FRAMEWORK AGREEMENT

THIS FRAMEWORK AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **NASUNI CORPORATION,** a Delaware corporation, whose address is One Marina Park Drive, Boston, MA 02210 (the "Contractor"), individually a "Party" and jointly "the Parties."

RECITALS

WHEREAS, the City awarded this Agreement to the Contractor pursuant to D.R.M.C. Sec. 20-64(a)(3) and the City's Executive Order 8 for cloud file storage software licensing and support (this "Agreement").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above agree as follows:

1. **COORDINATION AND LIAISON**: The Contractor shall fully coordinate all Work under this Agreement with the City's Chief Information Officer ("CIO") or other designated personnel of the Department of Technology Services ("Agency" or "TS").
2. **DEFINITIONS**
   - **2.1.** "**City Data**" means all information, data, and records, regardless of form, created by or in any way originating with the City and all information that is the output of any computer processing or other electronic manipulation including all records relating to the City's use of the Work. City Data also includes Confidential Information and Protected Information, as defined in this Agreement.
   - **2.2.** "**D(d)ata**" means information, regardless of form, that can be read, transmitted, or processed.
   - **2.3.** "**Deliverable(s)**" means a tangible object, software-as-a service subscription, or on-premise software that is provided to the City by the Contractor under this Agreement or Order(s) subject to this Agreement, defined as a written purchasing document for such Deliverables (an "Order").
   - **2.4.** "**Effective Date**" means the date on which this Agreement is fully approved and signed by the City as shown on the City's signature page.
   - **2.5.** "**Service(s)**" means the services to be performed by the Contractor as set forth in this Agreement and shall include any services or support provided by the Contractor in connection with any goods or Deliverables under this Agreement.
   - **2.6.** "**Subcontractor**" means any third party engaged by the Contractor to aid in performance of the Work.
   - **2.7.** "**Work**" means the Deliverables provided and Services performed pursuant to this Agreement.
   - **2.8.** "**Work Product**" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Term that is used, without modification,

in the performance of the Work. Work Product excludes all Services performed by the Contractor hereunder and all pre-existing intellectual property of Contractor.

3. **SOFTWARE AS A SERVICE, SUPPORT AND SERVICES TO BE PERFORMED**: As the City directs, the Contractor shall diligently undertake, perform, and complete the technology related Work set forth on the attached **Exhibit A**, Scope of Work ("SOW") to the City's reasonable satisfaction. The City shall have no liability to compensate the Contractor for Work that is not specifically authorized by this Agreement. The Work shall be performed as stated herein and shall materially conform to the specification of the attached exhibits (collectively, "Exhibits"). The Parties acknowledge that they may further define the SOW in writing, and any alterations to the initial SOW shall become a part of this Agreement by incorporation. If any alteration to the initial or subsequent SOW materially alters the terms contained therein, the Parties agree to amend this Agreement in writing. The Contractor is ready, willing, and able to provide the technology related Work required by this Agreement. The Contractor shall faithfully perform the Work in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in this Agreement and in accordance with the terms of this Agreement.
4. **ON-CALL SERVICES TO BE PERFORMED**: The Contractor agrees to cooperate with the City in the preparation of detailed Task Orders in accordance with the Scope of Work, and the rates, contained therein, attached hereto as **Exhibit A**. Each Task Order shall include a detailed scope of Services, level of effort, schedule, rates, and payment schedule, including a "not to exceed" amount, specific to each Task Order, and to take effect, each Task Order shall have been signed by both Parties. Task Orders shall be construed to be in addition to, supplementary to, and consistent with the provisions of this Agreement. In the event of a conflict between a particular provision of any Task Order and a provision of this Agreement, this Agreement shall take precedence. A Task Order may be amended by the Parties by a written instrument prepared by the Parties jointly and signed by their authorized representatives. The City may execute Task Orders in its sole discretion, and the City is not required to execute any minimum number of Task Orders under this Agreement. The City shall have no liability to compensate the Contractor for any Work not specifically set forth in this Agreement or a properly executed Task Order. In no event shall a Task Order term extend beyond the Term unless the City has specifically agreed in writing. If this Agreement is terminated for any reason, each Task Order hereunder shall also terminate unless the City has specifically directed otherwise in writing. Subject to agreed fees, the Contractor agrees to fully coordinate its provision of Services with any third party under contract with the City doing work or providing Services which affect the Contractor's performance. The Contractor represents and warrants that all Services under a Task Order will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards; upon delivery, all Services and/or Deliverables will materially conform to applicable, agreed upon specifications, if any; and, it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to any software and Services free and clear from any and all liens, adverse claims,

encumbrances and interests of any third party. Each Party represents and warrants that it shall comply with applicable laws and regulations in the performance of this Agreement.

5. **TERM**: This Agreement will commence on June 1, 2023, and will expire, unless sooner terminated, on November 1, 2026 (the "Term"). Subject to the City's prior written authorization and payment of applicable fees, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the City.
6. **COMPENSATION AND PAYMENT**
   - **6.1. Fees**: The City shall pay, and the Contractor shall accept as the sole compensation for services rendered and costs incurred under this Agreement the fees described in the attached **Exhibit A**. Amounts billed may not exceed rates set forth in **Exhibit A** and will be made in accordance with any agreed upon payment milestones, unless the Parties agree to amend a Task Order. All Fees are exclusive of applicable taxes. Each Order shall be paid in advance and once placed is non-cancelable and non-refundable unless this Agreement is terminated by cause.
   - **6.2. Reimbursement Expenses**: There are no reimbursable expenses allowed under this Agreement. All the Contractor's expenses are contained in the budget in **Exhibit A**. The City will not be obligated to pay the Contractor for any other fees, costs, expenses, or charges of any nature that may be incurred and paid by the Contractor in performing services under this Agreement including but not limited to personnel, benefits, contract labor, overhead, administrative costs, operating costs, supplies, equipment, and out-of-pocket expenses.
   - **6.3. Invoicing**: The Contractor must submit an invoice which shall include the City contract number, clear identification of the Work that has been completed, and other information reasonably requested by the City. Payment in USD, on all uncontested in good faith amounts shall be made in accordance with the City's Prompt Payment Ordinance.
   - **6.4. Maximum Agreement Liability**
     - **6.4.1.** Notwithstanding any other provision of this Agreement, the City's maximum payment obligation will not exceed Two Million Seventy-Eight Thousand Six Hundred Twenty-Three Dollars and Seventy-Five Cents ($2,078,623.75) (the "Maximum Agreement Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in the attached Exhibits. Any services performed beyond those in the attached Exhibits are performed at the Contractor's risk and without authorization under this Agreement.
     - **6.4.2.** The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
7. **STATUS OF CONTRACTOR**: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its

employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, or employment relationship between the Parties.

8. TERMINATION

8.1. Either Party has the right to terminate this Agreement or any Task Order under this Agreement with cause upon the material breach of the other, where such breach remains uncured thirty (30) days after receipt of written notice. However, nothing gives the Contractor the right to perform services under this Agreement beyond the time when its services become unsatisfactory to the City.

8.2. Notwithstanding the preceding paragraph, the City may terminate this Agreement if the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with the Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

8.3. The City is entering into this Agreement to serve the public interest. If this Agreement ceases to further the City's public interest, the City, in its sole discretion, may terminate this Agreement, in whole or in part, for convenience by giving written notice to the Contractor, but in such case, the City shall not be entitled to any refund and shall remain liable to pay for the full Subscription Term(s) set forth in any order accepted by the Contractor.

