

Vendor Pass-Through Terms

Keystone® Storage-as-a-Service

Vendor:	NetApp Inc. (“ NetApp ”)
Product(s):	Keystone Storage-as-a-Service(s) (“ StaaS ”) as described at https://www.netapp.com/services/keystone/terms-and-conditions/
Version:	March 2, 2026
Territories:	United States

- i) In addition to the Terms and Conditions (available at <https://www.tdsynnex.com/us/en/terms-and-conditions.html>) – together referred to as “**TD SYNEX Terms and Conditions of Sale**”, These Keystone® Storage-as-a-Service vendor pass-through terms apply to the purchase of Vendor Products (as defined above) by Buyer (also referred to as “**Reseller**”) from TD SYNEX.
- ii) By purchasing the Vendor Products from TD SYNEX, Buyer agrees to these Vendor Pass-Through Terms as well as TD SYNEX Terms and Conditions of Sale as indicated above; which shall form a binding agreement (“**Agreement**”) between TD SYNEX and Buyer.
- iii) To the extent required under these Vendor Pass-Through Terms, Buyer will flow down such terms to its customer (“**End User**”) in its agreements with such End User.
- iv) Vendor may amend these Vendor Pass-Through Terms from time to time. In such case, TD SYNEX will publish the updated terms on its website at: <https://www.tdsynnex.com/us/en/terms-and-conditions/vendor-pass-through-terms.html>. Buyer agrees to be bound by such updated pass-through terms. It is Buyer’s responsibility to check the aforementioned link from time to time.
- v) In the event of a conflict between these Vendor-Pass-Through Terms, the TD SYNEX’s Terms and Conditions, or any other referenced documents, the following order of precedence applies with respect to the provision of Vendor Products:
 - a. These Vendor Pass-Through Terms;
 - b. Any purchase order (“**Order**”) submitted by Buyer and accepted by TD SYNEX;
 - c. Any previously agreed different terms and conditions between TD SYNEX and Buyer;
 - d. TD SYNEX Terms and Conditions of Sale.

1. Definitions.

Capitalized terms not specifically defined in these provisions have the meaning ascribed to them in the attached Appendix A or the Customer Terms.

2. Resale of STaaS Services.

- 2.1** Right to Resell STaaS. Reseller is authorized to order STaaS Services directly from TD SYNEX in order to resell to End Users directly, on a non-exclusive resale basis only. NetApp, through TD SYNEX, will provide End User with the STaaS Services identified in each Order from Reseller to Distributor, subject to End User’s compliance with the Keystone STaaS Terms and Reseller’s compliance with the terms and conditions of this STaaS Reseller Attachment. For the avoidance of doubt, references within this Attachment to End User’s rights and obligations will be construed where appropriate to also include Reseller, where such Reseller is ordering the STaaS Services from Distributor for resale to an End User.
- 2.2** 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 Reseller. NetApp retains sole and exclusive title to the STaaS Products and all of their components.
- 2.3** Risk of Loss. 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. However, no such loss or damage will relieve Reseller of any of its obligations under this STaaS Reseller Attachment or the applicable Order.
- 2.4** 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. Reseller Fees & Payment Terms.

- 3.1 Reseller Fees.** TD SYNEX will invoice Reseller 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 **Sections 8.2 and 8.4**, Reseller will pay such Fees, without deduction or offset. Reseller's payment of an amount less than the invoice amount will not be deemed as acceptance of payment in full.
- 3.2 Reseller Responsible for Purchase Orders and Collection of Payments from End Users.** Reseller shall:
- (a) appropriately process End User's purchase orders for Keystone STaaS Services;
 - (b) submit Orders to TD SYNEX; 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 Reseller, which procedures may be revised from time to time in Reseller'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.
- 3.3 Credit Review.** With respect to each Order submitted to TD SYNEX for approval, NetApp/TD SYNEX may obtain from Reseller and/or the End User such information as NetApp/TD SYNEX 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.** Reseller acknowledges and agrees that the STaaS Services are at all pertinent times exclusively governed by the Keystone STaaS Terms. Reseller is responsible to either (a) deliver a copy of the Keystone STaaS Terms to the End User as part of its legally binding order documentation with the End User, as applicable, or (b) instruct the End User to access the Keystone STaaS Terms, at the following publicly accessible link: <https://www.netapp.com/how-to-buy/sales-terms-and-conditions> ("Pass Through Requirement").
- 4.2 Changes to Keystone STaaS Terms.** Neither NetApp, nor TD SYNEX, will accept any liability in relation to any supplemental services to be performed by Reseller over and above the STaaS Services set out in the Keystone STaaS Terms. If Reseller chooses to offer better or different terms to any End User, it is solely at Reseller's risk and Reseller cannot look to NetApp or TD SYNEX 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. Reseller Responsibilities, Reseller Services.

