**NUTANIX MASTER SERVICES AGREEMENT**

This Master Services Agreement (this "Agreement") is made as of \_\_, 20\_\_ (the "Effective Date") between Nutanix [ENTITY], (“Nutanix”) located at [ENTITY ADDRESS] and [insert SERVICE PROVIDER’s NAME] (“Service Provider”) located at [insert SERVICE PROVIDER’s address]. In consideration of the mutual promises and upon the terms and conditions set forth below, the parties hereby agree as follows:

**1. DEFINITIONS**

**“Services”** means the work to be performed by Service Provider on behalf of Nutanix pursuant to this Agreement and described in a Statement of Work.

**“Statement of Work”** or **“SOW”** means a mutually-executed written description of the Services and any work product or deliverables to be provided. SOWs shall contain a reference to this Agreement by its name and date, applicable fees and payment schedule, and the date the Services will start and are scheduled to end. A template of an SOW is attached hereto as Attachment A. Each SOW shall by reference incorporate the terms and conditions of this Agreement and this Agreement shall govern each SOW and shall take precedence over any conflicting or inconsistent terms in an SOW. SOWs supersede any and all proposals provided by Service Provider to Nutanix relating to any of the work described in the SOW; however, Service Provider represents and warrants to Nutanix that any and all statements and representations regarding Service Provider and Service Provider’s services and capabilities made in such proposals are true and correct.

**“Security Incident”** means any unauthorized access or breach of security leading to, or reasonably believed to have led to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access to Personal Data.

**“Personal Data”** means information provided by Nutanix under this Agreement relating directly or indirectly to an identified or identifiable natural person (“data subject”), including but not limited to a name, email address, identification number, location data, or online identifiers, etc.

**2. PERFORMANCE STANDARDS**

Unless otherwise specified in an SOW, Service Provider shall be solely responsible for determining the method, details and means of performing the Services. Service Provider shall provide the Services personally, and may not assign or sub-contract the provision of the Services to any other person, firm or company without the prior written consent of Nutanix. Service Provider must also comply with any applicable Nutanix policies or Code of Business Conduct and Ethics, which can be found at: https://ir.nutanix.com/company/governance/default.aspx .

**3. PAYMENT**

**3.1 Fees**. Except to the extent provided otherwise in the applicable SOW, Service Provider will invoice Nutanix monthly in arrears for such fees as agreed in such SOW. An SOW may estimate fees only to the extent that Services will be billed on a time-and-materials basis, in which case Service Provider represents and warrants that it will not invoice or otherwise charge Nutanix more than estimated for any line item unless Nutanix has pre-approved in writing and the estimate for that line item specifies how the actual fee will be calculated. Service Provider may invoice Nutanix for fees in addition to those agreed in the applicable SOW only if both parties have agreed in a signed writing to such additional fees and the related additions or changes to the scope of Services. Each invoice will explain how all fees have been determined and will include such other information as Nutanix may specify from time to time.

**3.2 Expenses**. All expenses incurred by Service Provider in performing the Services will be borne by Service Provider, unless otherwise pre-approved by Nutanix in writing. Service Provider will submit in arrears expense reports with receipts and any other documentation that Nutanix may reasonably request. Service Provider agrees to comply with the terms and conditions of Nutanix’s Travel & Expense Guidelines available at https://nutanixinc.sharepoint.com/BU/NTR/HR/travel-and-expenses/SitePages/Home.aspx.

**3.3 Invoicing**. Each proper undisputed invoice and expense report submitted to Nutanix will be due and payable forty-five (45) days from receipt. On termination of an SOW for any reason permitted by this Agreement, Nutanix will pay Service Provider a proportionate value of the Services completed as of the effective date of such termination provided that Service Provider has delivered to Nutanix the portion of the Services completed. All amounts payable under this Agreement will be paid in U.S. dollars less any required government withholding, including but not limited to applicable sales, use and similar taxes. Nutanix will not be responsible for paying any tax not specified on an SOW and the corresponding invoice.

