



## SUBSCRIPTION AGREEMENT FOR CLOUD-SCALE ENTERPRISE FILE SERVICES

Last Updated: 22 February 2018

This Agreement governs the access and use of the Software provided by Nasuni pursuant to the terms on your Order. The terms of this Agreement take precedence over any inconsistent terms in the Order. If you have entered into a separate written agreement with Nasuni regarding the use of the Software, then the terms of that agreement will prevail and will govern your use of the Software. If you have ordered the Software through a Nasuni reseller, the terms of this Agreement shall apply to the exclusion of all other varying terms and conditions other than the terms of the Order placed by the reseller for you. The Reseller is responsible for the accuracy of any such order. Resellers are not authorized to make any promises or commitments on our behalf, and we are not bound by any obligations to you other than what we specify in this Agreement. In agreeing to these terms on behalf of your employer, you are representing that you have the authority to bind that entity to the Order and this Agreement and that your agreement to these terms will be treated as the agreement of that entity. If you have been granted access to use the Software by your account administrator, you are subject to these terms through that account and you are required to abide by the terms of this Agreement.

If you are using a trial subscription of the Software, the Software will be accessible until the end of the trial period, unless you purchase a subscription. During the trial period, the Software is provided "AS-IS" (without warranty). Nasuni may suspend, limit, or terminate your trial subscription at any time (and will not be liable for any damages related to your use of the Software during this trial period). Data ingested by the Software during the trial period is not intended for production use after the trial period (even if you purchase a subscription). Unless you purchase a subscription to the Software by the end of the trial period, you may not be able to further access the data stored in the Software and Nasuni, after using reasonable efforts to notify you, may delete such data.

BY ACCESSING, DOWNLOADING OR USING THE SOFTWARE, YOU AGREE THAT THE TERMS OF THIS AGREEMENT GOVERN YOUR USE OF THE SOFTWARE AND, UNLESS OTHERWISE STATED IN THIS AGREEMENT, NO VARYING TERMS AND CONDITIONS WILL APPLY. IF YOU DO NOT AGREE WITH THESE TERMS, YOU MAY NOT ACCESS, DOWNLOAD OR USE THE SOFTWARE.

### 1. DEFINITIONS

**"Access Controls"** means any and all keys, certificates, passwords, authorization or access codes, user IDs or other credentials or login information that is automatically generated or that you may generate in connection with your use of the Software.

**"Affiliate"** means an entity that owns or controls, is owned or controlled by or is under common ownership or control with you, where "control" means the power to direct the management or affairs of an entity and "ownership" means the beneficial ownership of fifty percent (50%) or more of the voting securities or other equivalent voting interests of an entity.

**"Agreement"** means this Subscription Agreement.

**"Authorized Users"** means your employees, contractors and agents that you authorize to use the Software on your behalf.

**"Confidential Information"** means any non-public information that is marked or identified as confidential (or under the circumstances of the disclosure or the nature of the information, it would reasonably be understood to be confidential or proprietary) at the time of disclosure.

**"Customer Data"** means the programs, data, information and content that you transmit using the Software.

**"Data Storage Services"** means the data storage services purchased from Nasuni as described in Section 3.5

**"Documentation"** means any written user and technical documentation provided by Nasuni generally to its subscribers for use with the Software.

**"Equipment"** means the hardware appliance referred to as a Nasuni Edge Appliance™, which is purchased separately from Nasuni or an authorized reseller.

**"Feedback"** means feedback or suggestions about the features, functions, or operation of the Software or Support.

**"Nasuni"** means Nasuni Corporation and/or its Affiliate, as indicated on your Order.

**“Order”** means the purchase order or other ordering document that Nasuni accepts from you or an authorized reseller.

**“Protected Information”** means personally identifiable information of either party’s employees, contractors or agents that is subject to specific regulations or laws that impose increased protections and/or obligations with respect to handling that type of information.

**“Renewal Term”** means each subsequent annual renewal of your subscription to the Software after the initial Subscription Term.

**“Software”** means the Nasuni cloud-based software (including Updates) that is listed on the Order, which may include UniFS®, the encryption and gateway technology that enables management, access and control of your files, the Nasuni Management Console, which enables access to the Nasuni operations center which allows you to manage permissions and authentication of your files, the Nasuni mobile applications and any other software as identified on the Order.

**“Standard Contractual Clauses”** means the standard contractual clauses for the transfer and processing of personal data as set out in European Commission Decision 2004/915/EC.

**“Subscription Fees”** means the subscription fees listed in the Order for the use of the Software.

**“Subscription Term”** means the subscription term listed in the Order and each subsequent Renewal Term.

**“Support”** means the support services as described in Section 4.

**“Support Policy”** means the support data sheet found at <https://www.nasuni.com/resource/nasuni-support/>, or a successor location that we point to, as may be updated from time to time.

