



KEYSTONE STAA S TERMS

These Keystone StaaS Terms (“**Keystone StaaS Terms**”), together with the General Terms, set forth the terms and conditions under which NetApp will provide Keystone StaaS Services to Customer, whether acquired directly from NetApp or from a NetApp Partner or, where applicable, a NetApp Cloud Provider.

1. DEFINITIONS.

Capitalized terms not specifically defined in Attachment 1 attached to these Keystone StaaS Terms have the same meaning as otherwise set forth in the General Terms.

2. SCOPE OF STAA S SERVICES.

2.1. Scope. NetApp will perform the StaaS Services in accordance with the applicable NetApp quotation and corresponding Order, the Service Description, and these Keystone StaaS Terms.

2.2. Orders. Each Order will set forth the Subscription Term, the Committed Capacity (including the Minimum Payments), the applicable Performance Level, and the applicable Rates. Orders may be modified or cancelled only with NetApp’s express written consent.

2.3. Monitoring Tool. StaaS Services require full installation and continuous enablement of the Monitoring Tool on End User provided virtual machines. The Monitoring Tool connects to and communicates only with the management plane of the StaaS Products. The Monitoring Tool does not connect to or communicate with the End User data plane, nor does it have access to, operate on, or process End User data transferred to or stored on StaaS Services.

2.4. Capacity Reports. NetApp measures End User’s consumption of the StaaS Services using the Monitoring Tool pursuant to the terms of the Service Description. NetApp or its StaaS Partner will use the Capacity Reports to calculate the amounts due under each invoice for StaaS Services, and such Capacity Reports will be deemed to contain the final and conclusive summary of the Consumed Capacity used by End User during the applicable billing period, unless End User can establish within a reasonable time that such Capacity Report contains an error.

2.5. Changes to the StaaS Services. End User may increase Committed Capacity to an existing Performance Level or add a new Performance Level at any time during the Subscription Term, and NetApp will provide End User with confirmation of such increase. End User may not request an increase to the Committed Capacity, and NetApp has no obligation to confirm such increase, where such request falls within the final ninety (90) days of the related Subscription Term, unless the parties have agreed in writing to renew or otherwise extend the Subscription Term prior to or during such final 90-day period. Decreases to the Committed Capacity or to the Minimum Payments are not allowed except in certain circumstances explicitly set forth in the Service Description. A more detailed description of the conditions and processes for adjusting the Committed Capacity and the StaaS Services are described in the Service Description.

3. OWNERSHIP; RIGHT TO USE.

3.1. Right to Use StaaS Products. The StaaS Services provide End User with the right to use StaaS Products, and do not transfer any ownership or title, or grant any license to End User. NetApp retains sole and exclusive title to the StaaS Products and all of their components. The StaaS Services are provided to End User for End User’s use for internal business purposes and are not for resale or redistribution. The StaaS Products may include software that is openly and freely licensed under the terms of a public license designated by a third party. Nothing in these Keystone StaaS Terms grants End User rights that supersede those contained in an applicable license for the open source software.

3.2. 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 return to NetApp or other final disposition of the StaaS Products as provided in Section 7.3 of



these Keystone SaaS Terms and the applicable Order. No such loss or damage will relieve End User of any of its obligations under these Keystone SaaS Terms or the applicable Order.

3.3. Selection of SaaS Products. SaaS Products are selected by NetApp, activated and made available solely to support NetApp's delivery of the SaaS Services. NetApp will determine the SaaS Products used to deliver such SaaS Services.

3.4. Location and Use of SaaS Services. End User may only use SaaS Services on the SaaS Products provided by NetApp in connection with the applicable Order at the End User Site. SaaS Products may be physically located on or accessible at premises that End User either owns or controls. Unless otherwise expressly permitted in a Service Description or the applicable Order, End User will not, nor will End User permit any third party to, combine, use or otherwise incorporate (whether physically or logically) the SaaS Services or the SaaS Products with any hardware storage products or services (which may include, but are not limited to, any NetApp hardware storage products or services supplied by NetApp under a separate Order or agreement).

3.5. No Custom Development. SaaS Services are of a scalable, repeatable nature and, as such, the same or similar services have been and will continue to be provided to other NetApp End Users. No custom development activity will be performed as SaaS Services.

3.6. Activation. Once activated by NetApp, the Subscription Term commences and the SaaS Services are available for End User use.

4. SERVICE LEVELS; WARRANTY AND DISCLAIMER.

4.1. Service Levels. NetApp will provide the SaaS Services in accordance with the Service Levels described more specifically in the Service Description.

4.2. Warranty and Disclaimer. NetApp warrants that SaaS Services will be performed in a professional and workerlike manner consistent with generally accepted industry practices. Except as set forth herein, NETAPP MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SaaS SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING.

