



## PROFESSIONAL SERVICES TERMS

These Professional Services Terms (“**Professional Services Terms**”) set forth the terms and conditions under which NetApp will provide Professional Services to Customer. For Customer purchasing Professional Services directly from NetApp, the NetApp General Terms (posted at <http://netapp.com/us/how-to-buy/stc.html>) also apply. For Customer purchasing Professional Services from a NetApp authorized distributor or reseller, the NetApp Channel End User Terms (posted at <http://netapp.com/us/how-to-buy/stc.html>) also apply. To the extent there is any conflict between these Professional Services Terms and those contained in the NetApp General Terms or NetApp Channel End User Terms, these Professional Services Terms will control and take precedence. These Professional Services Terms will not apply if Customer has a separate applicable agreement with NetApp for the provision of Professional Services. The revenue-related terms set forth in these Professional Services Terms (i.e., Sections 3, 4 and the remedies for non-payment language in Section 7 below) will not apply if Customer is purchasing Professional Services from a NetApp authorized distributor or reseller.

**1. DEFINITIONS.** Capitalized terms not specifically defined in these Professional Services Terms will have the same meaning as in the NetApp General Terms or NetApp Channel End User Terms, as applicable. In addition to the definitions set forth in the General Terms or Channel End User Terms, the following definitions will apply:

**1.1. Deliverables.** Tangible materials, including reports, analyses, documents, drawings, studies, recommendations, scripts, code or other specific outputs identified as a Deliverable and delivered to Customer under the relevant Engagement Document.

**1.2. Engagement Document.** A NetApp-approved document, including but not limited to a statement of work, service brief or service description that defines the tasks, schedule of performance and/or Deliverables to be provided by NetApp.

**1.3. IP Rights.** Patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

**1.4. Pre-Existing IP.** IP Rights, existing, owned, or otherwise licensed by Customer or NetApp prior to entering into these Professional Services Terms.

**1.5. Professional Services Materials.** All materials, including software, tools, know-how, utilities, methodologies, inventions or innovations of any kind and/or information that NetApp or a Professional Services Resource working on NetApp’s behalf may create, conceive, develop, use or reduce to practice, alone or jointly with others, in the course of, or as a result of, performing Professional Services, including any modifications or improvements to such materials.

**1.6. Professional Services Resource.** A NetApp employee, supplier or subcontractor which NetApp utilizes to provide Professional Services to Customer.

### 2. SCOPE OF SERVICES

**2.1. Projects.** NetApp will perform Professional Services in accordance with the applicable quotation and purchase order, the Engagement Document, and these Professional Services Terms. NetApp may in its sole discretion require an Engagement Document to be executed prior to commencement of the Professional Services.

**2.2. Change Orders.** Changes to the Professional Services specified in an Engagement Document will not be effective unless a change order has been executed by authorized representatives of both Parties and NetApp has received the applicable purchase order corresponding to a quotation supporting the change.

**2.3. No Custom Development.** Professional Services are of a scalable, repeatable nature and, as such, the same or similar Professional

Services have been and will continue to be provided to other NetApp customers. No custom development activity will be performed as Professional Services. Any custom development will be subject to a separate written agreement.

**2.4. No Superuser Access.** In no event will Customer grant to a Professional Services Resource root or “superuser” access at a server or network level. Such services will be subject to a separate written agreement.

**3. FEES.** An Engagement Document or the associated price quotation will state the fees to be paid by Customer to NetApp for Professional Services rendered and any related payment schedules. Customer’s execution of an Engagement Document or NetApp’s acceptance of a Purchase Order, as applicable, will indicate acceptance of the stated fees and payment schedules. No changes in fees or payment schedules will be effective absent a mutually executed change order.

**4. EXPENSES.** In addition to the foregoing, if specified in an Engagement Document, Customer will pay NetApp its actual out-of-pocket expenses, including travel, as reasonably incurred by NetApp during the performance of the Professional Services.

**5. DURATION AND EXPIRATION OF PROFESSIONAL SERVICES BASED ON TIME AND MATERIAL ENGAGEMENT.** In relation to Time and Material (“T&M”) Professional Services, NetApp will provide to Customer a Professional Services Resource qualified at the skill level purchased by Customer, to perform T&M Professional Services at an agreed Customer site or remotely for the total amount of hours and/or days set forth in NetApp’s price quotation and Customer’s purchase order. T&M Professional Services purchased on an hourly basis will be performed in minimum increments of 4 consecutive hours. For T&M Professional Services purchased on a daily basis, a “day” constitutes at least 4 hours but not more than 8 hours in a single calendar day. Any hours exceeding 8 hours in a single calendar day are considered overtime. When the accumulated overtime hours are at least 4 hours but not more than 8 hours, this constitutes an additional day. Unused T&M Professional Services will expire 1 year from the date of purchase. Customer payments are nonrefundable, and credit for any unused T&M Professional Services will not be available.

**6. INTELLECTUAL PROPERTY RIGHTS.** Each Party will retain all right, title and interest in and to its Pre-Existing IP. NetApp will retain all right, title, and interest in and to the Professional Services, Professional Services Materials, Deliverables, and IP Rights embodied therein. In no event will Professional Services Materials be deemed to include Customer Pre-Existing IP or Customer Confidential Information. Customer hereby grants NetApp a non-exclusive, worldwide, royalty-free, fully paid-up license to use Customer’s Pre-Existing IP and Confidential Information for the sole purpose of performing the Professional Services and providing the

Deliverables. Upon receipt of full payment, NetApp hereby grants to Customer a limited, non-exclusive, non-transferable, terminable license, with no right to sublicense, to use the Deliverables, including any incorporated in such Deliverables, Professional Services Materials for Customer's internal business purposes. Customer will not re-distribute the Deliverables (including any Professional Services Materials incorporated therein) to any third parties without NetApp's prior written consent.

**7. TERMINATION; REMEDIES FOR NON-PAYMENT; SCHEDULED DELIVERY.** Customer may terminate an Engagement Document for convenience upon 30 days prior written notice. Such termination will not relieve Customer from its obligations to pay NetApp any sums accrued prior to such termination, including all expenses and time and

material costs incurred or expended by NetApp, and any early termination fees set forth in such terminated Engagement Document, which will be immediately due upon termination. Customer may request that NetApp complete the Professional Services in progress after notice of termination. NetApp may, in its sole discretion, elect to complete such Professional Services, and, upon completion, will be entitled to full compensation. If Customer fails to make payment in accordance with the applicable payment terms, or fails to schedule delivery of the Professional Services within 1 year of the applicable date of purchase, then, in addition to any other available remedies, NetApp will have the right to decline to render further Professional Services to Customer. NetApp may terminate an Engagement Document immediately on written notice to Customer if Customer commits a material breach of these Professional Services Terms.