

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

Last Updated: 2018/02/21

The following Terms and Conditions govern the delivery of the Services provided by Nasuni Corporation or its Affiliate (as stated on the Order) ("**Nasuni**") to the customer stated on the SOW ("**Customer**" or "**you**"). Each SOW shall be governed by these Terms. All capitalized terms not defined in these Terms shall have the same meaning as in the Subscription Agreement

1. **Definitions.**

"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.

"Change Order" means any change to an SOW or Order as further described in Section 3 below. Change Orders are deemed incorporated by reference into the SOW or Order, as applicable.

"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.

"Deliverable" means a deliverable identified under an SOW or Order.

"Terms" means these Terms and Conditions including any SOWs, Change Orders, exhibits, schedules or other addenda incorporating these Terms and Conditions.

"Order" means the purchase order or other ordering document that Nasuni accepts from you or an authorized reseller for the purchase of Services under these Terms. Services purchased under an Order are governed by these Terms and not by the Subscription Agreement. Any reference to "Order" herein shall not apply to Software or Equipment, which shall be governed by the terms of the Subscription Agreement.

"Services" the consulting, implementation, installation, data migration, training or other professional services provided by Nasuni (or its subcontractors) under an SOW or Order, including the delivery of any Deliverables specified on the SOW or Order.

"Software" means the Nasuni cloud-based Software that is listed on your Order to which the Services relate.

"SOW" means a statement of work describing the Services to be provided that is executed by Nasuni and you, or which is incorporated into an Order that is entered into between Nasuni and you. Each SOW and any Order are incorporated herein by this reference.

"Subscription Agreement" means the Subscription Agreement for Cloud-Scale Enterprise File Services, or other agreement executed by you and Nasuni, which governs your use of the Software (and Equipment, if applicable) to which the Services relate.

"you" means the customer identified in the SOW or Order; you may also be referred to as "Customer".

2. **Scope.** Subject to your payment of the fees as stated in Section 8 below, Nasuni will provide you with the Services, including any Deliverables, as specified on each SOW or Order (as applicable) in accordance with these Terms and the applicable SOW or Order. You agree that your purchase of 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 Services require a written Change Order referring to the applicable SOW or Order, and in the form as may be further described therein and signed by the parties. Such changes may include changes in the scope or work and corresponding changes in the 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 Services outside the scope of any SOW or Change Order, you agree to pay for such Services at Nasuni's then-current time and materials rates.

4. **Acceptance.** You are responsible for reviewing and testing all Deliverables in accordance with the SOW or Order pursuant to any acceptance criteria applicable to such Deliverable that the parties agree in writing. You agree to provide us 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 the 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 require modification (due to, for example, incorrect assumptions or changed requirement), they will cooperate in good faith with each other to execute a Change Order reflecting such modification. Acceptance of a Deliverable does not impede your rights under Section 10 below.

5. **Your Responsibilities.** You will cooperate reasonably and in good faith with Nasuni in its provision of the Services. Without limiting the foregoing, and in addition to any other responsibilities allocated to you under the 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 Services, (4) assigning internal project manager to be Nasuni's primary contact who is skilled and knowledgeable about project to which the 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 Services. Any delays in performance of the Services or delivery of the Deliverables that you cause may result in additional charges.

6. **Term and Termination.** These Terms becomes effective upon the parties' execution of the applicable SOW, or upon Nasuni's acceptance of the Order, as applicable, continue in effect until the Services are completed, unless terminated earlier in accordance with these Terms. Either party may terminate any SOW or Order upon ten (10) days prior written notice to the other party, unless the SOW or Order is billed in advance or otherwise expressly restricts a party's rights to cancellation or termination for convenience. Either party may terminate an SOW or Order (1) for the other party's material breach not cured within fifteen (15) days following notice of such breach, 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. You agree to pay for Services performed up to the effective date of termination (on a time and materials basis or percentage complete basis, as applicable).

