



GENERAL TERMS

THESE GENERAL TERMS (INCLUDING ANY APPLICABLE PRODUCT, SERVICES AND COUNTRY TERMS) (COLLECTIVELY, “TERMS”) SET FORTH THE DIRECT TERMS BETWEEN NETAPP, INC., NETAPP IRELAND, LTD. AND/OR A NETAPP AFFILIATE (COLLECTIVELY “NETAPP”) AND CUSTOMER IN CONNECTION WITH CUSTOMER’S PURCHASE OR LICENSE (AS APPLICABLE) OF PRODUCTS AND SERVICES DIRECTLY FROM NETAPP OR INDIRECTLY FROM A NETAPP PARTNER OR, WHERE APPLICABLE, A NETAPP CLOUD PROVIDER. THE TERMS APPLY UNLESS CUSTOMER HAS ENTERED INTO A SEPARATE WRITTEN AGREEMENT WITH NETAPP GOVERNING SUCH PURCHASE OR LICENSE. BY PURCHASING OR LICENSING SUCH PRODUCTS OR SERVICES EITHER (1) VIA AN ORDER DIRECTLY WITH NETAPP OR INDIRECTLY WITH A NETAPP PARTNER OR CLOUD PROVIDER, (2) CLICKING A BOX INDICATING ACCEPTANCE, OR (3) ACCEPTING DELIVERY AND USING PRODUCTS OR SERVICES, CUSTOMER AGREES TO BE BOUND BY THESE TERMS.

IF CUSTOMER REGISTERS FOR A FREE TRIAL OR EVALUATION OF PRODUCTS OR SERVICES, THE APPLICABLE PROVISIONS OF THESE TERMS WILL ALSO GOVERN THAT FREE TRIAL OR EVALUATION, UNLESS CUSTOMER HAS A SEPARATE WRITTEN TRIAL OR EVALUATION AGREEMENT WITH NETAPP.

IF THE INDIVIDUAL ACCEPTING THESE TERMS IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND/OR ITS AFFILIATES TO THESE TERMS, IN WHICH CASE THE TERM “CUSTOMER” REFERS TO SUCH ENTITY AND ITS AFFILIATES.

1. DEFINITIONS

Capitalized terms have the definitions set forth below or as otherwise set forth in these Terms.

- 1.1 **Active IQ.** The portal and mobile application that displays remote diagnostics, including AutoSupport Data about Customer’s Products, and provides Customer with remote support tools.
- 1.2 **Affiliate.** Any entity, directly or indirectly through one or more intermediaries, that is controlled by, or is under common control with, a party hereunder, but only for so long as such relationship exists. For purposes of this definition, “control” means the ability to direct its affairs and/or to control the composition of its board of directors or ownership of more than 50% (or such lesser percent as may be the maximum that may be owned by foreign interests pursuant to the applicable laws of the country of incorporation) of (a) the shares of stock entitled to vote for directors in the case of a corporation; or (b) the equity or interests in profits in the case of a business entity other than a corporation.
- 1.3 **AutoSupport™.** A telemetry mechanism that proactively monitors the health of Customer’s Products and automatically provides configuration, status, performance and system events data (“AutoSupport Data”) for diagnosis and response purposes.
- 1.4 **Cloud Provider.** A third party authorized by NetApp to offer or enable the use of Products or Services as part of such provider’s cloud-based service.
- 1.5 **Cloud Service.** A NetApp cloud-based service (which may be infrastructure, platform or software) made available to Customer.
- 1.6 **Cloud Service Enabling Software.** NetApp Software that is solely necessary to facilitate Customer’s use of a Cloud Service.
- 1.7 **Confidential Information.** All information, whether written, oral or in any other medium disclosed by or on behalf of the Disclosing Party to the Receiving Party for purposes arising out of or in connection with these Terms, that (a) in the case of information in tangible form, is marked “confidential” or “proprietary” or with words of similar import at the time of disclosure; (b) in the case of any information disclosed orally, visually or in any other intangible form, is designated “confidential” or “proprietary” at the time of disclosure, and if disclosed orally, is summarized in reasonable detail in a writing delivered to the Receiving Party within 30 days of disclosure; or (c) by its nature or the circumstances surrounding disclosure should reasonably be considered confidential or proprietary, including any reproduction of such information. Confidential Information of Customer includes Personal Information provided to NetApp; Confidential Information of NetApp includes all Orders (including pricing). Confidential Information of each party includes business

and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by the Disclosing Party.