5. DIRECT KEYSTONE SaaS TRANSACTIONS WITH END USERS ONLY.

5.1. Direct Transactions. This Section 5 applies only to Orders for SaaS Services that End User places directly with NetApp.

5.2. Fees. An Order and/or the associated price quotation will state the Fees to be paid for SaaS Services made available for use. NetApp's acknowledgment of an Order placed by End User will indicate End User's acceptance of the stated Fees and associated Rates. No changes in Fees, Rates or the Committed Capacity will be effective absent mutual agreement except as expressly provided in the Service Description. The total Fees payable for Consumed Capacity for a billing period are determined for each billing period and will include Minimum Payments, additional usage-based consumption charges and/or fixed rate charges for any Burst Capacity.

6. KEYSTONE SaaS TRANSACTIONS THROUGH PARTNERS.

6.1. Distribution. These Keystone SaaS Terms also apply to End User's use of SaaS Services which are offered by or through a Partner. Once NetApp accepts an Order placed by Partner for the benefit of End User, the SaaS Services will provide End User with the right to access and use NetApp's SaaS Products. End User will pay Partner for the SaaS Services in amounts specified in an Order.

6.2. Partner Services. NetApp makes no warranties or representations, and shall have no responsibility or liability, with respect to any additional products and/or services offered by a Partner, in addition to or beyond the SaaS Services.



6.3. Amounts Due to Partner. Where a Partner resells StaaS Services to End User, Partner will use its own order form, including specifying amounts payable by End User. References to “Fees” in these Keystone StaaS Terms mean those amounts due and owing from End User to Partner under End User’s order to Partner for the StaaS Services.

7. TERM; TERMINATION.

7.1. Term. These Keystone StaaS Terms are effective as of the date End User first agrees to these Keystone StaaS Terms and will continue until the Subscription Term for each Order has expired or has been terminated. The Subscription Term of an Order is as specified in the particular Order.

7.2. Termination for Cause. NetApp may terminate the applicable Order or these Keystone StaaS Terms for cause if: (a) End User fails to pay any of the Fees or other amounts when due, and such failure continues for a period of ten (10) days after delivery of notice in respect of such late payment; (b) End User 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 End User; or (c) End User experiences any material change in control, where the term “control” means the power to direct the management and policies of End User, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; *provided* that a change of control shall not constitute cause for termination if the successor entity (i) is of equal or better credit quality, as determined in the sole discretion of NetApp, (ii) is not a competitor of NetApp, and (iii) agrees in writing to be bound by the terms and conditions of each and every Order and the provisions of these Keystone StaaS Terms.

7.3. Effects of Termination.

- (a) *End User Must Discontinue Use and Return Subscription Products.* Upon termination or expiration of these Keystone StaaS Terms or any applicable Order for any reason, End User will: (i) promptly discontinue use of, and delete, all data uploaded on the StaaS Products by End User within the affected StaaS Services; and (ii) return in accordance with the guidelines provided or otherwise make available to NetApp any StaaS Products provided by NetApp as part of the affected StaaS Services in the same condition as when originally delivered, ordinary wear and tear excepted. Except as provided in Section 7.3(b) below, End User is responsible for erasing, without destroying or damaging the storage media, all End User Information from the StaaS Products before they are returned to NetApp.
- (b) *NR-NVC Option.* If End User has purchased the NR-NVC additional service, it will not return defective or failed disks, solid state drives and other non-volatile memory components as defined on the NetApp Support Site that are part of the Hardware. End User will retain such non-volatile components and remain solely responsible for their disposal or destruction and will promptly deliver a certificate of destruction certifying that End User has destroyed or disabled such components. End User agrees that if components covered by the NR-NVC option are returned to NetApp, Section 7.3(c) below will apply.
- (c) *End User Must Remove End User Data.* End User must return the StaaS Products with all End User Information or proprietary and confidential information removed. End User acknowledges that any End User Information remaining on any StaaS Products returned to NetApp may be disposed of or destroyed by or on behalf of NetApp without any liability to NetApp, and NetApp disclaims all liability for the removal or for the protection of any such End User Information.
- (d) *End User’s Delay or Failure to Return StaaS Products.* All End User use of the StaaS Services after the scheduled expiration or earlier termination of the Subscription Term is subject to Fees calculated and billed in accordance with this Section 7.3(d) until the return of all related StaaS Products to NetApp. Failure to return the StaaS Products within fifteen (15) calendar days following the expiration or termination of the Subscription Term in accordance with the guidelines provided to End User will entitle NetApp, in its sole discretion, to invoice End User for (i) the cost of the replacement for such StaaS Products, calculated in accordance with NetApp’s then current price list, or (ii) the Fees accruing (including a reasonable interest charge) until final return. For purposes of clause (ii) above, the Fees



will not be less than the applicable Minimum Payment amounts payable immediately prior to the expiration or termination of the Subscription Term.

