



## NETOMI MASTER SERVICES AGREEMENT

This Master Subscription Agreement (“Agreement”) is made and entered into as of the Order Form Effective Date of the first Order Form executed between Netomi, Inc. (“Netomi”) and the Customer, described in such Order Form (“Customer”).

The terms and conditions of this Agreement shall govern the Services to be provided by Netomi under any Order Form submitted by Customer and accepted by Netomi, as though the provisions of this Agreement were set forth in their entirety within such Order Form, and so that each Order Form and this Agreement shall be considered one, fully integrated document and agreement. A Definitions section is included at the end of this Agreement. Customer agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Netomi regarding future functionality or features.

**1 DEFINITIONS** - Please refer to the bottom of the agreement..

### 2. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

**2.1 Customer Rights to the Services.** Subject to the terms and conditions set forth in this Agreement, Netomi grants to Customer a limited, non-transferable/non-assignable (except as set forth in the Agreement), non-exclusive right to access and use the Services during the Term (as defined in Section 8.1) for its internal business purposes.

**2.2 Netomi Ownership Rights.** All rights and title in and to the Platform, the Services, Netomi Materials and Documentation, including all Intellectual Property Rights inherent therein, belong exclusively to Netomi and its licensors. No rights are granted to Customer other than as expressly set forth in this Agreement.

**2.3 Customer Ownership Rights.** All rights and title in and to the Customer Data, including all Intellectual Property Rights inherent therein, belong exclusively to Customer. No rights are granted to Netomi other than as expressly set forth in this Agreement.

**2.4 Consent to Use Customer Data.** Customer hereby irrevocably grants to Netomi all such rights and permissions in or relating to Customer Data as are necessary or useful for Netomi (i) to perform the Services and (ii) to enforce this Agreement and exercise its rights hereunder.

### 3. RESTRICTIONS AND RESPONSIBILITIES

**3.1 Customer Restrictions.** Customer shall not (and will not allow any third party to): (i) modify, copy, display, republish or create derivative works based on the Services or Netomi Materials; (ii) reverse engineer the Services; (iii) access the Services in order to build a competitive product or service, or copy any ideas, features, functions or graphics of the Services; (iv) use the Services to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (v) use the Services to send infringing, obscene, threatening, libelous, or otherwise unlawful material; (vi) use the Services to access blocked services in violation of applicable laws; (vii) upload to the Services or use the Services to send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (viii) use the Services to run automated queries to web sites; (ix) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (x) attempt to gain unauthorized access to the Services or its related systems or networks; (xi) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Services; or (xii) without the express prior written consent of Netomi, conduct any benchmarking or comparative study or analysis involving the Services for any reason or purpose except, to the limited extent absolutely necessary, to determine the suitability of the Services to interoperate with Customer’s internal systems. In addition, Customer agrees that it shall: (i) use the Services solely for its internal business purposes; (ii) only permit access to the Services by Customer Users; and (iii) not access or use the Services from an embargoed nation, including without limitation, Cuba, Iran, North Korea, Syria, Sudan, Crimea Region of Ukraine, or any other country/region that becomes an embargoed nation.

**3.2 Customer Responsibilities.** Customer agrees and understands that (i) it is responsible for all activity of Customer Users and for Customer Users’ compliance with this Agreement; (ii) it shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data; (b) prevent unauthorized access to, or use of, the Services, and notify Netomi promptly of any such unauthorized access or use; and (c) comply with all applicable laws in using the Services; (iii) the Services shall not include Customer’s access connection to the Internet or any equipment necessary for Customer to make such connection, which shall be Customer’s sole responsibility; (iv) it is responsible for supplying Netomi with any technical data and other information Netomi may reasonably request to allow Netomi to provide the Services to Customer; and (v) Netomi shall have the right to (a) use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer relating to the Services; (b) utilize all other information provided by Customer (including Customer Data) relating to the Services for the purposes of (1) maintaining, improving and/or analyzing the Services, and/or (2) complying with all legal or contractual requirements; and (c) develop and commercialize benchmarks and measures based on Aggregated Data. The foregoing shall in no way limit Netomi’s confidentiality obligations set forth in this Agreement.

#### 3.3 Netomi Responsibilities.

**3.3.1** Netomi shall not use, access, or modify the Customer Data except as set forth in this Agreement;



**3.3.2** Netomi shall use commercially reasonable measures to maintain the security and integrity of the Services and the Customer Data and to provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use of, destruction, transfer, disclosure or alteration of Customer Data;

**3.3.3** Netomi reserves the right to manage bandwidth or route traffic across the Internet in a commercially optimal way, provided such actions do not compromise Netomi's obligations regarding the Customer Data; and

**3.3.4** Netomi reserves the right to suspend Customer's access to or download of the Services in the event Customer's use of the Services represents an imminent threat to Netomi's network, or if so directed by a court or competent authority. In such cases, Netomi will (i) suspend such the Services only to the extent reasonably necessary to prevent any harm to Netomi's network (for example, blocking offending source IP addresses); (ii) use its best efforts to promptly contact Customer and give Customer the opportunity to promptly change the configuration of its server(s) accordingly and/or work with Customer to promptly resolve the issues causing the suspension of such the Services; and (iii) reinstate any suspended the Services immediately after any issue is abated.

