



## **DLT RIDER TO MANUFACTURER END USER TERMS (For Public Sector End Users)**

1. **Scope.** This DLT Rider to NetApp, Inc. ("Manufacturer") End User Terms ("DLT Rider") establishes the terms and conditions enabling DLT Solutions, LLC ("DLT") to provide Manufacturer's Offerings to Public Sector Government Agencies to include the Federal, State and Local entities (the "Licensee" or "Customer").
2. **Applicability.** The terms and conditions in the attached Manufacturer Terms are hereby incorporated by reference to the extent that they are consistent with Public Sector Laws (e.g., the Anti-Deficiency Act, the Contracts Disputes Act, the Prompt Payment Act, the Anti-Assignment statutes). To the extent the terms and conditions in the Manufacturer's Terms or any resulting Customer Order are inconsistent with the following clauses, they shall be deemed deleted and the following shall take precedence:
  - a. **Advertisements and Endorsements.** Unless specifically authorized by Customer in writing, use of the name or logo of Customer is prohibited.
  - b. **Assignment.** All clauses regarding Assignment are subject to Assignment of Claims and Novation and Change-of-Name Agreements. All clauses governing Assignment in the Manufacturer Terms are hereby deemed to be deleted.
  - c. **Audit.** During the term of a Customer order subject to this Rider: (a) If Customer's security requirements included in the Order are met, Manufacturer or its designated agent may audit Customer's facilities and records to verify Customer's compliance with this Agreement. Any such audit will take place only during Customer's normal business hours contingent upon prior written notice and adherence to any security measures the Customer deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. DLT on behalf of the Manufacturer will give Customer written notice of a desire to verify compliance ("Notice"); (b) If Customer's security requirements are not met and upon Manufacturer's request, Customer will provide a written certification, executed by a duly authorized agent of Customer, verifying in writing Customer's compliance with the Customer order; or (c) discrepancies in price discovered pursuant to an audit may result in a charge by the commercial supplier to the Customer however, all invoices must be: i) in accordance with the proper invoicing requirements of the Customer; ii) if there is a dispute then no payment obligation may arise on the part of the Customer until the conclusion of the dispute process, and iii) the audit, if requested by the Customer, will be performed at the Manufacturer's expense.
  - d. **Confidential Information.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, and any order by a Court with appropriate jurisdiction.
  - e. **Consent to Government Law / Consent to Jurisdiction.** The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States and/or the respective Customer's state. Any Manufacturer Terms that identify the jurisdiction in which a lawsuit may be brought, the law which shall apply to such lawsuit, or the requirements to pursue Alternative Dispute Resolution prior to such lawsuit are deemed to be deleted. All clauses in the Manufacturer Terms referencing equitable remedies are deemed to be deleted.
  - f. **Contractor Indemnities.** DLT shall not be required to indemnify Customer except as explicitly stated in the contract. Any such indemnification requirement shall vest control over the matter with the United States and shall give DLT or the Manufacturer the right to intervene in the proceeding at its own expense through counsel of its own choice.





- g. **Customer.** Customer is the “Ordering Activity”, defined as any entity authorized to use government sources of supply. An individual person shall not be the Licensee or Customer.
- h. **Customer Indemnities.** Customer shall not be required to indemnify DLT except as in accordance with federal statute that expressly permits such indemnification.
- i. **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer Terms, unless a Customer determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid order placed by Customer.
- j. **Force Majeure.** Clauses in the Manufacturer Terms referencing Force Majeure and unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- k. **Future Fees or Penalties.** All fees and charges are as explicitly set forth in the Customer’s order. Additional fees or penalties such as liquidated damages or license, maintenance or subscription reinstatement fees be incorporated into the contract only by bilateral written agreement of the parties. Any clauses imposing additional fees or penalties automatically in Manufacturer’s Terms are hereby deemed to be deleted.
- l. **Renewals.** All Manufacturer Terms clauses that violate the Anti-Deficiency Act or which permit automatic renewal are hereby deemed to be deleted.
- m. **Taxes.** Taxes are subject to applicable jurisdiction regulations, which provides that the contract price includes all federal, state, local taxes and duties.
- n. **Termination.** Clauses in the Manufacturer Terms referencing termination or cancellation are hereby deemed to be deleted. Both DLT and Customer’s termination rights shall be governed by Contract Dispute Acts of the jurisdiction in which the transaction occurs.
- o. **Third Party Terms.** No entity shall have privity of contract with the United States with respect to any third-party product or service, referenced in the Manufacture’s Terms unless expressly stated in Customer’s order. Absent agreement by Customer to the contrary, third parties shall have no rights or obligations with respect to such agreements vis-à-vis the United States.
- p. **Waiver of Jury Trial.** All clauses referencing waiver of jury trial in the Manufacturer Terms are hereby deemed to be deleted.

