

## INDIRECT CHANNEL PARTNER TERMS – STATE, LOCAL GOVERNMENT AND HIGHER EDUCATION (SLED) TERMS

**SLED End User(s):** These SLED Reseller Terms (the “Terms”) set forth additional terms and conditions for Your purchase and resale of NetApp Products and Services to any executive, legislative or judicial branch of any State, Municipal, County, Regional or Territorial Government entity within the United States of America and its territories or dependencies, including, but not limited to (a) any department, agency, bureau, office, board, district, commission, council, committee, center, service, facility or state-chartered institution; (b) any State, Municipal, County, Regional or Territorial public university or community college or other public non-Federal institution of higher learning and all directly-associated museums, facilities, libraries and hospitals thereof; (c) any governmental or public-private corporation, fund, partnership or conservancy formed with a public purpose or in support of government employees under an act, regulation or ordinance of any State, Municipal, County, Regional or Territorial Government within the United States of America and its territories or dependencies; (d) any Native American Tribal governmental organization not engaged directly in Class III gaming as defined by the Indian Gaming Regulatory Act; and (e) any State, Municipal, County, Regional or Territorial Government-owned contractor-operated (hereinafter “SLED GOCO”) facilities and establishments; as well as any private university or community college or other institution of higher learning and all directly-associated museums, facilities, libraries and hospitals thereof. Capitalized terms are defined in accordance with the definitions provided in the Indirect Channel Partner Terms.

**Appointment of Reseller:** Subject to the terms and conditions herein, You are authorized on a non-exclusive basis to purchase Products and Services from the selected Distributor solely for resale to SLED End User(s) or prime contractors for resale to SLED End User(s) under a valid prime contract. NetApp reserves the right to appoint other partners, resellers, and/or distributors for the Products or Services to SLED End User(s) and/or prime contractors for resale to SLED End User(s) under a valid prime contract. NetApp reserves the right to sell, market, and/or license the Products or Services directly to SLED End User(s).

**NetApp IDIQ Contract Exclusion:** You are prohibited from reselling NetApp Products or Services to SLED End User(s) to fulfill orders under NetApp-held contract vehicles, including but not limited to any NetApp-held Indefinite-Delivery, Indefinite-Quantity (“IDIQ”) or Multiple Award Schedule (“MAS”) Contracts unless, prior to each such transaction You are named by NetApp as a Reseller for such contract.

**Texas SLED Entity Exclusion:** Absent express written authorization, You are prohibited from reselling NetApp Product or Services to SLED End User(s) in the State of Texas unless You are a named reseller on NetApp’s Texas DIR contract.

**Reseller IDIQ Contract Exclusion:** These Terms are not a letter of supply and does not authorize You to represent that NetApp will furnish supplies needed by You to fulfill any of Your prime contract obligations including, but not limited to, the General Services Administration’s Multiple Award Schedules (“GSA MAS”) or California Multiple Award Schedule (CMAS”), absent a quote and a letter of authorization or letter of supply, as appropriate. You further agree that You must obtain either a letter of authorization or letter of supply from NetApp prior to submitting any bid for inclusion of NetApp Products and Services on any IDIQ contract. All letters of authorization or supply shall be independently negotiated between You and NetApp.

### General Terms and Conditions

**SLED Relationship Manager:** You shall appoint a SLED account relationship manager whose primary responsibility is to work with the designated NetApp account manager, act as a focal point for day to day account issues and participate in NetApp Reseller related activities. You shall inform NetApp of the name and contact information for the SLED account relationship manager within five (5) days of (a) the execution of these Terms or (b) the transition to a new SLED account relationship manager.

**Maintenance of Records Pertaining to SLED Transactions:** You must maintain books, records, documents, and other evidence relating to Your financial status and the pricing, expenses, and provision of Products and Services under these Terms. You must also maintain books, records, documents and other evidence concerning your accounting procedures and practices, Employee Eligibility Forms (I-9s), and the protection and use of personally identifiable information employed by

SLED entities to which NetApp Products have been sold. You will provide NetApp full access to such records within fifteen (15) calendar days of receipt of a written request. You shall retain all records for eight (8) years after the expiration or termination of these Terms, whichever is later. Records involving matters in litigation relating to these Terms must be kept for either one (1) year following the termination of litigation, including all appeals, or eight (8) years from the date of expiration or termination of these Terms, whichever is later.

