SUPPORT SERVICES TERMS

These Support Services Terms ("Support Services Terms") set forth the terms and conditions under which NetApp will provide Support Services to Customer. For Customer purchasing Support Services directly from NetApp, the NetApp General Terms (posted at http://netapp.com/us/how-to-buy/stc.html) also apply. For Customer purchasing Support 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 Support Services Terms and those contained in the NetApp General Terms or NetApp Channel End User Terms, these Support Services Terms will control and take precedence. These Support Services Terms shall not apply if Customer has a separate applicable agreement with NetApp for the provision of Support Services. Any revenues generated by fees set forth in these Support Services Terms shall not apply if Customer is purchasing Support Services from an authorized NetApp distributor or reseller.

1. DEFINITIONS. Capitalized terms not specifically defined in these Support 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. AutoSupport. NetApp’s AutoSupport™ remote support diagnostic system including Active IO™, a Customer-facing portal and mobile application that displays remote diagnostics and provides Customer with remote tools to help optimize Customer’s environment.

1.2. Business Day. Monday through Friday, 8:00 a.m. to 5:00 p.m. Customer local time, except: (i) In Japan, Business Day means Monday through Friday, 9:00 a.m. to 6:00 p.m.; and (ii) in the Middle East and Israel, Business Day means Sunday through Thursday, 8:00 a.m. to 5:00 p.m. Designated local holidays are not considered Business Days.

1.3. Customer Replaceable Unit (CRU). Any FRU which can be replaced by Customer following guidelines and documentation provided by NetApp.

1.4. Field Replaceable Unit (FRU). A component or disk in the Hardware, excluding filler heads, which can be replaced at a Customer location without pre-configuration by NetApp. FRUs will be new or equivalent to new, at NetApp’s reasonable discretion.


1.6. Remote Technical Support. Remote means of providing support which may include telephone and web-based support.

1.7. Software Updates. Updates to the Software which include: (i) enhancements made generally available at no charge by NetApp to existing Software versions; (ii) Software releases made generally available by NetApp to resolve known issues with existing versions of Software; and (iii) temporary software modifications developed for individual, known Software issues as part of the applicable Support Services.

1.8. Support Services. NetApp’s generally available technical support and maintenance services for Hardware and Software, as described on the NetApp Support Site.

1.9. Support Services Period. The period of time specified in the Order Documentation during which NetApp will provide Support Services.

1.10. TRO. The Target Response Objective for timing of delivery of Support Services.

2. SUPPORT SERVICES

2.1. Scope of Support Services. NetApp agrees to provide the Support Services purchased by Customer as set forth in the applicable quotation and corresponding purchase order during the Support Services Period. On a case by case basis, and as explicitly set forth in the applicable quotation and purchase order, NetApp may also offer Support Services in relation to Third Party Branded Products as described on the NetApp Support Site. In such cases, references to Hardware and Software in these Support Services Terms shall also be deemed to include such Third Party Branded Products for which Support Services are provided. NetApp reserves the right to revise or update the scope of Support Services at its sole discretion. Support Services are non-transferable without NetApp’s prior written authorization.

2.2. Combined Use. Customer must purchase the same level of service entitlement for all components and controllers in a system. Customer will notify NetApp prior to any combined use of Hardware and Software initially purchased for use in separate systems, and will upgrade to the highest level of Support Services entitlement existing in the newly combined system. Customer also will pay any additional Support Services fees required by NetApp, as calculated in accordance with the Price List.

2.3. Out-of-Scope Services. The following services are not included in the scope of Support Services:

2.3.1. Subject to Section 2.1 above, services related to any third party products of Customer, including Third Party Branded Products; (b) Transit or relocation of Hardware and related services, including services to remediate any associated damage; (c) Provision of accessories, batteries, supplies or replacement of disposable parts, including without limitation power cords, rack mounting kits and cables; (d) Customer education, training and consulting services; (e) Implementation or installation assistance for hardware and software not procured from a NetApp authorized source; (f) Services related to any work performed at Customer’s site except as specified in the applicable quotation and purchase order; (g) Services relating to issues arising from Customer or third-party modifications, customizations, or enhancements to Software; (h) Services relating to issues arising from a change in Customer’s system configuration which is not in conformance with the NetApp Interoperability Matrix located on the NetApp Support Site at https://mysupport.netapp.com/matrix/#welcome; and (i) Services relating to issues arising from Customer or third party error, use of software other than Software, or modification of Software.

