

Oracle Information Systems (Japan) G.K. Third Party Terms

If the hyperlink location of these Oracle Information Systems (Japan) G.K. ("Oracle") Third Party Terms ("Third Party Terms") is referenced in the description for an item on an Estimate/Order Form signed by an authorized representative of the procuring party ("you"), then the Third Party Terms govern your use of the item. The item and all associated elements (e.g., users,) procured from Oracle on such Estimate/Order Form shall be subject solely to the terms and conditions of these Third Party Terms, and not the License or Subscription Services Agreement.

Background.

(a) Third Party has appointed Oracle to market and distribute the Third Party Application.

(b) You wish to access and use the Third Party Application and associated support services as set out in the Estimate/Order Form, and accept the license to use the Third Party Application on these Third Party Terms.

1. Definitions.

"Affiliates" means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party, for so long as such control exists.

"End User Limitations" means any limitations on the use of the Third Party Application specified in the Estimate/Order Form, including (i) restrictions on the number of users authorized to access and use the Third Party Application, whether by you or any person acting under your instructions, and (ii) amount of disk space for the storage of your data specified for the Third Party Application.

"Estimate/Order Form" means an estimate, renewal notification or order form executed by you and accepted by Oracle (or a Reseller, if applicable) which specifies the Third Party Application to be provided by Oracle subject to these Third Party Terms.

"Initial Term" means the duration specified in the Estimate/Order Form during which you have procured the right to access and use the Third Party Application, which shall be coterminous with the expiration of the subscription Term for your Service account in effect at the time the Third Party Application(s) is/are procured.

"Service" means, collectively, the NetSuite online business application suite (and any optionally procured modules) (the "NetSuite Service") and/or the SuiteProjects Pro online Professional Services Automation application suite (and any optionally procured modules) (the "SuiteProjects Pro Service") as described in the applicable User Guides that is procured by Customer from Oracle in the Estimate/Order Form and any subsequent Estimate/Order Form from time to time, including

associated offline components, but excluding Third Party Applications, Support Services and Professional Services. The Service shall be governed by a separate license or subscription services agreement ("License or Subscription Services Agreement") and not these Third Party Terms).

"Third Party" means the vendor of the Third Party Application procured from Oracle.

"Third Party Application" means the on-line, web-based application recently acquired by Oracle, provided by Oracle as a reseller for a Third Party or as otherwise specified by Oracle in an Estimate/Order Form.

2. Grant of License. Subject to your compliance with these Third Party Terms, and Oracle's receipt of payment of all applicable fees for the Third Party Application ("**Subscription Fees**"), Oracle grants you and your Affiliates a nonexclusive, nontransferable, revocable, limited license to use the Third Party Application:

- (a) online via the internet,
- (b) solely for your internal business purposes,
- (c) during the Term, and
- (d) in accordance with any End User Limitations.

In addition, if the Third Party Application includes an offline software component, then you acknowledge that such component shall be governed by the terms of the applicable Software EULA that can be found at www.netsuite.com/termsOfService (or other similar sites) and shall apply if such component(s) are subsequently ordered or activated by you.

If you require or wish to add additional (i) users, (ii) storage space and/or (iii) functionality, you will be charged an additional fee for any additional usage/functionality of the Third Party Application in excess of that which is authorized under the applicable Estimate/Order Form. All fees payable are due within no later than the end of the month following the month in which the Oracle invoice is issued from the invoice date unless otherwise specified in your Estimate/Order.

Oracle 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**"). You are responsible for paying all Taxes, excluding only taxes based on Oracle's net income. If Oracle has the legal obligation to pay or collect Taxes for which you are responsible, then the appropriate amount shall be invoiced to and paid by you unless you provide Oracle with a valid tax exemption certificate authorized by the appropriate taxing authority.

2.1 Procurement of Third Party Application through Oracle Reseller. To the extent you procure access to the Third Party Application from a

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third party authorized by Oracle to bill/collect for such Third Party Application (a "Reseller"), then the following shall apply: (a) Except as set forth in this Section, all terms of these Third Party Terms govern your use of the Third Party Application; (b) You shall pay Reseller in accordance with your Estimate/Order Form with Reseller, notwithstanding any contrary provision in these Third Party Terms regarding payment of fees and/or taxes to Oracle; (c) Notwithstanding anything to the contrary in these Third Party Terms, any terms that provide for a refund of fees from Oracle to you or notifications from Oracle to you regarding such subject matter shall not apply as between Oracle and you; (d) You hereby unconditionally release Oracle of any and all liability in connection with statements or commitments made by Reseller that are inconsistent with or in addition to these Third Party Terms; (e) You shall not seek support from the Third Party; and (f) All references to "Estimate/Order Form" in these Third Party Terms shall be interpreted consistently with this Section 2.1, including that such Estimate/Order Form is issued/accepted by Reseller (and not Oracle).

