SNAPDIFF REST APIs v3 LICENSE AGREEMENT FOR NETAPP ONTAP

This SnapDiff REST APIs v3 License Agreement for NetApp ONTAP (“Agreement”) is entered into by and between NetApp, Inc., with principal offices located at 3060 Olsen Drive, San Jose, California 95128 (“NetApp”), and [\_\_\_\_] (“Licensee”), and is effective as of the date last signed below by a party to this Agreement (the “Effective Date”).

**RECITALS**

NetApp previously offered license agreements to implement proprietary versions of NetApp’s SnapDiff APIs that relate to identifying new, changed and deleted files between snapshots in a filesystem (collectively, the “SnapDiff ZAPIs”). NetApp has modified the SnapDiff ZAPIs, functionality, and documentation to conform to REST architecture (collectively, the “SnapDiff APIs v3”). NetApp wants Licensee to cease its use of the SnapDiff ZAPIs and develop and distribute applications using the SnapDiff REST APIs v2 as specifically provided herein.

In consideration of the mutual convenents set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

**AGREEMENT**

1. Prior SnapDiff APIs. Licensee’s right to implement SnapDiff ZAPIs (if previously granted by NetApp) expires on the Effective Date, and six (6) months following the Effective Date Licensee will not release any applications (or versions thereof) with SnapDiff ZAPIs enabled by default. For the avoidance of doubt, Licensee may continue to support SnapDiff ZAPI functionality.
2. License Grant to SnapDiff REST APIs v3. Subject to the terms and conditions of this Agreement, NetApp grants to Licensee a limited, terminable, revocable, non-exclusive, non-assignable, and non-transferable license, with no right to sublicense, to:
	1. implement the SnapDiff REST APIs v3, and invoke the separately licensed implementation of the functionality underlying the SnapDiff REST APIs v3, in the data backup and recovery software applications and services listed in Exhibit A to this Agreement (“Licensee Applications”); and
	2. distribute the Licensee Applications only to parties to whom the Licensee sells Licensee Applications, solely to enable such Licensee Applications to access changed file lists from snapshots residing on (a) on-premises storage systems running on a NetApp hardware appliance, (b) Cloud Volumes ONTAP software, or (c) ONTAP Select software (collectively, “ONTAP Systems”).
3. API Keys. Licensee’s implementation and use of the SnapDiff REST APIs v3 as permitted under the terms of this Agreement may require the use of one or more unique authentication keys (each an “API Key”). If such API Key(s) are required, NetApp will issue such API Keys to Licensee, which must be referenced in all of Licensee Applications’ calls to the SnapDiff REST APIs v3. Such API Keys are NetApp Confidential Information (as defined below), may not be shared, and may not under any circumstances be used by any software that is not a Licensee Application.
4. License Restrictions. Unless such right is expressly granted in this Agreement, Licensee will not, nor permit or induce any third party, to:
	1. decompile, disassemble, decrypt, extract, or otherwise reverse engineer or attempt to reconstruct, or discover any source code of the SnapDiff REST APIs v3 and implementation of the functionality underlying the SnapDiff REST APIs v3 or NetApp Format, including any underlying ideas, algorithms, API Keys or file or data formats of, or used in, the SnapDiff REST APIs v3, any portion of a Licensee Application implementing the SnapDiff REST APIs v3, or any NetApp products, by any means whatever; provided that the foregoing restriction will not limit any activity that is required to be permitted under applicable law in a specific jurisdiction; further provided, however, that if Licensee wishes to exercise its rights to engage in activities that are permitted under applicable law in a specific jurisdiction that otherwise would be prohibited by the foregoing restrictions, Licensee will provide prompt written notice to NetApp and provide NetApp with a reasonable amount of time in which to perform the activity and provide related results to Licensee.
	2. remove or conceal any product identification, copyright or other notices contained in or on the SnapDiff REST APIs v3;
	3. publish or provide to a third party any results of benchmark tests run on the SnapDiff REST APIs v3, any portion of the Licensee Application implementing SnapDiff REST APIs v3, or any NetApp products, without NetApp’s prior written consent;
	4. disable, disrupt, circumvent, interfere with, or otherwise violate or impair the security of the SnapDiff REST APIs v3 or any NetApp product;
	5. access any application, system, service, computer, data, account, or network without authorization using the SnapDiff REST APIs v3 or any NetApp product;
	6. combine, remix, link against, transform, build upon, create a derivative work with, or otherwise use the SnapDiff REST APIs v3 in the Licensee Application or otherwise such that the SnapDiff REST APIs v3 or NetApp Format would be licensed under a license that requires the SnapDiff REST APIs v3 or any portion thereof to be (i) disclosed or distributed in source code form, or (ii) licensed under terms that allow any licensee to copy, create derivative works and distribute the software without any fee or cost;
	7. allow SnapDiff REST APIs v3 or any implementation of the functionality underlying the SnapDiff REST APIs v3 to be visible, discoverable, usable, accessible, or otherwise expose, either directly or indirectly, by any third party other than Licensee customers who are end users of ONTAP Systems; or
	8. display, reproduce, publish, sell, offer for sale, modify, or create a derivative work of any part of the SnapDiff REST APIs v3 or implementation of the functionality underlying the SnapDiff REST APIs v3 except as expressly licensed in this Agreement. Any such unlicensed derivative work is and will be owned entirely by NetApp; Licensee hereby assigns and agrees to assign to NetApp all right, title and interest in and to said derivative work.

