

PARTNER SPHERE TERMS OF PARTICIPATION (COMMERCIAL)

These **Partner Sphere Terms of Participation** are entered into by and between **Partner** (as defined herein) and **NetApp, Inc.** and **NetApp Ireland Ltd.**, each on behalf of itself and its Affiliates (collectively "**NetApp**");

1. PARTNER'S APPOINTMENT; SCOPE

- 1.1. As used herein, the term "Partner" primarily refers 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, Partner expressly agree that such enrollment / participation in, access to and utilization of the NetApp Partner Sphere Program, in any way, as well as Partner purchase of NetApp Products and/or Services whether through a NetApp authorized Distribution Partner or direct from NetApp, for resale to an End User, (a) is expressly governed by these Partner Sphere Terms of Participation, inclusive of all Program Guide(s) (as defined herein), Attachments and subsequent amendments (collectively "**Program Terms**") and (b) the Program Terms expressly supersede and replace 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 Partner and NetApp is that of independent contractors and Partner must not act or represent themselves as an agent of NetApp. Partner is not permitted, under any circumstances, to assign or transfer their appointment as a NetApp Partner, any rights and obligations in relation to it, and/or these Program Terms without the prior written consent of NetApp.
- 1.4. The Program Terms exclusively govern Partner participation in the NetApp Partner Sphere Program, which includes Partner's resale of NetApp Products and Services. Except for Section 1.4.1. herein, these Program Terms do not apply to nor govern Partner's purchase and use of NetApp Products or Services.
 - 1.4.1. For so long as Partner remains enrolled in the Partner Sphere Program, Partner is authorized to use the NetApp Products and Services Partner purchase for Partner's own use (i.e., not for resale) in a Service Provider Offering, with such use otherwise solely and exclusively governed by the Channel End User Terms or, if applicable, the separate, written agreement between Partner and NetApp expressly governing the same. 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 Partner and NetApp regarding the same and, notwithstanding Section 3.2 herein, prevails over terms prohibiting use of NetApp Products or Services in a Service Provider Offering in the Channel End User Terms.

2. PROGRAM GUIDE(S)

- 2.1. 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 these Program Terms. At all times pertinent hereunder, the current, governing version of each Program Guide shall be available to Partner at partnerhub.netapp.com. Together, each such Program Guide and these Program Terms replace and supersede any prior agreements between Partner and NetApp in relation to participation in any NetApp incentive, benefits, or certification 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>
1 - Terms for Resale Orders Placed Directly with NetApp	Terms governing the placement of orders directly with NetApp, where Partner has been separately authorized in writing by NetApp to do so
2 - Resale Terms	Terms governing the resale of NetApp Products, whether purchased direct from NetApp or through a NetApp authorized Distribution Partner
3 - Keystone STaaS Resale Terms	Additional terms governing Partner resale of Keystone STaaS Service subscriptions to End Users

- 3.2. Partner acknowledges 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 these Program Terms 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

- 4.1. Following Partner's submission of the Partner Application Form, NetApp may require that Partner complete certain qualifying training, as set forth in more detail at https://netapp.sabacloud.com/Saba/Web_spf/NA1PRD0047/app/me/learningeventdetail/cours000000000044163?regId=regdw000000005076526 ("Training"). If Partner is required to complete training and provided Partner's application is granted preliminary approval, Partner 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, Partner's have not completed the Training, Partner will be removed from the NetApp Partner Sphere Program and these Program Terms will terminate.

5. INTELLECTUAL PROPERTY

- 5.1. As a NetApp Partner, NetApp grants Partner a limited, non-transferable, nonexclusive license to use NetApp's trademarks for the purpose of identifying Partner as a NetApp Partner and for advertising and promotion purposes. Details of Partner's 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/company/legal/trademark-guidelines/>

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 these Program Terms. 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 these Program 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.

- 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 these Program Terms; (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 by law, or 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.** Partner 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 Partner will no longer be permitted to represent themselves, 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.** Without prejudice to NetApp's right to otherwise terminate an Order, termination of these Program Terms will have no effect on and shall not terminate existing Orders placed with NetApp pursuant to Attachment 1 hereto prior to the effective date of termination. The following Sections will survive termination of these Program Terms 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 Program Terms which, upon a plain reading, are intended to survive termination or expiration of the Program Terms, will survive such termination or expiration.

8. INDEMNIFICATION

- 8.1.** If a claim for infringement of any third party's patent, trademark or copyright is brought against Partner in relation to Partner's resale and/or distribution of NetApp Products and Services hereunder, Partner will allow NetApp to defend or settle any such claim as NetApp thinks appropriate. NetApp will pay any settlement amounts or any damages and costs awarded by a court against Partner to the extent such damages and costs are specifically attributable to the infringement claim but only if Partner: (a) promptly notify NetApp in writing of any such infringement claim; (b) provide information and assistance to NetApp to enable NetApp to defend such infringement claim; and (c) provide NetApp with sole control of the defense or settlement negotiations. This is the extent of NetApp's liability to Partner in relation to any infringement claim.
- 8.2.** Partner will defend, indemnify and hold NetApp and its directors, employees, subsidiaries, and affiliates harmless from/for any and all claims, settlement amounts, costs or damages finally awarded by a court, and any losses 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 failure to comply with (i) the requirements of Section 9 (Compliance with Laws), (ii) the Pass-Through Requirement set forth in Attachment 2 and/or (iii) any applicable Program Guide(s); (b) any Partner service or Partner Service Provider Offering; or (c) any false, misleading or otherwise unauthorized statements or representations. NetApp will promptly notify Partner of any such claim, and Partner will have the right, at Partner's own expense, to employ counsel and participate in the defense and/or settlement of the claim.

9. COMPLIANCE WITH LAWS

- 9.1. NetApp and Partner each 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, Services and access to technology and intellectual property (collectively "Materials") 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 all such laws and regulations and to provide NetApp destination end use and end user information. Partner will not resell, export, re-export, divert or transfer Materials to Prohibited Persons or into Restricted Countries. "Prohibited Persons" means sanctioned individuals and entities, including without limitation persons on the U.S. Denied Persons, Entity and Specially Designated Nationals Lists. "Restricted Countries" means countries and regions subject to embargoes or trade sanctions programs, including without limitation Cuba, Iran, North Korea, Syria, Russia, Belarus, The Crimean, Luhansk and Donetsk regions of Ukraine, and the Kherson and Zaporizhzhia oblasts of Ukraine. Partner will not use Materials for any purposes prohibited by United States or other applicable laws, including but without limitation, the development, design, manufacture or production of nuclear, missile, chemical, biological weaponry or other weapons of mass destruction. Partner is responsible for obtaining all required authorizations, permits, and licenses to import, export, re-export or transfer Materials. Partner agrees to obligate, by contract or other similar assurances, the parties to whom Partner re-exports or otherwise transfers Materials 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 these Program Terms. 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 these Program Terms. NetApp certifies that it understands the foregoing restrictions and will comply with them.

10. GENERAL

10.1. Audit

- 10.1.1. Partner agrees to grant NetApp the right to audit and verify Partner's compliance with these Program Terms and Partner's 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 will refer to the version release(es) of the Program Terms in effect as of the pertinent time period such audit is to apply to, and may require Partner (a) giving access to Partner's records in relation to Partner's appointment as a NetApp Partner; (b) providing copies of documents or other evidence to verify Partner's compliance with obligations hereunder; (c) responding to requested

assessments; and (d) providing periodic certifications. In addition, NetApp will periodically conduct check-ins with regard to Partner performance as a NetApp Partner, which may result in Partner's appointment as a NetApp Partner being revoked or a demotion of Partner's partner level status if Partner fails to perform as expected.

