

Software License Agreement for Nasuni Analytics Connector

LAST UPDATED JUNE 26, 2020

PLEASE READ THIS AGREEMENT (THE “AGREEMENT”) CAREFULLY. BY ACCESSING OR USING THE NASUNI ANALYTICS CONNECTOR (THE “CONNECTOR”, AS FURTHER DEFINED IN SECTION 2 BELOW), YOU ARE ACCEPTING AND AGREEING TO THE TERMS OF THIS AGREEMENT AND, UNLESS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, NO VARYING TERMS AND CONDITIONS WILL APPLY. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE CONNECTOR. IF YOU ARE ENTERING INTO THIS AGREEMENT IN CONNECTION WITH USE ON BEHALF OF YOUR EMPLOYER OR OTHER LEGAL ENTITY, YOU ARE REPRESENTING THAT YOU HAVE THE AUTHORITY TO BIND THE EMPLOYER OR OTHER ENTITY AND THAT BY AGREEING TO THIS AGREEMENT, YOU ARE AGREEING TO THEM ON BEHALF OF SUCH EMPLOYER OR OTHER ENTITY, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH EMPLOYER OR OTHER ENTITY. NASUNI IS WILLING TO LICENSE THE CONNECTOR TO YOU ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS IN THIS AGREEMENT.

- 1. Subscription Agreement.** In order to access and use the Connector, You must have a valid license to the Nasuni Software and Appliance, each as defined and further described in a separate set of terms and conditions executed by and between You and Nasuni (the “**Subscription Agreement**”). You acknowledge and agree that the terms of the Subscription Agreement apply to the Connector only if and as expressly stated in this Agreement. In the event of a conflict between the terms of the Subscription Agreement and the terms of this Agreement, the terms of this Agreement shall control with respect to the Connector and Your use thereof. Capitalized Terms used and not otherwise defined herein shall have the meaning set forth in the Subscription Agreement.
- 2. Connector License.** Subject to the terms and conditions of this Agreement and any restrictions set forth in the applicable Documentation, upon your receipt of a license key for the Connector, Nasuni hereby grants You a license to access and use the Connector, accessible via Your account dashboard (currently located at account.nasuni.com), for Your own internal business purposes during the Subscription Term. “**Connector**” means the Nasuni Analytics Connector, including any updates or upgrades, whether hosted by You or Your third-party cloud services provider or Nasuni, and any related documentation. You are responsible for all activity occurring under Your account dashboard using the Connector and for compliance by Your Authorized Users with this Agreement and the Documentation. You agree to promptly notify Nasuni of any actual or suspected unauthorized use of your account dashboard or the Connector that You become aware of. If You allow use of the Connector by Your Affiliates, You agree to be responsible for such Affiliates’ use and for their compliance with the terms of this Agreement and the Documentation.
- 3. Third Party Applications and Materials.** You acknowledge and agree that the purpose of the Connector is to provide You with a mechanism to create an unencrypted temporary copy, in cloud-native form, of data You select and extract from a Nasuni volume (the “**Unencrypted Temporary Copy**”), the original copy of which remains encrypted and stored in Your third party public cloud storage in Your own instance of Microsoft Azure Blob Storage or Amazon S3 bucket and/or as further described in the Documentation (a “**Third Party Application**”). You cannot use the Connector unless You have valid account for a Third Party Application. Nasuni has no control over Third Party Applications, and Your use, access and life-cycle management, and other privileges, rights and obligations thereof, including with regard to the Unencrypted Temporary Copy, are subject to separate terms and conditions with the applicable third party and not the terms of this Agreement or the Subscription Agreement. Nasuni is not responsible for any loss, security, use or misuse of Customer Data or from the Unencrypted Temporary Copy. You are responsible for obtaining, maintaining, and supporting at Your own expense all applications, hardware, software, and services required to access and use the Connector, including hosting or storage services, internet access, telecommunications services, or other services. Nasuni shall have no liability for the acts or omissions of You or Your third-party providers.
- 4. Restrictions.** You may not use the Connector other than as authorized in this Agreement. You may not (and may not authorize any third party to) (1) modify, translate, or create or attempt to create any derivative works of the Connector, (2) use, resell, sublicense, rent, lease, assign or share the Connector, or any component thereof, with or for any third party, except as otherwise set forth in this Agreement, (3) use the Connector in violation of applicable law, (4) decompile, disassemble, or reverse engineer the Connector, read or attempt to read or derive the source code of the Connector (except as permitted by law), (5) work around any technical limitations in the Connector or restrictions in the Documentation, (6) access the Connector if You are a competitor of ours or use the Connector to build a similar or competitive work, (7) interfere with or attempt to interfere with the integrity, security, functionality or proper working of the Connector, (8) attempt to bypass, delete or disable any security features of the Connector, or permit or gain unauthorized access to the Connector, or (9) introduce or propagate any unauthorized data, virus, worm, time bomb, Trojan horse or any other harmful or malicious code into the Connector. Nasuni reserves all rights not specifically granted to You in this Agreement.
- 5. Technical Support.** Nasuni provides Updates and Support for the Connector during the Subscription Term at no additional charge in accordance with the then-current Support Terms. Nasuni is not responsible for providing Support for problems arising out of errors in any Third Party Application, the Unencrypted Temporary Copy, Customer Data, or any formulas, databases, access to other software or databases, configuration errors in Your network or environment, performance limitations in Your network, or other problems arising out of software or services not in Nasuni’s control, or for any unauthorized use or modification of the Connector.