7. **Fees; Taxes.** You will pay us for the Services at the rates specified in the SOW or Order (or, if not rate is specified, at Nasuni's then current time and materials rates). Services are performed on a fixed price or time and materials basis, as specified in the SOW or Order, as applicable. 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 not a guarantee the Services will be completed for that amount; the actual amount may be higher or lower. You agree to

pay the fees set forth in the SOW or Order, as applicable, plus any reasonable expenses incurred in connection with the performance of Services, including, without limitation, travel and living expenses. The fees specified in the SOW or Order (as applicable) 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 these Terms, all payment obligations are non-cancelable, and fees once paid are nonrefundable.

8. **Payment Terms.** Nasuni will invoice fees for time and materials Services monthly as incurred, plus associated expenses. Fixed price Services will be invoiced according to the schedule set forth in the applicable SOW or Order. Unless otherwise specified in the SOW or Order (as applicable), invoices are payable within thirty (30) days of the invoice date. Nasuni reserves the right to charge a late fee of up to 1.5% per month (or, if less, the maximum rate allowable by law) on any balance remaining unpaid for more than thirty (30) days or, at its option, to condition the delivery of future Services on your pre-payment or on payment terms less than thirty (30) days. You agree to reimburse Nasuni for any reasonable costs and legal fees associated with Nasuni's efforts to recover any fees due but not paid as set forth in these Terms. If you fail to make payment by the due date have not cured such non-payment within ten (10) days following receipt of written notice of non-payment, Nasuni shall have the right to suspend Services under the SOW or Order, as applicable.

9. **Confidentiality.** During the performance of Services, each party may need to provide the other with certain Confidential Information. The receiving party may only use the other party's 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. Confidential Information includes, but is not limited to, the terms of any SOW or Order, pricing, financial information, customer information, business processes, and technologies and technical information. 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.** Nasuni will retain all rights, title and interests in and to its Software and any and all enhancements, modifications corrections and derivative works thereto. Nasuni owns all work product, including any methodologies, techniques, know-how and processes related thereto, and upon your payment of applicable fees under the SOW or Order, Nasuni licenses such work product to you solely for your use of the Software. 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 SOW or Order (as applicable). You will retain all rights, title and interests in and to your own information and data, and your processes, standards, practices, and management policies and procedures, and all of your Confidential Information.

11. **Limited Warranty and Disclaimer.**

11.1 **Limited Warranty.** Nasuni warrants that the Services will be performed in a professional manner in accordance with generally accepted industry standard for such Services.

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). NASUNI DOES NOT WARRANT THAT THE SERVICES WILL MEET YOUR BUSINESS GOALS OR OTHER REQUIREMENTS OR EXPECTATIONS OR THAT ALL ERRORS WILL BE CORRECTED. NASUNI WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, DATA LOSS OR CORRUPTION NOT CAUSED BY THE SERVICES, 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. Your exclusive remedy, and Nasuni's sole liability for breach of this limited warranty is to terminate the SOW or Order, as applicable, pursuant to Section 6 and receive a refund from Nasuni of the unearned portion of any fees paid with respect to the Services.

12. **Limitation of Liability.**

12.1 **Consequential Damages Waiver.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, 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 **Indemnification 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 arising out of death, personal injury or damage to tangible

property to the extent caused by Nasuni in the performance of the Services.

13.2 Mutual Indemnification. Each party will defend the other party against any claim, demand, suit or action that alleges that any information, design, specification, instruction, software, data, or material furnished by the providing party infringes any patent, trademark or other intellectual property right of a third party and will indemnify the other party from any damages, attorneys fees and costs finally awarded as a result of, or for amounts paid under a settlement approved in writing by the providing party of, any such claim. The providing party will have no liability for any claim of infringement or misappropriation to the extent that (1) it arises from information, design, specification, instruction, software, data or material provided by the other party, (2) such claims is based upon the use of a superseded or altered version of the information, design, specification, instruction, software, data or material, if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered version. If all or some of the information, design, specification, instruction, software, data or material is held or reasonably believed by the providing party to infringe or misappropriate, the providing party may in its discretion at no cost to the other party (a) modify or replace it so it is no longer claimed to misappropriate or infringe, (b) obtain a license for its use in accordance with these Terms, or (c) require its return and terminate the relevant SOW or Order, and the associated license for the allegedly infringing or misappropriated material, and refund the other party for the fees paid for such material.