**“Support Terms”** means the support terms provided in Section 4.

**“Updates”** means bug fixes, enhancements and other updates to the Software which Nasuni makes generally commercially available without additional charge during your Subscription Term.

**“you”** means the customer identified in the Order (and includes any of your Affiliates); you may also be referred to as **“Customer”**.

## 2. SUBSCRIPTION TERMS

**2.1. Software Subscription.** Subject to the terms and conditions of this Agreement, Nasuni hereby grants you a license to access and use (and for downloadable portions, download) the Software for the number of installation locations and capacity limits, and any other limitations, described in the Order and any accompanying Documentation, for your own internal business purposes during the Subscription Term. Nasuni provides Updates and technical support for the Software during the Subscription Term (at no additional charge) according to the Support Terms.

**2.2. Subscription Renewal.** After the initial Subscription Term, unless otherwise specified on the Order, your Software subscription will automatically renew for subsequent annual terms unless either party gives the other party written notice of nonrenewal at least 30 days before the last day of your then-current Subscription Term. You agree that, if you do not give written notice of nonrenewal prior to the date that is 30 days before the last day of your then-current Subscription Term, you will pay the subscription fees applicable to the Renewal Term at Nasuni’s then-current rates (or such other renewal rate, if any, specified on the Order). The renewal of promotional or one-time priced subscriptions will be at our then-current list price in effect at the time of the renewal, unless otherwise stated on the Order or otherwise agreed by the parties in writing at the time of the renewal.

**2.3. Professional Services.** Any professional services to be performed by Nasuni in connection with the configuration and implementation of the Software will be performed pursuant to Nasuni’s terms and conditions for professional services found at <https://www.nasuni.com/legal/terms-conditions-professional-services/>.

## 3. USE OF THE SOFTWARE

**3.1. Authorized Users.** On installation of the Software, you will be given default Access Controls, and you will be required change such Access Controls to Access Controls generated and controlled by you. You, and not Nasuni, are responsible for the creation of all other Access Controls and their use by your Authorized Users. If you choose to integrate the Software with active directory services, then the administrative rules generated by such services will govern access to the Software. You are responsible for the activity occurring under your account by Authorized Users (and their compliance with this Agreement), even if such Authorized Users gain access by means of the active directory services with which you integrate. You will not disclose Access Controls other than to your Authorized Users and will use reasonable efforts to prevent unauthorized access to your Access Controls. You agree to promptly notify Nasuni of any actual or suspected unauthorized use of your account that you become aware of. If you allow use of the Software by your Affiliates, you agree to be responsible for such Affiliates’ use and for their compliance with the terms

of this Agreement. Nasuni will not be liable for any unauthorized access to, use of, or alteration, corruption, deletion or loss of any Customer Data in connection with any Authorized User's or third party's use of your Access Controls.

**3.2. Copying.** At your own expense, you may make a reasonable number of copies of the Software that Nasuni makes available for download from the Nasuni customer dashboard, or any components thereof, solely for your archival and back-up purposes. You agree to reproduce, and not to remove, all copyright and other proprietary notices on such copies.

**3.3. Third Party Services and Equipment.** You are responsible for obtaining, maintaining, and supporting at your own expense all hardware, software, and services required to access and use the Software, including hosting or storage services, internet access, telecommunications services, or other services. Nasuni shall have no liability for the acts or omissions of your third party providers. You may purchase Equipment for use with the Software from Nasuni or a Nasuni authorized reseller. Equipment is not subject to the terms of this Agreement but is subject to the warranties, terms and conditions set forth on the Order for the Equipment or as otherwise required by applicable law. Nasuni has no access to your raw cloud data and, unless you are a subscriber of Data Storage Services, does not control your cloud storage, which is provided by a third party. Nasuni does not warrant that the use or operation of the Software will meet your individual requirements or be entirely secure, uninterrupted or error free, or that all errors will be corrected.

**3.4. Restrictions.** You may not use the Software other than as authorized in this Agreement or in your Order. You may not (and may not contract with a third party to) (1) modify, translate, or create or attempt to create any derivative works of the Software, (2) use, resell, sublicense, rent, lease, assign or share the Software, or any component thereof, with or for any third party (unless authorized in your Order), (3) use the Software for unlawful or illegal purposes, (4) decompile, disassemble, or reverse engineer the Software or attempt to derive the source code of the Software (except as permitted by law), (5) access the Software if you are a competitor of ours or use the Software to build a similar or competitive work, (6) interfere with or attempt to interfere with the integrity, security, functionality or proper working of the Software, (7) attempt to bypass, delete or disable any security features of the Software, or permit or gain unauthorized access to the Software, or (8) introduce or propagate any unauthorized data, virus, worm, time bomb, Trojan horse or any other harmful or malicious code into the Software. Nasuni reserves all rights not specifically granted to you in this Agreement. You may not alter or remove any copyright or other proprietary notices contained on the Software or any component thereof.

