



MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (“Agreement”) is entered into as of (“Effective Date”) between NetApp, Inc. and its Affiliates (“NetApp”), and (“Company”).

Company and NetApp are considering disclosing information for the purpose of exploring future business opportunities between the parties (“Purpose”).

THEREFORE, the parties agree as follows:

1. “Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with such party.
2. “Confidential Information” means (1) any information disclosed by either party that is marked “confidential” or “proprietary” or with words of similar import at the time of delivery, and (2) information disclosed orally or visually that is designated “confidential” or “proprietary” at the time of disclosure, and that the disclosing party summarizes in reasonable detail in writing, delivered to the other party within 30 days.
3. This Agreement applies to all Confidential Information disclosed between the Effective Date and three (3) years thereafter. Confidential Information may only be used for the Purpose.
4. Each party’s obligations regarding the other party’s Confidential Information shall expire three (3) years from the date of disclosure. The disclosing party’s Confidential Information will be disclosed or disseminated only to the receiving party’s employees and consultants who have a need to know and who are under written confidentiality obligations at least as protective as those provided in this Agreement.
5. Each party will protect Confidential Information of the other party with the same degree of care, but no less than a reasonable degree of care, as it would use to protect its own Confidential Information.
6. This Agreement shall not apply to information that the receiving party can prove:
 - a. is or becomes generally known to the public without violation of this Agreement or any duty of confidentiality;
 - b. is disclosed to the receiving party by a third party without an obligation of confidentiality;
 - c. is independently developed by the receiving party without using any Confidential Information; or
 - d. is lawfully in the possession of the receiving party at the time of disclosure under this Agreement and in respect of which the receiving party is not under any obligation of confidentiality.

The receiving party shall be permitted to disclose Confidential Information to the extent that it can document that such Confidential Information:

- e. is required to be disclosed pursuant to a judicial or administrative proceeding, provided that the receiving party, immediately after receiving notice of such action, notifies the disclosing party to give the disclosing party the opportunity to seek a protective order or any other legal remedies to maintain such information in confidence;
- f. is disclosed with the prior written consent of the disclosing party; or
- g. is disclosed for purposes of giving proper instructions to any professional adviser of the receiving party who also has an obligation to keep any such Confidential Information confidential.

7. Confidential Information will remain the property of the disclosing party. Except as expressly provided herein, no license or right is granted by either party to the other under any patent, patent application, trademark or copyright. All Confidential Information is provided "as is" and all representations and warranties, express or implied, including fitness for a particular purpose, merchantability, and non-infringement, are hereby disclaimed. Neither party will copy, duplicate, reverse engineer, reverse compile or attempt to derive the composition or underlying information of any Confidential Information. Neither party has made any commitment to the other, except as expressly set forth herein, and each party will bear its own costs and expenses in connection with this Agreement whether or not such a relationship comes into being. Nothing in this Agreement shall be construed as a representation that the receiving party will not develop or acquire information that is the same as or similar to Confidential Information, provided that the receiving party does not do so in breach of this Agreement. This Agreement does not apply to the disclosure of source code. The parties will execute a separate written agreement for any disclosure of source code.

8. Upon the disclosing party's request, all Confidential Information of that party will be returned or destroyed and, upon request by the disclosing party, the receiving party will provide certification of such destruction in writing.

9. Both parties acknowledge that the Confidential Information is claimed to be a valuable, special, and unique asset of the party disclosing the Confidential Information and monetary damages may not be sufficient should there be any breach of this Agreement. Therefore, the disclosing party shall also be entitled to seek an injunction from a court of competent jurisdiction for the purpose of stopping or preventing any existing or anticipated breach of this Agreement, in addition to any other remedies at law. The prevailing party in any dispute under this Agreement shall be entitled to reasonable attorneys' fees and costs.

10. This Agreement constitutes the entire agreement between the parties concerning its subject matter. This Agreement is governed by the laws of the State of California, excluding its conflicts of law rules. Each party agrees to comply strictly with all applicable export laws and regulations. All additions or modifications to this Agreement must be in writing and signed by an authorized representative of each party. No failure or delay in exercising any right under this Agreement will operate as a waiver of any term or condition hereunder. This Agreement is between the parties and neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party.

NetApp, Inc.:



By: _____

By: _____

Name: Matt Fawcett

Name: _____

Title: SVP, General Counsel

Title: _____

Email: _____