



PARTNER SPHERE AGREEMENT (COMMERCIAL)

This **Partner Sphere Agreement** is entered into by and between **You** (as defined herein) and **NetApp, Inc.** and **NetApp Ireland Ltd.**, each on behalf of itself and its Affiliates (collectively "**NetApp**"):

1. YOUR APPOINTMENT; SCOPE

- 1.1. As used herein, the terms "You" and "Your," primarily, refer to the entity seeking enrollment in the NetApp Partner Sphere Program that you represent but, where context indicates, may refer to you, individually, but only in your capacity as a representative of the entity you represent. Capitalized terms not defined herein shall take the meaning set forth for such terms in the Attachments.
- 1.2. By completing and submitting the NetApp Partner Application Form, You expressly agree that such enrollment / participation in, access to and utilization of the NetApp Partner Sphere Program, in any way, as well as Your purchase of NetApp Products and/or Services whether through a NetApp authorized Distribution Partner or direct from NetApp, including for resale to an End User, (a) is expressly governed by this Partner Sphere Agreement, inclusive of all Program Guide(s) (as defined herein), Attachments and subsequent amendments (collectively "**Partner Agreement**") and (b) the Partner Agreement expressly supersedes and replaces any and all prior oral or written agreements or understandings between the Parties with respect to the subject matter contained herein.
- 1.3. The relationship between You and NetApp is that of independent contractors and You must not act or represent Yourself as an agent of NetApp. You are not permitted, under any circumstances, to assign or transfer Your appointment as a NetApp Partner, any rights and obligations in relation to it, and/or this Partner Agreement without the prior written consent of NetApp.
- 1.4. As a NetApp Partner, You may also place orders for NetApp Products or Services for Your use, which includes use of such Products and/or Services in a Service Provider Offering, and not for resale in the same manner You order Products and/or Services for resale (i.e., either through a NetApp authorized Distribution Partner or direct with NetApp, as authorized and applicable). NetApp Product or Services that You purchase for Your use and not for resale are exclusively governed by the Channel End User Terms, and in each such instance You shall be deemed the End User or "Customer," as applicable, notwithstanding Your NetApp Partner status.
 - 1.4.1. For purposes of the Channel End User Terms, the foregoing authorization to use NetApp Products and/or Services in a Service Provider Offering constitutes a written agreement between You and NetApp regarding the same and, notwithstanding Section 3.2 herein, prevails over terms prohibiting use of NetApp Product or Services in a Service Provider Offering in the Channel End User Terms.

2. PROGRAM GUIDE(S)

The NetApp Partner Sphere Program and incentive benefits are governed by the then current NetApp Partner Sphere Program Guide as well as any incentive, benefit, or certification specific guide, as published by NetApp, applicable to such incentive benefit or certification (each a "Program Guide") and this Partner Agreement. At all times pertinent hereunder, the current, governing version of each Program Guide shall be available to You at partners.netapp.com. Together, each such Program Guide and this Partner Agreement replace and supersede any prior agreements between You and NetApp in relation to participation in any NetApp incentive benefits, certification, or technology alliance program, including the NetApp Partner Sphere Program.

3. STRUCTURE; ATTACHMENTS

- 3.1. Different or additional terms apply to certain NetApp Products or Services, incentive benefits and/or sales

motions, as set forth in the following attachments (each an "Attachment"):

<u>Attachment:</u>	<u>Description / Application:</u>
Direct Order Terms	Terms governing the placement of orders directly with NetApp, where Partner has been separately authorized in writing by NetApp to do so
Resale Terms	Terms governing the resale of NetApp Products, whether purchased direct from NetApp or through a NetApp authorized Distribution Partner
Keystone StaaS Resale Terms	Additional terms governing Partner resale of Keystone StaaS Service subscriptions to End Users

- 3.2. You acknowledge that not all NetApp Products and/or Services are available in all countries and/or regions, and that prior to providing a quotation to an End User, Partner should confirm availability of the Product or Service in the relevant country or region with a NetApp representative first. In the event of a conflict between the terms set forth in the main body of this Partner Agreement and any Attachment, the Attachment will prevail with respect to the subject matter contained therein. In the event of a conflict between the terms of Attachments, the Product or Service specific Attachment(s) will prevail over the more general Attachment(s).

4. TRAINING

Following your submission of the Partner Application Form, NetApp may require that You complete certain qualifying training, as set forth in more detail at https://netapp.sabacloud.com/Saba/Web_spf/NA1PRD0047/app/me/learningeventdetail/cours00000000044163?regId=regdw000000005076526 ("Training"). If You are required to complete training, and provided Your application is granted preliminary approval, You will have thirty (30) days from the date set forth on the preliminary approval notification to complete the training ("Training Period"). If, by the conclusion of the Training Period, You have not completed the Training, You will be removed from the NetApp Partner Sphere Program and this Partner Agreement will terminate. For Your convenience, NetApp will retain Your application materials and information for a period of ninety (90) days, during which You may re-apply ("Grace Period"). If You have not re-applied to the NetApp Partner Sphere Program within the Grace Period or, if You do re-apply, but do not complete the Training during the Training Period subsequent to re-applying, You will need to restart the application process to participate in the NetApp Partner Sphere Program.