3. Restrictions. You agree not to: (i) use the Third Party Application except as expressly authorized in these Third Party Terms and your Estimate/Order Form; (ii) use any device, software, or routine that (a) interferes with any application, function, or use of the Third Party Application, or (b) is intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or communication; (iii) outsource, rent, resell, sublicense, time-share, or otherwise share the Third Party Application with any third party including service bureau use; (iv) frame or mirror the login page for the Third Party Application; (v) decompile, disassemble or reverse-engineer the underlying software that is part of the Third Party Application or otherwise attempt to derive its source code; (vi) use the Third Party Application either directly or indirectly to support any activity that is illegal; (vi) access the Third Party Application for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; or (vii) authorize any third parties to do any of the above. You shall ensure that any use of the Third Party Application by your Affiliates and users is in accordance with the terms and conditions of these Third Party Terms. Any action or breach by any of such Affiliates or users shall be deemed an action or breach by you.

4. Ownership. You agree that as between you, Oracle and the Third Party, all rights, title and interest in and to all intellectual property rights in the Third Party Application are owned or held exclusively by Oracle, the Third Party or its licensors. Except as provided in these Third Party Terms, the license granted to you does not convey any rights in the Third Party Application, express or implied, or ownership in the Third Party Application or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by Oracle and/or the Third Party. You may not delete or in any manner alter the copyright, trademark, and other proprietary rights

notices appearing in or on the Third Party Application as provided.

5. Your Responsibilities. You will pay the Subscription Fees as set forth in the Estimate/Order Form for the Third Party Application. You are responsible for all activity occurring under your user accounts and will: (i) maintain the accuracy and completeness of the information you provide in your account registration, Estimate/Order Form, and authorized users; and (ii) notify Oracle immediately of any unauthorized use of any password or account or any other known or suspected breach of security. You are responsible for obtaining, maintaining, and supporting all internet access, computer hardware, and other equipment and services needed for its access to the Third Party Application. All electronic data or information submitted to and stored in the Third Party Application ("**Customer Data**") will be stored on Oracle's and/or such Third Party's servers. You own all Customer Data. You are solely responsible and liable for the Customer Data and you will control access to and management of the Customer Data through your account, including access by any authorized users and any other third party services providers that you engage, enable or procure. Third Party and/or Oracle, as applicable, shall act as your data processing agent and process your Customer Data only on behalf and in the interest of you and in accordance with your instructions and directions. Without limiting the generality of Oracle's disclaimers and limitations of liability regarding Third Party Applications, you specifically acknowledge that Oracle shall have no responsibility or liability whatsoever with respect to any activities, acts and omissions of Third Party. You must abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Third Party Application, including those related to United States and other applicable export regulations, data privacy, international communications and the transmission of technical or personal data. Neither the Third Party Application nor the data accessed on the Third Party Application may be exported or re-exported directly or indirectly by you or your users in violation of any such export laws or used for any purposes prohibited by such export laws.

6. Oracle Responsibilities. Oracle and/or Third Party will (i) routinely back up all Customer Data; (ii) use industry standard security measures to maintain your authorized users' login information (e.g., User IDs and passwords) for the Third Party Applications in confidence; and (iii) not use Customer Data for any purpose other than to exercise its rights and perform its obligations in providing the Third Party Application and applicable services pursuant to these Third Party Terms. Oracle and Third Party may access your account and Customer Data as necessary to identify or resolve technical problems or respond to complaints about the Third Party Applications. If the fees for the Third Party Application are based on usage or the number or types of users of the Third Party Application, then Oracle shall access and use Customer Data as reasonably necessary to determine the fees for the Third Party Application. Oracle and

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Third Party will use commercially reasonable efforts to maintain the confidentiality of Customer Data. Notwithstanding any other provision, Oracle and Third Party may disclose Customer Data if Oracle or Third Party determine that such action is reasonably necessary: (a) to comply with the law, regulatory requirements, or legal or regulatory process; (b) to enforce these Third Party Terms; (c) to respond to claims that you are using the Third Party Applications to perform or support activities that violate the law or the rights of third parties; or (d) to the extent necessary, to contractors and service providers who have executed written agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services in connection with the performance of these Third Party Terms. The operation of and access to the Third Party Applications may be interfered with by numerous factors outside of Oracle and Third Party's control and Oracle and Third Party will not be liable for any such costs, losses, expenses, damages, or liabilities arising out of or related to any delay or failure in performance under these Third Party Terms resulting directly or indirectly from causes beyond Oracle or Third Party's reasonable control.

