

ATTENTION! THIS ORACLE NETSUITE REFERRAL AGREEMENT PROVIDES THE TERMS APPLICABLE TO ORACLE NETSUITE'S REFERRAL PROGRAM. UPON CLICKING THE "I AGREE" BUTTON BELOW, YOU AGREE THAT UPON NOTIFICATION TO YOU OF ORACLE'S ACCEPTANCE OF YOUR APPLICATION FOR PARTICIPATION IN THE ORACLE NETSUITE REFERRAL PROGRAM (AS OUTLINED IN SECTION 1), THAT THIS AGREEMENT WILL BE LEGALLY BINDING. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOU PERSONALLY, IF YOU ARE ENTERING INTO THIS AGREEMENT ON YOUR OWN BEHALF, OR UPON THE COMPANY OR OTHER LEGAL ENTITY ON BEHALF OF WHICH YOU ARE ACTING (HEREINAFTER "YOU" OR "YOUR"). CAREFULLY READ THIS AGREEMENT BEFORE CLICKING "I AGREE".

ORACLE NETSUITE REFERRAL AGREEMENT

This Oracle NetSuite Referral Agreement ("**Agreement**") is entered into between You and Oracle America, Inc. ("**Oracle**") headquartered at 2300 Oracle Way, Austin, TX 78741 and takes effect as set forth in Section 1 below.

1. AGREEMENT SUBJECT TO APPROVAL.

This Agreement is effective upon notification in writing (via e-mail) of Oracle's acceptance of Your application for participation in the Oracle NetSuite Referral Program ("**Approval**"). The effective date of this Agreement shall be the date of such Approval notification ("**Effective Date**"). Oracle may reject or decline to accept Your application for any or no reason at its sole discretion. Oracle may conduct background checks and other screening measures of any sort in connection with Your application. If Oracle approves Your application, You may refer sales leads to Oracle during the term and in accordance with all terms and conditions of this Agreement, to enable Oracle to solicit orders for the Oracle NetSuite products and services ("**Products**").

2. LIMITATIONS ON ACTIVITIES.

2.1 Limitations on Activities. Your activities under this Agreement shall be limited as follows:

2.1.1 You shall conduct all of Your business in Your own name and in accordance with the highest business standards, acting dutifully, in good faith and in compliance with all applicable laws and the terms of this Agreement, and not perform any act which would or might reflect adversely upon the Products or the business, integrity or goodwill of Oracle.

2.1.2 You shall not be, or purport to be, authorized to legally represent Oracle or to conduct negotiations on behalf of Oracle. You shall not have the authority to make any commitments or agreements or incur any liabilities whatsoever on behalf of Oracle or register this Agreement under local registered agency law nor shall Oracle be liable for any acts, omissions to act, contracts, commitments, promises or representations made by You.

2.1.3 You shall not use any trademarks, names or other identifiers owned or used by Oracle ("**Marks**"), except that You may refer to Oracle and the Products in conversations and written correspondence with potential customers in the same manner as Oracle does in its own marketing materials and website. Any use of the Oracle Marks shall be subject to Oracle's right to review and approve or reject in advance of each proposed use of the Oracle Mark, and shall conform with any trademark usage guidelines, policies, or requirements provided, from time to time, by Oracle. Oracle is the sole and exclusive owner of the Oracle Marks. Upon termination or expiration of this Agreement, You shall immediately cease use of any and all Oracle Marks.

2.1.4 You shall not make any representations or other statements about Products, prices or business practices, except that You shall forward to potential customers (i) unmodified marketing materials provided by Oracle and (ii) references to Oracle's standard conditions of sale, as published by Oracle on its website or otherwise.

2.2 No License. No license is granted under this Agreement to use or access any Products, any of Oracle's proprietary technologies embodied therein, or any data, information or other content provided thereby.

2.3 IP Rights. All rights, title and interest in and to the Products, Marks and other Oracle intellectual property (including without limitation, all IP Rights (as defined in Section 11) therein and all modifications, extensions, customizations, scripts or other derivative works of such Intellectual Property provided or developed by Oracle) are owned exclusively by Oracle or its licensors. Except for the rights and grant of limited use of the Marks expressly granted in this Agreement, the rights granted to You do not convey any rights in the Products, Marks or other Oracle intellectual property, express or implied, or ownership therein. Any rights not expressly granted herein by Oracle are reserved by Oracle. You shall immediately advise Oracle if You have knowledge of any potential infringement of any of Oracle's patents, trademarks, copyrights or other IP Rights.

