



MASTER SUBSCRIPTION AND SERVICES AGREEMENT

Last Updated: July 2022

This Master Subscription and Services Agreement (the “Agreement” or “MSA”) sets forth the terms and conditions governing your (and your Affiliates’) purchase, use (or trial) of your subscription(s) to products, solutions, and services (as further defined below, the “Solutions”) sold by Nasuni Corporation (“Nasuni” or “we”) pursuant to the terms on your Order(s), which further define(s) the Solutions you are purchasing. The terms of your Order(s) take precedence over any inconsistent terms in this Agreement. If you have entered into a separate written agreement with Nasuni regarding the use of the Solutions, then the terms of that agreement will govern your Order(s) for, and use of, the Solutions. If you have ordered the Solutions through a Nasuni reseller, the applicable payment terms between you and your reseller shall apply to Order(s) hereunder, but all other terms of this Agreement, as between you and Nasuni, shall govern your use of the Solutions. 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. You represent that the individual who agrees to these terms on your behalf has the authority to bind you to the Order and this Agreement and that their agreement to these terms will be treated as your agreement.

If you are using a trial subscription, the Solutions will be accessible until the end of the trial period, which shall not exceed Thirty (30) days, unless you purchase a subscription (the “Trial Period”). During the Trial Period, the Solutions are provided “AS-IS” (without warranty). Nasuni will not be liable for any damages related to your use of the Solutions during this Trial Period. Data ingested by the Solutions during or after the Trial Period is not intended for production use after the Trial Period (even if you purchase a subscription), and Nasuni may delete it after the Trial Period.

BY ACCESSING, DOWNLOADING OR USING THE SOLUTIONS, YOU AGREE THAT THE TERMS OF THIS AGREEMENT GOVERN YOUR USE OF THE SOLUTIONS, 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 SOLUTIONS.

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 Solutions.

“Account Portal” means the web-based portal through which you may access and download the Solutions, serial numbers, view usage information, and through which you may update your account profile information.

“Affiliate” means an entity that owns or controls, is owned or controlled by or is under common ownership or control with a party, 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. “Affiliate” shall not include any entity which is prohibited by applicable law from using the Services.

“Agreement” means this Master Subscription and Services Agreement, and any and all references, exhibits, addenda, policies, attachments and Order(s).

“Authorized Users” means your employees, contractors and agents that you authorize to use the Solutions 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 (including without limitation any Protected Information) that Nasuni processes solely on your behalf in order to provide the Solutions.

“Data Controller” means the entity that determines the purposes and means of Processing Protected Information.

“Data Processor” means an entity that Processes Protected Information on behalf of a Data Controller.

“Data Storage Services” means any legacy data storage services that may be 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™, or other such hardware as defined on the Order, which is purchased separately from Nasuni or an authorized reseller.

“Feedback” means feedback or suggestions about the features, functions, or operation of the Solutions or Support.

“Fees” means Subscription Fees, fees for Professional Services and any other fees listed on the Order.

“Nasuni” means Nasuni Corporation and/or its Affiliates, as indicated on your Order.

“Nasuni Connector” means the Nasuni Analytics Connector, including any updates or upgrades thereto, and any related Documentation. The Nasuni Connector enables you to export a temporary second copy of your file data, in native object format, to your separate cloud storage account (provided by your cloud storage provider), so you can use that copied data with data recognition tools, provided by a third party (not Nasuni), such as analytics software, AI and machine learning.

“Order” means the purchase order or other ordering document that Nasuni accepts from you or an authorized reseller. If you are purchasing via a Nasuni authorized reseller, the Order will be between Nasuni and the reseller and you will have a separate purchasing document that you enter into with the reseller that will apply to your purchase from that reseller.

“Process” means (including any grammatically inflected forms thereof) any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, including without limitation collection, recording, organization, structuring, storage, adaptation or alteration, access, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“Professional Services” means any professional services to be performed by Nasuni and its agents as set forth in Section 2.3 hereof.

“Protected Information” means information relating to any identified or identifiable individual, household, or device, in each case that is subject to specific applicable regulations or laws that impose increased protections and/or obligations with respect to handling that type of information, including any such information of either party’s employees, contractors or agents.