**3.5. Storage Services.** Notwithstanding anything to the contrary in this Agreement, if you are a legacy customer of Nasuni's Data Storage Services and you are continuing to use and pay for such Data Storage Services when this Agreement is accepted or further revised (by posting of a new version of this Agreement as described below), then you agree: (1) to use the Data Storage Services only in connection with your use of the Software and only through interfaces and protocols provided or authorized by Nasuni; (2) that you have sufficient rights to store the Customer Data using the Data Storage Services; (3) that you will not store more Customer Data than is stated on your Order and that, if you do, you will pay Nasuni for such additional storage at Nasuni's then-current fees in accordance with the payment terms set forth in Section 5.1 below. If you are a customer of Data Storage Services, the Storage Services Service Level Agreement will continue to apply to such Data Storage Services. In the event of a conflict between the terms of this Agreement and the Storage Services Service Level Agreement, the terms of the Storage Services Service Level Agreement will control (except where it expressly defers to the Agreement).

## 4. SUPPORT

**4.1. Technical Support.** Nasuni provides technical support in accordance with its then-current Support Policy. During trial periods or in some cases where you purchase your subscription through an authorized reseller, the Nasuni authorized reseller may offer you first line support. Nasuni is not responsible for providing support for problems arising out of errors in your data, formulas, databases, access to other software or databases, configuration errors in your network or environment, performance limitations in your network, or other problems not arising out of the Software not in Nasuni's control, or for any unauthorized use or modification of the Software.

**4.2. Maintenance and Updates.** Nasuni makes Updates to the Software on an ongoing basis. Except in the case of urgent Updates, Nasuni schedules maintenance during appropriate, non-peak usage hours (in an attempt to minimize the impact on all users, worldwide) and will provide advance notice of any planned unavailability (if reasonably possible).

**4.3. Changes.** Nasuni reserves the right to change, add to, or discontinue any feature or function of the Software or Support Terms, the equipment needed for access or use, and the types of files that can be stored or processed using the Software. Nasuni will use commercially reasonable efforts to notify you of any material change to the Software or Support Terms and will post such change in the release notes on the customer support portal. You should check this portal frequently for information about such changes. If any change materially diminishes the Software or Support Terms, you may terminate your subscription by giving written notice to Nasuni no later than thirty (30) days from the date the release note describing such change is posted to the customer support portal, and Nasuni will refund to you any pre-paid fees applicable to the period following the effective date of such termination.

## 5. PAYMENT

**5.1. Payment Terms.** Unless otherwise specified in your Order or elsewhere in this Agreement, all amounts payable under this Agreement are due and payable within 30 days from the invoice date. Unless otherwise specified on the Order, payment shall be made in USD. Invoices will be sent directly to the billing contact identified on the Order (and you agree to keep Nasuni informed of any updates or changes to your billing contact information). Late payments (on any undisputed amounts) may be subject to interest charges of 1.0% per month (or the maximum permitted by law, whichever is lower) and the expenses associated with those collections. Billing disputes must be reported to Nasuni (in writing) within 60 days from the invoice date. Except as otherwise provided in this Agreement, all payment obligations are non-cancelable and once paid are nonrefundable.

**5.2. Taxes.** Fees are exclusive of any applicable sales or use taxes (such as GST or VAT), and you are responsible for all such taxes.

**5.3. Excess Usage.** You agree to pay Nasuni any charges applicable to your use of the Software in excess of the usage limitations set forth on the Order at Nasuni's then-current rates (or such other rate for excess usage, if any, specified on your Order).

## 6. CUSTOMER DATA

**6.1. Customer Data.** You represent and warrant that you own all rights to your Customer Data and that you have full authority to transmit Customer Data using the Software. Nasuni has no ownership rights in any Customer Data. You are responsible for the accuracy, quality, integrity, and legality of your Customer Data. You agree to abide by (and be responsible for your compliance with) applicable laws and regulations regarding your access and use of Customer Data with the Software.

**6.2. Data Security.** You are responsible for (1) properly configuring the access rights for your Authorized Users, (2) your Authorized Users' access and use of the Software, (3) the adequate backup and protection of Customer Data while stored on your (or a third party's) equipment or service, and (4) the secure transmission of your Customer Data to the Software. Any files that were corrupted, for any reason, when transmitted to the Software will be restored in the same condition in which they were transmitted and therefore may not be usable due to such corruption. Nasuni will not be liable for any unauthorized access to, or use, alteration, corruption, deletion, destruction or loss of any Customer Data.