10.2. Data Sharing

- 10.2.1. In order to claim reimbursement for Eligible Activities (as may be defined in an applicable Program Guide) in accordance with these Program Terms, in addition to any of the requirements set out in these Program Terms, Partner agrees to provide NetApp with the requested Proof of Performance (as further detailed in the applicable Program Guide) which may contain Personal Information and which NetApp requires for audit, legal compliance and fraud prevention purposes. NetApp will process any Shared Personal Information required as part of the Proof of Performance for audit, legal compliance and fraud prevention purposes only and not for any other purposes. NetApp will retain any Shared Personal Information only for long as required in order to fulfil these purposes.
- 10.2.2. NetApp Partners located in the EEA, Switzerland and the UK, will provide the Proof of Performance to NetApp Ireland Limited ("**NetApp Ireland**"). Partner and NetApp Ireland will act as independent controllers (as defined under Applicable Data Protection Law) in respect of the Shared Personal Information provided as part of the Proof of Performance requirements. Partner and NetApp Ireland agree to comply with each of its respective obligations under Applicable Data Protection Law in respect of the sharing and processing of such Shared Personal Information.

10.3. Limitation of Liability

- 10.3.1. Except where otherwise agreed in writing by NetApp, to the extent permitted by applicable law and 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):
 - 10.3.1.1. Neither Partner nor NetApp (including its suppliers or subcontractors) shall be liable to the other 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 these Program Terms;
 - 10.3.1.2. Each party's liability is limited to direct damages in an amount not to exceed one million dollars (US\$1,000,000) on a cumulative basis.
- 10.3.2. These limitations in Section 10.3 do not apply to claims or 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) a Party's failure to comply with the Confidentiality obligations of Section 6; (d) any other liability which cannot be excluded under applicable law; or (e) indemnification claims described in Section 8.

- 10.4. Updates. Partner agrees that, from time to time, NetApp may modify and/or update the Partner Sphere Terms of Participation, and, at least once annually (without prior notice to Partner), the Program Guides ("Updates"). The current Partner Sphere Terms Of Participation will be available to Partner at <https://partnerhub.netapp.com/s/partner-sphere-terms-of-participation>, and the current Program Guide(s) will be available to Partner at partnerhub.netapp.com. NetApp shall use commercially reasonable efforts to provide thirty (30) day notice of changes to the Partner Sphere Terms of Participation, at <https://partnerhub.netapp.com/s/partner-sphere-terms-of-participation> and through standard program communications. At any pertinent time hereunder, the then current, posted version of the Program Terms shall be the controlling version of the Program Terms.

- 10.5. Notices.** Except as specifically stated, all notices or other communications required or permitted under these Program Terms 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.
- 10.6. 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).
- 10.7. Governing Law / Venue**
- 10.7.1. These Program Terms, the interpretation hereof, and any dispute arising hereunder will be governed as follows:
- 10.7.1.1. Subject to and limited by Section 10.7.1.2 herein, with respect to any dispute arising from or related to Partner's participation in the Partner Sphere Program and/or any incentive benefits thereunder (a) the State of California, United States, if Partner is located in the United States, Canada or Mexico or (b) Ireland, if Partner is located elsewhere, and in all cases, without regard to conflict of law provisions.
- 10.7.1.2. 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.
- 10.7.2. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Program Terms or any Order.
- 10.8. Entire Agreement/Amendments.** Except for NetApp Updates, these Program Terms 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 these Program Terms (where translated for local requirements), the English version of these Program Terms will govern, to the extent permitted by applicable laws. These Program Terms, 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 Partner's 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 Partner and an End User. Orders issued to NetApp are deemed to incorporate and be subject to these Program Terms, 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.

- 10.9. Interpretation.** Headings are for convenience and ease of reference only and are not to be considered in the interpretation of any provision of these Program Terms. Any use of the word “including” in these Program Terms will not be deemed to limit the meaning of the preceding word or phrase. NetApp may make non-English, local language versions of these Program Terms available for Partner’s convenience in reviewing. However, and for the avoidance of doubt, if there are differences in meaning between the English language version of the Program Terms and any translation thereof, the English language version shall prevail. Each party has been given the opportunity to independently review these Program Terms with legal counsel and each party has the requisite experience and sophistication to understand, interpret, and agree to the language of the provisions. Therefore, in the event of any ambiguity in or dispute regarding the interpretation of these Program Terms, 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.

Applicable Data Protection Law means any and all applicable privacy and data protection laws that apply to the processing of Shared Personal Information including, where applicable, (i) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 (General Data Protection Regulation) and (ii) the General Data Protection Regulation as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

Channel End User Terms means the exclusive terms and conditions governing an End User’s 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 these Program Terms, 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.

Online Marketplace means an internet-based platform that allows businesses to use cloud infrastructure to develop and sell applications and services to third parties, including but not limited to hyperscaler marketplaces or platforms also known as public cloud(s).

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/company/legal/privacy-policy/>.

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.

Shared Personal Information means the Personal Information that may be shared by a NetApp Partner with NetApp as part of the Proof of Performance requirements in accordance with the applicable Program Guide.

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 TERMS OF PARTICIPATION
ATTACHMENT 1 – TERMS FOR RESALE ORDERS PLACED DIRECTLY WITH NETAPP

This Attachment 1 to the Program Terms, which sets forth the additional terms governing resale Orders placed directly with NetApp (i.e., not through a Distribution Partner), 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 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. 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 these Program Terms.

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 these Program Terms 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 these Program Terms or by law or in equity. 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 TERMS OF PARTICIPATION ATTACHMENT 2 - RESALE TERMS

This Resale Terms Attachment to the Program Terms 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. Partner is authorized by NetApp to resell Products and Services to End Users in the Territory, as "Territory" is defined in relation to Partner in the current Partner Sphere Program Guide, available at partnerhub.netapp.com, for their own internal use only (that is, not for resale, remarketing or redistribution) unless NetApp has specifically agreed otherwise in writing. This includes resale on or through an Online Marketplace. 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, Services and access to technology and intellectual property 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. Partner agrees to comply with such laws and regulations as more fully set forth in Section 9 of these Program Terms.

2. ORDERING

2.1. Any Orders Partner places for NetApp Products and Services must be placed with the Distribution Partner that Partner selected in the Partner Application Form unless NetApp has authorized Partner 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 Terms for Resale Orders Placed Directly with NetApp (Attachment 1). The terms governing orders placed with Partner's Distribution Partner are between Partner and the Distribution Partner. For more information on selecting or changing Partner's 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

3.1. When reselling and distributing NetApp Products and Services to End Users, including on or through an Online Marketplace, Partner must ensure that each End User is fully aware that the NetApp Products and/or Services are 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"). Partner must either deliver a

copy of the CEU Terms to the End User as part of its order documentation with Partner or instruct the End User to access the CEU Terms at the web address provided in this Section ("Pass-Through Requirement"). Partner acknowledges and agrees 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, Partner is not authorized to modify, negotiate or waive any provision of the CEU Terms on behalf of NetApp. If Partner chooses to offer different terms to any End User, this is solely at Partner's risk, and Partner cannot look to NetApp to cover such risk or terms in any way.

3.2. NetApp and Partner acknowledge and agree that although use of an Online Marketplace for resale of NetApp Products and Services may be subject to terms and conditions of the Online Marketplace provider ("Marketplace Terms"), (a) NetApp and Partner each agree to comply with the applicable Marketplace Terms for such resale transaction and (b) notwithstanding the foregoing, such Marketplace Terms are in addition to these Program Terms. To the extent of a conflict between these Program Terms and the Marketplace Terms, these Program Terms shall prevail as between NetApp and Partner.

4. LICENSE TO DISTRIBUTE SOFTWARE

As a NetApp Partner, NetApp grants Partner 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 by Partner.

5. U.S. Public Sector Restrictions and Regulations

Partner 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 Partner 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 Partner.

**PARTNER SPHERE TERMS OF PARTICIPATION
ATTACHMENT 3 – KEYSTONE STaaS RESALE TERMS**

This Keystone® Storage-as-a-Service Resale Terms Attachment to the Partner Sphere Terms of Participation (“**STaaS Resale Terms**”) 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 Program Terms.

2. RESALE OF STaaS SERVICES

2.1 Right to Resell to End Users. Partner is authorized to order STaaS Services through a NetApp authorized Distribution Partner or directly from NetApp, as applicable, solely for resale to End Users, on a non-exclusive basis 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 these STaaS Resale Terms.

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 these STaaS Resale Terms 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) 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 Terms;

(b) 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; and

(c) 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. For purposes of Section 10.2.1.2, of the Program Terms, each Party's cumulative liability under these STaaS Resale Terms is limited to 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.

