

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached NetApp, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (*e.g.*, the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (MAY 2014). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

PROFESSIONAL SERVICES TERMS

These Professional Services Terms ("Terms") set forth the terms and conditions under which NetApp will provide Professional Services to Customer. For Customers purchasing Professional Services directly from NetApp, the NetApp General Terms (attached herein) [also apply. For Customers purchasing Professional Services](#) from an authorized NetApp distributor or reseller, the NetApp Channel End User Terms ([attached](#) herein) also apply. To the extent there is any conflict between these Terms and those contained in the NetApp General Terms or NetApp Channel End User Terms, these Terms will control and take precedence. These Terms shall not apply if Customer has a separate applicable agreement with NetApp for the provision of Professional Services.

- 1. DEFINITIONS.** 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 or 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 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, 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 provision 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 Order Documentation, including the Engagement Document, and these 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 Order Documentation supporting the change.
 - 2.3. No Unique Services.** 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. Any unique services requested by Customer shall be subject to separate written agreement. No custom development activity shall be performed as Professional Services.
 - 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.** Ordering Activity Licensee agrees to pay any travel expenses in accordance with FTR/JTR, as applicable. Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.
- 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 price quotation and Customer's Purchase Order. T&M Professional Services purchased on an hourly basis will be performed in minimum increments of four (4) consecutive hours. For T&M Professional Services purchased on a daily basis, a "day" constitutes at least four (4) hours but not more than eight (8) hours in a single calendar day; or whenever aggregate overtime hours (those exceeding eight (8) hours on a calendar day), exceed four (4) hours but not more than eight (8) hours. T&M Professional Services will be available to Customer for one (1) year from the Purchase Order date 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. DATA PROTECTION. Performance of Professional Services under these Terms may result in Customer providing NetApp access to personal data. NetApp does not need nor request access to personal data in order to provide Professional Services. In the event Customer does provide personal data to NetApp, Customer accepts sole responsibility and liability for the disclosure and protection of such data in accordance with applicable data protection laws.

9. TERMINATION; REMEDIES FOR NON-PAYMENT. Customer may terminate an Engagement Document for convenience upon thirty (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 payment terms, 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.

SUPPORT SERVICES TERMS

These Support Services Terms ("Terms") set forth the terms and conditions under which NetApp will provide Support Services to Customer. To the extent that there is any conflict between these Terms and those contained in the Master Purchase Agreement, these Terms will control and take precedence.

1. DEFINITIONS In addition to the definitions set forth in the Master Purchase Agreement, the following definitions shall apply:

1.1. AutoSupport. NetApp's AutoSupport™ remote support diagnostic system.

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 filer 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.

1.5. NetApp Support Site. <http://mysupport.netapp.com>

1.6. Remote Technical Support. Telephone and web-based support.

1.7. Software Updates. (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 Order Documentation during the Support Services Period. On a case by case basis, and as explicitly set forth in the Order Documentation, NetApp may also offer Support Services in relation to Third Party Branded Products. In such cases, references to Hardware and Software in these Terms shall also be deemed to include Third Party Branded Products. NetApp reserves the right to revise or update the scope of Support Services at its sole discretion.

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:

- (a) Subject to Section 2.1 above, services related to third party 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 Order Documentation;
- (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 <http://support.netapp.com/matrix/mtx/login.do>; 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:

- (a) 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;
- (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;
- (e) Customer has failed to provide a suitable environment for the Hardware within the range of tolerances set forth in the applicable NetApp Site Requirements Guide at <http://hwu.netapp.com>;
- (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 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 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, Customer will notify NetApp of its intent to return such Hardware within fifteen (15) calendar days of the support case resolution. Hardware replacement is subject to the Return Material Authorization ("RMA") procedure located on the NetApp Support Site at <http://mysupport.netapp.com/NOW/products/rma/>. Failure to return the Hardware components within the fifteen (15) days specified above or their return in a condition rendering them unsupportable under Section 2.3 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 and the NetApp Remote Support Diagnostics Tool, as applicable. 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.

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 is 3:00 p.m. local Customer time. Remote diagnosis completion and/or CRU/FRU ordering that occurs after 3:00p.m. local Customer time, will be deemed completed on the following Business Day and shipment and/or arrival will be scheduled accordingly. (e.g., if diagnosis occurs after 3:00 p.m. on Monday, CRU/FRU ships Tuesday to arrive on Wednesday).