8.4. Upon termination of this Agreement, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in this Agreement and shall refund to the City any as yet unused prepaid cost or expenses for professional services as of the effective date of Termination.

9. EXAMINATION OF RECORDS AND AUDITS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Contractor

to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. 20-276.

10. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach.

11. **INSURANCE**

11.1. **General Conditions**: The Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Contractor shall keep the required insurance coverage in force at all times during the term of this Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer rated by A.M. Best Company as "A-VIII" or better. The Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

11.2. **Proof of Insurance**: The Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Upon request, the Contractor shall provide the Certificate of Insurance, such as the one attached as **Exhibit C**, preferably an ACORD form. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

11.3. **Additional Insureds**: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), the Contractor and Subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials and employees, as additional insured.

11.4. **Waiver of Subrogation**: For all coverages required under this Agreement, with the exception of Professional Liability – if required, the Contractor's insurer shall waive subrogation rights against the City.

11.5. **Subcontractors and Subconsultants**: The Contractor shall confirm and document that all Subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as

approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

11.6. **Workers' Compensation and Employer's Liability Insurance**: The Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of $100,000 per occurrence for each bodily injury claim, $100,000 per occurrence for each bodily injury caused by disease claim, and $500,000 aggregate for all bodily injuries caused by disease claims.

11.7. **Commercial General Liability**: The Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of $1,000,000 for each bodily injury and property damage occurrence, $2,000,000 products and completed operations aggregate (if applicable), and $2,000,000 policy aggregate. Policy shall not contain an exclusion for sexual abuse, molestation, or misconduct.

11.8. **Automobile Liability**: The Contractor shall maintain Automobile Liability with minimum limits of $500,000 combined single limit applicable to all owned, hired, and non-owned vehicles used in performing services under this Agreement.

11.9. **Technology Errors & Omissions including Cyber Liability**: The Contractor shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with minimum limits of $1,000,000 per occurrence and $1,000,000 policy aggregate. The policy shall be kept in force, or a Tail policy placed, for three (3) years.

12. DEFENSE AND INDEMNIFICATION

12.1. The Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Contractor or its Subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

12.2. The Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. the Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

12.3. The Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be

in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

12.4. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

12.5. The Contractor shall indemnify, save, and hold harmless the indemnified parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the indemnified parties in relation to any claim that any Deliverable or Service, software, or Work Product provided by the Contractor under this Agreement (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. The Contractor's obligations hereunder shall not extend to the combination of any IP Deliverables provided by the Contractor with any other product, system, or method, unless the other product, system, or method is (i) provided by the Contractor or the Contractor's subsidiaries or affiliates; (ii) specified by the Contractor to work with the IP Deliverables; (iii) reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or (iv) is reasonably expected to be used in combination with the IP Deliverables.

12.6. The Contractor shall indemnify, save, and hold harmless the indemnified parties against all costs, expenses, claims, damages, liabilities, court awards and other amounts, including attorneys' fees and related costs, incurred by the indemnified parties in relation to the Contractor's failure to comply with §§ 24-85-101, *et seq*., C.R.S., or the *Accessibility Standards for Individuals with a Disability* as established pursuant to § 24-85-103 (2.5), C.R.S.

12.7. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

13. LIMITATION OF THE CONTRACTOR'S LIABILITY: To the extent permitted by law, the liability of the Contractor, its Subcontractors, and their respective personnel to the City for any claims, liabilities, or damages relating to this Agreement shall be limited to damages, including but not limited to direct losses, consequential, special, indirect, incidental, punitive or exemplary loss, loss or unauthorized disclosure of City Data, not to exceed three (3) times the Maximum Agreement Amount payable by the City under this Agreement. No limitation on the Contractor's liability to the City under this Section shall limit or affect: (i) the Contractor's indemnification obligations to the City under this Agreement; (ii) any claims, losses, or damages for which coverage is available under any insurance required under this Agreement; (iii) claims or damages arising out of bodily injury, including death, or damage to tangible property of the City; or (iv) claims or damages resulting from the recklessness, bad faith, or intentional misconduct of the Contractor or its Subcontractors.

14. COLORADO GOVERNMENTAL IMMUNITY ACT: The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights,

immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq*., C.R.S. (2003).

15. **COMPLIANCE WITH APPLICABLE LAWS AND POLICIES**: Each Party shall comply with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations, public health orders, and Executive Orders of the City and County of Denver that are applicable to the Contractor's performance hereunder. These laws, regulations, and other authorities are incorporated by reference herein to the extent that they are applicable and required by law to be so incorporated. Any of the Contractor's personnel visiting the City's facilities will comply with all applicable City policies regarding access to, use of, and conduct within such facilities. The City will provide copies of such policies to the Contractor upon request.
16. **SERVICE LEVEL AGREEMENTS**: To the extent the Contractor provides service level commitments in connection with its provision of any Work purchased hereunder, the Contractor shall be fully responsible for the delivery and maintenance of the Work, in whole and/or in part, in accordance with the terms of the service level agreement attached hereto and incorporated herein as **Exhibit B**.
17. **TECHNOLOGY SERVICES SPECIFICATIONS**

17.1. **User ID Credentials**: Internal corporate or customer (tenant) user account credentials shall be restricted, ensuring appropriate identity, entitlement, and access management and in accordance with established policies and procedures, as follows:

17.1.1. Identity trust verification and service-to-service application (API) and information processing interoperability (e.g., SSO and Federation);

17.1.2. Account credential lifecycle management from instantiation through revocation;

17.1.3. Account credential and/or identity store minimization or re-use when feasible; and

17.1.4. Adherence to industry acceptable and/or regulatory compliant authentication, authorization, and accounting (AAA) rules (e.g., strong/multi-factor, expire able, non-shared authentication secrets).

17.2. **Vendor Supported Releases**: The Contractor shall maintain the currency of all third-party software used in the development and execution or use of the Work with third-party vendor approved and supported releases, including, but not limited to, all code libraries, frameworks, components, and other products (e.g., Java JRE, code signing certificates, .NET, jQuery plugins, etc.), whether commercial, free, open-source, or closed-source.

17.3. **Identity Management**: The City's Identity and Access Management ("IdM") system is an integrated infrastructure solution that enables many of the City's services and online resources to operate more efficiently, effectively, and securely. All new and proposed applications must utilize the authentication and authorization functions and components of IdM. Strong authentication is required for privileged accounts or accounts with access to sensitive information. This technical requirement applies to all solutions regardless of where the application is hosted.

17.4. **Additional Products or Services**: The Parties acknowledge that the Contractor will continue to enhance and/or modify its existing products or services. To use those enhanced products or services, the City shall be entitled to order those offerings at any time throughout the

duration of this Agreement provided the pricing is set out in this Agreement. Once agreed upon by the Parties, additional products or services shall be subject to the same terms and conditions as contained herein and any order placed by the City shall not create any additional binding conditions on the City and shall not act as an amendment of the terms and conditions of this Agreement. If additional products or services are requested by the City, the Parties shall follow the agreed upon order process and if no process is outlined, then the CIO, or other designated Agency personnel, shall be authorized to sign any necessary forms to acquire the products/services on behalf of the City. Additional licenses shall be prorated and co-termed with current licensing contained in this Agreement.