- 1.8 **Country Terms.** Additional terms that apply to Orders placed with NetApp Affiliates in certain countries outside the U.S. as set forth on the [How to Buy Site](#).
- 1.9 **Customer.** The end user customer purchasing NetApp Products and Services for its own use.
- 1.10 **Customer Content.** Any data, content, or information in any form, format or media submitted by Customer that NetApp may operate on, where such operation is on the Customer's behalf as part of providing Products and Services.
- 1.11 **Disclosing Party.** The party disclosing Confidential Information.
- 1.12 **Documentation.** The then-current documentation published by NetApp on [NetApp.com](#) relating to the description, operation and use of NetApp Products and Services. Documentation includes technical program and interface documentation, user manuals, operating instructions and release notes.
- 1.13 **Engagement Document.** A NetApp-approved document that describes the Professional Services NetApp will provide to Customer, including but not limited to a statement of work, service brief or service description.
- 1.14 **Hardware.** NetApp-branded hardware, including its components and spare parts, and excluding any firmware and Third-Party Branded Products.
- 1.15 **Order.** A NetApp-approved ordering document with Customer or Partner (as applicable), Purchase Order, Engagement Document or online order describing the Products or Services that the Customer is purchasing.
- 1.16 **Partner.** A third party authorized by NetApp to resell Products and Services to Customer.
- 1.17 **Personal Information.** Any information relating to, directly or indirectly, an identified or identifiable natural person or household, or is defined as "personal data" or "personal information" by applicable laws or regulations, as further described in the NetApp Privacy Policy, which can be accessed at [NetApp Privacy Policy](#).
- 1.18 **Price List.** NetApp's then-current list of Products and Services, and their associated prices for the country of destination.
- 1.19 **Product Terms.** Additional terms that apply to specific Products, as set forth on the [How to Buy Site](#).
- 1.20 **Products.** Collectively, Hardware, Software, and Third-Party Branded Products.
- 1.21 **Professional Services.** Consulting, installation, implementation and other services that are not Support Services to be provided to Customer by or on behalf of NetApp.
- 1.22 **Purchase Order.** An electronic order that Customer provides to NetApp for direct purchases of Products and Services from NetApp.
- 1.23 **Receiving Party.** The party receiving Confidential Information.
- 1.24 **Services.** Collectively, NetApp's Cloud Services, Support Services and/or Professional Services.
- 1.25 **Services Terms.** Additional terms that apply to specific Services, as set forth on the [How to Buy Site](#).
- 1.26 **Software.** NetApp-branded software in object code format, including (as applicable) operating system software, protocols, firmware, backup and recovery, disaster recovery, storage efficiency, and management software.
- 1.27 **Support Services.** NetApp's generally available technical support and maintenance services for Products to be provided by or on behalf of NetApp.
- 1.28 **Terms.** These Terms and any Product Terms, Services Terms, and/or Country Terms, as applicable, which are hereby incorporated by reference.
- 1.29 **Third-Party Branded Products or Third-Party Branded Services.** Any hardware ("Third-Party Branded Hardware") or software ("Third-Party Branded Software") or services ("Third-Party Branded Services") manufactured, developed licensed or otherwise provided by a third party and resold by NetApp under the third party's brand name for use in conjunction with Hardware and Software.
- 1.30 **Usage Data (also referred to as "Functional Data").** Data generated or derived from the usage, configuration, deployment, access, performance and operation of Products and Services. Usage Data includes, by example and not limitation, technical information about Customer's operating environment, configuration data, and system architecture,



AutoSupport Data, aggregated quantitative information about number of users, capacity usage, account information, used bandwidth, storage space, Product versions and other quantitative data derived from Customer's use of Products and Services and Service performance-related data.

2. COVERAGE AND SCOPE

2.1 Services Terms and Product Terms. Customer's acquisition of Products and/or Services is subject to additional terms as set forth in the Services Terms and Product Terms, respectively, described below. Applicable warranties for Products and Services, respectively, are set forth in the Product Terms and Services Terms.

