GENERAL TERMS
Global Terms for All Transactions
(excluding Germany)

These General Terms ("Terms") apply to the sale of Products and Services by NetApp, Inc., NetApp B.V. and/or any of their affiliates (collectively, "NetApp") directly to a customer acquiring Products and Services for its own use ("Customer"), unless Customer has entered into a separate agreement with NetApp governing such sale. By ordering, accepting delivery, keeping, or using Products or otherwise proceeding with any transaction with NetApp, Customer agrees to these Terms. NetApp and Customer may each be referred to as a "Party" or collectively, as the "Parties."

1. DEFINITIONS

1.1. Documentation. NetApp supplied technical documentation describing the features and functions of the associated Products.

1.2. Hardware. NetApp-branded hardware, including its components and spare parts, but excluding any firmware and Third Party Branded Products.

1.3. How-to-Buy Site. http://netapp.com/us/how-to-buy/stc.html.

1.4. NetApp Cloud Provider. A third party authorized by NetApp to offer or enable the use of the Software or Cloud Data Services as part of such provider's cloud-based service.

1.5. Order Documentation. The applicable NetApp price quotation (and the NetApp engagement document, if required for the purchase of applicable Services), the corresponding Purchase Order, and the associated Documentation for the Products or Services purchased or licensed hereunder.

1.6. Price List. NetApp's then-current list of Products and Services, and their associated prices for the country of destination.

1.7. Products. Hardware, Software, associated Documentation, and any Third Party Branded Products.

1.8. Purchase Order. A written or electronic order provided to NetApp consistent with the corresponding price quotation for the purchase of Products and Services.

1.9. Services. NetApp's consulting, installation, implementation and other services that are not Support Services ("Professional Services"), its generally available technical support and maintenance services for Products ("Support Services") and/or its "as a service" offerings which Customer may purchase either from NetApp or a NetApp Cloud Provider ("Cloud Data Services").

1.10. 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.

1.11. Third Party Branded Products. Any hardware or software that is manufactured, developed, licensed or otherwise made available by any entity other than NetApp and is distributed or licensed by NetApp for use in conjunction with Hardware and Software.

2. ORDERS, DELIVERY and ACCEPTANCE

2.1. Orders. All Purchase Orders are subject to acceptance by NetApp. Customer will submit all Purchase Orders electronically via e-mail.

2.2. Changes, Cancellation, and Rescheduling. Customer may modify or cancel Purchase Orders up to 10 days prior to any scheduled shipment date, and Customer may reschedule a requested delivery date one time per Purchase Order without additional charge. Product returns are subject to NetApp approval and applicable charges.

2.3. Delivery. Delivery of Hardware and Software pre-installed on the Hardware occurs according to the applicable trade term specified on the NetApp price quotation or as agreed to by NetApp on a case by case basis. Delivery of Software that is not pre-installed on Hardware occurs when NetApp makes the enabling key available electronically via e-mail or otherwise to Customer or, if an enabling key is not required, when NetApp makes such Software available for download or use electronically via e-mail or otherwise by Customer.

2.4. Risk of Loss. Risk of loss or damage to the Products and title to any Hardware in the Products will pass to Customer upon delivery.

2.5. Acceptance. Acceptance by Customer of Products will occur upon delivery, and acceptance by Customer of Services will occur when such Services are rendered, unless otherwise agreed in a NetApp engagement document.

3. PRICING AND PAYMENTS

3.1. Pricing. NetApp may, at its sole discretion, change the prices set forth in its Price List and add or remove Products and Services from its Price List at any time. A Purchase 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.

3.2. Payment Terms. Customer will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, not later than 30 days from the date of NetApp's invoice.

3.3. Remedies for Non-payment. Customer 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 or check 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 may decline to make further deliveries of Product and provision of Services to Customer.

3.4. 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 the 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) shall 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 a Purchase 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 will be liable for all applicable duties, license fees and taxes for Products shipped across international borders in accordance with the applicable trade term as set forth in Section 2.3 or as otherwise may apply.

4. SOFTWARE LICENSE

4.1.   License Grant. Subject to these Terms and any limitations or restrictions set forth in the corresponding Order 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 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 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 specified in the Documentation. 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 hardware and software support offerings in effect at all times.