17.5. **Reoccurring Security Audits**: Prior to the Effective Date of this Agreement, the Contractor, will at its expense conduct or have conducted the following, and thereafter, the Contractor will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Security Breach: (i) a mutually agreed upon audit of the Contractor's security policies, procedures and controls; (ii) external and internal vulnerability scan of the Contractor's systems and facilities, to include public facing websites, that are used in any way to deliver Services under this Agreement. The report must include the vulnerability, age, and remediation plan for all issues identified as critical or high; and (iii) a formal penetration test performed by qualified personnel of the Contractor's systems and facilities that are used in any way to deliver Work under this Agreement. Upon request, the Contractor will provide the City the reports or other documentation resulting from the above audits, certifications, scans, and tests within a reasonable time of the Contractor's receipt of such results. The report must include the vulnerability, age, and remediation plan for all issues identified as critical or high. In addition, the Contractor shall reasonably comply with the City's annual risk assessment and the results thereof. The Contractor shall also protect data against deterioration or degradation of quality and authenticity by, at minimum, having a third party perform annual data integrity audits

17.6. **Transition of Services**: Upon expiration or earlier termination of this Agreement or any Work provided hereunder, the Contractor shall cooperate reasonably with the City or such replacement provider and promptly assist in effecting a transition of the Services designated by the City. If requested all Services related to such transition shall be performed at the Contractor's then current rates for professional services. The Parties may extend this Agreement for one month (30 days) (a "Grace Period") if additional time is required beyond the termination of this Agreement, if necessary, to effectuate the transition and the City shall pay a proration of the subscription fee.

17.7. **Disaster Recovery and Continuity**

17.7.1. The Contractor shall use reasonable commercial efforts to maintain a continuous and uninterrupted business continuity and disaster recovery program with respect to the Work provided under this Agreement. The program shall be designed, in the event of a significant business disruption affecting the Contractor, to provide the necessary and sufficient capabilities, processes, and procedures to enable the Contractor to resume and

continue to perform its duties and obligations under this Agreement without undue delay or disruption. In the event of equipment failures, the Contractor shall, at no additional expense to the City, take reasonable steps to minimize service interruptions, including using any back-up facilities where appropriate. Upon request, the Contractor shall provide the City with a summary of its disaster recovery plan and procedures.

17.7.2. Prior to the Effective Date of this Agreement, the Contractor shall, at its own expense, conduct or have conducted the following, and thereafter, the Contractor will, at its own expense, conduct or have conducted the following at least once per year:

17.7.2.1. A test of the operability, sufficiency, and completeness of business continuity and disaster recovery program's capabilities, processes, and procedures that are necessary to resume and continue to perform its duties and obligations under this Agreement.

17.7.2.2. Upon request, the Contractor shall provide the City with report summaries or other documentation resulting from above testing of any business continuity and disaster recovery procedures regarding the Services provided under this Agreement.

17.7.2.3. The Contractor represents that it is capable, willing, and able to provide the necessary and sufficient business continuity and disaster recovery capabilities and functions that are appropriate for it to provide services under this Agreement.

18. DELIVERY AND ACCEPTANCE

18.1. **Acceptance & Rejection**: Professional technology services delivered pursuant to this Agreement (collectively, "Deliverables") will be considered accepted ("Acceptance") only when the City provides the Contractor affirmative written notice of acceptance that such Deliverable has been accepted by the City. Such communication shall be provided within a reasonable time from the delivery of the Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the City shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or the Contractor's gross negligence or willful misconduct. The City may reject a Deliverable within fifteen days of receipt if it materially deviates from its specifications and requirements listed in this Agreement or its attachments by written notice setting forth the nature of such deviation. In the event of such rejection, the Contractor shall use reasonable commercial efforts to correct the deviation, at its sole expense, and redeliver the Deliverable within thirty (30) days, or to find a reasonable alternative. After redelivery, the Parties shall again follow the acceptance procedures set forth herein. If any Deliverable does not perform to the City's reasonable satisfaction, the City reserves the right to repudiate acceptance within fifteen (15) days of receipt. If the City ultimately rejects a Deliverable, or repudiates acceptance of it, the Contractor will refund to the City pre-fees paid, if any, by the City solely with respect to such rejected Deliverable. Acceptance shall not relieve the Contractor from its responsibility under any representation or warranty contained in this Agreement, and payment of an invoice prior to Acceptance does not grant a waiver of any representation or warranty made by the Contractor.

18.2. **Quality Assurance**: The Contractor shall use reasonable commercial efforts to provide and maintain a quality assurance system acceptable to the City for Deliverables under this

Agreement and shall use reasonable commercial efforts to provide to the City only such Deliverables that have been inspected and found to conform to the specifications identified in this Agreement and any applicable solicitation, bid, offer, or proposal from which this Agreement results. The Contractor's delivery of any Deliverables to the City shall constitute certification that in Contractor's discretion, any Deliverables have been determined to conform to the applicable specifications, and the Contractor shall use reasonable commercial efforts to make records of such quality assurance available to the City upon request.

18.3. **License to Deliverables**: Subject the payment of fees due hereunder, and effective upon Acceptance of each Deliverable, the Contractor grants the City a nonexclusive, non-transferable license to reproduce, modify, display, and use such Deliverable, and all intellectual property rights necessary to use the Deliverable as authorized, as necessary for the City's internal business purposes during the subscription term of any applicable Order, provided the City complies with any license restrictions set forth in this Agreement and any attachments thereto. The City will not reverse engineer or reverse compile any part of a Deliverable.

18.4. **Incorporation of Deliverables**: Upon Acceptance, each Deliverable will thereafter be subject to this Agreement's terms, including without limitation license, warranty, and indemnity terms.

19. WARRANTIES AND REPRESENTATIONS

19.1. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, the Contractor warrants that any Work or Deliverable provided by the Contractor under this Agreement shall be, if it is for a) professional services, Contractor shall perform such Work or Deliverable in a professional and workmanlike manner in accordance with generally accepted industry standards; or b) for software as a service, such Deliverable shall substantially comply with its Documentation The Contractor warrants that any Work or Deliverable, and any media used to distribute it, shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function or technological means designed to disrupt, interfere with, or damage the normal operation of the Work or Deliverable and the use of City resources and systems. The Contractor's warranties under this Section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.

19.2. Upon notice of any defect or material nonconformity, the Contractor may submit to the City in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the City to ascertain the feasibility, risks, and impacts of each recommendation. The City's remedy for such defect or material non-conformity shall be in Contractor's discretion:

19.2.1. The Contractor shall re-perform, repair, or replace such Work or Deliverable. The Contractor shall deliver, at no additional cost to the City, all documentation required under this Agreement as applicable to the corrected Work or Deliverable; or

19.2.2. The Contractor shall refund to the City all amounts pre-paid for such non-conforming Work or Deliverable

19.3. Any Work or Deliverable delivered to the City as a remedy under this Section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date of the corrected or replacement Work or Deliverable.

19.4. **Customization Services**: The Contractor warrants that it will perform all customization services, if any, in a professional and workmanlike manner. In case of breach of the warranty of the preceding sentence, the Contractor, at its own expense, shall promptly re-perform the customization services in question or provide a full refund for all pre-paid materially nonconforming customization services.