5. INTELLECTUAL PROPERTY

- 5.1. As a NetApp Partner, NetApp grants You a limited, non-transferable, nonexclusive license to use NetApp's trademarks for the purposes of identifying Yourself as a NetApp Partner and for advertising and promotion purposes. Details of Your permitted usage of NetApp's name and trademarks, and the terms governing such usage, are fully set forth at the following website: <https://www.netapp.com/us/legal/tmguidelines.aspx>.
- 5.2. Subject to the terms and conditions herein, NetApp will defend or settle any third party claim brought against You, alleging that Hardware, Software, Documentation, Services or Cloud Service Enabling Software You have resold, distributed or are using, subject to this Partner Agreement and/or the Channel End User Terms (available at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/>) (individually or collectively, "Covered Products") 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 Partner to the extent such Damages are specifically attributable to the IP Claim, provided that Partner: (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.

- 5.3. NetApp may, at its option, substitute or modify the applicable Covered Products, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the applicable Covered Products. If NetApp determines that none of these alternatives is reasonably available, then NetApp may, in its sole discretion, accept return of the Covered Products or termination of an affected subscription to a Cloud Service, and provide a pro rata refund of pre-paid fees received by NetApp for such Covered Product(s), as applicable to the End User.
- 5.4. Notwithstanding anything to the contrary in this Partner Agreement, NetApp has no obligation or liability for any IP Claim related to the Covered Products 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 Partner or an End User; (b) modifications to the Covered Products made by or on behalf of Partner or an End User without NetApp's prior written authorization; (c) an End User's failure to upgrade or use a new version of the Covered Products, to make a change or modification requested by NetApp, to implement or configure the Covered Product in a manner set forth by NetApp, or to cease using the Covered Products if requested by NetApp; (d) the Covered Products, or any portion thereof, in combination with any other product or service (including a NetApp Cloud Provider's services); (e) Third-Party Branded Products or Third-Party Branded Services; (f) any content or information stored on or used by Partner, End User or a third party in connection with a Covered Product; or (g) Partner's or End User's breach of the use limitations prescribed by NetApp.
- 5.5. Notwithstanding anything to the contrary in this Partner Agreement, this Section states NetApp's entire liability and Partner's sole and exclusive remedies for IP Claims.

6. CONFIDENTIAL INFORMATION

- 6.1. Confidential Information disclosed to the Receiving Party will remain the exclusive property of the Disclosing Party. The Receiving Party may use the Disclosing Party's Confidential Information solely for the purpose of fulfilling its obligations under this Partner Agreement. The Receiving Party agrees to disclose the Disclosing Party's Confidential Information only to those employees, agents or subcontractors who have a need to know in furtherance of this Partner Agreement 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.
- 6.2. Confidential Information does not include any information that: (a) is already known to the Receiving Party without restrictions at the time of disclosure; (b) is or becomes known to the general public through no act or omission of the Receiving Party in breach of this Partner Agreement; (c) is disclosed to the Receiving Party by a third party who is not, to the knowledge of the Receiving Party, in breach of an obligation of confidentiality; or (d) is independently developed by employees and/or contractors of the Receiving Party who did not have access to, and without use of, the Disclosing Party's Confidential Information.
- 6.3. The Receiving Party's obligations regarding the Disclosing Party's Confidential Information will expire three (3) years from the date of disclosure.
- 6.4. 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, unless prohibited by applicable law, the Receiving Party gives the Disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.
- 6.5. 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 by law to retain such information, and the Receiving Party will provide written certification of compliance with this Section.

7. TERMINATION

- 7.1.** Your appointment as a NetApp Partner may be terminated upon thirty (30) days' notice in writing by either party that they wish to terminate. Upon termination You will no longer be permitted to represent Yourself, or act in any capacity, as a NetApp Partner, and any right to use NetApp's name or trademarks, or right to resell or distribute NetApp Products and Services will automatically cease.
- 7.2.** Subject to, and except as otherwise set forth in each of the Attachments, either party may terminate an Order for cause: (a) upon thirty (30) days written notice to the other party of a material breach (including for Partner's failure to remit payments when due) if such breach remains uncured at the expiration of such period; or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Termination will not (a) relieve Partner from its payment obligations with respect to any sums accrued prior to termination, which will become immediately due and payable; or (b) entitle Partner to any refund unless otherwise set forth in this Partner Agreement.
- 7.3.** The following Sections will survive termination of this Partner Agreement in accordance with the terms set forth herein: Section 5 (Intellectual Property), Section 6 (Confidential Information), Section 8 (Indemnification) Section 9 (Compliance with Laws), and Section 10 (General). In addition, any sections of the Partner Agreement which, upon a plain reading, are intended to survive termination or expiration of the Partner Agreement, will survive such termination or expiration.

8. INDEMNIFICATION

- 8.1.** Partner shall defend, indemnify and hold NetApp and its directors, employees, subsidiaries, and affiliates harmless from/for any and all claims, damages, losses, costs and expenses, including attorneys' fees, arising from any third party claims asserted against NetApp, its employees, subsidiaries, and/or affiliates that are based in whole or in part on: (a) Partner's breach of the Partner Agreement; (b) any Partner service or service provider offering; or (c) any false, misleading or otherwise unauthorized statements or representations.