4.2.   License Restrictions. Customer will not, nor will Customer allow any third party to: (a) use the Software in breach or excess of the types, quantities and other usage attributes related to the associated Software licenses or other limitations prescribed by NetApp in these Terms or the associated Order Documentation; (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 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 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 i) the Software has been obtained from a NetApp Cloud Provider, ii) is used in conjunction with NetApp Cloud Provider service, or iii) 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.

4.3.   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 the Services hereunder.

4.4.   Software Notices. Notwithstanding other statements in this Section 4, third party software components, including free, copyleft and open source software components, if any, embedded in Software ("Third Party Embedded Software") are distributed in compliance with the particular licensing terms and conditions attributable to such Third Party Embedded Software. Copyright notices and licensing terms and conditions applicable to Third Party Embedded Software are available for review with the Software Documentation at https://mysupport.netapp.com/ or may be included on the media on which Customer receives the Software, 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.

4.5.   Performance Data. NetApp retains all right, title and interest in data and data elements collected by the Software systems configuration which, as applicable, pertains to the Software environment, the usage and performance of the Software, and the components managed by the Software, as applicable ("Performance Data"). Without limiting the foregoing, NetApp may collect and use Performance Data to provide and improve the Software and NetApp's other products and services.

5. SERVICES

5.1.   Services. Services are provided by or on behalf of NetApp**.** Additional terms and conditions applicable to Support Services, Professional Services and Cloud Data Services, respectively, are set forth at the How-to-Buy Site. The Services terms for the applicable Services will control over any conflicting term in these Terms.

6. DIRECT WARRANTY

6.1.   Hardware Warranty. NetApp warrants that the Hardware will materially conform to the Documentation for a period of 3 years from the date of delivery, unless otherwise specified in the applicable Documentation ("Hardware Warranty Period"). In the event of any material nonconformity in the Hardware during the Hardware Warranty Period that is reproducible and verifiable, NetApp will, in its sole discretion and at its own expense, repair or replace the Hardware, or refund the amounts received by NetApp for the non-conforming Hardware. Replacement parts will be warranted for the remainder of the Hardware Warranty Period in effect for the original Hardware purchased, unless otherwise mandated by applicable law.

6.2.   Software Warranty. NetApp warrants for a period of 90 days from date of first 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) 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 nonconformity 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. Software that is obtained for use solely in conjunction with a NetApp Cloud Provider's services is provided "AS IS" and without warranty of any kind. Customer assumes all risks arising from the use of the Software together with a NetApp Cloud Provider's offering.

6.3. **Limitations.** NetApp will not be liable under this warranty for claims arising from Customer's, Customer's subcontractor's, or any unauthorized third person's misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Hardware warranty will become void if a Hardware component is installed as an add-on to or replacement for the original Hardware without NetApp's prior written approval. The Software warranty will become void if the Software is modified or otherwise used in violation of the Software license terms set forth in Section 4, except as authorized in writing by NetApp.

6.4. **Exclusive Warranties.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

7.1. **General.** The Software and Documentation is licensed, not sold, to Customer. It is 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.

7.2. **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, and Documentation sold and delivered by or for NetApp to Customer under these Terms 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.

7.3. **Remedies.** NetApp may, at its option, substitute or modify the Product, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the Product. If NetApp determines that none of these alternatives is reasonably available, then Customer may return the Product and NetApp will refund Customer's purchase price.

7.4. **Exclusions.** Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement 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) Product modifications made by or on behalf of Customer without NetApp's authorization; (c) Customer's failure to upgrade or use a new version of the Product, to make a change or modification requested by NetApp, or to cease using the Product if requested by NetApp; (d) the Product, or any portion thereof, in combination with any other product or service; (e) Third Party Branded Products; or (f) any content or information stored on or used by Customer or a third party in connection with a Product.

7.5. **Entire Liability.** Notwithstanding anything to the contrary in these Terms, this Section 7 states NetApp's entire liability and Customer's sole and exclusive remedies for IP Claims.