**4. WORKING RELATIONSHIP AND RIGHTS OR OWNERSHIP**

**4.1 No Agency**. Nutanix and Service Provider are independent contractors and neither party is the legal representative, agent, joint venturer, partner, employee or employer of the other party for any purpose whatsoever, and neither party has any right, power or authority to assume or create any obligation of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect.

**4.2 No Benefits or Contributions**. Neither Service Provider nor Service Provider’s employees, agents or representatives are entitled to any of the benefits that Nutanix may make available to its own employees, such as group insurance, profit sharing or retirement benefits. Service Provider will be solely responsible for, and will file on a timely basis, all tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to Service Provider's performance of the Services and receipt of compensation under this Agreement. Service Provider shall have the full responsibility for compliance with all applicable laws, rules and regulations applicable to the Services, all applicable labor and employment requirements with respect to Service Provider’s Assigned Personnel, its designation of self-employment, sole proprietorship or other form of business organization, and with respect to the personnel, including jurisdictionally required insurance coverage (i.e., workers compensation) and any jurisdictional immigration or work visa requirements.

**4.3 Assigned Personnel**. If Service Provider assigns any of its employees, Service Providers, contractors or other personnel (the “Assigned Personnel”) to perform any of the Services at Nutanix’s offices or facilities (other than occasional visits for meetings with Nutanix that are not scheduled on a regular basis), then in compliance with and to the extent permitted by applicable laws: (i) Service Provider will ensure that each Assigned Personnel has properly demonstrated eligibility to work in the jurisdiction in which the Services will be performed; (ii) Service Provider will, in accordance with applicable law, conduct a criminal background check on each Assigned Personnel covering the counties, states, and/or countries in which such person was employed or resided for the past seven years and in such other areas as Nutanix may reasonably specify (such as a driving record check, credit check, etc.); (iv) Service Provider will not provide any Assigned Personnel who: (a) has any felony convictions or misdemeanor convictions involving violence or dishonesty; (b) has a restriction (e.g.. a court order or restrictive covenant) that would prevent the person from providing services or impose limitations on the services that the person is able to provide to Nutanix; (c) may present a higher than normal security risk to Nutanix; or (d) does not meet other guidelines specified by Nutanix from time to time. Nutanix may at any time request that Service Provider remove an Assigned Personnel and Service Provider shall comply with such request as soon as possible.

**4.4 Nutanix Facilities and Equipment**. If any Service Provider personnel visits or performs Services at any Nutanix office or facility, then Service Provider will ensure that such personnel complies with all applicable Nutanix rules and policies and other requests from Nutanix and takes all necessary precautions to prevent injury to any person or damage to any property. Service Provider shall indemnify, defend and hold Nutanix harmless for any breach or alleged of this Section 4.4.

**4.5 Pre-Existing Property and Ownership**. All Services are “works for hire” and any and all work product, deliverables, code, data, information or reports that are referenced in any SOW or otherwise provided to Nutanix as part and parcel of this Agreement is and shall be the sole and exclusive property of Nutanix and shall be deemed to be Nutanix intellectual property and subject to all non-disclosure and other protections afforded hereunder. Service Provider hereby assigns to Nutanix any and all rights it may obtain to any such work product or deliverable. Service Provider shall execute any and all documentation as may be required to effectuate the requirements of this section 4.5. Nutanix owns all of its data, customer and employee information, and all information regarding its technology and its business and this Agreement effectuates no license or transfer of any such Nutanix information or materials to Service Provider or other third party. Service Provider owns and continues to own any Service Provider developed data, information or technology that pre-exists this Agreement less any Nutanix intellectual property that may be contained therein. However, Service Provider hereby grants to Nutanix a fully paid, royalty free, perpetual, non-terminable and global license to use any such Service Provider data, information or technology for any legitimate Nutanix business purpose.

**5. REPRESENTATIONS AND WARRANTIES**

**5.1 By Nutanix.** Nutanix warrants to Service Provider that Nutanix is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, that this Agreement has been duly authorized by all necessary corporate action, and that this Agreement is the legal, valid, and binding obligation of Nutanix, enforceable against Nutanix in accordance with its terms.