2.4 Nonexclusive Referral Agreement. Each party acknowledges that this Agreement does not create an exclusive agreement between the parties. Each party shall have the right to recommend similar products and services of third parties and to work with other parties in connection with the design, sale, installation, implementation and use of similar services and products of third parties. Notwithstanding the foregoing, once You establish a Commissionable Lead (as defined in Section 4) with Oracle, You will not refer such Commissionable Lead to a competitor of Oracle which offers a product or service that is similar or competing with any current or publically announced Oracle NetSuite offering.

3. REFERRALS.

3.1 **Submission of Leads.** You shall identify, register, and provide relevant commercial conditions relating to an opportunity at a proposed lead ("**Proposed Lead**") in a NetSuite Lead Form ("**NLF**"), which is a standard form generated by Oracle (and available online via a link provided to You by Oracle), or via some other method at Oracle's option. Proposed Leads cannot be located in an Excluded Country. At Oracle's request in connection with the Proposed Lead, You agree to (a) supply any additional information reasonably requested by Oracle, (b) discuss each completed NLF in reasonable detail with Oracle, and (c) assist Oracle in making contact with the Proposed Lead by taking reasonable measures to facilitate an introduction, meeting, conference call or other means of communication with the Proposed Lead. For the avoidance of doubt, projects offered by Public Sector Entities (as defined in Section 11) are not eligible for participation in the referral program contemplated as a Proposed Lead, and are not eligible for any payment of commissions or any other referral fees under this Agreement.

3.2 **Acceptance of Leads.** Within a reasonable period of time following Your submission of a NLF, Oracle shall review the NLF to determine whether to accept the Proposed Lead as commissionable under Section 4.1 below, or reject the Proposed Lead pursuant to this Section and will provide You with a written (including e-mail) notification of its acceptance or rejection of a Proposed Lead ("**Referral Confirmation**"). Oracle reserves the right to change its acceptance or rejection of an NLF at any time if it learns of new or different information relating to the Proposed Lead than what You submitted in the NLF and for subsequent noncompliance with the terms of this Agreement. Oracle will be under no obligation to accept any NLF and may reject or decline to accept a NLF for any or no reason at its sole discretion, including, without limitation, because:

3.2.1 the Proposed Lead was an existing customer of Oracle's at the time of submission of the NLF;

3.2.2 Oracle was already involved in preliminary or advanced discussions relating to the sale of a subscription to the Proposed Lead at the time of submission of the NLF;

3.2.3 an NLF (or similar document) has previously been submitted to Oracle by You or any third party with respect to the Proposed Lead;

3.2.4 the Proposed Lead (a) does not meet Oracle's credit requirements, (b) is directly or indirectly involved in a business or industry that in Oracle's sole discretion may not comply with applicable laws, (c) is on a list of restricted or prohibited parties issued by the government of the United States or any other jurisdiction, or (d) is located in a country that is subject to a United States trade embargo or that is deemed a terrorist supporting country by the United States Government; or

3.2.5 the Proposed Lead is located in an Excluded Country, or which Oracle is otherwise prohibited by agreement from accepting; or

3.2.6 at the time of Your submission of the NLF, Oracle has a lead already recorded in Oracle's system of record that has been active within the last thirty (30) days; or

3.2.7 the Proposed Lead is a Public Sector Entity.

3.3 **Pursuit of Leads by Oracle.** The method of contacting and following up with Proposed Leads will be determined in Oracle's sole discretion; *provided, however*, that You shall actively support Oracle in the sales process with Proposed Leads when requested by Oracle. Oracle shall have sole discretion to refuse to offer any Products to any third party without liability to You.

3.4 An opportunity at a Proposed Lead shall remain a Proposed Lead until the earlier of: (i) the Proposed Lead declines to work with You or decides to work with a different partner; (ii) the Proposed Lead declines to work with Oracle; (iii) You withdraw the applicable NLF; (iv) Oracle learns of new or different information relating to the Proposed Lead than what You submitted in the NLF and revokes its acceptance of such NLF; or (v) one year after acceptance of such NLF, except that such acceptance shall renew for additional three month periods if: (a) both parties mutually agree to extend the validity of the accepted NLF; or (b) a proposal has been submitted to the proposed lead and such proposal is still pending.

