

**NETAPP CERTIFICATION PROGRAM
CANDIDATE AGREEMENT**

YOU MUST READ THIS NETAPP CERTIFICATION PROGRAM (OR "NCP") CANDIDATE AGREEMENT ("AGREEMENT") BEFORE PROCEEDING WITH THE NCP EXAM, CERTIFICATION, ACCREDITATION AND ASSESSMENT PROCESS.

THIS AGREEMENT IS MADE BETWEEN YOU AND NETAPP. YOU AGREE THAT THE FOLLOWING TERMS AND CONDITIONS GOVERN YOUR NETAPP CERTIFICATION PROGRAM PARTICIPATION, WHICH IS A TECHNICAL CERTIFICATION, ACCREDITATION AND ASSESSMENT PROGRAM RELATED TO NETAPP PRODUCTS AND SERVICES. IN ORDER TO PROCEED TO THE EXAMINATION AND CERTIFICATION, ACCREDITATION AND ASSESSMENT PROCESS YOU MUST AGREE TO THE TERMS AND CONDITIONS. IF YOU DO NOT AGREE, THEN YOU ARE NOT PERMITTED TO CONTINUE WITH THE PROGRAM.

1. Definitions. Capitalized terms in this Agreement not otherwise defined above have the following meanings:

1.1. "Accreditation Requirements", "Assessment Requirements", "Certification Requirements" or "Requirements" means any one of those sets of requirements established by NetApp that an individual must meet to achieve and maintain NCP certified, accredited or assessment status and any applicable Program Track.

1.2. "Confidential Information" means Program tests, exams, questions and any information provided to you or obtained by you related to the exams including specific exam answers or the content, structure or organization of any exam.

1.3. "Designation" shall mean any one of the titles established by the Program which you may become qualified to use by successfully passing all required exams and complying with all other Requirements.

1.4. "Exam Fraud" means any action or attempt which unfairly advantages you or others or otherwise influences the Program testing procedure and outcome whether through inadvertent or deliberate access to exam content, regardless of intent and whether or not it occurs before, during or after an exam. Examples of Exam Fraud may include but are not limited to: collusion, negligence, disclosure of NetApp Confidential Information, copying, sharing exam questions, providing false identification, or engaging someone to impersonate you.

1.5. "Laws" means statutes, ordinances, laws, regulations, judicial or executive orders of any government body (whether municipal, state, country or otherwise), including but not limited to export or anti-bribery laws.

1.6. "Logo" shall mean any one of the Program logos established by NetApp which you may become qualified to use by meeting applicable Requirements associated with the Logo.

1.7. "NetApp" means NetApp, Inc. and its affiliated companies.

1.8. "Official" means an official of any public international organization, government, political party, political office, candidate for a government office or any other person who may serve in a role that can influence Laws and other political decision making.

1.9. "Personal Data" means personally identifiable information including your signature, name, address, telephone number and email address

1.10. "Process" means to collect, access, retain, transfer, disclose, use or destroy Personal Data.

1.11. "Program" shall mean the NetApp Certification Program or NCP, as described herein, and as further described and updated on the NCP website.

1.12. "Program Track" or "Track" shall mean specific types of Program certification, accreditation or assessment and associated Requirements established by NetApp.

1.13. "You" means you, the individual seeking NCP certification, accreditation or assessment.

2. NCP Certification, Accreditation or Assessment

2.1 Becoming NetApp Certified or Accredited. Current Requirements are available on the [NCP web site](#). To meet Requirements for a Track, you must (a) be in compliance with this Agreement and (b) have received a NetApp-authorized acknowledgement that you have successfully met the applicable Requirements.

2.2 Maintaining your NetApp Certification, Accreditation or Assessment status. Requirements may change from time to time without specific notice to you (check the URL listed in Section 2.1 above). NetApp may require you to pass new, different or revised tests/exams from time to time as Requirements for specific Tracks as well as to maintain overall certification, accreditation or assessment status.

3. Right to Use Logo and Designation

3.1 License. Subject to your compliance with the terms and conditions set forth in this Agreement, and upon your successful completion of the Requirements for a Track, you shall be granted a non-exclusive, non-transferable, revocable license to use the Logo and Designation associated with the Track for which you are certified or accredited, solely in connection with, and solely to the extent reasonably necessary, to publicize that you have met, and continue to meet all Requirements for the applicable Track.

3.2 Limitations on Use. You agree not to use the Designation or Logo in a manner that (a) damages or infringes NetApp rights in the Designation or Logo, (b) reflects negatively on NetApp or otherwise injures NetApp's reputation, (c) misrepresents your relationship with NetApp or (d) gives the impression that the Designation or Logo applies to any other individual or organization other than yourself. Subject to meeting applicable Requirements, you may be eligible to use more than one Designation or Logo.