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 forming part of the Hardware. Customer will retain such disks and remain solely responsible for their disposal. Customer agrees that if disks covered by the NRD option are returned to NetApp, NetApp shall have no obligation or liability whatsoever associated with any data remaining on such disks. NetApp will treat such disks like non-NRD disks and convey them into the NetApp supply chain for repair and/or destruction.

2.13. Software Support Services. If Customer has purchased 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 both telephone and web-based 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 includes installation of software updates by NetApp, as described in Section 2.13 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 NetApp Interoperability Matrix on the NetApp Support Site.

2.16 AutoSupport. AutoSupport data is deemed to be NetApp Confidential Information.

3. CUSTOMER RESPONSIBILITIES

3.1. Customer Contacts. Customer will designate up to three (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 thirty (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.

3.8 Data Protection. Performance of Support Services under these Terms may result in Customer providing NetApp access to Personal Data. NetApp does not need nor request access to Personal Data in order to provide Support Services. In the event Customer does provide Personal Data to NetApp, Customer accepts sole responsibility and liability for the disclosure and protection of such data in accordance with applicable data protection laws.

GENERAL TERMS

Terms for All Transactions

These General Terms ("Terms") apply to the sale of Products and Services by NetApp, Inc., NetApp B.V. or any of their affiliates ("NetApp") directly to the Ordering Activity customer acquiring Products and Services for its own use ("Customer"), unless Customer has entered into a separate agreement with NetApp governing such sale. By both parties executing this agreement in writing, 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. Cloud-Based Offering. Hardware, Software, and any Services offered, distributed, marketed or otherwise sold by NetApp for use through a Cloud Provider.

1.2. Cloud Provider. A third party designated by NetApp which offers off premises cloud-based services such as hosting, computing, networking, or storage.

1.3. Documentation. NetApp supplied then current technical documentation describing the features and functions of the associated Products.

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

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 services ("Professional Services") and/or its generally available technical support and maintenance services programs ("Support Services").

1.10. Software. NetApp software in object code format including (as applicable) operating systems, protocols, 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.

2.2. Changes, Cancellation, and Rescheduling. Customer may modify or cancel Purchase Orders up to ten (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.

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 to

Customer or, if an enabling key is not required, when NetApp makes such software available for download or use 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. Reserved.

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 thirty (30) days from the date of receipt 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.

3.4. Taxes and Duties. NetApp shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

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 only, 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 licenses"), or is independent of a storage controller ("Standalone licenses"), and the license 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 of time; (d) "Capacity": Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity or usage; and (e) "Subscription": Controller-based licenses or Standalone licenses which may be purchased on a periodic basis. Certain license types may require the installation and use of NetApp's AutoSupport™ Remote support diagnostic system. 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) 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; (b) remove or conceal any product identification, proprietary, intellectual property, or other notices in the Software and Documentation; (c) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment; (d) 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; (e) 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; (f) modify, adapt, or create a derivative work of the Software or Documentation; and (g) publish or provide any Software benchmark or comparison test results.

4.3. Reserved.

4.4 Software Copyright Information and Notices. Software copyright information and other related details are included as part of notices in the Documentation or other documentation published by NetApp (e.g. NOTICES.TXT or NOTICES.PDF).

5. SERVICES

5.1. Services. Services are provided by or on behalf of NetApp. Additional terms and conditions applicable to Services are set forth on NetApp's How to Buy information provided above.

6. DIRECT WARRANTY

6.1. Hardware Warranty. NetApp warrants that the Hardware will materially conform to the

Documentation for a period of three (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, at its sole 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 that (a) the initially-shipped version of the Software will materially conform to the Documentation; and (b) the Software media will be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law ("Software Warranty Period"). 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, at its sole discretion and 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.

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. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

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. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from the Vendor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

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. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

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; (f) services offered by Customer or revenue earned by Customer for such services; or (g) 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. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

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 thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. "Confidential Information" shall include any reproduction of such information, but shall 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. Neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings. NetApp recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

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 three (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. 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; the acts and omissions of any Cloud Provider; and 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 the amount of fees paid by Ordering Activity under the order giving rise to such liability. 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 death or personal injury caused by negligence, gross negligence, willful misconduct, fraud, any other liability which cannot be excluded under applicable laws, or to 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 export controls under the laws and regulations of the United States, and other countries as applicable, and that Products and Services may include export 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 export or re-export 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 export or re-export 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 and Services for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture, or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer agrees to provide NetApp end use and end user 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. Termination. These Terms are effective until terminated. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, NetApp shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. 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 4.2. - 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. Cloud-Based Offering Notice. Customers buying Cloud-Based Offerings must also comply with the Cloud Provider's applicable terms. Customer is responsible for its Cloud Provider selection, including but not limited to assessing Cloud Provider's services, compliance, and security. Customers using Cloud-Based Offerings to provide customer services may only do so if: (a) its users agree to terms limiting NetApp's liability in a manner no less protective than these Terms; (b) its users provide legally required consents for data storage, use, transfer or handling; and (c) its services comply with applicable laws and regulations, including but not limited to data protection regulations.

