



END USER LICENSE AGREEMENT

1. DEFINITIONS

1.1. **“Documentation”** means technical documentation describing the features and functions of the Software.

1.2. **“NetApp Cloud Provider”** means a third party authorized by NetApp to offer or enable the use of the Software as part of such provider’s cloud-based service.

1.3. **“NetApp Partner”** means an authorized NetApp distributor, reseller or other channel partner.

1.4. **“Open Source Software”** means third party software that is openly and freely licensed under the terms of a public license designated by the third party.

1.5. **“Software”** means all NetApp-branded software in object code format comprising backup and recovery, disaster recovery, storage efficiency and management software, operating systems, protocols, utilities and storage management tools.

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- a) **“Life-of-controller”:** Controller-based licenses granted for the period during which Your storage controller is operable;
- b) **“Perpetual”:** Standalone licenses granted in perpetuity;
- c) **“Term”:** Controller-based licenses or Standalone licenses granted for a fixed period;
- d) **“Capacity”:** Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity, number of hosts, or other measure of usage as specified in the Documentation.

Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based license as the other storage controllers in that cluster, high-availability pair or group. Subject to NetApp’s separate written agreement, and in the context of non-disruptive operations within a cluster, You 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 hardware and software support offerings in effect at all times. Certain license types may require the enablement and use of NetApp’s remote support diagnostics systems.

5. **LICENSE RESTRICTIONS.** You must comply with the EULA terms at all times when using the Software and Documentation. You will not, nor will You allow anyone else to:

- a) use the Software in breach or excess of the types, quantities and other usage attributes related to Your Software licenses or other limitations prescribed by NetApp in this EULA;
- b) reverse-engineer, decompile or disassemble the Software or otherwise reduce it to human-readable format except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses;
- c) remove or conceal any product identification, proprietary, intellectual property or other notices in the Software or Documentation;
- d) use the Software or Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services or similar environment, unless i) the Software has been obtained from a NetApp Cloud Provider, ii) is used in conjunction with a NetApp Cloud Provider service, iii) or has been otherwise agreed in writing with 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 in writing with NetApp;
- f) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market NetApp hardware not purchased by You 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.

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7. WARRANTY. NetApp warrants that for a period of 90 days from the date of first delivery of the Software to You or a NetApp Partner, whichever is the earlier, or such other minimum periods under applicable laws (the "Software Warranty Period"), the Software will materially conform to the then-current Documentation. NetApp does not warrant that Your use of the Software will be error-free or uninterrupted. If a material defect arises in the Software during the Software Warranty Period and if the defect is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the defective Software or refund the amounts received by NetApp for the Software. Software that is obtained for use solely in conjunction with a NetApp Cloud Provider's services is provided "AS IS" and without a warranty of any kind. You assume all risks arising from Your use of the Software together with a NetApp Cloud Provider's offering. The Software warranty will be voided if You or any third parties misuse, neglect, attempt to repair or modify (unless authorized by NetApp), or use the Software beyond the range of the intended use. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THIS IS YOUR SOLE AND EXCLUSIVE WARRANTY AND REMEDY. NETAPP SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY, ACCEPTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE WARRANTY IN THIS SECTION 7 WILL NOT APPLY IF NETAPP MAKES THE SOFTWARE GENERALLY AVAILABLE AT NO COST.

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- a) any indirect, consequential, incidental, exemplary or special damages;
- b) loss or corruption of data;
- c) loss of revenues, profits, goodwill or anticipated savings;
- d) procurement of substitute goods and/or services;
- e) interruption to business; or
- f) Your failure to comply with applicable "non-erasable" and "non-rewriteable" U.S. government regulations.

The limitations and exclusions above will not apply to liability for death or bodily injury caused by negligence, gross negligence, willful misconduct, fraud or any other liability that cannot be excluded under applicable laws.

9. AUDIT. Upon reasonable notice, You grant NetApp and its independent accountants the right to examine Your Software usage annually to verify compliance with this EULA. If the audit discloses over-usage or any other material non-compliance, then a) You will promptly pay to NetApp or to a NetApp Partner, as designated by NetApp, any additional fees that NetApp or a NetApp Partner notifies You are owed, and the reasonable costs of conducting the audit; and b) NetApp may conduct subsequent audits, upon reasonable notice, as NetApp reasonably determines is necessary to verify compliance with this EULA.

