

NAKIVO®

# Grow Together with NAKIVO

NAKIVO Marketing Development  
Funds Program

Terms and Conditions

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## Program Overview

The NAKIVO Marketing Development Funds (NMDF) Program is designed to help NAKIVO Partners drive pipeline growth and increase demand for NAKIVO Backup & Replication and associated services. Through the NMDF Program, NAKIVO partially reimburses, at NAKIVO's discretion, eligible marketing activities conducted by NAKIVO Partners and approved in advance by NAKIVO.

## Purpose

This document aims to familiarize NAKIVO Partners with the terms and conditions for benefiting from the NMDF Program. Partners who want to apply for the NMDF Program must read and accept the terms and conditions set forth in this document.

## Definitions

**"Marketing Activity(-ies)"** means the advertising, marketing, promotional, and event activities planned by the Partner and set forth in the Partner's Marketing Plan.

**"Marketing Plan"** means the document detailing the Partner's marketing goals and objectives for a quarter and includes an overview of planned Marketing Activities for that quarter to help drive demand for NAKIVO Backup & Replication and associated services.

**"NAKIVO Partner"** means the business entity (distributor or reseller) that:

- a. meets the requirements of the NAKIVO Partner Program; and
- b. qualifies as an activated NAKIVO Partner.

**"Marketing Materials"** means all collateral materials created and provided by NAKIVO to NAKIVO Partner as part of the NMDF Program.

**"Co-Funded Marketing Activities"** means the marketing activities conducted by Partners and approved by NAKIVO for partial reimbursement under the NMDF Program.

**"Co-Funding Application"** means the email sent by the Partner to their NAKIVO channel manager with all the details (See [Planning](#)) about the Marketing Activity for which co-funding is requested.

## Eligibility Criteria

To be eligible for the NMDF Program, the Partner must meet the following requirements:

- Be an activated NAKIVO Partner throughout the term of the NMDF Program;
- Accept and comply with these Terms and Conditions.

A Marketing Activity is eligible for partial reimbursement by NAKIVO if it has one or several of the following objectives:

#### Resellers

- **Acquire new customers:** lead generation and making sales to potential customers; and/or
- **Develop** and/or **retain** existing customers.

#### Distributors

- **Expand NAKIVO's channel network** through recruitment of new resellers (available only for authorized distributors); and/or
- Reactivate resellers who have not made a purchase for two consecutive quarters or longer.

Marketing Activities listed in the Partner's NAKIVO Marketing Plan must be pre-approved by NAKIVO as part of the Co-Funding Application process. The Marketing Plan is approved quarterly by NAKIVO. The Marketing Plan for an upcoming quarter should be presented to the Partner's NAKIVO channel manager and marketing channel manager in the quarter preceding the quarter during which the Marketing Activity will be conducted or in the quarter during which the Marketing Activity will be conducted. In case of any changes, the Marketing Plan must be submitted for re-approval.

Note that funds must be pre-approved for each Marketing Activity based on specific time frames and other details. If the activity is canceled, the date is postponed by more than 14 days, and/or the venue are changed, the Partner must apply for approval of the Marketing Activity again. Approved funds that remain unused for an approved Marketing Activity will expire automatically if the activity is not held on the agreed date.

## Frequency and Amount of Funding

NAKIVO Partners can request funding for a Marketing Activity that ties into their Marketing Plans as frequently as they need to with the aim of driving sales of NAKIVO Backup & Replication and associated services.

NAKIVO shall fund no more than 50% of the cost of the Marketing Activity, and in any case, no more than the figures indicated in the [Support of Co-Funded Marketing Activities](#) section for each Marketing Activity (or their equivalents in other currencies).

The total amount of funding approved for any given quarter must be used during the said quarter. If unused, this amount cannot be carried over to the following quarter and shall expire at the end of the quarter for which it was approved.

## Procedure

The stages for receiving partial reimbursement for a Marketing Activity from NAKIVO are outlined below.

