



## PROFESSIONAL SERVICES TERMS

These Professional Services Terms (“**Professional Services Terms**”), together with the General Terms, set forth the terms and conditions under which NetApp will provide Professional Services to Customer, whether acquired directly from NetApp or from a NetApp Partner or, where applicable, a NetApp Cloud Provider. These Professional Services Terms (and the General Terms) exclusively govern NetApp’s delivery of Professional Services unless Customer has a separate written agreement with NetApp that specifically governs Professional Services.

### 1. DEFINITIONS

Capitalized terms not specifically defined in these Professional Services Terms have the same meaning as in the General Terms. In addition, the following definitions 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 Intellectual Property (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.
- 1.3 Pre-Existing IP.** IP Rights existing, owned, or otherwise licensed by Customer or NetApp prior to entering into these Professional Services Terms.
- 1.4 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.
- 1.5 Professional Services Resource.** A NetApp employee, supplier or subcontractor that 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 NetApp quotation and corresponding Order (including the Engagement Document), and these Professional Services Terms. NetApp, in its sole discretion, may require an Engagement Document to be executed prior to commencement of the Professional Services.
- 2.2 Change Orders.** Unless otherwise noted in an Engagement Document, changes to Professional Services specified in an Engagement Document will not be effective unless a change order has been executed by authorized representatives of the parties to the original Engagement Document, and NetApp has received the applicable Order corresponding to a NetApp 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.
- 2.5 **Acceptance.** Acceptance of Professional Services by Customer will occur when such Professional Services are rendered, unless otherwise agreed in an Engagement Document.

### 3. PROFESSIONAL SERVICES WARRANTY

NetApp warrants that Professional Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices. In the event of a breach of the foregoing warranty, NetApp will re-perform such Professional Services. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTY IS CUSTOMER’S SOLE AND EXCLUSIVE WARRANTY AND REMEDY. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN THESE PROFESSIONAL SERVICES TERMS, NETAPP MAKES NO OTHER WARRANTIES AND SPECIFICALLY DISCLAIMS AND EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

### 4. DIRECT PURCHASES ONLY

This Section applies only to Orders for Professional Services that Customer places directly with NetApp.

- 4.1 **Fees.** The Engagement Document and/or the associated NetApp quotation will state the fees Customer is required to pay for Professional Services under an Order and any related payment schedules. Customer’s execution of an Engagement Document or NetApp’s acceptance of an 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.
- 4.2 **Expenses.** In addition to the foregoing, if specified in an Engagement Document, Customer will pay NetApp’s actual out-of-pocket expenses, including travel, as reasonably incurred by NetApp during the performance of the Professional Services.

### 5. DURATION OF PROFESSIONAL SERVICES BASED ON TIME AND MATERIAL ENGAGEMENT

For Professional Services in which fees are calculated based on the time spent by NetApp personnel and cost of materials provided (“**Time and Materials**” or “**T&M**”), 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 days set forth in the applicable NetApp quotation. T&M Professional Services purchased on an hourly basis will be performed in minimum increments of four (4) consecutive hours. For T&M Professional Services purchased on a daily basis, a “day” constitutes



at least four (4) hours but not more than eight (8) hours in a single calendar day. Overtime will be charged after eight (8) hours in a single calendar day. An additional day is after four (4) hours of overtime, and two (2) additional days is after eight (8) hours of overtime.

## **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 Professional Services Materials incorporated in such Deliverables, for Customer's internal business purposes. Customer will not redistribute the Deliverables (including any Professional Services Materials incorporated therein) to any third parties without NetApp's prior written consent.

## **7. TERMINATION**

- 7.1 Termination by Customer.** Customer may terminate an Engagement Document for convenience upon 30 days' prior written notice, subject to payment for 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.
- 7.2 Termination by NetApp.** Customer's failure to fulfill its obligations set forth in an Engagement Document within 30 days after receiving notice from NetApp of such failure will be deemed a material breach of the applicable Order and Engagement Document.

## **8. EXPIRATION OF PROFESSIONAL SERVICES**

Unused T&M Professional Services will expire one year from the date of purchase. Certain other Professional Services will expire if unused one year from the date of purchase if documented in an Engagement Document. Customer payments are nonrefundable, and credit for any unused Professional Services will not be available.

*[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]*