

NetApp U.S. Public Sector, Inc. (“NetApp”)
INDIRECT CHANNEL PARTNER TERMS – US FEDERAL GOVERNMENT SUPPLEMENTAL TERMS

U.S. Federal Government End Users: These U.S. Federal Government Reseller Terms (the “Terms”) set forth additional terms and conditions for Your purchase and resale of NetApp Products and Services to the executive, legislative, or judicial branches of the United States Government; a U.S. Government corporation that was specifically formed and is currently existing under an act of Congress; or any government-owned contractor-operated (“GOCO”) facilities and establishments (each a “U.S. Federal Government End User”). Capitalized terms are defined in accordance with the definitions provided in the Indirect Channel Partner Terms.

Appointment of Partner: Subject to these Terms, you are authorized on a non-exclusive basis to purchase Products and Services from NetApp solely for resale to U.S. Federal Government End User(s) or prime contractors for resale to the U.S. Federal Government End User(s) under a valid prime contract. NetApp reserves the right to appoint other partners, resellers, and/or distributors for the resale of Products or Services to U.S. Federal Government End User(s) and/or prime contractors for resale to U.S. Federal Government End User(s) under a valid prime contract. NetApp reserves the right to sell, market, and/or license the Products or Services directly to U.S. Federal Government End User(s). These Terms are not a letter of supply and do 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”) and NASA’s Solutions for Enterprise-Wide Procurement (SEWP) contract.

Maintenance of Records Pertaining to Government Transactions to U.S. Federal Government End Users: 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 will provide NetApp full access to such records within fifteen (15) calendar days of receipt of a written request. 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 six (6) 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 and Services. 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 U.S. Federal Government End User(s) pursuant to a NetApp-held Multiple Award Schedule Contract, (b) any unauthorized use of a NetApp-held Multiple Award Schedule Contract, or (c) any breach of these Terms, NetApp reserves the right to charge and You agree to promptly pay any amounts owed by You and You will reimburse NetApp for all reasonable expenses related to such audit.

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.

Representations and Certifications When Selling to U.S. Federal Government End Users: By participating in the NetApp Partner Program, You represent that Your participation does not violate any applicable laws and regulations, including without limitation: FAR Part 3.4 (regarding contingent fees); FAR 3.5 (regarding kickbacks); FAR Part 9.5 (regarding conflicts of interest); and FAR part 3.8 (Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions). You further represent that any payment received from the Partner Program was earned in connection with Your meaningful, definitive actions to develop, market, drive, and win a U.S. Federal Government opportunity, and not for

any improper purpose or as part of any kickback. In addition, by participating in the Partner Program, you certify that (i) any payment earned is not prohibited by, nor violative of, any applicable solicitation or contract terms; and (ii) where required (e.g., by solicitation or contract terms or otherwise), the U.S. Government End User is notified of Your Partner Program payment and/or receives the benefit of any discount.

Commercial Products and Services: NetApp Products and Services are Commercial-Off-The-Shelf (“COTS”) products and commercial services as defined in Federal Acquisition Regulation (FAR) subpart 2.101 and are developed at private expense; no portion of the Products have been developed with U.S. Government, state, or other public-sector funds. The Products contain trade secrets and confidential commercial or financial information exempt from disclosure by 5 U.S.C. §§ 552(B) (3) and (4) (Freedom of Information Act) and 18 U.S.C. § 1905 (Trade Secrets Act) and the ownership of the Products and any reproductions remains with NetApp. NetApp Software is provided to the U.S. Federal Government End User(s) pursuant to FAR subpart 12.212 which states that such software shall be acquired under licenses customarily provided to the public as posted on <http://www.netapp.com/us/how-to-buy/stc.aspx>.

Security Clearance: Should Your contractual requirements with U.S. Federal Government End User(s) necessitate that NetApp or NetApp subcontracted service delivery or other account management activities be conducted within a classified work environment, you agree to make all reasonable efforts to assist NetApp and NetApp’s subcontractors with sponsorship of the necessary security clearances required to perform NetApp’s obligations under these Terms. You will provide NetApp, in a timely manner, with any DD-254 flow downs and other security guidance related to NetApp’s performance under Your contract with the U.S. Government End User(s).

Federal Acquisition Regulations Flow Down Provisions: NetApp only agrees to accept those FAR clauses and FAR agency supplemental clauses that are required by the FAR and any agency supplement to be included in commercial product and commercial service subcontracts. Accordingly, NetApp agrees to accept only those FAR clauses identified in FAR clause 52.244-6 Subcontracts for Commercial Products and Commercial Services (the version of the clause current as of the date of these Terms) and FAR agency supplemental clauses identified in the agency-specific clause(s) as required for subcontracts for commercial products or commercial services (the version of the clause current as of the date of these Terms). NetApp expressly rejects all other FAR and FAR agency supplemental clauses, unless otherwise agreed to in writing by NetApp. Note that any additional flow down provisions on Your supplied documentation do not constitute a written agreement by NetApp to accept additional clauses notwithstanding any language in the Your supplied documentation to the contrary and notwithstanding NetApp’s acceptance of such documentation whether in the form of a purchase order or otherwise.

Claims Against U.S. Federal Government End Users: For any claim by NetApp against a U.S. Federal Government End User arising from the NetApp Channel End User Terms that is to be resolved pursuant to the Contract Disputes Act, where applicable, You will cooperate with and provide reasonable assistance to NetApp in NetApp’s efforts to enforce the Channel End User Terms against a U.S. Federal Government End User. When requested by NetApp, you will sponsor NetApp’s claim, appeal, or enforcement action brought in Your name as the NetApp authorized reseller for the transaction(s) related to the claim. NetApp will control the prosecution of its portion of the claim and bear its own costs, including attorney’s fees, relating to the prosecution of NetApp’s portion of the claim. You will be liable for such claims only to the extent funds are actually recovered from the U.S. Federal Government End User, which will be paid by You to NetApp within five (5) business days of Your receipt.

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 these Terms, these Terms prevail, where applicable.