**Audit Rights:** You grant NetApp the right to audit sales records pertaining to the resale of Products. Such audit will take place during normal business hours upon fifteen (15) calendar days advance written notice. In the event that such audit reveals (a) any overcharging of SLED End User(s) pursuant to a NetApp-held IDIQ Contract, (b) any unauthorized use of a NetApp-held IDIQ Contract, or (c) any breach of these Terms, NetApp reserves the right to charge any amounts owed by You to a SLED End User and You agree to reimburse NetApp for all such amounts owed plus reasonable expenses related to such audit.

**Protection of NetApp's Proprietary Information:** You acknowledge that responses to requests for proposals and bids frequently require the disclosure of NetApp's Non-public, Proprietary Information, including without limitation, the results of proof of concept studies performed for a particular bid or proposal. You agree to clearly identify Non-public Proprietary Information in all proposals and bids to SLED entities, and to comply with all laws relating to the protection of such Proprietary Information. In the event You receive a FOIA Disclosure request covering any NetApp Proprietary Information, You shall promptly notify NetApp.

**Compliance with Laws:** You must, to the extent they apply, abide by the requirements of **(1)** 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin and require affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability; **(2)** 29 CFR Part 471, Appendix A to Subpart A; and **(3)** E-Verify. If You are required by federal regulations to file Employer Information Report EEO-1 (standard form 100) or Federal Contractor Veterans' Employment Report VETS-4212, You certify that You have done so or will file such reports in accordance with applicable instructions and will continue to file such reports unless or until no longer required by law or regulation.

**Risk of Loss and Freight Charges:** Notwithstanding any provision of any NetApp-held IDIQ Contract or Reseller-held Contract, except as expressly stated in a NetApp price quotation or a written amendment to these Terms, the terms relating to delivery, acceptance, title transfer, risk of loss, and assessment of freight charges shall be in accordance with these Terms and NetApp's Agreement with Your distributor, as applicable. NetApp does not offer or accept a "right of return" of its Products. You are solely responsible for any refund, cost or other liability associated with a Product rejection or return by a SLED End User following delivery. You shall indemnify NetApp for any loss during shipment claimed by Your customers when utilizing a NetApp-held contract vehicle.

**Disputes:** In the event of any disagreement relating to the parties' performance under or interpretation of the Agreement and/or these Terms, the parties shall attempt to reach a negotiated resolution. Notwithstanding the parties' desire to resolve disputes through negotiation, in the event that immediate action is required to protect a party's rights under these Terms, the aggrieved party may take whatever immediate action is appropriate to protect its rights, to include, but not be limited to injunctive relief. Nothing contained in these Terms or in any other document related hereto is intended to or shall have the effect of requiring either party to consider, resort to, participate in or abide by any arbitration process or mechanism, or any device or arrangement of a nature or intent similar to arbitration. Any dispute arising under or related to these Terms which relates to a matter giving the SLED Prime Contractor recourse against SLED entities under the Prime Contract, or applicable law thereto, may be resolved, by agreement of the parties, in accordance with the Disputes clause of the Prime Contract.

**Software:** NetApp Software is a Commercial-Off-The-Shelf ("COTS") product developed entirely at private expense; no portion of the Software has been developed with public funds; the Software contains trade secrets and confidential commercial or financial information exempt from disclosure under U.S. and State laws; and the ownership of the Software

and any reproductions shall remain with NetApp. In no event shall NetApp be required by You to escrow or offer to escrow Software under any Prime Contract without written authorization by NetApp. Contractor/Manufacturer is: NetApp, Inc., 3060 Olsen Drive, San Jose, CA 95128. Except as expressly licensed hereunder, all rights are reserved.

**Government Contract Flow Down Provisions:** NetApp will not accept any flow-down provisions under SLED Prime Contracts unless previously negotiated and agreed to in writing between You and NetApp. NOTWITHSTANDING ANY LANGUAGE OR PROVISION IN THE AGREEMENT TO THE CONTRARY, ANY SUCH FLOW-DOWN PROVISION ON YOUR PURCHASE ORDERS OR SUPPLEMENTARY DOCUMENTATION ARE DISCLAIMED BY AND INVALID AS TO NETAPP UNLESS EXPLICITLY AGREED TO IN A SEPARATE WRITING BY YOU AND NETAPP.

**Reseller Eligibility:** You certify that you are not presently debarred, suspended, proposed for debarment, voluntarily excluded, or declared ineligible by any State agency or as defined in the FAR 48 C.F.R. Ch. 1 Subpart 9.4. (debarred).

