



## SOFTWARE TERMS

These Software Terms (“**Software Terms**”), together with the General Terms, set forth the terms and conditions for the license of Software and related Documentation whether obtained by Customer directly from NetApp, indirectly from a NetApp Partner, or a NetApp Cloud Provider or made available to Customer by NetApp at no charge. These Software Terms apply to Software embedded in (or pre-installed on) NetApp Hardware, as well as to Software licensed on a standalone basis. These Software Terms (and the General Terms) exclusively govern NetApp’s license of Software unless Customer has a separate written agreement with NetApp that specifically governs the license of such Software. Capitalized terms not defined in these Software Terms have the same meaning as in the General Terms.

The types, quantities and other usage attributes related to the Software licenses are specified in other documents associated with the Software, including (as applicable) the Documentation or a NetApp quotation or related document (for direct transactions), or documents from a Partner (for indirect transactions). These Software Terms do not entitle Customer to receive Software updates, upgrades, Support Services or Professional Services, which must be purchased separately.

### 1. DIRECT PURCHASE TERMS

This Section applies only to Orders for Software licenses that Customer places directly with NetApp.

#### 1.1 **Delivery.** Delivery of Software and Third-Party Branded Software occurs as follows:

**1.1.1** if pre-installed on Hardware, delivery occurs according to the applicable trade term specified on the NetApp price quotation;

**1.1.2** if provided on a standalone basis, delivery occurs when NetApp (or the applicable third party licensor) makes the enabling key or Software/Third-Party Branded Software available for download or use electronically or otherwise by Customer.

#### 1.2 **Risk of Loss.** Risk of loss or damage to the Software and Third-Party Branded Software will pass to Customer upon delivery.

#### 1.3 **Acceptance.** Acceptance of Software and Third-Party Branded Software by Customer will occur upon delivery.

### 2. SOFTWARE LICENSE

#### 2.1 **License Grant.** Subject to these Software Terms and any limitations prescribed by NetApp in an Order or in the Documentation, NetApp grants to Customer a personal, non-exclusive, non-transferable, worldwide, limited, and revocable license, without the right to sublicense, to: (a) install and use the Software for Customer’s internal business purposes; and (b) use the related Documentation in support of Customer’s use of the Software. The Software associated with Customer’s license is either bundled with a specific storage controller identified by a unique serial number (“**Controller-based**”), or is independent of a storage controller (“**Standalone**”), and is one or more of the following license types:



- (a) “Life-of-controller”: Controller-based licenses granted for the period of time during which Customer’s controller is operable;
- (b) “Perpetual”: Standalone licenses granted in perpetuity;
- (c) “Term”: Controller-based licenses or Standalone licenses granted for a fixed period; or
- (d) “Capacity”: Controller-based licenses or Standalone licenses granted for a specified amount of storage capacity or usage, which may be measured as “raw” or “provisioned” storage capacity, number of hosts or other measure of usage as prescribed by NetApp.

Certain license types may require the enablement and use of NetApp’s remote support diagnostic systems. Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based licenses as the other storage controllers in that cluster, high-availability pair, or group. Subject to NetApp’s prior written agreement, and in the context of non-disruptive operations within a cluster, Customer may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same level of Support Services in effect at all times.

**2.2 License Restrictions.** Customer will not, nor will Customer allow any third party to: (a) use the Software in breach or excess of any limitations (e.g., the types, quantities, user limits, time limits, capacity limits) prescribed by NetApp and other usage attributes related to the associated Software licenses; (b) reverse-engineer, decompile or disassemble the Software or otherwise reduce it to human-readable form except to the extent required for interoperability purposes under applicable law or as expressly permitted in open-source licenses; (c) remove or conceal any Software identification, proprietary, intellectual property, or other notices in the Software and Documentation; (d) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment unless otherwise agreed to in writing by NetApp; (e) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller, unless otherwise agreed to in writing by NetApp; (f) install Controller-based licenses on, or use them with, third-party hardware or any second-hand or grey market hardware that Customer has not purchased from NetApp or a NetApp Partner; (g) modify, adapt, or create a derivative work of the Software or Documentation; or (h) publish or provide any Software benchmark or comparison test results.

