

CONSULTANT PARTNER TERMS

These Consultant Partner Terms ("CP Terms") are an exhibit to the accompanying Consultant Partner Program Agreement. NetApp and Partner may each be referred to as a "Party" or collectively, as the "Parties".

1. DEFINITIONS

- 1.1. **Initiative Guide.** Guidelines related to a specific initiative that Partner may be invited to participate in, as may be updated from time to time by NetApp, describing the specific terms and conditions of the initiative to which Partner is selected to participate.
- 1.2. **Partner.** The entity contracting with NetApp as more specifically identified in the Program Agreement.
- 1.3. **Program.** A specific engagement model between NetApp and Partner, defining Partner's role in NetApp's partner and pathway ecosystem.
- 1.4. **Program Guide.** The guide, as may be updated from time to time by NetApp, describing the specific terms and conditions of the Program to which Partner is admitted.

2. INTELLECTUAL PROPERTY RIGHTS.

- 2.1. **Access to Tools.** Subject to the requirements under the applicable Partner Program, Partner may receive access to online NetApp tools. Such access may be subject to additional terms and conditions that are communicated to Partner prior to access. Any login credentials provided to Partner are confidential and may not be shared with any third party.
- 2.2. **License to Use NetApp Trademarks.** NetApp grants Partner a limited, non-transferable, nonexclusive license to use NetApp's trademarks for the purposes of identifying itself as a NetApp-authorized partner pursuant to the applicable Program, and for advertising and promotion under the Agreement.

3. LIMITATION OF LIABILITY

- 3.1. **Liability Exclusions.** Regardless of the basis of claim (e.g., contract, tort, or statute), in no event will NetApp or its suppliers or subcontractors be liable to Partner for special, incidental, indirect, or consequential damages; downtime costs; loss or corruption of data; loss of revenues, profits, goodwill, or anticipated savings; procurement of substitute goods and/or services; and interruption of business. This exclusion is independent of any remedy set forth in these CP Terms.
- 3.2. **Cumulative Liability.** To the extent that limitation of liability is permitted by law, NetApp's liability to Partner is limited to US\$10,000. This limitation is cumulative and not per incident.
- 3.3. **Exceptions.** The limitations set forth in Sections 3.1 and 3.2 will not apply to liability for death or personal injury caused by negligence, gross negligence, willful misconduct, fraud, any other liability which cannot be excluded under applicable laws, or to IP Claims under Section 6.

4. CONFIDENTIALITY

- 4.1. **General.** "Confidential Information" means any information disclosed by a Party to the other Party in connection with these CP Terms that (a) is marked "confidential" or "proprietary at the time of disclosure; (b) if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure and summarized in a writing delivered to the receiving Party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. "Confidential Information" shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving Party; (b) was in the receiving Party's lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the receiving Party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving Party.
- 4.2. **Treatment of Confidential Information.** Confidential Information will remain the property of the disclosing Party. Each Party will have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under these CP Terms. Each Party agrees (a) to hold the other Party's Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other Party's Confidential Information only to those employees or agents who have a need to know in furtherance of these CP Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The receiving Party will protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving Party may disclose the disclosing Party's Confidential Information to the extent such disclosure is required pursuant to a

judicial or administrative proceeding, provided that the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

- 4.3. Return/Destruction.** Upon the disclosing Party's written request, all Confidential Information (including all copies thereof) of the disclosing Party will be returned or destroyed, unless the receiving Party is required to retain such information by law, and the receiving Party will provide written certification of compliance with this Section 8.3.

