



PROFESSIONAL SERVICES TERMS

These Professional Services Terms (“Professional Services Terms”) set forth the terms and conditions under which NetApp will provide Professional Services to Customer. For Customer purchasing Professional Services directly from NetApp, the NetApp General Terms (posted at <http://netapp.com/us/how-to-buy/stc.html>) also apply. For Customer purchasing Professional Services from an authorized NetApp distributor or reseller, the NetApp Channel End User Terms (posted at <http://netapp.com/us/how-to-buy/stc.html>) also apply. To the extent there is any conflict between these Professional Services Terms and those contained in the NetApp General Terms or NetApp Channel End User Terms, these Professional Services Terms will control and take precedence. These Professional Services Terms shall not apply if Customer has a separate applicable agreement with NetApp for the provision of Professional Services. The revenue-related terms set forth in these Professional Services Terms (i.e., Sections 3, 4 and the remedies for non-payment language in Section 8 below) shall not apply if Customer is purchasing Professional Services from an authorized NetApp distributor or reseller.

1. DEFINITIONS. Capitalized terms not specifically defined in these Professional Services Terms will have the same meaning as in the NetApp General Terms or NetApp Channel End User Terms, as applicable. In addition to the definitions set forth in the General Terms or Channel End User Terms, the following definitions shall apply:

1.1. Deliverables. Tangible materials, reports, analyses, documents or other specific outputs expressly designated as Deliverables in the relevant Engagement Document.

1.2. Engagement Document. A NetApp-approved document, including but not limited to a statement of work, service brief or service description that defines the tasks, schedule of performance and/or Deliverables to be provided by NetApp.

1.3. IP Rights. Patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

1.4. Pre-Existing IP. IP Rights, existing, owned, or otherwise licensed by Customer or NetApp prior to entering into these Professional Services Terms.

1.5. Professional Services. The consulting services to be provided by or on the behalf of NetApp as specified in an Engagement Document.

1.6. Professional Services Materials. Deliverables, materials, software, tools, know-how, and/or information used, generated, created, developed or reduced to practice, including any modifications thereof or thereto, by or for NetApp during the performance of the Professional Services

1.7. Professional Services Resource. A NetApp employee, supplier or subcontractor which NetApp utilizes to provide Professional Services to Customer.

2. SCOPE OF SERVICES

2.1. Projects. NetApp will perform Professional Services in accordance with the applicable quotation and purchase order, the Engagement Document, and these Professional Services Terms. NetApp may at its sole discretion require an Engagement Document to be executed prior to commencement of the Professional Services.

2.2. Change Orders. Changes to the Professional Services specified in a statement of work will not be effective unless a change request form has been executed by authorized representatives of both Parties and NetApp has received the applicable purchase order corresponding to a quotation supporting the change.

2.3. No Custom Development. Professional Services are of a scalable, repeatable nature and, as such, the same or similar Professional Services have been and will continue to be provided to other NetApp customers. No custom development activity shall be performed as Professional Services. Any custom development shall be subject to a separate written agreement.

2.4. No Superuser Access. In no event will Customer grant to a Professional Services Resource root or “superuser” access at a server or network level and NetApp will have no responsibility or liability for loss or damage that results from or is related thereto. Such services shall be subject to a separate written agreement.

3. FEES. An Engagement Document or the associated price quotation will state the fees to be paid by Customer to NetApp for Professional Services rendered and any related payment schedules. Customer’s execution of an Engagement Document or NetApp’s acceptance of a Purchase Order, as applicable, will indicate acceptance of the stated fees and payment schedules. No changes in fees or payment schedules will be effective absent a mutually executed change order.

4. EXPENSES. In addition to the foregoing, if specified in an Engagement Document, Customer will pay NetApp its actual out-of-pocket expenses, including travel, as reasonably incurred by NetApp during the performance of the Professional Services.

5. DURATION AND EXPIRATION OF PROFESSIONAL SERVICES BASED ON TIME AND MATERIAL ENGAGEMENT. In relation to Time and Material (“T&M”) Professional Services, NetApp will provide to Customer a Professional Services Resource qualified at the skill level purchased by Customer, to perform T&M Professional Services, at an agreed Customer site or remotely, for the total amount of hours and/or days set forth in NetApp’s (or the applicable authorized reseller’s) price quotation and Customer’s purchase order. T&M Professional Services purchased on an hourly basis will be performed in minimum increments of 4 consecutive hours. For T&M Professional Services purchased on a daily basis, a “day” constitutes at least 4 hours but not more than 8 hours in a single calendar day; or whenever aggregate overtime hours (those exceeding 8 hours on a calendar day), exceed 4 hours but not more than 8 hours. T&M Professional Services will be available to Customer for 1 year from the date of purchase. Customer payments are nonrefundable, and credit for any unused T&M Professional Services will not be available.

6. PROFESSIONAL SERVICES WARRANTY. NetApp warrants to Customer that the Professional Services will be performed in a professional, workmanlike manner consistent with generally accepted industry practices. If the Professional Services materially fail to conform to this Professional Services warranty, NetApp will re-perform such Professional Services. This is Customer’s sole and exclusive remedy in relation to breach of warranty.

7. INTELLECTUAL PROPERTY RIGHTS. Each Party will retain all right, title and interest in and to its Pre-Existing IP. NetApp will retain all right, title, and interest in and to the Professional Services, Professional Services Materials, and IP Rights embodied therein. In no event will Professional Services Materials be deemed to include Customer Pre-Existing IP or Customer Confidential Information. Customer hereby grants NetApp a non-exclusive, worldwide, royalty-free, fully paid-up license to use such Pre-Existing IP and Confidential Information for the sole purpose of performing

or producing the Professional Services and Professional Services Materials. Upon receipt of full payment, NetApp hereby grants to Customer a limited, non-exclusive, non-transferable, terminable license, with no right to sublicense, to use the Professional Services Materials for Customer's internal business purposes. Customer will not re-distribute the Professional Services Materials to any third parties without NetApp's prior written consent.

8. TERMINATION; REMEDIES FOR NON-PAYMENT. Customer may terminate an Engagement Document for convenience upon 30 days prior written notice. Such termination will not relieve Customer from its obligations to pay NetApp any sums accrued prior to such termination,

including all expenses and time and material costs incurred or expended by NetApp, which will be immediately due upon termination. Customer may request that NetApp complete the Professional Services in progress after notice of termination. NetApp may, in its sole discretion, elect to perform, and, upon completion, will be entitled to full compensation for the completion of such Professional Services. If Customer fails to make payment in accordance with the applicable payment terms or schedule delivery within 1 year of the applicable date of purchase, then, in addition to any other available remedies, NetApp will have the right to decline to render further Professional Services to Customer. NetApp may terminate an Engagement Document immediately on written notice to Customer if Customer commits a material breach of these Professional Services Terms.