3.3 Compliance with Guidelines. You agree that you shall use only NetApp-supplied artwork and that your reproduction and use of the Designation and Logo shall be in strict compliance with NetApp usage and style guidelines made available to you upon your certification, accreditation or assessment. Upon request, you agree to promptly provide NetApp with representative examples of your materials using the Designation or Logo. You agree to not misrepresent your Designation to any NetApp personnel or third parties.

3.4 Business Conduct. You agree that all business you conduct and all services you provide in your capacity as a Program participant or in connection with the use or display of a Designation or Logo, shall be performed in a manner that (a) does not reflect negatively on NetApp or in any way harm NetApp reputation, (b) avoids unethical, illegal, misleading or deceptive practices, (c) does not make or appear to make any warranties, representations or guarantees on behalf of NetApp or related to NetApp products or services, (d) complies with all Laws and (e) protects NetApp Confidential Information and other NetApp intellectual property rights.

3.5 Reservation of Rights. You acknowledge the value of the goodwill associated with the Designation and Logo and acknowledge that such goodwill exclusively inures to the benefit of and belongs to NetApp. NetApp retains all rights not expressly conveyed to you by this Agreement, and shall have the right to grant licenses to others to use the Designation and Logo.

3.6 Protection of Mark. If necessary to aid NetApp in the protection of NetApp rights in or to a Designation or Logo, you agree to provide reasonable cooperation and assistance to NetApp.

3.7 No Challenge of Rights. You agree not to challenge, interfere with, or bring any kind of action or legal or administrative proceeding in relation to the rights and title of NetApp in or to any Designation or Logo.

3.8 No Unauthorized Use or Registration. You agree not to use any Designation or Logo except as specifically authorized under this Agreement, not to file any application to register, in any class and in any country, any trademark or service mark for any Designation or Logo or any other mark confusingly similar to any Designation or Logo. You agree to immediately cease all use of all Logos and Designations upon termination of this Agreement, your failure to maintain applicable Requirements or otherwise upon receipt of a written cease and desist letter from NetApp. You agree to immediately correct or discontinue the use of any Logo or Designations if NetApp notifies you that it is being misused or used in any way conflicts with applicable trademark or usage guidelines.

4. Confidentiality

4.1 NetApp Confidential Information. NetApp makes exams available to you solely to test your knowledge of the exam subject matter for which you seek certification, accreditation or assessment. You are expressly prohibited from disclosing, publishing, reproducing, or transmitting any exam Confidential Information in whole or in part, in any form or by any means, oral or written, electronic or mechanical, for any purpose, without the prior express written permission of NetApp.

4.2 Your Confidentiality Obligations. You agree that you will, both during and after the term of this Agreement, (a) hold all Confidential Information in confidence and take all reasonable measures to protect the Confidential Information, (b) make no use of the Confidential Information except as expressly allowed under this Agreement, and (c) not disclose, reproduce, disseminate or transmit in any way any portion of the Confidential Information to any third party in any form, including without limitation, written, electronic or verbal.

4.3 Intellectual Property Ownership. NetApp retains all intellectual property rights, title and interest in and to all Program and related information, content, data, exams, materials, or software. All rights not expressly granted by NetApp to you are expressly reserved.

5. Certification, Accreditation or Assessment Information and Personal Data

5.1 Other Parties. NetApp may make information concerning your certification, accreditation or assessment status available to NetApp partners, agents, contractors or customers either verbally or in writing (including electronically) only with your explicit consent. Your acceptance of this Agreement means you have provided consent with regard to the data sharing practices outlined in this Agreement. The purpose of sharing information with third parties is related to either administration of the Program or verification of your certification, accreditation or assessment status. You have the responsibility for ensuring that your information is accurate and that NetApp is kept aware of your current relevant information.