7. Support. Oracle offers optional and "for fee" training classes, professional services consultation, and customer support services for the Third Party Application. Oracle shall provide the level of support, if any, procured by you from Oracle for the Third Party Application on the corresponding Estimate/Order Form and you shall seek support from Oracle and not from Third Party

8. Usage Data. In addition to certain information about you, including your account information, authorized user information, and services and support information, that is needed to provide you with the Third Party Applications, Oracle and Third Party may maintain, collect, or generate other information about you, including the duration and frequency of your use of the Third Party Applications, the pages viewed and searches performed, and other such anonymous data (collectively "**Usage Data**"). Oracle and Third Party may use the Usage Data for determining fees and internal business purposes, including improving, testing and providing the Third Party Applications and additional services. Oracle and Third Party may use and disclose Usage Data in aggregate form (e.g., data aggregated from your and other customers' use of the Third Party Applications, but does not identify you or any other customer) for promotion, statistical analysis, market analysis, financial analysis, and other such purposes.

9. Term. These Third Party Terms are effective commencing on the earlier of the date: (i) you executed the Estimate/Order Form that references to these Third Party Terms; or (ii) you began using the Third Party Application being provided by Oracle; and continues for the Initial Term and all renewal terms (collectively, the "Term"), unless terminated earlier pursuant to these Third Party Terms. As long as you continue to have the right to use and access the Service or Third Party Application, these Third Party

Terms will automatically renew at the end of the Initial Term and each renewal term at the then current list price for a further 12 month period unless you agree otherwise in writing with Oracle or provide Oracle with notice of non-renewal, in writing, one (1) day prior to the expiration of the then current term.

10. Termination; Effects of Termination. Without limiting any other remedies available to it, Oracle may immediately suspend access to the Third Party Application and/or terminate these Third Party Terms if: (a) you breach any material provision of these Third Party Terms that, (if it is capable of being cured) is not cured within thirty (30) days from written notice to you; or (b) Oracle determines that your actions are likely to cause legal liability for such Third Party or its suppliers and other customers. Notwithstanding the above, with regard to non-payment of any amount owed to Oracle, Oracle shall provide you with two (2) delinquent notices with at least thirty (30) days time since the transmission of the first notice before suspending access to and/or use of the Third Party Application by you. Oracle may terminate these Third Party Terms and the right to access the Third Party Application by written notice to you, if Oracle's right to procure access and use of the Third Party Application is terminated by such Third Party, if Oracle is contractually required to terminate these Third Party Terms, or if your right to access and use the Service terminates.

Upon any expiration or termination of these Third Party Terms, or upon expiration of the Term, the rights and licenses granted hereunder will automatically terminate, and you may not continue to use the Third Party Application. Additionally, with regard to any services, Oracle reserves the right to stop work on any project that has undisputed invoices that are outstanding more than 45 days. Oracle and any such Third Party will have no liability for any costs, losses, damages, or liabilities arising out of or related to termination of these Third Party Terms. Except as otherwise expressly provided in these Third Party Terms, Oracle and/or such Third Party may permanently delete the Customer Data after 30 days following termination or expiration of these Third Party Terms. Neither Oracle nor Third Party will be liable in any way to you for any termination of access to the Third Party Application or Customer Data or deletion of the Customer Data in accordance with these Third Party Terms. The provisions of Sections 1, 4, 10, 11, 12, 13, 14, and 15 will survive termination of these Third Party Terms.

