

Oracle America, Inc.
NetSuite US Payroll Service
Terms of Service

IMPORTANT! THESE TERMS OF SERVICE ("PAYROLL TERMS OF SERVICE") ARE THE ONLY TERMS THAT GOVERN YOUR USE OF THE NETSUITE PAYROLL SERVICES DESCRIBED IN THIS PAYROLL TERMS OF SERVICE. THIS PAYROLL TERMS OF SERVICE WILL BE LEGALLY BINDING ON YOU WHEN YOU CLICK THE "I AGREE" BUTTON BELOW. CAREFULLY READ THIS PAYROLL TERMS OF SERVICE BEFORE CLICKING "I AGREE."

YOU REPRESENT THAT YOU HAVE AUTHORITY TO ENTER INTO THIS PAYROLL TERMS OF SERVICE ON BEHALF OF YOUR COMPANY (OR OTHER LEGAL ENTITY). IF YOU DO NOT HAVE SUCH AUTHORITY, OR YOU DO NOT AGREE WITH ANY OF THE TERMS AND CONDITIONS IN THIS PAYROLL TERMS OF SERVICE, DO NOT CLICK THE "I AGREE" BUTTON; INSTEAD, CLICK THE "I DECLINE" BUTTON.

This Payroll Terms of Service will be effective as of the date you click "I agree."

1. Parties. This Payroll Terms of Service is entered into by you, as an authorized agent of your company (or other legal entity), and Oracle America, Inc., a Delaware corporation ("Oracle"). You should retain a copy of this Payroll Terms of Service for your records. You have entered into an Oracle Master Agreement, Subscription Services Agreement, Cloud Services Agreement, or License Agreement ("Agreement") with Oracle regarding your access and use of the Service, as defined therein.

2. Services and Requirements.

- A. Payroll Services.** This Payroll Terms of Service, together with the documentation described in subsection B below and receipt of a satisfactory credit review (described below), authorizes you to access and use the NetSuite Payroll services (the "Payroll Services") via the Service (as defined in your Agreement). The Payroll Services include the NetSuite tax calculation tool and payroll processing services. Oracle may (i) retain the services of a third party to perform certain functions in connection with the Payroll Services (a "Fulfillment Partner") and (ii) require you to enter into a contract directly with Fulfillment Partner for such Payroll Services (the "Fulfillment Partner Agreement").
- B. Documentation and Required Information.** You will be required to complete and submit to Oracle, or Fulfillment Partner, the following documents in order to use the payroll processing components of Payroll Services: (i) power of attorney forms for each jurisdiction in which you will use the Payroll Services (the "POA"), (ii) Authorization to Debit/Credit Bank Account(s)/Obtain Bank Account Information (the "Authorization Form"), (iii) an IRS proof of legal name/FEIN and (iv) an authorization form for Fulfillment Partner authorizing debiting and crediting your bank account. In addition, you will provide to Oracle, and authorize Oracle to provide to Fulfillment Partner, your (a) legal name, and "doing business as" name if applicable; (b) legal address (not a PO Box or PMB); (c) phone number; (d) Duns Number (if one exists); (e) voided pre-printed bank check or MICR spec sheet; (f) primary Federal Employer Identification Number ("FEIN"); (g) Processor payroll identification number; (h) average total payroll amount; (i) number of employees; and (j) complete American Bankers Association banking information. Oracle may require you to complete additional documentation or information. You hereby authorize Oracle to (i) provide your data to Fulfillment Partner for the purposes of performing the Payroll Service, and (ii) take such action as is necessary to perform the Payroll Services. You agree to promptly comply with Oracle's request for such additional documentation and understand that the Payroll Services may be impaired or delayed if you do not.
- C. Credit Check.** Your ability to access and use the payroll processing services component of the Payroll Services is subject to an initial satisfactory credit check which may be performed by Oracle, or Fulfillment Partner. In addition, Oracle, or Fulfillment Partner, may conduct periodic credit checks throughout the term. In the event a credit check indicates an objective material defect in your financial status, Oracle or Fulfillment Partner, may terminate this Payroll Terms of Service, suspend the Payroll Services, or require alternative methods of funding and payment.
- D. Your Obligations.** You will (i) provide Oracle, or Fulfillment Partner, with any information requested by Oracle in order to perform the Payroll Services, (ii) comply with the funding and other requirements set forth on Schedule 1 to this Payroll Terms of Service, (iii) input the required information into the proper fields within your Service account, (iv) be solely responsible for all federal, state and local payroll taxes and any related fees or penalties and the accuracy of your data, (iv) pay all applicable taxes, late fees, late funding fees, and interest charges related to your payroll obligations, and (v) pay the Oracle Fees (as defined below). NetSuite may charge interest fees for late funding or late payments at the rate of the lesser of the annual compounded rate of 10.0% or the highest rate permitted by applicable law and the fees.
- E. Power of Attorney.** In the event you granted to Oracle, or Oracle's authorized third parties, a POA regarding payroll tax matters pursuant to a prior agreement with Oracle related to the Payroll Services, such POA will remain in full force and

