of the additional terms for Support Services available www.nexttechnik.com/supportpolicies or such other URL as specified by Next Technik. Support Services may be subject to additional fees. The Support Services do not include supplemental, technical support for the NetSuite Cloud Service or any other Third Party Applications.

"Third Party Applications" means applications, integrations, services, or implementation, customization and other consulting services related thereto, provided by a party other than Next Technik, as further described in the section below entitled "Third Party Applications" that interoperate with the Software Program.

"Update" means a version of the Software Program that has been produced primarily to provide minor functionality enhancements or to address defects in the Software Program without significantly altering the functionality of the Software Program and includes bug fixes and patches.

"**User Documentation**" means the user manuals that are provided as part of the Software Program and any reference material and other relevant publications and aids (in electronic format, online or hard copy as determined by Next Technik) in respect of the Software Program and any updates, replacements, revisions and additions (if any) provided by Next Technik from time to time at its discretion. For the avoidance of doubt, User Documentation does not include training materials.

"Users" means individuals who are authorized by Customer to use the Software Program pursuant to this Agreement or as otherwise defined, restricted or limited in an Estimate/Order Form or amendment to this Agreement. Users may include, but are not limited to, Customer's and its Affiliates' employees, consultants, contractors and agents.

"URL Terms" means the terms with which Customer must comply, which are located at a URL, referenced in this Agreement, and are hereby incorporated by reference.

1. Services.

1.1. Authorization. Subject to the terms and conditions of this Agreement, Customer and its Affilates shall have the non-exclusive, worldwide, limited right to use the Software Program, Support Services and Professional Services ordered by Customer (collectively, the "**Services**") during the applicable Service Period set forth in Customer's applicable Estimate/Order Form or SOW solely for the internal business operations of Customer. Customer may allow its Users to use the Services for this purpose, and Customer is responsible for their compliance with this Agreement and Customer's applicable Estimate/Order Form or SOW. The terms of this Agreement shall also apply to Updates and New Releases subsequently provided by Next Technik to Customer. Customer acknowledges and agrees that Next Technik may use technical means to prevent Customer exceeding its maximum number of permitted Users.

1.2. Access to the Software Program. Customer acknowledges the Software Program is embedded in, the NetSuite Cloud Service and is hosted within the NetSuite Hosting Environment. Accordingly:

(i) Customer must maintain an active subscription to the NetSuite Cloud Service for the duration of each applicable Service Period to access the Software Program.

(ii) Customer will not have any access to the Software Program if Customer's use of the NetSuite Cloud Service is suspended or terminates for any reason; in which case Customer will not have a claim against Next Technik for failure to provide the Services and remains liable for all fees applicable to the Services for the duration of the appliable Service Period.

(iii) Customer's access to the Software Program (and access to certain features and functions in the Software Program) is partly determined by the NetSuite Cloud Service Agreement and any licensing and security rules established incidental thereto.

(iv) Access to the Software Program is subject to the availability of the NetSuite Cloud Service or the NetSuite Hosting Environment and Next Technik is not responsible for Customer's inability to access the Software Program resulting for lack of availability of the NetSuite Cloud Service or the NetSuite Hosting Environment.

(v) Customer's ability to download its Customer Data from the Software Program is determined by the NetSuite Cloud Service Agreement.

(vi) Next Technik may need to access and use Customer's NetSuite Cloud Service to deliver Support Services and/or Professional Services. Accordingly, Customer (a) authorizes Next Technik to accept any online clickwrap agreement that Oracle or an Oracle Affiliate requires to be entered into in order to access and use the NetSuite Cloud Service, provided Customer remains responsible for meeting all such obligations including payment of any applicable fees, and (b) will enable Next Technik to access Customer's NetSuite Cloud Service and authorizes Next Technik to make use, add to, delete, modify, and adapt the relevant portion of the NetSuite Cloud Service as may be required to implement or Support the Software Program.

(vii) Next Technik is not responsible for the impact of any changes to the NetSuite Cloud Service (not performed by Next Technik or at its direction), including without limitation, (a) changes resulting from new releases, updates, changes to data formats, filed and data download capabilities to the technical requirements of the IT infrastructure required to Access the Software Program and changes in the NetSuite Hosting Environment.