**4. THIRD PARTY MATERIALS.** Customer acknowledges that the Services may include Third Party Materials. Netomi represents that these Third Party Materials will not diminish the license rights provided herein or limit Customer's ability to use the Services in accordance with the applicable Documentation, and the use or inclusion of Third Party Materials in any the Services will not create any obligation on the part of Customer to license Customer's software or products under any open source or similar license. To the extent certain portions of the Services are distributed under and subject to open source licenses obligating Netomi to make the source code for such portions publicly available, Netomi will make such source code portions (including Netomi modifications, as appropriate) available to Customer upon request.

## **5. FEES; PAYMENT TERMS**

**5.1 Fees.** Customer shall pay Netomi the Fees set forth in Exhibit A in accordance with this Section 5. Customer agrees and understands that if Customer does not pay Netomi the Fees due for the Services within the agreed time period, Netomi reserves the right to suspend Customer's access and use of the Services until such Fees are paid as provided in Section 5.4.

**5.2 Taxes.** All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Netomi's income.

**5.3 Payment.** Unless otherwise provided in Exhibit A, Customer shall pay all Fees within thirty (30) days after the date of the invoice therefor. Customer shall make all payments hereunder in U.S. dollars by the payment method specified by Netomi. Customer shall make payments to the account specified in Exhibit A or such other account as Netomi may specify in writing from time to time.

**5.4 Late Payment.** If Customer fails to make any payment when due then, in addition to all other remedies that may be available, Netomi may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law. If such failure continues for five (5) days following written notice thereof, Netomi may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer by reason of such suspension.

## **6. WARRANTIES**

**6.1 Mutual Warranty.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement.

**6.2 Services Warranty.** Netomi warrants that the Services will be free of defects under normal use and will substantially conform to the Documentation. If Customer believes that the warranty stated in this Section has been breached, Customer must notify Netomi of the breach no later than ten (10) days following the date the warranty was allegedly breached, and if Netomi determines that a defect exists, Netomi will promptly correct the non-conformity at its own expense.

**6.3 Professional Services Warranty.** Netomi warrants that any Professional Services will be performed in a professional manner in accordance with industry standards for similar services. If Customer believes that the warranty stated in this Section has been breached, Customer must notify Netomi of the breach no later than ten (10) days following the date that the Professional Services were performed. If Netomi determines that a breach of this warranty occurred, Netomi will promptly correct or re-perform the Professional Services at its own expense.

**6.4 Sole Remedies.** The remedies stated in Sections 6.2 and 6.3 above are the sole remedies, and Netomi's sole obligation, with respect to the Services that fail to comply with the foregoing warranties.

**6.5 Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY WHATSOEVER. NETOMI EXPRESSLY DISCLAIMS, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, ALL WARRANTIES, EXPRESS, IMPLIED AND STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. NETOMI ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS, AND MAKES NO WARRANTY THAT SERVICES WILL BE ERROR-FREE.



## 7. CONFIDENTIAL INFORMATION

**7.1 Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in the SOW hereunder), the Customer Data, the Services, the Netomi Materials, and each party's respective business and marketing plans, technology and technical information, product designs, and business processes. The obligations in this Section shall not apply to any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality; (iii) was independently developed by the Receiving Party without the use of or reference to the Confidential Information of the Disclosing Party; or (iv) is lawfully received from a third party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality.

**7.2 Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Either party may disclose Confidential Information to its personnel and its auditors who are subject to the same confidentiality obligations.

**7.3 Protection.** Receiving Party will use at least the same level of care to prevent unauthorized use of the Confidential Information as it uses for its own confidential and proprietary information of like kind, but in no event less than a reasonable standard of care.

**7.4 Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure, to the extent legally permitted, and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**7.5 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts.

## 8. TERM AND TERMINATION

**8.1 Agreement Term.** This Agreement shall commence on the Effective Date and continue for the period specified in the SOW (the "Term"), unless otherwise terminated in accordance with this Agreement or the SOW. This Agreement shall renew for successive periods of one (1) year (the "Renewal Term"), unless either party provides written notice of non-renewal to the other party at least thirty (30) days prior to the end of the then-current Term or Renewal Term.

