NetApp Canada Limited, a wholly-owned subsidiary of NetApp, Inc. (“NetApp”)
Purchase Order Terms & Conditions

1. General. The party providing NETAPP with any goods and services (“Seller”) agrees to perform the services ("Services") and/or provide the goods or Service deliverables (collectively referred to as "Goods"), described in any purchase order, in accordance with the applicable purchase order, documents agreed to by the parties describing the Services and Deliverables provided by Seller to NetApp, and with these Terms and Conditions ("Agreement"). Upon acceptance of a purchase order, shipment of Goods or commencement of a Service, Seller shall be bound by the provisions of this Agreement, including all provisions set forth on the face of any applicable purchase order, whether Seller acknowledges or otherwise signs this Agreement or the purchase order, unless Seller objects to such terms in writing prior to shipping Goods or commencing Services. This writing does not constitute a firm offer within the meaning of Section 2205 of the California Commercial Code, and may be revoked at any time prior to acceptance. Any terms or conditions contained in any acknowledgment, invoice or other communication of Seller, which are inconsistent with the terms and conditions herein, are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms hereof and shipment of the Goods or beginning performance of any Services by Seller shall constitute such assent. In the absence of an effective agreement duly executed by NETAPP and Seller which sets out provisions that govern the purchase of Goods and Services by NETAPP from Seller (“Master Agreement”), any discrepancy between the terms on the face of an applicable purchase order and the terms hereof, the terms of such purchase order shall prevail. In the event an applicable Master Agreement exists, the Master Agreement supersedes this Agreement in precedence and will prevail in any conflict or ambiguity among the provisions, and govern the purchase.

2. Changes. NETAPP may at any time by a written change order make changes in the general scope and terms of this Agreement, and hereby reserves the right to reschedule any delivery or cancel any purchase order issued at any time prior to shipment of the Goods or prior to commencement of any Services. NETAPP shall not be subject to any charges or other fees as a result of such cancellation. Nothing herein shall excuse Seller from proceeding with the Agreement as changed. This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part, except by written change order signed by a NETAPP authorized purchasing representative. After NETAPP's approval or acceptance of the initial qualification prototypes of the Goods, Seller shall not make any changes in the design, material or processes that may affect the form, fit, function, interchangeability, quality or reliability of the Goods without NETAPP'S prior written consent.

3. Purchase Order Number. NETAPP's purchase order number must appear on all invoices, packing lists and bills of lading and shall appear on each package, container or envelope on each shipment made pursuant to such purchase order.

4. Delivery Documentation. All deliveries of Goods to NETAPP must contain a packing list referencing Goods delivered. Each copy must show the NETAPP purchase order number, part number, and quantity of Goods shipped. Bills of Lading shall be mailed in triplicate to the destination address shown on the face of the NETAPP purchase order, or to the consignee of such purchase order on the day shipment is made. Delivery and acceptance of Services shall be evidenced by an authorized representative of NETAPP signing the submitted invoice specifically accepting the Services and referencing the appropriate purchase order number.

5. Packaging and Shipment. All articles are to be packed in accordance with sound commercial practices to obtain the lowest transportation rates unless otherwise specified in the NETAPP purchase order and comply with requirements of common carriers. Shipments will be valued so as to obtain the lowest transportation rate and must be made by NETAPP’s choice of common carrier if specified in the purchase order. Transportation insurance for loss or damage will not be purchased by NETAPP unless specifically directed. Excess transportation costs resulting from failure to comply with the provisions of this paragraph will be debited to Seller's account. Unless otherwise specified in the NETAPP purchase order, packaging must conform to NETAPP’s specifications and be constructed for handling with a mechanical device. A complete packing list specifying NETAPP's applicable purchase order number, quantity of Goods shipped, and part number shall be enclosed with all shipments hereunder. Seller shall mark each container with necessary lifting, loading and shipping information, including the NETAPP purchase order number, date of shipment, and name and address of consignor and consignee. Seller shall bear the expense of any premium transportation charges unless otherwise agreed. Prepaid transportation charges appearing on Seller's invoice must be supported by a paid freight bill and bill of lading.