- (e) *Obligation to Pay.* Termination will not relieve End User from its payment obligations with respect to any sums accrued prior to termination, which will become immediately due and payable; nor will it entitle End User to any refund unless otherwise set forth in these Keystone SaaS Terms. If NetApp terminates an Order for cause under Section 7.2 of these Keystone SaaS Terms, End User will promptly pay to NetApp the additional sums, as liquidated damages and not as a penalty, of: (i) the Fees that are to become due for the remaining Subscription Term; (ii) NetApp's reasonable costs of deinstallation and repossession of the SaaS Products; and (iii) any costs associated with any damage or loss of any SaaS Products that occurred while in End User's possession.

7.4. Surviving Provisions. Any sections of these Keystone SaaS Terms which, upon a plain reading, are intended to survive termination or expiration of these Keystone SaaS Terms, will survive such termination or expiration.

8. END USER RESPONSIBILITIES.

8.1. Ongoing Cooperation. End User will, at all times from the date the SaaS Products are delivered to the date such SaaS Products are returned to NetApp: (a) cooperate with NetApp to enable the installation, documentation, and utilization, of SaaS Products, including providing such access and authorization as is reasonably necessary to complete the installation, (b) promptly notify NetApp if the SaaS Products or any part of them are lost, stolen, destroyed or damaged beyond repair, or are the subject of action by a valid act by a governmental authority having the effect of restricting or preventing End User's use of same; (c) ensure that the SaaS Products do not suffer any loss or damage caused, whether directly or indirectly, by End User or any party acting by or through End User; and (d) promptly notify NetApp in writing of any proposed changes to any of the SaaS Products, or of changes caused by planned or unplanned events impacting End User's environment (such as space, power, network, security, etc.) that may impact the SaaS Products (e.g., maintenance, upgrades).

8.2. Inspection. NetApp may inspect the SaaS Products at any time during End User's regular business hours, with reasonable prior notice, subject to End User's reasonable security procedures.

8.3. Monitoring Tool Enabled. End User will at all times during the Subscription Term (including any holdover period) keep the Monitoring Tool fully operational, without disabling, blocking, modifying or otherwise interfering with its functionality or its ability to communicate with NetApp.

8.4. Additional Restrictions. In addition to restrictions set forth in the General Terms, End User will not, nor will End User permit any third party to: (a) relocate any of the SaaS Products from the End User Site(s) without the prior written consent of NetApp, which consent will not be unreasonably withheld; (b) reconfigure, modify, add to or impair any portion of SaaS Products, whether with third party products or otherwise, except as expressly permitted in the Order or as mutually agreed in writing by the Parties; (c) use the SaaS Services in breach or excess of any limitations prescribed by NetApp in these Keystone SaaS Terms or the associated Order or related documentation; (d) use SaaS Services for any benchmarking or competitive purposes or activities, including but not limited to, developing similar or competing products or services or publishing or providing any benchmark or comparison test results; (e) reverse-engineer or disassemble the SaaS Products or the SaaS Services; (f) use the SaaS Services and related documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment unless otherwise agreed to in writing by NetApp; (g) assign or otherwise transfer, in whole or in part, any of End User's rights to use the SaaS Services, the SaaS Products, or the related documentation to another party, unless otherwise agreed to in writing by NetApp; (h) use the SaaS Services or SaaS Products (i) in violation of laws or regulations, (ii) to violate the rights of others, (iii) to try to gain unauthorized access to or interrupt any service, device, data, account or network, or (iv) in high-risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems, or any other application in which the failure of the SaaS Services or SaaS Products could lead to severe physical or environmental damages.

8.5. Certified Services. Where End User is a NetApp Partner implementing the SaaS Services in a Service Provider Offering, End User may deliver value-added services for Keystone SaaS solutions provided that:



- (a) End User has attained and continues to maintain the appropriate Services Certified track as governed by and defined in such Program Guide; and
- (b) End User shall indemnify NetApp and its directors, employees, subsidiaries, and affiliates for all claims, damages, losses, costs and expenses, including attorneys' fees, arising from any third-party claims asserted against NetApp, its employees, subsidiaries, and/or affiliates that are based in whole or in part on any End User service or Service Provider Offering.

8.6. U.S. Public Sector Restrictions and Regulations. End User will not act as a reseller—either in the capacity of a prime contractor or a subcontractor—of Products or Services to a customer of End User that is either a U.S. federal government entity, a U.S. state or local government entity, or a U.S. public educational institution, unless NetApp has given End User express written approval to do so. In such event the [FED](#) and/or [SLED](#) Terms and Conditions, as applicable, shall also apply to End User.

