

NUTANIX INDIRECT RESELLER AGREEMENT

These Reseller and Partner Program Participation terms (“Agreement”) set forth the terms and conditions governing Partner’s resale of Products to End Users during the term of this Agreement and Partners participation in the Nutanix Partner Program. Subject to the terms and conditions herein, Partner is authorized, on a non-exclusive basis, to purchase Products from the selected Distributor solely for resale in the Territory and/or to sell, market or license the Products directly in the Territory.

These Terms are made effective as of the date of signature set forth below (“Effective Date”) by and between Nutanix Inc. or Netherlands B.V. as indicated in section 16.

1. DEFINITIONS AND POLICIES

Distributor: the authorized Nutanix distributor placing purchase orders on Nutanix and selling the Products to Partner.

End User: the party acquiring the Products for that party’s own internal business use and not for resale.

NLSA: Nutanix License and Services Agreement is available [here](#).

Nutanix’s Bookings Policy: Nutanix’s Bookings Policy is available [here](#).

Nutanix Partner Program or Partner Program: the non-exclusive, non-transferable program available to qualifying channel partners. Acceptance into the Nutanix Partner Program is determined solely at Nutanix’s discretion.

Territory: the territory communicated to Partner by Nutanix in writing in which Partner is authorized to market and resell Products.

Partner Code of Business Conduct and Ethics: the Partner Code of Business Conduct and Ethics is available [here](#).

Products: Nutanix Software, Cloud Services, Support Services, Professional Services and applicable Documentation.

Program Guide: the Program Guide is available [here](#).

2. NUTANIX PARTNER PROGRAM

2.1 Participation in the Nutanix Partner Program is governed by this Agreement, the Program Guide and the Partner Code of Business Conduct and Ethics.

2.2 Upon acceptance of these Terms, Partner is enrolled in the Nutanix Partner Program that corresponds to the category of Partner (“Partner Type”) specified by Nutanix, and entitles Partner to the benefits specific to that Partner Type, subject to Partner’s compliance with certain criteria (“Requirements”). In some cases, Requirements are divided into more than one tier (“Program Tier”) and Partner entitlement to the benefits of that Program Tier are subject to Partner’s continued compliance with those particular Requirements. For each Partner Type and Program Tier, the corresponding benefits and Requirements together are considered the “Program.” Each Program is governed by a guide (“Program Guidelines”) defining its benefits, Requirements and then-current rules of engagement, all of which may be specific to Partner geographic region. Partner acknowledges being presented with Program Guidelines upon submission of the Application Form and represents that Partner has read and understood the Program Guide. Because Nutanix may update the Program Guide and the above-referenced policies from time to time, it is Partner’s responsibility to review them regularly to comply with the Requirements and policies as they may be updated. Nutanix may review such compliance from time to time and may adjust Partner’s Program Tier as a result. Partner’s sole and exclusive remedy if Partner does not accept an update to the Requirements or adjustment to Program Tier shall be to terminate this Agreement within thirty (30) days after such update or adjustment. During the term of this Agreement, Partner agrees that Nutanix may publish Partner’s tradename and logo as a member of the Program.

3. AUTHORIZATION & RESELLING OF PRODUCTS

3.1 Nutanix hereby grants to Partner – for the duration of this Agreement – a limited, non-exclusive, non-transferable and non-sublicensable right to market and sell the Products to End Users in the Territory. Partner will order Products from an authorized Nutanix distributor only and not from Nutanix directly.

3.2 Nutanix grants to Partner the limited right to resell the Products supplied by Nutanix and Distributor to its End Users, provided that Partner will ensure the Nutanix License and Services Agreement (NLSA) will be passed through to such End Users (including the [link to the NLSA](#)) and/or (ii) incorporate the, either directly or by reference (including the links to such documents provided herein), into the relevant order documentation. Partner will ensure End User is aware that the receipt and usage of the Products is subject to the terms of the NLSA. Except as permitted by Nutanix in writing or as permitted by law, Partner will not reverse engineer, decompile, or disassemble the Nutanix Software, modify or translate Nutanix Software or copy Nutanix Software onto any public or distributed network.

3.3 Nutanix shall honor directly with and to the End User the terms set forth in the NLSA, unless Partner has failed to provide a copy of the NLSA as described above.

3.4 If Partner wishes to purchase Nutanix Products to provide managed or hosting services, or to integrate Nutanix Products, such purchase and use is governed by separate agreements.

4. PRICING, ORDERING & MARKETING

4.1 Prices and additional payment terms for Products purchased by Partner from a Distributor shall be determined and agreed solely between Partner and Distributor. Partner may not disclose Nutanix wholesale, distribution or reseller pricing, including without limitation on any websites or URLs, without Nutanix’s prior written consent. Notwithstanding the foregoing, Partner may quote retail pricing to its End Users. All other Nutanix and Distributor pricing shall be kept confidential by Partner.