6. Delivery. Time is of the essence. Deliveries are to be made in such quantities and at such times as are specified herein. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of land transportation. If no method of shipment is specified in the purchase order, Seller shall use the least expensive carrier. Upon request Seller shall provide NETAPP notice of the departure of any shipment of Goods from Seller’s site. Seller shall provide NETAPP notice as soon as it is aware that any delivery will not be on time. At NETAPP’s request, Seller will provide NETAPP with daily notification of shipping delays or of the progress of delayed Goods in transit. Such notification will include action plans for recovery or expediting of the affected Goods. If Seller's deliveries fail to meet schedule, NETAPP, without limiting its other rights and remedies, may, at its option, either: (a) direct expedited routing, and any excess costs incurred thereby shall be debited to Seller's account; or (b) in accordance with Section 12 hereof, cancel all or any part of the NETAPP purchase order in the event Seller fails to deliver Goods as scheduled. With regard to any Goods delivered in advance of schedule NETAPP may, at its option, either: (a) return the Goods at Seller's expense for proper delivery, or (b) accept the Goods with payment only in accordance with Section 8 below and with the right to charge Seller for storage of the Goods. Delivery terms are DDU (Incoterms, Delivery Duty Unpaid) NETAPP's dock or the dock of NETAPP’s designated manufacturer.

7. Title and Risk Of Loss. Identification of the Goods shall occur in accordance with Section 2501 of the California Commercial Code. Seller assumes all risk of loss until receipt by NETAPP. Title to the Goods shall pass to NETAPP upon receipt by it of the Goods at the designated destination. If the Goods ordered are destroyed prior to title passing to NETAPP, NETAPP may at its option cancel the Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, NETAPP shall have the right to require delivery of the Goods not destroyed.

8. Payment Terms. For Goods, Seller shall send the invoice to NETAPP upon the delivery of the Goods in conformity with the relevant delivery term as specified in Section 6. For Services, Seller shall send the invoice to NETAPP upon written acceptance by NETAPP of such Services. Unless stated otherwise in a specific purchase order, to the extent permitted by applicable laws, invoices shall be due sixty (60) days from the end of the calendar month in which the invoice is dated. Invoices will be paid on the 3rd day of each month (or next business day) after they come due. Incorrect invoices will be returned to Seller for correction and/or credit. After Seller resubmits the corrected invoice, NETAPP will pay Seller sixty (60) days from the end of the calendar month in which NETAPP’s Accounts Payable Department receives the corrected invoice. NETAPP shall assume all responsibilities for taxes on shipments or provide Seller with a tax exemption certificate acceptable to the taxing authorities. On orders for shipment to NETAPP from shipping points other than Canada all required import duties, licenses and fees shall be payable by the Seller and shall be included in the quoted pricing to NETAPP.

9. Inspection. Seller shall test each lot to ensure that the Goods meet NETAPP's specifications and acceptance criteria, and Seller shall not ship any Goods that do not conform thereto. All Goods (including raw materials, components, subassemblies and end products) may be inspected and tested by NETAPP at all reasonable times and places before, during and after manufacture. If any Goods are defective in materials or workmanship, or are otherwise not in conformity with the requirements of this Agreement, it shall be at NETAPP’s sole discretion, whether or not payment has been made, to reject such Goods, return them to Seller at Seller’s expense, and receive a refund for the purchase price (if payment has been made), or require that such Goods be corrected or replaced promptly with satisfactory materials or workmanship. Payment shall not constitute acceptance. In no event shall NETAPP be liable for any reduction in value of any Goods used in connection with any inspection or test. If any inspection or test is made on Seller's premises, Seller shall, without additional charge, provide reasonable facilities and assistance for the safety and convenience of inspectors in such manner as not unduly to delay the work. Inspection of Goods at Seller's facility shall be without prejudice to NETAPP's right to inspect and reject such Goods upon delivery to NETAPP's facility. Where applicable, NETAPP may, at its option, inspect all Goods or inspect a statistical sample selected from each lot. Seller further agrees to maintain adequate authenticated inspection test documents that relate to work performed under this Agreement. Such records shall be retained by Seller for a period of three (3) years after completion of this Agreement or as otherwise specified by NETAPP and made available to NETAPP upon request. Seller agrees to supply NETAPP with inspection and test reports, affidavits, certifications or any other documents as may be reasonably requested.