13.3. Process. The indemnity obligations set forth in this Section 13 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.

13.4 Exclusive Remedy. This Section 13 describes each party's entire responsibility and the other's sole remedy for any infringement claim or action.

14. Force Majeure. Except for payment for Services, neither party will be responsible for any failure to perform

due to causes beyond its reasonable control, including, but not limited to, acts of God, terrorism, war, riot, embargoes, fire, floods, earthquakes, or strikes, provided that such party gives prompt written notice to the other party of the force majeure event. The time for performance will be extended for a period equal to the duration of the force majeure event, but in no event longer than sixty (60) days.

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

16. Insurance. Each party will maintain at its own expense during the term of each SOW and Order insurance appropriate to its obligations hereunder, including as applicable general commercial liability, errors and omissions, employer liability, automobile insurance and workers compensation insurance as required by applicable law.

17. Compliance with Laws. Each party will be responsible for compliance with all legal requirements related to the Services, including those related to the disclosure of data, and to any exports of software.

18. Relationship of the Parties. These Terms do not create or imply any agency, partnership, or franchise relationship. These Terms are intended for the benefit of the parties and 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.

19. Notices. All notices or other communications required to be given hereunder shall be in writing and to the other party's address listed on the SOW or Order, as applicable. For Nasuni, the contact person should be the "Legal Department"; for you, the contact person should be the Principal Contact identified on the applicable SOW or Order, or such other contact of which you notify Nasuni in writing. Notices shall be effective upon their receipt by the party to whom they are addressed.

20. Assignment. Neither party may assign the SOW or Order, as applicable, 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 SOW or Order other than as permitted in these Terms will be null and void. These Terms are binding upon and insures to the benefit of each party and its respective successors and assigns.

21. Export Restrictions. The Services, Deliverables, and any derivatives thereof, are subject to U.S. export controls and may not be (a) 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 the Services, Deliverables or any derivatives thereof, 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.

22. **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 these Terms. 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.

23. **Governing Law.** If you are located in the United Kingdom or 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 or European Union, 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 these Terms, the Services or any SOW or Order.

24. **Language.** The parties confirm that it is their desire that these Terms, 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 these Terms that shall govern is the translated version of these Terms 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 these Terms, the English language version of these Terms will control.

25. **Entire Understanding; Severability.** These Terms, and any SOW or Order incorporated into these Terms, 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 its subject matter. No terms in any purchase order or in any order documentation (other than the Order or SOW) are incorporated into or form any part of these Terms. In the

event of a conflict between these Terms and the terms of any SOW or Order, these Terms shall control, unless the applicable provision of the SOW or Order specifically states it overrides these Terms. If any terms are found to be void or unenforceable, the remaining terms of these Terms will remain in full force and effect. If any provision in these Terms is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, then such provision shall be deemed void and severed from these Terms and the remainder of these Terms shall remain in full force and effect.

26. **Modification; Waiver.** No modification of these Terms shall be effective unless in writing signed by both parties. 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.

27. **Non-Solicitation.** Neither party shall extend offers of employment to, or directly or indirectly solicit the engagement of, any employee of the other party with whom the non-employing party came into contact with through the performance of the Services during the period such employee was engaged in the performance of the SOW (or Order) and for two consecutive years after such engagement. This restriction shall not apply to offers extended solely as a result of and in response to web advertising on each party's or a third-party web site, classified advertising or other, similar, general solicitations not specifically targeted at the other party's employees. If any court or other adjudicatory body determines that the foregoing provision is unenforceable because of its duration or scope, the court or adjudicatory body has the power to reduce the duration or scope of the provision, as the case may be, so that in its reduced form the provision is enforceable. Such power includes the authority to reform the provision by rewriting it, if required, so that it conforms to applicable law and carries out the parties' intentions under these Terms.

28. **Survival.** The following sections shall survive termination or expiration of these Terms or any SOW or Order: 6-13, 17-29.

29. **Headings.** The headings in these Terms are for convenience only and shall not be considered in its interpretation or construction.

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