**Valid Business Requirement:** You certify that You (i) are authorized and validly existing under the laws of the state of Your organization, (ii) are authorized to do business, and if required by the state for collection of sales and use taxes, have a valid business registration on file with the Department of revenue; in every state in which You provide Products or Services under these Terms.

#### Terms and Conditions Applicable to Use of NetApp-Held Contract Vehicles

**Application of Terms:** Approval to become an Authorized Reseller on a NetApp-held contract vehicle is at NetApp's sole discretion. You shall work with NetApp to determine whether such appointment is available. These Terms are not an agreement by NetApp to list You as an Authorized Reseller to maintain such contract vehicles, nor does it obligate NetApp to maintain such contract vehicles. You acknowledge a duty of good faith towards any NetApp-held contract vehicle (i) on which NetApp has approved You to act as a named reseller, or (ii) under which NetApp permits You to conduct a two-tier transaction.

**Reporting Obligations:** You agree to provide NetApp with a report of all Product sales to SLED End User(s) and SLED Prime Contractors on a monthly basis. For months where You did not complete any sales to a SLED End User via a NetApp-held IDIQ Contract, You shall still submit a timely report. All reports shall be submitted within eight (8) days after the last day of reporting month. Reports shall be submitted via the NetApp Reporting Portal ("Portal") which can be found at: <http://psi.immixgroup.com/ignetapp/Logon.aspx>. Questions concerning reporting should be directed to the designated NetApp Operations SLED Contracts Manager.

**SLED End User Audit Rights:** You shall grant SLED End User(s) the right to audit sales records upon request and shall comply with all applicable laws governing the same. SLED End User(s) shall have the right to review and copy any records and supporting documentation, whether electronic or paper, pertaining to Your performance under the Agreement, including Your subcontracting reports. You agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. If requested, You agree to deliver the required data and records to the location specified by the SLED End User, without charge

**Indemnification:** You shall indemnify NetApp and its directors, employees, subsidiaries, and affiliates for any and all third party claims, damages, losses, costs and expenses, including attorneys' fees, against NetApp, its employees, subsidiaries, and/or affiliates arising from or related Your failure to comply with any provisions, requirements or laws set forth in a NetApp-held or Reseller-held contract with a state or SLED End User that are applicable to Reseller, or any subcontractor or agent of Yours.

**Reseller Provided Services:** If You are PS Certified, You may sell Your provided services to eligible SLED End User(s) via a NetApp-held IDIQ Contract; provided, however, that (a) Your provided services SKUs have been awarded under the contract, (b) You do not represent to the SLED End User that such services are provided by NetApp, (c) You utilize the appropriate SKUs for all such sales, (d) You accurately report all such sales to NetApp, and (e) You agree to indemnify and hold NetApp, its officers, agents and employees harmless from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of Your provided services.

**Location of Performance of Services:** You certify that all services are to be performed within the United States when required by the SLED End User.

**Security Requirements:** Services that You provide to eligible SLED End User(s) at SLED End User sites shall fully comply with all applicable facility codes of conduct and regulations, security requirements and other site-specific rules. You are solely responsible for reviewing all contract and subcontract requirements relating to onsite performance, prior to commencing work, and to ensuring the full compliance of their personnel. NetApp does not assume any responsibility for Your compliance or conduct on site. Your employees requiring access to such sites may be required by the SLED End User to undergo background checks, fingerprinting, and/or questions about any past convictions for felonies or misdemeanors. Your employees who have been convicted of a felony or misdemeanor shall not be permitted to work at SLED sites.

**Proof of Qualification:** You shall provide, upon request, a copy of relevant technical certifications or other proof or qualifications for the applicable employees, including any replacements or substitutes.

**Authorized Reseller Employees:** You certify that none of Your employees nor any individuals holding a controlling interest in Your company are currently, or have within the past six months been, employees of any state in which You are providing Products or Services under these Terms.

**State-Specific Provisions:** For each state for which You are a named Authorized Reseller, Your participation will be in accordance with the terms and conditions set forth in the NetApp-held agreement with the applicable state. You are solely responsible for Your compliance with all applicable terms and conditions. You shall pass through all terms and conditions of the applicable state Agreements to any lower tier subcontractors. The terms of the applicable Agreements may be found on NetApp's state landing pages, located at <http://www.netapp.com/us/how-to-buy/contracts/>.

**Order of Precedence:** Except as otherwise stated herein, all terms and conditions of the Indirect Channel Partner Terms remain in full force and effect. To the extent there is conflict between the Indirect Channel Partner terms and the terms of these Terms, these Terms prevail, where applicable.