5.2 Data Protection. NetApp takes data protection compliance seriously and expects the same from its employees, partners, customers, agents, suppliers and contractors. NetApp uses appropriate and reasonable administrative, technical and physical measures to protect your Personal Data. You acknowledge and agree that NetApp and the Program contractors or suppliers may (1) Process your Personal Data to provide you the services under this Agreement, and (2) transfer your Personal Data across borders from the European Economic Area to the United States and/or between other countries only as necessary to provide the services under this Agreement or otherwise respond to third party inquiries as indicated in Sections 5.1, 5.3 and 7.3 or in connection to a cease and desist to protect NetApp Confidential Information or NetApp intellectual property. You represent and warrant that any information that you provide to NetApp (or its contractors or agents), including Personal Data, will be provided in accordance with all applicable laws and regulations. Notwithstanding anything to the contrary in this Agreement, you acknowledge and agree that: (1) NetApp obligations and your rights under this Agreement shall not apply to any Personal Data or any other information that is required by any applicable law, regulation, government request, or judicial process, to be retained, disposed of, or disclosed; and (2) in no event shall

NetApp be held liable or responsible for any inaccuracies or omissions contained in any Personal Data or any other information at the time such data is received by or on behalf of NetApp.

5.3 Release of Personal Data. NetApp will provide information on your certification, accreditation or assessment status as outlined in the NetApp Certification Program information release guidelines. Certification, accreditation or assessment status is required to verify individual and organizational compliance with specific partnerships and programs within NetApp as well as to communicate to the candidate program changes, promotions and opportunities. Information regarding NetApp's privacy policy can be found at www.netapp.com. Questions may be directed to privacy@netapp.com.

6. Integrity of NCP Examination Process

6.1 Exam Fraud and Exam Invalidation. NetApp or its designated agents shall always have the right to research exam results by statistical analyses or other proprietary methods to detect Exam Fraud. NetApp Certification takes the security of our exams very seriously. If it is determined that you have had previous access to the exam content, it is possible that your exam result may be invalidated and you may be banned from the NetApp Certification program. The methods used to identify exam security violations are used in the testing industry and follow sound statistical methodology. Exam invalidations cannot be appealed.

6.2 Certification, Accreditation or Assessment Revocation. NetApp reserves the right to investigate and take remedial action it deems appropriate when it reasonably (and in its sole discretion) believes exam fraud has occurred. Actions may include but are not limited to invalidating exam results, requiring candidates to retake an exam, requiring candidates to provide evidence that they personally took an exam, and/or revoking certification, accreditation or assessment(s). Revocation or a full ban, either permanently or for designated periods, from the Program may occur under any of the following circumstances:

- a. If you breach any of the Agreement terms and conditions,
- b. If NetApp determines, in its sole discretion, that you have undertaken or participated in any action that compromises the integrity and confidentiality of an examination or the Program,
- c. If you are determined to have committed Exam Fraud, or
- d. If you otherwise violate NCP Policies posted [here](#).

6.3 Notifications and Employer. You agree that if NetApp invalidates your exam or revokes your certification, accreditation or assessment pursuant to Section 6.2 or otherwise terminates this Agreement under Section 7, NetApp shall have the right to, a) notify your employer, NetApp customers, contractors and partners, b) respond to inquiry by your employer or others, regarding your certification, accreditation or assessment status and c) inform NetApp partner management personnel of your status change.

6.4 Appeal of Exam Score. NetApp Certification, Accreditation and Assessment exams delivered through [Pearson VUE](#) are automatically scored. Requests for a rescore or review of the scoring will not be addressed nor will they be considered for appeal.

While taking the exam, if you feel that there is an exam question with an error, mark the question by selecting the "Comment" button and leave specific comments describing the potential error during the exam. The NetApp Certification Program regularly reviews exam comments and, if an error is discovered, it will be corrected and the exam will be rescored. If this error resulted in the difference between passing and failing the exam, we will notify the impacted individuals and adjust the score accordingly. We will only adjust a failing score to a passing score and not a pass to a fail.

If after you have taken an exam you would like to appeal an exam based on items that you feel are incorrect, please contact ncp@netapp.com with the exam name, your contact information and a detailed explanation why you feel an appeal is

warranted. It is not expected for you to recite the specific item(s), but you will need to describe the item in as much depth as possible with your explanation regarding why you feel this is incorrect. No adjustments will be made without providing a detailed explanation. Additionally, even if the item you identify does have an error and gets rescored, it may not change a failure to a pass.

Reviews of exam item(s) take time and while you will be contacted initially if your appeal request has merit, it can take weeks to months to identify, correct, update and rescore the exam. We will work to ensure that this would not impact any compliance programs you may be associated with.

7. Agreement Term and Termination

7.1 Term and Termination by Either Party. This Agreement is effective until terminated as provided for herein. Either party, with or without cause, may terminate this Agreement upon thirty (30) days written notice of termination to the other party.