- 5.1 Undertakings.** Reseller undertakes:
- (a) to actively promote the STaaS Services to End Users;
 - (b) 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 Reseller Attachment;
 - (c) not to accept gifts or offer other advantage to decision makers within the End User organization to ease or reward the selection of NetApp, whether in its own name or on behalf of NetApp;
 - (d) 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;
 - (e) to comply with the requirements of all applicable Incentive Guide(s); and
 - (f) to comply with the Pass Through Requirement.

- 5.2 Ongoing Cooperation.** Reseller agrees to promptly notify NetApp/TD SYNEX of any material information within Reseller'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.

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. Term; Termination.

- 8.1 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 thirty (30) 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.

8.2 Effects of Termination.

The following provisions of this **Section 8.2** are subject to **Section 8.3**.

- (a) Upon termination of this STaaS Reseller Attachment or TD SYNEX Terms and Conditions of Sale, all of Reseller's rights to resell STaaS Services shall immediately cease, except to the extent necessary for Reseller to continue to provide services contemplated under this STaaS Reseller Attachment 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/TD SYNEX's request, Reseller 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/TD SYNEX for cause pursuant to Section 8.1, Reseller will promptly pay to TD SYNEX: (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 8.2(e), if applicable; provided, however, that Reseller may mitigate its liability to TD SYNEX under this Section 8.2(c) if Reseller is able to obtain a suitable Replacement Order as described in Section 8.4 below.
- (d) If End User terminates its Keystone STaaS Terms with NetApp for cause (as permitted in such Keystone STaaS Terms),
- (e) (i) Reseller will promptly pay to TD SYNEX any past due amounts and shall remain liable to TD SYNEX for any Fees that are due and payable through the effective date of such termination, and (ii) Reseller shall have no further obligation to pay any other Fees or other amounts that are to become due for the remaining Subscription Term.
- (f) If End User fails to return the Hardware within a reasonable time following the expiration or earlier termination of the Subscription Term or the termination of the applicable Keystone STaaS Terms, then TD SYNEX, in its sole discretion, may invoice Reseller 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/TD SYNEX, as applicable, retains all of its rights and remedies in this STaaS Reseller Attachment 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 Reseller of the invoiced amount described above, or return

of the Products in full compliance with End User's obligations. Reseller shall remain liable to TD SYNEX, and TD SYNEX shall be entitled to charge Reseller, for the Recovery Fee.

8.3 Assignment Upon End User Non-payment.

- (a)** An option to assign an Order to TD SYNEX ("Assignment Option") is available to Reseller where an End User refuses or otherwise fails to pay to Reseller amounts owing for the STaaS Services under an Order, and such nonpayment continues uncured for more than ninety (90) days after the due date. Except as expressly permitted below, the availability of this Assignment Option shall have no effect on Reseller's obligation described in Section 3.1 to pay the Fees owing to TD SYNEX with respect to such STaaS Services.
- (b)** With respect to any Order, no Assignment Option may be exercised during the Lockout Period.
- (c)** Prior to exercising an Assignment Option, Reseller 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 Reseller's agreement with the End User or applicable law.
- (d)** Subject to this Section 8.3, Reseller may deliver written notice to TD SYNEX requesting to exercise the Assignment Option with respect to the affected Order. Upon execution and delivery of an assignment agreement to TD SYNEX or any of its designees, and provided Reseller has not breached its obligations to TD SYNEX or to End User with respect to such Order or the applicable End User purchase order (respectively), TD SYNEX (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 Reseller exercises the Assignment Option, then Reseller shall only be obligated to pay the Fees due and to become due through the period ending on the date of delivery of Reseller's notice to exercise the Assignment Option.