19.5. **Intellectual Property Rights in the Software**: The Contractor warrants that it is the owner of all Deliverables, and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the intellectual property rights to the Deliverables in this Agreement without the further consent of any third party and without conditions or requirements not set forth in this Agreement. In the event of a breach of the warranty in this Section, the Contractor, in its discretion and at its own expense, shall promptly take the following actions: (i) secure for the City the right to continue using the Deliverable as intended; (ii) replace or modify the Deliverable to make it non-infringing, provided such modification or replacement will not materially degrade any functionality as stated in this Agreement; or (iii)if the City terminates the applicable Task Order or this Agreement, the Contractor shall refund the pre-paid as yet unearned fee paid for the infringing Deliverable as of the date of termination., As of the effective date of termination, the Contractor shall terminate any or all of the City's licenses to granted in the terminated Order or this Agreement and require return or destruction of copies thereof. The Contractor also warrants that there are no pending or threatened lawsuits, claims, disputes, or actions: (i) alleging that any of the Work or Deliverables infringes, violates, or misappropriates any third-party rights; or (ii) adversely affecting any Deliverables or Services, or the Contractor's ability to perform its obligations hereunder.

19.6. **Disabling Code**: The Work and any Deliverables will contain no malicious or disabling code that is intended to damage, destroy, or destructively alter software, hardware, systems, or data. The Contractor represents, warrants and agrees that the City will not receive from the Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system, resources, or data (a "Disabling Code"). In the event a Disabling Code is identified, the Contractor shall take all steps necessary, at no additional cost to the City, to: (i) restore and/or reconstruct all data lost by the City as a result of a Disabling Code; (ii) furnish to City a corrected version of the Work or Deliverables without the presence of a Disabling Code; and, (iii) as needed, re-implement the Work or Deliverable at no additional cost to the City. This warranty shall remain in full force and effect during the Term.

19.7. ***Disclaimer.*** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CONTRACTOR DISCLAIMS ALL WARRANTIES, TERMS, CONDITIONS AND

UNDERTAKINGS, EXPRESS OR IMPLIED 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 CONTRACTOR's INDEMNIFICATION OBLIGATIONS HEREUNDER). CONTRACTOR DOES NOT WARRANT THAT YOUR USE OF THE SERVICES, WORK OR DELIVERABLES WILL BE ENTIRELY SECURE, UNINTERRUPTED OR ERROR-FREE OR THAT THEY WILL MEET YOUR BUSINESS GOALS, OR THAT ALL ERRORS WILL BE CORRECTED. CONTRACTOR SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, DATA LOSS OR CORRUPTION NOT CAUSED BY THE SERVICES, WORK OR DELIVERABLES, INCLUDING BUT NOT LIMITED TO DATA LOSS OR CORRUPTION CAUSED BY THE CITY, THE CITY'S 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 CONTRACTOR'S REASONABLE CONTROL (INCLUDING BUT NOT LIMITED TO ANY THIRD PARTY PLATFORM).

20. ACCESSIBILITY AND ADA WEBSITE COMPLIANCE

20.1. **Compliance**: The Contractor shall comply with, and the Work and Work Product provided under this Agreement shall be in compliance with, all applicable provisions of §§ 24-85-101, *et seq*., C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established pursuant to Section § 24-85-103 (2.5), C.R.S (collectively, the "Guidelines"). The Contractor shall also comply with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

20.2. **Testing**: The City may require the Contractor's compliance to be determined by a third party selected by the City to attest that the Contractor's has performed all obligations under this Agreement in compliance with §§ 24-85-101, *et seq*., C.R.S., and the Accessibility Standards for Individuals with a Disability as established pursuant to Section § 24-85-103 (2.5), C.R.S.

20.3. **Validation and Remediation**: The Contractor agrees to promptly respond to and resolve any instance of noncompliance regarding accessibility in a timely manner and shall use reasonable commercial efforts to remedy any noncompliant Work Product, Service, or Deliverable at no additional cost to the City. If the City reasonably determines accessibility issues exist, the Contractor shall provide a "roadmap" for remedying those deficiencies on a reasonable timeline to be approved by the City. Resolution of reported accessibility issue(s) that may arise shall be addressed as high priority, and failure to make satisfactory progress towards compliance with the Guidelines, as agreed to in the roadmap, shall constitute a breach of contract and be grounds for termination or non-renewal of this Agreement.

21. CONFIDENTIAL INFORMATION

21.1. "Confidential Information" means all information or data, regardless of form, not subject to disclosure under the Colorado Open Records Act, § 24-72-201, *et seq*., C.R.S. ("CORA"), and is marked or identified at the time of disclosure as being confidential, proprietary, or its

equivalent. Each of the Parties may disclose (a "Disclosing Party") or permit the other Party (the "Receiving Party") access to the Disclosing Party's Confidential Information in accordance with the following terms. Except as specifically permitted in this Agreement or with the prior express written permission of the Disclosing Party, the Receiving Party shall not: (i) disclose, allow access to, transmit, transfer or otherwise make available any Confidential Information of the Disclosing Party to any third party other than its employees, Subcontractors, agents and consultants that need to know such information to fulfil the purposes of this Agreement, and in the case of non-employees, with whom it has executed a non-disclosure or other agreement which limits the use, reproduction and disclosure of the Confidential Information on terms that afford at least as much protection to the Confidential Information as the provisions of this Agreement; or (ii) decompile, or reverse engineer the Confidential Information; or use or reproduce the Confidential Information of the Disclosing Party for any reason other than as reasonably necessary to fulfil the purposes of this Agreement. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Each party will retain all right, title, and interest in its Confidential Information.

21.2. Each party shall provide for the security of Confidential Information and information which may not be marked, but constitutes personally identifiable information, HIPAA, CJIS, or other federally or state regulated information ("Regulated Data") in accordance with all applicable laws and regulations.

21.3. Disclosed information or data that the Receiving Party can establish: (i) was lawfully in the Receiving Party's possession before receipt from the Disclosing Party; or (ii) is or becomes a matter of public knowledge through no fault of the Receiving Party; or (iii) was independently developed or discovered by the Receiving Party; or (iv) was received from a third party that was not under an obligation of confidentiality, shall not be considered Confidential Information under this Agreement. The Receiving Party will inform necessary employees, officials, Subcontractors, agents, and officers of the confidentiality obligations under this Agreement, and all requirements and obligations of the Receiving Party under this Agreement shall survive the expiration or earlier termination of this Agreement.

21.4. Nothing in this Agreement shall in any way limit the ability of the City to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this Agreement, including Confidential Information, may be subject to CORA. In the event of a request to the City for disclosure of possible confidential materials, the City shall advise the Contractor of such request to give the Contractor the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If the Contractor objects to disclosure of any of its material, the Contractor shall identify to the City the legal basis under CORA for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Contractor agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the City will tender all material to the court for judicial determination of the issue of disclosure. The Contractor further agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any

claim, damages, expense, loss, or costs arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Section, including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs, and damages that the City may incur directly or may be ordered to pay.