1. Planning
2. Applying for Approval
3. Receiving Approval
4. Marketing Activity Execution
5. Results and Proof
6. Claiming Reimbursement
7. Receipt of Payment

For any questions about any of the stages, the Partner should contact their NAKIVO channel manager who will navigate them through the procedure to receive partial reimbursement for a Marketing Activity.

### 1. Planning

To obtain partial reimbursement approval for a Marketing Activity, the Partner must provide NAKIVO with the following information in the Co-Funding Application:

1. Marketing objectives and goals (e.g. demand generation, sales boost, registration of new partners, etc.);
2. Marketing Activity start date/time and period;
3. Type of Marketing Activity (email, webinar, focus day, etc.);
4. Online channels for online Marketing Activities;
5. Place of the event for offline Marketing Activity;
6. A general description, including NAKIVO Backup & Replication features or functionality to be promoted;
7. Forecasted budget (in USD, EUR or GBP).

In addition, the following information should be included for different types of Marketing Activities:

Marketing Activity Type	Activity Details	Expected Results
<b>Webinar</b>	<ol style="list-style-type: none"> <li>1. Title</li> <li>2. Outline</li> <li>3. List of promotional activities</li> <li>4. Number of unique contacts to reach</li> </ol>	<ol style="list-style-type: none"> <li>1. Number of registrations</li> <li>2. Number of attendees</li> <li>3. Number of scheduled demos*</li> <li>4. Number of new deals*</li> <li>5. Number of partner sign-ups (applies only to distributors)</li> </ol> <p>*Expected results depend on the CTA.</p>
<b>Email or email campaign</b>	<ol style="list-style-type: none"> <li>1. Subject</li> <li>2. Call to action (CTA)</li> <li>3. Number of unique contacts to reach</li> </ol>	<ol style="list-style-type: none"> <li>1. Open rate and click rate</li> <li>2. Number of Free Trial downloads*</li> <li>3. Number of white paper downloads*</li> <li>4. Number of scheduled demos*</li> <li>5. Number of partner sign-ups (applies only to distributors)</li> </ol> <p>*Expected results depend on the CTA.</p>
<b>NAKIVO landing page</b>	<ol style="list-style-type: none"> <li>1. Title</li> <li>2. Call to action (CTA)</li> <li>3. UTM links to the NAKIVO website</li> </ol>	<ol style="list-style-type: none"> <li>1. Traffic to the NAKIVO landing page deployed on the partner website</li> <li>2. Traffic to the NAKIVO website from the NAKIVO landing page deployed on the partner website</li> </ol>
<b>PR publication</b>	<ol style="list-style-type: none"> <li>1. Title</li> <li>2. Publication platform</li> <li>3. UTM links to the NAKIVO or partner website</li> </ol>	<ol style="list-style-type: none"> <li>1. Media audience of the PR publication platform</li> <li>2. Traffic to the NAKIVO website from the PR publication page</li> </ol>