9. COMPLIANCE WITH LAWS

- 9.1.** You agree to comply with all applicable laws in transactions involving NetApp, including but not limited to applicable country laws relating to anti-corruption or anti-bribery, 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. This means that nothing of value may be given to a third party, such as an actual or prospective customer or End User, in connection with a NetApp transaction to get or maintain business or to encourage an official to perform his or her official duties.
- 9.2.** Partner acknowledges that Products and Services are subject to export controls under the laws and regulations of the United States, the European Union, and other countries (as applicable), and that Products and Services may include technology controlled under export and import regulations, including encryption technology. Partner agrees to comply with such laws and regulations and to provide NetApp destination end use and end user information. Partner agrees to obligate, by contract or other similar assurances, the parties to whom Partner re-exports or otherwise transfers the Products and Services to comply with all obligations set forth in this Section.
- 9.3.** In the event Partner provides NetApp with access to Personal Information in order for NetApp to provide Products or Services hereunder, the Parties will ensure that such Personal Information is disclosed and handled in accordance with all applicable data protection laws and the confidentiality provisions set forth in this Partner Agreement. To the extent that NetApp receives Personal Information from Partner, the NetApp Privacy Policy (found at <https://www.netapp.com/company/legal/privacy-policy/>) will apply to NetApp's management and usage of such Personal Information and is hereby incorporated by reference. Article 28 (1) of the European Union General Data Protection Regulation ("GDPR") requires an agreement between a controller and processor, and between a processor and sub processor, that processing of Personal

Information be conducted in accordance with technical and organizational measures that meet the requirements of the GDPR and ensure the protection of the rights of data subjects. To the extent NetApp acts as a data processor of Personal Information on behalf of Partner: (a) NetApp will comply with the additional terms and conditions applicable to NetApp in the “NetApp Data Processing Addendum,” available at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/>, and (b) NetApp will not retain, use, or disclose such Personal Information for any purpose other than providing or improving Products or Services in accordance with this Partner Agreement. NetApp certifies that it understands the foregoing restrictions and will comply with them.

10. GENERAL

10.1. Audit

10.1.1. You agree to grant NetApp or its independent accountants the right to audit and verify Your compliance with this Partner Agreement and Your role and obligations as a NetApp Partner, upon reasonable advance notice, but in no event less than fourteen (14) calendar days written notice, and only during regular business hours. Such audit may require You (a) giving access to Your records in relation to Your appointment as a NetApp Partner; (b) providing copies of documents or other evidence to verify Your compliance with Your obligations hereunder; (c) responding to requested assessments; and (d) providing periodic certifications. In addition, NetApp will periodically conduct check-ins with regard to Your performance as a NetApp Partner, which may result in Your appointment as a NetApp Partner being revoked or a demotion of Your partner level status if You fail to perform as expected.

10.2. Limitation of Liability

10.2.1. To the extent permitted by applicable law, regardless of the basis of the claims (e.g., whether in contract, tort (including negligence), statute, products or strict liability, or any other form of action):

10.2.1.1. in no event will NetApp or its suppliers or subcontractors be liable to You for special, incidental, exemplary, 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; and/or interruption of business. This exclusion is independent of any remedy set forth in this Partner Agreement;

10.2.1.2. NetApp's liability to You is limited to direct damages in an amount not to exceed one million dollars (US\$1,000,000) on a cumulative basis.

10.2.2. These limitations do not apply to liability for claims arising from: (a) death or bodily injury caused by a Party's negligence or gross negligence; (b) willful misconduct or fraud; (c) any other liability which cannot be excluded under applicable law; or (d) IP Claims for which NetApp indemnifies Partner under Section 5 (Intellectual Property).

10.3. Updates. You agree that NetApp may modify and/or update this Partner Agreement, including the Attachments and Program Guides, at least once annually without prior notice to You (“Updates”). The current Partner Sphere Agreement and Attachments will be available to You at <https://partnerhub.netapp.com/s/partner-sphere-agreement>, and the current Program Guide(s) will be available to You at partners.netapp.com. At any pertinent time hereunder, the then current posted version of the Partner Sphere Agreement, Attachments and Program Guide(s) shall be the controlling terms of Your Partner Agreement with NetApp.

10.4. Notices. Except as specifically stated, all notices or other communications required or permitted under this Partner Agreement must be in writing and must be delivered by personal delivery, certified overnight delivery, or registered mail (return receipt requested), and will be deemed given upon personal delivery or upon confirmation of receipt. In addition, the parties each consent to notice by email or electronic transmission

sent to the email address provided by Partner and, for NetApp, to the following email address: General.Counsel@netapp.com. It is Partner's responsibility to update its contact information, including e-mail address(es), provided to NetApp on an on-going basis and NetApp shall be deemed to have complied with this section by delivering any notice or communication hereunder to the contact information then on file with NetApp.

10.5. 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 or pandemics, 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 (each a "Force Majeure Event"). For the avoidance of doubt, Force Majeure Event will not relieve Partner's obligation to make payments due hereunder for Products or Services actually delivered. If the Force Majeure Event continues for more than thirty (30) days, the parties will negotiate in good faith the termination of the affected Order(s).

10.6. Governing Law / Venue

10.6.1. This Partner Agreement, the interpretation hereof, and any dispute arising hereunder will be governed as follows:

10.6.1.1. Subject to and limited by Section 10.6.1.2 herein, with respect to any dispute arising from or related to Your participation in the Partner Sphere Program and/or any incentive benefits thereunder (a) the State of California, United States, if You are located in the United States, Canada or Mexico or (b) Ireland, if You are located elsewhere, and in all cases, without regard to conflict of law provisions.

10.6.1.2. With respect to any dispute arising from any Order, the state and/or country where the NetApp entity that accepted and/or otherwise entered the related Order is incorporated, excluding any relevant conflict of law provisions.

10.6.2. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Partner Agreement or any Order.

10.7. Entire Agreement/Amendments. Except for NetApp Updates, this Partner Agreement may not be changed except by an amendment signed by an authorized representative of each party. In the event of a dispute between the English and any non-English version of this Partner Agreement (where translated for local requirements), the English version of this Partner Agreement will govern, to the extent permitted by applicable laws. This Partner Agreement, including any Program Guide(s), Attachments and/or supplemental terms referenced herein, (a) represent the entire agreement and understanding between the parties with respect to participation in, access to and utilization of the NetApp Partner Sphere Program, in any way, as well as Your purchase of NetApp Products and/or Services whether through a NetApp authorized Distribution Partner or direct from NetApp, including for resale to an End User; (b) supersede any previous communications, representations or agreements between the parties; and (c) prevail over any conflicting or additional terms in any Order, acknowledgement, or similar communications between the parties or between You and an End User. Orders issued to NetApp are deemed to incorporate and be subject to this Partner Agreement, except where the parties expressly agree in writing to variations thereto. The pre-printed terms or general terms and conditions on any non-NetApp order document, whether signed by NetApp, or other similar non-NetApp document will have no effect.