2.4. Hardware and Software Warranty Disclaimers. All NetApp warranties related to Hardware and Software will be voided where:

2.4.1. Hardware has been mishandled, altered, damaged or rendered inoperable (e.g., degaussed disk drives) due to willful or negligent acts or omissions, accident, force majeure, or operation of the Hardware other than as specified in the Documentation; (b) A solid state drive or flash device has been used in excess of its rated life as set forth in the Documentation and/or as determined by its original manufacturer or has not been configured as set forth in the Documentation; (c) Services have been performed by a person or entity other than NetApp or an authorized NetApp service representative in relation to the Hardware and Software, in the absence of a prior written agreement with NetApp; (d) A power surge or failure has occurred or Hardware was subjected to fire suppression discharge; (e) Customer has failed to provide a suitable environment for the Hardware within the range of tolerances set forth in the applicable NetApp Hardware Universe guidelines and related information at https://hwu.netapp.com/Home/index; and (f) An issue arises from cleaning, refinishing or cosmetic modification
of Hardware, or any electrical or site preparation; and
g) Products or components, including without limitation, software or
hardware, have been procured from a source not authorized by NetApp,
and then combined with Products.

2.5. Support Services Warranty. NetApp warrants that for the duration
of the applicable Support Services Period, Support Services will be
performed in a professional and workmanlike manner consistent with
generally accepted industry practices. Customer’s sole and exclusive
remedy in relation to a breach of this warranty is a re-performance of the
Support Services by NetApp.

2.6. Subcontracting. NetApp may use subcontractors to provide the
Support Services under these Support Services Terms.

2.7. End of Availability and End of Support. The NetApp Service and
Support Product Programs End of Availability Index, which is located on
the NetApp Support Site, details information related to the last date on
which Hardware or Software will be available for quoting from NetApp
(“End of Availability” or “EoA”), and the last date on which Hardware or
Software will be supported by NetApp (“End of Support” or “EOS”).
NetApp will not provide Support Services for any Hardware, or
components thereof, or Software after the applicable published EOS
date. In relation to Hardware running Software which has passed its
EOS date, NetApp may require Customer to update to a supported
version of Software as a prerequisite to NetApp continuing to provide
the Hardware Support Services.

2.8. Replacement of Hardware Components and Return Material
Authorization. In the event the resolution of a support case initiated with
the NetApp Technical Support Center (“TSC”) is a Hardware failure and
the Customer is eligible for a replacement, NetApp will provide a part
with the expectation that the Customer will return such Hardware within
15 calendar days of the support case resolution and follow the return
instructions that are provided to the Customer. Failure to return the
Hardware components within the 15 days specified above or their return
in a condition rendering them unsupportable under Section 2.4 above
shall entitle NetApp to invoice Customer for the cost of the replacement
Hardware components supplied, calculated in accordance with the Price
List. Customer will ensure that the failed Hardware is free of any legal
obligations or restrictions that could prevent its replacement and will
return each CRU and FRU individually by separate shipment.

2.9. Support Included with Original and Extended Hardware
Warranty. During the applicable Hardware warranty period, NetApp will
provide Customer with access to 24/7/365 Remote Technical Support,
delivery of replacement Hardware components and access to the
NetApp Support Site. Customer will also have access to AutoSupport.
In relation to Support Services included with the Hardware warranty,
NetApp will use reasonable commercial efforts to deliver replacement
Hardware components by the next Business Day. Such delivery is
subject to local country limitations, including but not limited to shipment
cut-off times, and other factors beyond the reasonable control of
NetApp. Any TRO applicable for Support Services does not apply during
warranty-only support if Customer has not paid for Support Services.

2.10. Next Business Day Schedule. The cutoff time for next Business
Day delivery of FRUs or CRUs and/or arrival of a NetApp Authorized
Service Engineer (“ASE”) is 3:00 p.m. local Customer time, which may or
may not fall within the TRO specified above.

2.11. Onsite Support Services. If Customer has purchased onsite
Support Services, it will receive such services as follows: When
Customer initiates a technical support case with the TSC, a Technical
Support Engineer (“TSE”) will commence issue identification and repair
as necessary. If the issue cannot be resolved remotely, and where the
TSE and Customer jointly agree that onsite Support Services are
necessary and appropriate, the TSE will dispatch an Authorized Support
Engineer (“ASE”) to the Customer site. The ASE will, at the direction of
the TSC, work to diagnose and isolate the issue, make necessary
changes and restore the normal operation of the systems. The TRO for
onsite Support Services will be the same as that specified for
replacement Hardware components in the Documentation. Subject to
Section 2.13 below, in relation to onsite Software Support Services,
NetApp reserves the right to define the most appropriate onsite
resources to resolve the case and restore normal operation. In such
cases, NetApp will communicate with Customer the estimated time of
arrival for the ASE, which may or may not fall within the TRO specified
above.