10. Confidential Information. Seller may acquire knowledge of NETAPP Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such NETAPP Confidential Information in confidence during the term of this Agreement. "NETAPP Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary by NETAPP relating to the current or anticipated business or affairs of NETAPP which is disclosed directly or indirectly to Seller. In addition, NETAPP Confidential Information means any third party's proprietary or confidential information disclosed to Seller in the course of providing Services or Goods to NETAPP. NETAPP Confidential Information does not include any information (i) which Seller lawfully knew without restriction on disclosure before NETAPP disclosed it to Seller, (ii) which is now or becomes publicly known through no wrongful act or failure to act of Seller, (iii) which Seller developed independently without use of the NETAPP Confidential Information, as evidenced by appropriate documentation, or (iv) which is hereafter lawfully furnished to Seller by a third party as a matter of right and without restriction on disclosure. In addition, Seller may disclose Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as Seller provides prompt notice to NETAPP of such requirement prior to disclosure. Seller agrees not to copy, alter or directly or indirectly disclose any NETAPP Confidential Information. Additionally, Seller agrees to limit its internal distribution of NETAPP Confidential Information to Seller's Assistants (defined in Section 15) who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Seller's Assistants of nondisclosure agreements with provisions substantially similar to those set forth herein. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of NETAPP Confidential Information. Seller further agrees not to use the NETAPP Confidential Information except in the course of performing hereunder, and agrees not to use such NETAPP Confidential Information for its own benefit or for the benefit of any third party. Seller agrees not to design or manufacture any products which incorporate NETAPP Confidential Information. All NETAPP Confidential Information is and shall remain the property of NETAPP. Upon NETAPP's written request or the termination of this Agreement, Seller shall return, transfer or assign to NETAPP all NETAPP Confidential Information, including all Work Product, as defined herein, and all copies thereof.

11. Tooling. Unless otherwise specified in this Agreement, all tooling and/or all other articles required for the performance hereof shall be furnished by Seller, maintained in good condition and replaced when necessary at Seller's expense. If NETAPP agrees to pay Seller for special tooling or other items either separately or as a stated part of the unit price of Goods purchased herein, title to same shall be and remain in NETAPP upon payment therefor.

12. Default-Cancellation. NETAPP may, by written notice of default to Seller, terminate the whole or any part of this Agreement if Seller fails to make delivery of the Goods or perform the Services within the time specified herein or in any authorized extension. If this Agreement or any part hereof is terminated by NETAPP, then in addition to any other rights provided in this Agreement, NETAPP may require Seller to transfer title and deliver to NETAPP in the manner and to the extent directed by NETAPP, any completed or partially completed Goods and any materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and manufacturing materials specifically produced or acquired for performance of this Agreement. If, after notice of termination of the Agreement under the provisions

of this Section 12, it is determined for any reason that Seller was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 13 hereof. The rights and remedies of NETAPP provided in this Section 12 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

13. Termination. This Agreement may be terminated in whole or in part at any time by NETAPP for its own convenience. Any such termination will not be construed as a cancellation for breach. NETAPP’s exclusive liability and Seller's exclusive remedy for such termination will be as follows: (a) NETAPP will purchase and pay for any Goods that have been completed as of the effective date of the cancellation; (b) NETAPP will pay Seller for the actual labor and materials costs incurred by Seller in connection with the assembly of any Goods that are partially completed as of the effective date of cancellation; and (c) NETAPP will pay Seller for the costs of components and other materials procured by Seller specifically on account of the cancelled Agreements if such components cannot be diverted by Seller to another use. In no event will NETAPP's liability in the aggregate exceed the total price which would have been paid hereunder for the work had it not been terminated. Notwithstanding the foregoing, to the extent such termination involves materials Seller normally manufactures or supply for distribution to other customers, and not specifically manufactured to this Agreement, NETAPP's exclusive liability and Seller's exclusive remedy will be payment for finished Goods and Services delivered or performed according to schedule prior to termination, subject to NETAPP's final acceptance at the applicable price specified. The provisions of this paragraph will not apply to any portion of this Agreement canceled for Seller's breach. No cancellation charges shall be payable if notice of cancellation is given or deemed to be given at least thirty (30) days before the scheduled shipment date. Prior to NETAPP'S payment, NETAPP may audit Seller's records at reasonable times or require Seller to provide reasonable documentation and invoices to substantiate any cancellation charges or require Seller to produce evidence that the relevant Goods, materials, assemblies and components shall have been disposed of in accordance with NETAPP'S instructions. NETAPP reserves the right to direct the disposition of any work or property paid by NETAPP hereunder. Seller's termination claim must be submitted in writing no later than thirty (30) days from the date of receipt of termination notice.