- 1. Cloud Services Terms** - Purchases of Cloud Services (a list of which is set forth at the [How to Buy Site](#)) are governed by the [Cloud Services Terms](#).
- 2. Hardware Terms** - Purchases of Hardware and Third-Party Hardware are governed by the terms within [Hardware Terms](#).
- 3. Software Terms** - Purchases of Software licenses (including Software and Third-Party Branded Software embedded within Hardware or standalone Software/Third-Party Branded Software) are governed by the [Software Terms](#).
- 4. Support Services Terms** - Purchases of Support Services are governed by the [Support Services Terms](#).
- 5. Professional Services Terms** - Purchases of Professional Services are governed by the [Professional Services Terms](#).

2.2 Not for Resale. These Terms govern Customer's acquisition of Products and Services for Customer's internal use, and not for resale or distribution.

3. DIRECT PURCHASE TERMS

This Section applies only to a Customer that places an Order directly with NetApp (not through a Partner).

- 3.1 Orders.** Customer will submit all Orders to NetApp electronically. Each Order will be based on, and refer to, a valid and current price quotation (where applicable) and will include relevant Product and/or Services information, appropriate legal entities, "ship to" and "bill to" locations (where applicable) and requested delivery date (where applicable). All Orders are subject to acceptance by NetApp.
- 3.2 Changes, Cancellation, and Rescheduling.** Customer may modify or cancel Orders for Products or related Support Services up to 10 days prior to any scheduled shipment date, and Customer may reschedule a requested delivery date for Products and related Support Services one time per Order without additional charge. Product returns are subject to NetApp approval and applicable charges. Changes, cancellation, and rescheduling for Professional Services and Cloud Services is set forth in the applicable Services Terms.
- 3.3 Pricing.** NetApp may, in its sole discretion, change the prices set forth on its Price List and may add or remove Products and Services from its Price List at any time. An Order received after the effective date of a price change, but pursuant to a valid and current NetApp quotation, will be invoiced at the price stated on the NetApp quotation.
- 3.4 Invoicing.** NetApp may invoice shipments, including partial shipments, on delivery in accordance with the applicable trade term specified in the quotation or mutually executed Order.
- 3.5 Payment Terms.** Customer will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, no later than 30 days from the date of invoice (unless otherwise agreed in a mutually executed Order). Fees are non-refundable and payment obligations are non-cancelable, except as provided in these Terms, or where prohibited by law.
- 3.6 Remedies for Non-payment.** Customer's payment of an amount less than the invoice amount will not be deemed as acceptance of payment in full, nor will any endorsement or statement on any check or letter accompanying any payment or check be deemed an accord and satisfaction. NetApp may accept such payment without prejudice to NetApp's right to recover the balance of any amount due or pursue any other remedy provided for in these Terms, or by law or in equity. NetApp has the right to apply any payment received from Customer to any account of Customer which is due and/or

delinquent. If Customer fails to make timely payment, in addition to all other available remedies, NetApp will have the right to decline to make further deliveries of Products or provide further Services to Customer.

- 3.7 Taxes and Duties.** Customer is solely responsible for the payment of taxes (except taxes based on NetApp's net income), fees, duties and charges, and all related penalties and interest, that arise from its utilization or NetApp's provision of Products and/or Services. If such taxes are incurred, including any withholding taxes, the sum payable by Customer (in respect of which such deduction or withholding is required to be made) will be increased to the extent necessary to ensure that NetApp receives payment in full of an amount equal to the invoiced amount. If Customer is tax-exempt, then Customer will provide NetApp with tax exemption certificates or other documentation acceptable to the taxing authorities not later than 30 days from the date Customer places an Order with NetApp. If Customer does not provide such documentation to NetApp, NetApp reserves the right to include such taxes in the invoice. In addition to the stated prices, Customer is responsible for all applicable duties, license fees and taxes for Products shipped across international borders in accordance with the applicable trade term specified or as otherwise may apply.