7.2 Termination by NetApp. In addition to the above termination rights, NetApp, in its sole discretion and without prejudice to any rights NetApp may have under this Agreement in law, equity or otherwise may (i) terminate the entire NCP Program without specific notice to you or (ii) terminate this Agreement at any time immediately with written notice upon the occurrence of any one of the following events: (a) you fail to comply with the Requirements for maintaining your Designation for at least one Track, (b) you misrepresent your certification, accreditation or assessment status, (c) you use a Logo or Designation in a manner that NetApp believes could injure NetApp reputation or rights in the Logo or Designation, (d) you misappropriate or disclose without authorization any NetApp Confidential Information or other proprietary information, (e) you supply false or misleading information in connection with your applying for Program registration or in connection with maintaining your status, (f) you fail to comply with any of the material terms of this Agreement.

7.3 Effect of Termination. Upon termination of this Agreement, the license and all rights granted hereunder shall terminate completely. You shall immediately discontinue all use of Designations and Logos. Except as specifically provided herein, you shall have no further rights or obligations under this Agreement after its termination.

7.4 Survival. Rights and obligations under Sections 1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 4, 5, 7, 8, 9, 10, 11 and 12 of this Agreement shall survive termination of this Agreement.

8. Disclaimers

8.1 NETAPP ASSUMES NO LIABILITY WHATSOEVER FOR ANY ACT, WHETHER INTENTIONAL, NEGLIGENT OR OTHERWISE, OF ANY PERSON CERTIFIED OR ACCREDITED UNDER THE PROGRAM. NETAPP MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROGRAM TRACKS, COURSE MATERIALS, DOCUMENTATION, REQUIREMENTS, EXAMS, AND OTHER MATERIALS PREPARED AND SUPPLIED BY OR ON BEHALF OF NETAPP UNDER THIS AGREEMENT OR AUTHORIZATION HEREUNDER. ALL MATERIALS PROVIDED ON NETAPP WEBSITES ARE PROVIDED "AS IS." NETAPP DOES NOT WARRANT THAT THE ACCURACY OR COMPLETENESS OF ANY INFORMATION, LINKS OR OTHER MATERIALS INCLUDED IN ITS WEB SITES OR THAT ITS SOFTWARE IS ERROR FREE OR WILL OPERATE WITHOUT PROBLEMS OR INTERRUPTION.

8.2 YOU ACKNOWLEDGE THAT YOU HAVE INDEPENDENTLY EVALUATED THE POTENTIAL RISKS AND BENEFITS OF ENTERING INTO THIS AGREEMENT AND OF PERFORMING UNDER THIS AGREEMENT, BY ENTERING INTO THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, YOU HAVE IN NO WAY RELIED ON ANY ASSURANCES OR REPRESENTATIONS OF NETAPP OR ANYONE PURPORTING TO ACT ON ITS BEHALF REGARDING THE POTENTIAL FUTURE BUSINESS, PROFITS, OPPORTUNITIES, REVENUES, COSTS OR CAPITAL INVESTMENTS.

9. Limitation of Liability

IN NO EVENT SHALL NETAPP OR ITS AGENTS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS PROFITS) ARISING FROM THIS AGREEMENT OR IN ANY WAY RELATED TO YOUR NCP STATUS, YOUR FAILURE TO ACHIEVE OR MAINTAIN NCP CERTIFICATION, ACCREDITATION OR ASSESSMENT, YOUR USE OR INABILITY TO USE THE DESIGNATIONS OR LOGOS, OR THE TERMINATION OF YOUR CERTIFICATION, ACCREDITATION OR ASSESSMENT, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF NETAPP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THESE LIMITATIONS WILL NOT APPLY TO CLAIMS OF BODILY INJURY OR DEATH IN JURISDICTIONS WHERE SUCH LIMITATIONS ARE NOT PERMITTED

10. Indemnification

You agree to indemnify and hold harmless NetApp and its officers, employees and agents against any third party claim asserted against these NetApp entities, against any loss, liability, damage, cost or expense (including attorneys' fees) arising out of any claims or suits, whatever their nature and however arising, which may be brought or made against these NetApp entities if arising out of or in any manner connected with: (i) any breach by you of this Agreement including, but not limited to, your use of the Designations and Logos in any way that is inconsistent with this Agreement; (ii) any claim alleging that your services were promoted, sold or performed in a deceptive, incomplete, illegal, negligent, improper or unauthorized manner, (iii) NetApp termination of this Agreement pursuant to the terms of this Agreement or (iv) your use or misuse of NetApp intellectual property or confidential information.

11. Changes to Program

11.1 Right to Change. NetApp reserves the right to terminate the Program or change the Program at any time, including, but not limited to, (a) changes to the number, scope, organization, objectives and content of the tests, (b) additions, deletions or other modifications to the Requirements for obtaining or maintaining certification, accreditation or assessment status, (c) addition of new Tracks, Designations and Logos, and (d) deletion, modification or replacement of any Track, Designation or Logo.