4. COMMISSIONS.

4.1 **Commissionable Leads.** A Proposed Lead qualifies as commissionable ("**Commissionable Lead**") only if:

4.1.1 You have submitted an NLF for the Proposed Lead in accordance with Section 3.1; and

4.1.2 Oracle has accepted the Proposed Lead as a Commissionable Lead (i.e., not rejected the Proposed Lead as set forth in Section 3.2, or otherwise).

4.2 **Commissions and Payment.** Subject to Your compliance with all terms and conditions of this Agreement, Oracle will pay You commissions equal to ten percent (10%) of Lead Referral Revenue (as defined in Section 12). Commission payments (less any applicable withholding taxes or other levies) will be payable on the last day of the month following the quarter in which Oracle receives payment of the Lead Referral Revenue.

4.3 **Reports.** Within thirty (30) days after the end of each calendar quarter during which You have submitted five (5) or more Commissionable Leads, Oracle will issue quarterly reports to You by mail, e-mail or through an online system, which will show the Lead Referral Revenue generated by each Commissionable Lead and the commission amounts earned by You as a result. Each report shall be deemed final and accepted by You unless Oracle receives a detailed written objection within thirty (30) days of Your receipt of Oracle's report.

4.4 **Modifications.** Oracle may modify the NLF submission process and the percentage amounts and conditions relating to commissions upon thirty (30) calendar days written notice. Such changes will only affect NLF's submitted after such thirty (30) day period.

4.5 **Commissions After Termination.** Except in the event of termination for breach by You, Oracle will continue to pay You commissions for the duration of the applicable referral payment period in accordance with Section 4.2 on Lead Referral Revenue received following termination of the Agreement for Commissionable Leads accepted prior to such termination, and Oracle will continue to issue reports in accordance with Section 4.2 through such time.

4.6 **No Other Payments.** Except as expressly provided in this Section, You are not entitled to any fees, reimbursements or other payments. You shall promptly refund to Oracle any overpayments (e.g., Referral Fees on Lead Referral Revenue that was reduced due to returns by the customer).

5. TERM AND TERMINATION.

5.1 **Term.** This Agreement shall commence on the Effective Date and shall continue in full force and effect unless terminated as provided herein.

5.2 **Termination for Convenience.** Either party may terminate this Agreement for any or no reason upon giving thirty (30) days written notice to the other party.

5.3 **Termination for Breach or Insolvency.** Either party may, by written notice to the other party, terminate this Agreement if the other party (a) is in breach of any material term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within five (5) business days of receipt of a written request to cure from the other party, or (b) terminates its business; (c) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (d) becomes subject to bankruptcy or insolvency proceeding under federal or state statutes, and such proceeding is not terminated within sixty (60) days of the institution thereof.

5.4 **Effect of Termination.** Upon termination of this Agreement for any reason, You shall immediately cease the use of all Oracle brochures, literature, documentation and other materials within Your control and shall return such materials to Oracle within ten (10) business days. Except as provided in Section 4.4, You shall have no rights or claims against Oracle in connection with termination, expiration or non-renewal of this Agreement; in particular, without any limitation, You hereby irrevocably waive any rights to severance or compensation for lost opportunities or investments to the maximum extent permissible under applicable law.

6. INDEMNIFICATION.

You will defend and indemnify Oracle from and against any and all claims, demands, liabilities, costs, losses, damages and expenses (including but not limited to, reasonable attorneys' fees) (collectively, "Losses") brought by any third party against Oracle which arise out of or result from any act, default, misrepresentation or any omission on Your part (including, without limitation, negligence and breach of this Agreement), or any of Your agents, employees or representatives, directly or indirectly relating to this Agreement, including without limitation any claims relating to allegations, actions or proceedings for breach of contract or warranty, regulatory or other legal claims, claims for bodily injury (including death) and damage to property.

7. LIMITATION OF LIABILITY.

ORACLE WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE DATA, OR DATA USE. ORACLE'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL BE LIMITED TO FIVE THOUSAND DOLLARS (\$5,000).