**5.2 By Service Provider.** Service Provider represents and warrants to Nutanix that:

**5.2.1** Service Provider is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, that this Agreement has been duly authorized by all necessary corporate (or other entity) action, and that this Agreement is the legal, valid, and binding obligation of Service Provider, enforceable against Service Provider in accordance with its terms.

**5.2.2** Service Provider has obtained any and all consents, permits, licenses and authorizations necessary for or in connection with providing the Services to Nutanix. Service Provider’s entry into or performance of this Agreement does not and will not violate any other agreement by which Service Provider is bound, and Service Provider has full power, authority, unrestricted ability and all rights (including but not limited to license rights of intellectual property) necessary: to enter into this Agreement; and to perform all of Service Provider's obligations hereunder.

**5.2.3** The Services will be performed by qualified personnel in a timely manner on a good and workmanlike best-efforts basis, and will meet and conform to all applicable specifications as stated in any SOW. The Services and any work product and/or deliverable shall be of the highest prevailing standard within Service Providers industry, and shall meet the reasonable requirements of Nutanix as stated within any SOW. In the event of a breach of this warranty, Nutanix shall notify Service Provider in writing as the specifications of any such breach, whereupon Service Provider shall, at the reasonable discretion of Nutanix, re-perform all non-conforming services at no additional charge to Nutanix, replace any non-conforming work product or deliverable with a fully conforming item or deliverable, or refund any all applicable fees paid for any such non- conforming work product or deliverable. Service Provider shall be liable for any and all reasonable costs of cover and\or replacement Services in the event of a breach of these warranties.

**5.2.4** Service Provider and its employees, and contractors have complied and will comply with all laws, rules, regulations and ordinances applicable to the provision of the Services. Service Provider represents that it has completed all training of its personnel providing Services under this Agreement required under applicable law, including, but not limited to, any applicable anti-harassment and/or other compliance-related training. Service Provider agreed that it will make records reflecting compliance with all such mandatory trainings available for audit and inspection upon Nutanix’s reasonable request. Additionally, Service Provider agrees that it will ensure that its personnel providing Services under this Agreement will complete additional training and compliance certifications provided by Nutanix and/or its third party vendors at Nutanix’s request. Service Provider agrees not to export, directly or indirectly, any U.S. source technical data acquired from Nutanix or any products utilizing such data to countries outside the United States, which export may be in violation of the United States export laws or regulations (including the U.S. Export Administration Act and the regulations thereunder).

**6. INSURANCE**

During the term of the Engagement, Service Provider will (at Service Provider's sole cost and expense) obtain and maintain all appropriate insurance coverages required by federal or state law (including without limitation workers' compensation and disability insurance). Service Provider will also (at Service Provider's sole cost and expense) maintain the following minimum insurance coverages during the term of the Engagement: (a) comprehensive general liability insurance for bodily injury, death, and property damage with a per occurrence limit of at least $3,000,000, with such policy to include broad-form contractual liability, advertisers liability, protective liability, and personal injury/property damage coverage; (b) workers' compensation and employer's liability coverage of at least $1,000,000; (c) comprehensive automobile liability insurance for all owned, leased, non-owned, and hired vehicles with policy limits of at least $1,000,000 combined single limit for bodily injury and property damage; (d) if any of Service Provider's personnel are to visit or perform Services at any of Nutanix's offices or facilities, then fidelity bond coverage (or an employee crime policy) of at least $1,000,000; and (e) if Service Provider will have any access to any personally identifiable information of Nutanix users or Service Provider provides computer programming services to Nutanix, then Professional Liability Insurance (Errors & Omissions) in the amount of at least $5,000,000 for each claim covering the products and/or services provided by Service Provider. The Professional Liability Insurance policy (if required) will not exclude claims based on computer virus, computer attack, e commerce transactions, or breach of security. Each insurance policy required by this Section will be with an insurance company rated at least A-, VII by the most recent AM Best ratings guide. With respect to each type of insurance policy required by this Section, there will be coverage for the entire term of the Engagement; without limiting the generality of the foregoing, for any claims-made policy, the "prior acts" or "retroactive" date will be before the Effective Date. Promptly after the Effective Date, Service Provider will provide to Nutanix certificates from Service Provider's insurers indicating the amount of insurance coverage, the nature of such coverage, and the expiration date of each applicable policy. Each such certificate will indicate that the policy will not be materially changed (including erosion of limits) or terminated without at least 30 days' prior written notice to Nutanix, will name Nutanix as an additional insured on the general liability and auto policies, and will indicate that the insurer has waived the insurer's subrogation rights against Nutanix. The fact that this Section requires Service Provider to maintain insurance with certain minimum coverages will not be deemed to limit Service Provider’s liability under this Agreement in any way.