14. NETAPP's Property. Title and property furnished to Seller by NETAPP or paid for by NETAPP shall remain with NETAPP. Seller shall not alter or use such property for any purpose other than that specified by NETAPP, or for any other person, without the prior written consent of NETAPP. Seller shall keep adequate records of such property and such records shall be made available to NETAPP upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound commercial practice, all at Seller's expense. Unless otherwise agreed to by NETAPP, Seller shall insure NETAPP's interest in such material against loss or damage by reason of fire (including extended coverage), flood, accident, theft, riot or civil commotion. In the event that NETAPP's property becomes lost or damaged to any extent while in Seller's possession, Seller agrees to indemnify NETAPP or replace such property at Seller's expense, in accordance with NETAPP's request. At the completion or termination of this Agreement, Seller shall request disposition instructions for all such property or the remainder thereof, whether in its original form or in semi-processed form. Seller agrees to make such property available as directed by NETAPP, including preparation, packaging and shipping. The use of NETAPP’s name, logo or reference to any association or partnership is expressly prohibited without NETAPP’s written permission.

15. Independent Contractor. NETAPP is interested only in the results obtained under this Agreement; the manner and means of achieving the results are subject to Seller's sole control. Seller is an independent contractor for all purposes, without express or implied authority to bind NETAPP by contract or otherwise. Neither Seller nor its employees, agents or subcontractors ("Seller's Assistants") are agents or employees of NETAPP, and therefore are not entitled to any employee benefits of NETAPP, including but not limited to, any type of insurance. Seller shall be responsible for all costs and expenses incident to performing its obligations under this Agreement and shall provide Seller's own supplies and equipment.

16. Ownership of Work Product. For purposes of this Agreement, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, Service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others which result from or relate to the Services performed hereunder. Standard Goods manufactured by Seller and sold to NETAPP without having been designed, customized or modified for NETAPP do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of NETAPP. Seller hereby agrees to irrevocably assign and transfer to NETAPP and does hereby assign and transfer to NETAPP all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. NETAPP will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that NETAPP deems appropriate. Seller agrees: (a) to disclose promptly in writing to NETAPP all Work Product in its possession; (b) to assist NETAPP in every reasonable way, at NETAPP's expense, to secure, perfect, register, apply for, maintain, and defend for NETAPP's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in NETAPP’s name as it deems appropriate; and (c) to otherwise treat all Work Product as NETAPP Confidential Information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by NETAPP to Seller shall remain the sole property of NETAPP. Seller will ensure that Seller's Assistants appropriately waive any and all claims and assign to NETAPP any and all rights or any interests in any Work Product or original works created in connection with this Agreement. Seller irrevocably agrees not to assert against NETAPP or its direct or indirect customers, assignees or licensees, or distributors any claim of any intellectual property rights of Seller affecting the Work Product. NETAPP will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities or trade secret or NETAPP Confidential Information, unless (i) such works relate to NETAPP's business, or NETAPP's actual or demonstrably anticipated research or development, or (ii) such works result from any Services performed by Seller for NETAPP. Except for works within (i), (ii) or (iii) of the preceding sentence which shall be works owned by NETAPP, for any other works within the preceding sentence not owned by NETAPP but which are necessary to use the Goods and Services for their intended purposes, Seller hereby grants NETAPP a non-exclusive, irrevocable, perpetual, worldwide, royalty free, fully paid-up license to make, have made, sell, demonstrate, use, reproduce, modify, create derivative works based on such works, and sublicense such works, including the right to sublicense through multiple tiers of distribution.

17. Indemnification. Seller shall, in the performance of work or services under this Agreement, fully comply with all applicable federal, state, provincial and local laws, rules, regulations and ordinances and shall indemnify and hold harmless NETAPP from and against any loss, claim, damage, liability, expense, or cost (including without limitation attorney's fees and court costs) resulting from failure of such compliance, or out of any other negligence by Seller or those acting on Seller's behalf.

18. LIMITATION OF LIABILITY. IN NO EVENT SHALL NETAPP BE LIABLE TO SELLER OR SELLER'S ASSISTANTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH,THIS AGREEMENT, WHETHER OR NOT NETAPP WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL NETAPP BE LIABLE FOR SUMS IN EXCESS OF THE VALUE OF THE GOODS AND SERVICES PROVIDED HEREUNDER.

19. Assignments and Subcontracts. Seller shall not assign or subcontract this Agreement or any right or obligation hereunder without the prior written consent of NETAPP. NETAPP may from time to time assign this Agreement or any rights, obligations, or benefits hereunder to its related, affiliated, or successor corporations.