effect with regard to Payroll Services performed by Oracle prior to the effective date of this Payroll Terms of Service. Any POA executed with Fulfillment Partner will be in effect for Payroll Services performed subsequent to the effective date of this Payroll Terms of Service.

- F. **Fees.** You agree to pay all subscription and service fees that you are charged by Oracle for the Payroll Services (the "Oracle Fees"). The Oracle Fees and payment terms are described on your Estimate/Order Form (as defined in the Agreement) Oracle may increase the Oracle Fees upon 30 days written notice to you. Upon utilizing any Payroll Services, you agree to allow Oracle, or Fulfillment Partner, to withdraw from the bank account designed on the Authorization Form all amounts sufficient to pay (i) any and all payments, disbursements, and remittances related to, or required by, your use of the Payroll Services and (ii) any Oracle Fees. You also agree to pay all costs and fees (including attorneys' fees), if any, incurred by Oracle in collecting overdue Oracle Fees or any other amounts owing from you and shall remit such payments immediately upon notice by Oracle.

3. Electronic Communication. You agree to the following terms and conditions with respect to your access and use of the Payroll Services:

- You will only issue requests to perform Payroll Services to Oracle using the Payroll Services tool within the Service;
- You will not use the Payroll Services for any unlawful, defamatory, obscene, or threatening purpose;
- You will not upload any information into the Payroll Services tab within the Service that you are not authorized to have and use for the purposes of providing payroll related services; and
- You will provide to Oracle an email address where Oracle may deliver electronic communications relating to the Payroll Services and accept as binding any electronic communications from Oracle at such email address.

4. Your Representations and Warranties. You acknowledge that Oracle's obligation to perform the Payroll Services is subject to your obligations, representations, and warranties set forth in this Payroll Terms of Service. You represent and warrant the following:

- You shall input, maintain, and verify the accuracy of any and all payroll information in your Service account, and you shall continually ensure that such information is kept complete, accurate, and up-to-date at all times. You acknowledge that Oracle and Fulfillment Partner will rely on the accuracy of this information as it performs its requested functions which may include automatically completing and submitting filings to government agencies or other third parties.
- You will retain copies of all information entered into or generated by the Payroll Services and you shall be solely responsible for maintaining such data, and all tax records, in accordance with any legal obligations.
- You will maintain sufficient funds in your designated bank account(s) as necessary to perform the Payroll Services and meet all of your obligations, including, without limitation, sufficient funds to cover funding disbursements, checks, direct deposits, tax payments, or recurring payments to third parties, as well as the Oracle Fees. All funds must be available and any transfers made by you in advance of the applicable deadlines set forth on Attachment 1 to this Payroll Terms of Service.
- You will use the Payroll Services in accordance with the policies and procedures communicated by Oracle.
- You agree that NetSuite and Fulfillment Partner, are the exclusive provider(s) of the Payroll Services during the term of and in accordance with this Agreement and that you shall not, directly or indirectly, supplement, substitute, or otherwise modify the provision of such Payroll Services without terminating this Agreement.
- You will only reverse payrolls when you have had the funds returned from an employee or you have issued a successful stop payment. You understand and acknowledge that the process of correcting a mistaken reversal is complicated, highly manual, and may result in substantial tax consequences and penalties. Reversing payroll is subject to additional Oracle Fees set forth on the Payroll Fee Schedule. You are solely responsible for any such consequences, penalties, and additional Oracle Fees.
- You will comply with all applicable laws, rules, and regulations including, but not limited to, NACHA regulations regarding the U.S. Patriot Act, the Unlawful Internet Gambling Enforcement Act, the Bank Secrecy Act, and Anti Money Laundering Laws.