**7. INDEMNIFICATION**

Service Provider will defend, indemnify, and hold harmless Nutanix, Nutanix’s subsidiaries and affiliates, and their respective directors, officers, employees, sublicensees, customers, agents, attorneys, affiliates, successors, and assigns (collectively, the “Indemnified Parties”), against and from any and all claims, losses, liabilities, damages, suits, actions, government procedures, taxes, penalties or interest, associated auditing and legal expenses, and other costs (including reasonable attorneys’ fees and costs of suit) that may be imposed on, incurred by, or asserted against any Indemnified Party resulting from, arising out of, or relating to any third party claims for the following: (a) any misrepresentation or breach of any representation, warranty, obligation, or covenant of this Agreement by Service Provider (or any of Service Provider's employees, Service Providers, contractors, or agents); (b) the performance of the Services or Service Provider's other obligations under this Agreement by Service Provider (or any of Service Provider's employees, Assigned Personnel, Service Providers, contractors, or agents); (c) any claim that any part of the Services, the Deliverables, or the use thereof: (i) infringes any patent, copyright, trademark right, or other Intellectual Property Right of a third party, (ii) is a misappropriation of any third party trade secret, or (iii) violates any other rights of a third party; (d) security incidents and/or breaches of applicable privacy laws; (e) any negligence, willful misconduct, errors, or omissions of Service Provider (or any of Service Provider’s employees, Service Providers, contractors, or agents); and (f) any claims arising from a death, bodily injury, tortious conduct or damage to real or personal property, provided, however, that Service Provider shall not be required to indemnify or hold harmless Nutanix to the extent that claims and or costs arise out of the gross negligence or willful misconduct of Nutanix or its employees. Nutanix will have the right to withhold from any payments due to Service Provider under this Agreement the amount of any such defense costs plus additional reasonable amounts as security for Service Provider’s obligations under this Section 7 (Indemnification). Service Provider will not enter into any settlement that affects Nutanix’s rights or interest without Nutanix’s prior written approval. Nutanix will have the right to participate in the defense of any applicable claim at Nutanix’s own expense. In the event of a violation of this Section 7 (i), Service Provider shall, at the reasonable discretion of Nutanix, procure at Service Provider’s expense and for the benefit of Nutanix a license to use the allegedly infringing item, or replace the applicable deliverable or work product with a non-fringing item with the same or better features and/or functionality and which is non-infringing, or refund any and all applicable fees paid by Nutanix. These remedies are in addition to and independent of the indemnification obligations listed herein.

**8. LIMITATION OF LIABILITY**

EXCEPT WITH RESPECT TO A VIOLATION OF NUTANIX’S RIGHT IN ITS INTELLECTUAL PROPERTY OR A BREACH OF ANY PRIVACY OR SECURITY OBLIGATION IMPOSED BY THIS AGREEMENT OR APPLICABLE LAW, BREACHES OR OBLIGATIONS OF SECTION 5 (REPRESENTATIONS AND WARRANTIES), SECTION 9 (CONFIDENTIAL INFORMATION AND PERSONAL DATA), OR INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS (HOWEVER ARISING, INCLUDING NEGLIGENCE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL NUTANIX BE LIABLE TO SERVICE PROVIDER FOR AN AMOUNT GREATER THAN THE AMOUNTS PAID OR PAYABLE BY NUTANIX HEREUNDER.

