



PROFESSIONAL SERVICES TERMS

These Professional Services Terms ("Professional Services Terms") set forth the terms and conditions between NetApp, Inc., NetApp B.V., or any of their affiliates ("NetApp") and the Department of Navy ("Customer") in connection with NetApp Professional Services 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 Products and 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."

To the extent there is any conflict between these Professional Services Terms and those contained in the NetApp General Terms or NetApp Channel End User Terms, these Professional Services Terms will control and take precedence. These Professional Services Terms shall not apply if Customer has a separate applicable agreement with NetApp for the provision of Professional Services. The revenue-related terms set forth in these Professional Services Terms (i.e., Sections 3, 4 and the remedies for non-payment language in Section 8 below) shall not apply if Customer is purchasing Professional Services from an authorized NetApp distributor or reseller. For Government Customers, all orders will be placed from authorized NetApp distributors or resellers participation in the DoN ESL NetApp SEWP V Agency Catalog.

1. DEFINITIONS. Capitalized terms not specifically defined in these Professional Services Terms will have the same meaning as in the NetApp General Terms or NetApp Channel End User Terms, as applicable. In addition to the definitions set forth in the General Terms or Channel End User Terms, the following definitions shall apply:

1.1. Deliverables. Tangible materials, reports, analyses, documents or other specific outputs expressly designated as Deliverables in the relevant Engagement Document.

1.2. Engagement Document. A NetApp-approved document, including but not limited to a statement of work, service brief or service description that defines the tasks, schedule of performance and/or Deliverables to be provided by NetApp.

1.3. IP Rights. Patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

1.4. Pre-Existing IP. IP Rights, existing, owned, or otherwise licensed by Customer or NetApp prior to entering into these Professional Services Terms.

1.5. Professional Services. The consulting services to be provided by or on the behalf of NetApp as specified in an Engagement Document.

1.6. Professional Services Materials. Deliverables, materials, software, tools, know-how, and/or information used, generated, created, developed or reduced to practice, including any modifications thereof or thereto, by or for NetApp during the performance of the Professional Services

1.7. Professional Services Resource. A NetApp employee, supplier or subcontractor which NetApp utilizes to provide Professional Services to Customer.

2. SCOPE OF SERVICES

2.1. Projects. NetApp will perform Professional Services in accordance with the applicable quotation and purchase order, the Engagement Document, and these Professional Services Terms. NetApp may at its sole discretion require an Engagement Document to be executed prior to commencement of the Professional Services.

2.2. Change Orders. Changes to the Professional Services specified in a statement of work will not be effective unless a change request form has been executed by authorized representatives of both Parties and NetApp has received the applicable purchase order corresponding to a quotation supporting the change. For Government Customers, all changes will be made in accordance with FAR clause 52.212-4(c) and may only be authorized by a warranted contracting officer.

2.3. No Custom Development. Professional Services are of a scalable, repeatable nature and, as such, the same or similar Professional Services have been and will continue to be provided to other NetApp

customers. No custom development activity shall be performed as Professional Services. Any custom development shall be subject to a separate written agreement.

2.4. No Superuser Access. In no event will Customer grant to a Professional Services Resource root or "superuser" access at a server or network level and NetApp will have no responsibility or liability for loss or damage that results from or is related thereto. Such services shall be subject to a separate written agreement.

3. FEES. An Engagement Document or the associated price quotation will state the fees to be paid by Customer to NetApp for Professional Services rendered and any related payment schedules. Customer's execution of an Engagement Document or NetApp's acceptance of a Purchase Order, as applicable, will indicate acceptance of the stated fees and payment schedules. No changes in fees or payment schedules will be effective absent a mutually executed change order.

4. EXPENSES. In addition to the foregoing, if specified in an Engagement Document, Customer will pay NetApp its actual out-of-pocket expenses, including travel, as reasonably incurred by NetApp during the performance of the Professional Services.