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 these STaaS Resale Terms 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, as required by the Keystone STaaS Terms, 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 these STaaS Resale Terms 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 ("**End User Nonpayment Event**"). 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) [Reserved].

(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 an assignment agreement, in the form attached hereto as Appendix B, 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 these STaaS Resale Terms, 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 these STaaS Resale Terms: **1, 3, 5, 6, 7, 8, 9 and 10**.

10.3 General. These STaaS Resale Terms, together with the Order and the Partner Sphere Terms of Participation: (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 these STaaS Resale Terms, except where the parties expressly otherwise agree in writing. To the extent there is a conflict between these STaaS Resale Terms 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 these STaaS Resale Terms.

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 STaaS Services to be resold by Partner pursuant to these terms.

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

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 STaaS Services to be deployed for the benefit of an End User in accordance with these STaaS Resale Terms. Each initial Order, together with any confirmation for additional STaaS 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 STaaS 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 STaaS Service(s) identified in an Order.

**APPENDIX B
ASSIGNMENT AGREEMENT (FORM)**

THIS ORDER ASSIGNMENT AGREEMENT (“**Assignment**”) is effective as of the date last signed below (“**Assignment Effective Date**”) by and between [ASSIGNEE ENTITY] (“**Assignee**”) and [PARTNER ENTITY] (“**Assignor**”). Terms not defined herein shall take the meaning provided for them in the Program Terms.

WHEREAS, Assignor previously entered the **Partner Sphere Terms of Participation**, which includes Keystone STaaS Resale Terms, authorizing and governing Assignor’s resale of NetApp’s Keystone Storage-as-a-Service to and End User (the “**Program Terms**”);

WHEREAS, End User placed an order (“**Order**”) for NetApp’s Keystone Storage-as-a-Service (“**STaaS Services**”) via Assignor, details of which are set forth below;

WHEREAS, End User’s Order for STaaS Services is subject to NetApp’s Keystone STaaS Terms (the “**STaaS Terms**”) and the applicable Service Description (“**Service Description**”), and, when taken together with the applicable STaaS Terms and Service Description, constitutes a “**NetApp Keystone Transaction**”;

WHEREAS, an End User Nonpayment Event (as such term is defined under the Program Terms) has occurred with respect to the NetApp Keystone Transaction;

WHEREAS, Assignor has elected to exercise its right to transfer and assign the NetApp Keystone Transaction in accordance with the terms and conditions of the Program Terms and Assignee desires to assume, certain of Assignor’s rights and obligations under the applicable NetApp Keystone Transaction; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, NetApp and Partner hereby agree as of the Assignment Effective Date as follows:

1. **Assignment and Assumption.** Subject to the remaining provisions of this Assignment, Assignor hereby irrevocably transfers and assigns to Assignee all of Distributor’s rights, title and interests under the Order specified below, and Assignee hereby irrevocably accepts such rights, title and interests, all as subject to the remaining provisions of this Assignment, including without limitation the rights to enforce the terms of the Order against End User directly.

End User:	
Order:	
Description of STaaS Services:	

2. **NetApp’s Performance Obligation.** Subject to **Section 3** below, Assignee shall: (a) duly perform (and hereby assumes) all liabilities and obligations in respect of NetApp’s STaaS Services identified under the Order. Any other End User rights and obligations which are not expressly included in the Order , but which may nevertheless be related to the NetApp Keystone Transaction, are retained by, and are the sole responsibility of, Assignor.
3. **STaaS Services Only.** Assignee’s liability is limited only to the STaaS Services specified under the Order, to the extent resold by Assignee. Any other End User rights and obligations which are not expressly included in the NetApp Keystone Transaction, but which may nevertheless be related to such NetApp Keystone Transaction, are retained by, and are the sole responsibility of, Assignor.
4. **Collection.** Under **Sections 1** and **2**, Assignee assumes all collection, termination and other enforcement rights against End User under the NetApp Keystone Transaction. Notwithstanding the foregoing, Assignor retains all collection rights with respect to STaaS Services for which Assignor remains liable to pay NetApp or Distributor (as applicable) under **Section 9.3(c)** of the Program Terms.
5. **End User Notice of Assignment.** Assignee remains responsible to ensure End User has been or shall be notified of this Assignment.
6. **Acknowledgment.** Assignee agrees that Assignor shall have no liability to Assignee in respect of any duties, obligations, causes of action, claims, liabilities or losses of any kind whatsoever arising out of or in connection with or under the Order on or after the Assignment Effective Date, except as otherwise provided in the Agreement.



7. General. The recitals above and the documents referred to therein including all terms and conditions, exhibits and amendments to those documents, are incorporated herein by this reference. Unless otherwise defined in this Assignment, all capitalized terms shall have the same meaning as set forth in the terms of the NetApp Keystone Transaction, as applicable. Other than described herein, no terms or conditions of the NetApp Keystone Transaction are modified by this Assignment.

IN WITNESS WHEREOF, duly authorized officers of Assignor, Assignee and, if applicable the relevant NetApp entity have executed this Assignment as of the Assignment Effective Date.

[ASSIGNOR ENTITY]

[ASSIGNEE ENTITY]

Signature: _____ *[FORM – DO NOT SIGN]*

Signature: _____ *[FORM – DO NOT SIGN]*

Name: _____

Name: _____

Title: _____

Title: _____



PARTNER SPHERE TERMS OF PARTICIPATION (U.S. PUBLIC SECTOR)

These **Partner Sphere Terms of Participation** are entered into by and between **Partner** (as defined herein) and **NetApp U.S. Public Sector, Inc.** and **NetApp, Inc.** (collectively "**NetApp**"):

1. PARTNERR APPOINTMENT; SCOPE

- 1.1. As used herein, the term "Partner" primarily refers 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, Partner expressly agree that such enrollment / participation in, access to and utilization of the NetApp Partner Sphere Program, in any way, as well as Partner's 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 these Partner Sphere Terms Of Participation, inclusive of all Program Guide(s) (as defined herein), Attachments and subsequent amendments (collectively "**Program Terms**") and (b) the Program Terms expressly supersede and replace 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 Partner and NetApp is that of independent contractors and Partner must not act or represent themselves as an agent of NetApp. Partner is not permitted, under any circumstances, to assign or transfer Partner's appointment as a NetApp Partner, any rights and obligations in relation to it, and/or these Program Terms without the prior written consent of NetApp.
- 1.4. The Program Terms exclusively govern Partner participation in the NetApp Partner Sphere Program, which includes themselves resale of NetApp Products and Services. Except for Section 1.4.1. herein, these Program Terms do not apply to nor govern Partner's purchase and use of NetApp Products or Services.
 - 1.4.1. For so long as Partner remains enrolled in the Partner Sphere Program, Partner are authorized to use the NetApp Products and Services Partner purchase for Partner's own use (i.e., not for resale) in a Service Provider Offering, with such use otherwise solely and exclusively governed by the Channel End User Terms or, if applicable, the separate, written agreement between Partner and NetApp expressly governing the same. 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 Partner and NetApp regarding the same and, notwithstanding Section 3.2 herein, prevails over terms prohibiting use of NetApp Products or Services in a Service Provider Offering in the Channel End User Terms.
- 1.5. NetApp U.S. Public Sector, Inc. exclusively services U.S. federal, state and local public sector contracts for NetApp. All transactions pertaining to U.S. Federal Government customers and SLED customers (as defined in Attachments 5 and 6) will be quoted, ordered, fulfilled, and invoiced through NetApp U.S. Public Sector, Inc., and are subject to the additional terms and conditions set forth in Attachments 5 and 6 hereto.