2.12. Non-Returnable Disk. If Customer has purchased the Non-
Returnable Disk (“NRD”) option, it will not return defective or failed disks
solid state drives and other non-volatile memory components as defined in
the NetApp Support Site that are part of the Hardware. Customer will
retain such non-volatile components and remain solely responsible for
their disposal. Customer agrees that if components covered by the NRD
option are returned to NetApp, NetApp shall have no obligation or liability
whatsoever associated with any data remaining on such components.
NetApp will treat such components like other returned parts and convey
them into the NetApp return chain for repair and/or destruction.

2.13. Software Support Services. If Customer has purchased Software
Support Services that include a Software Support Plan (“SSP”), it is entitled to
Software Support Services during the applicable Support Services
Period. SSP consists of Remote Technical Support and access to all
Software Updates made generally available by NetApp. Customer shall
be responsible for installing and implementing Software and Software
Updates unless it has purchased a Support Services offering that
incudes installation of Software Updates by NetApp, as described in
Section 2.14 below. NetApp may require Customer to implement specific
Software upgrades to resolve current or prospective issues. Customer may
be required to purchase additional Hardware at its own expense to
make use of Software Updates and/or Software upgrades.

2.14. Installation of Software Updates. If Customer has purchased such
installation services, NetApp will install Software Updates during
the provision of Support Services during the Support Services Period.
The TSE will determine the method and timing of installation, with
Customer’s agreement and participation. NetApp may choose to
dispatch an ASE to the Customer site to participate in Software Update
activities.

2.15. Software Support Services Prerequisites. Provision of Software
Support Services is conditional upon Customer having: (a) installed and
operated the Software in accordance with the applicable
Documentation; (b) described with sufficient specificity the nature of the
Software issues Customer is experiencing and the circumstances in
which they occur; (c) reproduced the Software issue such that it can be
confirmed and evaluated by NetApp; (d) made no changes, additions, or
modifications to the Software, directly or indirectly; and (e) installed the
Software in an infrastructure/environment that adheres to the published

2.16. AutoSupport. AutoSupport data (including ActiveIQ data) is
dehemed to be NetApp Confidential Information.

3. CUSTOMER RESPONSIBILITIES

3.1. Customer Contacts. Customer will designate up to 3 technically
qualified employees to serve as Customer’s primary points of contact in
relation to the receipt of the Support Services.

3.2. Customer Information. Immediately on receipt, Customer will
register all Hardware and Software on the NetApp Support Site to create
Customer’s support profile. Customer will keep this profile up-to-date.
TROs, if any, can be met only if Customer has provided NetApp with
accurate information including delivery and on-site service addresses, names and phone numbers of key Customer contacts and access to Customer’s location. If this information is inaccurate or obsolete and/or access to Customer’s location is unavailable or denied to the NetApp ASE or other representatives, adherence to any applicable TRO will be measured from the time that correct information is provided by the Customer to NetApp and/or the NetApp ASE is granted access to Customer’s location.

3.3. NetApp Support Site. During the Support Services Period, Customer will be granted access to the NetApp Support Site. A unique login and password will be assigned to Customer by NetApp, which will be deemed NetApp Confidential Information.

3.4. Miscellaneous Permissions. In the event that NetApp requires access to any computer systems or software owned or licensed by Customer in order to provide the Support Services, Customer will obtain all associated permissions.

3.5. Work Environment. Customer will provide NetApp or the NetApp ASE with a safe working environment and make all necessary arrangements as NetApp may determine is reasonably necessary to perform the Support Services.

3.6. Equipment Relocation. In the event that Customer wishes to relocate Hardware or Software, Customer will contact the NetApp TSC at least 30 days prior to such relocation. NetApp will notify Customer if Customer’s existing Support Services are available at the new location. Customer acknowledges that relocation of the Hardware or Software may result in a decrease of the scope and an increase in the pricing of Support Services. NetApp will communicate this to Customer on a case-by-case basis. If Customer fails to notify NetApp of the relocation of Hardware or Software as required above, NetApp may refuse to provide the Support Services at its sole discretion. In the event of an increase in pricing of Support Services following relocation, Customer will promptly submit a Purchase Order to NetApp and pay the associated NetApp invoice.

3.7. Reinstatement of Lapsed Support. In the event that Customer wishes to reinstate Support Services after a lapsed period following expiration or termination of the original Support Services Period, Customer will pay to NetApp an amount equal to the Support Services fees that would have been due for accrued Support Services during such lapsed period, as well as any applicable reinstatement fee and the amount due for the go-forward Support Services Period being purchased. All such amount will be calculated in accordance with the Price List.