(viii) Next Technik makes no warranty, representation or otherwise (nor does Next Technik adopt any warranty, representation or otherwise made by Oracle, Oracle Affiliate or other person) in respect of the NetSuite Cloud Service (including the NetSuite Hosting Environment) or any other product or service provided by Oracle, Oracle Affiliate or other third party.

2. Estimates/Order Forms. The Services shall be ordered by Customer pursuant to Estimates/Order Forms. Each Estimate/Order Form will include at a minimum a listing of the Software Product and any Support Services and/or Professional Services being ordered and the associated fees. Except as otherwise provided on the Estimate/Order Form, Statement of Work or this Agreement, once placed, each Estimate/Order Form and Statement of Work is non-cancellable. If Customer exceeds the quantity of Services ordered, then Customer promptly must purchase and pay fees for the excess quantity. [Any one of Customer's majority owned subsidiaries may also order Services under this Agreement by entering into an Estimate/Order Form or SOW, signed by such subsidiary and Next Technik, and agreeing to be bound by the terms of this Agreement and such Estimate/Order Form or SOW. For the purposes of such Estimate/Order Form or SOW, "Customer" as used in such Estimate/Order Form or SOW and this Agreement, shall be deemed to refer to the majority owned subsidiary executing such Estimate/Order Form or SOW.]

3. Restrictions.

3.1. General Restrictions.

(i) Customer may not, and may not cause or permit others to: (a) use the Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking, availability or performance testing of the Services; or (c) perform or disclose any performance or vulnerability testing of the Services without Next Technik's prior written approval, perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking, remote access or penetration testing of the Services (the "**Acceptable Use Policy**"). In addition to other rights that Next Technik has in this Agreement and Customer Estimate/Order Form, Next Technik has the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include removing or disabling access to material that violates the policy.

(ii) Customer may not, and may not cause or permit others to: (a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download, or copy any part of the Services (including data structures or similar materials produced by programs) unless required to be permitted by law for interoperability; (b) access or use the Services to build or support, directly or indirectly, products or services competitive to Next Technik; or (c) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Services to any third party except as permitted by this Agreement or Customer Estimate/Order Form.

3.2. Sensitive Data. Unless expressly permitted under the applicable Next Technik Written Materials, Customer may not include any payment card data or other data consisting of racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation or similarly sensitive data that imposes specific data security or data protection obligations on the processing of such data by Next Technik or its Affiliates or subcontractors in fields not designed specifically therefor.

4. Term, Fee, Payment & Taxes.

4.1. Term. This Agreement is valid for the Estimates/Order Forms (including SOWs) which this Agreement accompanies (the "**Term**"). The initial subscription term of the Support Program and/or Support Services procured by Customer shall continue for the term applicable to such Services specified in the applicable Estimate/Order Form. If Customer has not entered into an Estimate/Order Form with Next Technik regarding renewal of the Support Program and/or Support Services prior to the expiration of the initial term or then-current renewal term of such Services, then the subscription term for such Services shall be automatically renewed for a term of one (1) year unless either party provides written notice of non-renewal to the other at least 30 days before expiration of the applicable initial term or then-current renewal term.

4.2. Fees and Payment. All fees payable are due within 30 days from the invoice date unless otherwise specified in the applicable Estimate/Order Form. All fees are non-refundable, except as otherwise explicitly stated in the applicable Estimate/Order Form or this Agreement. The fees and the term of use for additional or other items procured during an existing subscription term will co-terminate with and be prorated through the end date of the subscription term for the applicable Service.

Pricing for subsequent renewal Estimate/Order Forms shall be set at then current Next Technik pricing, unless otherwise agreed to by the parties.

4.3. Late Payments. Customer must pay a late charge for any failure to make any payment by the date required under the Agreement, calculated at a rate that is the lesser of 1.5% per month or the maximum rate permitted by law, from the date that the payment first becomes overdue, to the date that the payment is received by Next Technik, both dates inclusive.

4.4. Taxes. Next Technik fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on Next Technik's net income. If Next Technik has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Next Technik with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. Proprietary Rights.

