



Overland Storage FastTrack Partner Program Terms and Conditions

This FastTrack Partner Program Terms and Conditions (this “**Agreement**”) sets forth the terms and conditions that apply to your marketing, demonstration, distribution and resale of Overland Storage, Inc. (“**Overland Storage**”) products as a reseller (“**you,**” “**your**” or “**Partner**”) for your authorized Overland Storage distributor, and your participation in the Deal Registration Program and Meet Comp Program. The Agreement is a legal contract between you and Overland Storage, and this Agreement supersedes and replaces any other terms or agreements you may have with Overland Storage relating to your marketing, demonstration, distribution and resale of Overland Storage products (“**Products**”). By entering into this Agreement Overland Storage is authorizing you to market, demonstrate, distribute and resell its Products in accordance with its terms. You acknowledge and agree that this contract is only between you and Overland Storage and not any of Overland Storage’s distributors or service providers (collectively, “**Distributors**”).

PLEASE READ CAREFULLY THE FOLLOWING TERMS. BY CLICKING THE ACCEPT BUTTON, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, PLEASE DO NOT CLICK THE ACCEPT BUTTON, AND PLEASE CONTACT YOUR OVERLAND STORAGE SALES REPRESENTATIVE FOR ADDITIONAL INFORMATION.

Overland Storage reserves the right to update and modify this Agreement from time to time without prior written notice to you. Overland Storage will use commercially reasonable efforts to inform you about any such updates and modifications, and any updates or modification to this Agreement will be made available to you on our website at <http://www.overlandstorage.com/TCs/FastTrack.pdf>. You agree that you will continue to be bound by all of the terms and conditions in any updated or modified Agreement unless you inform Overland Storage in writing that you do not agree to any such updates or modifications, at which time your participation in the FastTrack Partner Program will be automatically and immediately terminated, and the terms of Section 4 below will apply.

1. PARTNER RIGHTS

Subject to your compliance with the terms and conditions of this Agreement, and as an approved Partner, Overland Storage grants you the following rights:

(a) You have the non-exclusive right to market, demonstrate, distribute and resell Products, but you may only do so to end user customers of Products in the applicable territory who intend to use the products for their own use and not for resale or redelivery (“**Customers**”).

- You may not transfer or sublicense these rights to any third party.

- You agree that you will not unbundle the Products or any software included or installed on them or resell Products in a physical retail environment.
- You acknowledge and agree that all intellectual property and proprietary rights in and to the Products are and will remain the exclusive property of Overland Storage and that title to any software included with the Products remains with Overland Storage or its licensors.

(b) You also have a limited, non-exclusive and revocable right to use Overland Storage’s trademarks, service marks and trade names (“**Overland Marks**”), but only in connection with your marketing and distribution of Products.

- You may not transfer or sublicense these rights to any third party.
- You agree to comply with all trademark usage guidelines that apply to your use of the Overland Marks, which Overland Storage may issue and update from time to time in its sole discretion.
- You must submit all proposed uses of the Overland Marks to Overland Storage for prior written approval.
- You further agree that your use of the Overland Marks will meet or exceed all quality standards and specifications which Overland Storage may issue and update from time to time in its sole discretion.
- Overland Storage and its authorized representatives will have the right, at any reasonable time with prior notice to you, to inspect your use of the Overland Marks.
- You agree that all proprietary right and goodwill in the Overland Marks resulting from your use of them will inure to the benefit of Overland Storage, and that all uses of the Overland Marks will not create any interest or right, express or implied, in you, except for those rights specifically granted to you above.
- You agree not to do any of the following: (i) assert any claim of ownership in the Overland Marks; (ii) contest the validity, enforceability or Overland Storage’s ownership of the Overland Marks; (iii) use or apply for registration of any trademarks, service marks, trade names, logos or designs that are confusingly similar with any of the Overland Marks; (iv) remove or efface any notices on the Products; or (v) register any Internet domain or acquire or be the beneficiary of a web site, social media service or weblog that includes any part of the Overland Marks or trademarks that are confusingly similar.
- You further agree that if you acquire in any manner a domain name or social media account with any portion of an Overland Mark, you hereby assign and transfer your entire interest such domain name or social media account to Overland Storage, and you agree to take any actions reasonably necessary to effectuate such assignment.

2. RESTRICTIONS

You acknowledge and agree that you will not, and will not permit or encourage any third party to do any of the following:

- modify, adapt, translate or create any derivative works of any software included or contained within the Products or attempt to do so;

- attempt to decompile, disassemble, reverse engineer or otherwise attempt to derive the source code for any such software;
- use the Products in any manner to provide service bureau, timeshare or other computer-related services to third parties;
- use the products in any manner to assist or take part in the development, marketing or sale of a product potentially competitive with any of the Products;
- make any commitment or incur any obligations on behalf of Overland Storage or make any representations, warranties, promises or guarantees with respect to any Products other than those expressly authorized by Overland Storage in writing to end users of the Products;
- engage in any practices that would or could be deceptive, misleading, unethical or detrimental to the Products or to Overland Storage's image or reputation.