5. Warranty and Disclaimer of Warranties. Oracle warrants that it, or Fulfillment Partner, will (i) correctly file tax returns and other documents as requested by you and (ii) properly transmit the appropriate tax funds based on the information provided in your Payroll Services account. Oracle will use commercially reasonable efforts to rectify any payroll tax underpayment and tax filing issues for which Oracle is solely responsible and, subject to the limitations set forth in this Section 5 and to the extent not included in the Fulfillment Partner Agreement, Oracle shall reimburse you for any tax penalties and interest actually paid by you as a direct result of Oracle's failure to comply with the warranty set forth above. This is your sole remedy in the event of a breach of the foregoing warranty. Notwithstanding the foregoing, you will be solely responsible for payment of all tax penalties, interest, and additional Oracle Fees if (i) the information you provide to Oracle in your Payroll Services account is incorrect, inaccurate, or incomplete, (ii) you have insufficient funds in your designated bank account to process such Payroll Services, or (iii) a party other than Oracle, or Fulfillment Partner, fails to perform services in a timely manner.

EXCEPT AS EXPRESSLY SET FORTH ABOVE THE PAYROLL SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND NON-INFRINGEMENT. THERE IS NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, REGARDING ANY ASPECT OF THE PAYROLL SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES. THEREFORE THE ABOVE DISCLAIMERS MAY NOT APPLY TO YOU.

6. Limitations of Liability

ORACLE, ITS PROVIDERS, AND FULFILLMENT PARTNER, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS, WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES EVEN IF YOU ADVISE THEM OF THE POSSIBILITY OF SUCH DAMAGES. THIS INCLUDES, BUT IS NOT LIMITED TO, CLAIMS FOR LOST PROFITS, AND DAMAGES THAT MAY RESULT FROM THE USE, INCONVENIENCE, DELAY, OR LOSS OF USE OF THE PAYROLL SERVICE, OR FOR OMISSIONS OR INACCURACIES IN THE PAYROLL SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THAT THESE DISCLAIMERS AND LIMITATIONS MAY NOT APPLY TO YOU.

ORACLE, ITS PROVIDERS, AND FULFILLMENT PARTNER, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES OR UNDER ANY THEORY OF RECOVERY (WHETHER IN CONTRACT OR TORT OR OTHERWISE) FOR (i) ANY FEES, COSTS, CHARGES, OR ANY DAMAGES CAUSED BY LOST SHIPMENT OR TRANSMISSION OF CHECKS OR ANY FORM OF DISBURSEMENT INCLUDING, BUT NOT LIMITED TO, STOP PAYMENT FEES, REPRINTING OR RETRANSMISSION COSTS, SHIPPING CHARGES, OR CONSEQUENTIAL EXPENSES AND DAMAGE; (ii) ANY CHARGES, FEES, OR EXPENSES INCURRED BY YOU, YOUR AGENTS, OR EMPLOYEES WHICH ARE DUE TO LATE PAYCHECKS, REGARDLESS OF WHETHER SUCH PAYCHECKS ARE TO BE PREPARED AND DELIVERED BY ORACLE, FULFILLMENT PARTNER, OR BY YOU; AND (iii) NON-PERFORMANCE OF PAYROLL SERVICES WHICH HAVE BEEN SUSPENDED DUE TO FAILURE OR DELAY IN PAYMENT OF THE ORACLE FEES OR FEES OWED UNDER YOUR AGREEMENT. CHECK AND ELECTRONIC DISBURSEMENTS MADE ON YOUR BEHALF ARE FOB THE SHIPPING OR TRANSMITTING SITE.

IN NO EVENT WILL THE TOTAL LIABILITY OF ORACLE, OR ITS PROVIDERS, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS FOR ANY LEGAL CLAIM (WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE ORACLE FEES ACTUALLY PAID BY YOU FOR THE ANNUAL PERIOD PRIOR TO THE TIME WHEN THE CLAIM AROSE.