**Incorporation of Manufacturer Terms.** Attached hereto are the Manufacturer Terms. As part of this Rider, the following Terms are incorporated by reference and made a part of this Rider except as modified as set forth above.





## END USER LICENSE AGREEMENT

### 1. DEFINITIONS

**1.1. "Documentation"** means technical documentation describing the features and functions of the Software.

**1.2. "NetApp Cloud Provider"** means a third party authorized by NetApp to offer or enable the use of the Software as part of such provider's cloud-based service.

**1.3. "NetApp Partner"** means an authorized NetApp distributor, reseller or other channel partner.

**1.4. "Open Source Software"** means third party software that is openly and freely licensed under the terms of a public license designated by the third party.

**1.5. "Software"** means all NetApp-branded software in object code format comprising backup and recovery, disaster recovery, storage efficiency and management software, operating systems, protocols, utilities and storage management tools.

**2. SCOPE.** This end user license agreement ("EULA") is between you ("You" or "Your"), and NetApp, Inc. and (as applicable) its subsidiaries and affiliates ("NetApp"). This EULA sets forth the terms under which NetApp licenses Software and Documentation to You. In the absence of a more specific written agreement, this EULA applies to Software and Documentation obtained by You directly from NetApp, indirectly from a NetApp Partner or a NetApp Cloud Provider or made available to you by NetApp at no charge. The types, quantities and other usage attributes related to Your Software licenses are specified in other documents associated with the Software, including (as applicable) the Documentation, a NetApp quote or related document (for direct transactions), or the corresponding documents from a NetApp Partner or NetApp Cloud Provider (for indirect transactions). This EULA does not entitle You to receive Software updates, upgrades, technical support or professional services, which must be purchased separately unless otherwise provided at NetApp's discretion.

**3. ACCEPTANCE.** By clicking the "I ACCEPT" button when downloading or installing the Software, or by copying, accessing or using the Software or Documentation, You agree that this EULA exclusively governs NetApp's license to You and Your use of the Software and Documentation unless You have a separate applicable written agreement with NetApp. If You are accepting this EULA on behalf of another person, company or other legal entity, whether as an employee, contractor, distributor, reseller, partner, agent or otherwise, You represent and warrant that You have full authority to bind them. If You do not agree to the terms of this EULA, do not download, install, copy, access, or use the Software or Documentation, or click the "I ACCEPT" button, and promptly return the Software and Documentation to the party from whom it was obtained.

**4. LICENSE GRANT.** NetApp grants to You a personal, nonexclusive, non-transferrable, worldwide, limited and revocable license, without the right to sublicense, to i) install and use the Software for Your internal business purposes, and ii) use the Documentation in support of Your use of the Software. Your Software license is either bundled with a specific storage controller identified by a unique serial number ("Controller-based") or is independent of a storage controller ("Standalone"), and is one of the following license types:

- a) "Life-of-controller": Controller-based licenses granted for the period during which Your storage controller is operable;
- b) "Perpetual": Standalone licenses granted in perpetuity;
- c) "Term": Controller-based licenses or Standalone licenses granted for a fixed period;
- d) "Capacity": Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity, number of hosts, or other measure of usage as specified in the Documentation.

Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based license as the other storage controllers in that cluster, high-availability pair or group. Subject to NetApp's separate written agreement, and in the context of non-disruptive operations within a cluster, You may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same hardware and software support offerings in effect at all times. Certain license types may require the enablement and use of NetApp's remote support diagnostics systems.

**5. LICENSE RESTRICTIONS.** You must comply with the EULA terms at all times when using the Software and Documentation. You will not, nor will You allow anyone else to:

- a) use the Software in breach or excess of the types, quantities and other usage attributes related to Your Software licenses or other limitations prescribed by NetApp in this EULA;
- b) reverse-engineer, decompile or disassemble the Software or otherwise reduce it to human-readable format except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses;
- c) remove or conceal any product identification, proprietary, intellectual property or other notices in the Software or Documentation;
- d) use the Software or Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services or similar environment, unless i) the Software has been obtained from a NetApp Cloud Provider, ii) is used in conjunction with a NetApp Cloud Provider service, iii) or has been otherwise agreed in writing with NetApp;
- e) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller, unless otherwise agreed in writing with NetApp;
- f) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market NetApp hardware not purchased by You from NetApp or a NetApp Partner;
- g) modify, adapt or create a derivative work of the Software or Documentation; or
- h) publish or provide any Software benchmark or comparison test results.