Marketing Activity Type	Activity Details	Expected Results
<p><b>Google ads</b></p>	<ol style="list-style-type: none"> <li>1. Subject</li> <li>2. Call to action (CTA)</li> <li>3. UTM links to the NAKIVO or partner website</li> <li>4. Banners (applies only to banner campaigns)</li> </ol>	<ol style="list-style-type: none"> <li>1. Number of Free Trial downloads*</li> <li>2. Number of white paper downloads*</li> <li>3. Traffic to the NAKIVO or partner website*</li> <li>4. Number of scheduled demos*</li> <li>5. Number of partner sign-ups (applies only to distributors)</li> <li>6. <a href="#">Coverage</a> (optional)</li> <li>7. <a href="#">Cost-per-click (CPC)</a> (optional)</li> </ol> <p>*Expected results depend on the CTA.</p>
<p><b>Social media ads</b></p>	<ol style="list-style-type: none"> <li>1. Subject</li> <li>2. Content</li> <li>3. Call to action (CTA)</li> <li>4. UTM links to the NAKIVO or partner website</li> </ol>	<ol style="list-style-type: none"> <li>1. Number of Free Trial downloads*</li> <li>2. Number of white paper downloads*</li> <li>3. Traffic to the NAKIVO or partner website*</li> <li>4. Number of scheduled demos*</li> <li>5. Number of partner sign-ups (applies only to distributors)</li> <li>6. <a href="#">Coverage</a> (optional)</li> <li>7. <a href="#">Cost-per-click (CPC)</a> (optional)</li> </ol> <p>*Expected results depend on the CTA.</p>
<p><b>Telemarketing</b></p>	<ol style="list-style-type: none"> <li>1. Caller description</li> <li>2. Number of unique contacts to reach</li> <li>3. Call to action (CTA)</li> </ol>	<ol style="list-style-type: none"> <li>1. Number of partner sign-ups* (applies only to distributors)</li> <li>2. Number of Free Trial downloads*</li> <li>3. Number of scheduled demos*</li> </ol> <p>*Expected results depend on the CTA.</p>

Marketing Activity Type	Activity Details	Expected Results
<b>Other online activities</b>	<ol style="list-style-type: none"> <li>1. Activity description</li> <li>2. Call to action (CTA)</li> </ol>	Provide at least one expected activity result
<b>Focus day</b>	<ol style="list-style-type: none"> <li>1. List of participants</li> <li>2. Subject of discussion</li> </ol>	<ol style="list-style-type: none"> <li>1. Number of partner sign-ups* (applies only to distributors)</li> <li>2. Number of new Bronze partners* (applies only to distributors)</li> <li>3. Number of scheduled demos*</li> <li>4. Number of new deals*</li> </ol> <p>*Expected results depend on the meeting goal.</p>
<b>Workshop/ Training</b>	<ol style="list-style-type: none"> <li>1. Speaker list</li> <li>2. Demo materials: presentation, handouts, etc.</li> <li>3. List of participants</li> </ol>	Number of attendees
<b>Event</b>	<ol style="list-style-type: none"> <li>1. Event description: name, address, etc.</li> <li>2. Speaking slot time and duration</li> <li>3. Demo materials: presentation, handouts, etc.</li> </ol>	<ol style="list-style-type: none"> <li>1. Number of attendees</li> <li>2. Number of scheduled demos*</li> <li>3. Number of leads*</li> <li>4. Number of partner sign-ups* (applies only to distributors)</li> </ol> <p>*Expected results depend on the meeting goal.</p>
<b>Partner/ customer meeting</b>	<ol style="list-style-type: none"> <li>1. Attendees</li> <li>2. Objectives</li> <li>3. Subject of discussion</li> </ol>	<ol style="list-style-type: none"> <li>1. Number of scheduled demos*</li> <li>2. Number of leads *</li> <li>3. Number of partner sign-ups* (applies only to distributors)</li> </ol> <p>*Expected results depend on the meeting goal.</p>

## 2. Applying for Approval

To apply for co-funding approval, the Partner must send a Co-Funding Application email to their NAKIVO regional channel manager with detailed information about the Marketing Activity (See [Planning](#)).

NAKIVO shall evaluate the Co-Founding Application based on the information provided by the Partner regarding each Marketing Activity (See [Planning](#)). If the Partner modifies a Marketing Activity that has already been approved, the Partner must re-submit the Co-Funding Application with the changes to NAKIVO for re-approval.

NAKIVO reserves the right to request additional information and/or documents before granting approval.

## 3. Receiving Approval

NAKIVO shall review and evaluate the Co-Funding Application within 30 days from the date of receipt of the Co-Funding Application. Once a Co-Funding Application is approved without any qualification or conditionally, or it is denied, we will inform the Partner about NAKIVO's decision via email.