**8.2 Termination for Material Breach.** Either party may terminate this Agreement (i) if the other party breaches any terms and conditions of this Agreement and does not cure such breach within thirty (30) days of receiving notice of such breach (the "Cure Period"); or (ii) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Notwithstanding the foregoing, this Agreement and any SOW shall terminate automatically in the event Customer has breached any license restriction set forth in Section 3.1 and, in Netomi's determination, that breach cannot be adequately cured within the Cure Period.

**8.3 Effect of Termination.** The following provisions shall survive the termination of this Agreement and all SOWs: Section 2 (Intellectual Property Rights and Ownership), Section 3 (Restrictions and Responsibilities), Section 5 (Fees; Payment Terms), Section 6.5 (Disclaimer of Warranties), Section 7 (Confidential Information), Section 8.3 (Effect of Termination), Section 9 (Indemnity), Section 10 (Limitation of Liability), Section 11 (Export Control and U.S. Government Restricted Rights), and Section 12 (General Provisions).

## 9. INDEMNITY

**9.1** Netomi will indemnify and hold Customer harmless from and against any claim against Customer by reason of Customer's use of the Services as permitted hereunder brought by a third party alleging that the Services or Netomi Materials infringe or misappropriate a third party's valid patent, copyright, trademark or trade secret. Netomi shall, at its expense, defend such claim and pay damages finally awarded against Customer in connection therewith, including the reasonable fees and expenses of the attorneys engaged by Netomi for such defense. If the Services, or parts thereof, become, or in Netomi's opinion may become, the subject of an infringement claim, Netomi may, at its option: (a) procure for Customer the right to continue using the Services as set forth herein; (b) replace or modify the Services to make it non-infringing; or (c) if options (a) or (b) are not commercially and reasonably practicable as determined by Netomi, terminate this Agreement and the applicable SOW and refund Customer, on a prorated basis, any pre-paid Fees for any Services not received. THIS SECTION 9.1 STATES NETOMI'S ENTIRE LIABILITY AND CUSTOMER'S SOLE REMEDY WITH RESPECT TO ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICES OR NETOMI MATERIALS.

**9.2** Netomi will have no liability or obligation under this Section with respect to any claim if such claim is caused in whole or in part by (i) compliance with designs, data, instructions or specifications provided by Customer; (ii) modification of the Services by anyone other than Netomi or its authorized agents; or (iii) the combination, operation, or use of the Services with other hardware or software not provided by Netomi or its authorized agents where the Services would not by itself be infringing.

**9.3** Customer will indemnify and hold Netomi harmless from and against any claim brought by a third party against Netomi arising from or related to (i) Customer's violation of Section 3.1 of this Agreement or (ii) any Customer Data.



9.4 The indemnification obligations in this Section shall be subject to the indemnified party: (i) promptly notifying the indemnifying party in writing upon receiving notice of any threat or claim of such action; (ii) giving the indemnifying party exclusive control and authority over the defense and/or settlement of such claim (provided any such settlement unconditionally releases the indemnified party of all liability); and (iii) providing reasonable assistance requested by the indemnifying party, at the indemnifying party's expense.

## 10. LIMITATION OF LIABILITY

**10.1 Waiver of Consequential Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS AND LOST SAVINGS, HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

**10.2 Limitation of Monetary Damages.** NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR ANY SOW, EACH PARTY'S TOTAL LIABILITY ARISING OUT OF THIS AGREEMENT AND ANY SOW SHALL BE LIMITED TO THE TOTAL AMOUNTS RECEIVED BY Netomi FOR THE RELEVANT SOW DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST OCCURRENCE OF THE EVENT(S) GIVING RISE TO SUCH LIABILITY.

**10.3 Exclusions to Limitations of Liability.** The above limitations of liability will not apply to the following: (i) damages caused by a party's gross negligence, fraud, or willful misconduct; or (ii) Customer's violation of Section 3.1.

**10.4 Applicability.** THE LIMITATIONS AND EXCLUSIONS CONTAINED HEREIN WILL APPLY ONLY TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AND NOTHING HEREIN PURPORTS TO LIMIT EITHER PARTY'S LIABILITY IN A MANNER THAT WOULD BE UNENFORCEABLE OR VOID AS AGAINST PUBLIC POLICY IN THE APPLICABLE JURISDICTION.

## 11. EXPORT COMPLIANCE AND U.S. GOVERNMENT RESTRICTED RIGHTS

**11.1 Export Compliance.** The Services and other software or components of the Services which Netomi may provide or make available to Customer may be subject to United States export control and economic sanctions laws and other foreign trade controls. Customer agrees to comply with applicable laws in connection with its performance hereunder, including without limitation, applicable U.S. and foreign export controls, economic sanctions, and other trade controls. Customer agrees to indemnify Netomi for any breach of this provision.