11. Indemnity. Oracle will defend and indemnify you from and against any loss, damage, liability or cost (including reasonable attorneys' fees) arising out of a third party claim that Oracle failed to obtain the appropriate rights and licenses necessary to make the Third Party Application available to you; provided that you promptly notify Oracle in writing of any and all such claims. In the event of any loss, damage, liability or cost for which Oracle is obligated to indemnify you hereunder, Oracle shall have sole control of the defense and all related settlement negotiations, and you shall reasonably cooperate with

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Oracle and the Third Party in the defense and/or settlement thereof at Oracle's expense; provided that you may participate in such defense using your own counsel, at your own expense. If your use of the Third Party Application is, or in Oracle's opinion is likely to be, enjoined due to a claim specified above, Oracle may, at its sole option and expense: (a) procure for you the right to continue using the Third Party Application under the terms of these Third Party Terms; (b) replace or modify the Third Party Application so that it is non-infringing; or (c) if options (a) and (b) above cannot be accomplished despite its reasonable efforts, then Oracle may terminate the license rights and Oracle's obligations hereunder with respect to the Third Party Applications and refund you the unused portion of the Subscription Fees paid for the Third Party Applications.

You will defend and indemnify Oracle and its licensors from and against any and all loss arising out of a claim, suit action, or proceeding brought by any third party against Oracle (i) alleging that the Customer Data or any trademarks or service marks other than Oracle or Third Party marks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party, or (ii) arising out of or related to your breach of Section 3 (Restrictions); provided that Oracle (a) promptly provides you notice of the claim, suit, action or proceeding, (b) gives you sole control of the defense and related settlement negotiations; and (c) provides you with all reasonably available information and assistance necessary to perform your obligations under this paragraph

12. No Warranty. Oracle and Third Party do not offer financial, accounting or legal advice. The Third Party Application may provide general information about the possible use of the Third Party Application or related industry principles or standards (e.g., such as standard accounting principles), but such general information is intended for informational purposes only, and is not intended to be relied upon as professional accounting, regulatory or other advice. The Third Party Applications are provided "AS IS" and the entire risk as to satisfactory performance, accuracy, and effort is with you. Oracle and Third Party do not warrant that the operation of the Third Party Application will be error free or uninterrupted. ORACLE AND THIRD PARTY HEREBY EACH DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. Third Party Applications are not within the scope of Oracle's SSAE 16 (SOC1) / ISAE 3402 Type II Report.*

*or similar third party audit to an established industry standard selected by Oracle.

13. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY LOST PROFITS OR REVENUE, COVER, PUNITIVE, SPECIAL, RELIANCE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT

DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED (INCLUDING LOSS OF DATA, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE THIRD PARTY APPLICATION, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE THIRD PARTY APPLICATION, OR FOR ANY INFORMATION OBTAINED FROM OR THROUGH THE THIRD PARTY APPLICATIONS, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT (OR SUCH PARTY'S LICENSORS) HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE SUBSCRIPTION FEES PAID FOR THE SERVICE GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OUT OF WHICH THE LIABILITY AROSE. The foregoing limitations will not apply to (i) breach of Section 3 (Restrictions), (ii) fees due under this Agreement, and (iii) any losses suffered by Oracle in connection with any breach of these Third Party Terms by you which causes or entitles Third Party to exercise any rights adversely to Oracle, including rights to terminate any relevant agreement between Third Party and Oracle.

14. Governing Law and Jurisdiction. These Third Party Terms are governed by the substantive and procedural laws of Japan and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in the Tokyo District Court in any dispute arising out of or relating to these Third Party Terms. The Uniform Computer Information Transactions Act does not apply to these Third Party Terms.

15. General. The parties are independent contractors, and no branch or agency, partnership, association, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by these Third Party Terms. If any portion hereof is found to be void or unenforceable, the remaining provisions of these Third Party Terms shall remain in full force and effect. Neither party shall be liable for any loss or delay resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage (other than those involving Oracle employees), internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties, and any payment date or delivery of Service date shall be extended to the extent of any delay resulting from any force majeure event. You may not assign these Third Party Terms, in whole or in part, without Oracle's prior written consent; provided however, that you may assign these Third Party Terms without Oracle's consent, in connection with a merger, acquisition, or sale of all or substantially all of your assets, provided that you provide Oracle with prior notice. Any attempt to assign these Third Party Terms other than as permitted above will be null and void. These Third Party Terms and any Oracle Estimate/Order Forms constitute the complete and exclusive understanding and agreement between the parties regarding the

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Third Party Application and supersede all prior or contemporaneous agreements, emails, or understandings, written or oral, including the Oracle Subscription Services Agreement and any different or additional terms and conditions stated by you in connection herewith in a purchase order or otherwise. Any waiver, modification or amendment of any provision of these Third Party Terms will be effective only if in writing and signed by a duly authorized representative of the party against whom such provision shall be applied. These Third Party Terms have been written in the English language. You waive any rights you may have under the law of your country to have these Third Party Terms written in the language of that country.