Oracle Corporation Australia Pty Limited
TRIAL ACCOUNT AGREEMENT

IMPORTANT-READ CAREFULLY: THIS Oracle Corporation Australia Pty Limited TRIAL ACCOUNT AGREEMENT ("**AGREEMENT**") IS A LEGAL AGREEMENT BETWEEN YOU, EITHER ON BEHALF OF YOURSELF AS AN INDIVIDUAL OR ON BEHALF OF AN ENTITY AS ITS AUTHORIZED REPRESENTATIVE ("**CUSTOMER**") AND Oracle Corporation Australia Pty Limited ("**ORACLE**"). PLEASE READ THIS AGREEMENT CAREFULLY AND PRINT OUT A COPY FOR YOUR RECORDS. THIS AGREEMENT SUPERSEDES ALL PREVIOUS VERSIONS.

BY SELECTING "**I AGREE**" AND/OR ACCESSING OR OTHERWISE USING THE TRIAL ACCOUNT ENABLED FOR CUSTOMER BY ORACLE, AGREES TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, CLICK ON THE "**CANCEL**" BUTTON AND/OR DO NOT INSTALL OR OTHERWISE USE THE TRIAL ACCOUNT.

Please review the User Guides, which can be found under the Help tab in the Service during the Trial Account Period, so that You become familiar with the features and functions of the Service before You make Your purchase.

1.   **DEFINITIONS.**

        1.1.   "Customer Information" means any data, information, or other materials of any nature whatsoever, provided to Oracle by Customer in the course of implementing and/or using the Service.

        1.2.   "Demonstration Account" means a non-production account that provides access to and the ability to use some or all of the features of the Service, and is populated with fabricated sample data in order to facilitate a more illustrative demonstration experience, as determined by the applicable Oracle representative.

        1.3.   "Trial Account" means a temporary account that provides access to and the ability to use some or all of the features of the Service, as determined by the applicable Oracle representative and Demonstration Account.

        1.4.   "Trial Account Period" means the period beginning on the date that Customer is first provided with access to the Trial Account and ending on the earlier to occur of: fourteen (14) days thereafter; or when Oracle disables the Trial Account.

        1.5.   "Service" means the NetSuite on-line business application suite of products and service.

        1.6.   "User Guides" mean the detailed online guides that explain the workflow and setup of features like SFA and Marketing, Customer Service and Web Store.

2.   **LICENSE GRANTS.**

        2.1   Trial Account. During the Trial Account Period, and subject to the terms and conditions contained herein, Oracle hereby grants to Customer a limited, temporary, non-exclusive and non-transferable license to access and use the Trial Account solely for the purpose of evaluating the Service for procuring a paid subscription to the Service for Customer's own internal use and not for production use.

        2.2   No Assignment; No Other Rights. The rights granted to Customer under this Section 2 may not be assigned or transferred to any other party, by operation of law or otherwise. For the avoidance of doubt, except as expressly set forth herein, no other rights are granted to Customer by Oracle with respect to the Trial Account. There are no implied rights.

3.   **RESTRICTIONS**. Customer shall not: (a) modify, disassemble, decompile or reverse engineer the Service; (b) copy or otherwise reproduce the Service, in whole or in part, except as expressly provided in Section 2 above; (c) remove, modify or otherwise tamper with notices or legends on the Service; or (d) use the Trial Account and/or the Service in any manner to provide service bureau, time sharing or other computer service to third parties. Customer shall have no right to license, distribute or otherwise transfer the Trial Account or any rights therein. You may not access the Service if You are reviewing it on behalf or at the direction of Our direct competitor, except with Our prior written consent. In addition, You may not access the Service for purposes of monitoring their availability, performance or functionality, or for any other benchmarking, comparison, or competitive purposes.

4.   FEEDBACK.   Any ideas, feedback, suggestions, requests, questions, comments, results of Customer's testing and evaluation of the Trial Account and the Service ("**Feedback**") will be the property of Oracle. Customer hereby assigns and agrees to assign to Oracle all rights, title and interest worldwide in and to such Feedback and the related intellectual property rights and agrees to assist Oracle, at Oracle's expense, in perfecting and enforcing such rights.

5.   CONFIDENTIALITY OBLIGATIONS. Customer agrees and acknowledges that the Service contain proprietary and trade secret information that is the sole and exclusive property of Oracle and that Customer may obtain information relating to Oracle and the Service which Customer knows, or has reason to know, is of a confidential and/or proprietary nature ("**Confidential Information**"). Confidential Information shall include, without limitation, the Feedback and the specific design and structure of the Service. Customer shall, at all times, both during the term of this Agreement and at all times thereafter, keep in confidence and trust all of the Confidential Information provided to Customer. Customer shall not use the Confidential Information other than as necessary to exercise its rights under this Agreement. Customer shall take all reasonable steps to prevent unauthorized disclosure or use of the Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Customer shall not disclose Confidential Information to any person or entity other than its officers, employees and consultants who need access to such Confidential Information in order to effect the intent of this Agreement and who have entered into written confidentiality agreements with Customer which protect the Confidential Information containing terms and conditions at least as protective of Oracle's rights as the terms and conditions herein. These obligations shall not apply to the extent that Confidential Information includes information which: (a) is, or, through no act or failure to act of Customer, becomes publicly known; or (b) is approved for release by written authorization of Oracle.