10. TERMINATION. This EULA is effective until expiration or termination. You may terminate the EULA at any time on written notice to NetApp. NetApp may terminate the EULA immediately on written notice for material breach of the EULA. Any failure to remit payments in relation to the Software and Documentation when due, whether payable to NetApp or a NetApp Partner, constitutes a material breach of this

EULA. Upon expiration or termination of this EULA, You will promptly return or destroy all copies of the Software and Documentation, including any license enablement keys. Sections 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 survive expiration or termination of this EULA.

11. EXPORT CONTROLS. You acknowledge that the Software and Documentation supplied by NetApp under this EULA is subject to export controls under the laws and regulations of the United States, the European Union and other countries (as applicable), and the Software may include technology controlled under export and import regulation, including encryption technology. You agree to comply with such laws and regulations and represent and warrant that You:

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- b) are not a party, nor will You export or re-export to a party, identified on any applicable government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists;
- c) will not use the Software and Documentation for any purposes prohibited by U.S. law, including the development, design, manufacture or production of nuclear, missile, chemical, or biological weaponry or other weapons of mass destruction; and
- d) are responsible for compliance with all local encryption laws and regulations, where applicable, and for obtaining any permits and licenses required under those laws and regulations for your use of the Software.

You agree to provide NetApp destination end use and end user information upon NetApp's request. You will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. You agree to obligate, by contract or other similar assurances, the parties to whom You re-export or otherwise transfer the Software to comply with all obligations set forth in this Section 11.

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13. EVALUATION OR PRE-RELEASE SOFTWARE. This Section 13 applies to You only if You are acquiring generally available Software for the purposes of evaluation ("Evaluation Software") or Software specifically identified by NetApp as alpha, beta, pre-release, demonstration or preview ("Pre-Release Software"). Unless otherwise agreed in writing by NetApp, Evaluation Software or Pre-Release Software may be used a) for a period not exceeding 90 days from the effective date of this EULA ("Evaluation Period") and b) up to the maximum amounts of raw storage capacity, number of hosts or other measure of usage as specified in the Documentation. Unless otherwise agreed in writing by NetApp, Evaluation Software or Pre-Release

Software may only be used in non-production environments and not for commercial purposes. You agree to delete or deinstall the Evaluation Software or Pre-Release Software at the expiration of the Evaluation Period. For the avoidance of doubt, Software is considered in use when installed or deployed after expiry of the 90-day period regardless of whether or not the Evaluation Software or Pre-Release Software is used in a production environment. You will pay fees to NetApp, calculated in accordance with the applicable NetApp price list, within 30 days of NetApp's demand for use exceeding the limits above. You agree to cooperate with NetApp in testing the Pre-Release Software and providing feedback, to NetApp, which NetApp can use without restriction, concerning the functionality and performance of the Pre-Release Software. ("Feedback"). You acknowledge that the Pre-Release Software and Feedback are proprietary and confidential information of NetApp ("Confidential Information"). You will not make the Confidential Information available in any form to any person other than to Your employees or consultants with a need to know and who are under an obligation of confidentiality not to disclose such Confidential Information. You will use the same degree of care to protect the confidentiality of such Confidential Information as You use to protect Your own confidential information. NOTWITHSTANDING SECTIONS 7 AND 8 ABOVE, THE EVALUATION SOFTWARE OR PRE-RELEASE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NETAPP DISCLAIMS ALL LIABILITIES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

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This EULA will be construed pursuant to the laws of i) the State of California, United States, excluding its conflicts of law provisions, if You are in the United States or in a country in which NetApp has no local sales subsidiary, or ii) the country in which You are located if NetApp has a local sales subsidiary in that country. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Your use of the Software or Documentation. If required by NetApp's agreement with a third-party licensor, NetApp's licensor will be a direct and intended third party beneficiary of this EULA and may enforce it directly against You. To the extent that Software may include or be distributed with Open Source Software, the terms of the applicable license for the Open Source Software supersede the terms set forth in this EULA.

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