**Note:** NAKIVO shall not consider a verbal approval as binding in any way. The approval email from NAKIVO for each Marketing Activity should include:

- The type of the activity;
- The goals of the activity;
- The name of the activity;
- The region and city of the activity;
- The date of the activity;
- The agreed reimbursement amount; AND
- The expected results;
- Requirements for reimbursement.

Partner shall not commence any Marketing Activity until it has been approved in writing by NAKIVO.

Here is an example of a funding approval letter.

Dear Partner,

You have applied for approval and subsequent funding of the webinar titled “NAKIVO Backup & Replication Conference 145”, which will take place via NAKIVO’s webinar platform on \*DATE\*. The declared objective of the activity is: **Motivate existing resellers to find new business.**

NAKIVO will reimburse USD 500 (50% of the activity cost) to you if the webinar produces one of the following results:

- 20 attendees
- 50 registration
- 2 scheduled demos

## 5. Results and Proof of Execution

Upon successful completion of the approved Marketing Activity, the Partner must provide NAKIVO with the results and proof of execution of the Marketing Activity to be able to claim the agreed partial reimbursement amount. NAKIVO expects that Marketing Activities will yield results that are actionable and can be monetized.

The Partner must submit the results and proof of execution within 15 days from the end of the Marketing Activity by enclosing them in an email to the Partner’s NAKIVO channel manager. The following information must be included:

- Execution Report on the conducted Marketing Activity (See [Appendix](#));
- Visual Proof of the activity’s results and cost (See [Visual Proof](#));
- An attendee list for online and offline activities (e.g. webinars, conferences, focus days, etc.). The attendee list must contain the following information about each attendee: first and last names, attendee’s email address, company name, business phone number (optional), and country. Partners are expected to provide permission for processing the personal data of attendees.
- A list of leads/potential opportunities generated as a result of the Marketing Activity; AND
- Other documentation that NAKIVO may request.

**Visual Proof**

To verify the execution of a Marketing Activity, the Partner must include visual proof and, if applicable, an attendee list. A visual proof must be provided to confirm that the Marketing Activity did in fact promote NAKIVO. Visual proof must include photos and/or screenshots with the NAKIVO logo and CTA’s for online activities. It should also include the following for each type of activity:

Marketing Activity Type	Type of visual proof
<p><b>Webinar</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Webinar recording;</li> <li>2. An attendee list with the following details for each attendee: first name, last name, email address, country;</li> <li>3. Presentation, if not provided by NAKIVO;</li> <li>4. Pictures of branded gifts or collateral materials*;</li> <li>5. Third-party invoices for services directly related to the marketing activity*</li> <li>6. Screenshots of social media or Google Ads advertisement accounts with Reach, CTR, CPC, budget*;</li> </ol> <p>*If applicable</p>
<p><b>Email or email campaign</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Copy of the email sent to NAKIVO manager;</li> <li>2. Screenshot of email marketing service report with email subject, reach, open rate, click rate;</li> <li>3. Links to the NAKIVO landing page(s) deployed on the partner website and/or UTM link(s) to the NAKIVO website;</li> <li>4. Third-party invoices for services directly related to the marketing activity*</li> </ol> <p>*If applicable</p>
<p><b>NAKIVO landing page</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Screenshot of Google Analytics account with traffic to the NAKIVO landing page deployed on partner website;</li> <li>2. UTM links to the NAKIVO website;</li> <li>3. Third-party invoices for services directly related to the marketing activity*</li> </ol> <p>*If applicable</p>