4. CONFIDENTIALITY

- 4.1 General.** Confidential Information disclosed to the Receiving Party will remain the exclusive property of the Disclosing Party. The Receiving Party may use the Disclosing Party's Confidential Information solely for the purpose of fulfilling its obligations under these Terms. The Receiving Party agrees to disclose the Disclosing Party's Confidential Information only to those employees or agents who have a need to know in furtherance of these 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.
- 4.2 Exclusions.** Confidential Information does not include any information that: (a) is already known to the Receiving Party without restrictions at the time of disclosure; (b) is or becomes known to the general public through no act or omission of the Receiving Party in breach of these Terms; (c) is disclosed to the Receiving Party by a third party who is not, to the knowledge of the Receiving Party, in breach of an obligation of confidentiality; or (d) is independently developed by employees and/or contractors of the Receiving Party who did not have access to, and without use of, the Disclosing Party's Confidential Information.
- 4.3 Period of Disclosure.** The Receiving Party's obligations regarding the Disclosing Party's Confidential Information will expire three years from the date of disclosure, provided, however, that any Confidential Information that constitutes a trade secret will remain subject to the obligations of this Section until such information no longer qualifies as a trade secret under applicable law.
- 4.4 Legally Compelled Disclosure.** 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, unless prohibited by applicable law, the Receiving Party gives the Disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.
- 4.5 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 by law to retain such information, and the Receiving Party will provide written certification of compliance with this Section.

5. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

- 5.1 General.** Software, Cloud Service Enabling Software and related Documentation are licensed, not sold, to Customer. Software, Cloud Service Enabling Software, Cloud Services and related Documentation are protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to Customer. No right, title or interest to any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to Customer.
- 5.2 IP Claims.** Subject to the terms and conditions of this Section, NetApp will defend or settle any claim brought by a third party against Customer that Hardware, Software, Documentation, Cloud Service Enabling Software and/or the Cloud Services sold and delivered by or for NetApp to Customer under these Terms (individually or collectively, "Covered Products") infringe any patent, trademark, or copyright ("IP Claim"). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, "Damages")

against Customer to the extent such Damages are specifically attributable to the IP Claim, provided that Customer: (a) promptly notifies NetApp in writing of the IP Claim; (b) provides information and assistance to NetApp to defend such IP Claim; and (c) provides NetApp with sole control of the defense or settlement negotiations.

- 5.3 Remedies.** NetApp may, at its option, substitute or modify the applicable Covered Products, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the applicable Covered Products. If NetApp determines that none of these alternatives is reasonably available, then Customer may cease using and, if applicable, return Covered Products or terminate its subscription to the Cloud Service, and Customer will be entitled to a pro rata refund of pre-paid fees received by NetApp for such Covered Products, as applicable.
- 5.4 Exclusions.** Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any IP Claim related to the Covered Products that arises from or relates to: (a) NetApp's compliance with, or use of, designs, specifications, inventions, instructions, or technical information furnished by or on behalf of Customer; (b) modifications to the Covered Products made by or on behalf of Customer without NetApp's prior written authorization; (c) Customer's failure to upgrade or use a new version of the Covered Products, to make a change or modification requested by NetApp, to implement or configure the Covered Product in a manner set forth by NetApp, or to cease using the Covered Products if requested by NetApp; (d) the Covered Products, or any portion thereof, in combination with any other product or service (including a Cloud Provider's services); (e) Third-Party Branded Products or Third-Party Branded Services; (f) any content or information stored on or used by Customer or a third party in connection with a Covered Product; or (g) Customer's breach of the use limitations prescribed by NetApp.
- 5.5 Entire Liability.** Notwithstanding anything to the contrary in these Terms, this Section states NetApp's entire liability and Customer's sole and exclusive remedies for IP Claims.