8. GOVERNING LAW.

This Agreement is governed by the substantive and procedural laws of the State of California and each party agrees 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 or relating to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement or to orders placed under it.

9. GENERAL PROVISIONS.

9.1 **Relationship of Parties.** The parties are independent contractors under this Agreement and no other relationship is intended, including, but not limited to, a partnership, franchise, joint venture, agency, employer/employee, or master/servant relationship. Neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever. All financial and other obligations associated with Your business are solely your responsibility. As an independent contractor, the mode, manner and method used by You shall be under Your sole control and You shall be solely responsible for risks incurred in the operation of Your business and the benefits thereof. You shall bear all of Your own expenses in connection with the performance of this Agreement and will not be entitled to reimbursement of any such expenses by Oracle.

9.2 **No Waiver.** The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Neither party will be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by a duly authorized representative of the party against which such waiver is asserted.

9.3 **Severability.** 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 the Agreement shall otherwise remain in full force and effect.

9.4 **Notices.** Any notice required under this Agreement shall be provided to the other party in writing. If You have a legal dispute with Oracle or if You wish to provide a notice under the Indemnification Section of this Agreement, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway Redwood Shores, CA 94065, Attention: General Counsel, Legal Department. Notices to You shall be provided by Oracle via mail, fax or e-mail (to the address or number You provide) or by way of a posting on Oracle's Referral Program Website (available under "Partners" at www.netsuite.com).

9.5 **Assignment.** This Agreement shall inure to benefit and bind the parties hereto, their successors and assigns, but You may not assign this Agreement without Oracle's prior written consent.

9.6 **Force Majeure.** Neither party shall be liable for loss or delay resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage, war or military hostilities, criminal acts of third parties. Any payment date shall be extended to the extent of any delay resulting from any force majeure event.

9.7 **Compliance.**

9.7.1 You represent and warrant that (a) You will conduct Your business activities in a legal and ethical manner; (b) You have submitted and will submit complete and truthful information in connection with your application and all referrals; (c) You will submit all filings and obtain any approvals that may be necessary for You to perform Your obligations under this Agreement, (d) You will commit no act that would reflect unfavorably on Oracle; (e) You will comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with Your performance of this Agreement, including without limitation, privacy, anti-spam, advertising, copyright, trademark and other intellectual property laws, (f) except if you are entering this Agreement in your individual capacity, You are duly organized, validly existing and in good standing under the laws of the state or country of Your domicile and are in good standing in each other jurisdiction in which such qualification is required by law; and (g) You have the power and authority to transact the business You transact, to execute and deliver this Agreement, and to perform Your obligations under this Agreement. You acknowledge that any sums paid to You under this Agreement are for Your own account and that, except as appropriate to carry out Your duties set forth herein in a legal manner, You have no obligation to, and will not, directly or indirectly, give, offer, pay, promise to pay, or authorize the payment of money or anything of value to any other person in connection with the performance of Your referral activities hereunder. In particular, without limitation, You agree not to take any actions that would cause You or Oracle to violate the United States Foreign Corrupt Practices Act or any other anti-bribery law. You further agree not to engage in any form of money laundering, which involves disguising, channeling unlawfully obtained money, or transforming such money into legitimate funds.

9.7.2 Any act, omission, or breach by Your contractors, agents or Affiliates shall be deemed an action or breach by You and You waive all of those defenses that You may have as to why You should not be liable for Your contractors', agents' or Affiliates' acts, omissions and/or noncompliance with this Agreement.

9.7.3 **Export.** You represent and warrant that: You are not a party with whom Oracle is prohibited from doing business with under the U.S. or applicable export control or economic sanctions laws and regulations. You will refrain from (a) referring Proposed Leads engaging in export, re-export, transfer, or end-use(s) restricted under U.S. law, and (b) disclosing any technical information related to Products to prohibited persons or destinations in violation of United States law.

9.8 **Survival.** Upon the termination of this Agreement for any reason, in addition to the parties' rights and obligations that survive as explicitly set forth herein, the parties' rights and obligations under the following paragraphs shall survive: Sections 2 ("Limitations on Activities"), 4.5 ("Commissions After Termination"), 4.6 ("No Other Payments"), 5.4 ("Effect of Termination"), 6 ("Indemnification"), 9.7.1 ("Compliance") and others which by their nature are intended to survive.

