



## SUPPORT SERVICES TERMS

These Support Services Terms ("Support Services Terms") set forth the terms and conditions between NetApp, Inc. ("NetApp") and the Department of Navy ("Customer") will provide Support Services which are purchased by Customer from an authorized NetApp reseller through the Department of Navy Enterprise Software License (DoN ESL) NetApp Agency catalog available through the NASA Solutions for Enterprise Wide Procurement (SEWP) V Government-Wide Acquisition Contract (GWAC). By purchasing such Support Services, Customer agrees to be bound by these Terms. NetApp and Customer may each be referred to as a "Party" or collectively, as the "Parties."

**1. DEFINITIONS** In addition to the definitions set forth in the General Terms or the Channel End User Terms, the following definitions shall apply:

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

**1.2. Business Day.** Monday through Friday, 8:00 a.m. to 5:00 p.m. Customer local time, except: (i) In Japan, Business Day means Monday through Friday, 9:00 a.m. to 6:00 p.m.; and (ii) in the Middle East and Israel, Business Day means Sunday through Thursday, 8:00 a.m. to 5:00 p.m. Designated local holidays are not considered Business Days.

**1.3. Customer Replaceable Unit (CRU).** Any FRU which can be replaced by Customer following guidelines and documentation provided by NetApp.

**1.4. Field Replaceable Unit (FRU).** A component or disk in the Hardware, excluding filer heads, which can be replaced at a Customer location without pre-configuration by NetApp. FRUs will be new or equivalent to new, at NetApp's reasonable discretion.

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

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

**1.7. Software Updates.** (i) Enhancements made generally available at no charge by NetApp to existing Software versions; (ii) Software releases made generally available by NetApp to resolve known issues with existing versions of Software; and (iii) Temporary software modifications developed for individual, known Software issues as part of the applicable Support Services.

**1.8. Support Services.** NetApp's generally available technical support and maintenance services for Hardware and Software, as described on the NetApp Support Site.

**1.9. Support Services Period.** The period of time specified in the Order Documentation during which NetApp will provide Support Services.

**1.10. TRO.** The Target Response Objective for timing of delivery of Support Services.

## 2. SUPPORT SERVICES

**2.1. Scope of Support Services.** NetApp agrees to provide the Support Services purchased by Customer as set forth in the Order Documentation during the Support Services Period. On a case by case basis, and as explicitly set forth in the Order Documentation, NetApp may also offer Support Services in relation to Third Party Branded Products. In such cases, references to Hardware and Software in these Terms shall also be deemed to include Third Party Branded Products. NetApp reserves the right to revise or update the scope of Support Services at its sole discretion. For U.S. Government customers any reductions to the scope of services during a period of performance already contracted for and specified in the Government purchase order shall be negotiated with the authorized Government Contracting Officer. Services specified in the purchase order shall continue during the contracted period of performance until an agreement and formal change is agreed upon in writing by the Parties or a dispute is resolved in accordance with FAR 52.212-4(d).

**2.2. Combined Use.** Customer must purchase the same level of service entitlement for all components and controllers in a system. Customer will notify NetApp prior to any combined use of Hardware and Software initially purchased for use in separate systems, and will upgrade to the highest level of Support Services entitlement existing in

the newly combined system. Customer also will pay any additional Support Services fees required by NetApp, as calculated in accordance with the Price List.

**2.3. Out-of-Scope Services.** The following services are not included in the scope of Support Services:

(a) Subject to Section 2.1 above, services related to third party products;

(b) Transit or relocation of Hardware and related services, including services to remediate any associated damage;

(c) Provision of accessories, batteries, supplies or replacement of disposable parts, including without limitation power cords, rack mounting kits and cables;

(d) Customer education, training and consulting services;

(e) Implementation or installation assistance for hardware and software not procured from a NetApp authorized source;

(f) Services related to any work performed at Customer's site except as specified in the Order Documentation;

(g) Services relating to issues arising from Customer or third-party modifications, customizations, or enhancements to Software;

(h) Services relating to issues arising from a change in Customer's system configuration which is not in conformance with the NetApp Interoperability Matrix located on the NetApp Support Site at <http://support.netapp.com/matrix/mtx/login.do>; and

(i) Services relating to issues arising from Customer or third party error, use of software other than Software, or modification of Software.

**2.4. Hardware and Software Warranty Disclaimers.** All NetApp warranties related to Hardware and Software will be voided where:

(a) Hardware has been mishandled, altered, damaged or rendered inoperable (e.g., degaussed disk drives) due to willful or negligent acts or omissions, accident, force majeure, or operation of the Hardware other than as specified in the Documentation;

(b) A solid state drive or flash device has been used in excess of its rated life as set forth in the Documentation and/or as determined by its original manufacturer;

(c) Services have been performed by a person or entity other than NetApp or an authorized NetApp service representative in relation to the Hardware and Software, in the absence of a prior written agreement with NetApp;

(d) A power surge or failure has occurred;

(e) Customer has failed to provide a suitable environment for the Hardware within the range of tolerances set forth in the applicable NetApp Site Requirements Guide at <http://hwwu.netapp.com>;

(f) An issue arises from cleaning, refinishing or cosmetic modification of Hardware, or any electrical or site preparation; and

(g) Products or components, including without limitation, software or hardware, have been procured from a source not authorized by NetApp, and then combined with Products.