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

“Services” means (collectively) Support, Professional Services and any other services provided by Nasuni hereunder.

“Solutions” means (collectively) the Software and the Services provided by Nasuni hereunder.

“Software” means the Nasuni software (including Updates) that is listed on the Order.

“Subscription Fees” means the fees listed in the Order for the use of the Solutions.

“Subscription Term” or **“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/legal/customer-support-data-sheet/> 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 Solutions 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. Solutions Subscription. Subject to the terms and conditions of this Agreement, Nasuni hereby grants you a non-exclusive, non-transferable (except as expressly permitted herein) license to access and use (and for downloadable portions, download) the Solutions for the 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 Solutions 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 Term. You agree that, if you do not give written notice of non-renewal 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 Solutions will be performed pursuant to this Agreement, including additional terms and conditions for such services found at **Exhibit A**, “Additional Terms for Professional Services” attached hereto.

3. USE OF THE SOFTWARE

3.1. Authorized Users. On installation of the Solutions, you will be given default Access Controls, and you will be required to 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 Solutions with active directory services, then the administrative rules generated by such services will govern access to the Solutions. 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 Solutions by your Affiliates, you agree to be responsible for such Affiliates’ use and for their compliance with the terms of this Agreement. You represent and warrant that you have the authority to bind all such Affiliates to 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 Solutions, 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 Solutions 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. Unless you are a subscriber of Data Storage Services, Nasuni does not control your cloud storage, which is provided by a third party.

3.4. Restrictions. You may not use the Solutions 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 Solutions, (2) use, resell, sublicense, rent, lease, assign or share the Solutions, or any component thereof, with or for any third party (unless authorized in your Order), (3) use the Solutions for unlawful or illegal purposes, (4) decompile, disassemble, or reverse engineer the Solutions or attempt to derive the source code of the Solutions (except as permitted by law), (5) access the Solutions if you are a competitor of ours or use the Solutions to build a similar or competitive work, (6) interfere with or attempt to interfere with the integrity, security, functionality or proper working of the Solutions, (7) attempt to bypass, delete or disable any security features of the Solutions, or permit or gain unauthorized access to the Solutions, or (8) introduce or propagate any unauthorized data, virus, worm, time bomb, Trojan horse or any other harmful or malicious code into the Solutions. 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 Solutions 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 Solutions 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 5.3 below.

3.6 Nasuni Connector. If you choose to use the Nasuni Connector at any time during the Term, you will be using it to extract copies of your file data, in native object form, out of the Software. For avoidance of doubt, this Agreement no longer applies to the file data that you have extracted from the Software by using the Nasuni Connector.

4. SUPPORT

4.1. Technical Support. Nasuni provides technical support in accordance with its then-current Support Policy. 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 in arising out of the Solutions not in Nasuni's control, or for any unauthorized use or modification of the Solutions.

4.2. Maintenance and Updates. Nasuni makes Updates to the Solutions 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). Nasuni gives you tools so you can reasonably control and manage the timing of your deployment of the Updates.

4.3. Changes. Nasuni reserves the right to change, add to, or discontinue any feature or function of the Solutions or Support Terms, the equipment needed for access or use, and the types of files that can be stored or processed using the Solutions. Nasuni will use commercially reasonable efforts to notify you of any material change to the Solutions or Support Terms and will post such change in the release notes on the customer support portal. If any change materially diminishes the Solutions, you may, as your sole and exclusive remedy, terminate your subscription by giving written notice to Nasuni no later than thirty (30) days after the date the release note describing such change is posted to the customer support portal, and Nasuni will refund to you any pre-paid as yet unused Fees applicable to the affected Solution and Order for the period following the effective date of such termination.

5. PAYMENT

5.1. Payment Terms. Unless otherwise specified in your Order(s), all amounts payable under this Agreement are due and payable within 30 days from the invoice date. 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 Solutions 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, or have the rights to use your Customer Data, and that you have full authority to transmit Customer Data using the Solutions. You hereby grant to Nasuni the right and license to Process and otherwise use Customer Data to the extent necessary to perform the Services. 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 Solutions. Without limiting the foregoing, you represent, warrant and covenant that: (i) you have (and will have) Processed, collected, and disclosed all Customer Data in compliance with applicable laws; (ii) you have (and will have) provided any notice and obtained all consents and rights required by applicable law to enable Nasuni to lawfully Process Customer Data as permitted by this Agreement; (iii) you have (and will continue to have) full right and authority to make the Customer Data available to Nasuni under this Agreement; and (iv) Nasuni's Processing of the Customer Data in accordance with this Agreement or Customer's instructions does and will not infringe upon or violate any applicable law or any rights of any third party.