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 these Program Terms. At all times pertinent hereunder, the current, governing version of each Program Guide shall be available to Partner at partnerhub.netapp.com. Together, each such Program Guide and these Program Terms replace and supersede

any prior agreements between Partner and NetApp in relation to participation in any NetApp incentive benefits, or certification 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>
1 - Terms for Resale Orders Placed Directly with NetApp	Terms governing the placement of orders directly with NetApp, where Partner has been separately authorized in writing by NetApp to do so
2 - Resale Terms	Terms governing the resale of NetApp Products, whether purchased direct from NetApp or through a NetApp authorized Distribution Partner
3 - Keystone STaaS Resale Terms	Additional terms governing Partner resale of Keystone STaaS Service subscriptions to End Users.
4 - U.S. Federal Government Terms	Terms governing the purchase and resale of NetApp Products and Services to a U.S. Federal Government End User (as more fully defined therein), where Partner has been authorized separately in writing by NetApp to do so
5 - State, Local Government and U.S. Higher Education Terms	Terms governing the purchase and resale of NetApp Products and Services to various State, Local Government and Higher Education End Users (as more fully defined therein), where Partner has been separately authorized in writing by NetApp to do so

- 3.2. Partner acknowledges 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 these Program Terms 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 Partner's submission of the Partner Application Form, NetApp may require that Partner complete certain qualifying training, as set forth in more detail at https://netapp.sabacloud.com/Saba/Web_spf/NA1PRD0047/app/me/learningeventdetail/cours000000000044163?regId=regdw000000005076526 ("Training"). If Partner is required to complete training and provided Partner's application is granted preliminary approval, Partner 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, Partner's have not completed the Training, Partner will be removed from the NetApp Partner Sphere Program and these Program Terms will terminate.

5. INTELLECTUAL PROPERTY

- 5.1. As a NetApp Partner, NetApp grants Partner a limited, non-transferable, nonexclusive license to use NetApp's trademarks for the purpose of identifying Partner as a NetApp Partner and for advertising and promotion purposes. Details of Partner's 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/company/legal/trademark-guidelines/>.

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 these Program Terms. 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 these Program 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.
- 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 these Program Terms; (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 by law, or 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.** Partner 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 Partner will no longer be permitted to represent themselves, 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.** Without prejudice to NetApp's right to otherwise terminate an Order, termination of these Program Terms will have no effect on and shall not terminate existing Orders placed with NetApp pursuant to Attachment 1 hereto prior to the effective date of termination. The following Sections will survive termination of these Program Terms 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 Program Terms which, upon a plain reading, are intended to survive termination or expiration of the Program Terms, will survive such termination or expiration.

8. INDEMNIFICATION

- 8.1.** If a claim for infringement of any third party's patent, trademark or copyright is brought against Partner in relation to Partner's resale and/or distribution of NetApp Products and Services hereunder, Partner will allow NetApp to defend or settle any such claim as NetApp thinks appropriate. NetApp will pay any settlement amounts or any damages and costs awarded by a court against Partner to the extent such damages and costs are specifically attributable to the infringement claim but only if Partner: (a) promptly notify NetApp in writing of any infringement claim; (b) provide information and assistance to NetApp to enable NetApp to defend such infringement claim; and (c) provide NetApp with sole control of the defense or settlement negotiations. This is the extent of NetApp's liability to Partner in relation to any infringement claim.

- 8.2. Partner will defend, indemnify and hold NetApp and its directors, employees, subsidiaries, and affiliates harmless from/for any and all claims, settlement amounts, costs or damages finally awarded by a court, and any losses 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) failure to comply with (i) the requirements of Section 9 (Compliance with Laws), (ii) the Pass-Through Requirement set forth in Attachment 2 and/or (iii) any applicable Program Guide(s); (b) any Partner service or Partner Service Provider Offering; or (c) any false, misleading or otherwise unauthorized statements or representations. NetApp will promptly notify Partner of any such claim, and Partner will have the right, at Partner's own expense, to employ counsel and participate in the defense and/or settlement of the claim.

9. COMPLIANCE WITH LAWS

- 9.1. NetApp and Partner each 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, Services and access to technology and intellectual property ("Materials") 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 all such laws and regulations and to provide NetApp destination end use and end user information. Partner will not resell, export, re-export, divert or transfer Materials to Prohibited Persons or into Restricted Countries. "Prohibited Persons" means sanctioned individuals and entities, including without limitation persons on the U.S. Denied Persons, Entity and Specially Designated Nationals Lists. "Restricted Countries" means countries and regions subject to embargoes or trade sanctions programs, including without limitation Cuba, Iran, North Korea, Syria, Russia, Belarus, The Crimean, Luhansk and Donetsk regions of Ukraine, and the Kherson and Zaporizhzhia oblasts of Ukraine. Partner will not use Materials for any purposes prohibited by United States or other applicable laws, including but without limitation, the development, design, manufacture or production of nuclear, missile, chemical, biological weaponry or other weapons of mass destruction. Partner is responsible for obtaining all required authorizations, permits, and licenses to import, export, re-export or transfer Materials. Partner agrees to obligate, by contract or other similar assurances, the parties to whom Partner re-exports or otherwise transfers Materials 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 these Program Terms. 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 these Program Terms. NetApp certifies that it understands the foregoing restrictions and will comply with them.

10. GENERAL

10.1. Audit

- 10.1.1. Partner agrees to grant NetApp the right to audit and verify Partner's compliance with these Program Terms and Partner 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 will refer to the version release(es) of the Program Terms in effect as of the pertinent time period such audit is to apply to, and may require Partner (a) giving access to Partner records in relation to Partner's appointment as a NetApp Partner; (b) providing copies of documents or other evidence to verify Partner compliance with Partner obligations hereunder; (c) responding to requested assessments; and (d) providing periodic certifications. In addition, NetApp will periodically conduct check-ins with regard to Partner performance as a NetApp Partner, which may result in Partner's appointment as a NetApp Partner being revoked or a demotion of Partner's partner level status if Partner fails to perform as expected.

10.2. Data Sharing

- 10.2.1. In order to claim reimbursement for Eligible Activities (as may be defined in an applicable Program Guide) in accordance with these Program Terms, in addition to any of the requirements set out in these Program Terms, Partner agrees to provide NetApp with the requested Proof of Performance (as further detailed in the applicable Program Guide) which may contain Personal Information and which NetApp requires for audit, legal compliance and fraud prevention purposes. NetApp will process any Shared Personal Information required as part of the Proof of Performance for audit, legal compliance and fraud prevention purposes only and not for any other purposes. NetApp will retain any Shared Personal Information only for long as required in order to fulfil these purposes.
- 10.2.2. NetApp Partners located in the EEA, Switzerland and the UK, will provide the Proof of Performance to NetApp Ireland Limited ("**NetApp Ireland**"). Partner and NetApp Ireland will act as independent controllers (as defined under Applicable Data Protection Law) in respect of the Shared Personal Information provided as part of the Proof of Performance requirements. Partner and NetApp Ireland agree to comply with each of its respective obligations under Applicable Data Protection Law in respect of the sharing and processing of such Shared Personal Information.

10.3. Limitation of Liability

- 10.3.1. Except where otherwise agreed in writing by NetApp, to the extent permitted by applicable law and 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):
- 10.3.1.1. Neither Partner nor NetApp (including its suppliers or subcontractors) shall be liable to the other 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 these Program Terms;
- 10.3.1.2. Each Party's is limited to direct damages in an amount not to exceed one million dollars (US\$1,000,000) on a cumulative basis.
- 10.3.2. These limitations in Section 10.3 do not apply to claims or 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) a Party's failure to comply with the Confidentiality obligations of Section 6; (d) any other liability which cannot be excluded under applicable law; or (e) indemnification claims described in Section 8.

- 10.4. Updates.** Partner agrees that, from time to time, NetApp may modify and/or update the Partner Sphere Terms of Participation, and, at least once annually (without prior notice to Partner), the Program Guides (“Updates”). The current Partner Sphere Terms Of Participation will be available to Partner at <https://partnerhub.netapp.com/s/partner-sphere-terms-of-participation>, and the current Program Guide(s) will be available to Partner at partnerhub.netapp.com. NetApp shall use commercially reasonable efforts to provide thirty (30) day notice of changes to the Partner Sphere Terms of Participation, at <https://partnerhub.netapp.com/s/partner-sphere-terms-of-participation-and-through-standard-program-communications>. At any pertinent time hereunder, the then current, posted version of the Program Terms shall be the controlling version of the Program Terms.
- 10.5. Notices.** Except as specifically stated, all notices or other communications required or permitted under these Program Terms 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.
- 10.6. 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).
- 10.7. Governing Law / Venue:** These Program Terms, the interpretation hereof, and any dispute arising hereunder will be governed by the laws of the State of California, United States, without regard to conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Program Terms or any Order.
- 10.8. Entire Agreement/Amendments.** Except for NetApp Updates, these Program Terms 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 these Program Terms (where translated for local requirements), the English version of these Program Terms will govern, to the extent permitted by applicable laws. These Program Terms, 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 Partner’s 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 Partner and an End User. Orders issued to NetApp are deemed to incorporate and be subject to these Program Terms, 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.