**2.5. Support Services Warranty.** NetApp warrants that for the duration of the applicable Support Services Period, Support Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices. Customer's sole and exclusive remedy in relation to a breach of this warranty is a re-performance of the Support Services by NetApp.

**2.6. Subcontracting.** NetApp may use subcontractors to provide the Support Services under these Terms.

**2.7. End of Availability and End of Support.** The NetApp Service and Support Product Programs End of Availability Index, which is



located on the NetApp Support Site, details information related to the last date on which Hardware or Software will be available for quoting from NetApp ("End of Availability" or "EOA"), and the last date on which Hardware or Software will be supported by NetApp ("End of Support" or "EOS"). NetApp will not provide Support Services for any Hardware, or components thereof, or Software after the applicable published EOS date. In relation to Hardware running Software which has passed its EOS date, NetApp may require Customer to update to a supported version of Software as a prerequisite to NetApp continuing to provide Hardware Support Services.

**2.8. Replacement of Hardware Components and Return Material Authorization.** In the event the resolution of a support case initiated with the NetApp Technical Support Center ("TSC") is a Hardware failure, Customer will notify NetApp of its intent to return such Hardware within fifteen (15) calendar days of the support case resolution. Hardware replacement is subject to the Return Material Authorization ("RMA") procedure located on the NetApp Support Site at <http://mysupport.netapp.com/NOW/products/rma/>. Failure to return the Hardware components within the fifteen (15) days specified above or their return in a condition rendering them unsupportable under Section 2.3 above shall entitle NetApp to invoice Customer for the cost of the replacement Hardware components supplied, calculated in accordance with the Price List. Failure of U.S. Government customers to return components as specified above shall be handled as a dispute under FAR 52.212-4(d) unless resolved sooner. Customer will ensure that the failed Hardware is free of any legal obligations or restrictions that could prevent its replacement and will return each CRU and FRU individually by separate shipment.

**2.9. Support Included with Original and Extended Hardware Warranty.** During the applicable Hardware warranty period, NetApp will provide Customer with access to 24/7/365 Remote Technical Support, delivery of replacement Hardware components and access to the NetApp Support Site. Customer will also have access to AutoSupport and the NetApp Remote Support Diagnostics Tool, as applicable. In relation to Support Services included with the Hardware warranty, NetApp will use reasonable commercial efforts to deliver replacement Hardware components by the next Business Day. Such delivery is subject to local country limitations, including but not limited to shipment cut-off times, and other factors beyond the reasonable control of NetApp.

**2.10. Next Business Day Schedule.** The cutoff time for next Business Day delivery of FRUs or CRUs and/or arrival of a NetApp Authorized Service Engineer is 3:00 p.m. local Customer time. Remote diagnosis completion and/or CRU/FRU ordering that occurs after 3:00p.m. local Customer time, will be deemed completed on the following Business Day and shipment and/or arrival will be scheduled accordingly. (e.g., if diagnosis occurs after 3:00 p.m. on Monday, CRU/FRU ships Tuesday to arrive on Wednesday).

**2.11. Onsite Support Services.** If Customer has purchased onsite Support Services, it will receive such services as follows: When Customer initiates a technical support case with the TSC, a Technical Support Engineer ("TSE") will commence issue identification and repair as necessary. If the issue cannot be resolved remotely, and where the TSE and Customer jointly agree that onsite Support Services are necessary and appropriate, the TSE will dispatch an Authorized Support Engineer ("ASE") to the Customer site. The ASE will, at the direction of the TSC, work to diagnose and isolate the issue, make necessary changes and restore the normal operation of the systems. The TRO for onsite Support Services will be the same as that specified for replacement Hardware components in the Documentation. Subject to Section 2.13 below, in relation to onsite Software Support Services, NetApp reserves the right to define the most appropriate onsite resources to resolve the case and restore normal operation. In such cases, NetApp will communicate with Customer the estimated time of arrival for the ASE, which may or may not fall within the TRO specified

above.

**2.12. Non-Returnable Disk.** If Customer has purchased the Non-Returnable Disk ("NRD") option, it will not return defective or failed disks forming part of the Hardware. Customer will retain such disks and remain solely responsible for their disposal. Customer agrees that if disks covered by the NRD option are returned to NetApp, NetApp shall have no obligation or liability whatsoever associated with any data remaining on such disks. NetApp will treat such disks like non-NRD disks and convey them into the NetApp supply chain for repair and/or destruction.