10.8. Interpretation. Headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Partner Agreement. Any use of the word "including" in this Partner Agreement will not be deemed to limit the meaning of the preceding word or phrase. Each party has been given the opportunity to independently review this Partner Agreement with legal counsel and each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions. Therefore, in the event of any ambiguity in or dispute

regarding the interpretation of this Partner Agreement, the drafting of the language will not be attributed to either party.

EXHIBIT 1 DEFINITIONS

(Capitalized terms not defined here shall take the meaning provided for such terms in the Attachments)

Affiliate means any entity, directly or indirectly through one or more intermediaries, that is controlled by, or is under common control with, a party hereunder, but only for so long as such relationship exists. For purposes of this definition, “control” means the ability to direct its affairs and/or to control the composition of its board of directors or ownership of more than 50% (or such lesser percent as may be the maximum that may be owned by foreign interests pursuant to the applicable laws of the country of incorporation) of (a) the shares of stock entitled to vote for directors in the case of a corporation; or (b) the equity or interests in profits in the case of a business entity other than a corporation.

Channel End User Terms means the exclusive terms and conditions governing an End User’s purchase and use of NetApp Products and/or Services available at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/>.

Cloud Service(s) means a NetApp cloud-based service (which may be infrastructure, platform or software) made available to End Users as described more fully in the Cloud Services Terms, available at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/>.

Cloud Service Enabling Software means NetApp Software that is solely necessary to facilitate End User’s use of a Cloud Service.

Confidential Information means information (in its broadest sense) belonging to or provided by a party to this Partner Agreement, identified as “Confidential” at the time of disclosure and which does not otherwise fall within the description set forth in Section 6.2.

Disclosing Party means a party sharing Confidential Information hereunder.

Distribution Partner means an entity authorized by NetApp to distribute NetApp Products and Services through authorized NetApp partners.

Documentation means the then-current published documentation as published by NetApp on NetApp.com relating to the description, operation and use of NetApp Products and Services published by NetApp. Documentation includes technical program and interface documentation, user manuals, operating instructions, and release notes.

End User means the end user customer purchasing NetApp Products and Services for their own use.

Engagement Document means NetApp-approved document that describes the Professional Services NetApp will provide to End User, including but not limited to a statement of work, service brief or service description.

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

Keystone Storage-as-a-Service means NetApp’s proprietary data storage capacity, paid for by End Users on a consumption basis.

Order means a NetApp-approved ordering document with Partner, Purchase Order, or online order describing the Products or Services that the End User is purchasing.

Partner Sphere Application Form means the mandatory application workflow through which Partner applies for participation to the NetApp Partner Sphere Program.

Partner Sphere Program means the Partner incentive benefits program, described in the then current NetApp Partner Sphere Program Guide, as published by NetApp.

Personal Information means any information relating to, directly or indirectly, an identified or identifiable natural person or household, or is defined as “personal data” or “personal information” by applicable laws or regulations, as further described in the NetApp Privacy Policy, which can be accessed at: <https://www.netapp.com/us/legal/privacypolicy/index.aspx>.

Price List means NetApp’s then-current list of Products and Services, and their associated prices for the country of

destination.

Products means, collectively, Hardware, Software, and Third-Party Branded Products.

Professional Services means consulting, installation, implementation, and other services that are not Support Services, to be provided by or on behalf of NetApp.

Purchase Order means an electronic order that Partner provides to NetApp for direct purchases of Products and certain Services from NetApp.

Receiving Party means a party receiving Confidential Information hereunder.

Services means collectively, NetApp's Cloud Services, Keystone Storage-as-a-Service, Support Services and/or Professional Services.

Service Provider Offering means a service bureau, managed service or commercial hosting service offering by End User that consists of managing and distributing technology-based services and solutions to one or more End Users, including but not limited to storing, retrieving, and maintaining such End Users' data files and which utilizes NetApp Products for data storage.

Software means NetApp-branded software in object code format, including (as applicable) operating system software, protocols, firmware, backup and recovery, disaster recovery, storage efficiency, and management software.

Support Services means NetApp's generally available technical support and maintenance services for Products to be provided by or on behalf of NetApp.

Third-Party Branded Products or **Third-Party Branded Services** means any hardware ("**Third-Party Branded Hardware**") or software ("**Third-Party Branded Software**") or services ("**Third-Party Branded Services**") manufactured, developed licensed or otherwise provided by a third party and resold by NetApp under the Third Party's brand name for use in conjunction with Hardware and Software.

**PARTNER SPHERE AGREEMENT
ATTACHMENT 1 - DIRECT ORDER TERMS**

This Direct Order Terms Attachment to the Partner Agreement only applies to Partners that are authorized in writing by NetApp to place, and to each such Order that is placed, directly with NetApp.

1. ORDERS AND ORDERING

Each Order will be based on, and refer to, a valid and current price quotation (where applicable) and will include relevant Product and/or Services information, appropriate legal entities, "ship to" and "bill to" locations (where applicable) and requested delivery date where applicable. Partner will submit all Orders to NetApp electronically. Partner will only submit Order documentation for Products or Services once the End User has submitted a corresponding binding purchase order to Partner. All Purchase Orders are subject to acceptance by NetApp.