Marketing Activity Type	Type of visual proof
<p><b>PR publication</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Link to the publication platform;</li> <li>2. Screenshot of Google Analytics account with the publication platform traffic (optionally);</li> <li>3. UTM links to the NAKIVO website;</li> <li>4. Third-party invoices for services directly related to the marketing activity*</li> <li>5. Screenshots of social media advertisement accounts with Reach, CTR, CPC, budget*;</li> </ol> <p>*If applicable</p>
<p><b>Google ads</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Screenshots of Google Ads accounts with advertisement texts, Reach, CTR, CPC, budget;</li> <li>2. Screenshots of banners*</li> <li>3. Third-party invoices for services directly related to the marketing activity*</li> </ol> <p>*If applicable</p>
<p><b>Social media ads</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Screenshots of Social Media advertisement accounts with Reach, CTR, CPC, budget;</li> <li>2. Screenshots of paid social media posts;</li> <li>3. Third-party invoices for services directly related to the marketing activity*</li> </ol> <p>*If applicable</p>
<p><b>Telemarketing</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. The list of reached contacts;</li> <li>2. Recordings of two or more calls;</li> <li>3. Third-party invoices for services directly related to the marketing activity*</li> </ol> <p>*If applicable</p>
<p><b>Other online activities</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Screenshots of marketing metrics, such as reach, click rate, budget;</li> <li>2. Third-party invoices for services directly related to the marketing activity*</li> </ol> <p>*If applicable</p>

Marketing Activity Type	Type of visual proof
<p><b>Focus day</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Pictures from the Focus day;</li> <li>2. Pictures of branded gifts or collateral materials;</li> <li>3. List of attendees with the following details for each attendee: first name, last name, email address, country;</li> <li>4. Third-party invoices for services directly related to the marketing activity*</li> <li>5. Screenshots of social media advertisement accounts with Reach, CTR, CPC, budget*;</li> </ol> <p>*If applicable</p>
<p><b>Workshop/Training</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Pictures from the workshop/training;</li> <li>2. Pictures of branded gifts or collateral materials;</li> <li>3. List of attendees with the following details for each attendee: first name, last name, email address, country;</li> <li>4. Third-party invoices for services directly related to the marketing activity*</li> </ol> <p>*If applicable</p>
<p><b>Event</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Pictures from the event;</li> <li>2. Pictures of branded gifts or collateral materials;</li> <li>3. List of attendees with the following details for each attendee: first name, last name, email address, country;</li> <li>4. Third-party invoices for services directly related to the marketing activity*</li> </ol> <p>*If applicable</p>
<p><b>Partner/customer meeting</b></p>	<p><i>The provision of spending proof is mandatory.</i></p> <ol style="list-style-type: none"> <li>1. Pictures from the meeting;</li> <li>2. Pictures of branded gifts or collateral materials;</li> <li>3. List of attendees with the following details for each attendee: first name, last name, email address, country;</li> <li>4. Third-party invoices for services directly related to the marketing activity*</li> <li>5. Screenshots of social media advertisement accounts with Reach, CTR, CPC, budget*;</li> </ol> <p>*If applicable</p>

NAKIVO reserves the right not to accept any claims unless all supporting documentation has been received. If there are any questions or concerns, NAKIVO will request additional information in order to approve the claim.

## **6. Claiming Reimbursement**

To claim partial reimbursement from NAKIVO for the cost of the Marketing Activity, the Partner must send an invoice by email to their NAKIVO channel manager with the necessary details for a wire transfer.

Based on the documentation received (as outlined in section 5 Result and Proof of Execution), NAKIVO will determine the Partner's compliance with the Co-Funding Application for the Marketing Activity and the other requirements. If NAKIVO deems that the Partner has complied in full with all requirements, the agreed partial reimbursement amount shall be approved in writing for disbursement.

If the results in the Co-Funding Application are lower than the results agreed at the approval stage by 50% or more, NAKIVO may choose not to fund the activity or fund only a portion of what was initially agreed upon.

Nakivo reserves the right to approve or reject all submitted Marketing Activities claims in its sole discretion.

## **7. Receipt of Payment**

Payments for Marketing Activities are made based on the approved amount. Any incremental costs of Marketing Activities that go beyond an agreed-upon amount are the sole responsibility of the Partner. NAKIVO issues payment within 60 days after the reimbursement claim received from the Partner is approved. If the Partner does not receive payment by wire transfer in that time period, they should contact their NAKIVO channel manager.