6. LIMITATION OF LIABILITY

- 6.1 Liability Exclusions.** To the extent permitted by applicable law, regardless of the basis of the claims (e.g., whether in contract, tort (including negligence), statute, products or strict liability, or any other form of action), in no event will NetApp or its suppliers or subcontractors be liable to Customer for special, incidental, exemplary, 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/or interruption of business. This exclusion is independent of any remedy set forth in these Terms.
- 6.2 Cumulative Liability.** To the extent permitted by applicable law, NetApp's liability to Customer is limited to direct damages in an amount not to exceed US\$1,000,000. This limitation is cumulative and not per incident.
- 6.3 Exceptions.** The limitations set forth in Sections 6.1 (Liability Exclusions) and 6.2 (Cumulative Liability) will not apply to liability for: (a) claims arising from death or bodily injury caused by a Party's negligence or gross negligence; (b) claims arising from a Party's willful misconduct or fraud; or (c) IP Claims under Section 5.2 (IP Claims). These limitations will also not apply to any other liabilities which cannot be excluded under applicable law.
- 6.4 Disclaimer of Liability for Trial/Pre-Release Products and Services.** To the extent permitted by law, NetApp disclaims all liability arising out of Customer's use of any Trial, No-Charge or Pre-Release Products or Services (defined below).

7. WARRANTY DISCLAIMER

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE WARRANTIES SET FORTH IN THE PRODUCT TERMS, SERVICES TERMS AND COUNTRY TERMS ARE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES.

8. COMPLIANCE WITH LAWS

- 8.1 Compliance with Anti-Bribery and Other Laws.** Each party will comply with all applicable laws and regulations, including but not limited to applicable country laws relating to anti-corruption or anti-bribery, the requirements of 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.

- 8.2 Export.** Customer acknowledges that Products, Services and access to technology and intellectual property (collectively, “Materials”) are subject to export controls under the laws and regulations of the United States, the European Union, and other countries (as applicable), and that Products and Services may include technology controlled under export and import regulations, including encryption technology. Customer agrees to comply with all such laws and regulations, and to provide NetApp destination end use and end user information. Materials are intended for Customer’s own use. Customer will not resell, export, re-export, divert or transfer Materials to Prohibited Persons or into Restricted Countries. “Prohibited Persons” means sanctioned individuals and entities, including without limitation persons on the U.S. Denied Persons, Entity and Specially Designated Nationals Lists. “Restricted Countries” means countries and regions subject to embargoes or trade sanctions programs, including without limitation Cuba, Iran, North Korea, Syria, Russia, Belarus, The Crimean, Luhansk and Donetsk regions of Ukraine, and the Kherson and Zaporizhzhia oblasts of Ukraine. Customer will not use Materials for any purposes prohibited by United States or other applicable laws, including but without limitation, the development, design, manufacture or production of nuclear, missile, chemical, biological weaponry or other weapons of mass destruction. Customer is responsible for obtaining all required authorizations, permits, and licenses to import, export, re-export or transfer Materials. Customer agrees to obligate, by contract or other similar assurances, the parties to whom Customer re-exports or otherwise transfers Materials to comply with all obligations set forth in this Section.
- 8.3 Privacy/Data Processing Addendum.** In the event Customer provides NetApp with access to Personal Information in order for NetApp to provide Products or Services hereunder, the Parties will ensure that such Personal Information is disclosed and handled in accordance with all applicable data protection laws and the confidentiality provisions set forth in these Terms. To the extent that NetApp receives Personal Information from Customer, the NetApp Privacy Policy (found at [NetApp Privacy Policy](#)) will apply to NetApp’s management and usage of such Personal Information and is hereby incorporated by reference. Article 28 (1) of the European Union General Data Protection Regulation (“GDPR”) requires an agreement between a controller and processor, and between a processor and sub processor, that processing of Personal Information be conducted in accordance with technical and organizational measures that meet the requirements of the GDPR and ensure the protection of the rights of data subjects. To the extent NetApp acts as a data processor of Personal Information on behalf of Customer: (a) NetApp will comply with the additional terms and conditions applicable to NetApp in the [NetApp Data Processing Addendum](#); and (b) NetApp will not retain, use, or disclose such Personal Information for any purpose other than providing or improving Products or Services in accordance with these Terms. NetApp certifies that it understands the foregoing restrictions and will comply with them.