20. Delays. Whenever any cause delays or threatens to delay the timely performance of this Agreement or any work or service hereunder, Seller shall immediately notify NETAPP of all relevant information with respect to such cause. If Seller is or will be delayed in any performance or delivery by more time than is acceptable to NETAPP in NETAPP’s sole judgment, then NETAPP may terminate this Agreement in whole or in part and such termination shall not be a breach of this Agreement and shall be without penalty or payment.

21. Price Warranty. Seller warrants that the prices specified in this Agreement do not exceed the prices charged for like quantities of the same or substantially similar articles to any other purchaser. If prices are lowered for any other customer purchasing similar articles in similar quantities, NETAPP's price shall be lowered to such price. Seller agrees to notify NETAPP of such lower prices within ten (10) days of such sale. Seller will give NETAPP the benefit of any price declines at actual time of shipment. This Agreement must not be filled at higher prices than last quoted or charged without prior written consent of NETAPP. Prices include and Seller shall bear all duties, fees, and taxes including sales, use, property, excise, value added and gross receipts levied on this Agreement or the Goods prior to delivery to the DDU Point. Seller agrees that if any of the above is paid by NETAPP, Seller shall immediately reimburse NETAPP for the amount paid plus any related expenses and interest.

22. Services Warranty. Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, Seller represents and warrants that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in this Agreement. Seller represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Seller is bound.

23. Goods Warranty. Seller warrants that all Goods provided will be new and will not be used or refurbished. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications, drawings, samples or other descriptions given, including those set forth in this Agreement and Seller's sales literature; to be of merchantable quality; to process correctly, provide, and/or receive date data within and between the twentieth and twenty-first centuries; and, if of Seller's design, to be suitable for the purpose intended, to meet all of the performance requirements and to be free from defects in design. This warranty shall run to NETAPP, its successors, assigns, and the users of Goods covered by this Agreement. The aforesaid expressed warranties shall be in addition to any warranty implied by law and any standard warranty or guarantee of Seller, shall be construed as conditions as well as warranties and shall not be exclusive. Seller agrees to replace or to correct any Goods not conforming to the foregoing requirements when notified by NETAPP or its successors within three (3) years after final acceptance. Seller hereby agrees that it will make spare parts available to NETAPP for a period of five (5) years from the date of shipment at Sellers then current price, less applicable discounts. If Seller, upon notice of defect, fails promptly to correct or replace the Goods, NETAPP may do so without further notice and Seller shall reimburse NETAPP for all costs incurred thereby. No inspection, test or approval of any kind, including approval of designs, shall affect Seller's obligation under this Section. Goods which have been rejected shall not thereafter be tendered for acceptance unless the former rejection and correction are identified. Replaced or repaired Goods shall be subject to the provisions of this Section 23 to the same extent as the original Goods except that the warranty shall run from the last delivery date. NETAPP may return rejected Goods or hold them at Seller’s risk and expense, and may in either event charge Seller with costs of transportation, shipping, unpacking, examining, repacking, reshipping, and the like.

24. Patents. Unless an infringement arises exclusively from a design that is proprietary to NETAPP and provided by NETAPP, Seller shall, at its expense, hold harmless and defend NETAPP, its customers, and all persons claiming under NETAPP against any suit or suits for the infringement of any patent, trade secret, copyright, trademark or other intellectual property right of a third party and shall indemnify the aforesaid parties against all damages, claims, losses, liabilities, costs and expense of any kind or nature (including without limitation attorney's fees and court costs) arising therefrom by reason of the manufacture, sale or the normal and intended use of the articles covered by this Agreement. Where performance under this Agreement includes experimental, developmental or research effort and such work is paid for in whole or in part by NETAPP, Seller agrees to disclose to NETAPP all confidential processes, knowhow and trade secrets resulting there from and, on request, to assign to NETAPP each invention and property right resulting there from. Should the use by

NETAPP or its customers of any of the Goods enjoined, or in the event Seller desires to minimize its liabilities hereunder, Seller may, at its option, either: (a) substitute a fully equivalent non-infringing item; (b) modify the infringing item so that it no longer infringes but remains functionally equivalent; (c) obtain for NETAPP or NETAPP's customers, at Seller's expense, the right to continue use of such item. If none of the foregoing is feasible, NETAPP may, at its option, require that Seller take back such infringing item and refund to NETAPP or its customers the purchase price therefor.