**6.3. Encryption.** The Software encrypts Customer Data before it is transmitted to your storage provider. Customer Data is encrypted using private keys that are controlled and maintained by you. Nasuni has no ability to decrypt Customer Data, without the use of such private keys. At the time of installation, you may request that Nasuni escrow a copy of your private keys for your recovery purposes. Nasuni will not use such private keys to access Customer Data unless requested by you or unless Nasuni is required to do so by applicable law.

**6.4. Data Access.** You manage and control access to your account (through your use of Access Controls) and the use and processing of your Customer Data. Nasuni will not access Customer Data except as necessary (by authorized personnel) to identify, investigate, or resolve technical problems with the Software, to deliver Support, or to verify your compliance with the terms of this Agreement. Customer Data that is accessed by Nasuni will (1) be kept confidential, (2) handled according to applicable laws and regulations, and (3) not be shared with any unauthorized personnel or comingled with other customers' data.

**6.5. Disclosure of Data.** Nasuni may disclose Customer Data (to the extent such Customer Data may be decrypted) if necessary to comply with a valid court order or subpoena or to comply with applicable law, rule or regulation of a governmental authority. Nasuni will promptly notify you of the request for such disclosure (unless prohibited by such process) and will cooperate with you if you choose to contest the disclosure, seek confidential treatment of the Customer Data to be disclosed, or to limit the nature or scope of the Customer Data to be disclosed.

## 7. PROTECTED INFORMATION

**7.1. Protected Information.** You acknowledge that the Software is not designed (or intended) for Nasuni to access your Customer Data or Protected Information. Each party agrees to comply with all applicable data protection laws with respect to such Protected Information, including Protected Information of the other party which it may receive in connection with this Agreement.

**7.2. Protected Information in Customer Data.** Nasuni may access your Protected Information if it is contained within the Customer Data which Nasuni accesses for the purposes set forth in Section 6.4. You agree that you are the data controller of any such Protected Information. If and to the extent that you are using the Software to process the Protected Information of individuals located in the United Kingdom, Switzerland or the European Union (EU), the Data Processing Addendum located at [www.nasuni.com/legal/data-processing-addendum/](http://www.nasuni.com/legal/data-processing-addendum/) will apply to Nasuni's processing of such Protected Information on your behalf. Any capitalized terms not otherwise defined in the Data Processing Addendum shall have the same meaning as in this Agreement. In the event of a conflict between this Agreement and the Data Processing Addendum, the Data Processing Addendum will control.

**7.3. Business Contact Information.** Each party may also access and use the other party's Protected Information where such Protected Information is included in business contact information provided in connection with this Agreement. If you are located in the United Kingdom, Switzerland or the EU, when transferring such Protected Information to Nasuni in the U.S., you will comply with the obligations required of a data exporter as set out in the Standard Contractual Clauses, which are incorporated into this Agreement, and Nasuni will comply with the obligations of an importer and the data processing principles as set out in Annex A of the Standard Contractual Clauses (which for the purposes of this Section 7.3 are incorporated into this Agreement). Each party will provide its personnel with appropriate notices (1) describing the circumstances under which Protected Information will be transferred to the other party, (2) identifying the other party as the recipient of such Protected Information, (3) identifying the Protected Information that it will transfer, (4) describing that the purpose for which such Protected Information will be used by the other party is limited to the management of this Agreement and provision of Software and Support, and (5) where such Protected Information is transferred to Nasuni, stating that the transfer of such Protected Information may be to the U.S. and that adequate safeguards are provided for the transfer of such Protected Information by Nasuni's EU-U.S. Privacy Shield Framework certification as administered by the U.S. Department of Congress or, otherwise, by the Standard Contractual Clauses.

## **8. TERMINATION; SUSPENSION**

**8.1. Term.** This Agreement commences on the earlier of (1) the start date specified on the Order or (2) the date you accept these terms and conditions and continues for the Subscription Term specified on the Order and any renewal Subscription Term. This Agreement will renew in accordance with the provisions of Section 2.2.

**8.2. Termination.** A party may terminate this Agreement (1) if the other party commits a material breach of this Agreement and does not cure the breach within 30 days from receiving written notice, or (2) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors that is not dismissed within, or continues for, a period of thirty (30) days. If you terminate this Agreement for Nasuni's uncured material breach, Nasuni will refund to you the unused portion of the Subscription Fees that were paid for the Software for the remainder of the Subscription Term.