5. TERMINATION

- 5.1. Compliance Review Requirement.** Notwithstanding Partner's acceptance of this Agreement, Partner's access to the NetApp Partner Program and/or full NetApp Partner status (including all associated benefits thereto) shall only become effective upon NetApp's notification to Partner of (i) Partner's having passed NetApp's compliance review and (ii) its level of NetApp Partner status ("Notification"). NetApp may conduct subsequent additional compliance reviews as it sees fit. Partner's failure to pass any compliance review by NetApp shall result in immediate termination of this Agreement.
- 5.2. Program Agreement.** These CP Terms will terminate automatically upon expiration or termination of the referencing Program Agreement.
- 5.3. Termination for Convenience.** Either Party may terminate the Agreement for convenience by giving the other Party ninety (90) days prior written notice. Termination for convenience does not entitle the other Party to any form of compensation.
- 5.4. Termination for Cause.** Either Party may terminate the Agreement for cause in the event the other Party breaches a material term of the Agreement and does not cure such breach within a thirty (30) day written notice period. Notwithstanding the foregoing, either party may terminate the Agreement immediately upon written notice in the event of breach by the other party of Section 8.0 (Confidentiality) or Section 10 (Compliance with Laws).
- 5.5. Effect of Termination.** Upon termination of the Agreement, Partner will immediately cease identifying itself as a NetApp-authorized partner as specified in the Program Agreement.
- 5.6. Survival.** Provisions of the Agreement which by their nature extend beyond the termination or expiration of the Agreement will remain in effect until fulfilled.

6. COMPLIANCE WITH LAWS

- 6.1. Compliance.** Each Party will comply with all applicable laws and regulations.
- 6.2. Personal Data and Privacy.** NetApp acknowledges and agrees that the data, including nominative data, which Partner communicates to NetApp in performance of the Agreement, may not be freely used by NetApp or transferred to third parties unless required to comply with relevant laws, to fulfill its obligations under the Agreement, or if prior written consent is obtained from the Partner through a Data Privacy Model Contract/Transfer Agreement. In such cases, NetApp agrees that any data NetApp transmits outside the European Economic Area, including to countries that do not guarantee the protection of nominative data in a manner identical to that applicable in The European Union, will be protected in accordance with the European Union requirements. Partner represents having obtained or that it shall obtain all consents or authorizations necessary by virtue of applicable law to communicate the data to NetApp.
- 6.3. Export.** Each Party will comply with all applicable export/import laws.
- 6.4. Anti-Bribery.** Each Party will comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Anti-Kickback Act, the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

7. MISCELLANEOUS

- 7.1. General Indemnity.** Partner shall indemnify NetApp and its directors, employees, subsidiaries, and affiliates for any and all claims, damages, losses, costs and expenses, including attorneys' fees, arising from any third party claims asserted against NetApp, its employees, subsidiaries, and/or affiliates that are based in whole or in part on: (a) Partner's breach of the Agreement; (b) any Partner service; or (c) any false, misleading or otherwise unauthorized statements or representations.
- 7.2. Assignment and Subcontracting.** Partner may not assign the Agreement, or any rights and obligations resulting from the Agreement, without the prior written consent of NetApp. Any purported assignment by Partner without NetApp's prior written consent will be null and void. NetApp may use subcontractors to fulfill its obligations under these CP Terms.
- 7.3. Force Majeure.** Neither Party will be liable to the other for any alleged loss or damages resulting from acts of God, acts of civil or military authority, governmental priorities, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation, or any other causes beyond the reasonable control of a Party (collectively, "Force Majeure").
- 7.4. Waiver.** Any waiver or failure to enforce any provision of the Agreement on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either Party's exercise of any right or remedy provided in the Agreement will be without prejudice to its right to exercise any other right or remedy.

- 7.5. Severability.** In the event any provision of the Agreement is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.
- 7.6. Relationship between the Parties.** The relationship of the Parties under the Agreement is that of independent contractors. Nothing set forth in the Agreement will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture or employer and employee between the Parties. Neither Party will act or represent itself, directly or by implication, as an agent of the other Party. The rights and obligations of the Parties under the Agreement shall be governed in all respects exclusively by the laws specified in the Program Agreement without regard to conflict of law provisions. The Parties agree to disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.
- 7.7. Entire Agreement.** The Agreement is the complete Agreement between the Parties with respect to the subject matter contained herein and replaces any and all prior oral or written communications between the Parties. There are no other conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Any amendments or waiver hereto will be effective only if made in writing by non-preprinted agreements clearly understood by both Parties to be an amendment or waiver and signed by an authorized representative of each Party. In the event of a dispute between the English and non-English version of the Agreement (where translated for local requirements), the English version of the Agreement shall govern to the extent permitted by applicable laws.