11.2 Notice of Changes. NetApp will post a notice of any Program changes on its website. If NetApp records indicate that you are certified or accredited for a Track and any change to the Program affects the Requirements for that Track, NetApp intends, but is not obligated, to send an e-mail notification to you at the e-mail address on file with the Program office, however it is your responsibility to monitor the posted Program information and Requirements for any changes potentially affecting your certification, accreditation or assessment status.

11.3 Effect of Changes. If NetApp changes the Requirements for maintaining certification, accreditation or assessment for a Track for which you are entitled, you must comply with the changed Requirements. NetApp will post a notice of any Program changes on its website. If you have not fully complied with the new or modified Requirements, your certification, accreditation or assessment for that Track shall terminate and you shall cease all use of the Designation or Logo associated with that Track.

12. Other Provisions

12.1 No Joint Venture or Partnership. This Agreement shall not create a joint venture, partnership, principal-agent, employer-employee, franchisor/franchisee or similar relationship between the parties. You agree that you will not represent yourself as an agent, employee, consultant, contractor or legal representative of NetApp or any subsidiary thereof based upon this Agreement. The relationship established by this Agreement is that of independent contractors and nothing contained in this Agreement shall be construed to: (i) give either party the power to direct and control the business activities of the other, or (ii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

12.2 No Warranties by You. This Agreement does not give you any right or authority to make any representation, warranty, or promise on behalf of NetApp or NetApp products or services.

12.3 Injunction. You recognize and acknowledge that a material breach by you of any of your covenants, agreements or undertakings hereunder will cause NetApp irreparable damage, which cannot be readily remedied in monetary damages in an action at law. Therefore, in addition to its rights and remedies otherwise available at law, upon an adequate showing of material breach, and without further proof of irreparable harm other than this acknowledgment, NetApp shall be entitled to immediate equitable relief, including, but not limited to, both interim and permanent injunctions, to stop such damage.

12.4 Compliance With Laws and Indemnity Obligations. You will comply fully with all Laws. You will not make, authorize, offer or promise to make or give any money or anything of value to any Official, or to any other person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any Official. You will not export, either directly or indirectly, any NetApp Confidential Information, including any product and technical data, without first obtaining any and all necessary approvals from NetApp. You will indemnify, defend and hold harmless NetApp and its directors, officers, agents and employees from and against (i) any and all claims, demands, actions, litigation, investigations and proceedings arising out of or related to any non-compliance by you of this section, and (ii) any and all liens, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or related to a claim under the foregoing subsection (i).

12.5 Governing Law and Jurisdiction. This Agreement shall be governed and construed and enforced in all respects in accordance with the substantive and procedural laws of the State of California, USA except for its conflict of law rules. Unless waived by NetApp in its sole discretion or otherwise as NetApp deems necessary to protect its Confidential Information or intellectual property, any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court within Santa Clara County, California, USA. The parties agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

12.6 Waiver and Severability. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. In the event any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, then the other provisions of this Agreement shall continue in full force and effect. Except for actions for breach of NetApp proprietary rights, no action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has accrued.

12.7 No Assignment. This Agreement may not be assigned by you in whole or in part. Any attempted assignment shall be null and void.

12.8 Notices. All legal notices required by this Agreement to be sent to NetApp must be addressed to:

NetApp
Attention: General Counsel/Legal Department
495 E. Java Drive
Sunnyvale, California 94089 USA

All notices to be mailed to you will be directed to the most recent address for you in the Program office files. It is your responsibility to ensure that the Program office has your current e-mail and postal address. The parties agree to accept service by U.S. certified mail or registered mail, return receipt requested, or by other legally available method.

12.9 Publicity. Any public announcements, postings, or other advertising or public relations activities related to or concerning this Agreement or the Program must be reviewed and approved in writing by NetApp in advance.

12.10 Governing Language. The parties agree that this Agreement and all related documentation should be written and accepted in English. Any translation of this Agreement from its English version is provided for convenience only.

12.10.1 Langue faisant foi. Les parties aux présentes reconnaissent et acceptent que ce Contrat et tout document s'y référant soient rédigé en langue anglaise. Toute traduction de la version anglaise est fournie seulement à titre d'information.

12.11 Click-through Agreement Governs. This Agreement supersedes all prior agreements, commitments or representations between the parties, whether oral or written, as well as any downloaded or translated version of the Agreement, whether or not such downloaded or translated version is signed by either party, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.