6. Changes. Nasuni reserves the right to change, add to, or discontinue any feature or function of the Connector, the Third Party Applications eligible for use with the Connector, the equipment needed for access or use, and the types of files that can be processed using the Connector, provided no such change shall materially reduce the features or functions of the Connector.

7. Fees and Payment Terms. Fees and payment terms are as set forth in the applicable Order or Subscription Agreement.

8. Customer Data and Security. You represent and warrant that you have a valid license to the Third Party Application and that You own all rights to Your Customer Data and that You have full authority to transmit Customer Data to the Third Party Application using the Connector. You are responsible for the accuracy, quality, integrity, and legality of Your Customer Data. You are responsible for the legality of using any Customer Data with a Third Party Application and/or the Connector, and You agree to abide by (and be responsible for Your compliance with) applicable laws and regulations regarding the same. You acknowledge and agree that any use of the Connector will create Unencrypted Temporary Copy(ies), which will be unencrypted and you accept all risks and liability associated with such actions. You are responsible for Your Authorized Users' access and use of the Connector and the adequate backup and protection of Customer Data and any Unencrypted Temporary Copy while stored on Your equipment or service or any Third Party Application.

9. Processing of Protected Information. If and to the extent that You are using the Connector to process the Protected Information of individuals located in California, the United Kingdom, Switzerland or the European Union (EU), the Data Processing Addendum located at <https://www.nasuni.com/legal/data-processing-addendum/> will apply to Nasuni's processing of such Protected Information on Your behalf. If You are located in the United Kingdom or EU, when transferring such Protected Information to Nasuni in the U.S., You will comply with the obligations required of a data exporter as set out in the standard contractual clauses for the transfer and processing of personal data as set out in European Commission Decision 2004/915/EC ("Standard Contractual Clauses"), which are incorporated into this Agreement, and Nasuni will comply with the obligations of an importer and the data processing principles as set out in Annex A of the Standard Contractual Clauses.

10. Ownership. The Connector is licensed, not sold, to You for Your use only under the terms of this Agreement, and Nasuni, its affiliates, and its licensors reserve all rights in and to the Connector not expressly granted to You. All rights, title and interests in and to the Connector and all updates, improvements and derivative works thereof, and all worldwide intellectual property rights and proprietary rights relating thereto or embodied therein, are the exclusive property of Nasuni, its affiliates, and its licensors. You will not remove or alter any of Nasuni's proprietary notices on the Connector (or any copies thereof) or any Documentation. The Connector and its Documentation are Nasuni's Confidential Information.

11. Usage Data. Nasuni monitors and collects data about the general use of the Connector by all customers. This data does not contain any Customer Data. Nasuni uses this data for its own business purposes (such as improving, testing, and maintaining the Connector 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.

12. Term and Termination. This Agreement shall run concurrently with the Subscription Agreement. If the Subscription Agreement is terminated for any reason, this Agreement shall immediately terminate. Nasuni may also terminate this Agreement if You commit a material breach of this Agreement and do not cure the breach within 30 days from receiving written notice of the same from Nasuni. Unless otherwise agreed to in the Subscription Agreement, upon termination of this Agreement, you shall stop using and accessing the Connector and Documentation and delete all copies of the same. Clauses which by their nature should survive termination of this Agreement shall so survive.

13. Suspension of Access. Nasuni reserves the right to suspend or limit access to the Connector if (1) Nasuni is prohibited by court order or order of another governmental authority from providing access to the Connector, (2) the third party providing the applicable Third Party Application requires such action, (3) Nasuni reasonably determines that the Connector is subject to a security incident, denial of service attack, or other event that impacts the security of the Connector, Software, or Customer Data, (4) Nasuni reasonably determines that You are using the Connector in a way that creates a security vulnerability to the Software or Connector, or (5) Nasuni reasonably determines that You are using the Connector in violation of Section 4. Nasuni may also disable access to the Connector if You have subscription fees (other than subscription fees that are the subject of a good faith dispute) more than 30 days past due. 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 Connector pursuant to this Section 13.

14. Indemnification. You will indemnify and hold Nasuni and its officers, directors, employees, agents, subcontractors, and resellers harmless against any claim brought by a third party against Nasuni arising from or relating to (i) any breach of this Agreement by You or those acting on Your behalf, (ii) any violation by you of the terms associated with your use of the Third Party Application, or (iii) any violation of law or regulation by You.