9. TERM AND TERMINATION

- 9.1 Term.** These Terms are effective as of the date Customer first agrees to these Terms and will continue until the applicable Order subject to these Terms has expired or has been terminated. The term of an Order is as specified in the particular Order.
- 9.2 Termination.** A party may terminate these Terms and any applicable Order for cause: (a) upon 30 days written notice to the other party of a material breach (including for Customer’s failure to remit payments when due) if such breach remains uncured at the expiration of such period; or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Termination will not (a) relieve Customer from its payment obligations with respect to any sums accrued prior to termination, which will become immediately due and payable; or (b) entitle Customer to any refund unless otherwise set forth in these Terms. Upon termination of these Terms, all rights to use any Software and related Documentation licensed under the Software Terms cease and Customer will, at NetApp’s request, promptly return or destroy all copies of such Software and Documentation, including any license enablement keys, in Customer’s possession or under Customer’s control, unless the license granted to Customer under the Software Terms is a perpetual license, Customer remains in full compliance with these Terms and NetApp has not terminated these Terms for cause.
- 9.3 Surviving Provisions.** The following Sections will survive termination of these Terms in accordance with the terms set forth herein: Section 4 (Confidentiality), Section 5 (Intellectual Property Rights and Protection), Section 6 (Limitation of Liability), Section 7 (Warranty Disclaimer), Section 8 (Compliance with Laws), Section 9 (Term and Termination) and Section 10 (General Provisions). In addition, any sections of the Terms which, upon a plain reading, are intended to survive termination or expiration of the Terms, will survive such termination or expiration.

10. GENERAL PROVISIONS

- 10.1 Updates.** NetApp reserves the right to update these Terms without prior notice to Customer. The version of these Terms that are in effect at the time NetApp accepts an Order will govern the applicable transaction.
- 10.2 Order of Precedence.** In the event of a conflict between the terms set forth in the General Terms, Services or Product Terms, Country Terms or an Order, the following order of precedence will apply:
1. Country Terms
 2. Product Terms or Services Terms (as applicable to the Order)
 3. General Terms
 4. Order (excluding any pre-printed terms on a Customer Purchase Order)
- 10.3 Third-Party Licenses.** Customer represents and warrants that it has obtained, and/or will obtain, all applicable third-party licenses necessary to operate any third-party software required in connection with the use of the Products and for NetApp to freely and without interruption perform Services. NetApp is not liable or responsible for Customer's failure to obtain any such licenses.
- 10.4 Evaluation/Trial/Beta/No-Charge Products and Services.** Unless there is a separate written agreement between the parties related to Products or Services provided on an evaluation, trial, alpha, beta, pre-release, preview or no-charge basis, the following provisions will apply.
- 10.4.1 Cloud Services.** NetApp may offer:
1. a no-cost, no-obligation trial to a Cloud Service ("Trial Cloud Service") to Customer which will commence on the initial date Customer accesses the Trial Cloud Service and will conclude at the end of the trial period delineated by NetApp, or sooner if: (a) Customer purchases a pre-paid subscription to the Cloud Service; (b) Customer uses the Cloud Service on a pay as you go basis; or (c) NetApp terminates Customer's use of the Trial Cloud Service;
 2. a Cloud Service or feature of a Cloud Service available to Customer that NetApp has identified as alpha, beta, pre-release, demonstration, or preview (each a "Beta Cloud Service"); unless otherwise agreed in writing by NetApp, a Beta Cloud Service may only be used in non-production environments and not for commercial purposes; or
 3. a Cloud Service at no cost to Customer, up to certain limits prescribed by NetApp ("No Charge Cloud Service").
- 10.4.2 Products.** NetApp may offer Products for evaluation, demonstration or trial ("Trial Products") or alpha, beta, pre-release, or preview Products ("Pre-Release Products"). Such Trial or Pre-Release Products will be provided or licensed, as applicable, by NetApp at no cost for a 90-day period from initial delivery to Customer, or such other period as agreed by NetApp in writing ("Evaluation Period"). These Products are provided to Customer for evaluation, demonstration, and internal, non-commercial use only and Customer will not use the Trial or Pre-Release Products for production use or in a production environment. Customer is responsible for the Trial Products from the date of delivery until the Trial Product is returned to, and received by, NetApp, a NetApp-authorized carrier, or NetApp's agent, as evidenced by a bill of lading or document of title ("Possession Period") where applicable. Customer will reimburse NetApp for any loss or damage to the Trial Products sustained during the Possession Period, except for reasonable wear and tear. Customer must keep the Trial Products free and clear of all liens and encumbrances, and will defend, at its own expense, the rights, title and interest of NetApp in and to the Trial Products. The Trial Products will remain NetApp's property, even if it becomes attached or affixed to real property, and NetApp will exclusively maintain title and ownership to all Trial Products. In no event will title to the Trial Products that consist of Hardware transfer to Customer unless purchased by Customer. Trial and Pre-Release Products that are Software may only be used up to the maximum amounts of storage capacity, number of hosts or other measure of usage as prescribed by NetApp. Customer agrees to deinstall (or delete, as applicable) the Trial Product at the expiration of the Evaluation Period and make it available for pickup by NetApp (or return or destroy the applicable license keys as requested by NetApp). If Customer does not return (or destroy as applicable) the Trial Product within 30 days of the end of the Evaluation Period, Customer will pay the then-current list price for the Trial Product. Unless otherwise agreed in writing by the parties, such purchase will be governed by the Terms then in effect. Customer is solely responsible for erasing all Customer Content from the Trial Product before being returned to NetApp and acknowledges that any Customer Content remaining on any Trial Product that is returned to NetApp may be disposed of or destroyed by NetApp without any liability of NetApp.