- 10.9. Interpretation.** Headings are for convenience and ease of reference only and are not to be considered in the interpretation of any provision of these Program Terms. Any use of the word “including” in these Program Terms will not be deemed to limit the meaning of the preceding word or phrase. NetApp may make non-English, local language versions of these Program Terms available for Partner’s convenience in reviewing. However, and for the avoidance of doubt, if there are differences in meaning between the English language version of the Program Terms and any translation thereof, the English language version shall prevail. Each party has been given the opportunity to independently review these Program Terms with legal counsel and each party has the requisite experience and sophistication to understand, interpret, and agree to the language of the provisions. Therefore, in the event of any ambiguity in or dispute regarding the interpretation of these Program Terms, 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.

Applicable Data Protection Law means any and all applicable privacy and data protection laws that apply to the processing of Shared Personal Information including, where applicable, (i) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 (General Data Protection Regulation) and (ii) the General Data Protection Regulation as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

Channel End User Terms means the exclusive terms and conditions governing an End User’s 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 these Program Terms, 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.

Online Marketplace means an internet-based platform that allows businesses to use cloud infrastructure to develop and sell applications and services to third parties, including but not limited to hyperscaler marketplaces or platforms also known as public cloud(s).

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/company/legal/privacy-policy/>.

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.

Shared Personal Information means the Personal Information that may be shared by a NetApp Partner with NetApp as part of the Proof of Performance requirements in accordance with the applicable Program Guide.

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 TERMS OF PARTICIPATION
ATTACHMENT 1 – TERMS FOR RESALE ORDERS PLACED DIRECTLY WITH NETAPP

This Attachment 1 to the Program Terms, which sets forth the additional terms governing resale Orders placed directly with NetApp (i.e., not through a Distribution Partner), 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 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. 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 these Program Terms.

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 these Program Terms 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 these Program Terms or by law or in equity. 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 Program Terms applies to the resale of NetApp Products and Services, whether purchased direct from NetApp or through a NetApp authorized Distributor.

1. RESELLER AUTHORIZATION

1.1. Partner is authorized by NetApp to resell Products and Services to End Users in the Territory, as "Territory" is defined in relation to Partner in the current Partner Sphere Program Guide, available at partnerhub.netapp.com, for their own internal use only (that is, not for resale, remarketing or redistribution) unless NetApp has specifically agreed otherwise in writing. This includes resale on or through an Online Marketplace. 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, Services and technology and intellectual property 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. Partner agrees to comply with such laws and regulations as more fully set forth in Section 9 of these Program Terms.

2. ORDERING

2.1. Any Orders Partner place for NetApp Products and Services must be placed with the Distribution Partner that Partner selected in the Partner Application Form unless NetApp has authorized Partner 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 Terms for Resale Orders Placed Directly with NetApp (Attachment 1). The terms governing orders placed with Partner's Distribution Partner are between Partner and the Distribution Partner. For more information on selecting or changing Partner 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

3.1. When reselling and distributing NetApp Products and Services to End Users, including on or through an Online Marketplace, Partner must ensure that each End User is fully aware that the NetApp Products and/or

Services are 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"). Partner must either deliver a copy of the CEU Terms to the End User as part of its order documentation with Partner or instruct the End User to access the CEU Terms at the web address provided in this Section ("Pass Through Requirement"). Partner acknowledges and agrees 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, Partner is not authorized to modify, negotiate or waive any provision of the CEU Terms on behalf of NetApp. If Partner chooses to offer different terms to any End User, this is solely at Partner risk, and Partner cannot look to NetApp to cover such risk or terms in any way.

3.2. NetApp and Partner acknowledge and agree that although use of an Online Marketplace for resale of NetApp Products and Services may be subject to terms and conditions of the Online Marketplace provider ("Marketplace Terms"), (a) NetApp and Partner each agree to comply with the applicable Marketplace Terms for such resale transaction and (b) notwithstanding the foregoing, such Marketplace Terms are in addition to these Program Terms. To the extent of a conflict between these Program Terms and the Marketplace Terms, these Program Terms shall prevail as between NetApp and Partner.

4. LICENSE TO DISTRIBUTE SOFTWARE

As a NetApp Partner, NetApp grants Partner 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 by Partner.

5. U.S. Public Sector Restrictions and Regulations

Partner 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 Partner 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 Partner.

**PARTNER SPHERE TERMS OF PARTICIPATION
ATTACHMENT 3 – KEYSTONE STaaS RESALE TERMS**

This Keystone® Storage-as-a-Service Resale Terms Attachment to the Partner Sphere Terms of Participation (“**STaaS Resale Terms**”) 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 Program Terms.

2. RESALE OF STaaS SERVICES.

2.1 Right to Resell to End Users. Partner is authorized to order STaaS Services through a NetApp authorized Distribution Partner or directly from NetApp, as applicable, solely for resale to End Users, on a non-exclusive basis 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 these STaaS Resale Terms.

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 these STaaS Resale Terms 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) 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 Terms;

(b) 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; and

(c) 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. For purposes of Section 10.2.1.2 of the Program Terms, each Party's cumulative liability under these STaaS Resale Terms is limited to 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.

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 these STaaS Resale Terms 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, as required by the Keystone STaaS Terms, 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 these STaaS Resale Terms 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 ("**End User Nonpayment Event**"). 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) [Reserved]

(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 an assignment agreement,

in the form attached hereto as Appendix B, 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 these STaaS Resale Terms, 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 these STaaS Resale Terms: **1, 3, 5, 6, 7, 8, 9 and 10.**

10.3 General. These STaaS Resale Terms, together with the Order and the Partner Sphere Terms Of Participation: (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 these STaaS Resale Terms, except where the parties expressly otherwise agree in writing. To the extent there is a conflict between these STaaS Resale Terms 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 these STaaS Resale Terms.

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 STaaS Services to be resold by Partner pursuant to these terms.

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

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 STaaS Services to be deployed for the benefit of an End User in accordance with these STaaS Resale Terms. Each initial Order, together with any confirmation for additional STaaS 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 STaaS 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 STaaS Service(s) identified in an Order.

**APPENDIX B
ASSIGNMENT AGREEMENT (FORM)**

THIS ORDER ASSIGNMENT AGREEMENT (“**Assignment**”) is effective as of the date last signed below (“**Assignment Effective Date**”) by and between [ASSIGNEE ENTITY] (“**Assignee**”) and [PARTNER ENTITY] (“**Assignor**”). Terms not defined herein shall take the meaning provided for them in the Program Terms.

WHEREAS, Assignor previously entered the **Partner Sphere Terms of Participation**, which includes Keystone STaaS Resale Terms, authorizing and governing Assignor’s resale of NetApp’s Keystone Storage-as-a-Service to and End User (the “**Program Terms**”);

WHEREAS, End User placed an order (“**Order**”) for NetApp’s Keystone Storage-as-a-Service (“**STaaS Services**”) via Assignor, details of which are set forth below;

WHEREAS, End User’s Order for STaaS Services is subject to NetApp’s Keystone STaaS Terms (the “**STaaS Terms**”) and the applicable Service Description (“**Service Description**”), and, when taken together with the applicable STaaS Terms and Service Description, constitutes a “**NetApp Keystone Transaction**”;

WHEREAS, an End User Nonpayment Event (as such term is defined under the Program Terms) has occurred with respect to the NetApp Keystone Transaction;

WHEREAS, Assignor has elected to exercise its right to transfer and assign the NetApp Keystone Transaction in accordance with the terms and conditions of the Program Terms and Assignee desires to assume, certain of Assignor’s rights and obligations under the applicable NetApp Keystone Transaction; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, NetApp and Partner hereby agree as of the Assignment Effective Date as follows:

1. Assignment and Assumption. Subject to the remaining provisions of this Assignment, Assignor hereby irrevocably transfers and assigns to Assignee all of Distributor’s rights, title and interests under the Order specified below, and Assignee hereby irrevocably accepts such rights, title and interests, all as subject to the remaining provisions of this Assignment, including without limitation the rights to enforce the terms of the Order against End User directly.