5.1. Ownership of Customer Data. As between Next Technik and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer acknowledges and agrees that in connection with the provision of the Services, Next Technik may store and maintain Customer Data for a period of time consistent with Next Technik standard business processes for the Services. Following expiration or termination of the Agreement or a Customer account, if applicable, Next Technik may deactivate the applicable Customer account(s) and delete any data therein. Customer grants Next Technik the right to use, process, display and transmit Customer Data to provide the Services pursuant to and in accordance with this Agreement and the applicable Estimate/Order Form or SOW. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Data, and for obtaining all rights related to Customer Data required by Next Technik to perform the Services.

5.2. Next Technik Intellectual Property Rights. All rights, title and interest in and to the Services (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the Services provided or developed by Next Technik) and anything developed or delivered by or on behalf of Next Technik under this Agreement are owned exclusively by Next Technik or its licensors. Except as provided in this Agreement, the rights granted to Customer do not convey any rights in the Services, express or implied, or ownership in the Services or any intellectual property rights thereto. Customer grants Next Technik a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Services (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Customer or any Users related to the operation or functionality of the Services. Any rights in the Services or Next Technik's intellectual property not expressly granted herein by Next Technik are reserved by Next Technik. Customer agrees not to display or use Next Technik's trademarks, logos or service marks in any manner without Next Technik's express prior written permission.

6. Terms of Service.

6.1. Accuracy of Customer's Contact Information. Customer shall provide accurate, current and complete information on Customer's legal business name, address, email address and phone number, and maintain and promptly update this information if it should change.

6.2. Notice. Any notice required under this Agreement shall be provided to the other party in writing. If Customer has a legal dispute with Next Technik or if Customer wishes to provide a notice under the Indemnification Section of this Agreement, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: Next Technik Ltd, 13th Floor, One Croydon, 12-16 Addiscombe Road, Croydon London CR0 0XT, United Kingdom, Attention: General Manager with a copy via email to notice@NextTechnik.com.

6.3. Users: Passwords, Access and Notification. Customer shall authorize access to and assign unique passwords and user names to its Users. Customer will be responsible for the confidentiality and use of User's passwords and user names. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Software Program or under Customer's account. Next Technik will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Software Program and shall promptly notify Next Technik of any unauthorized access or use of the Software Program and any loss or theft or unauthorized use of any User's password or name and/or Software Program account numbers.

6.4. Transmission of Data. Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of the Software Program. Customer is responsible for securing DSL, cable or another high speed Internet connection and up-to-date "browser" software in order to utilize the Software Program. Customer expressly consents to Next Technik's interception and storage of Electronic Communications and/or Customer Data as needed to provide the Services hereunder, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Next Technik. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. Without limiting Next Technik applicable obligations under the Data Privacy or Confidentiality Sections of this Agreement, Next Technik is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or

stored during the transmission of any data whatsoever across networks not owned and/or operated by Next Technik, including, but not limited to, the Internet and Customer's local network.

6.5. Third-Party Applications. Next Technik or third party providers may offer Third Party Applications. Except as expressly set forth in the Estimate/Order Form, Next Technik does not warrant any such Third Party Applications. Any procurement by Customer of such Third Party Applications or services is solely between Customer and the applicable third party provider. Next Technik is not responsible for any aspect of such Third Party Applications that Customer may procure or connect to through the Software Program or NetSuite Cloud Service, or any interoperation, descriptions, promises, or other information related to the foregoing. Next Technik shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Applications or third party providers.

6.6. Support Services and Professional Services. Next Technik requires Customer to purchase Support Services. Professional Services can be purchased for additional separate fee(s). Next Technik will provide Customer with User Documentation and other online resources to assist Customer in its use of the Software Program.

6.7. Updates. During a Support Services Service Period, Next Technik may update the Software Program and the Next Technik Written Materials to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use.

6.8. Analyses. Next Technik may (i) compile statistical and other information related to the performance, operation and use of the Software Program within the NetSuite Cloud Service, and (ii) use data from the Software Program in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses (i) and (ii) are collectively referred to as "**Service Analyses**"). Next Technik may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer Data, Personal Information or Confidential Information in a form that could serve to identify Customer or any individual. As between Customer and Next Technik, Next Technik retains all intellectual property rights in Service Analyses.