5. DURATION AND EXPIRATION OF PROFESSIONAL SERVICES BASED ON TIME AND MATERIAL ENGAGEMENT. In relation to Time and Material ("T&M") Professional Services, NetApp will provide to Customer a Professional Services Resource qualified at the skill level purchased by Customer, to perform T&M Professional Services, at an agreed Customer site or remotely, for the total amount of hours and/or days set forth in NetApp's (or the applicable authorized reseller's) price quotation and Customer's purchase order. T&M Professional Services purchased on an hourly basis will be performed in minimum increments of 4 consecutive hours. For T&M Professional Services purchased on a daily basis, a "day" constitutes at least 4 hours but not more than 8 hours in a single calendar day; or whenever aggregate overtime hours (those exceeding 8 hours on a calendar day), exceed 4 hours but not more than 8 hours. T&M Professional Services will be available to Customer for 1 year from the date of purchase. Customer payments are nonrefundable, and credit for any unused T&M Professional Services will not be available.

For Government Customers, all orders will be based on pre-negotiated firm fixed prices, or when the work required is not covered by a pre-negotiated price, a firm fixed price specific to the order that is negotiated and agreed to by the parties in advance or the order's placement.

6. PROFESSIONAL SERVICES WARRANTY. NetApp warrants to Customer that the Professional Services will be performed in a professional, workmanlike manner consistent with generally accepted industry practices. If the Professional Services materially fail to conform to this Professional

Services warranty, NetApp will re-perform such Professional Services. This is Customer's sole and exclusive remedy in relation to breach of warranty.

For Federal Government Customers, disputes shall be addressed in accordance with FAR Clause 52.212-4(d) of the underlying order.

7. INTELLECTUAL PROPERTY RIGHTS. Each Party will retain all right, title and interest in and to its Pre-Existing IP. NetApp will retain all right, title, and interest in and to the Professional Services, Professional Services Materials, and IP Rights embodied therein. In no event will Professional Services Materials be deemed to include Customer Pre-Existing IP or Customer Confidential Information. Customer hereby grants NetApp a non-exclusive, worldwide, royalty-free, fully paid-up license to use such Pre-Existing IP and Confidential Information for the sole purpose of performing or producing the Professional Services and Professional Services Materials. Upon receipt of full payment, NetApp hereby grants to Customer a limited, non-exclusive, non-transferable, terminable license, with no right to sublicense, to use the Professional Services Materials for Customer's internal business purposes. Customer will not re-distribute the Professional Services Materials to any third parties without NetApp's prior written consent.

8. TERMINATION; REMEDIES FOR NON-PAYMENT. Customer may terminate an Engagement Document for convenience upon 30 days

prior written notice. Such termination will not relieve Customer from its obligations to pay NetApp any sums accrued prior to such termination, including all expenses and time and material costs incurred or expended by NetApp, which will be immediately due upon termination. Customer may request that NetApp complete the Professional Services in progress after notice of termination. NetApp may, in its sole discretion, elect to perform, and, upon completion, will be entitled to full compensation for the completion of such Professional Services. If Customer fails to make payment in accordance with the applicable payment terms or schedule delivery within 1 year of the applicable date of purchase, then, in addition to any other available remedies, NetApp will have the right to decline to render further Professional Services to Customer. NetApp may terminate an Engagement Document immediately on written notice to Customer if Customer commits a material breach of these Professional Services Terms.

For Federal Government Customers, termination for the Government's convenience shall be addressed in accordance with FAR Clause 52.212-4(l) of the underlying order. Payment shall be made to the applicable NetApp-Authorized Federal Reseller in accordance with FAR Clause 52.212-4(i) of the underlying order. As stated above, all disputes, including disputes regarding non-payment, shall be handled in accordance with the Contract Disputes Act which is incorporated into the order through FAR Clause 52.212-4(d).

CUSTOMER

Signature: _____
Name: _____
Title: _____
Date: _____

NETAPP, INC.

Signature: 
Mary Dorr (Jan 29, 2019)
Name: Mary Dorr
Title: USPS Controller
Date: Jan 29, 2019