6.2. Data Security. You are responsible for (i) properly configuring the access rights for your Authorized Users, (ii) any access or use of your Solutions account, including your Authorized Users' access and use of the Solutions, (iii) the adequate backup and protection of Customer Data while stored on your (or a third party's) equipment or service, and (iv) the secure transmission of your Customer Data to the Solutions. Any files that were corrupted, for any reason, when transmitted to the Solutions can only 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 and you alone. Nasuni has no ability to decrypt Customer Data, without the use of such private keys. If you are a legacy customer of Nasuni's Data Storage Services for whom Nasuni escrows 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. Even if you have requested Nasuni to escrow a copy of your private keys for recovery purposes, you acknowledge and agree that a password is necessary to access the private keys to de-escrow your Customer Data, and that YOU ALONE HOLD THAT PASSWORD, not Nasuni. If you lose that password and request a recovery key from Nasuni as a last resort for you to de-escrow your data, you HEREBY RELEASE, HOLD HARMLESS, WAIVE, DISCHARGE AND COVENANT NOT TO SUE NASUNI, its directors, officers, shareholders, employees or agents from, AND NASUNI HEREBY EXPRESSLY DISCLAIMS, any and all loss, liability, damage, or cost that you may incur or which may arise from the escrowing of your private keys and/or the de-escrowing of such data.

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 by authorized personnel of Nasuni as necessary to provide the Solutions, including to identify, investigate, or resolve technical problems with the Solutions, to deliver Support or Professional Services, or to verify your compliance with the terms of this Agreement. Nasuni will use commercially reasonable efforts to ensure that 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 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.

6.6. Protected Information in Customer Data. 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 its Processing of Protected Information of the other party which it may receive in connection with this Agreement. 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 and Nasuni is a Data Processor of such Protected Information on your behalf. To the extent any Protected Information is contained in Customer Data, the Nasuni Data Processing Addendum (available at www.nasuni.com/legal) the "Nasuni Data Processing Addendum") will apply to Nasuni's Processing of such Protected Information on your behalf, and the parties hereby agree to comply with such Nasuni Data Processing Addendum, which Nasuni Data Processing Addendum is hereby incorporated into this Agreement in its entirety. Customer hereby enters into the Nasuni Data Processing Addendum on behalf of itself and its Affiliates.

7. TERMINATION; SUSPENSION

7.1. Term. This Agreement commences on the earlier of (1) the start date specified on the Order or (2) the date you access and use the Solutions, 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, unless terminated earlier as set forth hereunder.

7.2. Termination. A party may terminate this Agreement by providing the other party with effective written Notice (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 pre-paid, as yet unused, pro-rata portion of the Subscription Fees that were paid for the affected Solution, as of the Effective Date of Termination.

7.3. Suspension of Access. Nasuni reserves the right to suspend or limit access to the Solutions if (1) Nasuni is prohibited by court order or order of another governmental authority from providing access to the Solutions, (2) Nasuni reasonably determines that the Solutions are subject to a security incident, denial of service attack, or other event that impacts the security of the Solutions or Customer Data, (3) Nasuni reasonably determines that you are using the Solutions in a way that creates a security vulnerability to the Solutions, (4) Nasuni reasonably determines that you are using the Solutions 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 Solutions if you materially breach this Agreement and do not correct such breach within the 30-day cure period specified in Section 7.2. 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 Solutions pursuant to this Section 7.3.

7.4. Effect of Termination. On the effective date of the expiration or termination of this Agreement (the "Effective Date of Termination"), you will (1) stop using and accessing the Solutions (other than as permitted in Section 7.5), (2) pay to Nasuni any Fees that had accrued (but had not been paid) prior to the Effective Date of Termination and (3) delete all copies of the Solutions, Documentation, and any other Nasuni Confidential Information then in your possession. Except as otherwise provided in Section 7.5, any post-termination transition assistance requested of Nasuni is subject to the mutual written agreement of the parties and shall require payment of reasonable Fees. Sections 3.1, 3.3-3.4, 6 (while Customer Data is Processed using the Software), 7.3-7.4, and 8 through 13 will survive the expiration or termination of this Agreement.