25. Data Protection. To the extent that Seller receives any information that relates to an identified or identifiable individual ("Personal Data") from or on behalf of NETAPP in connection with any Agreement, Seller will process such Personal Data solely for the purpose of providing the goods and services specified in such Agreement, in accordance with all applicable agreements with NETAPP, including without limitation any applicable data processing agreement, and in compliance with all applicable laws and regulations. Without limiting the foregoing, Seller will not retain, use, or disclose such Personal Data for any purpose other than providing the goods or services specified in such Agreement, including without limitation for any commercial purpose other than providing such goods or services to NETAPP, and in no event may Seller sell such Personal Data to any third party. Seller certifies that it understands the foregoing restrictions and will comply with them. To the extent Seller provides any Personal Data to NETAPP, Seller shall ensure that it has provided all required notices and obtained any required consents to enable NETAPP to receive, transfer, and otherwise process such Personal Data in accordance with the NETAPP Privacy Policy, as may be amended from time to time, the current version of which is posted at www.netapp.com.

26. Security. Seller will implement and maintain an information security program that meets industry standards and is designed to protect the confidentiality, integrity, and availability of all resources and information necessary to provide the Goods and/ or Services to NETAPP, and any data or information belonging to NETAPP to which Seller has access. The information security program shall be reviewed and updated as necessary to comply with industry standards and shall include, but not be limited to: authentication and authorization controls for authorized personnel, regular and updated security training for all employees responsible for any aspect of the provision of the Goods and/ or Services, encryption of confidential information at rest and in transit, appropriate backup and recovery methods for disaster recovery, network security and threat detection and response systems and processes, event logging, vulnerability management, a security incident management program, a process for promptly notifying NETAPP of any security incidents, regular comprehensive security audits by a qualified and independent party, and appropriate physical security. No more than once annually, or where required by law, or after Seller is subject to a significant or material security incident impacting Seller's services or data, NETAPP, its customer or competent authorities shall have a right to request the reports from any security audits of the Seller, and the right to conduct their own reasonable security audit of Seller's information security program.

27. Governing Law; Venue. This agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of California, except its conflicts of law rules. The California Superior Court in Santa Clara County and/or United States District Court for the Northern District of California in San Jose, California, shall have jurisdiction and venue over all controversies in connection herewith and Seller waives any objection which Seller may have based on improper venue or forum non conveniens to the conduct of any proceeding in any such court.

28. Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to receive its reasonable court costs and attorney's fees in addition to any other damages.

29. Notices; Manner of Giving Notice. All notices hereunder shall be in writing and shall be deemed to have been duly given if delivered (i) personally, (ii) to an internationally or nationally recognized overnight delivery service, charges prepaid, or (iii) via registered or certified mail, postage prepaid. Notices will be deemed effective (i) on the date that personal delivery is made, (ii) three (3) business days after postage prepaid, if mailed, or (iii) the next business day if sent by overnight mail, to such address as shall be provided by the parties from time to time in writing. Any party may change its address for such communications by giving notice thereof to the other party in accordance with this Section. In addition, the parties consent to notice by email or electronic transmission sent to the email address provided by Seller and for NetApp to the following email address: General.Counsel@netapp.com.

30. United States Federal Acquisition Regulation Flow Down Provisions. NETAPP is required to flow down certain provisions in its supplier agreements, which includes this purchase order. Accordingly, the following clauses from the Federal Acquisition Regulation ("FAR") apply to this purchase order (provided the conditions described in each clause apply to this purchase order). The most up-to-date version of each FAR clause that is in effect at the time this purchase order is executed will apply.

52.203-6 Restrictions on Subcontractor Sales to the Government
52.203-7 Anti-Kickback Procedures
52.203-13 Contractor Code of Business Ethics and Conduct
52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights
52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities
52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
52.222-21 Prohibition of Segregated Facilities
52.222-26 Equal Opportunity
52.222-35 Equal Opportunity for Veterans
52.222-36 Equal Opportunity for Workers with Disabilities
52.222-37 Employments Reports on Veterans
52.222-40 Notification of Employee Rights Under the National Labor Relations Act
52.222-50 Combating Trafficking in Persons
52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving
52.225-13 Restrictions on Certain Foreign Purchases

Additionally, to the extent this purchase order involves NETAPP's sales to the U.S. Department of Defense, the following clauses from the Department of Defense Supplement (DFARS) apply to this purchase order (provided the conditions described in each clause apply to this purchase order). The most up-to-date version of each DFARS clause that is in effect at the time this purchase order is executed will apply:

252.203-7002 Requirement to Inform Employees of Whistleblower Rights
252.204-7000 Disclosure of Information
252.225-7048 Export-Controlled Items
252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System
252.246-7008 Sources of Electronic Parts

Seller and Sellers Assistants shall, to the extent they apply, abide by (1) the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin and require affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability; (2) 29 CFR Part 471, Appendix A to Subpart A, and (3) E-Verify.