2. CHANGES, CANCELLATION AND RESCHEDULING

Partner may modify or cancel Purchase Orders for Products or related Support Services up to ten (10) days prior to any scheduled shipment date, and Partner may reschedule a requested delivery date for Products and related Support Services one time per Purchase Order without additional charge. Additional terms related to cancellation, changes and rescheduling for Services are set forth in the applicable Attachment(s) hereto and/or Services Terms, available at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/>.

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 End User, or if any enabling key is not required, when NetApp makes such software available for download or use by End User.

4. RISK OF LOSS

Risk of loss or damage to the Products and title to any hardware in the Products will pass to Partner upon delivery.

5. ACCEPTANCE

Acceptance by Partner of Products will occur upon delivery, and acceptance by Partner of Services will occur when such Services are rendered, unless otherwise agreed in an Engagement Document.

6. INVOICING

NetApp may invoice shipments, including partial shipments, on delivery in accordance with the applicable

trade term specified in the quotation or mutually executed Order.

7. PRICING

Prices will be as quoted from the applicable Price List. NetApp may, at its sole discretion, change the prices set forth in its Price List and add or remove Products and Services from its Price List at any time. An Order received after the effective date of a price change, but pursuant to a valid and current NetApp quotation, will be invoiced at the price stated on the NetApp quotation.

8. PAYMENT TERMS

Partner 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 of the date of NetApp's invoice (unless otherwise agreed in writing by NetApp). Fees are non-refundable and payment obligations are non-cancelable, except as provided in this Partner Agreement or where prohibited by law.

9. REMEDIES FOR NON-PAYMENT

Partner 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 this Partner Agreement or by law or in equity. NetApp has the right to apply any payment received from Partner to any account of Partner which is due and/or delinquent. If Partner fails to make timely payment, in addition to all other available remedies, NetApp will have the right to decline to make further deliveries of Product(s) and/or provision of Services to Partner.

10. TAXES & DUTIES

Partner is solely responsible for the payment of taxes (except taxes based on NetApp's net income), fees, duties and charges, and all related penalties and interest, that arise from its utilization or NetApp's provision of the Products and/or Services. If such taxes are incurred, including any withholding taxes, the sum payable by Partner (in respect of which such deduction or withholding is required to be made) will be increased to the extent necessary to ensure that NetApp receives payment in full of an amount equal to the invoiced amount. If Partner is tax-exempt, then Partner will provide NetApp with tax exemption certificates or other documentation acceptable to the taxing authorities not later than thirty (30) days from

the date Partner places an Order with NetApp. If Partner does not provide such documentation to NetApp, NetApp reserves the right to include such taxes in the invoice. Partner may not withhold tax from payments due to NetApp without proper exemption documentation from NetApp. In addition to the stated prices, Partner will be liable for all applicable duties, license fees, and taxes for Products shipped across international borders in accordance with the applicable trade term specified or as otherwise may apply.

**PARTNER SPHERE AGREEMENT
ATTACHMENT 2 - RESALE TERMS**

This Resale Terms Attachment to the Partner Agreement applies to the resale of all NetApp Products and Services, whether purchased direct from NetApp or through a NetApp authorized Distributor.

1. RESELLER AUTHORIZATION

1.1. You are authorized by NetApp to resell Products and Services to End Users in the Territory, as "Territory" is defined in relation to You in the current Partner Sphere Program Guide, available at partners.netapp.com, for their own internal use only (that is, not for resale, remarketing or redistribution) unless NetApp has specifically agreed otherwise in writing. Reselling to a third party that is not an End User is strictly forbidden, unless expressly approved in writing by NetApp.

1.2. NetApp Products and Services are subject to export and import control laws and regulations of the United States, the European Union and other countries and may include export-controlled technologies such as encryption. You agree to comply with such laws and regulations and maintain full, true, and accurate records of exports, re-exports, and transfers of the Products and Services purchased or deployed for a minimum of seven (7) years from the date of shipment. You must promptly notify NetApp of any violations or potential violations of customs or export laws that You become aware of.

2. ORDERING

2.1. Any Orders You place for NetApp Products and Services must be placed with the Distribution Partner that You selected in the Partner Application Form unless NetApp has authorized You in writing to place Orders otherwise. Only Partners authorized in writing by NetApp to place Orders direct with NetApp may do so.

2.2. All Orders placed directly with NetApp are subject to the Direct Order Terms Attachment. The terms governing orders placed with your Distribution Partner are between You and the Distribution Partner. For more information on selecting or changing Your Distributor contact NetApp by email at partner@netapp.com.

2.3. Partner will only submit an Order for Products or Services once the End User has submitted a corresponding binding purchase order to Partner first.

3. CHANNEL END USER TERMS

When reselling and distributing NETAPP Products and Services to End Users, You must ensure that each End User is fully aware that its purchase and use of NetApp Products and/or Services is EXCLUSIVELY subject to and governed by the applicable NetApp Channel End User Terms, publicly available at the following link

<https://www.netapp.com/how-to-buy/sales-terms-and-conditions/> ("CEU Terms"). You must either deliver a copy of the CEU Terms to the End User as part of its order documentation with You or instruct the End User to access the CEU Terms at the web address provided in this Section ("Pass-Through Requirement"). You acknowledge and agree that NetApp will not accept any liability in relation to the Products and Services over and above those set out in the CEU Terms. Further, and for the avoidance of doubt, You are not authorized to modify, negotiate or waive any provision of the CEU Terms on behalf of NetApp. If you choose to offer different terms to any End User, this is solely at Your risk, and You cannot look to NetApp to cover such risk or terms in any way. Your failure to provide the CEU Terms to an End User as described herein, and/or attempting to offer any terms with respect to the End User's purchase and/or use of NetApp Products and/or Services that differs from or modifies the CEU Terms, in any way, shall constitute breach of this Partner Agreement and is subject to the remedies set forth herein.