6.   NO WARRANTY. The Service and the Trial Account are provided to Customer solely for the purpose of evaluation and use on an "AS IS" basis and without warranty. ORACLE DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THERE ARE NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NONINFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

7.   NO LIABILITY FOR CONSEQUENTIAL DAMAGES AND LIMITATION ON DIRECT DAMAGES. IN NO EVENT SHALL ORACLE BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) ARISING OUT OF THE USE OF THE TRIAL ACCOUNT REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF ORACLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Except with regard to breaches of Sections 2, 3 and 5, the maximum liability of either party to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of the Service, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, tort, or otherwise, shall in no case exceed the one hundred dollars ($100). The essential purpose of this provision is to limit the potential liability of the parties arising from this Agreement. The parties acknowledge that the limitations set forth in this Section are an essential basis of the barging between the parties and shall apply notwithstanding any failure of essential purpose of any limited remedy.

8.   TERM AND TERMINATION. This Agreement is effective as of the date of acceptance of the Agreement by Customer and shall continue until the end of the Trial Account Period. Oracle may, at Oracle's option, extend the Trial Account Period by providing Customer with prior written notice authorizing such extension of the Trial Account Period. Either party may terminate this Agreement at any time and for any reason, with or without cause, and without penalty, and without compensation of any kind, except as expressly set forth herein, effective after giving written notice of termination to the other party. Upon any termination of this Agreement: (a) Customer shall immediately cease the use of all of the Trial Account; and (b) Oracle may disable all access to and/or delete the Customer Information. The provisions of Sections 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15 and 16 shall survive any termination or expiration of this Agreement.

9.   TRANSMISSION OF DATA. Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to Customer's use of the Service. Customer expressly consents to Oracle's interception and storage of Electronic Communications and/or Customer Data, 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 Oracle. Customer acknowledges and understands that changes to Customer's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. 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. Customer agrees that Oracle is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored without authorization during the transmission of any data whatsoever across networks not owned and/or operated by Oracle, including, but not limited to, the Internet. "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 Service.

10. **ACCESS TO CUSTOMER INFORMATION.** Customer acknowledges and agrees that the Oracle account representative that enables Customer's Trial Account may have access to the Customer Information and may have system administrator privileges with respect to the Trial Account.

11. **PRIVACY**. For details about Oracle's privacy policy, please refer to the NetSuite Privacy Policy, accessible at http://www.netsuite.com/portal/privacy.shtml.

12. **THIRD-PARTY WEB SITES, PRODUCTS AND SERVICES.** The Service may provide, or third parties may provide, links to other World Wide Web sites or resources and enable You to connect through the Service to be able to use the products and services of various third parties ("Third Party Products and Service"). Because Oracle has no control over such sites and resources and/or the Third Party Products and Service, Customer agrees that Oracle is not responsible for the availability of such external sites or resources and/or Third Party Third Party Products and Service, and does not endorse and is not responsible or liable for any content, advertising,, or other materials on or available from third party web sites or vendors. Customer further agrees that Oracle has no control over, does not endorse or warrant and has no responsibility for the quality, accuracy, integrity, fitness, safety, reliability, legality, or any other aspect of (a) any Third Party Product or Service that Customer may purchase through the Service, or (b) any descriptions, promises or other information related to the foregoing. Oracle is not an agent of any provider of Third Party Products and Service in connection with any sale of Third Party Products and Service purchased by Customer, and Customer agrees that Oracle has no liability for, or relationship to, the sale or purchase of any Third Party Products and Service. Customer is solely responsible for contacting the applicable provider with respect to any issues pertaining to any Third Party Products and Service

13. **EXPORT**. Customer acknowledges and agrees that it shall not import, export, or re-export, directly or indirectly, any commodity (including, without limitation, the Trial Account or related information) to any country in violation of the laws and regulations of any applicable jurisdiction. This restriction expressly includes, without limitation, the export regulations of the United States, and the import and export restrictions of the various European countries. Customer further agrees to defend, indemnify and hold Oracle harmless for any losses, costs, claims or other liabilities arising out of Customer's breach of this Section 13.

14. **U.S. GOVERNMENT RESTRICTED RIGHTS**. The Service is a "commercial item" as that term is defined at FAR 2.101. If Customer or User is a US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Oracle provides the Service, including any related software, technology, technical data, and/or professional services in accordance with the following: (a) if acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement; or (b) if acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative Agency or Federal Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as set forth in this Agreement. If any Federal Executive Agency, Federal Legislative Agency, or Federal Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Oracle to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. This U.S. Government Rights Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

15. GOVERNING LAW. This Agreement will be governed by the substantive and procedural laws of the State of New South Wales, Australia and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in Sydney,

Australia counties in in any dispute arising out of or relating to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement or to orders placed under it.

16. **GENERAL PROVISIONS**. This Agreement is not assignable or transferable, in whole or in part, by Customer, whether involuntarily, by merger, operation of law or otherwise without Oracle's prior written consent. A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity, except as expressly limited by this Agreement. In the event any provision of this Agreement is held to be invalid or unenforceable, such provision shall be severed from the remainder of this Agreement, and such remainder will remain in force and effect. This Agreement constitutes the entire agreement between the parties relating to the Trial Account and supersedes all prior and/or simultaneous representations, discussions, negotiations and agreements, whether written or oral.

You may not access the Service if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Service for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.