If Seller or Sellers Assistant is required by federal regulations to file Employer Information Report EEO-1 (standard form 100) or Federal Contractor Veterans' Employment Report VETS-4212, Seller certifies that it or Sellers Assistant has done so or will file such reports in accordance with applicable instructions and will continue to file such reports unless or until no longer required by law or regulation. The clauses in this provision are incorporated by reference into this purchase order as if fully set forth herein. If changes to the FAR, DFARS, or agency-specific supplements result in a requirement to flow down new clause(s) during the term of this purchase order, NETAPP expressly reserves the right to unilaterally incorporate into this purchase order additional FAR, DFARS, and/or agency-specific supplemental clauses. Such additional clauses will be identified in writing as a modification to this purchase order.

31. Export Law Compliance. Seller shall fully and unconditionally comply with all applicable export laws in the performance of this Agreement. The Seller shall notify NETAPP if the delivery of any supplied Goods or Services to NETAPP is subject to US International Traffic in Arms Regulations ("ITAR"), US Export Administration Regulations ("EAR"), EU Export Controls Regulations (including Regulation EC (No) 1334/2000) and/or any other national and/or international Export Controls regulations (hereafter "Export Control Regulations"). Neither Seller nor NETAPP shall export or import directly or indirectly, any information acquired under this Agreement or any Goods utilizing any such information to any country or entity for which any export or import authority, or any agency thereof, at the time of export or import either prohibits or requires a license or other government authorization without first obtaining such license or approval. The Seller is responsible for obtaining all necessary licenses, agreements or approvals needed for the delivery of Goods and Services pursuant to the NETAPP purchase order to NETAPP from the appropriate authorities. If the Seller fails to obtain or to retain such license, agreement or approval, the delivery of the Goods or Services shall be cancelled and NETAPP is entitled to terminate the Agreement without incurring any liability versus Seller and the Seller must compensate NETAPP for all direct and indirect damages consequential to the Seller's failure to deliver the Goods or Services. Seller must inform NETAPP promptly if the necessary license, agreements or approvals are not issued, delayed or withdrawn as well as of any circumstances which may give cause for such non- issuance, delay or withdrawal. Seller shall notify NETAPP if the supply to and/or use by NETAPP of any Goods or Services is covered by an appropriate U.S. or other governmental license, agreement or approval, and provide date, reference and full details of the issuing governmental authority of such license, agreement or approval. Seller shall indemnify NETAPP for any claims, costs, penalties and/or damages (including reasonable attorney's fees) incurred by NETAPP consequential to Seller's failure to comply with applicable Import or Export Controls Regulations and/or required license, agreement or approval. Without prejudice to Seller's responsibility to obtain and retain licenses, agreements or approvals as set out above, NETAPP will, upon request, at the Seller's expense endeavour to assist the Seller in obtaining licenses, agreements or approvals. Upon NETAPP's request, Seller will promptly provide NETAPP with a statement of origin for all Goods and Canadian Customs documentation for Goods wholly or partially manufactured outside of Canada.

32. Compliance. Seller shall comply fully with all applicable federal, state, provincial and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws. With respect to any transactions under these purchase order terms and conditions, both parties will cooperate in any reasonable manner to affect compliance with foreign sales corporation rules as set forth under the applicable tax regulations.

33. Compliance with Regulations on Hazardous Substances and Waste Electrical Engineering Components. Seller shall comply with all applicable laws relating to the restrictions on hazardous substances in electrical and electronic equipment ("ROHS") in connection with Seller's Products, and to the collection, treatment, recycling and disposal of waste from electrical and electronic equipment ("WEEE") in connection with any disposal activities conducted by Seller for such Products. In addition, Seller hereby acknowledges that Seller has read and Seller agrees with all requirements of the current version of NETAPP specification 267-00046 PROC, ENVIRONMENTAL PRODUCT REQUIREMENTS, as posted on the NETAPP Document Portal website. (If the Seller does not have access to the NETAPP Document Portal website, Seller shall contact NETAPP for a copy of the most current version of such specification and its attachments.) Seller certifies that upon the purchase of Goods under this Agreement, any and all such Goods shall meet all requirements of NETAPP specification 267-00046 PROC, ENVIRONMENTAL PRODUCT REQUIREMENTS. Upon request by NETAPP, Seller shall promptly provide in writing a certification of such compliance or a declaration of the Goods content.

