

# PROFESSIONAL SERVICES ADDENDUM

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## **PROFESSIONAL SERVICES ADDENDUM**

This Professional Services Addendum (the "PSA") is part of and subject to the Master Subscription Agreement (the "Agreement") available at <https://www.nx2square.com/legal> between You ("Customer") and [NX2SQUARE - ID No. : GBC 181689], as applicable ("Company"). Capitalized terms without definitions in this PSA have the meaning defined in the Agreement. Company may modify this PSA by posting a revised version at <https://www.nx2square.com/legal>, or by providing notice using other reasonable means. If Customer does not agree to the revised version then, (a) the existing PSA will continue to apply to Professional Services that the Customer has purchased as of the date of the update for the remainder of the then-current Subscription Term; and (b) the revised version will apply to any new purchases of Professional Services made after the effective date of the revised version.

For and in consideration of the representations and promises of the parties set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1. SCOPE OF SERVICES**

Company will provide Customer with professional services as set forth in the applicable Quote (the "Professional Services"). From time to time, Customer may request additional professional services or changes to the Professional Services purchased, subject to approval in writing by Company. All other quotes and services provided by Company will be governed by this PSA as well.

- 1.2. In addition to the Professional Services, Company may also provide Customer with access to its software created to enhance the functionality of the NetSuite service made available as a SaaS service ("the Service"). This Service is governed by the Terms of Service which can be found at <http://www.nx2square.com/legal>.
- 1.3. The Professional Services to be provided to Customer are described in a Statement of Work ("SOW") or listed on the Quote. Within 10 business days of Customers' written acceptance of a Quote, Company will assign a consultant to perform the services (the "Consultant"). The start or kick-off date will be determined mutually by the parties.
- 1.4. For Professional Services with a predetermined price, such as Activation or Premium Implementation Packages, Customer may request a specification of the Professional Services purchased (the "Services Specification"). The Services Specification lists how many sessions or hours are included in the package, as well as other possible conditions and limitations. Any services requested by Customer that are outside the services listed in the Service Specifications, will be deemed out of scope and will be charged separately. Company may invoice such additional charges without prior Customer's additional consent, unless agreed otherwise in writing.
- 1.5. All additional services, including but not limited to additional training, configuration or technical development related to the NetSuite Add-on, shall also be governed by this PSA.

### **2. COMPENSATION FOR THE SERVICES**

- 2.1. Customer shall pay all service fees agreed upon and as set forth in the Quote. All prices and fees are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on by any taxing authority (other than taxes imposed on Company's income), related to the Professional Services and any other services provided by Company, unless Customer has provided Company with an appropriate resale or exemption certificate for the delivery location, which is the location where the Professional Services are used by Customer.
- 2.2. Customer agrees to pay, without the right to set-off any amount, all invoiced amounts within fourteen (14) days of the invoice date, unless stated otherwise in Quote or on Company's invoice. However, all amounts will be due immediately, in case Customer

terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits its inability to pay its debts, or in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Customer under any federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee, custodian, or liquidator, or any act or action constituting a general assignment by Customer of its properties and/or interest for the benefit of creditors.

- 2.3. Where payment is not made within the terms set forth in this article, contractual interest shall be owed at a rate of 1.5% a month, or the highest rate allowed by law, if lower, with effect from the first day following expiration of the payment term referred to in this article; part of a month shall be considered a full month.
- 2.4. Company will invoice services that are charged on a predetermined fee upon execution of the Quote by Customer, prior to the services being provided, unless the Quote states otherwise. Company will invoice services that are charged by the hour periodically but not less than monthly, after the services have been provided, unless the Quote states otherwise. Time and materials not included in an invoice for the invoicing period, will be added to a subsequent invoice.
- 2.5. Configurations and prices of services are subject to change at any time upon ninety (90) days written notice. Customer agrees to any such changes of prices or configurations unless Customer terminates in writing the Quote and the PSA within thirty (30) days of Company's notice. Such termination will be effective the date on which the new prices and/or rates will take effect.
- 2.6. Billing Reports and Disputed charges. For invoices containing items based on usage or hours, Customer may request a detailed billing report, the format of which is at Company's sole discretion. If Customer disputes an invoice, Customer must notify Company in writing of such dispute and submit all information and documentation that Company may require to determine the accuracy of the invoice. Any invoice dispute notice must be received by Company no later than ten (10) days after the invoice date. If no written invoice dispute has been received by Company within this term, Customer will be deemed to have accepted the invoice irrevocably. Notwithstanding any invoice dispute, Customer shall pay the full amount of any undisputed part of an invoice pending the resolution of such dispute. Company will respond to Customers' written dispute within thirty (30) days of receipt of such dispute. Company and Customer shall use best efforts to resolve all disputes.