4. LICENSE TO DISTRIBUTE SOFTWARE

As a NetApp Partner, NetApp grants You a limited right to distribute NetApp Software licenses to End Users as part of resale transaction, however such right does not include the right to use the Software Yourself.

5. U.S. Public Sector Restrictions and Regulations

You will not act as a reseller - either in the capacity of a prime contractor or a subcontractor - of Products or Services to an End User that is either a U.S. federal government entity, a U.S. state or local government entity, or a U.S. public educational institution, unless NetApp has given You express written approval to do so. This prohibition includes using NetApp Products and Services to provide a managed service to a U.S. federal government entity, a U.S. state or local government entity, or a U.S. public educational institution absent express written approval from NetApp. In the event NetApp does provide such written approval, the U.S. Federal Government Supplemental Terms and/or the State, Local Government and Higher Education Terms Attachments, as applicable, shall also apply to You.

**PARTNER SPHERE AGREEMENT
ATTACHMENT 3 – KEYSTONE STaaS RESALE ATTACHMENT**

This Keystone® Storage-as-a-Service Resale Attachment to the Partner Sphere Agreement (“**StaaS Resale Attachment**”) sets forth the additional terms and conditions under which Partner may resell to End Users certain access and use rights to NetApp’s proprietary data storage capacity, paid for by End Users on a consumption basis (“**StaaS Services**”).

1. DEFINITIONS. Capitalized terms not specifically defined in these provisions, including the attached Appendix A, have the meaning ascribed to them elsewhere in the Partner Agreement.

2. RESALE OF StaaS SERVICES; PARTNER OWN USE.

2.1 Right to Resell to End Users on a Sell-Through Basis; Partner Own Use. Partner is authorized to order StaaS Services through a NetApp authorized Distribution Partner or directly from NetApp, as applicable, for resale to End Users, on a non-exclusive sell-through basis only and subject to the Pass-Through Requirement. NetApp will provide End User with the StaaS Services identified in each Order from Partner, subject to End User’s compliance with the Keystone StaaS Terms and Partner’s compliance with the terms and conditions of this StaaS Resale Attachment. If Partner wants to purchase StaaS Services for its own internal use, including for use in a Service Provider Offering, Partner may do so pursuant to Section 1.4 of this Partner Agreement.

2.2 Orders. All Orders submitted by Partner for StaaS Services are subject to acceptance by NetApp.

2.3 End User’s Right to Use StaaS Products. The StaaS Services provide End User with the right to access and use StaaS Products, and do not transfer any ownership or title, or grant any license to End User or Partner. NetApp retains sole and exclusive title to the StaaS Products and all of their components.

2.4 Risk of Loss. Except as may otherwise be agreed under the Program Guide, End User is solely responsible for any loss or damage to the StaaS Products from the date of delivery to the date of final disposition of the StaaS Products. No such loss or damage will relieve Partner of any of its obligations under this StaaS Resale Attachment or the applicable order.

2.5 Selection of StaaS Products. StaaS Products are selected by NetApp, activated and made available solely to support NetApp’s or a NetApp-authorized subcontractor’s delivery of the StaaS Services. NetApp will determine the StaaS Products used to deliver such StaaS Services.

3. PARTNER FEES AND PAYMENT TERMS.

3.1 Partner Liable for Fees. NetApp will invoice Partner for the Fees payable for StaaS Services purchased under the applicable Order for an End User and incurred during the applicable billing period and, subject to **Section 9.3**, Partner will pay such Fees, without deduction or offset. Partner’s payment of an amount less than the invoice amount will not be deemed as acceptance of payment in

full.

3.2 Taxes and Duties.

(a) Partner is solely responsible for the payment of only those taxes (specifically excluding taxes based on NetApp’s net income and taxes associated with NetApp’s ownership of the StaaS Products, including personal property taxes), fees, duties and charges, and all related penalties and interest (which result directly and exclusively from Partner’s actions or omissions), that NetApp is required by law to collect from Partner. Partner will provide NetApp with a copy of its current Sales Tax Exemption Certificate upon request. If Partner does not provide such documentation to NetApp, NetApp reserves the right to include such taxes in the invoice.

(b) Solely with regard to payments of Fees, Partner shall be permitted to withhold taxes from such payments and pay such taxes directly to the appropriate tax authority as required by law. Partner will supply NetApp with a receipt for such withholding taxes remitted to the tax authorities. In addition to the stated prices, Partner will be liable for all applicable duties, license fees, and taxes for StaaS Products shipped across international borders in accordance with the applicable trade terms set forth in the Order, or as otherwise may apply.

3.3 Partner Responsible for Purchase Orders and Collection of Payments from End Users. Partner shall:

- (a) appropriately process End User’s purchase orders for Keystone StaaS Services;
- (b) submit Orders to NetApp; and
- (c) conduct all general administrative services related to the End User’s purchase orders for StaaS Services at its sole expense, including without limitation: (i) all invoicing and collections of amounts due from End User in accordance with the then-current standard procedures of Partner, which procedures may be revised from time to time in Partner’s commercially reasonable discretion; and (ii) processing End User requests for capacity increases and changes to the StaaS Services in a manner consistent with the Keystone StaaS Terms, the applicable Service Description and the related Order.