6.9. Professional Services. Next Technik will provide the Professional Services stated on the applicable Estimate/Order Form and/or Statement of Work to set up, implement and/or provide training to Customer for the fees and expenses stated therein.

6.10. Data Privacy.

(i) **Privacy Policy**. In performing the Services, Next Technik will comply with the Next Technik Privacy Policy, which is available at https://nextservicesoftware.com/privacy-policy/ and incorporated herein by reference. The Next Technik Privacy Policy is subject to change at Next Technik's discretion. Customer acknowledges Next Technik may have access to Customer Data (including Personal Information).

(ii) **Intentionally left blank**.

(iii) **Compliance and Data Protection Laws**. Customer will collect and maintain all Personal Information contained in the Customer Data in compliance with applicable data privacy laws and protections; and will retain reasonable security standards for its Users' use of the Services that process Customer Data.

(iv) **Data Security**. Next Technik will (i) process and secure Customer Data in accordance with documented, reasonable instructions provided by Customer, where such instructions are consistent with the terms of the Agreement, and (ii) maintain reasonable administrative, technical and physical measures designed for the protection of the security, confidentiality and integrity of the Customer Data processed by it. Next Technik may not use or disclose Customer Data other than for purposes of meeting its obligations under the Agreement or as required by law or a governmental authority.

(v) **Government Access Requests**. If Next Technik or its subcontractor receives a request for Customer Data directly from a law enforcement agency, then Next Technik will redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, Next Technik will promptly notify Customer and provide a copy of the demand, unless legally prohibited from doing so. If required by law, Customer will notify individuals that are data subjects within the Customer Data that their data may be disclosed to law enforcement or other governmental authorities and obtain the individuals' consent to the same.

(vi) **California Consumer Protection Act (CCPA)**. If and to the extent Next Technik processes "Personal Information of a Consumer" as defined under the CCPA for Customer, Next Technik will process Customer Data only as necessary to perform the Services and comply with applicable law, and will not collect, use, retain, access, share, transfer, or otherwise process Customer Data for any purpose not related to providing such Services or compliance with applicable law. Next Technik will refrain from taking any action that would cause any transfers of Customer Data to or from Next Technik to qualify as "selling" personal information as those terms are defined under the CCPA.

7. Suspension/Termination.

7.1. Suspension for Delinquent Account. Next Technik reserves the right to suspend Customer's access to and/or use of the Services if any payment is due but unpaid but only after Next Technik has provided Customer two (2) delinquency notices, and at least 30 days have passed since the transmission of the first notice. Customer agrees that Next Technik shall not be liable to Customer or other third party for any suspension pursuant to this Section.

7.2. Termination for Cause. If either Customer or Next Technik breaches a material term of this Agreement or any Estimate/Order Form or SOW and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate (a) in the case of breach of any Estimate/Order Form or SOW, the Estimate/Order Form and any applicable SOW under which the breach occurred; or (b) in the case of breach of the Agreement, the Agreement and all Estimates/Order Forms and SOWs that have been placed under the Agreement. If Next Technik terminates any orders as specified in the preceding sentence, Customer must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such Estimates/Order Forms and SOWs plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching party may agree in its sole discretion to extend the 30-day period for so long as the breaching party continues reasonable efforts to cure the breach. Customer agrees that if it is in default under this Agreement, Customer may not use those Services ordered.

8. Confidentiality.

8.1. By virtue of this Agreement, the parties may disclose to each other information that is confidential ("**Confidential Information**"). Confidential Information shall be limited to the terms and pricing under this Agreement and Customer's Estimate/Order Forms, Customer Data residing in the Services, and all information clearly identified as confidential at the time of disclosure.

8.2. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

8.3. Each party agrees not to disclose the other party's Confidential Information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Next Technik will protect the confidentiality of Customer Data Accessed by the Software Program for as long as it has access to it via the NetSuite Cloud Service. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement, and each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental entity as required by law.