**9. CONFIDENTIAL INFORMATION AND PERSONAL DATA**

**9.1 Obligations**. Service Provider agrees to hold the Confidential Information of Nutanix in strict confidence and agrees not to disclose any Confidential Information to any third party. Under this Agreement, Service Provider may obtain from Nutanix certain information relating to identified or identifiable individuals (“Personal Data”), and such Personal Data will be considered Nutanix Confidential Information. Confidential Information includes, but is not limited to, this Agreement, Personal Data, product roadmap, software, product and technology-related information, customer lists, financial information, sales, marketing, non-public company information and activities, and business plans. Service Provider will have no right, title or interest in Confidential Information obtained by it under this Agreement. In the event Service Provider has access to Personal Data, the parties hereby agree and incorporate by reference the 2010/87/EU Model Clauses and the related Data Security Requirements as defined in Section 10, until the parties execute a Data Processing Addendum (“DPA”), at which point the DPA will control. Service Provider represents and warrants that it will only use the Personal Data from Nutanix for the provision of Services under this Agreement or the applicable SOW and will not share, transfer, or otherwise use the Personal Data for any other purpose. Upon termination of this Agreement or SOW for any reason, Service Provider will promptly contact Nutanix for instructions and will follow such reasonable instructions regarding the return, destruction or other appropriate action with regard to Personal Data. This Section 9 supplements but does not replace any existing non-disclosure agreement by the parties, which is hereby incorporated by reference.

**9.2 Compliance Cooperation**. In the event of an investigation by a data protection regulator or similar authority regarding Personal Data, Service Provider will provide Nutanix with reasonable assistance and support, including, where necessary, access to Service Provider’s premises to the extent needed to respond to such investigation. In the event that Service Provider is unable to comply with the obligations stated in this Agreement, Service Provider will promptly notify Nutanix, engage a third party audit services provider at Service Provider’s cost to retrieve any needed information or complete any required compliance actions for Nutanix, and Nutanix may do one or more of the following: (a) suspend the transfer of Personal Data to Service Provider; (b) require Service Provider to cease processing Personal Data; (c) demand the return or destruction of Personal Data; or (d) immediately terminate this Agreement or any applicable SOW.

**10. SECURITY REQUIREMENTS**

As applicable, Service Provider will comply with the Service Provider Security Requirements, attached hereto as Attachment B and shall provide to Nutanix all reasonably required information in order for Nutanix to ensure compliance therewith.

**11. TERM AND TERMINATION**

**11.1 Term**. This Agreement will take effect on the Effective Date and will continue in effect for an initial term until August 31, 2021 unless terminated earlier in accordance with this Agreement. This Agreement will automatically renew for successive one-year terms from September 1st to August 31st (the “Renewal Term”) for an auto-renewal period not to exceed five (5) years. Unless terminated earlier, this Agreement will end, inclusive of all auto-renewal periods on August 31, 2026, at which time the Parties may enter into a new agreement.

**11.2 Termination for Convenience**. Nutanix may terminate this Agreement or any SOW at any time by giving to Service Provider written notice of termination thereof at least fifteen (15) days prior to the date of termination. Termination of the Agreement will also serve to terminate any SOW in progress. Service Provider may terminate the Agreement at any time that there is no uncompleted SOW in effect by giving to Nutanix written notice of termination thereof at least thirty (30) days prior to the date of termination.

**11.3 Termination for Cause**. Nutanix is entitled to terminate this Agreement immediately if Service Provider: (i) commits a serious breach of any obligations owed to Nutanix under this Agreement; (ii) fails, or continues to fail, or refuses to provide the Services to the standards or time scales reasonably required by Nutanix; or (iii) acts in any way which materially prejudices the interests of Nutanix.

**11.4. Return of Materials**. When this Agreement expires or is terminated, Service Provider shall promptly return any Confidential Information and Personal Data in Service Provider's possession to Nutanix pursuant to SECTION 9 (CONFIDENTIAL INFORMATION AND PERSONAL DATA).

**12. GENERAL PROVISIONS**

**12.1 No Publicity**. Except to the extent that Service Provider obtains the prior written approval of Nutanix, Service Provider will not directly or indirectly issue or permit the issuance of any publicity, press or news release, or other public statement concerning the relationship between the parties, this Agreement, any SOW, the terms hereof or thereof, or any of the transactions contemplated hereby or thereby; and will not use the name, trademarks, or service marks of Nutanix in any promotional materials. Any approval or consent given by Nutanix under this Agreement for any continued use may be revoked by Nutanix at any time by giving to Service Provider written notice of such revocation.