In addition, Licensee will include the license restrictions set forth in this Section in all agreements with customers who use the Licensee Applications.

1. Ownership. All rights, title, and interest in and to the SnapDiff REST APIs v3 and implementation of the functionality underlying the SnapDiff REST APIs v3 remains with NetApp. Subject to NetApp’s pre-existing rights in the SnapDiff REST APIs v3 and any implementation thereof made by NetApp, all rights, title and interest in and to the Licensee Application are retained by Licensee.
2. Feedback. Licensee may provide NetApp with Feedback as reasonably requested by NetApp. Feedback is the exclusive property of NetApp. Licensee hereby assigns to NetApp all of its intellectual property rights in and to Feedback. “Feedback” means all test results, error data, reports or other information or materials made or provided to NetApp by or on behalf of Licensee relating to the SnapDiff REST APIs v3 and all comments, suggestions, enhancements, and any other forms of feedback that Licensee may provide to NetApp.
3. Indemnification. Licensee will defend, indemnify and hold harmless NetApp and its Affiliates (and their respective employees, shareholders, and directors) from and against any third-party claim (“Claim”) brought against NetApp or tendered to it and for any and all liabilities, losses, damages, costs and expenses, including reasonable attorney’s fees, (“Losses”) related to such Claim(s), which in whole or in part, directly or indirectly: (i) allege that the Licensee Application, or any part thereof, or its manufacture, use, import, support, sale or distribution infringe, misappropriate or violate any intellectual property rights of any third party (excluding only those Claims based solely on the underlying SnapDiff REST APIs v3 or any portion thereof originally provided to Licensee by NetApp); or (ii) allege that the Licensee Application has caused personal injury or damage to tangible or intangible property; (iii) allege any breach of any open source license by Licensee or a Licensee customer, or (iv) allege Licensee’s breach of this Agreement. For purposes of this Agreement, an “Affiliate” of a party means any other entity that controls, is controlled by, or is under common control with such party, but only for so long as such control exists. For purposes of this definition, “control” of an entity means the direct or indirect ownership of more than fifty percent (50%) of the voting shares, securities or similar interest of such entity, or the power to direct or cause the direction of the management and policies of such entity.
4. Confidentiality. Licensee acknowledges that the SnapDiff REST APIs v3, API Keys and NetApp Format are highly protected and trade secret information of NetApp. Licensee further acknowledges that this Agreement, the SnapDiff REST APIs v3 (including information about how to transfer data by employing the SnapDiff REST APIs v3 or any portion of any work implementing the functionality of the SnapDiff REST APIs v3), API Keys, NetApp Format, NetApp’s product and marketing plans, any source code provided by NetApp, and any information or materials that are expressed to be confidential, are proprietary and confidential information of NetApp (hereafter “Confidential Information”). Notwithstanding the foregoing, any information or materials provided by NetApp that by its nature and content would be readily recognizable by a reasonable person to be proprietary and confidential information will also be deemed Confidential Information. Licensee therefore agrees not to use the Confidential Information other than as authorized under this Agreement, not to disclose the Confidential Information to any third party, and to use the same degree of care to protect the Confidential Information as Licensee uses to protect its own confidential information. In no event will such degree of care be less than a reasonable degree of care. These obligations will apply from the time of first disclosure until one of the exceptions set forth in this Section below applies, or until NetApp indicates in writing that the information is no longer Confidential Information. The provisions of this Section will not apply to any information or materials: (i) which are in or enter the public domain not in violation of the proprietary or other rights of NetApp; (ii) which were lawfully in the possession of, or known by, the Licensee prior to its receipt from NetApp; (iii) which are rightfully disclosed to the Licensee by another person not in violation of the proprietary or other rights of NetApp; or (iv) which are independently developed by the Licensee not using any Confidential Information. Licensee will immediately disclose to NetApp any unauthorized disclosures of Confidential Information, accidental or otherwise. Upon termination of this Agreement, all Confidential Information will be returned to NetApp or destroyed, and the Licensee will provide certification of such destruction in writing.