9. Warranties, Disclaimers and Exclusive Remedies.

9.1. Each party represents that it has validly entered into this Agreement and that it has the power and authority to do so. Next Technik warrants that during the Term, (i) the Software Program will operate in accordance with the functionality set out in the online User Documentation that is part of the Software Program in all material respects, and (ii) Next Technik will perform any Professional Services and Support Services in a professional manner consistent with industry standards (the warranties described by the foregoing clauses (i) and (ii), collectively, the "**Services Warranty**"). If the Services provided to Customer were not performed as warranted, Customer must promptly provide Next Technik with a written notice that describes the deficiency in the Services. For Professional Services, Customer must notify Next Technik of any warranty deficiencies within 60 days from performance of the deficient Professional Services.

9.2. NEXT TECHNIK DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT NEXT TECHNIK WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. NEXT TECHNIK IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER DATA OR THIRD PARTY APPLICATIONS, THE NETSUITE CLOUD SERVICE, OR ANY OTHER SERVICES PROVIDED BY THIRD PARTIES.

9.3. FOR ANY BREACH OF THE SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND NEXT TECHNIK'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF NEXT TECHNIK CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALLY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND NEXT TECHNIK WILL REFUND TO CUSTOMER THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO NEXT TECHNIK FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

9.4. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, ARE EXPRESSLY EXCLUDED, INCLUDING, WITHOUT LIMITATION, FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Limitations of Liability.

10.1. NOTHING IN THIS AGREEMENT, ANY ESIMATE/ORDER FORM, OR ANY STATEMENT OF WORK SHALL EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY:

(i)   FOR PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENCE OF THAT PARTY; OR

(ii)   IN THE TORT OF DECEIT OR FOR FRADULENT MISREPRESENTATION.

10.2. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE, PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), SALES, DATA, DATA USE, GOODWILL, OR REPUTATION.

10.3. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF NEXT TECHNIK AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR CUSTOMER'S ESTIMATE/ORDER FORM OR SOW, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID UNDER CUSTOMER'S ESTIMATE/ORDER FORM OR SOW FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

11. Indemnification.

11.1. If a third party makes a claim against either Customer or Next Technik ("**Recipient**" which may refer to Customer or Next Technik depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "**Material**") furnished by either Customer or Next Technik ("**Provider**" which may refer to Customer or Next Technik depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

(i) notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);

(ii) gives the Provider sole control of the defense and any settlement negotiations; and

(iii) gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

11.2. If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Next Technik's ability to meet obligations under the relevant order, then Next Technik may, upon 30 days prior written notice, terminate the order. If such Material is third party technology and the terms of the third party license do not allow us to terminate the license, then Next Technik may, upon 30 days prior written notice, end the Services associated with such Material and refund any unused, prepaid fees for such Services.

11.3. The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or the User Guides, or (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any Material not furnished by the Provider. Next Technik will not indemnify Customer to the extent that an infringement claim is based on a Third Party Application or any Material from a third party portal or other external source that is accessible or made available to Customer within or by the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.).

11.4. Customer, at Customer's sole cost and expense, will defend Next Technik against the claim and indemnify Next Technik from the damages, liabilities, costs and expenses awarded by the court related to Customer Data or Customer's breach of its obligations under Section 3 hereto, if Next Technik does the following:

(i) notifies Customer promptly in writing, not later than 30 days after Next Technik receives notice of the claim (or sooner if required by applicable law);

(ii) gives Customer sole control of the defense and any settlement negotiations; and

(iii) gives Customer the information, authority and assistance Customer needs to defend against or settle the claim.

11.5. This Section 11 provides the parties' exclusive remedy for any infringement claims or damages.

12. Governing Law and Jurisdiction. This Agreement is governed by English law and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in England in any dispute arising out of or relating to this Agreement.

13. Export.

13.1. Export laws and regulations of the United States and any other relevant local export laws and regulations may apply to the Services. Such export laws govern use of the Services (including technical data) and any Services deliverables provided under this Agreement, and Customer and Next Technik each agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information, software programs and/or materials resulting from the Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

13.2. Customer acknowledges that the Services are designed with capabilities for Customer and Customer Users to access the Services without regard to geographic location and to transfer or otherwise move Customer Data between the Services and other locations such as User workstations. Customer is solely responsible for the authorization and management of User accounts across geographic locations, as well as export control and geographic transfer of Customer Data.