**8.3. Suspension of Access.** Nasuni reserves the right to suspend or limit access to the Software if (1) Nasuni is prohibited by court order or order of another governmental authority from providing access to the Software, (2) Nasuni reasonably determines that the Software is subject to a security incident, denial of service attack, or other event that impacts the security of the Software or Customer Data, (3) Nasuni reasonably determines that you are using the Software in a way that creates a security vulnerability to the Software, (4) Nasuni reasonably determines that you are using the Software in violation of applicable law, (5) you have undisputed amounts more than 30 days past due, or (6) you have not paid the subscription fees (including subscription fees for any Renewal Term) when due. Nasuni will use reasonable efforts to give you prior notice if access will be suspended and, if the issue is capable of resolution, will promptly restore access once the issue has been resolved. Nasuni will give you at least ten (10) days' written notice of any planned suspension due to non-payment or other breach of this Agreement. Nasuni will not suspend access if you have corrected such non-payment or other breach within such 10-day time frame or if you are (reasonably and in good faith) disputing a charge and cooperating in resolving the dispute. Nasuni may terminate your access to the Software if you materially breach this Agreement and do not correct such breach within the 30-day cure period specified in Section 8.2. Nasuni shall have no liability for any damage, loss, or liability as a result of any suspension, limitation or termination of your access to the Software pursuant to this Section 8.3.

**8.4. Effect of Termination.** On the expiration or termination of this Agreement, you will (1) stop using and accessing the Software (other than as permitted in Section 8.5), (2) pay to Nasuni any Subscription Fees that had accrued (but had not been paid) prior to the effective date of termination and (3) delete all copies of the Software, Documentation, and any other Nasuni Confidential Information then in your possession. If Nasuni requests, you will certify in writing that you have fully complied with the foregoing requirements. Any post-termination transition assistance requested from Nasuni is subject to the mutual agreement of the parties (and may require payment of professional services fees for such assistance). Sections 3.1, 3.3-3.4, 6 (while Customer Data is processed using the Software), 8.3-8.4, and 9 through 13, and 15 will survive the expiration or termination of this Agreement.

**8.5. Access to Customer Data.** You may continue to access the Software in order to retrieve and download the Customer Data stored in the Software for up to 30 days after the expiration or termination of this Agreement. In order to retrieve Customer Data (1) you must be current in the payment of all Subscription Fees due up to the effective date of termination, (2) if you continued to access or use the Software after the effective date of termination, you must also be current in the payment of all fees applicable to such post-termination period, and (3) you must comply with any other reasonable terms and condition that Nasuni may establish with respect to such retrieval. After 30 days from termination, Nasuni may (unless legally prohibited) delete Customer Data stored in the Software. Nasuni will have no liability for deletion of Customer Data in accordance with this Section 8.5.

## **9. CONFIDENTIALITY**

**9.1. Confidentiality.** In addition to the confidential treatment of Customer Data pursuant to the terms of Section 6, in connection with the use of the Software or in the performance of Support, each party may need to provide the other with certain Confidential Information. The receiving party may only use this Confidential Information for the purpose for which it was provided and may

only share this Confidential Information with its employees, agents, and representatives who need to know it, provided they are subject to similar confidentiality obligations. The receiving party will protect the other party's Confidential Information in a similar way to how it protects its own confidential information, but using at least a reasonable degree of care, to prevent any unauthorized use or disclosure of this Confidential Information.

**9.2. Exceptions.** Confidential Information does not include any information that (1) was known (without any confidentiality obligations) prior to disclosure by the disclosing party, (2) is publicly available (through no fault of the receiving party), (3) is rightfully received by a third party (without a duty of confidentiality), or (4) is independently developed (without access or use of Confidential Information). The receiving party may disclose Confidential Information when compelled to do so by law, so long as the receiving party provides prior written notice of the disclosure (if legally permitted) to allow the disclosing party the opportunity to seek protection or confidential treatment or to limit or prevent such disclosure. The receiving party also agrees to cooperate with the disclosing party at the disclosing party's expense if the disclosing party chooses to contest the disclosure requirement, seek confidential treatment of the information to be disclosed, or to limit the nature or scope of the information to be disclosed. If the receiving party is compelled by law to disclose the disclosing party's Confidential Information as part of a civil proceeding to which the disclosing party is a party, and the disclosing party is not contesting the disclosure, the disclosing party will reimburse the receiving party for its reasonable cost of compiling and providing secure access to the Confidential Information.

## 10. PROPRIETARY RIGHTS

**10.1. Nasuni IP.** Nasuni, or its licensors, retains all rights, title and interest in and to Software, including any modifications, enhancements and derivative works. Except for the right to use the Software as set forth in this Agreement, no other right or license is granted to you. This Agreement does not grant any ownership rights to the Software. The Software may contain open source software. Nasuni will make a copy of the open source license available to you upon your request. There may be provisions in the open source license that expressly override some of the terms of this Agreement. Nasuni may ask you for Feedback. If you elect to provide Feedback, Nasuni may freely use and exploit the Feedback you provide (without any obligations or restrictions).

**10.2. Usage Data.** Nasuni monitors and collects data about the general use of the Software by all customers. This data does not include or contain any Customer Data. Nasuni uses this data for its own business purposes (such as improving, testing, and maintaining the Software and developing additional products and services), and from time to time, may publish this data (in the aggregate, which would not identify you or any other customer specifically) for informational and other such purposes.