IN ADDITION TO THE LIMITATIONS SET FORTH IN THIS SECTION 6, NEITHER ORACLE, NOR ITS PROVIDERS, OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS WILL BE LIABLE FOR ANY LOSS THAT RESULTS FROM ANY CAUSE OVER WHICH ORACLE DOES NOT HAVE CONTROL. SUCH CAUSES INCLUDE, BUT ARE NOT LIMITED TO: (1) THE FAILURE OF ELECTRONIC OR MECHANICAL EQUIPMENT OR COMMUNICATION LINES; (2) TELEPHONE OR OTHER INTERCONNECT PROBLEMS; (3) BUGS, ERRORS, CONFIGURATION PROBLEMS, OR THE INCOMPATIBILITY OF COMPUTER HARDWARE OR SOFTWARE; (4) THE FAILURE OR UNAVAILABILITY OF INTERNET ACCESS; (5) PROBLEMS WITH INTERNET SERVICE PROVIDERS OR OTHER EQUIPMENT OR SERVICES RELATING TO YOUR COMPUTER OR NETWORK; (6) PROBLEMS WITH INTERMEDIATE COMPUTER OR COMMUNICATIONS NETWORKS OR FACILITIES; (7) PROBLEMS WITH DATA TRANSMISSION FACILITIES OR YOUR TELEPHONE, CABLE, OR WIRELESS SERVICE; (8) UNAUTHORIZED ACCESS, THEFT, HACKERS, OPERATOR ERRORS; OR (9) ACTS OF GOD, INCLUDING WITHOUT LIMITATION, NATURAL DISASTER, FIRE, TERRORISM, LABOR STOPPAGE, WAR, TERRORISM, MILITARY HOSTILITIES, OR CRIMINAL ACTS OF THIRD PARTIES. ORACLE IS ALSO NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER, SOFTWARE, MODEM, TELEPHONE, WIRELESS DEVICE, OR OTHER PROPERTY RESULTING IN ANY WAY FROM YOUR USE OF THE PAYROLL SERVICES. THE SERVICE LEVEL COMMITMENT SET FORTH IN THE AGREEMENT WILL NOT APPLY TO THE PAYROLL SERVICES.

7. Use of Proprietary Information. Title to and ownership of the Oracle Intellectual Property (as defined below) shall be and at all times remain with Oracle. Oracle shall have sole control of the content, features, and functionality of the Payroll Services. As between you and Oracle, Oracle shall be the sole and exclusive owner of its inventions, software, technology, know-how, works, materials, trademarks, trade names, patents, copyrights, trade secrets, service marks, applications, or user interfaces and graphic content of such interfaces or other intellectual property (whether or not patented, copyrighted or covered by any application for patent, copyright, or registration) (collectively, "Oracle Intellectual Property"). You shall not assert ownership of or any claim to or any interest in any Oracle Intellectual Property. At no time shall you attack, challenge, or file any application related to any intellectual property used or licensed under this Payroll Terms of Service. You agree to comply with all reasonable written requests from Oracle intended to protect the Oracle Intellectual Property and Payroll Services.

8. No Legal or Tax Advice. You acknowledge that Oracle does not give legal advice or tax advice and that your use of the Payroll Service does not constitute, and is not a substitute for obtaining, tax or legal advice. Oracle may provide you general payroll tax, estate and pension planning information, and principals materials. You understand that the information provided by Oracle does not apply to your specific circumstances or take into account your comprehensive tax or estate planning situation and is information provided to all Payroll Services customers. For tax and legal assistance, you agree to consult your own tax or legal advisor. You understand and agree that Oracle is under no obligation to inform you of your legal or tax obligations.

9. Term and Termination. This Payroll Terms of Service will be in effect until (i) Oracle terminates this Payroll Terms of Service in writing, (ii) Oracle discontinues the Payroll Services, (iii) your Oracle Agreement is terminated or expires, (iv) you provide sixty (60) days written notice to Oracle of your intent to terminate this Payroll Terms of Service, (v) you revoke your Authorization Form, or (vi) you cease using the Payroll Services. In the event you terminate this Payroll Terms of Service pursuant to (iv) above with an effective date that does not occur on the last day of a calendar quarter, you may be charged an additional fee. In the event that you are in breach of this Payroll Terms of Service or Oracle has reason to believe that the security of your account has been compromised, Oracle may, in its sole discretion disable, suspend, or terminate your access to, or its provision of, any Payroll Services. Further, Oracle reserves the right in its sole discretion to require a cash deposit at any time and to determine the adequacy of any such deposit prior to the execution of any transaction through the Payroll Services. Oracle will not be responsible for any delay or failure to provide the Payroll Services in the event there is a restriction on the account designated in the Authorization Form, you lack sufficient funds in such account for the provision of the Payroll Services, or you delay or fail to make a required cash deposit in such account.