End User:	
Order:	
Description of STaaS Services:	

2. NetApp’s Performance Obligation. Subject to **Section 3** below, Assignee shall: (a) duly perform (and hereby assumes) all liabilities and obligations in respect of NetApp’s STaaS Services identified under the Order. Any other End User rights and obligations which are not expressly included in the Order , but which may nevertheless be related to the NetApp Keystone Transaction, are retained by, and are the sole responsibility of, Assignor.
3. STaaS Services Only. Assignee’s liability is limited only to the STaaS Services specified under the Order, to the extent resold by Assignee. Any other End User rights and obligations which are not expressly included in the NetApp Keystone Transaction, but which may nevertheless be related to such NetApp Keystone Transaction, are retained by, and are the sole responsibility of, Assignor.
4. Collection. Under **Sections 1** and **2**, Assignee assumes all collection, termination and other enforcement rights against End User under the NetApp Keystone Transaction. Notwithstanding the foregoing, Assignor retains all collection rights with respect to STaaS Services for which Assignor remains liable to pay NetApp or Distributor (as applicable) under **Section 9.3(c)** of the Program Terms.
5. End User Notice of Assignment. Assignee remains responsible to ensure End User has been or shall be notified of this Assignment.
6. Acknowledgment. Assignee agrees that Assignor shall have no liability to Assignee in respect of any duties, obligations, causes of action, claims, liabilities or losses of any kind whatsoever arising out of or in connection with or under the Order on or after the Assignment Effective Date, except as otherwise provided in the Agreement.



7. General. The recitals above and the documents referred to therein including all terms and conditions, exhibits and amendments to those documents, are incorporated herein by this reference. Unless otherwise defined in this Assignment, all capitalized terms shall have the same meaning as set forth in the terms of the NetApp Keystone Transaction, as applicable. Other than described herein, no terms or conditions of the NetApp Keystone Transaction are modified by this Assignment.

IN WITNESS WHEREOF, duly authorized officers of Assignor, Assignee and, if applicable the relevant NetApp entity have executed this Assignment as of the Assignment Effective Date.

[ASSIGNOR ENTITY]

[ASSIGNEE ENTITY]

Signature: _____ *[FORM – DO NOT SIGN]*

Signature: _____ *[FORM – DO NOT SIGN]*

Name: _____

Name: _____

Title: _____

Title: _____

**PARTNER SPHERE TERMS OF PARTICIPATION
ATTACHMENT 5 – US FEDERAL GOVERNMENT SUPPLEMENTAL TERMS**

This U.S. Federal Government Supplemental Terms Attachment (the “Fed Terms”) sets forth additional terms and conditions for Partner’s purchase and resale of NetApp Products and Services to the executive, legislative, or judicial branches of the United States Government; a U.S. Government corporation that was specifically formed and is currently existing under an act of Congress; or any government-owned contractor-operated (“GOCO”) facilities and establishments (each a “U.S. Federal Government End User”), where Partner have been authorized in writing by NetApp to do so. Capitalized terms are defined in accordance with the definitions provided in the Program Terms (including Attachments).

1. APPOINTMENT OF PARTNER

1.1. Subject to these Fed Terms, Partner is authorized on a non-exclusive basis to purchase Products and Services from NetApp or through Partner’s selected Distributor for resale to U.S. Federal Government End User(s) or prime contractors for resale to the U.S. Federal Government End User(s) under a valid prime contract. NetApp reserves the right to appoint other partners, resellers, and/or distributors for the resale of Products or Services to U.S. Federal Government End User(s) and/or prime contractors for resale to U.S. Federal Government End User(s) under a valid prime contract. NetApp reserves the right to sell, market, and/or license the Products or Services directly to U.S. Federal Government End User(s). These Fed Terms are not a letter of supply and do not authorize Partner to represent that NetApp will furnish supplies needed by Partner to fulfill any of Partner prime contract obligations including, but not limited to, the General Services Administration’s Multiple Award Schedules (“GSA MAS”). Partner further agrees that Partner must obtain either a letter of authorization or letter of supply, as applicable, from NetApp prior to submitting any bid for inclusion of NetApp Products and Services on any Indefinite- Delivery, Indefinite- Quantity (“IDIQ”) or multiple award schedule (“MAS”) contracts. All letters of authorization or supply shall be independently negotiated between Partner and NetApp.

2. MAINTENANCE OF RECORDS PERTAINING TO GOVERNMENT TRANSACTIONS TO U.S. FEDERAL GOVERNMENT END USERS:

2.1. Partner must maintain books, records, documents, and other evidence relating to Partner’s financial status and the pricing, expenses, and provision of Products and Services under these Fed Terms. Partner will provide NetApp with full access to such records within fifteen (15) calendar days of receipt of a written request. Records involving matters in litigation relating to these Fed Terms must be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of these Fed Terms, whichever is later.

3. AUDIT RIGHTS

In addition to any available audit rights set forth in the Program Terms, Partner grants NetApp the right to audit sales records pertaining to the resale of Products and Services under these Fed Terms. Such audit will take place during normal business hours upon fifteen (15) calendar days advance written notice. In the event that such audit reveals (a) any overcharging of U.S. Federal Government End User(s) pursuant to a NetApp-held Multiple Award Schedule Contract, (b) any unauthorized use of a NetApp-held Multiple Award Schedule Contract, or (c) any breach of these Fed Terms, NetApp reserves the right to charge and Partner agrees to promptly pay any amounts owed by Partner and Partner will reimburse NetApp for all reasonable expenses related to such audit.

4. COMPLIANCE WITH LAWS

4.1. Partner must, to the extent they apply, abide by the requirements of (1) 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin and require affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability; (2) 29 CFR Part 471, Appendix A to Subpart A; and (3) E-Verify. If Partner are required by federal regulations to file Employer Information Report EEO-1 (standard form 100) or Federal Contractor Veterans’ Employment Report VETS-4212, Partner certify that Partner have done so or will file such reports in accordance with applicable instructions and will continue to file such reports unless or until no longer required by law or regulation.

5. REPRESENTATIONS AND CERTIFICATIONS WHEN SELLING TO U.S. FEDERAL GOVERNMENT END USERS

5.1. By participating in the NetApp Partner Sphere Program, Partner represents that Partner participation does not violate any applicable laws and regulations, including without limitation: FAR Part 3.4 (regarding contingent fees); FAR 3.5 (regarding kickbacks); FAR Part 9.5 (regarding conflicts of interest); and FAR part 3.8 (Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions). Partner further represents that any payment received from NetApp under the Partner Sphere Program was earned in connection with Partner's meaningful, definitive actions to develop, market, drive, and win a U.S. Federal Government opportunity, and not for any improper purpose or as part of any kickback. In addition, by participating in Partner Sphere, Partner certifies that (i) any payment earned is not prohibited by, nor violative of, any applicable solicitation or contract terms; and (ii) where required (e.g., by solicitation or contract terms or otherwise), the U.S. Government End User is notified of Partner's Partner Sphere payment and/or receives the benefit of any discount.

6. COMMERCIAL PRODUCTS AND SERVICES

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

7. SECURITY CLEARANCE

7.1. Should Partner's contractual requirements with U.S. Federal Government End User(s) necessitate that NetApp or NetApp subcontracted service delivery or other account management activities be conducted within a classified work environment, Partner agrees to make all reasonable efforts to assist NetApp and NetApp's subcontractors with sponsorship of the necessary security clearances required to perform NetApp's obligations under these Program Terms. Partner will provide NetApp, in a timely manner, with any DD-254 or

similar flow downs and other security guidance related to NetApp's performance under Partner contract with the U.S. Government End User(s).

8. FEDERAL ACQUISITION REGULATIONS FLOW DOWN PROVISIONS

8.1. NetApp only agrees to accept those FAR clauses and FAR agency supplemental clauses that are required by the FAR and any agency supplement to be included in commercial product and commercial service subcontracts. Accordingly, NetApp agrees to accept only those FAR clauses identified in FAR clause 52.244-6 Subcontracts for Commercial Products and Commercial Services (the version of the clause current as of the date of these Terms) and FAR agency supplemental clauses identified in the agency-specific clause(s) as required for subcontracts for commercial products or commercial services (the version of the clause current as of the date of these Terms). NetApp expressly rejects all other FAR and FAR agency supplemental clauses, unless otherwise agreed to in writing by NetApp.