If, as a part of your participation in this FastTrack Partner Program or in any dealings with Overland Storage or its Distributors, you receive any rewards, gift or items that have a cash value, it is your responsibility to report them in compliance with any and all applicable laws, rules and regulations, including, but not limited to, tax regulations.

3. DISTRIBUTION OF PRODUCTS TO CUSTOMERS

You will distribute the Products to Customers with the then-current version of the applicable Overland Storage end user license agreement for the Products in the manner specified by Overland Storage.

Any agreement relating to Product pricing, orders, delivery, returns and payment will be between you and your authorized Overland Storage Distributor. You agree to participate, at your cost and expense, in sales and technical training required for you to adequately market, demonstrate, distribute and resell the Products. As between you and Overland Storage, you are responsible for training and educating your Customers with respect to the Products.

You agree to use your best efforts to assist Customers to resolve issues they may have with regards to the Products, but as between you and Overland Storage, Overland Storage will be responsible for providing technical support and related warranty services for the Products to Customers per any support or warranty terms accompanying a particular Product. Overland Storage reserves the right to contact Customers directly to offer additional support and maintenance or warranty services.

4. TERM AND TERMINATION

The term of your rights under this Agreement will be for the term of your agreement with your authorized Overland Storage Distributor, unless Overland Storage terminates this Agreement upon notice to you for any reason or no reason. Upon any such termination, you will immediately cease all marketing, demonstration, distribution and sales of the Products and discontinue all use of the Overland Marks and destroy or return (at Overland Storage's option) all sales and materials pertaining to the Products that are in your possession or control.

Overland Storage will have no liability to you or any third party for termination of this Agreement.

5. CONFIDENTIALITY

You agree that you will not disclose to any third party any confidential and proprietary information of Overland Storage, which includes all non-public information pertaining to Overland Storage's business or technical information, further including but not limited to specifications, designs, costs, pricing, finances, marketing plans, business opportunities, customer lists, research, development and know-how ("**Confidential Information**"). Confidential Information will not include any information that you can evidence in writing: (a) is or becomes generally known to the public without breach of any obligation owed to Overland Storage; (b) was known to you prior to disclosure by Overland Storage; or (c) is received from a third party without breach of any obligation owed to Overland Storage.

You agree to protect the Confidential Information in the same manner that you protect your own Confidential Information of like kind (but in no event using less than a standard of reasonable care). You agree to use the Confidential Information solely as necessary to perform your obligations or exercise your rights under this Agreement. You will promptly notify Overland Storage of any unauthorized access or use of Confidential Information and to cooperate with Overland Storage at your cost to take action reasonably necessary to prevent further unauthorized access or use. If you disclose or use (or threaten to disclose or use) any Confidential Information in breach of the confidentiality protections as provided in this Section 5, Overland Storage will have the right, in addition to any other remedies available, to injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies are inadequate.

6. WARRANTIES AND DISCLAIMERS

You represent and warrant to Overland Storage that you have the authority to enter into this Agreement, that you have no agreement or obligation that is in conflict or would stop you from complying with the terms and conditions of this Agreement and that you are authorized to do business in and sell Products in your designated territory.

AS BETWEEN YOU AND OVERLAND STORAGE, OVERLAND STORAGE PRODUCTS AND ANY RELATED SERVICES ARE PROVIDED ON AN "AS-IS" BASIS, AND OVERLAND STORAGE DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, TO YOU WITH RESPECT TO PRODUCTS AND RELATED SERVICES. OVERLAND STORAGE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

Any Product warranties that Overland Storage may, in its sole discretion, provide with respect to the Products will run directly to the end user of such Products, and you have no right to, and you will not, make any warranties or representations to any of your Customers regarding the Products or any related services.

7. LIMITATIONS OF LIABILITY

OVERLAND STORAGE WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT, TORT, OTHER LEGAL THEORY, OR OTHERWISE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY BUSINESS INTERRUPTION, LOSS BUSINESS OPPORTUNITIES OR LOST PROFITS, EVEN IF OVERLAND STORAGE IS ADVISED OF THE POSSIBILITY OF SUCH LIABILITY AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT WILL OVERLAND STORAGE'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS PAID BY YOU TO YOUR AUTHORIZED OVERLAND STORAGE DISTRIBUTOR FOR PRODUCTS ORDERED THROUGH SUCH DISTRIBUTOR.