**12.2 Force Majeure**. Neither party shall be liable to the other for delayed performance caused by events outside of its reasonable control, including war, civil unrest, fire, earthquake or other natural disaster, provided that the party affected by such force majeure provides prompt notice of it to the other party and uses reasonable efforts to overcome its effects.

**12.3 Assignment**. Nutanix may assign this Agreement. Service Provider may not assign this Agreement or Service Provider’s rights, nor delegate Service Provider’s duties hereunder, without Nutanix’s prior written consent.

**12.4 Entire Agreement**. This Agreement (including the Attachments hereto which are incorporated herein by this reference) and any other documents expressly contemplated hereby constitute the entire agreement between the parties with respect to the subject matter hereof.

**12.5 Severability**. If any provision of this Agreement is for any reason held to be invalid, illegal, or unenforceable under applicable law in any respect, then this Agreement will be construed as if such invalid, illegal, or unenforceable provision were excluded from this Agreement.

**12.6 Waiver**. No waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom such waiver is sought to be enforced.

**12.7 Amendment**. This Agreement may only be amended, modified, or supplemented by an instrument in writing specifically mentioning this Agreement and signed by the party against whom such amendment, modification, or supplement is sought to be enforced.

**12.8 Notices**. Any notice, demand, request, or other communication required or permitted to be given under this Agreement (any “Notice”) will be made in writing and will be delivered by personal delivery (with notice deemed given when delivered personally), by overnight courier (with notice deemed given upon written verification of receipt) or by certified or registered mail, return receipt requested (with notice deemed given upon verification of receipt). Notices will be addressed to a party as provided in this Section or such other address as such party may request by notifying the other party (or parties) thereof in writing. Any notice to Service Provider will be addressed to the address indicated as such on the signature page hereto.

**12.9 Specific Performance; Remedies Cumulative**. Each Party acknowledges that a breach of this Agreement cannot be adequately compensated for by money damages. Each Party acknowledges that compliance with the provisions of this Agreement is necessary in order to protect the proprietary rights of each Party. Each Party further acknowledges that any unauthorized use or disclosure to any third party in breach of this Agreement will result in irreparable and continuing damage to the other Party. Accordingly, each Party hereby consents to the issuance of any injunctive relief or the enforcement of other equitable remedies against it at the suit of the injured Party (without bond or other security), to compel performance of any of the terms of this Agreement, and waives any defenses thereto, including without limitation the defenses of failure of consideration, breach of any other provision of this Agreement, and availability of relief in damages. All remedies, whether under this Agreement, provided by law, or otherwise, shall be cumulative and not alternative.

**12.10 Governing Law and Venue**. This Agreement will be governed by the laws of the State of California, without regard to its choice of law provisions. Each of the parties hereto consents to the exclusive jurisdiction and venue of the state and federal courts of Santa Clara County, California.

**12.11 Exhibits**. The exhibits named below are incorporated by reference herein if the box next to the exhibit title is checked. Service Provider agrees to comply with the terms and conditions of the policies reflected by such exhibits as Nutanix may update them from time to time. Service Provider agrees to execute contemporaneously with this Agreement, then to comply with the terms and conditions of, the Nutanix Information Security Requirements if attached hereto.

Statement of Work template

Travel and Expense Policy (if Nutanix has authorized expense reimbursement)

Acceptable Use Policy (if Service Provider’s personnel will be using Nutanix systems)

Service Provider Security Requirements (if Service Provider will be processing Data)

The duly authorized representatives of the parties execute this Agreement as of the Effective Date.

|  |  |  |  |
| --- | --- | --- | --- |
| **Nutanix[ ENTITY]** | | **Service Provider:** | |
| **By** |  | **By** |  |
| **Name** |  | **Name** |  |
| **Title** |  | **Title** |  |
| **Address** | [1740 Technology Drive, Suite 150  San Jose, CA 95110] | **Address** |  |
| **Date** |  | **Date** |  |

**ATTACHMENT A**

**Statement of Work # \_\_**

**Services Start Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Statement of Work (SOW) is governed by the Master Services Agreement (the “Agreement”) entered into by and between Nutanix[ENTITY] (“Nutanix”) and \_\_\_\_\_\_\_\_\_(“Service Provider”) as of \_\_\_\_\_, 20\_\_. Unless the context requires otherwise, each capitalized term used but not defined herein will have the same definition as in the Agreement. Any conflict between this SOW and the Agreement will be resolved in favor of the Agreement unless specifically stated otherwise herein with reference to the relevant section of the Agreement.