## **Types of Marketing Support**

For each marketing activity, NAKIVO offers two types of marketing support:

- Free marketing materials
- Partial reimbursement of marketing activities costs

## Support of Co-Funded Marketing Activities

Type of Activity	Free Marketing Materials	Possible Partial Reimbursement
<p><b>Offline events (workshops, seminars, exhibitions, road shows, business breakfasts, training, etc.)</b></p>	<ol style="list-style-type: none"> <li>1. Presentation and script;</li> <li>2. Pre-recorded demo;</li> <li>3. Invitation emails;</li> <li>4. Post-event emails;</li> <li>5. Landing page template;</li> <li>6. Giveaways (optionally);</li> <li>7. Other marketing materials on demand</li> </ol>	<p>50% of the budget, but not more than USD 1,500</p>
<p><b>Online events (online conferences, press meetings, discussion panels, webinars, etc.)</b></p>	<ol style="list-style-type: none"> <li>1. Platform for webinars and presentations;</li> <li>2. Presentation and script;</li> <li>3. Pre-recorded demo;</li> <li>4. Invitation emails;</li> <li>5. Post-event emails;</li> <li>6. Landing page template;</li> <li>7. Other marketing materials on demand</li> </ol>	<p>50% of the budget, but not more than USD 300</p>
<p><b>Online marketing performance activities: Email; NAKIVO landing page(s) deployed on the partner website, PR articles, etc.</b></p>	<ol style="list-style-type: none"> <li>1. Email templates;</li> <li>2. Landing page templates;</li> <li>3. HTML templates with UTM links to NAKIVO website and/or UTM links to NAKIVO landing page(s) deployed on the partner website</li> </ol>	<p>50% of the budget, but not more than USD 300</p>

Type of Activity	Free Marketing Materials	Possible Partial Reimbursement
<b>Digital Advertising (Google Ads, remarketing, video creation, landing pages, banners, social media ads etc.)</b>	1. Keywords; 2. Landing page templates; 3. Google Ads templates; 4. Banners; 5. Social media posts and visuals; 6. Other marketing materials on demand	50% of the event budget, but not more than USD 500
<b>Marketing collateral (co-branding, etc.)</b>	Design for any required marketing materials	Not more than USD 200 per request

Other activities that are not included in this list may also be supported by NAKIVO. Support for such activities shall be decided on a case-by-case basis. Each request for funding shall be considered separately by NAKIVO after receiving a detailed description of the activity.

### What Isn't Covered

The following expenses shall not be considered for partial reimbursement by NAKIVO:

**For online activities:**

- Marketing activities without proper proof of execution and cost
- Promotion of partners not in connection with NAKIVO
- Free marketing activities (e.g. free social media posts, free emails, free web publications, etc.)
- Ads and promo materials that contain backup solutions by other vendors
- Activities without CTAs linking to NAKIVO resources

**For offline activities:**

- Marketing activities without proper proof of execution and cost
- Travel to or from events
- Accommodation
- Tax-related expenses
- Anything unrelated to NAKIVO

## Payment

Payments will be made via wire transfer.

Partner must provide NAKIVO with all financial and banking information requested in order to make a payment under the NMDF Program. Failure to provide such information within thirty (30) days after request by NAKIVO may result in forfeiture of amounts owed to Partner by NAKIVO.

Any claims concerning the payment amount must be received in writing (along with Partner's current contact information) to NAKIVO no later than thirty (30) days following receipt of the payment. If NAKIVO does not receive written notice within this thirty (30) day period, Partner will be deemed to have waived any such claim. NAKIVO's decisions with respect to approved Marketing Activities and the amount of payments are at NAKIVO's sole discretion. All decisions are final.

Any payment made under the NMDF Program does not include any taxes. Partner is responsible for paying all taxes arising out of any payment received under the NMDF Program.

Each party will pay for its own costs and expenses related to the NMDF program unless otherwise agreed in writing.