**2.13. Software Support Services.** If Customer has purchased Support Services that include a Software Support Plan ("SSP"), it is entitled to Software Support Services during the applicable Support Services Period. SSP consists of both telephone and web-based support and access to all Software Updates made generally available by NetApp. Customer shall be responsible for installing and implementing Software and Software Updates unless it has purchased a Support Services offering that includes installation of software updates by NetApp, as described in Section 2.14 below. NetApp may require Customer to implement specific Software upgrades to resolve current or prospective issues. Customer may be required to purchase additional Hardware at its own expense to make use of Software Updates and or Software upgrades.

**2.14. Installation of Software Updates.** If Customer has purchased such installation services, NetApp will install Software Updates during the provision of Support Services during the Support Services Period. The TSE will determine the method and timing of installation, with Customer's agreement and participation. NetApp may choose to dispatch an ASE to the Customer site to participate in Software Update activities.

**2.15. Software Support Services Prerequisites.** Provision of Software Support Services is conditional upon Customer having: (a) installed and operated the Software in accordance with the applicable Documentation; (b) described with sufficient specificity the nature of the Software issues Customer is experiencing and the circumstances in which they occur; (c) reproduced the Software issue such that it can be confirmed and evaluated by NetApp; (d) made no changes, additions, or modifications to the Software, directly or indirectly; and (e) installed the Software in an infrastructure/environment that adheres to the published NetApp Interoperability Matrix on the NetApp Support Site.

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

### 3. CUSTOMER RESPONSIBILITIES

**3.1. Customer Contacts.** Customer will designate up to three (3) technically qualified employees to serve as Customer's primary points of contact in relation to the receipt of the Support Services. For U.S. Government customers, any identified technical points of contact do not have the ability to change the terms of the contract, increase or decrease the scope of services ordered by the Government, or obligate the Government financially in any way; any such matters may only be approved by an authorized Government contracting officer.

**3.2. Customer Information.** Immediately on receipt, Customer will register all Hardware and Software on the NetApp Support Site to create Customer's support profile. Customer will keep this profile up-to-date. TROs, if any, can be met only if Customer has provided NetApp with accurate information including delivery and on-site service addresses, names and phone numbers of key Customer contacts and access to Customer's location. If this information is inaccurate or obsolete and/or access to Customer's location is unavailable or denied to the NetApp ASE or other representatives, adherence to any applicable TRO will be measured from the time that correct information is provided by the Customer to NetApp and/or the NetApp ASE is granted access to Customer's location.

**3.3. NetApp Support Site.** During the Support Services Period, Customer will be granted access to the NetApp Support Site. A unique login and password will be assigned to Customer by NetApp, which will



be deemed NetApp Confidential Information.

**3.4. Miscellaneous Permissions.** In the event that NetApp requires access to any computer systems or software owned or licensed by Customer in order to provide the Support Services, Customer will obtain all associated permissions.

**3.5. Work Environment.** Customer will provide NetApp or the NetApp ASE with a safe working environment and make all necessary arrangements as NetApp may determine is reasonably necessary to perform the Support Services.

**3.6. Equipment Relocation.** In the event that Customer wishes to relocate Hardware or Software, Customer will contact the NetApp TSC at least thirty (30) days prior to such relocation. NetApp will notify Customer if Customer's existing Support Services are available at the new location. Customer acknowledges that relocation of the Hardware or Software may result in a decrease of the scope and an increase in the pricing of Support Services. NetApp will communicate this to Customer on a case-by-case basis. If Customer fails to notify NetApp of the relocation of Hardware or Software as required above, NetApp may refuse to provide the Support Services at its sole discretion. In the event of an increase in pricing of Support Services following relocation, Customer will promptly submit a Purchase Order to NetApp and pay the associated NetApp invoice. For U.S. Government customers, failure to inform NetApp of hardware relocation will be handled as a dispute under FAR 52.212-4(d); any increases in price will be negotiated with the authorized Government Contracting Officer, and will also be handled as a dispute if agreement cannot be reached

**3.7. Reinstatement of Lapsed Support.** In the event that Customer wishes to reinstate Support Services after a lapsed period following expiration or termination of the original Support Services Period, Customer will pay to NetApp an amount equal to the Support Services fees that would have been due for accrued Support Services during such lapsed period, as well as any applicable reinstatement fee and the amount due for the go-forward Support Services Period being purchased. All such amount will be calculated in accordance with the Price List. For U.S. Government customers, reinstatement fees shall be negotiated with an authorized Government contracting officer as part of a contract for a new period of support services beginning after the lapse.

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

**CUSTOMER**

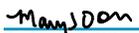
Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NETAPP, INC.**

Signature:   
Mary Dorr (Jan 29, 2019)

Name: Mary Dorr

Title: USPS Controller

Date:

Jan 29, 2019