15. Disclaimers. NASUNI DISCLAIMS ALL WARRANTIES, 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. NASUNI DOES NOT WARRANT THAT YOUR USE OF THE CONNECTOR WILL BE UNINTERRUPTED, TIMELY, ENTIRELY SECURE OR ERROR-FREE OR THAT THE CONNECTOR WILL MEET YOUR BUSINESS GOALS OR OTHER REQUIREMENTS OR EXPECTATIONS OR THAT ALL ERRORS WILL BE CORRECTED. NASUNI MAKES NO WARRANTIES THAT THE CONNECTOR SHALL NOT CAUSE DISRUPTIONS, ERRORS, LOSS OF DATA, LOSS OF USE, OR OTHER PROBLEMS WITH YOUR CUSTOMER DATA OR ANY THIRD PARTY APPLICATION. NASUNI SHALL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS, USE, ALTERATION, CORRUPTION, OR DELETION OF CUSTOMER DATA CAUSED BY YOUR AUTHORIZED USERS, ANY

THIRD PARTY APPLICATION, OR AS A RESULT OF THE UNENCRYPTED TRANSFER OF CUSTOMER DATA. NASUNI IS NOT LIABLE FOR ANY DELAYS, INTERRUPTIONS, SERVICE FAILURES, DATA LOSS OR CORRUPTION OF CUSTOMER DATA, INCLUDING BUT NOT LIMITED TO DATA LOSS OR CORRUPTION CAUSED BY YOU, ANY THIRD PARTY APPLICATION, YOUR CLOUD STORAGE PROVIDER, INTERNET SERVICE PROVIDER OR OTHER THIRD PARTY PROVIDER, OR BY ANY THIRD PARTY EQUIPMENT OR VIRTUAL APPLIANCE, OR OTHER SYSTEMS OR ANY THIRD PARTY PLATFORM.

16. Limitation of Liability. IN NO EVENT WILL NASUNI OR ITS AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THE PRE-RELEASE OR THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NASUNI'S AND ITS AFFILIATES' TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE PRE-RELEASE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE TO NASUNI BY YOU FOR YOUR USE OF THE CONNECTOR IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

17. Compliance with Laws. You will fully comply with all laws, regulations, rules, ordinances, and orders applicable to Your access to and use of the Connector, including without limitation, any export control laws. The Connector (and related technology and equipment) is subject to U.S. export controls and may not be (a) activated or downloaded in or transferred, exported or re-exported to any embargoed or sanctioned country or region, or any country subject to antiterrorism restrictions (currently Cuba, Crimea, Iran, North Korea, Sudan, and Syria) or to a citizen or permanent resident thereof if located outside of the United States, 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% or more by any blocked person(s), or under any Executive Order, which currently includes all Government of Venezuela entities or any persons acting for or on behalf of such an entity. By using Connector, you represent and warrant that you are not located in the aforementioned countries or a person referenced above, or under the control of or acting on behalf of any person that is. You further acknowledge that you are solely responsible for compliance with local authorities with regard to importation and use of Connector outside of the United States.

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

19. Subcontractors. Nasuni may use independent contractors or subcontractors inside or outside of the United States in its business generally in order to enable Nasuni to perform its obligations under this Agreement, and Nasuni will be liable for the actions or omissions of such independent contractors and subcontractors.

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

21. Government End-Users. The Connector 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 Connector and 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 252.227-7014 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). All other use is prohibited.

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

23. Modification. Nasuni has the right to amend the terms and conditions of this Agreement at any time, effective upon posting of an updated version of this Agreement at www.nasuni.com/legal/. Nasuni will use reasonable efforts to provide You with notice of changes to this Agreement, but You are responsible for regularly checking the Nasuni website to inform Yourself of such changes. Continued use of the Connector after any such changes are posted will constitute Your consent to such changes. If You do not agree with such changes, You may terminate this Agreement on written notice to Nasuni.

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

25. Statutory Exceptions for Public Institutions. If You are a qualified public educational or government institution and any

terms in this Agreement 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.

26. General. This Agreement is governed (without regard to conflicts of laws principles) by the laws of the Commonwealth of Massachusetts. All disputes, actions, claims or causes of action arising out of this Agreement or the Connector shall be subject to the exclusive jurisdiction of the state and federal courts located in Massachusetts, and You hereby consent to the jurisdiction of such courts. Notwithstanding the foregoing, nothing in this Agreement will prevent Nasuni from seeking injunctive relief to enforce the terms of this Agreement in any venue or jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable for any reason, the remaining provisions hereof will be unaffected and continue in full force and effect. This Agreement will be binding on and will inure to the benefit of the legal representatives, successors, and assigns of the parties hereto. Unless otherwise permitted by the Subscription Agreement, You may not assign or transfer any of Your rights or obligations under this Agreement without the prior written consent of Nasuni, and any attempt to do so will be void. The parties agree that this Agreement may be electronically signed and that the electronic signatures on this Agreement, and on any related documents, shall have the same legal affect as handwritten signatures. This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings and communications, whether written or oral.

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