**11.2 U.S. Government Restricted Rights.** The Services and Documentation are "commercial items," "commercial computer software" and "commercial computer software documentation," pursuant to DFAR section 227.7202 and FAR section 12.212, as applicable. All the Services and Netomi Materials are and were developed solely at private expense. Any use, modification, reproduction, release, performance, display or disclosure of the Services, Netomi Materials and Documentation by the United States Government shall be governed solely by this Agreement and shall be prohibited except to the extent expressly permitted by this Agreement.

## 12. GENERAL PROVISIONS

**12.1 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**12.2 Notices.** All notices required to be sent hereunder shall be in writing, addressed to the receiving party's current business contact, if known, with a cc: to the Legal Department of the receiving party, and sent to the party's address as specified in this Agreement, or as updated by either party by written notice. Notices shall be effective upon receipt and shall be deemed to be received as follows: (i) if personally delivered by courier, when delivered; (ii) if mailed by first class mail, or the local equivalent, on the fifth business day after posting with the proper address; or (iii) if sent by email, upon confirmation of transmission.

**12.3 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**12.4 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in full force and effect.

**12.5 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including any SOWs), without the consent of the other party, to (i) an Affiliate; or (ii) in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.6 Governing Law.** This Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or



the Uniform Computer Information Transactions Act. Any legal suit, action or proceeding arising out of or related to this Agreement or the Services shall be instituted exclusively in the federal courts of the United States or the courts of the State of California, in each case located in the city of San Francisco, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**12.7 Force Majeure.** Neither party shall be liable for delay or non-performance of its obligations hereunder (or part thereof) if the cause of delay or non-performance is due to a Force Majeure Event. The party affected shall be relieved from its obligations (or part thereof) as long as the Force Majeure Event lasts and hinders the performance of said obligations (or part thereof). The party affected shall promptly notify the other party and make reasonable efforts to mitigate the effects of the Force Majeure Event.

**12.8 Entire Agreement.** This Agreement, including any SOWs, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties are not relying and have not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties set forth in this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. No terms or conditions set forth on any purchase order, preprinted form or other document shall add to or vary the terms and conditions of this Agreement, and all such terms or conditions shall be null and void.

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## DEFINITIONS

- **"Affiliate"** means, with respect to a party, any entity which directly or indirectly Controls, is Controlled by, or is under common Control with such party.
- **"Aggregated Data"** means Customer Data (i) anonymized, and not identifiable to any person or entity, (ii) combined with the data of other customers or additional data sources, and (iii) presented in a manner from which Customer's or Customer Users' identity may not be derived.
- **"Control"** means 50% or greater voting power, or otherwise having the power to govern the financial and the operating policies or to appoint the management of an organization.
- **"Customer Data"** means all information, data and other content, in any form or medium, that is (i) submitted by or on behalf of Customer to the Services (including without limitation any training data), or (ii) generated specifically for Customer from its use of the Services.
- **"Customer Users"** means employees, agents and other third parties authorized by Customer to access or use the Services.
- **"Documentation"** means any user manuals or other documentation provided in writing by Netomi to Customer with respect to the Services in electronic or paper format, as amended from time to time by Netomi.
- **"Fees"** means any fees payable for the Services under the SOW.
- **"Force Majeure Event"** means an event which is unforeseeable, beyond the control of the party affected, and cannot be remedied by the exercise of reasonable diligence, including without limitation: acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Netomi's possession or reasonable control, and denial of service attacks.
- **Intellectual Property Rights** means copyrights (including, without limitation, the exclusive right to use, reproduce, modify, distribute, publicly display and publicly perform the copyrighted work), trademark rights (including, without limitation, trade names, trademarks, service marks, and trade dress), patent rights (including, without limitation, the exclusive right to make, use and sell), trade secrets, moral rights, right of publicity, authors' rights, contract and licensing rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the law of the United States or any other state, country or jurisdiction.
- **"Platform"** means Netomi's proprietary platform of servers, software and technology used to provide the Services.
- **"Services"** means the services that Netomi will provide to Customer under this Agreement as described in the SOW.
- **"Professional Services"** means the additional professional services that Netomi will provide to Customer under this Agreement as described in the SOW. Professional Services relate to such matters as configuration, implementation, training, support and reporting.
- **"Statement of Work" or "SOW"** means the statement of work attached hereto as Exhibit A (and any subsequent SOW agreed by the parties) that describes (i) the Services and Professional Services to be provided to Customer by Netomi, including any related target dates and milestones, and (ii) fees payable by Customer to Netomi for the Services and Professional Services. All SOWs will be governed by the terms and conditions in this Agreement, except as otherwise stated in the SOW.
- **"Third Party Materials"** means software or other components that are licensed to Netomi by third parties for use in the Services, including but not limited to open source software.
- **"Netomi Materials"** means all software, specifications, documentation and systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Netomi in connection with the Services or otherwise comprise or relate to the Services or the Platform. Netomi Materials do not include Customer Data or Third Party Materials.

*Last updated: 2/2/2021*