8.4 Replacement Orders.

- (a)** Upon the occurrence of a Reseller Insolvency Event, or Distributor's termination of a Reseller for breach of its obligations to Distributor and/or to NetApp with respect to an Order ("**Breaching Reseller**"), Reseller may submit a proposed Order replacing such Reseller (a "**Replacement Order**") for TD SYNEX & NetApp's approval, such approval not to be unreasonably withheld. A Replacement Order must contain substantially similar terms between the End User and either Distributor, NetApp, or another authorized Reseller, as applicable. NetApp and Distributor will work together with the End User to assist in procuring a Replacement Order.
- (b)** The option to propose a Replacement Order shall not supersede or limit the conditions set forth in Section 8.3 regarding an Assignment Option unless agreed in writing by NetApp/TD SYNEX.
- (c)** When submitting a proposal to enter into a Replacement Order, Reseller must (i) confirm that the Breaching Reseller's order with the Distributor for the affected STaaS Services has been or will promptly be terminated upon TD SYNEX's acceptance of the Replacement Order, (ii) provide the identity of the Replacement Order Reseller, and (iii) include the End User's consent to such replacement. Upon NetApp & TD SYNEX's acceptance of the terms of a Replacement Order, the grounds for termination by TD SYNEX for cause as provided in Section 8.2(c) shall be deemed waived in that instance. Reseller shall remain fully liable for its obligations under this Attachment with respect to any Order, including without limitation Section 3.1, until a Replacement Order is accepted.

9. Miscellaneous.

- 9.1** Assignment. Neither party may assign any rights or delegate any obligations under this STaaS Reseller Attachment, 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.
- 9.2** Survival. In addition to such terms that survive by their nature, the following Sections will survive termination or expiration of this STaaS Reseller Attachment: **1, 3, 5, 6, 7, 8, 9** and **10**.
- 9.3** General. This STaaS Reseller Attachment, together with the Order and TD SYNEX Terms and Conditions of Sale: (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 be incorporated and subject to this STaaS Reseller Attachment, except where the parties expressly otherwise agree in writing. 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 this STaaS Reseller Attachment.

APPENDIX A

DEFINITIONS

The following definitions apply to Orders entered into pursuant to the STaaS Reseller Attachment.

Assignment Option. This term is defined in **Section 8.3(a)**.

End User. The end user customer identified by Reseller in an Order as the beneficiary of the STaaS Services to be resold by Reseller direct to End User in accordance with this STaaS Reseller Attachment.

Fees. The applicable fees payable by Reseller to TD SYNEX 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.

Keystone Incentive Guide. The terms of NetApp's *Keystone Subscription Incentive Guide* in effect with respect to an Order.

Keystone STaaS Terms. NetApp's Keystone STaaS Service Terms that govern the End User's use of STaaS Services provided by NetApp, as published and available at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/>, or other NetApp site identified to Reseller (as may be updated from time to time).

Lockout Period. The first ninety (90) days of the applicable Subscription Term.

Monitoring Tool. One or more of the required NetApp proprietary tools that monitors and transmits STaaS Service consumption data to enable reporting, invoicing, and STaaS Products' capacity, health, performance, and support metrics to enable management and support of STaaS Products.

Order. Reseller's order placed on TD SYNEX in form and substance approved by TD SYNEX/NetApp for STaaS Services to be deployed for the benefit of an End User in accordance with this STaaS Reseller Attachment. Each initial Order, together with any confirmation for additional STaaS Services provided in connection with such Order, will constitute a single Order.

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 End User's possession.

Replacement Order. This term is defined in **Section 8.4**.

Replacement Value Fee. The cost of the replacement for Hardware, calculated in accordance with TD SYNEX's/NetApp's then current price list.

Reseller Insolvency Event. The suspension, or threatened suspension, by Reseller of its debts or the inability, or admitted inability, to pay its debts as they come due, the commencement by Reseller of negotiations with all or any class of its creditors with a view to reschedule any of its debts, or Reseller's proposal to enter into any compromise or arrangement with its creditors (other than in relation to a solvent restructuring), an application by Reseller, or against Reseller, for the appointment of an administrator or an administrative receiver, or NetApp and Distributor agree that Reseller's capability to adequately fulfill its obligations related to the Reseller Order has been placed in jeopardy.

Reseller. A NetApp partner active and in good standing in the NetApp Partner Sphere Program and authorized to resell STaaS Services through Distributor.

Service Description. The description for the STaaS Services published and available at

<https://www.netapp.com/services/keystone/terms-and-conditions/> (as may be updated from time to time) that apply to End User's use of the specific STaaS Service(s). Service Descriptions are provided for the benefit of End Users, and supersede the terms of any purchase, license, financing or other agreement governing an End User's acquisition of NetApp's products or services, including any such terms that are made available by or through Distributor or a Reseller, except as expressly provided in this STaaS Customer Terms.

STaaS Products. All or any part or all of the Hardware and Software used by NetApp as part of the STaaS Services, whether as part of the original configuration, or subsequently added in the ordinary course of NetApp's performance of the STaaS Services.

Subscription Term. The period specified in the applicable Order, including any renewal, extension or holdover period.