- 10.4.3** NOTWITHSTANDING ANY WARRANTIES SET FORTH IN THESE TERMS TO THE CONTRARY, ANY TRIAL, PRE-RELEASE OR NO CHARGE PRODUCT OR SERVICE THAT NETAPP PROVIDES TO CUSTOMER IS PROVIDED “AS IS.” ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, INCLUDING WARRANTIES OF PERFORMANCE AND THE IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
- 10.5 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 or pandemics, 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 (a "Force Majeure Event"). A Force Majeure Event will not relieve Customer’s obligation to make payments due hereunder for Products or Services actually delivered. If the Force Majeure Event continues for more than 30 days, the parties will negotiate in good faith the termination of the affected Order.
- 10.6 Data Security and Recovery.** Except as set forth in these Terms, Customer is solely responsible for its use of Products and Services, including Personal Information managed or stored using Products and Services. Customer is solely responsible for (a) management of its data back-up, data recovery, and disaster recovery measures; and (b) undertaking the supervision, control and management of Products, including following industry-standard processes, procedures and requirements for (i) the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of a Force Majeure Event or a Product error or malfunction; and (ii) reconstruction of lost or altered files, data, and programs. NetApp will have no responsibility or liability with respect to Customer’s internal processes and procedures related to the protection, loss, confidentiality, or security of Customer's data or Customer Content in connection with Customer’s use of the Products and Services.
- 10.7 Usage Data.** From time to time, NetApp may collect Usage Data generated in the course of Customer’s use of NetApp Products and Services. NetApp collects Usage Data for various reasons, including for NetApp, its agents, service providers and subcontractors to provide technical support, identify, diagnose and address performance issues, improve Products and Services, and for other business purposes in support of the development, deployment, operation, support, provision, and enhancement of Products and Services. NetApp retains all right, title and interest in Usage Data excluding any Customer Personal Information contained therein. Details about NetApp’s Usage Data collection processes are set forth in NetApp’s Privacy Policy at [NetApp Privacy Policy](#).
- 10.8 Audit.** Customer grants NetApp and its independent accountants the right to audit Customer or Customer’s subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If an audit discloses any over-usage or material non-compliance, Customer will promptly pay to NetApp any additional fees upon notice to Customer, including reasonable costs of conducting the audit.
- 10.9 Modification/Substitution/Discontinuation of Products.** NetApp has the sole discretion, at any time, to change, substitute, or discontinue Products and Services set forth on the Price List. NetApp will use commercially reasonable efforts to provide 60 calendar days prior notice when any Product or Service is no longer going to be available for purchase.
- 10.10 Hazardous Environments.** Products and Services are not designed or intended for use in or in the design, construction, operation, or maintenance of a nuclear facility or similar hazardous environment. NetApp will not be liable for any damages resulting from such use.
- 10.11 Severability; Waiver.** In the event any provision of these Terms 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 will be unaffected and remain in full force and effect. Any waiver or failure to enforce any provision of these Terms 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 these Terms will be without prejudice to its right to exercise any other right or remedy.
- 10.12 Assignment.** Customer may not assign any rights or delegate any obligations under these Terms without the prior written consent of NetApp. Any purported assignment by Customer without NetApp’s prior written consent will be null and void.
- 10.13 Subcontractors.** NetApp may use subcontractors to fulfill its obligations under these Terms. NetApp will be responsible for its subcontractors’ obligations hereunder.