8.2. Note that any additional flow down provisions on Partner supplied documentation do not constitute a written agreement by NetApp to accept additional clauses notwithstanding any language in the Partner supplied documentation to the contrary and notwithstanding NetApp's acceptance of such documentation whether in the form of a purchase order or otherwise.

9. CLAIMS AGAINST U.S. FEDERAL GOVERNMENT END USERS

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

10. ORDER OF PRECEDENCE

10.1. Except as otherwise stated herein, all terms and conditions of the Program Terms remain in full force and

effect. To the extent there is conflict between the Program Terms and these Fed Terms, these Fed Terms prevail.

PARTNER SPHERE TERMS OF PARTICIPATION
ATTACHMENT 6 - STATE, LOCAL GOVERNMENT AND HIGHER EDUCATION ("SLED") TERMS

This State, Local and Higher Education Terms Attachment (the "SLED Terms") sets forth additional terms and conditions for Partner's purchase and resale of NetApp Products and Services to any executive, legislative or judicial branch of any state, municipal, county, regional or territorial government entity within the United States and its territories or dependencies, including, but not limited to (a) any department, agency, bureau, office, board, district, commission, council, committee, center, service, facility or state-chartered institution; (b) any state, municipal, county, regional or territorial public university or community college or other public non-federal institution of higher learning and all directly-associated museums, facilities, libraries and hospitals thereof; (c) any governmental or public-private corporation, fund, partnership or conservancy formed with a public purpose or in support of government employees under an act, regulation or ordinance of any state, municipal, county, regional or territorial government within the United States and its territories or dependencies; (d) any Native American tribal governmental organization not engaged directly in Class III gaming as defined by the Indian Gaming Regulatory Act; and (e) any state, municipal, county, regional or territorial government-owned contractor-operated (hereinafter "SLED GOCO") facilities and establishments; as well as any private university or community college or other institution of higher learning and all directly-associated museums, facilities, libraries and hospitals thereof (each a "SLED End User"), where Partner have been authorized in writing by NetApp to do so. Capitalized terms are defined in accordance with the definitions provided in the Program Terms (including Attachments).

1. APPOINTMENT OF RESELLER

1.1. Subject to the terms and conditions herein, Partner are authorized on a non-exclusive basis to purchase Products and Services from NetApp or through Partner's selected Distributor for resale to SLED End User(s) or prime contractors for resale to SLED End User(s) under a valid prime contract. NetApp reserves the right to appoint other partners, resellers, and/or distributors for the Products or Services to SLED End User(s) and/or prime contractors for resale to SLED End User(s) under a valid prime contract. NetApp reserves the right to sell, market, and/or license the Products or Services directly to SLED End User(s).

2. NETAPP IDIQ CONTRACT EXCLUSION

2.1. Partner are prohibited from reselling NetApp Products or Services to SLED End User(s) to fulfill orders under NetApp-held contract vehicles, including but not limited to any NetApp-held Indefinite-Delivery, Indefinite-Quantity ("IDIQ") or Multiple Award Schedule ("MAS") Contracts unless, prior to each such transaction, Partner are named by NetApp as a Reseller for such contract.

3. TEXAS SLED ENTITY EXCLUSION

3.1. Absent express written authorization, Partner is prohibited from reselling NetApp Product or Services to SLED End User(s) in the State of Texas unless Partner is a named reseller on NetApp's Texas Department of Information Resources (DIR) contract.

4. RESELLER IDIQ CONTRACT EXCLUSION

4.1. These SLED Terms are not a letter of supply and do not authorize Partner to represent that NetApp will furnish supplies needed by Partner to fulfill any of Partner's prime contract obligations including, but not limited to, the

NASPO ValuePoint cooperative contract ("NASPO") or California Multiple Award Schedule (CMAS"), absent a quote and a letter of authorization or letter of supply, as appropriate. Partner further agrees that Partner must obtain either a letter of authorization or letter of supply from NetApp prior to submitting any bid for inclusion of NetApp Products and Services on any IDIQ contract. All letters of authorization or supply shall be independently negotiated between Partner and NetApp.

GENERAL TERMS AND CONDITIONS

5. SLED RELATIONSHIP MANAGER

5.1. Partner will appoint a SLED account relationship manager whose primary responsibility is to work with the designated NetApp account manager, act as a focal point for day-to-day account issues and participate in NetApp Partner related activities. Partner will inform NetApp of the name and contact information for the SLED account relationship manager within five (5) days of (a) the execution of these SLED Terms or (b) the transition to a new SLED account relationship manager.

6. MAINTENANCE OF RECORDS PERTAINING TO SLED TRANSACTIONS

6.1. Partner must maintain books, records, documents, and other evidence relating to Partner financial status and the pricing, expenses, and provision of Products and Services under these SLED Terms. Partner must also maintain books, records, documents and other evidence concerning Partner accounting procedures and practices, Employee Eligibility Forms (I-9s), and the protection and use of personally identifiable information employed by SLED entities to which NetApp Products have been sold. Partner will provide NetApp full access to such records within

fifteen (15) calendar days of receipt of a written request. Partner shall retain all records for eight (8) years after the expiration or termination of these SLED Terms, whichever is later. Records involving matters in litigation relating to these SLED Terms must be kept for either one (1) year following the termination of litigation, including all appeals, or eight (8) years from the date of expiration or termination of these SLED Terms, whichever is later.

7. AUDIT RIGHTS

7.1. In addition to any audit rights set forth in the Program Terms, Partner grant NetApp the right to audit sales records pertaining to the resale of Products. Such audit will take place during normal business hours upon fifteen

(15) calendar days advance written notice. In the event that such audit reveals (a) any overcharging of SLED End User(s) pursuant to a NetApp-held IDIQ Contract, (b) any unauthorized use of a NetApp-held IDIQ Contract, or (c) any breach of these SLED Terms, NetApp reserves the right to charge any amounts owed by Partner to a SLED End User and Partner agree to reimburse NetApp for all such amounts owed plus reasonable expenses related to such audit.

8. PROTECTION OF NETAPP'S PROPRIETARY INFORMATION

8.1. Partner acknowledges that responses to requests for proposals and bids frequently require the disclosure of NetApp's Confidential Information, including without limitation, the results of proof-of-concept studies performed for a particular bid or proposal. Partner agrees to clearly identify NetApp Confidential Information in all proposals and bids to SLED entities, and to comply with all laws relating to the protection of such Confidential Information. In the event Partner receives a freedom of information act (FOIA) disclosure request covering any NetApp Confidential Information, Partner shall promptly notify NetApp in writing.

9. COMPLIANCE WITH LAWS

9.1. Partner must, to the extent they apply, abide by the requirements of (1) 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin and require affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability; (2) 29 CFR Part 471, Appendix A to Subpart A; and (3) E-Verify. If Partner is required by federal regulations to file Employer Information Report EEO-1 (standard form 100) or Federal Contractor Veterans'

Employment Report VETS-4212, Partner certify that Partner has done so or will file such reports in accordance with applicable instructions and will continue to file such reports unless or until no longer required by law or regulation.

10. REPRESENTATIONS AND CERTIFICATIONS WHEN SELLING TO STATE, LOCAL GOVERNMENT AND HIGHER EDUCATION END USERS

10.1. By participating in the NetApp Partner Sphere, Partner represents that Partner's participation does not violate any applicable laws, regulations or ordinances, including without limitation those regarding contingent fees, kickbacks and conflicts of interest. Partner further represents that any payment received from NetApp under the Partner Sphere Program was earned in connection with Partner's meaningful, definitive actions to develop, market, drive, and win a SLED opportunity, and not for any improper purpose or as part of any kickback. In addition, by participating in the Partner Sphere Program, Partner certifies that (i) any payment earned is not prohibited by, nor violative of, any applicable solicitation or contract terms; and (ii) where required (e.g., by solicitation or contract terms or otherwise), the SLED End User is notified of Partner's Partner Sphere Program payment and/or receives the benefit of any discount.