7.5. Access to Software Following Termination. You may continue to use the Software to access Customer Data in your third-party storage provider for up to 30 days after the Effective Date of Termination ("Grace Period"), provided that you are current in the payment of all Subscription Fees due or owing for any Order(s) hereunder as of the Effective Date of Termination. If, however, you wish to continue to access or use any Solutions after such Grace Period, then, you must pay the annual Subscription Fees for all applicable Solutions for the one-year period commencing upon the Effective Date of Termination.

7.6 Legacy Customers of Nasuni Data Storage Services. If you are a legacy customer of Nasuni Data Storage Services, then after 30 days from termination, Nasuni may (unless legally prohibited) delete Customer Data stored in the Solutions. Nasuni will have no liability for such deletion of Customer Data.

8. CONFIDENTIALITY

8.1. Confidentiality. In addition to the confidential treatment of Customer Data pursuant to the terms of Section 6, in connection with the use of the Solutions 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.

8.2. 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 from 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.

8.3. Equitable Relief. The receiving party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the disclosing party, entitling the disclosing party to seek injunctive relief in addition to all legal remedies.

9. PROPRIETARY RIGHTS

9.1. Nasuni IP. Nasuni, or its licensors, retains all rights, title and interest in and to Solutions, including any modifications, enhancements and derivative works. Except for the right to use the Solutions 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 Solutions. The Solutions 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).

9.2. Usage Data. Nasuni monitors and collects data about the general use of the Solutions 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 Solutions 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.

9.3. 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).

10. LIMITED WARRANTY

10.1. Limited Warranty - Software. 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 (iv) any modification of the Software by anyone other than Nasuni. Additionally, if Nasuni materially breaches this warranty, and does not cure such breach within Thirty (30) days, then you may terminate the Agreement and receive a pro-rata refund of any pre-paid, as yet unused, fees for the Software, as of the Effective Date of Termination.

10.2. Limited Warranty – Services. Nasuni warrants that the Services will be performed in a professional manner in accordance with generally accepted industry standards for such Services. Your exclusive remedy and Nasuni's sole liability for breach of this Services Limited Warranty is to terminate that portion of the affected SOW or Order related to the applicable Services for which such breach occurred and receive a refund from Nasuni of the pro-rata portion of pre-paid, as yet unearned fees for such Services as of the Effective Date of Termination.

10.3. 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 12.1). WITHOUT LIMITING NASUNI'S EXPRESS OBLIGATIONS IN THE NASUNI DATA PROCESSING ADDENDUM, SECTION 10.1 AND 10.2 OR 4.1, NASUNI DOES NOT WARRANT THAT YOUR USE OF THE SOLUTIONS WILL BE ENTIRELY SECURE, UNINTERRUPTED OR ERROR-FREE OR THAT THE SOLUTIONS WILL MEET YOUR BUSINESS GOALS OR OTHER REQUIREMENTS OR EXPECTATIONS, OR THAT ALL ERRORS WILL BE CORRECTED. NASUNI SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, DATA LOSS OR CORRUPTION NOT CAUSED BY THE SOLUTIONS, 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.

11. LIMITATION OF LIABILITY

11.1. Consequential Damages Waiver. EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 12, 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 or willful misconduct, or (2) any other statutory or other liability that cannot be excluded or limited under applicable law.

11.2. Liability Cap. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 12 OR FOR A PARTY'S BREACH OF CONFIDENTIALITY, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, A PARTY'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) any death or personal injury caused by either party's gross negligence or willful misconduct, or (2) 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.

12. INDEMNIFICATION

12.1. 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 (i) arising out of Nasuni's violation of applicable law; or (ii) that alleges that the Solutions infringes any patent, trademark or other intellectual property right of a third party. If the use of the Solutions 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 Solutions under the terms of this Agreement, (2) replace or modify the Solutions 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 Solutions and refund you the unused portion of the Subscription Fees paid for the Solutions 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 Solutions 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 Solutions by anyone other than Nasuni (or a third party acting on behalf of Nasuni at Nasuni's written direction), or (c) the use of any version of the Solutions 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.

