

NetSuite POS Module Addendum

This POS Addendum (“**Addendum**”) is made effective as of the date the applicable Estimate/Order Form that references this Addendum is signed by Customer (“**Addendum Effective Date**”) and sets forth additional terms and conditions that govern use of the NetSuite POS Module. This Addendum is in addition to and amends the Subscription Services Agreement (“**SSA**”) between you (“**Customer**”) and Oracle America, Inc. (“**Oracle**”), but solely in connection with the NetSuite POS Module. Oracle and Customer hereby agree as follows:

1. Definitions.

“**Agreement**” means the SSA as modified by this Addendum.

“**NetSuite POS Module**” means: (a) the NetSuite POS hosted software module and (b) the POS Software, as such components are described in the applicable Help Documentation. For clarity, the NetSuite POS Module does not include the POS Infrastructure.

“**POS Infrastructure**” means the third party network and storage infrastructure on which the hosted portion of the NetSuite POS Module is hosted. The NetSuite POS Module is currently hosted on Amazon Web Services.

“**POS Software**” means the Oracle point of sale device software in object code only that is installed on the Terminals.

“**Store**” means a Customer retail establishment or location at which one (1) or more of the Terminals are located.

“**Store Data**” means the Customer’s sales transaction data that is transmitted from a Terminal through the Store Network and that resides on the NetSuite POS Module.

“**Store Network**” means the Customer’s equipment and transmission lines on which the Store Data resides and is transmitted from a Terminal to the NetSuite POS Module.

“**Terminal**” means third party point of sale hardware and terminals operated by or for Customer at a Store.

2. Subscription to NetSuite POS Module and License to POS Software.

The NetSuite POS Module is included in the “Service” under the SSA, subject to the terms and conditions set forth in this Addendum.

a. Scope of Use. Subject to the terms and conditions of the Agreement and during the subscription term for the NetSuite POS Module (as specified in the applicable Estimate/Order Form) (“**Subscription Term**”), Customer’s and its Affiliates’ Users may use the NetSuite POS Module solely for Customer’s and its Affiliates’ internal business operations and solely at the number of Stores and on the number of Terminals for which Customer has paid all applicable fees as set forth in the applicable Estimate/Order Form. Section 1 (Subscription Service) of the SSA does not apply for purposes of the NetSuite POS Module.

b. Software License. Subject to the terms and conditions of the Agreement and during the Subscription Term, Oracle grants Customer a non-transferable, non-exclusive, limited license to: (i) install (or have installed) the POS Software on the number of Terminals for which Customer has paid the applicable fees as set forth in the applicable Estimates/Order Form and (ii) use the POS Software for Customer’s and its Affiliates’ internal business operations in conjunction with Customer’s authorized use of the NetSuite POS Module.

c. Software License Restrictions. In addition to the restrictions in Section 3 (Restrictions) of the SSA (which apply to both the hosted and software portions of the NetSuite POS Module), Customer agrees not to (and not to allow any third party to) distribute or transfer the POS Software to any third party.

3. Differences from SSA. Except as provided in this Section 3, the Store Data shall be treated as Customer Data under the SSA when such data resides in the Service. Because the NetSuite POS Module is hosted on third-party POS Infrastructure, certain provisions of the SSA with regards to Customer Data or the Service do not apply to the NetSuite POS Module or to the Store Data.

a. Service Levels and Availability. Any service levels or “Service Level Commitment” described in the SSA or in any Oracle documentation or website will not apply to the NetSuite POS Module. Further, Customer understands that availability of the NetSuite POS Module features that are hosted on POS Infrastructure depend on the continuing availability of the POS Infrastructure. If the POS Infrastructure provider ceases to make the POS Infrastructure available on reasonable terms, Oracle may cease

NetSuite POS Module Addendum

providing such Service features without entitling Customer to any refund, credit, or other compensation.

b. **Security Obligations.** Oracle's obligations under Section 6.8 (Security), and Section 7.4 (Handling of Customer Data Upon Termination/Expiration), of the SSA do not apply to the NetSuite POS Module or the Store Data. Additionally, notwithstanding anything to the contrary in the SSA, the separate liability cap regarding a breach of Oracle's confidentiality obligations shall not apply to Store Data and instead, such liability shall not exceed the equivalent of twelve (12) months of subscription fees applicable to the NetSuite POS Module at the time of the event. The NetSuite POS Module shall be compliant with the Payment Application Data Security Standard (PA-DSS) in effect at the time the NetSuite POS Module is initially made available to Customer. A required PCI SSC disclosure pertaining to PA-DSS certification of the NetSuite POS Module may be found at: <http://www.netsuite.com/portal/resource/terms-of-service.shtml>, which may be updated by PCI SSC from time to time. Any changes made to the NetSuite POS Module may affect such compliance and Customer shall be solely responsible for ensuring that any customization, changes or modifications made to the NetSuite POS Module are compliant with the PA-DSS.

c. **Backup Policies.** The terms in Section 5.1 (Ownership of Customer Data) of the SSA related to Oracle's backup of Customer Data do not apply to Store Data. Customer acknowledges and agrees that in connection with operating and maintaining the NetSuite POS Module, Oracle may make copies of the Store Data and may maintain such Store Data consistent with Oracle's standard business processes.

For clarity and notwithstanding the foregoing, when and to the extent certain Store Data is submitted to and resident on the NetSuite Service (not the POS Infrastructure or the NetSuite POS Module), such data shall be deemed "Customer Data" for all purposes under the SSA.

4. Additional Customer Responsibilities. Customer, not Oracle, is solely responsible for procuring, installing and maintaining the Terminals and any other peripheral point of sale components from third parties (including without limitation any Terminal computer hardware and software on which the POS Software is installed in the Store). Customer shall use appropriate measures to maintain the confidentiality, integrity, availability and security of the Terminal (other than the POS Software), Store Network and of all Store Data residing on the Store Network and transmitted to the NetSuite POS Module (including but not limited to: promptly applying patches and updates provided by Oracle and other Terminal software providers; full disk encryption; anti-virus; network, access, and physical controls). Customer shall not transmit or upload any credit card data or bank account numbers or other sensitive financial data of its customers through the NetSuite POS Module.

5. POS Software Upon Termination. In addition to other terms set forth in the Agreement, Customer agrees that upon the earlier of termination or expiration of the Subscription Term or of the Term of the SSA, Customer shall immediately cease using and shall un-install the POS Software from all Terminals and destroy all copies of the POS Software in the Customer's possession.

6. General. Certain Sections in the SSA may have been renamed and/or renumbered and such renaming and/or renumbering shall not affect the validity, construction or interpretation of this Addendum. References in the this Addendum to any Section names or numbers in the SSA shall be deemed to be a reference to the identified or corresponding provisions in that document to accomplish the reasonable intent and objectives of such provisions to the greatest extent possible under applicable law. Except as modified by this Addendum, the SSA remains in full force and effect for purposes of Customer's use of the NetSuite POS Module. If any provision of this Addendum conflicts with or is in addition to any provision of the SSA, then the conflicting/additional provision of this Addendum shall control/apply solely in connection with the NetSuite POS Module and the subject matter herein. Capitalized terms not defined in this Addendum have the meaning assigned to them in the SSA.

CUSTOMER ACKNOWLEDGES THAT THEY HAVE READ THIS ADDENDUM, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS, AND THE PERSON SIGNING THE APPLICABLE ESTIMATE/ORDER FORM OR STATEMENT OF WORK HAS BEEN AUTHORIZED TO DO SO.