22. DATA MANAGEMENT, SECURITY, AND PROTECTION

22.1. **Compliance with Data Protection Laws and Policies**: Each Party shall comply with all applicable laws, rules, regulations, directives, and policies relating to data protection, use, collection, disclosures, processing, and privacy as they apply to such Party under this Agreement, including, without limitation, applicable industry standards or guidelines based on the data's classification relevant to the Contractor's performance hereunder and, when applicable, the most recent iterations of § 24-73-101, *et seq*.; C.R.S., IRS Publication 1075; the Health Information Portability and Accountability Act ("HIPAA"); the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services ("CJIS") Security Policy for all Criminal Justice Information; the Colorado Consumer Protection Act, the Payment Card Industry Data Security Standard ("PCI-DSS"), and the Minimum Acceptable Risk Standards for Exchanges (collectively, "Data Protection Laws"). If the Contractor becomes aware that it cannot reasonably comply with the terms or conditions contained herein due to a conflicting law or policy, the Contractor shall promptly notify the City.

22.2. **Safeguarding Protected and Sensitive Information**: "Protected Information" means data, regardless of form, that has been designated as sensitive, private, proprietary, protected, or confidential by law, policy, or the City. Protected Information includes, but is not limited to, employment records, protected health information, student and education records, criminal justice information, personal financial records, research data, trade secrets, classified government information, other regulated data, and personally identifiable information as defined by §§ 24-73-101(4)(b) and 6-1-716(1)(g)(I)(A), C.R.S., as amended. Protected Information shall not include public records that by law must be made available to the public under CORA. To the extent there is any uncertainty as to whether data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the City or an appropriate legal authority. Unless the City provides security protection for the information it discloses to the Contractor, the Contractor shall implement and maintain reasonable security procedures and practices that are both appropriate to the nature of the Protected Information disclosed and that are reasonably designed to help safeguard Protected Information from unauthorized access, use, modification, disclosure, or destruction. Disclosure of Protected Information does not include disclosure to a third party under circumstances where the City retains primary responsibility for implementing and maintaining reasonable security procedures and practices appropriate to the nature of the Protected Information, and the City implements and maintains technical controls reasonably designed to safeguard Protected Information from unauthorized access, modification, disclosure, or destruction or effectively eliminate the third party's ability to access Protected Information, notwithstanding the third party's physical possession of Protected Information. If the

Contractor has been contracted to maintain, store, or process personal information on the City's behalf, the Contractor is a "Third-Party Service Provider" as defined by § 24-73-103(1)(i), C.R.S.

22.3. **Data Access and Integrity**: The Contractor shall use reasonable commercial efforts to implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the Data Protection Laws applicable to the Contractor's performance hereunder to ensure the security and confidentiality of data. The Contractor shall use reasonable commercial efforts to protect against threats or hazards to the security or integrity of data; protect against unauthorized disclosure, access to, or use of data; restrict access to data as necessary; and ensure the proper and legal use of data. The Contractor shall not engage in "data mining" except as specifically and expressly required by law or authorized in writing by the City. Unless otherwise required by law, the City has exclusive ownership of all City Data under this Agreement, and the Contractor shall have no right, title, or interest in City Data obtained in connection with the services provided herein. The Contractor has a limited, nonexclusive license to access and use data as provided in this Agreement solely for the purpose of performing its obligations hereunder. All City Data is and shall remain the property of the City nor shall the Contractor have any rights in or to the City Data without the express written permission of the City. This Agreement does not give a Party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in this Agreement. The City retains the right to use the Work to access and retrieve data stored on the Contractor's infrastructure at any time during the Term. Upon written request, the Contractor shall provide the City its policies and procedures to maintain the confidentiality of City Data and Protected Information.

22.4. **Response to Legal Orders for City Data**: If the Contractor is required by a court of competent jurisdiction or administrative body to disclose City Data, the Contractor shall use reasonable commercial efforts to first notify the City and, prior to any disclosure, cooperate with the City's reasonable requests in connection with the City's right to intervene, quash, or modify the legal order, demand, or request, and upon request, provide the City with a copy of its response. If the City receives a subpoena, legal order, or other legal demand seeking data maintained by the Contractor, the City will promptly provide a copy to the Contractor. Upon notice and if required by law, the Contractor shall use reasonable commercial efforts to promptly provide the City with copies of its data required for the City to meet its necessary disclosure obligations.

22.5. **Data Retention, Transfer, Litigation Holds, and Destruction**: Using appropriate and reliable storage media, the Contractor shall use reasonable commercial efforts to regularly backup data used in connection with this Agreement and retain such backup copies consistent with the City's data and record retention policies. All City Data shall be encrypted in transmission, including by web interface, and in storage by an agreed upon National Institute of Standards and Technology ("NIST") approved strong encryption method and standard. The Contractor shall not transfer or maintain data under this Agreement outside of the United States without the City's express written permission. Upon termination of this Agreement, the Contractor shall use reasonable commercial efforts to securely delete or securely transfer all data, including Protected

Information, to the City in an industry standard format as directed by the City; however, this requirement shall not apply to the extent the Contractor is required by law to retain data, including Protected Information. Upon the City's request, the Contractor shall confirm, by providing a certificate, the data disposed of, the date disposed of, and the method of disposal. With respect to any data in the Contractor's exclusive custody, the City may request, at no additional cost to the City, that the Contractor preserve such data outside of record retention policies. The City will promptly coordinate with the Contractor regarding the preservation and disposition of any data and records relevant to any current or anticipated litigation, and the Contractor shall continue to preserve the records until further notice by the City. Unless otherwise required by law or regulation, when paper or electronic documents are no longer needed, the Contractor shall destroy or arrange for the destruction of such documents within its custody or control that contain Protected Information by shredding, erasing, or otherwise modifying the Protected Information in the paper or electronic documents to make it unreadable or indecipherable. The Contractor and its third-party services providers must develop and maintain a written policy for the destruction of such records.

22.6. **Software and Computing Systems**: At its reasonable discretion, the City may prohibit the Contractor from the use of certain software programs, databases, and computing systems with known vulnerabilities to collect, use, process, store, or generate data and information received under this Agreement. The Contractor shall fully comply with all requirements and conditions, if any, associated with the use of software programs, databases, and computing systems as reasonably directed by the City. The Contractor shall not use funds paid by the City for the acquisition, operation, or maintenance of software in violation of any copyright laws or licensing restrictions. The Contractor shall maintain commercially reasonable network security that, at a minimum, includes network firewalls, intrusion detection/prevention, and enhancements or updates consistent with evolving industry standards The Contractor shall use industry-standard and up-to-date security tools, technologies and procedures including, but not limited to, anti-virus and anti-malware protections. The Contractor shall ensure that any underlying or integrated software employed under this Agreement is updated on a regular basis and does not pose a security threat. The Contractor shall provide a software bill of materials ("SBOM") annually or upon major changes to the solution(s) provided to the City under this Agreement. The Contractor shall provide a complete SBOM for the supported life of the solution(s). The Contractor shall monitor for security vulnerabilities in applicable software components and use a risk-based approach to mitigate any vulnerabilities.

22.7. **Background Checks**: The Contractor shall ensure that, in accordance with applicable law, prior to being granted access to Protected Information, the Contractor's agents, employees, Subcontractors, volunteers, or assigns who perform work under this Agreement have all undergone and passed all necessary criminal background screenings, have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement and Data Protection Laws, and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the data. If the Contractor

will have access to federal tax information ("FTI") under this Agreement, the Contractor shall comply with the background check and other provisions of Section 6103(b) of the Internal Revenue Code, the requirements of IRS Publication 1075, and the Privacy Act of 1974, 5 U.S.C. § 552a, *et. seq*., related to federal tax information.