Nutanix Point of Contact:

Name:

Address:

Phone:

E-mail:

Service Provider Point of Contact:

Name:

Address:

Phone:

E-mail:

**A. Scope of Work**

Service Provider will develop and deliver to Nutanix the following Services:

**B. Fee and Payment Schedule**

Services shall be provided on the following basis:

time and materials at the rate of       per day/hour with maximum aggregate fees of

milestones according to the following description and schedule:

a fixed fee of

Nutanix will be responsible for additional fees only if the related additions or changes to the scope of work have been agreed to in a writing signed by both parties. If either party gives notice of termination of this SOW as provided in the Agreement, then Service Provider will cease all work under this SOW immediately after such notice has been given and will invoice Nutanix for the work done up to the date such notice is given based on a reasonable determination of the percentage completed of each line item of the Fees specified above.

**C. Estimated Work Schedule**

Services will commence on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_. The parties estimate in good faith that the project will end on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, unless otherwise extended by mutual written agreement of the parties.

The duly authorized representatives of the parties below have caused this Statement of Work to be executed as of the dates stated below.

|  |  |  |  |
| --- | --- | --- | --- |
| **Nutanix[ Inc.]** | | **Service Provider:** | |
| **By** |  | **By** |  |
| **Name** |  | **Name** |  |
| **Title** |  | **Title** |  |
| **Address** | [1740 Technology Drive, Suite 150  San Jose, CA 95110] | **Address** |  |
| **Date** |  | **Date** |  |

**ATTACHMENT B**

**Service Provider Security Requirements**

The security content of this attachment forms part of the Nutanix Master Services Agreement.

Description of the technical and organizational security measures implemented by the Service Provider in the event Service Provider has access to Personal Data of Nutanix as defined in the Master Services Agreement:

Security Policies and Procedures. Service Provider will maintain and implement security policies and procedures designed to ensure employees and contractors process Nutanix Data in accordance with these security measures. Service Provider will implement and enforce disciplinary measures against employees and contractors for failure to abide by its security policies and procedures.

Intrusion Prevention. Service Provider will ensure that its security infrastructure is consistent with leading industry standards for virus protection, firewalls and intrusion prevention technologies to prevent any unauthorized access or compromise of Service Provider’s network, systems, servers and applications from unauthorized access.

Security Awareness Training. Service Provider will implement and maintain security awareness training regarding the handling and securing of confidential information and sensitive information such as Personal Data consistent with applicable law.

Physical Access Controls. Service Provider will establish limits on physical access to information systems and facilities using physical controls (e.g., coded badge access) that provide reasonable assurance that access to data centers is limited to authorized individuals. Service Provider will install camera or video surveillance systems at critical internal and external entry points.

Logical Access Controls. Service Provider must ensure proper user authentication for all employees and contractors with access to Nutanix data, including, without limitation, by assigning each employee/contractor unique access credentials for access to any system on which Nutanix data can be accessed and prohibiting employees/contractors from sharing such access credentials. Service Provider will restrict and track access to Nutanix data to only those employees/contractors whose access is necessary to performing the services and implement and maintain logging and monitoring technology to help detect and prevent unauthorized access attempts to networks and production systems. Service Provider will conduct periodic reviews of changes affecting systems’ handling authentication, authorization, and auditing; and privileged access to production systems. Service Provider will ensure that upon termination of any employee/contractor, the terminated employee’s access to any Nutanix data on Service Provider’s systems will be immediately revoked.

Environmental Access Controls. Service Provider will implement and maintain appropriate and reasonable environmental controls for data centers, such as air temperature and humidity controls, and appropriate protections against power failures.