10. Indemnification. You agree to defend, indemnify, and hold harmless Oracle and its officers, directors, employees, suppliers, and agents from and against any and all claims, losses, liability costs and expenses (including but not limited to attorneys' fees) from you or any third party arising from or related to (i) your breach of this Payroll Terms of Service, (ii) violation of any applicable laws or regulations, (iii) any violation of a third party's rights, including but not limited to infringement of any third party proprietary or intellectual property rights or violation of any privacy rights, (iv) any fraudulent or criminal acts committed by you or your agents or employees, and (v) any of the categories of damages for which Oracle is not liable pursuant to the limitations of liability for as set forth in Section 6 of this Payroll Terms of Service. This obligation will survive the termination of this Payroll Terms of Service.

11. Survival. The following sections of this Payroll Terms of Service shall survive any termination of this Payroll Terms of Service: Section 2; Section 5 (the disclaimer of warranty); Section 6; Section 7; Section 8; Section 10; and Section 14.

12. Successors and Assigns. This Payroll Terms of Service shall be binding on and shall inure to the benefit of the parties to it and their respective heirs, legal representatives, successors, and assigns, but no rights, obligations, or liabilities hereunder shall be assignable by you without the prior written consent of Oracle.

13. Entire Payroll Terms of Service and Modifications. This Payroll Terms of Service, the additional documents referenced in Section 2, and any hyperlinks herein supersede all prior written agreements, and all prior or contemporaneous oral agreements and understandings, express or implied, with respect to the Payroll Service except with respect to any Power of Attorney you granted to Oracle prior to the effective date of this Payroll Terms of Service as described in Section 2.E. Oracle may modify this Payroll Terms of Service upon written notice, including electronic communications, to you. Your continued use of the Payroll Service will constitute acceptance of any such modification.

14. Governing Law; Venue. This Payroll Terms of Service is governed by the substantive and procedural laws of the State of California and you and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco or Santa Clara counties in California in any dispute arising out of this Payroll Terms of Service. shall be governed by the California law, excluding choice of law doctrines. You may not bring any action under this Payroll Terms of Service more than two years after the cause of action has accrued.

15. Severability. If any of the provisions of this Payroll Terms of Service are determined to be invalid, illegal, or unenforceable, such provisions shall be modified to the minimum extent necessary to make such provisions enforceable, and the validity, legality, and enforceability of the remaining provisions of this Payroll Terms of Service shall continue in full force and effect to the extent the economic benefits conferred upon the parties by this Payroll Terms of Service remain substantially unimpaired.

16. Acknowledgment. The parties acknowledge that (i) they have each had the opportunity to consult with independent counsel of their own choice concerning this Payroll Terms of Service and have done so to the extent they deem necessary, and (ii) they each have read and understand this Payroll Terms of Service, are fully aware of its legal effect, and have entered into it freely based on their own judgment and not on any promises or representations other than those contained in this Payroll Terms of Service.

Schedule 1

Payroll Services Requirements:

Direct Deposit on Oracle or Fulfillment Partner Account: Prior to the first credit to the account of any employee or other individual (a "Payee"), you will obtain and retain a signed authorization from such Payee authorizing the initiation of credits to such Payee's account and debits of such account to recover funds credited to such account in error.

Checks: You agree not to distribute any physical checks to Payees prior to 4:00 PM local time on the banking day immediately before pay date. If you desire to stop payment on any check, you shall provide Oracle with a stop payment request in a form provided by Oracle. Oracle or Fulfillment Partner will then place a stop payment order within one (1) business day of Oracle's receipt of such stop payment request. You will not request Oracle to stop payment on any check that represents funds to which the applicable Payee is rightfully entitled. You agree to indemnify, defend and hold harmless Oracle and its suppliers and their successors and assigns from and against any liability whatsoever for stopping payment on any check requested by you and from and against all actions, suits, losses, claims, damages, charges, and expenses of every nature and character, including attorneys fees, in any claims or suits arising by reason of stopping payment on said check, including claims made by a "holder in due course" of such check

Funds: You will have sufficient funds in the account set forth on your Authorization Form to fund the payroll and pay all disbursements and remittances including without limitation service-printed checks, direct deposits, third-party payments, employment taxes, and any Oracle Fees no later than 3:00 P M Pacific Time at least two (2) business day prior to each related payroll check date.

Standard Direct Deposit: Direct deposit for payrolls received by 2 PM Pacific Time will be processed and sent to the bank the next business day for settlement in the employees account one business day later. (Example: you submit payroll Wednesday by 2 PM. Oracle or fulfillment partner sends direct deposit to bank on Thursday, direct deposit settles in employee account on Friday.)

Exception Processing: It may be possible to make exceptions to the standards above upon written request to Oracle. These exceptions will be granted at Oracle's sole discretion. Additional fees may apply.