9. LIMITATION OF LIABILITY.

NetApp's cumulative liability under these Keystone SaaS Terms is limited to direct damages in an amount not to exceed the greater of: (a) the total of the Fees received by NetApp under Orders subject to these Keystone SaaS Terms for the twelve (12) months immediately preceding the most recent event giving rise to the claim(s), or (b) one million dollars (USD 1,000,000). This limitation is cumulative and not per incident. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE GENERAL TERMS, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES. The parties acknowledge and agree that any amounts payable pursuant to Sections 7.3(d) and 7.3(e) of these Keystone SaaS Terms shall be deemed direct damages for purposes of this Section 9.

10. INTELLECTUAL PROPERTY RIGHTS.

10.1. General. NetApp and its licensors reserve and retain all rights, title, and interest (including any IP Rights therein) in and to the SaaS Services and SaaS Products not expressly granted to End User.

10.2. Indemnity. For purposes of IP Claims (as defined in the General Terms), SaaS Services are included as Covered Products.

11. GENERAL.

11.1. Order of Precedence. Notwithstanding any provision of the General Terms, in the event of a conflict between the terms set forth in such General Terms, any related supplemental services terms, these Keystone SaaS Terms or an Order, the following order of precedence will apply:

- (a) the applicable Order for SaaS Services (excluding any pre-printed terms on an End User purchase order);
- (b) these Keystone SaaS Terms; and
- (c) the General Terms (together with any supplemental terms).

11.2. Affiliates. NetApp and End User agree that, from time to time, an Affiliate of a party may execute an Order under these Keystone SaaS Terms as "End User," and such Order will incorporate all of the terms and conditions contained herein and bind such Affiliate hereto, subject to any changes or supplemental terms reasonably required to comply with local laws, regulations and/or relevant industry practices. It is agreed that, unless expressly agreed in writing, the party *executing* these Keystone SaaS Terms as End User shall: (a) without notice or demand from NetApp, be jointly and severally liable with such Affiliate for all of the terms and conditions of any Order executed by it, including, without limitation, all terms and conditions negotiated by such Affiliate with respect thereto and the



prompt payment of Fees thereunder, and (b) hold NetApp and any assignee harmless from and against any and all liability, losses, damages and expenses which NetApp may incur by reason of any failure to so perform.

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ATTACHMENT 1 to KEYSTONE STAA S TERMS

DEFINITIONS

The following definitions apply to Orders entered into pursuant to the Keystone StaaS Terms:

Burst Capacity. The amount of Consumed Capacity (in tebibytes (TiB)) that exceeds the Committed Capacity during a billing period, per Performance Level, per Order.

Capacity Report. A report generated by NetApp summarizing the Consumed Capacity for the applicable billing period, as detailed in the Service Description.

Committed Capacity. The amount of capacity (in TiB), per Performance Level, per Order that End User is minimally invoiced for during each billing period.

Consumed Capacity. The amount of capacity (in TiB) used and metered to store End User data, per Performance Level, per Order.

End User. The end user of the StaaS Services. An End User may submit a direct Order for StaaS Services to NetApp, or a Partner may submit an Order to NetApp in connection with such End User's order placed on Partner for StaaS Services together with additional services offered by Partner in connection with the StaaS Services and (if any).

End User Site. The specific physical location where the StaaS Products are installed and maintained, whether such location is owned by or under the control of End User or any third party.

Deliverables. The StaaS Services, delivered under terms set forth in the applicable Service Description.

Fees. The applicable fees, including Minimum Payments, additional usage-based consumption charges and/or fixed rate charges for any Burst Capacity, calculated in the manner described in the Service Description.

Intellectual Property (IP) Rights. Patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

Minimum Payment. The amount payable during the applicable billing period for Committed Capacities for each Performance Level, Additional StaaS Services (if applicable), and NetApp's Cloud Volumes ONTAP® software (if applicable).

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.

NR-NVC. Non-Returnable, Non-Volatile Components.

Performance Level. One of the pre-defined storage performance levels identified in the applicable Service Description, based on IOPs, MBps, and/or latency.



Rates. The rates specified in an Order to be applied when calculating the Fees.

Service Description. The description for the SaaS 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 SaaS 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 a Partner, except as expressly provided in these Keystone SaaS Terms.

Service Level. Any of the service levels related to a Performance Level, as described in the applicable Service Description.

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

Subscription Term. The period specified in the applicable Order, including any renewal, extension or holdover period. Subscription Terms may be subject to autorenewal if specified in the Order or the applicable Service Description; provided that where End User is a U.S. federal government entity, the Subscription Term can only be extended in writing by the parties.

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