**6. INTELLECTUAL PROPERTY RIGHTS.** The Software and Documentation is licensed, not sold, to You. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to You. No right, title or interest to any trademark, service mark, logo or trade name, of NetApp or its licensors is granted to You.

**7. WARRANTY.** NetApp warrants that for a period of 90 days from the date of first delivery of the Software to You or a NetApp Partner, whichever is the earlier, or such other minimum periods under applicable laws (the "Software Warranty Period"), the Software will materially conform to the then-current Documentation. NetApp does not warrant that Your use of the Software will be error-free or uninterrupted. If a material defect arises in the Software during the Software Warranty Period and if the defect is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the defective Software or refund the amounts received by NetApp for the Software. Software that is obtained for use solely in conjunction with a NetApp Cloud Provider's services is provided "AS IS" and without a warranty of any kind. You assume all risks arising from Your use of the Software together with a NetApp Cloud Provider's offering. The Software warranty will be voided if You or any third parties misuse, neglect, attempt to repair or modify (unless authorized by NetApp), or use the Software beyond the range of the intended use. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THIS IS YOUR SOLE AND EXCLUSIVE WARRANTY AND REMEDY. NETAPP SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY, ACCEPTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE WARRANTY IN THIS SECTION 7 WILL NOT APPLY IF NETAPP MAKES THE SOFTWARE GENERALLY AVAILABLE AT NO COST.

**8. LIMITATION OF LIABILITY.** Regardless of the basis of the claim (e.g. contract, tort or statute), the total liability of NetApp and its licensors, under or in connection with this EULA, will not exceed the amounts actually received by NetApp for the Software or the minimum amounts permitted by applicable laws, if greater. NetApp and its licensors are not liable for:

- a) any indirect, consequential, incidental, exemplary or special damages;
- b) loss or corruption of data;
- c) loss of revenues, profits, goodwill or anticipated savings;
- d) procurement of substitute goods and/or services;
- e) interruption to business; or
- f) Your failure to comply with applicable "non-erasable" and "non-rewriteable" U.S. government regulations.

The limitations and exclusions above will not apply to liability for death or bodily injury caused by negligence, gross negligence, willful misconduct, fraud or any other liability that cannot be excluded under applicable laws.

**9. AUDIT.** Upon reasonable notice, You grant NetApp and its independent accountants the right to examine Your Software usage annually to verify compliance with this EULA. If the audit discloses over-usage or any other material non-compliance, then a) You will promptly pay to NetApp or to a NetApp Partner, as designated by NetApp, any additional fees that NetApp or a NetApp Partner notifies You are owed, and the reasonable costs of conducting the audit; and b) NetApp may conduct subsequent audits, upon reasonable notice, as NetApp reasonably determines is necessary to verify compliance with this EULA.

**10. TERMINATION.** This EULA is effective until expiration or termination. You may terminate the EULA at any time on written notice to NetApp. NetApp may terminate the EULA immediately on written notice for material breach of the EULA. Any failure to remit payments in relation to the Software and Documentation when due, whether payable

to NetApp or a NetApp Partner, constitutes a material breach of this EULA. Upon expiration or termination of this EULA, You will promptly return or destroy all copies of the Software and Documentation, including any license enablement keys. Sections 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 survive expiration or termination of this EULA.

**11. EXPORT CONTROLS.** You acknowledge that the Software and Documentation supplied by NetApp under this EULA is subject to export controls under the laws and regulations of the United States, the European Union and other countries (as applicable), and the Software may include technology controlled under export and import regulation, including encryption technology. You agree to comply with such laws and regulations and represent and warrant that You:

- a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export the Software and Documentation to or use the Software and Documentation in countries subject to U.S. embargoes or trade sanctions programs;
- b) are not a party, nor will You export or re-export to a party, identified on any applicable government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists;
- c) will not use the Software and Documentation for any purposes prohibited by U.S. law, including the development, design, manufacture or production of nuclear, missile, chemical, or biological weaponry or other weapons of mass destruction; and
- d) are responsible for compliance with all local encryption laws and regulations, where applicable, and for obtaining any permits and licenses required under those laws and regulations for your use of the Software.