### **3. PROFESSIONAL SERVICES WARRANTIES**

- 3.1. Company warrants that Professional Services will be provided in a professional manner consistent with industry standards. Customer must notify Company of any warranty deficiencies in writing within 60 days from the last day of performance of the alleged deficient Professional Services.
- 3.2. Company does not provide any warranty or guarantee on the results of the Professional Services. Should the Professional Services include modification, configuration or customization of a product, such modification, configuration or customization is not guaranteed to be free of errors. Because every project and customer is different, Company does not warrant meeting deadlines or budget targets.
- 3.3. Company does not warrant that the Professional Services will be performed free of

error or uninterrupted, that Company will be able to correct all Professional Services errors, or that the Professional Services will meet Customer's requirements or expectations. Company is not responsible for any issues related to the performance, operation or security of the Professional Services that arise from Customer data or third-party applications or professional services provided by third parties.

- 3.4. Customer's exclusive remedy for warranty claims and Company's entire liability shall be the correction of the deficient Professional Services, or, if Company cannot substantially correct the deficiency in a commercially viable manner, Customer may terminate the deficient Professional Services and Company will refund to the Customer the fees for the terminated Professional Services that Customer pre-paid to Company for the period following the effective date of termination.
- 3.5. To the extent not prohibited by law, this warranty is exclusive and there are no other express or implied warranties or conditions, including for software, hardware, systems, networks or environments or for merchantability, satisfactory quality and fitness for a particular purpose.

#### **4. DURATION OF THE PSA**

- 4.1. Each SOW shall commence on the date it is signed by both parties, and shall expire upon completion of the project in the SOW, or as otherwise set forth in the applicable SOW. Once signed by both parties, an SOW and/or a Quote shall be noncancellable, except as otherwise explicitly stated in such SOW or Quote. This PSA will terminate automatically when all services on Quotes and SOWs referencing to this PSA are terminated or expired.
- 4.2. Notwithstanding the above, Company's obligation to provide Professional Services under a predetermined fee arrangement (such as activation or premium implementation projects) expires the earlier of:
  - a. The agreement between Customer and Company is expired or terminated
  - b. Four weeks after the applicable product(s) for the services in scope have been moved to production, at COMPANY's discretion. In a project with multiple phases, the four weeks start when the first part of the product is moved in Production.
  - c. Twelve months from the date an SOW has been signed
- 4.3. All obligations of the parties that accrued prior to termination of this PSA shall survive termination of this PSA. In particular, the following provisions shall survive termination or expiration of this PSA: articles 5, 6 and 7.

#### **5. CONFIDENTIALITY**

- 5.1. Confidential Information. Each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party"). "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) consisting of or relating to its technology, trade secrets,

know-how, business operations, plans, strategies, customers, and pricing, including any written or oral information disclosed by the Disclosing Party in relation to the add-on, marked, designated, or otherwise identified as "confidential", or the confidential nature of which is known or can reasonably be deemed to be known by the other party. Notwithstanding the above, Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this PSA, SOW, or Quote; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this PSA, SOW, or Quote; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any of the Disclosing Party's Confidential Information.