22.8. **Subcontractors and Employees**: If the Contractor engages a Subcontractor under this Agreement, the Contractor shall impose data protection terms that provide at least the same level of data protection as in this Agreement and to the extent appropriate to the nature of the Work provided. The Contractor shall monitor the compliance with such obligations and remain responsible for its Subcontractor's compliance with the obligations of this Agreement and for any of its Subcontractors acts or omissions that cause the Contractor to breach any of its obligations under this Agreement. Unless the Contractor provides its own security protection for the information it discloses to a third party, the Contractor shall require the third party to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Protected Information disclosed and that are reasonably designed to protect it from unauthorized access, use, modification, disclosure, or destruction. Any term or condition within this Agreement relating to the protection and confidentially of any disclosed data shall apply equally to both the Contractor and any of its Subcontractors, agents, assigns, employees, or volunteers. Upon request, the Contractor shall provide the City copies of its record retention, data privacy, and information security policies. The Contractor shall ensure all Subcontractors sign, or have signed, agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force so long as the Subcontractor has access to any data disclosed under this Agreement. Upon request, the Contractor shall provide copies of those signed nondisclosure agreements to the City.

22.9. **Security Audit Access**: The Contractor shall permit the City reasonable access to records and shall provide the City with information reasonably required in the Contractor's discretion to assess the Contractor's compliance with its security and confidentiality obligations under this Agreement. Such access and information shall include an annual security audit recommended by the CityTo the extent the Contractor controls or maintains information systems used in connection with this Agreement, the Contractor shall provide the City with summaries of the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application-level risk assessments, and other security assessment activities as required by this Agreement or reasonably requested by the City. The Contractor in its discretion will use reasonable commercial efforts to remediate any vulnerabilities to comply with its obligations hereunder.

22.10. **Unauthorized Data Disclosure**

22.10.1. **Security Breach**: If the Contractor becomes aware of an unauthorized acquisition or disclosure of unencrypted data, in any form, that compromises the security, access, confidentiality, or integrity of City Data, Protected Information, or other data maintained or provided by the City ("Security Breach"), the Contractor shall notify the City without unreasonable delay but no less than forty-eight (48) hours. A Security Breach shall also

include, without limitation, (i) attempts to gain unauthorized access to a City system or City Data regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a City system for the processing or storage of data; or (iv) changes to the City's system hardware, firmware, or software characteristics without the City's knowledge, instruction, or consent. Any oral notice of a Security Breach provided by the Contractor shall be promptly followed by a written notice to the City. The Contractor shall maintain documented policies and procedures for Security Breaches including reporting, notification, and mitigation.

22.10.2. **Cooperation**: The Contractor shall use reasonable commercial efforts to cooperate with the City regarding recovery, lawful notices, investigations, remediation, and the necessity to involve law enforcement, as determined by the City and as required by law. The Contractor shall use reasonable commercial efforts to preserve and provide all information relevant to the Security Breach to the City; provided, however, the Contractor shall not be obligated to disclose confidential business information or trade secrets. Unless the Contractor can establish that neither it nor any of its agents, employees, assigns, or Subcontractors are the cause or source of the Security Breach, the Contractor shall indemnify, defend, and hold harmless the City for all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the City in connection with a Security Breach and any required lawful notices.

22.10.3. **Reporting**: The Contractor shall use reasonable commercial efforts to provide a written report to the City that identifies: (i) the nature of the unauthorized use or disclosure; (ii) the data used or disclosed; (iii) the parties responsible for the Security Breach (if known); (iv) what the Contractor has done or shall do to mitigate the effect of the Security Breach; and (v) what corrective action the Contractor has taken or shall take to prevent future Security Breaches. Except as expressly required by law, the Contractor will not disclose or otherwise provide notice of the incident directly to any person, regulatory agencies, or other entities, without prior written permission from the City.

22.10.4. **Costs**: Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to the City under law or equity, the Contractor will use reasonable commercial efforts to promptly reimburse the City in full for reasonable costs incurred by the City in any investigation, remediation or litigation resulting from any Security Breach, including but not limited to providing notification to third parties whose data was compromised and to regulatory bodies, law-enforcement agencies, or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Security Breach in such a fashion that, in the City's sole discretion, could lead to identity theft; and the payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the Security Breach.

22.10.5. **Remediation**: After a Security Breach, the Contractor shall use reasonable commercial efforts to take steps to reduce the risk of incurring a similar type of Security Breach in the future as directed by the City, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the City at no additional cost to the City. The City may adjust or direct modifications to this plan.

22.11. **Request for Additional Protections and Survival**: In addition to the terms contained herein, the City may reasonably request that the Contractor protect the confidentiality of certain Protected Information or other data in specific ways to ensure compliance with Data Protection Laws and any changes thereto. Unless a request for additional protections is mandated by a change in law, the Contractor may reasonably decline the City's request to provide additional protections. If such a request requires the Contractor to take steps beyond those contained herein, the Contractor shall notify the City with the anticipated cost of compliance, and the City may thereafter, in its sole discretion, direct the Contractor to comply with the request at the City's expense; provided, however, that any increase in costs that would increase the Maximum Contract Amount must first be memorialized in a written amendment complying with City procedures. Obligations contained in this Agreement relating to the protection and confidentially of any disclosed data shall survive termination of this Agreement, and the Contractor shall continue to safeguard all data for so long as the data remains confidential or protected and in the Contractor's possession or control.

23. **PROTECTED HEALTH INFORMATION**: The Contractor shall comply with all legislative and regulatory requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); the Health Information Technology for Economic and Clinical Health Act ("HITECH"); 42 CFR Part 2, Confidentially of Substance use Disorder Patient Records; the privacy standards adopted by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160 and 164, Subparts A and E; and the security standards adopted by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160, 162, 164, and Subpart C (collectively, "HIPAA Rules"). The Contractor shall implement all necessary protective measures to comply with HIPAA Rules, and the Contractor hereby agrees to be bound by the terms of the Business Associate Agreement attached hereto and incorporated herein as **Exhibit D**. The Contractor shall not use protected health information or substance use treatment records except as legally necessary to fulfill the purpose of this Agreement and shall hold the City harmless, to the extent permitted by law, for any breach of these regulations. This Section shall survive the expiration or earlier termination of this Agreement, and the Contractor shall ensure that the requirements of this Section are included in any relevant subcontracts or subgrants.

24. **TAXES, CHARGES AND PENALTIES**: The City shall not be liable for the payment of taxes, late charges, or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.

25. **ASSIGNMENT; SUBCONTRACTING**: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the City's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void and shall be cause for termination of this Agreement by the City. The

City has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate this Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subconsultant, Subcontractor, or assign.

26. NO THIRD-PARTY BENEFICIARY: Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

27. NO AUTHORITY TO BIND CITY TO CONTRACTS: Each party lacks any authority to bind the other on any contractual matters (except this Agreement and any Task Order(s)). Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

28. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: Except for the functional requirements provided in response to a request for proposal and/or any subsequent enhancement of the SOW, Task Order(s) or other implementation documentation that may be developed after execution of this Agreement, this Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous, or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.