**10.3. Attribution.** Nasuni may use your name (and the corresponding trademark or logo) on Nasuni's website and in any marketing or publicity to identify your business as a customer, subject to any usage guidelines that you provide or any pre-approval or authorization you tell us in writing that you require. Any other use requires your written consent (which you agree not to unreasonably withhold or delay).

## 11. LIMITED WARRANTY

**11.1. Limited Warranty.** Nasuni warrants that the Software will operate substantially in accordance with its Documentation during the Subscription Term. Nasuni further warrants that it will use commercially reasonable efforts to ensure that the Software, at the time of delivery, does not contain any spyware, malware, time bomb, virus, worm, Trojan horse or any other harmful or malicious code. If Nasuni fails to meet this warranty, Nasuni's sole obligation and your exclusive remedy will be for Nasuni to use reasonable efforts to cause the Software to conform to this warranty. You agree to reasonably assist Nasuni in identifying, reproducing and correcting the non-conformity. Nasuni has no obligation for any failure arising out of or relating to (i) your use of the Software other than as specified in the Documentation, (ii) your use or combination of the Software with any software, hardware or service not supported by Nasuni, (iii) causes external to the Software, such as problems with the hardware, network or infrastructure with which the Software is used, (iv) any unauthorized or improper use of the Software, or (v) any modification of the Software by anyone other than Nasuni.

**11.2. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NASUNI DISCLAIMS ALL WARRANTIES, TERMS, CONDITIONS AND UNDERTAKINGS, EXPRESS OR IMPLIED (INCLUDING BY STATUTE, CUSTOM OR USAGE, COURSE OF DEALING, OR COMMON LAW) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT (BUT FOR CLARITY THIS DISCLAIMER DOES NOT LIMIT NASUNI'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 13.1). WITHOUT LIMITING NASUNI'S EXPRESS OBLIGATIONS IN SECTION 7 (PROTECTED INFORMATION), SECTION 11.1 (LIMITED WARRANTY) OR 4.1 (TECHNICAL SUPPORT), NASUNI DOES NOT WARRANT THAT YOUR USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SOFTWARE WILL MEET YOUR BUSINESS GOALS OR OTHER REQUIREMENTS OR EXPECTATIONS. NASUNI SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, DATA LOSS OR CORRUPTION NOT CAUSED BY THE SOFTWARE, INCLUDING BUT NOT LIMITED TO DATA LOSS OR CORRUPTION CAUSED BY YOU, YOUR CLOUD STORAGE PROVIDER, INTERNET SERVICE PROVIDER OR OTHER THIRD PARTY PROVIDER, OR BY ANY THIRD PARTY EQUIPMENT OR VIRTUAL APPLIANCE, OR OTHER SYSTEMS OUTSIDE OF NASUNI'S REASONABLE CONTROL (INCLUDING BUT NOT LIMITED TO ANY THIRD PARTY PLATFORM). YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF SUCH STATUTORY RIGHTS, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

## 12. LIMITATION OF LIABILITY

**12.1. Consequential Damages Waiver.** EXCEPT FOR A PARTY'S BREACH OF CONFIDENTIALITY OR YOUR BREACH OF THE LICENSE, NEITHER PARTY (OR ITS LICENSORS) SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOSS OF GOODWILL, REPUTATION OR OPPORTUNITY, LOST PROFITS, ANY LOSS OF USE, LOSS OF DATA, LOSS OF ANTICIPATED SAVINGS, ANY ACCOUNT OF PROFITS OR INTERRUPTION OF BUSINESS), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY BREACH OR NON-PERFORMANCE OF IT, NO MATTER HOW FUNDAMENTAL AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. The foregoing limitations shall not apply to a party's liability in respect of (1) any death or personal injury caused by such party's gross negligence, (2) fraud or misrepresentation, or (3) any other statutory or other liability that cannot be excluded or limited under applicable law.

**12.2. Liability Cap.** EXCEPT FOR NASUNI'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NASUNI'S (AND ITS SUPPLIERS') ENTIRE LIABILITY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY CUSTOMER DURING THE PRIOR TWELVE MONTHS UNDER THIS AGREEMENT. The foregoing limitations shall not apply to ANY liability in respect of (1) death or personal injury caused by Nasuni's gross negligence, (2) fraud or misrepresentation, or (3) any other statutory or other liability that cannot be excluded or limited under applicable law. You acknowledge and agree that the prices set forth in the Order adequately reflect this allocation of risk and limitation of liability.