4.2 All orders for Products shall be placed by Partner directly with a Distributor under terms agreed with such Distributor. Nutanix is not responsible or liable to Partner for any act or omission by Distributor.

4.3 Partner shall market, promote, and resell the Products in the Territory at the Partner's expense. These efforts may include without limitation the use of mailings, advertising, seminars and other customary marketing techniques.

5. PARTNER OBLIGATIONS

Partner agrees to: (i) promote and resell the Nutanix Products and Services in a manner that maintains the good name, goodwill and reputation of Nutanix; (ii) conduct Partner business activities in a professional and competent manner; (iii) actively promote and sell the Nutanix Products and Services to customers and maintain a high level of customer satisfaction; (iv) not engage in any illegal, false or deceptive acts or practices in the course of its business activities or performance of this Agreement; (v) not sell any non-genuine (counterfeit) or grey-market products; (vi) not make or issue any representations, warranties, or guarantees to customers or any other third party through any medium with respect to the specifications, features, or capabilities of any Nutanix Products and Services that are inconsistent with the representations, warranties, guarantees and disclaimers specifically stated in the NLSA and then-current Nutanix Product documentation; (vii) Partner will provide knowledgeable assistance to customers and potential customers in connection with the Nutanix Products and Services, including: training and maintaining a sufficient number of capable personnel to sell the Nutanix Products and Services; and assisting customers to determine appropriate product configuration; (viii) notify Nutanix at least thirty (30) days in advance of changing its legal or operating business name, address (including web URLs) or contact information, or any change of ownership; (ix) comply with Nutanix's Bookings Policy.

6. NUTANIX MATERIALS

Participation in a Nutanix Partner Program entitles Partner to receive copies of certain Nutanix-created materials ("Nutanix Materials") and to use those Nutanix Materials during the term of this Agreement, as specified in the Program Guidelines. Except as expressly stated herein, Nutanix and its licensors shall retain all right, title and interest in and to the Nutanix Materials, and no other license to them is granted or will be implied. Partner agrees not to remove or alter any proprietary notice on the Nutanix Materials.

7. TRADEMARKS & PROPRIETARY RIGHTS

7.1 As a Nutanix Partner, Nutanix grants Partner a limited, non-transferable, nonexclusive license to use Nutanix trademarks for the purposes of identifying Partner as a Nutanix Partner and for advertising and promotion purposes during the Term of this Agreement, provided that usage of Nutanix trademarks is not misleading and does not indicate or imply Nutanix's endorsement, testing or approval of any other products or service offered by Partner. Use of Nutanix's name and trademarks are set out in the [Nutanix Brand Guidelines](#). Except as expressly stated herein, Nutanix retains all right, title and interest in and to the Nutanix Trademarks, and no other license to them is granted or will be implied. Partner use of Nutanix Trademarks (including any goodwill associated therewith) shall inure to the benefit of Nutanix.

7.2 Nutanix and its licensors own all worldwide right, title and interest in the Products including all copyrights, trademarks, service marks, patents, trade secrets, know-how, moral rights and all other proprietary rights, including registrations, applications, renewals and extensions of such rights existing anywhere in the world, whether registered or unregistered ("Intellectual Property Rights"). The structure and code of the Products are Nutanix' valuable trade secrets and constitute Nutanix confidential information. Except for the rights explicitly granted to Partner in this Agreement, all right, title and interest in the Products are reserved and retained by Nutanix, its affiliates, or its licensors. Partner does not acquire any intellectual property or other rights in the Products as a result of reselling the Products.

8. CONFIDENTIALITY

8.1 Confidential Information means any non-public information disclosed by one party to the other party in connection with this Agreement and any information that is marked "confidential" or "proprietary" at the time of disclosure; if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure or would be deemed to be confidential or proprietary to a reasonable recipient. Confidential Information includes: Customer Information (defined as a name, address, telephone number, email address or any other information identifiable to an actual or potential Nutanix customer or group of customers), product road maps and any other information about future Nutanix products or services, Nutanix instructor materials and notes, and the terms and conditions of this Agreement.

8.2 Each party undertakes that it shall not at any time during this Agreement and for a period of three years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, or is proprietary by its nature to the other party except as provided herein.

8.3 Each party may disclose the other party's confidential information to those of its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 8; and as may be required by law, court order or any governmental or regulatory authority.

8.4 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

8.5 Receiving party agrees that, due to the unique nature of the Confidential Information, the unauthorized disclosure or use of the Confidential Information may cause irreparable harm to the disclosing party, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, the receiving party agrees that the disclosing party, in addition to any other available remedies, will have the right to an immediate injunction and other equitable relief enjoining any breach or threatened breach of this section 8, without the necessity of posting any security. The receiving party will notify the disclosing party in writing immediately upon the receiving party becoming aware of any breach or threatened breach.