10. Entire Agreement.

This Agreement, including all exhibits hereto, constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or contemporaneous representations, discussions, negotiations, and agreements, whether written or oral, relating to its subject matter. Any amendments or renewals to this Agreement shall be invalid unless made in writing that is signed by duly authorized representatives of both parties. In the event of any additional or inconsistent terms contained in NLFs, Referral Confirmations or other communications, the terms and conditions in this Agreement shall prevail unless Oracle specifically identifies the section(s) of this Agreement that Oracle intends to override in a writing signed by Oracle.

11. DEFINITIONS.

“Commissionable Period” means, in respect of a Commissionable Lead, a period of one (1) year from Your submission of the NLF for such Commissionable Lead.

“Excluded Countries” mean any country to which United States law, rule or regulation prohibits the sale of goods and services, as such list of countries may be updated from time-to-time.

“Commissionable Product(s)” means the products listed as Commissionable Products on the Referral Partner Program page of Oracle’s website, as updated from time to time in Oracle’s sole discretion, or as specified by Oracle in writing.

“IP Rights” means, on a world-wide basis, copyrights, trademark rights, service marks, logos, patents, rights in trade secrets, moral rights, rights of publicity, privacy rights, authors’ rights, contract and licensing rights, goodwill, rights in domain names, and all other intellectual property rights as may exist now and/or hereafter come into existence, and all applications, registrations, renewals and extensions thereof (including continuations in part), regardless of whether such rights arise under the laws of any state, country or jurisdiction.

“Lead Referral Revenue” means any payments actually received by Oracle from a Commissionable Lead for the first year’s fees under a subscription agreement or other ordering document between Oracle and the Commissionable Lead entered into during the Commissionable Period for the Commissionable Lead’s first order of a Commissionable Product, minus any taxes, subsequently credited charges, write-offs, refunds or charge backs. For the avoidance of doubt, Lead Referral Revenue does not include any amounts received for follow-up orders, additional sales, renewals, or for products or services that are not Commissionable Products at the time of the relevant Referral Confirmation, such as professional services, support services, training services or third party software products purchased by a Commissionable Lead, nor does it include amounts that are owed by the Commissionable Lead but have not actually been received by Oracle.

“Public Sector Entity” means any traditional government agency or ministry, including national, state, provincial, or local government organizations, and any of their divisions, departments, agencies, branches, or ministries, whether executive, administrative, legislative, or judicial, as well as political parties, political organizations, and any public foundations, public organizations, or NGOs, such as the International Red Cross, United Nations and the World Bank. The term “public sector entity” also refers to any entity for which any of the following conditions exists: (a) any government owns 30% or more of the entity; (b) any government has voting control or the ability to appoint officers or directors; (c) any government has formally identified the entity as a government agency or state-owned enterprise; (d) the entity is financed through government appropriations, tax revenue, licenses, fees, or royalties; (e) the entity’s profits are paid or go directly to any government; (f) any government subsidizes the entity’s costs of providing services; (g) the entity is funded by any government in the event it fails to “break even;” (h) any government designates the entity as performing a governmental function or otherwise clearly recognizes that the entity is performing a function expressed in any government’s policies; (i) the public generally perceives the entity to be performing a governmental function; (j) the entity has a monopoly over the function it carries out, or exclusive power to administer the function it carries out; (k) employees of the entity are considered locally to be public officials or civil servants; or (l) the entity provides services, which the local government treats as its own, to the public at large.

BY CLICKING “I AGREE” YOU ARE REPRESENTING THAT (1) YOU HAVE SUBMITTED TRUE AND COMPLETE INFORMATION IN CONNECTION WITH YOUR APPLICATION AND (2) YOU ARE ENTERING INTO THIS AGREEMENT ON YOUR OWN BEHALF OR THAT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR COMPANY OR OTHER LEGAL ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT WISH TO ENTER INTO THIS AGREEMENT ON YOUR OWN BEHALF, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN, YOU MUST CLICK “I DECLINE” AND YOU WILL NOT BE ELIGIBLE FOR PARTICIPATION IN THE ORACLE REFERRAL PROGRAM.