5. Term; Termination**.** This Agreement will remain in effect for a term of one year from the Effective Date, and will automatically renew for successive one-year periods, unless a party provides written notice of non-renewal to the other at least thirty (30) days prior to the end of the then current period. Either party may terminate this Agreement for any reason at any time. Upon termination for any reason, Licensee will immediately cease all uses of the SnapDiff REST APIs v3, and return or destroy all copies of the SnapDiff REST APIs v3 and so certify in writing to NetApp, concurrently implementing an end-of-life for the version of any Licensee Application(s) in which any SnapDiff API is implemented and ceasing distribution of such Licensee Application(s) no later than thirty (30) days thereafter. Upon a termination by expiration of the license term, Licensee will have up to sixty (60) days to cease use of the SnapDiff REST APIs v3 and other NetApp Confidential Information, and return or destroy all copies, while implementing an end-of-life plan for the version of any Licensee Application(s) in which any SnapDiff API is implemented and ceasing distribution of such Licensee Application(s) within such timeframe, not to exceed ninety (90) days from the termination date. Notwithstanding the foregoing and subject to ongoing compliance with the terms and restrictions of this Agreement as if still in effect, Licensee may retain a reasonable number of copies of the SnapDiff REST APIs v3 to support its customers’ existing implementations of the Licensee Application installed prior to the date of termination. In addition, Licensee may, at a Licensee customer’s request, enable SnapDiff REST APIs v3 after termination of the Agreement solely to enable a Licensee customer’s data to be restored. Termination is not an exclusive remedy and all other remedies at law or in equity will be available to NetApp whether or not the Agreement is terminated. Sections 4 through 11, as applicable, and related defined terms will survive expiration or termination of this Agreement.
6. Open Source. As of the Effective Date the SnapDiff REST APIs v3 do not include open source code that would require Licensee to disclose its source code. Should open source code be included in the SnapDiff REST APIs v3 in the future, NetApp will take reasonable measures to ensure such inclusion would not require Licensee to disclose its source code.
7. Warranty Disclaimer; Limitation of Liability. Licensee acknowledges that the SnapDiff REST APIs v3 may have defects or deficiencies that cannot or will not be corrected by NetApp. THE SNAPDIFF REST APIs v3 ARE PROVIDED BY NETAPP "AS IS" AND WITHOUT WARRANTY OF ANY KIND. ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. NETAPP WILL HAVE NO LIABILITY IN CONNECTION WITH, OR RELATING TO, THIS AGREEMENT OR USE OF THE SNAPDIFF REST APIs v3 OR LICENSEE APPLICATIONS, FOR DAMAGES OF ANY KIND SUFFERED OR ALLEGED TO BE SUFFERED BY ANYONE, INCLUDING, BUT NOT LIMITED TO, DIRECT, INCIDENTAL, AND CONSEQUENTIAL DAMAGES, OR FOR LOSS OR INTERRUPTION OF BUSINESS, LOSS OF REVENUE OR PROFITS, OR LOSS OR CORRUPTION OF DATA, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. SUCH THEORIES OF LIABILITY INCLUDE CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE DOWNLOAD, INSTALLATION, USE, OPERATION, OR MAINTENANCE OF THE SNAPDIFF REST APIs v3, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OF IMPLIED WARRANTIES; THESE LIMITATIONS MAY NOT APPLY.
8. General. This Agreement is governed by the laws of the State of California, excluding its conflict of laws provisions. In addition to the license restrictions of this Agreement, Licensee acknowledges that the SnapDiff REST APIs v3 supplied by NetApp are subject to export controls under the laws and regulations of the United States, and other countries as applicable. Licensee agrees to comply with such laws and regulations, including, but not limited to those governing use, export, re-export (to embargoed countries, persons and entities), and transfer of the SnapDiff REST APIs v3. Each party acknowledges any breach of this Agreement may cause irreparable harm to the other and that the other party will be entitled to seek equitable relief in addition to all other remedies available at law. This Agreement contains the entire agreement between the parties with respect to the subject matter set forth herein and supersedes all prior or contemporaneous oral or written communications between the parties relating to the SnapDiff REST APIs v3. If any provision of this Agreement is held to be unenforceable, this Agreement will remain in effect with the provision omitted, unless omission would frustrate the intent of the parties, in which case this Agreement will immediately terminate. No failure by NetApp to enforce any of its rights related to the SnapDiff REST APIs v3 or to a breach of this Agreement in a situation will act as a waiver of such rights. This Agreement may not be modified or changed in any manner except in writing by authorized representatives of both parties. This Agreement may not be assigned by Licensee to any third party. In the event Licensee assigns this Agreement to a third party (including as a result of a Change of Control), NetApp may immediately terminate this Agreement. In this Agreement, “Change of Control” means the sale of all or substantially all of the assets of a party; any merger, consolidation or acquisition of a party with, by or into another entity; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a party in one or more related transactions. Any purported assignment (other than as permitted herein) without the prior written consent of NetApp is null and void. This Agreement may be executed in counterparts, all of which taken together will constitute one single Agreement between the parties.

**NetApp, Inc. Licensee: [\_\_\_]**

*Signature: Signature:*

*Print Name: Print Name:*

*Title: Title:*

*Date: Date:*

**Exhibit A**

**Licensee Applications:**