3.4 Credit Review. With respect to each Order submitted to NetApp for approval, NetApp may obtain from Partner and/or the End User such information as NetApp may reasonably request in connection with reviewing the creditworthiness of such End User and with assessing the economics and other terms of the proposed transaction, including without limitation, financial statements, credit references, and the essential terms and conditions of the proposed End User purchase order.

4. USE RIGHTS FOR STAAS PRODUCTS;

KEYSTONE StaaS TERMS.

4.1 Pass Through Keystone StaaS Terms. Partner acknowledges and agrees that the StaaS Services are at all pertinent times exclusively governed by the Keystone StaaS Terms.

4.2 Changes to Keystone StaaS Terms. NetApp will not accept any liability in relation to any supplemental services to be performed by Partner over and above the StaaS Services set out in the Keystone StaaS Terms. If Partner chooses to offer better or different terms to any End User, it is solely at Partner's risk and Partner cannot look to NetApp to cover such risk or terms.

4.3 Applicable Service Description. The Service Description specified in the applicable Order will apply to the StaaS Services and the StaaS Products provided thereunder.

4.4 NetApp Updates. NetApp may update the Keystone StaaS Terms and the Service Descriptions from time to time in its sole discretion, provided that the Keystone StaaS Terms and/or Service Description in effect with respect to any individual Order will remain in effect for such Order for the duration of the applicable Subscription Term.

5. PARTNER RESPONSIBILITIES, PARTNER SERVICES.

5.1 Undertakings. Partner undertakes:

- (a) to actively promote the StaaS Services to End Users;
- (b) not to make any claims or other representations about NetApp, its Affiliates or its StaaS Services, other than the current information published by NetApp, the applicable Service Description, the Documentation, any express guidelines or instructions approved, published or otherwise made available by NetApp, or as set forth in this StaaS Resale Attachment;
- (c) not to accept gifts or offer other advantage to decision makers within the End User organization to ease or reward the selection of NetApp, whether in its own name or on behalf of NetApp;
- (d) not to promote the StaaS Services in a form, manner and content inconsistent with the applicable Service Description, or with any express guidelines or instructions approved, published or otherwise made available by NetApp;
- (e) to comply with the requirements of all applicable Incentive Guide(s); and
- (f) to comply with the Pass Through Requirement.

5.2 Ongoing Cooperation. Partner agrees to promptly notify NetApp of any material information within Partner's possession related or pertaining to:

- (a) actual or proposed changes to the location, condition and/or performance of the StaaS Products;
- (b) actual or proposed changes to any of the StaaS Products, or changes caused by planned or unplanned events impacting End User's environment (such as space, power, network, security, etc.) that may impact the StaaS Products;
- (c) End User's compliance with or performance of its

obligations under the Keystone StaaS Terms, including without limitation all restrictions on the use of the StaaS Services; or

(d) NetApp's ability to access and monitor the StaaS Products for purposes of providing the StaaS Services, including without limitation the operability of the Monitoring Tool.

6. NETAPP RESPONSIBILITIES FOR StaaS SERVICES. NetApp's obligations and relevant representations and warranties with respect to the delivery of the StaaS Services are set forth in the Keystone StaaS Terms and the applicable Service Description.

7. INTELLECTUAL PROPERTY RIGHTS.

7.1 General. NetApp and its licensors reserve and retain all rights, title, and interest (including any intellectual property rights therein) in and to the StaaS Services and StaaS Products not expressly granted to End User.

8. LIMITATION OF LIABILITY. NetApp's cumulative liability under this StaaS Resale Attachment is limited to direct damages in an amount not to exceed the greater of the total of the Fees received by NetApp under Orders for StaaS Services for the twelve (12) months immediately preceding the most recent event giving rise to the claim(s), or one million dollars (USD 1,000,000). This limitation is cumulative and not per incident. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PARTNER SPHERE AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

9. TERM; TERMINATION.

9.1 Termination for Cause. Either party may terminate an Order for cause if: (i) the defaulting party fails to pay any amounts when due, and such failure continues for a period of ten (10) days after delivery of notice in respect of such late payment; (ii) the defaulting party breaches the applicable Order or the Agreement (to the extent a breach of the Agreement is related to or affects the Order) and such breach continues for a period of thirty (30) days after the delivery of written notice from the non-defaulting party; or (iii) the defaulting party becomes insolvent, files, or has filed against it a petition under applicable bankruptcy or insolvency laws which is not dismissed within ninety (90) days, proposes any dissolution, composition or financial reorganization with creditors, makes an assignment for the benefit of creditors, or if a receiver, trustee, conservator, liquidator or similar agent is appointed or takes possession with respect to any property or business of the defaulting party.

9.2 Effects of Termination. The following provisions of this **Section 9.2** are subject to **Section 9.3**.

- (a) Upon termination of the Agreement, all of Partner's rights to resell StaaS Services shall immediately cease,

except to the extent necessary for Partner to continue to provide services contemplated under this StaaS Resale Attachment to existing End Users regarding existing Orders, for the remainder of the then current applicable Subscription Term.

(b) NetApp may, in its sole discretion, enforce its rights against the End User under the Keystone StaaS Terms, as appropriate. At NetApp's request, Partner will direct End User to promptly comply with the conditions and obligations set forth in the Keystone StaaS Terms in relation to the StaaS Products.

(c) Upon termination of an Order by NetApp for cause pursuant to **Section 9.1**, Partner will promptly pay to NetApp: (i) any past due amounts; (ii) the Fees and any other amounts that are to become due with respect to all affected Orders for the remaining Subscription Term; and (iii) any amounts payable pursuant to **Section 9.2(e)**, if applicable.