12.2. 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 (i) your breach of Section 6; (ii) your violation of applicable law; or (iii) Customer Data, including (but not limited to) any claim that the Customer Data violates any applicable law, regulation, or the proprietary rights of others.

12.3. 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.

13. GENERAL

13.1. 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.

13.2. Assignment. Neither party may assign any 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 any Order or this Agreement other than as permitted in this Agreement will be null and void. This Agreement is binding upon and inures to the benefit of each party and its respective successors and assigns.

13.3. 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 responsible for ensuring that such independent contractors and subcontractors comply with the terms of this Agreement in the performance of Nasuni's obligations hereunder and shall be liable for any breach of such obligations by its independent contractors and subcontractors.

13.4. 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.

13.5. 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.

13.6. Export-Import Compliance. 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, or used in, any embargoed or sanctioned region or country, or any country subject to anti-terrorism restrictions (currently Cuba, Crimea, Iran, North Korea, and Syria), or (b) downloaded by or made available to any person (i) on the U.S. Denied Persons List or Entity List; or (ii) that is blocked under U.S. economic sanctions as a result of being on the Specially Designated Nationals List or being owned 50 percent or more, directly or indirectly, by one or blocked persons, or under and Executive Order, which currently includes all Government of Venezuela entities or persons acting for or on behalf of such an entity. By downloading and/or using Software, you represent and warrant that such download will not occur in the aforementioned countries, or by a person referenced above, or under the control of or acting on behalf of any such person.. You further acknowledge and warrant that you are solely responsible for compliance with local authorities with regard to the importation and use of Software outside of the United States. Nasuni does not assume any responsibility for your compliance obligations related to this Agreement.

13.7. Anti-Corruption. You warrant that you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any Nasuni employee or agent in connection with this Agreement. Appropriate gifts and/or entertainment of limited value directly related to bona fide business activity and provided transparently 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.

13.8. Governing Law. If you are located in the United Kingdom, governing law is the law of England and Wales, and jurisdiction and venue is in London, England. If you are located in Switzerland or the EEA, then governing law is Ireland, and jurisdiction and venue is in Cork, Ireland. If you are located within the Americas or in a country other than the United Kingdom, Switzerland or the EEA, 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.

13.9. 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 anglaise 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.

13.10. 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.

13.11. 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 <https://www.nasuni.com/legal/>. 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. 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.

13.12. 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.

13.13. 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.

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

[END]

EXHIBIT A

ADDITIONAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

This Exhibit A (“Exhibit A”) is incorporated into and governed by the Master Subscription and Services Agreement by and between you and Nasuni Corporation (together with its Exhibits, Order(s), and any SOWs, the “Agreement” or “MSA”) and governs the delivery of Professional Services provided by Nasuni to you, the Customer referenced on an applicable Order or Statement of Work (“SOW”). All capitalized terms not defined in this Exhibit A shall have the same meaning as in the MSA.

1. Additional Definitions. The following additional definitions shall apply to this Exhibit A.

“Change Order” means any written and signed change to an SOW or Order as further described in Section 3 below. Change Orders shall be incorporated into the applicable SOW or Order once signed by both parties.

“Professional Services” means the consulting, implementation, installation, data migration, training or other professional services provided by Nasuni (or its subcontractors) pursuant to an SOW or Order, including the delivery of any Deliverables specified on such SOW or Order.

“Statement of Work” means a written statement of work signed by the parties and describing the Professional Services to be provided and which is incorporated into an Order and subject to this Exhibit A and the Agreement.

2. Scope. Subject to your payment of Professional Services Fees as further described below in Section 6 and set forth on an Order or in an applicable SOW, Nasuni will provide you with the Professional Services, including any Deliverables, as specified on each SOW or Order(s). You agree that your purchase of Professional Services is not contingent upon the delivery of any future functionality or features or on any written or oral comments by Nasuni regarding the availability of any future functionality or features.