## 13. INDEMNIFICATION

**13.1. By Nasuni.** Nasuni will defend, indemnify and hold you harmless from and against, and pay any final award of damages or settlement amount and any liabilities or expenses incurred by you (including reasonable attorneys' fees), as a result of any claim brought against you by a third party that alleges that the Software infringes any patent, trademark or other intellectual property right of a third party. If the use of the Software is (or in Nasuni's opinion is likely to be) enjoined due to such a claim, Nasuni will at its option either (1) procure the right to continue using the Software under the terms of this Agreement, (2) replace or modify the Software so that it is non-infringing (but functionally equivalent), or (3) if Nasuni determines that neither of these options is reasonably available, then Nasuni may cancel your subscription with respect to the infringing Software and refund you the unused portion of the Subscription Fees paid for the Software for which the use is legally prohibited. Nasuni will have no liability for any claim of infringement based on (a) your use or combination of the Software with any other software, hardware or service not supported by Nasuni, if such infringement would not have occurred but for such use or combination, (b) any modification of the Software by anyone other than Nasuni, or (c) the use of any version of the Software other than the most current version, if such version was made available to you by Nasuni with notice that such version was being provided in order to avoid an alleged or potential infringement. This section describes Nasuni's entire responsibility and your sole remedy for any infringement claim or action.

**13.2. By You.** You will defend, indemnify and hold Nasuni harmless from and against any claim brought against Nasuni by a third party, any final award of damages or settlement amount, and any liabilities or expenses incurred by Nasuni (including reasonable attorneys' fees) as a result of any claim arising out of or relating to Customer Data, including (but not limited to) any claim that the Customer Data violates any applicable law, regulation, or the proprietary rights of others.

**13.3. Process.** These indemnity obligations are conditioned on the indemnified party promptly notifying the indemnifying party in writing of the claim (a delay in providing notice does not excuse these indemnity obligations unless the indemnifying party is prejudiced by such delay), the indemnified party giving the indemnifying party sole control of the defense of the claim (and in any related settlement negotiations), and the indemnified party cooperating and, at the indemnifying party's request and expense, assisting in such defense. The indemnified party may participate in the defense of the claim using its own counsel (at its own expense). The indemnifying party may not settle the claim without the indemnified party's consent, which will not be unreasonably conditioned, withheld or delayed, if such settlement imposes a payment or other binding obligation on the indemnified party.

## 14. MOBILE APPLICATION LICENSE

Nasuni grants you a non-transferable, non-exclusive license to download, install and use the Nasuni mobile application on a mobile device that you own or control, subject to the terms of this Agreement and any additional terms and conditions governing the use of the mobile application imposed by your mobile service provider. If there is a conflict between the terms of this Agreement and the terms imposed by your mobile service provider, the more restrictive provisions control. *For Apple devices:* You acknowledge that your rights to access and use the Nasuni mobile application is between you and Nasuni and not with Apple Inc. or its affiliates ("Apple") and that Apple has no responsibility for the Nasuni mobile application or its content. Your use of the Nasuni mobile application on Apple devices must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation to furnish any maintenance or support services for the Nasuni mobile application. If the Nasuni mobile application fails to meet the limited warranty set forth in this Agreement, you may notify Apple and Apple will, as your sole remedy for such failure, refund the purchase price paid to Apple for the Nasuni mobile application to the maximum extent permitted by applicable law. Apple will have



no other obligation to you for breach of the warranty applicable to the Nasuni mobile application. Each party acknowledges that Apple is not responsible for addressing your claims or the claims of any third party relating to the Nasuni mobile application, including (1) any product liability claim, (2) any claim that the Nasuni mobile application fails to conform to any applicable legal or regulatory requirement, and (3) any claim arising under any consumer protection or similar legislation. Each party acknowledges that, in the event of a third-party claim that the Nasuni mobile application or your use of the Nasuni mobile application infringes any third party's intellectual property rights, Nasuni and not Apple is solely responsible for its investigation, defense, settlement and discharge to the extent required by this Agreement. Each party agrees that Apple and its subsidiaries are third party beneficiaries to this Agreement as it relates to your use of the Nasuni mobile application and that, upon your acceptance of this Agreement, Apple has the right (and will be deemed to have accepted the right) to enforce this Agreement against you (with respect to the Nasuni mobile application) as a third party beneficiary.

## 15. GENERAL

**15.1. Relationship of the Parties.** This Agreement does not create or imply any agency, partnership, or franchise relationship. This Agreement is intended for the benefit of the parties and, except as specifically set forth herein, is not intended to benefit any third party. Neither party has the authority to assume or create any obligation on behalf of the other party.

**15.2. Assignment.** Neither party may assign the Order or this Agreement without the other party's prior written consent, except to an affiliate or in connection with a merger, acquisition, reorganization, or sale of all or substantially all of the assets or equity of such party. Any attempt to assign the Order or this Agreement other than as permitted in this Agreement will be null and void. This Agreement is binding upon and insures to the benefit of each party and its respective successors and assigns.