11.4. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

11.5. Data Privacy and Recovery. Customer is solely responsible for personal data managed or stored using Products and agrees to comply with all applicable data privacy laws. Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Customer assumes responsibility for undertaking the supervision, control and management of Hardware and Software including following industry-standard processes, procedures and requirements: (a) for 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 (b) for reconstruction of lost or altered files, data, and programs. NetApp will not be responsible or held liable for Customer's internal processes and procedures related to the protection, loss, confidentiality, or security of Customer's data or information.

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 ninety (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. Reserved.

11.9. Reserved.

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 and NetApp may not assign any rights or delegate any obligations under these Terms without the prior written consent of the other party. Any purported assignment by Customer or NetApp without the other party'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 to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. 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. Subject to applicable Government security requirements, 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, NetApp will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit.

11.17. General. These Terms will be construed pursuant to the Federal laws of the United States. The Parties agree to disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Customer's use of the Products. 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, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), represent the entire agreement and understanding between NetApp and Customer with respect to the Products. They supersede any previous communications, representations or agreements between NetApp and Customer and prevail over any conflicting or additional terms, 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, Order Documentation form, contractual document or other similar correspondence originating by either Party will have no effect unless the Parties expressly agree in writing. A negotiated purchase order signed by both parties would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs.

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

CHANNEL END USER TERMS

These Channel End User Terms ("Terms") set forth the direct terms and conditions between NetApp, Inc., NetApp B.V., or any of their affiliates ("NetApp") and "Ordering Activity" under GSA Schedule contracts ("Customer") in connection with NetApp Products and Services purchased by Customer from an authorized NetApp reseller, unless Customer has entered into a separate agreement with NetApp in connection with such Products or Services. By both parties executing these Terms in writing, Customer agrees to be bound by these Terms. NetApp and Customer may each be referred to as a "Party" or collectively, as the "Parties."

1. DEFINITIONS

1.1. Cloud-Based Offering. Hardware, Software, and any Services offered, distributed, marketed, or otherwise sold by NetApp or a NetApp authorized distributor, reseller, or partner for use through a Cloud Provider.

1.2. Cloud Provider. A third party designated by NetApp which offers off premises cloud-based services such as hosting, computing, networking, or storage.

1.3. Documentation. NetApp supplied then current technical documentation describing the features and functions of the associated Products.

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

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

1.6. Services. NetApp's consulting services ("Professional Services") and/or its generally available technical support and maintenance services programs ("Support Services").

1.7. Software. NetApp software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency, and management software.

1.8. 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. SOFTWARE LICENSE

2.1. License Grant. Subject to these Terms and any limitations or restrictions set forth in the corresponding 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 only, 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 licenses"), or is independent of a storage controller ("Standalone licenses"), and the license 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 of time; (d) "Capacity": Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity or usage; and (e) "Subscription": Controller-based licenses or Standalone licenses which may be purchased on a periodic basis. Certain license types may require the installation and use of NetApp's AutoSupport™ remote support diagnostic system. 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.

2.2. License Restrictions. Customer will not, nor will Customer allow any third party to (a) 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; (b) remove or conceal any product identification, proprietary, intellectual property, or other notices in the Software and Documentation; (c) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment; (d) 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; (e) 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; (f) modify, adapt or create a derivative work of the Software or Documentation; and (g) publish or provide any Software benchmark or comparison test results.

2.3. Reserved.

2.4. Software Copyright Information and Notices. Software copyright information and other related details are included as part of notices in the documentation published by NetApp (e.g. NOTICES, TXT or NOTICES, PDF).

3. SERVICES

3.1. Services. Services are provided by or on behalf of NetApp. Additional terms and conditions applicable to Services are set forth on NetApp's How to Buy information provided above.

4. DIRECT WARRANTY

4.1. Hardware Warranty. NetApp warrants that the Hardware will materially conform to the Documentation for a period of three (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, at its sole discretion and expense, repair or replace the Hardware, or refund 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. For purposes of this Section 4.1 delivery is made pursuant to the applicable trade terms specified on the quotation or as agreed to by NetApp.