8. INDEMNITY

You agree to comply with all applicable laws and regulations and at your expense, indemnify, defend and hold harmless Overland Storage from all claims and damages arising from your unauthorized marketing, sales or use of the Products; unauthorized representations or warranties made by you relating to the Products; your violation of laws, regulations or statutes, including export or import laws; any warranty in excess of or different from Overland Storage's end user Product warranty (if any), and any negligence or intentional misconduct on your part relating to the Products or your marketing, sales and distribution activities for the Products.

9. GENERAL TERMS

This Agreement constitutes the entire agreement between you and Overland Storage concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings. This Agreement may be amended only by a writing signed by both parties.

This Agreement will be governed by the laws of the state of California, without regard to conflicts of law provisions, and you consent to the exclusive jurisdiction of the state and federal courts sitting in Santa Clara County, California, USA. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Overland Storage may demand that any dispute or claim between Overland Storage and you regarding the subject matter of this Agreement be settled by arbitration utilizing the dispute resolution procedures of the American Arbitration Association ("AAA") in San Jose, California, USA and, if so demanded by Overland Storage, both parties hereby acknowledge and agree to submit exclusively to the jurisdiction of the AAA in Santa Clara County, CA to resolve the applicable dispute or claim; provided that the foregoing shall not prevent Overland Storage from seeking injunctive relief in a court of competent jurisdiction.

Each party will comply with all applicable federal, state, and local laws, rules, and regulations in performance of its obligations under this Agreement. Overland Storage and you are and at all times will be and remain independent contractors as to each other, and at no time will either party be deemed to be the agent or employee of the other or have the ability to bind the other.

In the event that any provision of this Agreement is determined to be invalid, unlawful, void or unenforceable to any extent, such provision or any portion thereof will be interpreted to best reflect the parties' intent, and the remainder of this Agreement will not be affected and will continue to be valid and enforceable to the fullest extent permitted by law. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof. This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you without Overland Storage's express prior written consent. The provisions of this Agreement that require or contemplate performance after the termination of this Agreement and all provisions relating to limitation of liability, disclaimers, and indemnification will be enforceable notwithstanding such termination. Neither party will be in default or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from any cause beyond its reasonable control. If any dispute arises under this Agreement, the prevailing party will be reimbursed by the other party for any and all legal fees and costs associated therewith.

DEAL REGISTRATION PROGRAM

As part of the FastTrack Partner Program, you will need to first register each new sales opportunity with a potential Customer ("**Opportunity**") online with Overland Storage and obtain Overland Storage's prior approval before you transact business with respect to Products with any such Opportunity ("**Deal Registration**"). The terms and conditions of the Deal Registration Program are subject to change without any prior notice to you.

1. ELIGIBILITY AND ENROLLMENT

- The FastTrack Partner Program Deal Registration is available to all Overland Storage FastTrack authorized Partners worldwide, and only authorized Partners will be allowed to submit Deal Registrations.
- Approval for each Deal Registration submission will be based on priority of submission and eligibility, and each Deal Registration for an Opportunity cannot be registered by another Partner.
- Each Deal Registration submitted by Partner must be for a bona fide Opportunity, and before submitting a Deal Registration for an Opportunity, Partner must make substantial pre-sales efforts related to the Opportunity by working with the potential Customer, such as helping the potential Customer quantify the project budget for Products, helping the potential Customer define project requirements necessary for acquiring Products, meeting with the appropriate decision-makers and leading the Opportunity with Products. Partners will be required to provide a description of such efforts, including proof of date and time, upon request by Overland Storage.
- Approved Deal Registration for any Opportunity is non-transferable by Partner.
- Approved Deal Registrations are valid for 60 days. Partner must request or receive an extension prior to expiration of the Deal Registration.
- Overland Storage will provide e-mail notification to Partner of any approval or rejection of a submitted Deal Registration.

- Each Opportunity must represent a single, new opportunity with a single potential Customer. Partner may not combine Opportunities or Customer accounts for any purpose.
- In order to maintain any particular approved Deal Registration, Partner must not be in breach of any terms and conditions of this Agreement or be on credit hold with Overland Storage or Partner's authorized Overland Storage Distributor. A breach or placement under credit hold will entitle Overland Storage to immediately suspend or exclude Partner from the FastTrack Partner Program or revoke any Deal Registration submission or approval.
- Partner must provide Overland Storage, upon request, a status update on any activity with respect to a submitted or approved Deal Registration.