You agree to provide NetApp destination end use and end user information upon NetApp's request. You will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. You agree to obligate, by contract or other similar assurances, the parties to whom You re-export or otherwise transfer the Software to comply with all obligations set forth in this Section 11.

**12. U.S. FEDERAL GOVERNMENT END USERS.** This Section 12 applies to You only if You are a U.S. Federal Government end user. The Software and Documentation is "commercial" computer software and documentation and is licensed to You in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARs) pertaining to commercial computer software and documentation. You will not be subject to applicable audit costs specified in Section 9. Any dispute between You and NetApp will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in this EULA is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other provisions of this EULA remain in effect as written.

**13. EVALUATION OR PRE-RELEASE SOFTWARE.** This Section 13 applies to You only if You are acquiring generally available Software for the purposes of evaluation ("Evaluation Software") or Software specifically identified by NetApp as alpha, beta, pre-release, demonstration or preview ("Pre-Release Software"). Unless otherwise agreed in writing by NetApp, Evaluation Software or Pre-Release Software may be used a) for a period not exceeding 90 days from the effective date of this EULA ("Evaluation Period") and b) up to the maximum amounts of raw storage capacity, number of hosts or other measure of usage as specified in the Documentation. Unless otherwise

agreed in writing by NetApp, Evaluation Software or Pre-Release Software may only be used in non-production environments and not for commercial purposes. You agree to delete or deinstall the Evaluation Software or Pre-Release Software at the expiration of the Evaluation Period. For the avoidance of doubt, Software is considered in use when installed or deployed after expiry of the 90-day period regardless of whether or not the Evaluation Software or Pre-Release Software is used in a production environment. You will pay fees to NetApp, calculated in accordance with the applicable NetApp price list, within 30 days of NetApp's demand for use exceeding the limits above. You agree to cooperate with NetApp in testing the Pre-Release Software and providing feedback, to NetApp, which NetApp can use without restriction, concerning the functionality and performance of the Pre-Release Software. ("Feedback"). You acknowledge that the Pre-Release Software and Feedback are proprietary and confidential information of NetApp ("Confidential Information"). You will not make the Confidential Information available in any form to any person other than to Your employees or consultants with a need to know and who are under an obligation of confidentiality not to disclose such Confidential Information. You will use the same degree of care to protect the confidentiality of such Confidential Information as You use to protect Your own confidential information. NOTWITHSTANDING SECTIONS 7 AND 8 ABOVE, THE EVALUATION SOFTWARE OR PRE-RELEASE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NETAPP DISCLAIMS ALL LIABILITIES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

**14. PERFORMANCE DATA.** NetApp retains all right, title and interest in data and data elements collected by the Software systems configuration which, as applicable, pertains to the Software environment, the usage and performance of the Software, and the components managed by the

Software, as applicable ("Performance Data"). Without limiting the foregoing, NetApp may collect and use Performance Data to provide and improve the Software and NetApp's other products and services.

#### **15. GOVERNING LAW AND ENFORCEMENT RIGHTS.**

This EULA will be construed pursuant to the laws of i) the State of California, United States, excluding its conflicts of law provisions, if You are in the United States or in a country in which NetApp has no local sales subsidiary, or ii) the country in which You are located if NetApp has a local sales subsidiary in that country. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Your use of the Software or Documentation. If required by NetApp's agreement with a third-party licensor, NetApp's licensor will be a direct and intended third party beneficiary of this EULA and may enforce it directly against You. To the extent that Software may include or be distributed with Open Source Software, the terms of the applicable license for the Open Source Software supersede the terms set forth in this EULA.

**16. GENERAL.** NetApp does not waive any of its rights under this EULA by failing to or delaying the exercise of its rights or partially exercising its rights at any time. To the extent that any Section of this EULA, or part thereof, is determined to be invalid or unenforceable, the remainder of this EULA will remain in full force and effect. This EULA may not be changed except by a written amendment executed by an authorized representative of each party. In the event of a conflict between the English and non-English version of the EULA (where translated for local requirements), the English version of this EULA will govern, to the extent permitted by applicable laws. This EULA represents the entire agreement and understanding between NetApp and You with respect to the Software and Documentation. It supersedes any previous communications, representations or agreements between NetApp and You and prevails over any conflicting or additional terms in any quote, purchase order, acknowledgment, or similar communication between the parties.