29. PAYMENT OF CITY MINIMUM WAGE: To the extent applicable to the Contractor's provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

30. SEVERABILITY: Except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of this Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

31. CONFLICT OF INTEREST: No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. § 2-51, *et seq*. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12. The Contractor shall not

engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

32. NOTICES: All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, electronic mail, or mailed via United States mail, postage prepaid, if to the Contractor at the aforementioned address, and if to the City at:

Chief Information Officer, Denver Technology Services
201 West Colfax Avenue, Dept. 301
Denver, Colorado 80202

With a copy to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered, sent by overnight courier, or electronic mail are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate electronic and substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

33. DISPUTES: All disputes between the City and the Contractor arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the CIO as defined in this Agreement. In the event of a dispute between the Parties, the Contractor will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

34. GOVERNING LAW; VENUE: This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

35. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.
36. **LEGAL AUTHORITY**: The Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of the Contractor represents and warrants that he has been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either the Contractor or the person signing this Agreement to enter into this Agreement.
37. **LICENSES, PERMITS, AND OTHER AUTHORIZATIONS:** The Contractor shall secure, prior to the Term, and shall maintain, at its sole expense, all licenses, certifications, rights, permits, and other authorizations required to perform its obligations under this Agreement. This Section is a material part of this Agreement.
38. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.
39. **ORDER OF PRECEDENCE**: In the event of any conflicts between the language of this Agreement and the exhibits, the language of this Agreement controls.
40. **SURVIVAL OF CERTAIN PROVISIONS**: The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
41. **INUREMENT**: The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.
42. **TIME IS OF THE ESSENCE**: The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
43. **FORCE MAJEURE**: Neither Party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of manufactures, unreasonable unavailability of equipment or software

from suppliers, default of a Subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other Party and/or other substantially similar occurrences beyond the Party's reasonable control ("Excusable Delay"). In the event of any such Excusable Delay, time for performance shall be extended for as may be reasonably necessary to compensate for such delay.

44. **PARAGRAPH HEADINGS**: The captions and headings set forth herein are for convenience of reference only and shall not be construed to define or limit the terms and provisions hereof.
45. **CITY EXECUTION OF AGREEMENT**: This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.
46. **ADVERTISING AND PUBLIC DISCLOSURE**: The Contractor shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of the Contractor's advertising or public relations materials without first obtaining the City' written approval. Any oral presentation or written materials related to services performed under this Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the City in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.
47. **EXTERNAL TERMS AND CONDITIONS DISCLAIMER**: Notwithstanding anything to the contrary herein, the City shall not be subject to any provision including any terms, conditions, or agreements appearing on the Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.
48. **PROHIBITED TERMS**: Any term included in this Agreement that requires the City to indemnify or hold the Contractor harmless; requires the City to agree to binding arbitration; limits the Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be *void ab initio*.
49. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**: The Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations.
50. **COUNTERPARTS OF THIS AGREEMENT**: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.
51. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**: The Contractor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground

that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

52. **ATTACHED EXHIBITS INCORPORATED**: The following attached exhibits are hereby incorporated into and made a material part of this Agreement: **Exhibit A**, Scope of Work; **Exhibit B**, Subscription and Services Agreement; **Exhibit C**, Certificate of Insurance; and **Exhibit D**, HIPAA/HITECH BAA.

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Contract Control Number: TECHS-202367991-00
Contractor Name: NASUNI CORPORATION

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By: _____

_____

APPROVED AS TO FORM:

Attorney for the City and County of Denver

By: _____

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number: TECHS-202367991-00
Contractor Name: NASUNI CORPORATION

By: DocuSigned by: Ray Hale 61BC17B07E10480...

Name: Ray Hale
(please print)

Title: CFO
(please print)

ATTEST: [if required]

By: DS

Name: Annie Bourne
(please print)

Title: Chief Commercial & Compliance Counsel
(please print)

Exhibit A

Proposal

Quote #: Q-18926-2
Date: 8/9/2023
Expires On: 8/31/2023

Customer City and County of Denver, CO
Customer Contact Sean Greer

Remit To: Nasuni Corporation
1 Marina Park Drive
Boston, MA 02210
USA

Start Date: 8/1/2023
End Date: 7/31/2026

Payment Terms: Net 35

Costs reflected herein are estimates and may differ from actuals. Actual amounts will be based upon capacity at the time of order

Year 1

QTY/TBs	SKU	Description	Customer Unit Cost	Customer Cost
1,125.00	NAS-Essentials	Nasuni Essentials: Consolidate unstructured data with a cloud file storage solution that includes high-speed cached access at the edge, built-in backup, and disaster recovery (DR). Ideal for a single site, with no limitations on number of authorized users. SaaS term offering, licensed per useable TB.	USD 212.44000	USD 238,995.00
1.00	NSRV-TAM-ESS	Nasuni Essentials TAM service provides a trusted technical advisor, best practices, and guidance to maintain optimum system health at an average of 4 hours per week.	USD ,000.00000	USD 45,000.00
1.00	NAS-RP-Custom	Ransomware protection add-on service including threshold-based edge detection, mitigation and attack scoping capabilities, incident reporting and management, and targeted restore; Supported by release 9.12 and later. Requires activation. Must be purchased with NAS-RW-Onboard PS service.	USD ,000.00000	USD 85,000.00
1.00	NS-PS-CW-FP	Custom services as mutually scoped and agreed. Can include Customer Environment Review, Nasuni setup, deployment, data migration or other services.	USD 2,000.00000	USD 2,000.00
1.00	NS-PS-TRN-Adm	Nasuni Onsite Administrator Training: Three day onsite Nasuni Administrator training with hands on virtual lab.	USD ,000.00000	USD 15,000.00

Exhibit A

Year 2

QTY/TBs	SKU	Description	Customer Unit Cost	Customer Cost
1,406.00	NAS-Essentials	Nasuni Essentials: Consolidate unstructured data with a cloud file storage solution that includes high-speed cached access at the edge, built-in backup, and disaster recovery (DR). Ideal for a single site, with no limitations on number of authorized users. SaaS term offering, licensed per useable TB.	USD 380.00000	USD 534,280.00
1.00	NAS-RP-Custom	Ransomware protection add-on service including threshold-based edge detection, mitigation and attack scoping capabilities, incident reporting and management, and targeted restore; Supported by release 9.12 and later. Requires activation. Must be purchased with NAS-RW-Onboard PS service.	USD ,000.00000	USD 85,000.00
1.00	NSRV-TAM-ESS	Nasuni Essentials TAM service provides a trusted technical advisor, best practices, and guidance to maintain 4 optimum system health at an average of 4 hours per week.	USD ,000.00000	USD 45,000.00
1.00	NS-PS-CW-FP	Custom services as mutually scoped and agreed. Can include Customer Environment Review, Nasuni setup, deployment, data migration or other services.	USD 2,000.00000	USD 2,000.00
1.00	NS-PS-TRN-Adm	Nasuni Onsite Administrator Training: Three day onsite Nasuni Administrator training with hands on virtual lab.	USD ,000.00000	USD 15,000.00