2. ELIGIBLE OPPORTUNITY REGISTRATION.

To secure the benefits of the Deal Registration Program, Partner must provide in full the following information on the Opportunity at the time of registration submission:

- Company name must be completely spelled out - no acronyms;
- Company contact name must be completely spelled out - no initials;
- Valid direct telephone number or main number with contact extension;
- Company contact email address must be a valid company email address - e-mail addresses from yahoo, gmail, hotmail, etc. will not be accepted;
- Company address; and
- The full name of the decision maker and buyer (if applicable).

3. OVERLAND STORAGE'S RESERVATION OF RIGHTS

Overland Storage reserves for itself the rights to:

- Retract any previously approved Deal Registration.
- Contact any Customer or Opportunity at any time with respect to Products.
- Terminate Partner membership in the FastTrack Partner Program or deny future Deal Registrations if Partner refuses to abide by the terms and conditions of the Deal Registration Program.
- Request additional information from Partner to validate any Deal Registration submitted by such Partner.
- At any time and in any manner, change, withdraw or alter the Deal Registration process or any benefit thereunder or eligibility requirements.
- Exclude any Partner from participating in the Deal Registration Program that Overland Storage deems does not meet any of the terms and conditions of this Agreement or whose conduct violates the spirit of the FastTrack Partner Program, Deal Registration or Meet Comp Program.
- Disqualify, at its sole discretion, Deal Registration approvals or submissions that Overland Storage determines fails to comply with the applicable terms and conditions.
- Audit any information supplied by Partner supplied information, in whatever means Overland Storage reasonably deems necessary.

MEET COMP PROGRAM

Overland Storage offers participation in its Meet Comp Program to authorized Partners who have an approved Deal Registration in order to provide qualified Partners discounted Product pricing in certain limited circumstances. An authorized Partner may request from Overland Storage a Meet Comp only if required to (i) ensure Customer satisfaction, (ii) preserve competitive advantage with respect to an Opportunity or (iii) honor promotional programs. Meet Comp is not intended for, and may not be used, to obtain additional margins for Partners. The terms and conditions of the Meet Comp Program are subject to change without any prior notice to you.

1. ELIGIBILITY AND ENROLLMENT

- The FastTrack Partner Program Meet Comp is available to all authorized Overland Storage FastTrack Partners worldwide who have an unexpired, approved Deal Registration, and only such Partners may submit a Meet Comp with Overland Storage.
- A request for a Meet Comp must apply to a single transaction for an entire configuration, unless otherwise specified by Overland Storage (i.e., the Meet Comp request must apply for an entire order and not for individual parts).
- Overland Storage will review the request for Meet Comp and provide e-mail notification to Partner in case of approval.
- Any approved Meet Comp is non-transferable by Partner.
- In order to be approved for Meet Comp or to benefit from the discounted Product pricing, Partner must not be in breach of any terms and conditions of this Agreement or be on credit hold with Overland Storage or Partner's authorized Overland Storage Distributor. A breach or placement under credit hold will entitle Overland Storage to immediately suspend or exclude Partner from the Meet Comp Program or revoke any Meet Comp approval.
- Partner must provide Overland Storage, upon request, a status update on any activity with respect to a Meet Comp.

2. ELIGIBLE OPPORTUNITY REGISTRATION.

To secure the benefits of the Meet Comp Program, Partner must provide its Overland Storage sales representative the following information in full:

- Company name must be completely spelled out - no acronyms;
- Company contact name must be completely spelled out - no initials;
- Valid direct telephone number or main number with contact extension;
- Company contact email address must be a valid company email address - e-mail addresses from yahoo, gmail, hotmail, etc. will not be accepted;
- Company address; and
- The full name of the decision maker and buyer (if applicable).

3. OVERLAND STORAGE'S RESERVATION OF RIGHTS

Overland Storage reserves for itself the rights to:

- Retract any previously approved Meet Comp.
- Contact any Customer at any time with respect to Products.
- Terminate Partner membership in the FastTrack Partner Program or deny future Meet Comp requests if Partner refuses to abide by the terms and conditions of the Meet Comp Program.
- Request additional information from Partner to validate any Meet Comp request submitted by such Partner.
- At any time and in any manner, change, withdraw or alter the Meet Comp process or any benefit thereunder and eligibility requirements.
- Exclude any Partner from Meet Comp that Overland Storage deems does not meet any of the terms and conditions of this Agreement or whose conduct violates the spirit of the FastTrack Partner Program, Deal Registration or Meet Comp Program.
- Disqualify, at its sole discretion, Meet Comp approvals or submissions that Overland Storage determines fails to comply with the applicable terms and conditions.
- Audit any information supplied by Partner supplied information, in whatever means Overland Storage reasonably deems necessary.
- Limit the grant of a Meet Comp for an Opportunity or Customer to one Partner.