

## INDIRECT CHANNEL PARTNER TERMS

**Your Appointment:** Participation in the NetApp Partner Program is governed by the Program Guide applicable to Your appointment and these Terms. Together these replace any prior agreements between You and NetApp in relation to the resale and distribution of NetApp Products and Services. You are expected at all times to comply with all of these terms.

**Program Guide:** NetApp may update the Program Guide at least once a year and the updated Program Guide will then automatically apply to You. NetApp will communicate all changes to You.

**Our Relationship:** The relationship between You and NetApp is that of independent contractors and You must not act or represent Yourself as an agent of NetApp. You are not permitted to assign or transfer Your appointment as a NetApp Partner or any rights and obligations in relation to it or any purchase, without the prior written consent of NetApp.

**Your Right to Resell:** You are authorized by NetApp to resell and distribute Products and Services to End Users in the Territory specified in Your Indirect Partner Appointment Letter for their own internal use only (that is, not for resale, remarketing or redistribution) unless NetApp has specifically agreed otherwise. Reselling to a third party that is not an End User or an authorized NetApp Partner is strictly forbidden. NetApp Products and Services are subject to export and import control laws and regulations of the United States, the European Union and other countries and may include export-controlled technologies such as encryption. You agree to comply with such laws and regulations and maintain full, true, and accurate records of exports, re-exports, and transfers of the Products and Services purchased or deployed for a minimum of 7 years from the date of shipment. You must promptly notify NetApp of any violations or potential violations of customs or export laws that You become aware of.

**Placing Orders:** Any orders You place for NetApp Products and Services must be placed with the Distributor that You selected in the Partner Application Form. The terms governing such orders are between You and the Distributor. For more information on selecting or changing Your Distributor You should contact us by emailing to [channel@netapp.com](mailto:channel@netapp.com).

**Channel End User Terms:** When reselling and distributing NetApp Products and Services to End Users, You must ensure that the End User is fully aware of the terms that apply to their purchase and use of NetApp Products and Services. These are NetApp's Channel End User Terms, Support Services Terms, Professional Services Terms and Cloud Data Services Terms, all of which can be found on NetApp's How to Buy website. You must either forward a copy of these terms to the End User as part of their order or provide them with the following link <http://netapp.com/us/how-to-buy/stc.html>. NetApp will not accept any liability in relation to the Products and Services over and above those set out in the Channel End User Terms, Support Services Terms, Professional Services Terms or Cloud Data Services Terms. If You choose to offer different or better terms to any End User, this is solely at Your risk and You cannot look to NetApp to cover such risk or terms.

**Trademarks:** As a NetApp Partner, NetApp grants You a limited, non-transferable, nonexclusive license to use NetApp's trademarks for the purposes of identifying Yourself as a NetApp Partner and for advertising and promotion purposes. Details of what You can or cannot do with NetApp's name and trademarks are set out on the following website: <https://www.netapp.com/us/legal/tmguidelines.aspx>.

**Software License:** As a NetApp Partner, NetApp grants You a limited right to distribute NetApp Software to End Users, however such right does not include the right to use the Software Yourself.

**Purchasing for Own Use:** If You wish to purchase Products and Services for Your own internal use or to provide managed or hosting services, such purchase and use is governed by the Channel End User Terms. If You are purchasing NetApp Products and Services so as to provide managed or hosting services, any license terms shall be extended so as to enable You to provide such managed or hosting services.

**Intellectual Property Protection:** If a claim for infringement of any third party's patent, trademark or copyright is brought against You in relation to any NetApp Products and Services that You have resold, distributed or are using, You will allow NetApp to defend or settle any such claim as NetApp thinks appropriate. NetApp will pay any settlement amounts or any damages and costs awarded by a court against You to the extent such damages and costs are specifically attributable to the infringement claim but only if You: (a) promptly notify NetApp in writing of any infringement claim; (b) provide information and assistance to NetApp to enable NetApp to defend such infringement claim; and (c) provide NetApp with sole control of the defense or settlement negotiations. This is the extent of NetApp's liability to You in relation to any infringement claim.

**Confidential Information:** Either party may share information with the other in relation to Your appointment and role as a NetApp Partner and NetApp Products and Services that is of a sensitive and confidential nature. Both parties shall keep such information safe and not share it with others unless expressly agreed to by the other party.

**Termination:** Your appointment as a NetApp Partner may be terminated by either of us giving the other party 30 days notice in writing that they wish to terminate. Upon termination You will no longer be permitted to call Yourself or act as a NetApp Partner and any right to use NetApp's name or trademarks, or right to resell or distribute NetApp Products and Services will automatically cease.

**Compliance with Laws:** You agree to comply with all applicable laws in transactions involving NetApp, including anti-bribery and anti-corruption laws. This means that nothing of value may be given to a third party, such as an actual or prospective customer, in connection with a NetApp transaction in order to get or maintain business or to encourage an official to perform his or her official duties.

**Personal Data and Privacy.** Any data You communicate to NetApp hereunder may only be used by NetApp or transferred to third parties pursuant to NetApp's [Privacy Policy](#). Additional terms and conditions governing NetApp's role as a data processor are at the How to Buy site.

**Audit:** You agree to grant NetApp and its independent accountants the right to audit and verify Your compliance with these Terms and Your role and obligations as a NetApp Partner, upon reasonable advance notice and only during regular business hours. Such audit may require You (a) giving access to Your records in relation to Your appointment as a NetApp Partner; (b) providing copies of documents or other evidence to verify Your compliance with Your obligations hereunder; (c) responding to requested assessments; and (d) providing periodic certifications. In addition, NetApp will periodically conduct check-ins with regard to Your performance as a NetApp Partner, which may result in Your appointment as a NetApp Partner being revoked or a demotion of Your partner level status if You fail to perform as expected.

**Limitation of Liability:** To the extent that limitation of liability is permitted by law:

- (i) in no event will NetApp be liable to You for special, incidental, indirect or consequential damages regardless of the basis of claim; and
- (ii) NetApp's liability to You is limited to direct damages in an amount not to exceed US\$1,000,000 on a cumulative basis.

These limitations do not apply to liability for claims arising from: (a) death or personal injury caused by NetApp's negligence or gross negligence; (b) willful misconduct or fraud by NetApp; (c) any other liability which cannot be excluded under applicable laws.

**U.S. Public Sector Restrictions and Regulations:** You will not act as a reseller - either in the capacity of a prime contractor or a subcontractor - of Products or Services to an End User that is either a U.S. federal government entity, a U.S. state or local government entity, or a U.S. public educational institution, unless NetApp has given You express written approval to do so. In such event the [FED](#) and/or [SLED](#) Terms and Conditions, as applicable, shall also apply to You.

**Governing Law:** These Terms will be governed by and interpreted in accordance with to the laws of (a) the State of California, United States, if You are located in the United States, Canada and Mexico; or (b) the Netherlands if You are located elsewhere.