- 10.14 Independent Contractors.** The relationship of the parties under these Terms is that of independent contractors. Nothing set forth in these Terms 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.
- 10.15 Publicity.** No advertising, publicity releases, or similar public communications concerning these Terms, Products, or Services will be published or caused to be published by either party without the prior written consent of the other party. Notwithstanding the foregoing, Customer agrees to be mentioned in the list of buyers of NetApp Products and/or Services and that its logo and trademark may be used for this purpose only.
- 10.16 U.S. Government Customers.** This Section applies only to U.S. Government customers. The Products and related Documentation and the Cloud Services are “commercially available off the shelf” items and the Professional Services and Support Services (including but not limited to deliverables or documents provided thereunder) are “commercial services” as defined in FAR 2.101, and their use is subject to the policies, as applicable, set forth in FAR part 12, specifically but not limited to FAR subpart 12.211 and 12.212, as well as DFARS subpart 212.2, specifically but not limited to 212.211 and 212.212. U.S. Government customers will not be subject to applicable audit costs specified in these Terms. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in this Section is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. § 516. All other terms remain in effect as written.
- 10.17 Contracting Entity, Notices, Governing Law, and Venue.** These Terms, the interpretation hereof, and any dispute arising hereunder will be governed by the laws of the state and/or country where the NetApp entity that entered into the applicable Terms (and, where applicable, the Order) is incorporated, excluding any relevant conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms or any Order.
- 10.18 Country Terms.** For any Customer domiciled outside of the United States, additional terms applicable to transactions in such country are set forth in the applicable Country Terms set forth on the [How to Buy Site](#), which will replace or supplement the equivalent provisions set forth in these Terms.
- 10.19 Feedback from Evaluation Products and Services.** To the extent Customer uses Pre-Release, Evaluation or Trial Products or Services, NetApp can use without restriction, any Customer feedback or suggested improvements concerning the functionality and performance of the Pre-Release Products or Services (“Feedback”). Feedback is proprietary and considered NetApp Confidential Information.
- 10.20 Product and Services Restrictions.** Except to the extent required under applicable law, Customer will not directly or indirectly: (i) use Products and Services for any benchmarking or competitive purposes or activities, including but not limited to, developing similar or competing products or services or publishing or providing any benchmark or comparison test results; or (ii) reverse-engineer or disassemble the Products and Services.
- 10.21 Notices.** Except as specifically stated, all notices or other communications required or permitted under these Terms must be in writing and must be delivered by personal delivery, certified overnight delivery, or registered mail (return receipt requested), and will be deemed given upon personal delivery or upon confirmation of receipt. In addition, the parties consent to notice by email or electronic transmission sent to the email address provided by Customer and for NetApp to the following email address: General.Counsel@netapp.com.
- 10.22 Entire Agreement/Amendments.** These Terms may not be changed except by an amendment signed by an authorized representative of each party. In the event of a dispute between the English and non-English version of these Terms (where translated for local requirements), the English version of these Terms will govern, to the extent permitted by applicable laws. These Terms, including any supplemental terms referenced herein, (a) represent the entire agreement and understanding between the parties with respect to the Products and Services acquired hereunder; (b) supersede any previous communications, representations or agreements between the parties; and (c) prevail over any conflicting or additional terms in any Order, acknowledgement, or similar communications. Orders issued to NetApp are deemed to incorporate and be subject to these Terms, except where the parties expressly agree in writing to variations thereto. The pre-printed terms or general terms and conditions on any Customer-provided or Partner-provided Order, or other similar non-NetApp document will have no effect.
- 10.23 Interpretation.** Headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of these Terms. Any use of the word “including” in these Terms will not be deemed to limit the meaning of the preceding word or phrase. Each party has been given the opportunity to



independently review these Terms with legal counsel and each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions. Therefore, in the event of any ambiguity in or dispute regarding the interpretation of these Terms, the drafting of the language will not be attributed to either party.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]