8. CONFIDENTIALITY

8.1. **General.** "Confidential Information" means any information disclosed by a Party to the other Party in connection with these Terms that (a) is marked "confidential" or "proprietary" at the time of disclosure; (b) if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure and summarized 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. "Confidential Information" includes any reproduction of such information, but does not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving Party; (b) was in the receiving Party's lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the receiving Party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving Party.

8.2. **Treatment of Confidential Information.** Confidential Information will remain the property of the disclosing Party. Each Party will have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under these Terms. Each Party agrees (a) to hold the other Party's Confidential Information in confidence for a period of 3 years from the date of disclosure; and (b) to disclose the other 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. 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 the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

8.3. **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 to retain such information by law, and the receiving Party will provide written certification of compliance with this Section 8.3.

9. LIMITATION OF LIABILITY

9.1. **Liability Exclusions.** To the extent permitted by applicable law, regardless of the basis of claim (e.g., contract, tort, or statute), in no event will NetApp or its suppliers or subcontractors be liable to Customer for special, incidental, 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; interruption of business; Customer's failure to comply with applicable "non-erasable" and "non-rewriteable" U.S. government regulations; or Customer's failure to obtain any 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 the Services. This exclusion is independent of any remedy set forth in these Terms.

9.2. **Cumulative Liability.** To the extent that limitation of liability is permitted by 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.

9.3. **Exceptions.** The limitations set forth in Sections 9.1 and 9.2 will not apply to liability for claims arising from: (a) death or personal injury caused by negligence or gross negligence; (b) willful misconduct

or fraud; (c) any other liability which cannot be excluded under applicable laws; or (d) IP Claims under Section 7.

10. COMPLIANCE WITH LAWS

10.1. Compliance. Each Party will comply with all applicable laws and regulations.

10.2. Export. Customer acknowledges that Products and Services supplied by NetApp under these Terms are subject to 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 export and import of controlled technologies, including without limitation encryption technology. Customer agrees to comply with such laws and regulations and, in particular, represents and warrants that it: (a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly import, export, re-export or divert Products and Services to (or use Products and Services in) countries subject to U.S. embargoes or trade sanctions programs; (b) is not a party, nor will it import, export, re-export or divert to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and (c) will not use Products, Services or technology for any purposes prohibited by United States law, including without limitation the development, design, manufacture, or production of nuclear, missile, chemical or biological weaponry or other weapons of mass destruction. Customer agrees to provide NetApp with destination end use and end user (Customer name or business division using the Products) information upon NetApp's request. Customer will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Customer agrees to obligate, by contract or other similar assurances, the parties to whom it re-exports or otherwise transfers Products and Services to comply with all obligations set forth herein.

10.3. Anti-Bribery. Each Party will comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to 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.

11. MISCELLANEOUS

11.1. Term and Termination. These Terms are effective until terminated. Customer may terminate these Terms at any time upon written notice to NetApp. NetApp may terminate these Terms immediately upon written notice to Customer if Customer commits a material breach of these Terms, including failure to remit payments when due (whether payable to NetApp or its authorized third party financing partners in connection with an Approved Financing Agreement, described in Section 11.8 below) and, in the event that the breach is remediable, Customer fails to remedy it within 30 days of NetApp's written notice requiring Customer to do so. Upon termination of these Terms, all rights to use the Software and Documentation cease and Customer will, at NetApp's request, promptly return or destroy all copies of the Software and Documentation, including any license enablement keys, in Customer's possession or under Customer's control, unless the license granted to Customer under Section 4.1 is a perpetual license and Customer remains in full compliance with these Terms. Sections 4.1. - 4.4, 6, 7, 8, 9, 10, and 11 will survive expiration or termination of these Terms.

11.2. U.S. Federal Government Customers. This Section 11.2 applies only to U.S. Federal Government Customers. The Software and Documentation is "commercial" computer software and documentation and is licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARs) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to applicable audit costs specified in Section 11.16. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these terms 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.

11.3. 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, 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 (collectively, "Force Majeure"). Force Majeure will not relieve the obligation of any payments due hereunder for delivered Products or Services actually performed. If the Force Majeure event continues for more than 30 days, the Parties will negotiate in good faith the termination of the affected Order Documentation(s).