Year 3

QTY/TBs	SKU	Description	Customer Unit Cost	Customer Cost
1,758.00	NAS-Essentials	Nasuni Essentials: Consolidate unstructured data with a cloud file storage solution that includes high-speed cached access at the edge, built-in backup, and disaster recovery (DR). Ideal for a single site, with no limitations on number of authorized users. SaaS term offering, licensed per useable TB.	USD 380.00000	USD 668,040.00
1.00	NAS-RP-Custom	Ransomware protection add-on service including threshold-based edge detection, mitigation and attack scoping capabilities, incident reporting and management, and targeted restore; Supported by release 9.12 and later. Requires activation. Must be purchased with NAS-RW-Onboard PS service.	USD ,000.00000	USD 85,000.00
1.00	NSRV-TAM-ESS	Nasuni Essentials TAM service provides a trusted technical advisor, best practices, and guidance to maintain 4 optimum system health at an average of 4 hours per week.	USD ,000.00000	USD 45,000.00
1.00	NS-PS-CW-FP	Custom services as mutually scoped and agreed. Can include Customer Environment Review, Nasuni setup, deployment, data migration or other services.	USD 2,000.00000	USD 2,000.00
1.00	NS-PS-TRN-Adm	Nasuni Onsite Administrator Training: Three day onsite Nasuni Administrator training with hands on virtual lab.	USD ,000.00000	USD 15,000.00

Exhibit A

Net Total	USD 1,882,315.00
Total Estimated Shipping	USD 0.00
Grand Total	USD 1,882,315.00

Terms & Conditions

This quotation, any purchase order for, and/or Customer's use of Nasuni Software, Equipment and Services, is and are subject to the Nasuni terms and conditions attached hereto (the "Terms"), or such other written agreement signed by the parties.

All fees exclude any applicable taxes, VAT, customs, duty and shipping charges, and are due Net 35 days from the date of invoice, unless otherwise agreed by the parties in writing. All purchases are non-refundable.

Estimates for shipping/freight & handling and applicable taxes are based on current knowledge at the time of the quote, which may not be complete. Nasuni reserves the right to revise indicated amounts based on subsequent knowledge.

Inspection and acceptance period for hardware purchase is 15 days from date of delivery.

Excess usage. If Customer consumes more TB than the volume defined in this Order during the applicable Term, ("Excess Usage"), the parties agree that the ordering party shall pay Nasuni any charges applicable to such Excess Usage at Nasuni's then current rates (or such other rate for Excess Usage, if any, specified on this Order) so long as funds are appropriated in accordance with the Agreement and local law

Notwithstanding the payment provisions hereof, The City and County of Denver shall be invoiced and shall pay in three equal annual installments for each such year of the three year Subscription Term in the amounts of $627,438 with each invoice to be payable net 30 days from the date of issuance.

EXHIBIT B, MASTER SUBSCRIPTION AND SERVICES AGREEMENT

Customer	***City and County of Denver***	
Customer Address	***201 West Colfax Avenue Denver CO 80202***	
Customer Contact Information	**Name**	**Email**

1. This Nasuni Master Subscription and Services Agreement (***"Agreement"*** or ***"MSA"***) sets forth the terms and conditions governing the customer identified above (together with your Affiliates, ***"Customer" or "you"***) purchase, use or trial of products, solutions and services (as further defined below, the "Solutions") sold by Nasuni Corporation (***"Nasuni" or "we"***) pursuant to Customer's Order(s) referencing this Agreement which further define the Solutions you are purchasing. This Agreement shall govern Customer's initial purchase as well as any future purchases made by Customer that reference this Agreement.

2. 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.

3. 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.

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 Solutions.

"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.

"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 subscription 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. ***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.

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

5.2. ***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.

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 attached heretothe "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. ***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.

7.2. ***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.

7.3. ***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.

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.

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, SECTIONS 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*** 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.

12. INDEMNIFICATION

12.1. ***By Nasuni***. In addition to the obligations in the main body of the Agreement, 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.

13. GENERAL

13.1. ***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.

13.2. ***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 or use 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.

13.3. ***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.

13.4. ***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.

13.5. ***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.

ADDITIONAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

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.

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.

Changes. Changes to an SOW or Order for Professional Services require a Change Order that identifies the applicable SOW or Order. Such changes many 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.

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.

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.

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 agreed upon 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.

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]

Exhibit C

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/11/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 470 Atlantic Avenue Boston MA 02210	**CONTACT NAME:** **PHONE (A/C, No, Ext):** 617-261-6700 **FAX (A/C, No):** 617-646-0400 **E-MAIL ADDRESS:**
INSURED Nasuni Corporation 1 Marina Park Drive 6th Floor Boston MA 02210	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** Hartford Fire Insurance Company — 19682 **INSURER B :** Trumbull Insurance Company — 27120 **INSURER C :** Hartford Casualty Insurance Company — 29424 **INSURER D :** AIG Specialty Insurance Company — 26883 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1792916895 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:	Y		08 UUN BD0621	3/17/2023	3/17/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 1,000,000 $ 100,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	**AUTOMOBILE LIABILITY** ANY AUTO OWNED AUTOS ONLY X HIRED AUTOS ONLY SCHEDULED AUTOS X NON-OWNED AUTOS ONLY	Y		08 UEN BD0790	3/17/2023	3/17/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 1,000,000 $ $ $ $
C	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** CLAIMS-MADE DED RETENTION $			08 XHU BD0827	3/17/2023	3/17/2024	EACH OCCURRENCE AGGREGATE 	$ 15,000,000 $ 15,000,000 $
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		08 WB AW6TMK	3/17/2023	3/17/2024	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
D	Cyber Liability/E&O			03-417-73-85	3/31/2023	3/31/2024	Limit Retention	$5,000,000 $100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

"As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured" Contract # TECHS-202367991

CERTIFICATE HOLDER

City and County of Denver Department if Technology Services
201 W. Colfax Ave, Dept 301
Denver CO 80202

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Patrick J. Veale

EXHIBIT D, BUSINESS ASSOCIATE AGREEMENT
HIPAA/HITECH

1. GENERAL PROVISIONS AND RECITALS.

1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.

1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.

1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.

1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.

1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.

1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.

2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.

2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.

2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

1. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

2. Any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.

3. A disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

1. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

2. The unauthorized person who used the PHI or to whom the disclosure was made;

3. Whether the PHI was actually acquired or viewed; and

4. The extent to which the risk to the PHI has been mitigated.

2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.

2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.

2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.

2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.10 "Immediately" where used here shall mean within 24 hours of discovery.

2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.l03 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.

2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.

2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.

2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.

2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.

3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.

3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.

3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.

3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.

3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.

3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.

3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.

3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.

3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).

3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. SECURITY RULE.

4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.

4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

5. BREACH DISCOVERY AND NOTIFICATION.

5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.

5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.

5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.

5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DEH Executive Director or other designee.

5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

5.03 CONTRACTOR'S notification shall include, to the extent possible:

5.03.l The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or

promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:

1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

2. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.

5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.

5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.

5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.

5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.

6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.

6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:

6.03.1 The Disclosure is required by law; or

6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.

6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.

6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.

7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.

7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.

7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:

8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or

8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.

8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.

8.02.2 CONTRACTOR shall retain no copies of the PHI.

8.02.3 In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the conditions that make return or destruction infeasible. Upon determination by CITY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.

8.03 The obligations of this Agreement shall survive the termination of the Agreement.

9. <u>SUBSTANCE ABUSE (42 C.F.R., Part 2).</u>

CONTRACTOR shall also comply with all provisions of 42 C.F.R., Part 2 relating to substance abuse treatment and records.