3. Changes. Changes to an SOW or Order for Professional Services require a Change Order that identifies the applicable SOW or Order. Such changes may include changes in the Scope, estimated fees and schedule. You agree to pay the fees and expenses as set forth in each Change Order. If you request that Nasuni perform Professional Services outside the Scope of any SOW or Change Order, you agree to pay for such Professional Services at Nasuni’s then-current time and material rates.

4. Acceptance. You are responsible for reviewing and testing all Deliverables in accordance with the SOW or Order pursuant to any written acceptance criteria applicable to such Deliverable. You agree to provide Nasuni with prompt written notice of acceptance or rejection of each Deliverable. Failure to reject a Deliverable will be deemed Acceptance. To reject a Deliverable, you must do so within Ten (10) business days after delivery and you must specify in detail the failure(s) of such Deliverable to conform to the agreed acceptance criteria (i.e., a “non-conformity”). We will use commercially reasonable efforts to correct such non-conformity and resubmit the Deliverable as soon as practicable, and you will have ten (10) business days to re-test the Deliverable. If the Deliverable fails to meet the acceptance criteria after its second submission to you, you may terminate the SOW or Order upon written notice and recover all fees paid for the non-conforming Deliverable. If you report a non-conformity in any Deliverable after the 10-business day acceptance period, then any correction will, at Nasuni’s option, be subject to revised rework estimates and completion timelines, and timelines and costs will need to be adjusted accordingly. If the parties determine that the acceptance criteria of a Deliverable requires modification (for example, due to incorrect assumptions or changed requirement), they will cooperate in good faith with each other to execute a Change Order reflecting such modification.

5. Your Responsibilities. You will cooperate reasonably and in good faith with Nasuni in its provision of the Professional Services. Without limiting the foregoing, and in addition to any other responsibilities allocated to you under an SOW or Order, you agree to 1) allocate sufficient resources to enable Nasuni to perform its obligations under each SOW and Order; 2) timely perform all tasks as necessary for Nasuni to perform its obligations under each SOW and Order; 3) timely respond to Nasuni’s inquiries relating to the Professional Services; 4) assigning internal project manager(s) to be Nasuni’s primary contact who is skilled and knowledgeable about the project to which the Professional Services relate; 5) actively participate in scheduled project meetings; and 6) provide complete, accurate and timely feedback and information as reasonably required for Nasuni to perform the Professional Services. Any delays in performance of the Professional Services or delivery of the Deliverables that you cause may result in additional charges.

6. Professional Services Fees and Taxes. You will pay us for the Professional Services at the rates specified in the SOW or Order (or, if no rate is specified, at Nasuni's then current time and materials rates.) Professional Services are performed on a fixed price or time and materials basis, as specified in the SOW or Order. On a time and materials engagement, if an estimated total amount is stated in the SOW or Order, that amount is solely a good faith estimate for your budgeting, and Nasuni's resource scheduling purposes and is not a guarantee that the Professional Services will be completed for that amount; the actual amount may be higher or lower. You agree to pay the Professional Services Fees set forth in the applicable SOW or Order, plus any reasonable expenses, if pre-approved by you in writing, and incurred in connection with the performance of the Professional Services. The Professional Services Fees specified in the Order or SOW are exclusive of any sales, use or other tax of any nature (other than taxes based on Nasuni's net income), and you agree to pay such taxes or reimburse Nasuni if Nasuni is ordered to pay such taxes on your behalf. Except as otherwise provided in the Agreement, all payment obligations to Nasuni are non-cancelable, and all fees once paid are non-refundable.

7. Proprietary Rights. Nasuni will retain all rights, title and interest in and to its Solutions and to any and all enhancements, modifications, improvements, corrections and derivative works thereto, such as may be created during Nasuni's performance of Professional Services hereunder. Nasuni owns all work product, including any methodologies, techniques, know-how and processes related thereto, and upon your payment of applicable Professional Services Fees under any SOW or Order, Nasuni licenses such work product to you solely for your use of the Solutions during the Term. You do not grant Nasuni any rights in your intellectual property except such licenses as may be required for Nasuni to perform its obligations under the applicable SOW or Order. You will retain all rights, title and interest in and to your own information and data, and your processes, standards, practices, management policies and procedures, and all of your Confidential Information.

[END]