9. INDEMNIFICATION

- 9.1 Subject to the limitations in this section 9, Nutanix will defend and indemnify Partner against any third-party claim alleging that the Products sold and delivered by Partner under this Agreement infringe or misappropriate a third-party intellectual property right and shall pay any settlement amount or the damages and losses finally awarded against Partner by a court of competent jurisdiction as a result of the claim.
- 9.2 Nutanix has no obligation to indemnify Partner and accepts no responsibility for any liability for any existing or alleged infringement of any third party rights arising out of (a) any modification to the Products made by Partner or anyone other than Us; (b) the combination of the Products with any other product, service, software, data, content or method; (c) Partner's continued sale of the Products after receiving notice of the alleged infringement of the Products; (d) services offered by Partner ("Excluded Claims").
- 9.3 If an infringement claim is made or appears likely to be made, Nutanix may, at its own expense and discretion, do any of the following: (a) modify the Product so that it is no longer infringing without substantially limiting its functionality; (b) obtain a license for or replace the Products; or (c) refund the purchase price upon return of the Products.
- 9.4 Partner will defend and indemnify Nutanix against any claim brought against Nutanix by a third party arising out of or relating to any (i) Excluded Claim, (ii) a breach by Partner of any of its obligations contained in this Agreement, or (iii) any false, misleading or otherwise unauthorized statements or representations. Partner agrees to pay any settlement amount, or the damages and losses finally awarded against Nutanix by a court of competent jurisdiction as a result of the claim.
- 9.5 Each party's defense and indemnity obligations in this section 9 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any admission of wrongdoing or material obligation by the other party without the prior written consent of the other party.

10. LIMITATION OF LIABILITY

- 10.1 In no event will Nutanix be liable for special, incidental, indirect or consequential damages, regardless of whether such damages are based on contract, tort, warranty or any other legal theory.
- 10.2 To the extent that limitation of liability is permitted by law, Nutanix' liability is limited to the amount paid by Partner for the particular Products with respect to which a claim is made. This limitation is cumulative and not per incident.
- 10.3 The limitations set forth in in this section 10 will not apply to damages for bodily injury or death, or to a breach of confidentiality under section 8 or infringement claims under section 9.
- 10.4 Any terms agreed to between Partner and End User that exceed Nutanix' obligations as set forth in the NLSA are at Partner sole risk and Partner will indemnify Nutanix from all damages arising from such claims.

11. EXPORT CONTROLS & US GOVERNMENT RESTRICTIONS

- 11.1 The Products are subject to export restriction in the U.S. and other jurisdictions. Partner is responsible to fully comply with all applicable export laws and regulations that apply to the download, installation and use of the Products in Partner jurisdiction. Partner represents and warrants that Partner is not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.
- 11.2 Partner shall not act as a reseller, or as a prime or subcontractor in providing a service provider offering, to an End User customer that is a U.S. federal government entity, a U.S. state or local government entity, or a U.S. public educational institution, absent a separate addendum, amendment or agreement with Nutanix.

12. DATA PRIVACY

To the extent the parties process information that is protected as "personal data", "personally identifiable information" or "personal information" (as these terms are defined under applicable data protection laws anywhere in the world) in connection with the Partner Program including, but not limited to Customer Information, the parties agree that they are acting as independent controllers of such information and shall comply with their respective obligations under applicable data protection laws and the Nutanix Partner Data Processing Addendum (including its Annexes). The Nutanix Partner Data Processing Addendum is available [here](#). It is Your responsibility to review said agreement to ensure compliance with applicable data protection laws. The Nutanix Partner Data Processing Addendum is incorporated into and forms part of the terms of this Agreement. Partner further agrees that its use of any "personal data", personally identifiable information" or "personal information" provided by Nutanix shall be solely as necessary to facilitate the marketing and sale of the Products.

13. AUDIT

Partner agrees to maintain accurate records as necessary to verify its compliance with this Agreement. Upon Nutanix' request, no more than once every twelve months, Partner agrees to provide Nutanix with any Partner's records related to this Agreement, as well as copies of documents or other evidence as may be required by Nutanix to verify Partner's compliance with its obligations under the terms of this Agreement. Nutanix will periodically conduct reviews with regard to Partner performance as a Nutanix Partner, which may result in Partner appointment as a Nutanix Partner being revoked or a demotion of partner level status if Partner fail to perform as expected.