## Audit

The Partner must keep all relevant documentation pertaining to Marketing Activities funded through the NMDF Program for 3 years from the date of receiving the partial reimbursement amount by wire transfer. NAKIVO reserves the right to conduct random audits of the proof of performance and execution. If and when NAKIVO decides to perform such an audit, the Partner shall make all relevant documentation available to NAKIVO.

## Representations and Warranties

Partner represents and warrants that:

- a. It has the right, power and authority to participate in the NMDF Program and perform according to its terms;
- b. The performance of its obligations under the NMDF Program will not breach any agreements with a third party and will strictly comply with the Program Terms and Conditions;
- c. The performance of its obligations under the NMDF Program and the Marketing Activities will be compliant with all applicable standards, laws, regulations and rules;

- d. The Marketing Activities will not infringe or misappropriate any copyright, patent, trade secret, trademark or other proprietary right held by another party; and
- e. The Marketing Activities will be performed in a professional, lawful and ethical manner and will not include any libelous, deceptive, materially false, or misleading statements or practices.

## **No Warranties**

Except as provided herein, NAKIVO expressly disclaims all other express, implied, or statutory warranties, such as warranties of merchantability, fitness for a particular purpose, title, and non-infringement. This also includes any implied warranty arising from course of performance, course of dealing, usage of trade, lack of errors, satisfactory condition, or quality.

## **Indemnification**

Partner will, at NAKIVO's request, indemnify, defend, and hold NAKIVO harmless from and against any third-party claims, suits, demands, costs, liabilities, expenses, and damages (including attorneys' cost and fees) (collectively "Claims") arising out of or in connection with Partner's performance under the NMDF Program, including any Claims made in connection with any Marketing Activities.

## **Limitation Of Liability**

To the maximum extent permitted by law, in no event will either party be liable for any indirect, incidental, consequential, punitive, special, or exemplary damages arising out of or that relate in any way to this agreement or its performance. This exclusion will apply regardless of the legal theory upon which any claim for such damages is based, whether the parties had been advised of the possibility of such damages, whether such damages were reasonably foreseeable, or whether application of the exclusion causes any remedy to fail of its essential purpose. This exclusion will not apply to the Partner's indemnification obligations, violation of NAKIVO's intellectual property rights, or willful misconduct.

## **INTELLECTUAL PROPERTY**

NAKIVO grants Partner a nonexclusive, nontransferable, non-assignable, limited license to use the Marketing Materials solely in connection with the NAKIVO-approved Marketing Activities during the NMDF Program term. Partner may not modify the Marketing Materials.

Except as expressly licensed to Partner herein, NAKIVO retains all right, title and interest in and to the Marketing Materials (including all intellectual property rights).

## Miscellaneous

Participation in the NMDF Program is voluntary.

Participation in the NMDF Program does not create an employer-employee relationship, partnership, joint venture, or agency relationship and does not create a franchise. Neither the Partner nor any of its representatives may make any representation, warranty, or promise on NAKIVO's behalf.

The Partner is solely responsible for complying with all applicable local, state, and federal laws and regulations pertaining to its activities under the NMDF Program.

By participating in the Program, Partner agrees to abide by General Promotion Terms & Conditions (the "Terms") available at <https://www.nakivo.com/resources/promo/nakivo-promotion-general-terms/> and NAKIVO Privacy Policy (the "Privacy Policy") available at <https://www.nakivo.com/support/privacy-policy/>.

The NMDF Program is available to NAKIVO Partners until September 31, 2022.

## Disclaimer

NAKIVO has the right to cancel the NMDF Program or change the NMDF Program requirements, eligible Marketing Activities, or the partial reimbursement rate at any time and at its sole discretion.

## Appendix: Execution Report Example

<https://docs.google.com/spreadsheets/d/1daH5JQU1MwpNu7FUNIzh9Zhufm7IZS5w/edit#gid=199934202>