(d) If an End User terminates its Keystone StaaS Terms with NetApp for cause or insolvency (but only as permitted in such Keystone StaaS Terms), (i) Partner will promptly pay to NetApp any past due amounts and any Fees that are due and payable through the effective date of such termination, and (ii) Partner shall have no further obligation to pay any other Fees or other amounts that are to become due for the remaining Subscription Term.

(e) If End User fails to return the Hardware within a reasonable time following the expiration or earlier termination of the Subscription Term or the termination of the applicable Keystone StaaS Terms, then NetApp, in its sole discretion, may invoice Partner an amount equal to the greater of either: (i) the Replacement Value Fee, or (ii) the sum of the Fees accruing until final return, which will not be less than the applicable minimum payment amounts payable immediately prior to expiration or termination. NetApp retains all of its rights and remedies in this StaaS Resale Attachment and the Keystone StaaS Terms, including the right to repossess the Hardware from such End User, until the earlier to occur of the payment by Partner of the invoiced amount described above, or return of the Products in full compliance with End User's obligations. Partner shall on behalf of such End User be liable to NetApp for, and NetApp shall be entitled to charge Partner the Recovery Fee.

9.3 Assignment Upon End User Nonpayment.

(a) An **Assignment Option** is available to Partner where an End User refuses or otherwise fails to pay to Partner amounts owing for the StaaS Services under an Order, and such nonpayment continues uncured for more than ninety (90) days after the due date. Except as expressly permitted below, the availability of this Assignment Option shall have no effect on Partner's obligation described in **Section 3.1** to pay the Fees owing to NetApp with respect to such StaaS Services.

(b) With respect to any Order, no Assignment Option may be exercised during the Lockout Period.

(c) Prior to exercising an Assignment Option, Partner shall have exercised its reasonable collection processes and procedures, including without limitation the giving of timely written notice of any delinquency and opportunity to

cure to End User as may be required under Partner's agreement with the End User or applicable law.

(d) Subject to this **Section 9.3**, Partner may deliver written notice to NetApp requesting to exercise the Assignment Option with respect to the affected Order. Upon execution and delivery of a mutually acceptable assignment agreement to NetApp or any of its designees, and provided Partner has not breached its obligations to NetApp or to End User with respect to such Order or the applicable End User purchase order (respectively), NetApp (or such designees) will (i) assume all collection, termination and other enforcement rights against End User under the Order and the Keystone StaaS Terms, and (ii) be entitled to exercise all available rights and remedies under applicable law, including without limitation any applicable insolvency and bankruptcy law.

(e) If Partner exercises the Assignment Option, then Partner shall only be obligated to pay (i) with respect to Orders that are invoiced monthly, the Fees due and to become due through the period ending on the date of delivery of Partner's notice to exercise the Assignment Option; or (ii) with respect to Orders that are invoiced annually, the Fees due and to become due through the end of the twelve month billing period of such annual invoice.

10. MISCELLANEOUS.

10.1 Assignment. Neither party may assign any rights or delegate any obligations under this StaaS Resale Attachment, without the prior written consent of the other party. Any purported assignment by a party without the other party's prior written consent will be null and void.

10.2 Survival. In addition to such terms that survive by their nature, the following Sections will survive termination or expiration of this StaaS Resale Attachment: **1, 3, 5, 6, 7, 8, 9 and 10.**

10.3 General. This StaaS Resale Attachment, together with the Order and the Partner Sphere Agreement: (a) represent the entire agreement and understanding between the parties with respect to the StaaS Products and StaaS Services; (b) supersede any previous communications, representations or agreements between the parties; and (c) prevail over any conflicting or additional terms in any quote, purchase order, acknowledgement, or similar communications between the parties. Order(s) will be deemed to incorporate and be subject to this StaaS Resale Attachment, except where the parties expressly otherwise agree in writing. To the extent there is a conflict between this StaaS Resale Attachment and an Order, the Order will control. Each party will deliver to the other party such information, instruments and documents and will do all such things from time to time as the other party may reasonably request to carry into effect the provisions and intent of this StaaS Resale Attachment.

APPENDIX A DEFINITIONS

The following definitions apply to Orders entered pursuant to these terms:

Assignment Option. This term is defined in **Section 9.3(a)**.

End User. The end user customer identified by Partner in an Order as the beneficiary of the SaaS Services to be resold by Partner pursuant to these terms.

Keystone SaaS Terms. NetApp's Keystone SaaS Service Terms, available at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/>.

Lockout Period. The first twelve months of the applicable Subscription Term.

Fees. The applicable fees payable by Partner to NetApp as set forth in an Order, including minimum fixed payments, additional fixed rate charges and/or usage-based consumption charges for usage over the committed capacity amounts. The Fees will be determined in accordance with the metering and billing methodology set forth in the applicable Service Description.

Order. Partner's order placed on NetApp for SaaS Services to be deployed for the benefit of a Customer in accordance with this SaaS Resale Attachment. Each initial Order, together with any confirmation for additional SaaS Services provided in connection with such Order, will constitute a single Order.

Partner Service Deliverables. This term is defined in **Section 5.2**.

Rate. The applicable rate(s) set forth in an Order that are used to calculate the Fees.

Recovery Fee. The sum of: (a) NetApp's reasonable costs of deinstallation and repossession of the Hardware; and (b) any costs associated with any damage or loss of Hardware that occurred while in Customer's possession.

Replacement Value Fee. The cost of the replacement for Hardware, calculated in accordance with NetApp's then current price list.

Service Description. The description of the SaaS Services, available at <https://www.netapp.com/services/keystone/terms-and-conditions/> (as may be updated from time to time), that applies to End User's use of the specific SaaS Service(s) identified in an Order.