**2.3 Third-Party and Open-Source Software.** Notwithstanding other statements in this Section, third-party software components, including free, copyleft and open-source software components, if any, embedded in the Software (“**Third-Party Embedded Software**”) are distributed in compliance with the licensing terms and conditions attributable to such Third-Party Embedded Software. Copyright notices and licensing terms and conditions applicable to Third-Party Embedded Software may be provided with the Software or available for review with the Documentation at <https://mysupport.netapp.com/>, within a “NOTICE” file (e.g., NOTICE.PDF or NOTICE.TXT) or included within the downloaded files, and/or reproduced within the materials or Documentation accompanying the Software. Third-Party Embedded Software that is delivered as part of the



Software is included in the applicable warranty, support and indemnification provisions provided it is not removed or used separately from the Software.

- 2.4 Third Party Beneficiaries.** If required by NetApp's agreement with a Third-Party Embedded Software licensor, such licensor will be a direct and intended beneficiary of these Software Terms and may enforce them directly against Customer.
- 2.5 Unauthorized Use.** Use of the Software outside of the scope of the applicable license terms constitutes a material breach, and Customer agrees to promptly pay upon notice any applicable additional license fees.

### **3. WARRANTY**

- 3.1 Software Warranty.** NetApp warrants for a period of ninety (90) days from the initial delivery of the Software or such other minimum period required under applicable law ("**Software Warranty Period**") that: (a) the Software will materially conform to the then-current Documentation; and (b) to the extent Software is delivered on media, the Software media will be free from physical defects. NetApp does not warrant that Customer's use of the Software will be error-free or uninterrupted. In the event of any material non-conformity in the Software during the Software Warranty Period that is reproducible and verifiable, NetApp will, in its sole discretion and at its own expense, repair or replace the Software, or refund the amounts received by NetApp for the non-conforming Software. This warranty does not cover software, other items, or any services provided by persons other than NetApp.
- 3.2 Exclusive Warranties.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTY IS CUSTOMER'S SOLE AND EXCLUSIVE WARRANTY AND REMEDY. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THESE SOFTWARE 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. THE WARRANTY IN THIS SECTION 3 (WARRANTY) WILL NOT APPLY IF NETAPP MAKES THE SOFTWARE GENERALLY AVAILABLE AT NO COST.

### **4. THIRD-PARTY BRANDED SOFTWARE**

For clarity, the license terms and warranty set forth in these Software Terms do not apply to Third-Party Branded Software. NetApp will, to the extent permissible, pass through or otherwise facilitate making available to Customer any Third-Party Branded Software license terms and warranty terms available from the licensor to the Customer.

### **5. NETAPP APPROVED FINANCING**

These Software Terms also apply to "**Financed Software**," which means Software and related Documentation licensed to Customer for a limited period of use pursuant to the terms of a financing agreement between Customer and NetApp or its authorized third-party financing partner (an "**Approved Financing Agreement**" or "**AFA**"), subject to the following: (a) the particular Financed Software, period of use, installation site, and



other transaction-specific conditions will be as agreed in the applicable AFA; and (b) notwithstanding anything to the contrary in these Software Terms, all licenses for Financed Software terminate at the expiration of the term of the AFA unless otherwise expressly agreed in the AFA, or when sooner terminated by NetApp (whether in accordance with these Software Terms or the AFA). Customer agrees that the license granted, and NetApp's termination rights set forth in these Software Terms and the General Terms, may be affected by an authorized third-party financing partner's rights under the applicable AFA, even if such partner has paid to NetApp all or any portion of the license fees for the Financed Software. Title and risk of loss will pass as specifically provided in the AFA, and Customer agrees that such provisions take precedence to the extent of any conflict or inconsistency with Section 2 (Software License) of these Software Terms.

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