34. Code of Conduct. Seller will maintain codes of conduct for all its personnel that are substantially similar in all material respects to the NETAPP Supplier Code of Conduct and NETAPP Code of Conduct, as may be amended from time to time, the current versions of which are posted at https://www.netapp.com/company/suppliers/. Seller will ensure all personnel, regardless of whether they are providing Services or Goods to NETAPP under this Agreement, are aware of, agree to comply, and do comply with those codes of conduct or their updates.

35. Disclaimer of Trademark Rights. Seller hereby disclaims any interest in any trademark, tradenames, such rights Seller may acquire in such trademarks, tradenames or goodwill, however acquired, whether by operation of law, estoppel or otherwise.

36. Survival. Seller's obligations under Sections 10, 14, 15, 16, 17, 18, and 21 through 33, 35- 37 shall survive any termination of this Agreement.

37. Language. The parties confirm that it is their wish that this Agreement, as well as any other documents relating hereto, including all purchase orders, notices, schedules, authorizations, attachments and amendments, have been and shall be drawn up in the English language only. Les parties confirment que c'est leur volonte expresse que ce contrat et tous documents y etant relatif, y compris les bons de commande, les avis,les annexes, les autorisations, les pieces jointes et les amendements soient rediges en langue anglais seulement.tion of law, estoppel or otherwise.

38. Insurance. Seller shall provide NETAPP with a signed original Certificate of Insurance. Insurance carrier must be rated A-VII or better by A.M. Best Company. Seller shall, at its own expense, maintain insurance as is required by law in Canada including workplace injury and auto liability, and any coverages which are usual, customary and appropriate for its business accord to the services or products provided. The required insurance, throughout the life of this Agreement shall include, but is not limited to, the following:

(a) Commercial General Liability. Commercial General Liability insurance covering bodily injury, death, property damage, personal injury, broad form property damage and contractual liability shall be with limits not less than $1,000,000 per occurrence and $2,000,000 general aggregate. NETAPP shall be named as Additional Insured. Coverage shall be considered primary without right of contribution of NETAPP’S insurance policies.
(b) Professional Liability/Errors and Omissions. Professional Liability insurance covering Errors and Omissions shall be on an occurrence or a claims-made basis, for limits of $3,000,000 annual aggregate for hardware, software, consulting or any other services provided under the Agreement. If coverage is written on a claims-made basis, coverage must be maintained for a period of 3 years after the Agreement expiration.
(c) Automobile Liability. Automobile Liability insurance covering owned, non-owned and hired vehicles shall be with limits not less than $500,000 per occurrence.
(d) Workers Compensation and Employer’s Liability. Workers Compensation insurance shall be provided as required by the law(s) of the state(s) or province, as the case may be, in which the Agreement is to be performed. Employer’s Liability shall be provided in a limit not less than $1,000,000. A waiver of subrogation shall apply in favor of NETAPP. If Seller is an exempt business under the laws of the state or province where the work will be performed, Seller may satisfy this requirement by submitting a signed waiver and release form from each individual involved in the work to be performed pursuant to this Agreement.
(e) Umbrella Liability. Umbrella Liability in excess of Commercial General Liability, Auto Liability and Employer’s Liability shall be provided in a limit not less than $1,000,000 per occurrence and in the aggregate.
(f) Employee Dishonesty Employee Dishonesty coverage, with Third Party Client coverage for limits not less than $250,000.
(g) Cyber/Privacy Liability. Cyber/Privacy Liability insurance covering liability for data breach (to include expenses including but not limited to notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and financial loss resulting from identity theft), unauthorized access to electronic network, website media content, introduction of a computer virus, data loss and theft with a limit of $3,000,000 per occurrence.

All of the foregoing policies shall contain a Severability of Interests clause and be on an occurrence basis unless otherwise expressly stated. All such coverages shall remain in full force and effect during the term of the Agreement unless otherwise required above. NETAPP shall be notified in writing thirty (30) days prior to any coverage cancellation or non-renewal, except for non-payment of premium which shall require at least 10 days’ notice. Seller shall be responsible for its subcontractors maintaining sufficient limits of the same insurance coverage.

39. Entire Agreement. In the absence of a Master Agreement, this Agreement, including all of these terms and modifications, if any, constitutes the exclusive and entire agreement between NETAPP and Seller and supersedes any and all prior discussions, correspondence, understandings and/or agreements pertaining to its subject matter.