- 5.2. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:
- a. not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this PSA, SOW, or Quote;
  - b. except as may be permitted by and subject to its compliance with this PSA, SOW, or Quote, not disclose or permit access to Confidential Information other than to its representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this PSA, SOW, or Quote; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this PSA, SOW, or Quote; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth herein;
  - c. safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;
  - d. promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps with Disclosing Party to prevent further unauthorized use or disclosure; and
  - e. ensure its representatives' compliance with and be responsible and liable for any of its Representatives' non-compliance with the terms set forth herein.
- 5.3. Trade Secrets. Notwithstanding any other provisions of this PSA, SOW, or Quote, the Receiving Party's obligations hereunder with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under such applicable law other than as a result of any act or omission of the Receiving Party or any of its representatives.
- 5.4. Compelled Disclosures. If the Receiving Party or any of its representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that

the Disclosing Party can seek a protective order or other remedy; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this article, the Receiving Party remains required by applicable law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

- 5.5 Residual Information. It is important for Company to be able to use its skills, experience, expertise, concepts, ideas, and know-how learned or acquired while providing the Professional Services for Customer, itself or any of its customers in the ordinary course of its business. Therefore, Customer agrees that Company is entitled to retain and use without restriction any of the generalized knowledge, techniques, methodologies, practices, processes, skills, experience, expertise, concepts, ideas, and know-how learned or acquired by Company's personnel in the course of providing the Professional Services for Customer hereunder solely to the extent that they are retained in intangible form in the unaided memory of the personnel of Customer without intentionally memorizing such information or using any Customer's Confidential Information to refresh its recollection ("Residual Information"). Nothing in this PSA, SOW, or Quote is to be construed as to prevent Company from being able to do so, and further, such retention and use of Residual Information shall not be construed as a breach of this PSA, SOW, or Quote.

## **6. LIABILITY**

- 6.1. Except in case of gross negligence, willful misconduct or fraud by Company, the aggregate liability of Company arising out of this PSA, the SOW, or a Quote, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, is limited to the amounts actually paid by Customer in the twelve (12) calendar months prior to the day the damages first occurred.
- 6.2. Company will not be liable or responsible to Customer, nor be deemed to have defaulted under or breached this PSA, an SOW, or Quote, for any failure or delay in fulfilling or performing any term of this PSA, an SOW, or Quote, when and to the extent such failure or delay is caused by or results from the following force majeure events ("Force Majeure Event(s)": (a) acts of God;(b) failures or outages of the Internet or the telecommunication infrastructure, unavailability or malfunctioning of the NetSuite platform, (c) a (D)DOS or comparable attack, power failures, strikes, lockouts, business interruptions, and stagnation in deliveries, (d) flood, fire, earthquake, pandemics, including Covid19, or explosion; (e) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (f) government order, law, or action; and (g) embargoes or blockades in effect on or after the date of this PSA, an SOW, or Quote. Company shall give notice within five (5) days of the Force Majeure Event to Customer, stating the period of time the occurrence is expected to continue. Company shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that Company's failure or delay remains uncured for a period of sixty (60) days following written notice given by it under this article 6.3, Customer may thereafter terminate this PSA, an SOW, or Quote, upon five (5) days' written notice, without any liability for Company.
- 6.3. Any cause of action against Company, regardless of whether in contract, tort, or

otherwise, must commence within six (6) months after the cause of action first arose or the alleged damages first became known to Customer, whichever comes first, after which such cause of action is permanently barred.