4.2. Software Warranty. NetApp warrants that (a) the initially-shipped version of the Software will materially conform to the

Documentation; and (b) the Software media will be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law ("Software Warranty Period"). 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, at its sole discretion and expense, repair or replace the Software, or refund the amounts received by NetApp for the nonconforming Software. This warranty does not cover software, other items, or any services provided by persons other than NetApp or a NetApp authorized distributor, reseller or partner. For the purposes of this Section 4.2, if Software is pre-installed on the Hardware, delivery is made pursuant to the applicable trade terms specified on the quotation or as agreed to by NetApp. If the Software is not pre-installed on the Hardware, then for the purposes of this Section 4.2, delivery is made when NetApp makes the enabling key available to a Customer or, if an enabling key is not required, otherwise makes such Software available for download or use by the Customer.

4.3. 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 2, except as authorized in writing by NetApp.

4.4. 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.

5. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

5.1 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.

5.2. 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 control of the defense or settlement negotiations.

5.3. 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.

5.4. 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 prior written 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; (f) services offered by Customer or revenue earned by Customer for such services; or (g) any content or information stored on or used by Customer or a third party in connection with a Product.

5.5. Entire Liability. Notwithstanding any Term to the contrary in these Terms, this Section 5 states NetApp's entire liability and Customer's sole and exclusive remedies for IP Claims.

6. CONFIDENTIALITY

6.1. 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 thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. "Confidential Information" shall include any reproduction of such information, but shall 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.

6.2. 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 three (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.

6.3. 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 6.3.

7. LIMITATION OF LIABILITY

7.1. Liability Exclusions. Regardless of the basis of claims (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; the acts and omissions of any Cloud Provider; and 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.

7.2. Cumulative Liability. To the extent that limitation of liability is permitted by law, NetApp's liability is limited to the amount of fees paid by Ordering Activity under the order giving rise to such liability. This limitation is cumulative and not per incident.

7.3. Exceptions. The limitations set forth in Sections 7.1 and 7.2 above will not apply to liability for death or personal injury caused by negligence, gross negligence, willful misconduct, fraud, any other liability which cannot be excluded under applicable laws, or to IP Claims under Section 5.

8. COMPLIANCE WITH LAWS

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

8.2. Export. Customer acknowledges that Products and Services supplied by NetApp under these Terms are subject to export controls under the laws and regulations of the United States, and other countries as applicable, and that Products and Services may include export 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 export or re-export 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 export or re-export 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 and Services for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture, or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer agrees to provide NetApp with end use and end user 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.

8.3. Anti-Bribery. Each Party shall 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.

9. MISCELLANEOUS

9.1. 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 9.7 below) and, in the event that the breach is remediable, Customer fails to remedy it within thirty (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 2.1 is a perpetual license and Customer remains in full compliance with these Terms.

9.2. U.S. Federal Government Customers. This Section 9.2 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 9.15. 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.

9.3. Cloud-Based Offering Notice. Customers buying Cloud-Based Offerings must also comply with the Cloud Provider's applicable terms. Customer is responsible for its Cloud Provider selection, including but not limited to assessing Cloud Provider's services, compliance, and security. Customers using Cloud-Based Offerings to provide customer services may only do so if: (a) its users agree to terms limiting NetApp's liability in a manner no less protective than these Terms; (b) its users provide legally required consents for data storage, use, transfer or handling; and (c) its services comply with applicable laws and regulations, including but not limited to data protection regulations.

9.4. 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").

9.5. Data Privacy and Recovery. Customer is solely responsible for personal data managed or stored using Products and agrees to comply with all applicable data privacy laws. Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Customer assumes responsibility for undertaking the supervision, control, and management of NetApp Hardware and Software including following industry-standard processes, procedures, and requirements: (a) for 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 (b) for reconstruction of lost or altered files, data, and programs. NetApp will not be responsible or held liable for Customer's internal processes and procedures related to the protection, loss, confidentiality, or security of Customer's data or information.

9.6. 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.

9.7. Product Evaluation. Subject to these Terms, as amended by this Section, NetApp may loan Products to Customer at no cost for a ninety (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 4 above, the evaluation 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.

9.8. 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 2 above and NetApp's termination rights under Section 9.1 above 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.

9.9. 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 sixty (60) calendar days' prior notice of any such changes.

9.10. 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.

9.11. 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.

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

9.13. 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.

9.14. 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.

9.15. Audit. Subject to Government security requirements, 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, NetApp will invoice Customer any fees.

9.16. General. These Terms will be construed pursuant to the Federal laws of the United States, excluding its conflicts of law provisions. The Parties agree to disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Customer's use of the Products. 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 these 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. They 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.

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