**15.3. Subcontractors.** Nasuni may use independent contractors or subcontractors inside or outside of the United States to perform its obligations under this Agreement, and Nasuni will be liable for the actions or omissions of such independent contractors and subcontractors.

**15.4. Notices.** Any notice, approval, consent, or other communication intended to have legal effect under this Agreement must be given to the other party in writing, by first-class, registered, or overnight mail or private overnight courier (to the address for the other party stated on the Order, unless the other party has given notice of a new address), and will be deemed given upon receipt.

**15.5. Government End-Users.** The Software is commercial computer software developed at private expense as defined in FAR 2.101 or DFAR 252.227-7014. If you are an agency, department or other entity of the U.S. Government, the use, duplication, reproduction, release, modification, disclosure and transfer of the Software, Documentation, including any technical data, is restricted only to those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). All other use is prohibited.

**15.6. Export Restrictions.** The Software (and related technology and Equipment) is subject to U.S. export controls and may not be (a) activated or downloaded in or transferred, exported or re-exported to any embargoed or sanctioned country, currently Cuba, Crimea, Iran, North Korea, Sudan, Syria (or to a citizen or permanent resident of these countries located outside of the United States), or (b) downloaded by or made available to any person on the U.S. Specially Designated Nationals List, Denied Persons List, or Entity List. By downloading and/or using Software, you represent and warrant that you are not located in the aforementioned countries or a person referenced above, or under the control of or acting on behalf of any person that is.

**15.7. Anti-Corruption.** You agree you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Nasuni employee or agent in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate this restriction. If you learn of any violation, you will use reasonable efforts to notify Nasuni at [legal@nasuni.com](mailto:legal@nasuni.com).

**15.8. Governing Law.** If you are located in the United Kingdom, Switzerland or the EU, governing law is the law of England, and jurisdiction and venue is in London, England. If you are located within the Americas or in a country other than the United Kingdom, Switzerland or EU, governing law is the Commonwealth of Massachusetts, U.S.A. and jurisdiction and venue is in Suffolk County, Massachusetts, U.S.A. Governing law is without regard to any conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**15.9 Language.** The parties confirm that it is their desire that this Agreement, and all related documents, including notices, shall be written in the English language only. *Les parties confirment leur désir que cet accord ainsi que tous les documents, y compris tous avis qui s'y rattachent, soient rédigés en langue anglais seulement.* If (and only if) you are located in a country whose laws require that contracts be in the local language in order to be enforceable, then the version of this Agreement that shall govern is the translated version of this Agreement in the local language that is produced by Nasuni within a reasonable time following your written request to us. Unless otherwise required by the applicable governing law, in the event of any conflict between the English language version and the local language version of this Agreement, the English language version of this Agreement will control.



**15.10 Entire Understanding; Severability.** This Agreement constitutes the complete and exclusive understanding and agreement between the parties regarding this subject and supersedes all prior or contemporaneous agreements or understandings (written or verbal) relating to this subject matter of this Agreement. No terms in any purchase order or in any order documentation (other than the Order or a Renewal Order) are incorporated into or form any part of this Agreement. If any terms are found to be void or unenforceable, the remaining terms of this Agreement will remain in full force and effect. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, then such provision shall be deemed void and severed from this Agreement and the remainder of this Agreement shall remain in full force and effect.

**15.11 Modification; Waiver.** Nasuni has the right to amend the terms and conditions of this Agreement at any time, effective upon posting of an updated version of this Agreement at [www.nasuni.com/legal/](http://www.nasuni.com/legal/). Nasuni will use reasonable efforts to provide you with notice of changes to this Agreement, but you are responsible for regularly checking the Nasuni website to inform yourself of such changes. Continued use of the Software after any such changes are posted will constitute your consent to such changes. If you do not agree with such changes, you may terminate this Agreement on written notice to Nasuni. The waiver by either party of a breach of any provision hereof shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of such party to avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any right, power or privilege.

**15.12 Force Majeure.** Except for payment obligations, if either party is unable to perform any obligation under this Agreement to due to any act of God, fire, casualty, flood, war, strike, shortage or any other cause beyond its reasonable control, and if such party uses reasonable efforts to avoid such occurrence and mitigate its duration and effects, then its performance shall be excluded and the time for performance shall be extend for the period of delay or inability to perform.

**15.13 Statutory Exceptions for Public Institutions.** If you are a qualified public educational or government institution and any terms in this Agreement (such as, by way of example, all or part of the indemnification section) are invalid or unenforceable against you because of applicable law, then those terms will be deemed excluded and unenforceable (as the case may be), and instead construed in a manner most consistent with applicable governing law. In addition, if the applicable governing law is precluded in these situations, then this Agreement will be construed under the laws of the state/province in which your primary office is located.

**15.14 Headings.** The headings in this Agreement are for convenience only and shall not be considered in its interpretation or construction.

[END]