- 6.4. Subject to the other sections of this article 6, Company shall indemnify Customer from and against damages, suffered or incurred as a result of a third-party claim regarding alleged intellectual property infringement caused by the unaltered services provided to Customer by Company. The indemnification obligations hereunder only apply if Customer provides Company immediately with detailed written notice of any claim and Customer grants full control of the defense of such claims to Company. In the event of a claim under this section, at Company's option, Customer may terminate this PSA, the SOW, or Quote, or defer acceptance of services until the claim is resolved. If any portion of the Professional Services is, or in Company's opinion is likely to become, the subject of an intellectual property rights infringement claim, then Company, at its sole option and expense, will either: (A) obtain for Customer the right to continue to use such portion under these ; (B) replace the portion of the Professional Services with services that are substantially equivalent in function, or modify the Professional Services so that it becomes non-infringing and substantially equivalent in function; or (C) refund Customer the portion of the Professional Services paid to COMPANY for the portion of the Professional Services that Customer may not use because of the infringement. The foregoing sets forth Company's exclusive and sole obligations and liability for (alleged) infringement of intellectual property rights.
- 6.5. In no event will either party or its affiliates be liable for any indirect, consequential, incidental, special, punitive, or exemplary damages, or any loss of revenue, profits (excluding fees under this PSA, SOW, or Quote), sales, data, data use, goodwill, or reputation, regardless of whether the damages were foreseeable, and whether or not a party was advised of the possibility of the damages, and regardless of the legal or equitable theory (contract, tort, or otherwise) on which the claim is based.
- 6.6. All warranties will become null and void, and Company will not be liable for any consequences if Customer modifies, removes or changes any (part of the) Professional Services.

## **7. INTELLECTUAL PROPERTY**

- 7.1. All intellectual property rights, e.g., patents, copyrights, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights, tools, documentations, etc., in relation to the Professional Services, including modifications thereto, delivered and/or used by Company, are owned by Company or its licensor(s). No transfer or other grant of rights is given to Customer, unless explicitly stated in writing. This applies even if products, software and/or services have been specifically designed, developed, or compiled for Customer.
- 7.2. Unless otherwise agreed in writing, Customer may not make repairs, fixes, modifications to the Professional Services, nor allow or enable any third parties to do so. Customer may not, nor may enable and/or allow third parties to copy, translate, or reverse engineer any part of the Professional Services.
- 7.3. Company, in its sole discretion, may implement technical measures aimed at protecting the Professional Services, and Customer is prohibited from attempting to remove or circumvent such protections.
- 7.4. Customer is granted a limited non-exclusive license to use the Professional Services for the term set forth in the SOW or Quote. The license is non-transferable and non-



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sublicensable.

## **8. MISCELLANEOUS**

- 8.1. For Customers entering into this PSA with NX2SQUARE, this PSA shall be governed by and construed in accordance with the substantive laws laws of Mauritius, without regard to its conflicts of law principles, and shall be subject to the exclusive jurisdiction of the courts of Mauritius. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this PSA or the parties.
- 8.2. Customer acknowledges that Company shall suffer irreparable injury in case of breach of the obligations under articles 5 and 7. Accordingly, in the event of such breach, Customer acknowledges that Company will be entitled to injunctive relief in any court of competent jurisdiction. Customer further submits to the personal jurisdiction of such courts for the purposes of any such action.
- 8.3. If a provision in the PSA, SOW, or Quote prescribes that a notification must be performed 'in writing', this requirement will also be satisfied if the notification is made by e-mail.
- 8.4. If any provision of this PSA, SOW, or Quote will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this PSA, SOW, or Quote is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- 8.5. Company has the right to transfer its rights and obligations under the PSA, SOW, or Quote to an affiliated party or to a third-party-purchaser of the relevant business activity of COMPANY. Company will give Customer at least thirty (30) days' notice of any transfer hereunder.
- 8.6. Company's relationship with Customer pursuant to this PSA will be that of an independent contractor. This PSA does not create any joint venture, partnership, agency, or employment relationship between the parties.
- 8.7. Each party is solely responsible for all of its employees and agents and its labor cost and expenses and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of each party's activities or those of its



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employees or agents in the performance of this PSA. Company reserves the right to use third parties (who are under a covenant of confidentiality with Company), including, but not limited to, offshore subcontractors to assist with the Professional Services, including, without limitation, any data migration, configuration, implementation and custom code development processes.

- 8.8. Should there be any discrepancy between the documents that constitute the full agreement between the parties, the documents take precedence in the following descending order:
- a. The SOW
  - b. The Quote or Quotes
  - c. The PSA
  - d. Attachments (if any)