11.4. Data Security and Recovery. Customer is solely responsible for its use of the Products, including personal data managed or stored using Products. 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 Hardware and Software 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 Hardware or Software 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 information in connection with Customer's use of the Products.

11.5. Data Privacy. In the event Customer provides NetApp with access to personal data in order for NetApp to provide Services hereunder, the Parties will ensure that such personal data is disclosed and handled in accordance with all applicable data protection laws and the confidentiality provisions set forth in Section 8 of these Terms. Where required by applicable law, additional terms and conditions governing NetApp's role as a data processor are set forth at the How-to-Buy Site.

11.6. Hazardous Environments. Products 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.

11.7. Product Evaluation. Subject to these Terms, as amended by this Section, NetApp may loan Products to Customer at no cost for a 90 day period from the initial delivery of the Products to Customer, or such other period as agreed by NetApp in writing, for evaluation purposes. Such Products may only be used in a non-production environment to assess the suitability of the Products for Customer's needs. Notwithstanding Section 6 above, these Products are provided and licensed to Customer on an "AS IS" basis and all warranties, whether express, implied, statutory or otherwise are excluded to the maximum extent permitted by applicable laws.

11.8. NetApp Approved Financing. These Terms also apply to "Financed Software," which means Software and 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 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 Terms or the AFA). Customer agrees that the license granted under Section 4 and NetApp's termination rights under Section 11.1 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 Sections 2.4 and 2.5 of these Terms.

11.9. Modification, Substitution, Discontinued Product. NetApp will have sole discretion, at any time, to change, substitute, or discontinue Products. NetApp will use commercially reasonable efforts to provide 60 calendar days' prior notice of any such changes.

11.10. Waiver. 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.

11.11. Severability. 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 hereof will be unaffected and remain in full force and effect.

11.12. 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.

11.13. Subcontractors. NetApp may use subcontractors to fulfill its obligations under these Terms.

11.14. 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 Party.

11.15. Publicity. No advertising, publicity releases, or similar public communications concerning these Terms, the Products, or the 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.

11.16. 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 the audit discloses Software over-usage or any other material noncompliance, Customer will promptly pay to NetApp any additional fees notified to Customer, and the reasonable costs of conducting such audit.

11.17. General. These Terms will be governed by and interpreted in accordance with to the laws of (a) the State of California, United States, excluding its conflicts of law provisions, if Customer is located in the United States or in a country in which NetApp has no local sales subsidiary; or (b) the Netherlands, excluding its conflict of law provisions, if Customer is located in EMEA (excluding the United Kingdom, Ireland and France which are set forth below) or South America; all disputes arising under or in connection with these Terms shall be subject to the exclusive jurisdiction of the competent city of Amsterdam Courts; or (c) if the Customer is established and registered in the United Kingdom, or Ireland, construction, performance and validity of these Terms shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts in London; the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from these Terms; or (d) if Customer is established and registered in France, these Terms are governed by and interpreted in accordance with the laws of France, excluding its conflict of laws rules; all disputes arising under or in connection with these Terms shall be subject to the exclusive jurisdiction of the Commercial Court of Paris, France and the Parties submit to the personal jurisdiction of this court and waive any claims of inconvenient forum; or (e) except as set forth above, in the country in which Customer is located if NetApp has a local sales subsidiary in that country. The Parties agree to disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. If required by NetApp's agreement with a third party licensor, NetApp's licensor will be a direct and intended beneficiary of these Terms and may enforce them directly against Customer. These Terms may not be changed except by an amendment accepted 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 the Terms will govern, to the extent permitted by applicable laws. These Terms represent the entire agreement and understanding between NetApp and Customer with respect to the Products and Services acquired hereunder. These Terms supersede any previous communications, representations or agreements between NetApp and Customer and prevail over any conflicting or additional terms in any quote, Purchase Order, acknowledgement, or similar communications between the Parties. Order Documentation(s) issued by Customer will be 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 Purchase Order, or other similar correspondence originating by either Party will have no effect.

11.18. Use Restriction. Products and Services are for Customer's use and are not for resale or redistribution.