Background Checks of Any Personnel. If Service Provider assigns any of its Personnel to perform any of the Services at Nutanix’s offices or facilities (other than occasional visits for meetings with Nutanix that are not scheduled on a regular basis) or the offices or facilities of the customers of Nutanix, then in compliance with and to the extent permitted by applicable laws: (i) Service Provider will ensure that each of the Personnel has properly demonstrated eligibility to work in the applicable geography; (ii) upon Nutanix’s request, Service Provider will conduct a criminal background check on each of the Personnel covering the counties, states, and/or countries in which such person was employed or resided for the past seven years and in such other areas as Nutanix may reasonably specify (such as a check of driving record, credit check, etc.); (iv) Service Provider will not provide any Personnel who: (a) has any felony convictions or misdemeanor convictions involving violence or dishonesty, or its international equivalents; (b) has a restriction (e.g. a court order or restrictive covenant) that would prevent the person from providing services or impose limitations on the services that the person is able to provide to Nutanix or a customer of Nutanix; (c) may present a higher than normal security risk to Nutanix or a customer of Nutanix; or (d) do not meet other guidelines specified by Nutanix or the customers of Nutanix from time to time.

Disaster Recovery and Back-up Controls. Service Provider will maintain: (a) periodic backups of production file systems and databases according to a defined schedule; and (b) a formal disaster recovery plan for the production data center and conduct regular testing on the effectiveness of such plan.

Business Continuity and Cyber Incident Response Plan. Service Provider will maintain business continuity and incident response plans to manage and minimize the effects of unplanned events (cyber, physical or natural) (“Incident Response Plans”) that include procedures to be followed in the event of an actual or potential security breach or business interruption and which have a stated goal of resumption of routine services within thirty-six (36) hours of such an event. The Incident Response Plans will require record keeping of root cause analysis and remediation efforts.

Storage and Transmission Security. Service Provider will logically segregate Nutanix data from all other Service Provider and third-party data. Service Provider will securely store and agrees to strongly authenticate and secure in transmission all Nutanix data and will encrypt Nutanix data while at rest and in motion consistent with industry standards and at a minimum of 256-bit encryption. Service Provider will not store Nutanix data on any removable storage devices.

Internal Audits. Service Provider will regularly conduct internal security audits and will contract annually for external security assessments and penetration tests of Service Provider systems including, without limitation, cloud architecture, business processes and procedures, access controls and encryption measures.

Secure Disposal. As soon as possible after any Nutanix data (or a portion thereof) is no longer needed by Service Provider to fulfil its obligations under the Agreement(s), and in any event upon termination or expiration of the Agreement(s) for any reason, Service Provider will securely destroy and certify that secure destruction (and produce a written certification upon request by Nutanix) of all Nutanix data or, if requested by Nutanix, return Nutanix data to Nutanix through a secure method designated by Nutanix.

Risk Identification & Assessment. Service Provider will implement and maintain a risk assessment program to help identify foreseeable internal and external risks to Service Provider’s information resources and determine if existing controls, policies, and procedures are adequate.

Service Provider & Services Providers. Prior to engaging new third-party contractors, Service Providers or vendors who will have access to Nutanix Data (collectively, “Subprocessors”), Service Provider will conduct a risk assessment on Subprocessor’s data security practices. Service Provider will conduct periodic Subprocessor reviews to ensure compliance with the terms of these security measures.

Change and Configuration Management. Service Provider will implement and maintain policies and procedures for managing changes to production systems, applications and databases, including without limitation, processes for documenting testing and approval of changes into production, security patching, and authentication.

Certifications. During the term of the Agreement(s), Service Provider agrees to maintain all security measures and third-party certifications that it currently has. In the event Service Provider fails to maintain any such certification or reduces the security measures during the term of the Agreement(s), Service Provider will notify Nutanix within thirty (30) days of the loss of such certification or reduction of security measures (“Certification Notice”). Within thirty (30) days of receipt of the Certification Notice, Nutanix may elect to terminate the Agreement(s) by providing written notice of same to Service Provider and receive a refund of any pre-paid fees for the period following the effective date of termination.