11. RISK OF LOSS AND FREIGHT CHARGES

11.1. Notwithstanding any provision of any NetApp-held IDIQ Contract or Reseller-held Contract, except as expressly stated in a NetApp price quotation or a written amendment to these SLED Terms, the terms relating to delivery, acceptance, title transfer, risk of loss, and assessment of freight changes shall be in accordance with these SLED Terms and NetApp's Agreement with Partner's distributor, as applicable. NetApp does not offer or accept a "right of return" of its Products. Partner is solely responsible for any refund, cost or other liability associated with a Product rejection or return by a SLED End User following delivery. Partner shall indemnify NetApp for any loss during shipment claimed by Partner's customers when utilizing a NetApp-held contract vehicle.

12. DISPUTES

12.1. In the event of any disagreement relating to the parties' performance under or interpretation of the Program Terms and/or these SLED Terms, the parties shall attempt to reach a negotiated resolution. Notwithstanding the parties' desire to resolve disputes through negotiation, in the event that immediate action is required to protect a party's rights under these SLED Terms, the aggrieved party may take whatever immediate action is appropriate to protect its rights, to include, but not be limited to injunctive relief. Nothing contained in these SLED Terms or in any other document

related hereto is intended to or shall have the effect of requiring either party to consider, resort to, participate in or abide by any arbitration process or mechanism, or any device or arrangement of a nature or intent similar to arbitration. Any dispute arising under or related to these SLED Terms which relates to a matter giving the SLED prime contractor recourse against SLED entities under the prime contract, or applicable law thereto, may be resolved, by agreement of the parties, in accordance with the Disputes clause of the prime contract.

13. SOFTWARE

13.1. NetApp Software is a Commercial-Off-The-Shelf ("COTS") product developed entirely at private expense; no portion of the Software has been developed with public funds; the Software contains trade secrets and confidential commercial or financial information exempt from disclosure under U.S. and State laws; and the ownership of the Software and any reproductions shall remain with NetApp. In no event shall NetApp be required by Partner to escrow or offer to escrow Software under any Prime Contract without written authorization by NetApp. Contractor/Manufacturer is: NetApp, Inc., 3060 Olsen Drive, San Jose, CA 95128. Except as expressly licensed hereunder, all rights are reserved.

14. GOVERNMENT CONTRACT FLOW DOWN PROVISIONS

14.1. NetApp will not accept any flow-down provisions from a SLED End User unless previously negotiated and agreed to in writing between Partner and NetApp. NOTWITHSTANDING ANY LANGUAGE OR PROVISION IN THE AGREEMENT TO THE CONTRARY, ANY SUCH FLOW-DOWN PROVISION ON PARTNER'S PURCHASE ORDERS OR SUPPLEMENTARY DOCUMENTATION ARE DISCLAIMED BY AND INVALID AS TO NETAPP UNLESS EXPLICITLY AGREED TO IN A SEPARATE WRITING BY PARTNER AND NETAPP.

15. RESELLER ELIGIBILITY

15.1. Partner certifies that Partner is not presently debarred, suspended, proposed for debarment, voluntarily excluded, or declared ineligible by any State agency or as defined in the FAR 48 C.F.R. Ch. 1 Subpart 9.4.

16. VALID BUSINESS REQUIREMENT

16.1. Partner certifies that Partner (i) is authorized and validly existing under the laws of the state of Partner organization, (ii) are authorized to do business, and if required by the state for collection of sales and use taxes, have a valid business registration on file with the Department of revenue in every state in which Partner provide Products or Services under these SLED Terms.

TERMS AND CONDITIONS APPLICABLE TO USE OF NETAPP-HELD CONTRACT VEHICLES

17. APPLICATION OF TERMS

17.1. Approval to become an authorized reseller on a NetApp-held contract vehicle is at NetApp's sole discretion. Partner shall work with NetApp to determine whether such appointment is available. These SLED Terms are not an agreement by NetApp to list Partner as an authorized reseller to maintain such contract vehicles, nor does it obligate NetApp to maintain such contract vehicles. Partner acknowledges a duty of good faith towards any NetApp-held contract vehicle (i) on which NetApp has approved Partner to act as a named reseller, or (ii) under which NetApp permits Partner to conduct a two-tier transaction.

18. REPORTING OBLIGATIONS

18.1. Partner agrees to provide NetApp with a report of all Product sales to SLED End User(s) and SLED prime contractors on a monthly basis. For months where Partner did not complete any sales to a SLED End User via a NetApp-held IDIQ Contract, Partner will still submit a timely report. All reports will be submitted within eight (8) days after the last day of reporting month. Reports will be submitted via the NetApp Reporting Portal ("Portal") which can be found at:

<http://psi.immixgroup.com/ignetapp/Logon.aspx>.

Questions concerning reporting should be directed to the designated NetApp Operations SLED Contracts Manager.

19. SLED END USER AUDIT RIGHTS

19.1. Partner will grant SLED End User(s) the right to audit sales records upon request and will comply with all applicable laws governing the same. SLED End User(s) will have the right to review and copy any records and supporting documentation, whether electronic or paper, pertaining to Partner's performance under the Program Terms, including Partner's subcontracting reports. Partner agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. If requested, Partner agrees to deliver the required data and records to the location specified by the SLED End User, without charge.

20. INDEMNIFICATION

20.1. Partner indemnify NetApp and its directors, employees, subsidiaries, and affiliates for any and all third-party claims, damages, losses, costs and expenses, including attorneys' fees, against NetApp, its employees, subsidiaries, and/or affiliates arising from or related Partner's failure to comply with any provisions, requirements or laws set forth in a NetApp-held or _____

Partner-held contract with a SLED End User that are applicable to Partner, or any subcontractor or agent of Partner.

21. RESELLER PROVIDED SERVICES

21.1. If Partner have obtained Services Certified status, Partner may sell Partner provided services to eligible SLED End User(s) via a NetApp-held IDIQ Contract; provided, however, that (a) Partner provided services SKUs have been awarded under the contract, (b) Partner do not represent to the SLED End User that such services are provided by NetApp, (c) Partner utilize the appropriate SKUs for all such sales, (d) Partner accurately report all such sales to NetApp, and (e) Partner agree to indemnify and hold NetApp, its officers, agents and employees harmless from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of Partner provided services.

22. LOCATION OF PERFORMANCE OF SERVICES

22.1. Partner certifies that all services are to be performed within the United States when required by the SLED End User.

23. SECURITY REQUIREMENTS

23.1. Services that Partner provide to eligible SLED End User(s) at SLED End User sites will fully comply with all applicable facility codes of conduct and regulations, security requirements and other site-specific rules. Partner is solely responsible for reviewing all contract and subcontract requirements relating to onsite performance, prior to commencing work, and to ensuring the full compliance of Partner personnel. NetApp does not assume any responsibility for Partner compliance or conduct on site. Partner employees requiring access to such sites may be required by the SLED End User to undergo background checks, fingerprinting, and/or questions about any past convictions for felonies or misdemeanors. Partner

employees who have been convicted of a felony or misdemeanor are not permitted to work at SLED End User sites.

24. PROOF OF QUALIFICATION

24.1. Partner will provide, upon request, a copy of relevant technical certifications or other proof or qualifications for the applicable employees, including any replacements or substitutes.

25. AUTHORIZED RESELLER EMPLOYEES

25.1. Partner certifies that none of Partner's employees nor any individuals holding a controlling interest in Partner company are currently, or have within the past six months been, employees of any state in which Partner are providing Products or Services under these SLED Terms.

26. STATE-SPECIFIC PROVISIONS

26.1. For each state for which Partner is a named authorized reseller on a NetApp-held contract, Partner participation will be in accordance with the terms and conditions set forth in the NetApp-held contract with the applicable state. Partner is solely responsible for Partner compliance with all applicable terms and conditions. Partner will pass through all terms and conditions of the applicable contract to any lower tier subcontractors. The terms of the applicable contracts may be found on the NetApp U.S. Public Sector, Inc. Contracts page, located at <http://www.netapp.com/us/how-to-buy/contracts/>.

27. ORDER OF PRECEDENCE

27.1. Except as otherwise stated herein, all terms and conditions of the Program Terms remain in full force and effect. To the extent there is conflict between the Program Terms and these SLED Terms, these SLED Terms prevail.