14. COMPLIANCE AND ANTI-BRIBERY

Nutanix and Partner shall comply with all applicable Nutanix policies, which may be updated from time to time as well as with all applicable laws and regulations including those relating to anti-corruption, e.g. the U.S. Foreign Corrupt Practices Act and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

15. TERM AND TERMINATION

- 15.1 Subject to clause 15.2 and 15.3, the term of this Agreement will be for one (1) year from the Effective Date (“Initial Term”). Following the expiration of the Initial Term, this Agreement will automatically extend for additional periods of one (1) year.
- 15.2 Either Party may terminate this Agreement for convenience by giving the other party thirty (30) days written notice. Termination for convenience does not entitle the other party to any form of compensation.
- 15.3 Either Party may terminate the Agreement for cause in the event the other Party breaches a material term of the Agreement and does not cure such breach within (30) day written notice. Notwithstanding the foregoing, either party may terminate this Agreement immediately upon written notice in the event of a breach by the other party of section 8, 11, 12 or 14.
- 15.4 Upon termination of the Agreement each Party shall immediately cease using and return or destroy confidential information belonging to the other Party.
- 15.5 Termination of the Agreement will not terminate existing orders sold to End Users prior to termination.
- 15.6 Provisions of the Agreement which by their nature extend beyond the termination or expiration of the Agreement will remain in effect until fulfilled.

16. GOVERNING LAW

All disputes arising out of or in connection with this Agreement shall be governed and construed in accordance with the laws and under the exclusive jurisdiction of the competent courts as follows:

Partner Domicile	Nutanix contracting entity	Governing law	Courts with exclusive jurisdiction
The Americas	Nutanix, Inc.	State of California and controlling United States law	Federal or state courts located in San Francisco
France	Nutanix Netherlands, B.V.	French law	Paris
Germany	Nutanix Netherlands, B.V.	German law	Munich
United Kingdom	Nutanix Netherlands, B.V.	English law	England and Wales
Australia, New Zealand, Hong Kong, Korea and Taiwan	Nutanix Netherlands, B.V.	State of New South Wales	Sydney
Japan	Nutanix Netherlands, B.V.	Japan	District Court of Tokyo
Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam	Nutanix Netherlands, B.V.	Singapore	Singapore
China	Nutanix Netherlands, B.V.	China	CIETAC Beijing
Any other country	Nutanix Netherlands, B.V.	The Netherlands	Amsterdam
Partner Domicile	Nutanix Entity	Notice Address	
The Americas (North America, Central America and South America)	Nutanix, Inc.	1740 Technology Drive, Suite 150, San Jose, California 95110; Attn: Legal Counsel	
Any country outside of The Americas	Nutanix Netherlands, B.V.	Pharos Building 12th-15th Floor Mercuriusplein 1, 2132HA Hoofddorp, The Netherlands; Attn: Legal Counsel	

17. GENERAL

- 17.1 Partner shall maintain adequate insurance during the term of this Agreement. Upon request, Partner shall send Nutanix proof of coverage.
- 17.2 Neither party will be responsible for any failure to perform due to causes beyond its reasonable control.
- 17.3 Neither party hereto shall be deemed for any purpose to be an agent of the other party, and the relationship between the parties hereto shall be that of independent contractors only. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever.
- 17.4 This Agreement is personal to the parties and no party shall, without the prior written consent of the other party assign, transfer, or deal in any other manner with this Agreement or any of its rights and obligations under it, or purport to do any of the same. No party shall subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent. Nutanix may assign this Agreement to a successor in interest in the context of a change of control.
- 17.5 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 17.6 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall be changes or interpreted to accomplish the objectives of such provision to the greatest extent under applicable law and enforceability of the other provisions of this agreement shall not be affected.
- 17.7 This Agreement, including the referenced agreements and documents herein, is the entire agreement between the Parties for the subject matters contained in this Agreement and replaces any prior agreement for the subject matter.
- 17.8 This agreement is in the English language only, which language shall be controlling in all respects, and all versions in any other language shall not be binding on the parties. All communication and notices made or give pursuant to this Agreement shall be in the English language.

ACCEPTED BY

Partner Name	VCG Technology Services Ltd
Signature	<i>Daniel Preston</i>
Name	Daniel Preston
Title	Finance Director
Date	08 / 08 / 2024

Signature Certificate

Reference number: TTP4B-KO5SF-2KJIV-GHXFT

Signer

Daniel Preston

Email: daniel.preston@vcg.group

Sent:

06 Aug 2024 11:35:55 UTC

Viewed:

08 Aug 2024 14:06:02 UTC

Signed:

08 Aug 2024 15:32:49 UTC

Timestamp

Signature



Recipient Verification:

✓ Email verified

08 Aug 2024 14:06:02 UTC

IP address: 185.14.212.146

Location: Warrington, United Kingdom

Document completed by all parties on:

08 Aug 2024 15:32:49 UTC

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