14. General Provisions.

14.1. Entire Agreement.

(i)   This Agreement incorporates by reference all URL Terms (as applicable) and Estimate/Order Forms, and this Agreement, together with such referenced items, constitute the entire understanding between Customer and Next Technik and are intended to be the final and entire expression of their agreement. The parties expressly disclaim any reliance on, and shall have no remedies in respect of, any and all prior discussions, emails, RFP's, statements, representations, assurances, warranties (in each case whether made innocently or negligently) and/or agreements between the parties. There are no other verbal agreements, representations, warranties undertakings or other agreements between the parties. Nothing in this section 14.1.(i) excludes or limits Oracle's liability for deceit or fraudulent misrepresentation.

(ii)   Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Customer in connection to this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Next Technik to object to such terms, provisions, or conditions. In the event of any inconsistencies between the terms of an Estimate/Order Form and the Agreement, the Estimate/Order Form shall take precedence.

(iii) The Agreement shall not be modified, or amended, except as expressly set forth herein, or in writing and signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted, or by a properly executed Estimate/Order Form or Statement of Work.

14.2. Other General Provisions.

(i)   This Agreement shall inure to benefit and bind the parties hereto, their successors and assigns, but neither party may assign this Agreement without written consent of the other, except that Next Technik may assign without consent to a related entity or the successor of all or substantially all of the assignor's business or assets to which this Agreement relates. There are no third-party beneficiaries to this Agreement. A person who is not a party to this Agreement, an Estimate/Order Form, or Statement of Work has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, an Estimate/Order Form, or Statement of Work but does not affect any right of a third party that exists or is available apart from that Act.

(ii)   This Agreement does not create any joint venture, partnership, agency, or employment relationship between the parties.

(iii) Next Technik's business partners and other third parties, including any third parties with which the Services have integrations or that are retained by Customer to provide consulting services, implementation services or applications that interact with the Services, are independent of Next Technik and are not Next Technik's agents. Next Technik is not liable for, bound by, or responsible for any problems with the Services or Customer Data arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Services as Next Technik's subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Next Technik would be responsible for our resources under this Agreement.

(iv) If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. A waiver of any breach under this Agreement should not constitute a waiver of any other breach or future breach.

(v)   **Force Majeure.** Neither party shall be liable for loss, delay, nonperformance (including failure to meet the service level commitment but excluding payment obligations) to the extent resulting from any force majeure event, including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, labor stoppage or dispute (other than those involving Next Technik's employees), or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible and any delivery date shall be extended accordingly.

(vi) **Non-Impediment.** Nothing in this Agreement shall be construed as precluding or limiting in any way the right of Next Technik to provide consulting, development, or other services of any kind to any individual or entity (including without limitation performing services or developing materials which are similar to and/or competitive with the Professional Services and/or deliverables hereunder).

(vii) **Audit.** Upon 45 days written notice and no more than once every 12 months, Next Technik may audit Customer's use of the Services to ensure Customer's use of the Services is in compliance with the terms of the applicable Estimate/Order Form and this Agreement. Any such audit shall not unreasonably interfere with Customer's normal business operations. Customer agrees to cooperate with Next Technik's audit and to provide reasonable assistance and access to information reasonably requested by Next Technik. The performance of the audit and non-public data obtained during the audit (including findings or reports that result from the audit) shall be subject to the provisions of Section 8 (Confidentiality) of this Agreement. If the audit

identifies non-compliance, Customer agrees to remedy (which may include, without limitation, the payment of any fees for additional Services) such non-compliance within 30 days of written notification of that non-compliance. Customer agrees that Next Technik shall not be responsible for any of Customer's costs incurred in cooperating with the audit.

(viii) The Section headings used in this Agreement are included for reference purposes only and shall not affect the meaning or interpretation of this Agreement in any way. Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive. This Agreement may be executed in counterparts and/or by facsimile or electronic signature and if so executed shall be equally binding as an original copy of this Agreement executed in ink by both parties.