

# Keystone Flex Subscription Services – Customer Operated – November 4, 2021

## 1. Scope of Subscription Services.

1.1 General. If Customer selects Keystone Flex Subscription Services – Customer Operated in the applicable Keystone Order, these terms apply to the provision and usage of such Subscription Services pursuant to the Agreement.

1.2 Definitions. The following additional defined terms apply to these Subscription Services.

(a) “**Burst**” means, for any Performance Level, the amount by which the Consumed Capacity exceeds the Committed Capacity during a billing period.

(b) “**Burst Limit**” means 120% of Customer’s then-current Committed Capacity. The Burst Limit represents the maximum amount of Usable Capacity available for use by Customer within the Subscription Products for which NetApp will continue to meet associated Service Levels applicable to the then-current Committed Capacity.

(c) “**Capacity Report**” means the report generated by NetApp from the Portal summarizing the Consumed Capacity for the prior billing period.

(d) “**Consumed Capacity**” means, for the Subscription Products made available for use under the terms of a Keystone Order, the sum of the logical sizes of all volumes (ONTAP®) or buckets (StorageGrid®). Consumed Capacity is measured as described in Section 3.2 of these terms.

(e) “**Performance Level**” refers to performance levels defined in terms of target input/output operations per second (“IOPS”) per tebibyte (“TiB”) ratio, latency and availability, as specified in Section 5 of these terms. Applicable Performance Levels and the related Rates to be applied to the Consumed Capacity are as identified in the applicable Keystone Order. These Subscription Services may be subject to more than one Performance Level.

(f) “**Service Level**” means any of the service level commitments made by NetApp in Sections 5.3 and 5.4 of these terms, as applicable.

(g) “**Usable Capacity**” means the capacity (as measured by NetApp in increments of TiB) available for data to be written on the Subscription Products.

## 2. Protocols.

2.1 The Subscription Services offer the following storage protocols:

(a) *File and Block*: Provides unified File (NFS, CIFS) and Block (iSCSI, FC) protocol-based storage capacity based on NetApp’s ONTAP® software platforms.

(b) *Object (S3)*: Provides S3 protocol-based storage capacity and based on NetApp’s StorageGrid® Web Scale platform.

(c) *Block*: Provides Block (iSCSI, FC) protocol-based storage capacity based on NetApp’s E-Series platform.

2.2 Supported protocol versions are based on the Subscription Hardware platform and Subscription Software OS version deployed to deliver the Subscription Services.

## 3. Monitoring and Measuring Consumed Capacity.

### 3.1 Committed Capacity.

(a) Use of the Subscription Services requires Customers to subscribe to a certain Committed Capacity for each Performance Level selected. Committed Capacity is defined in increments of TiB. Committed Capacities for each Performance Level are set forth in the applicable Keystone Order and are on per Customer Site basis.

(b) Committed Capacities and Rates (including the corresponding Minimum Payments) that may be selected via a Keystone Order may be included in an amendment to the Agreement, or as otherwise expressly agreed between NetApp and Customer in such Keystone Order.

### 3.2 Monitoring and Measuring the Consumption of Subscription Services.

(a) *Consumed Capacity*. For purposes of these Subscription Services, Consumed Capacity is measured in increments of TiB, and, where applicable, includes snapshots, clones, mirroring and vaulting.

(b) *Measuring Consumed Capacity*. The amount of Consumed Capacity for an applicable billing period is determined by summing the sizes of all then existing volumes, disks and buckets on Subscription Products, on a per Performance Level basis as further described in the Documentation.

(c) *Portal; Capacity Reports.* The Subscription Services and Subscription Products are monitored and managed through the Portal. Consumed Capacity is recorded daily and is available for Customer to review through the Portal. For each billing period, NetApp will generate a Capacity Report and NetApp will either provide Customer with such Capacity Report through the Portal or with each invoice. NetApp will use the Capacity Reports to calculate the Fees due under each invoice for Subscription Services and such Capacity Reports will be deemed to contain the final and conclusive summary of the Consumed Capacity used by Customer during the applicable billing period, unless Customer can establish that such Capacity Report contains a material error.

(d) *Bursts.* These Subscription Services are designed to allow Customer's Consumed Capacity to exceed the Committed Capacity up to the Burst Limit. Customer may in its discretion use the Subscription Services to exceed the Burst Limit, if available.

(e) *No Commitment Over Burst Limit.* NetApp makes no commitment to Customer that there will be capacity available in excess of the Burst Limit. Notwithstanding anything to the contrary in the Agreement, if available and Customer's use of the Subscription Services exceeds the Burst Limit, NetApp is not responsible for meeting, and will have no liability with respect to, the Service Levels described below during any such time that Customer's use of the Subscription Services exceeds the Burst Limit.

### 3.3 Fees.

(a) *Minimum Payment.* Each Committed Capacity selected via a Keystone Order is subject to a minimum payment amount for the corresponding Performance Level that is payable during the applicable billing period identified in the Keystone Order ("Minimum Payment").

(b) *Rates for Bursts.*

(i) All Consumed Capacity up to the Burst Limit will be invoiced at the applicable Rate, as may be included in an exhibit or as otherwise specified in the Keystone Order and corresponding to the applicable Performance Level.

(ii) In the event Customer's Consumed Capacity exceeds the Burst Limit, such excess Consumed Capacity above the Burst Limit amount will incur a premium charge and will be invoiced at a Rate factor of 1.5 (i.e., 150% of the applicable Rate).

(c) *Invoicing.*

(i) Fees are determined for each billing period by Performance Level and will include Minimum Payments for the Committed Capacity together with any additional amounts payable for any Bursts as described in Section (b) above. Fees will begin to accrue on the earlier of (A) the first day of the calendar month following the date on which NetApp notifies Customer that NetApp has made these Subscription Services available for access and use by Customer, (B) if the installation of the Subscription Products is delayed beyond 15 days from the date of delivery as a result of Customer's acts or omissions, then the first day of the calendar month following the expiration of such 15 day period, (C) the date designated by NetApp in accordance with Section 8.2(a) of these terms, or (D) such other date agreed to by the Parties in writing ("Start Date").

(ii) Customer will be invoiced in accordance with the billing frequency selected in the Keystone Order. For example, if Customer elects to be billed on a monthly basis, following the Start Date, Customer will be invoiced monthly in arrears within following the end of the applicable month for the applicable Fees (including without limitation any Fee amounts for Bursts) owed for the prior month. If Customer elects to be billed on an annual basis, (A) Minimum Payment invoices will be issued on or prior to the Start Date for the initial year and, for subsequent years, Minimum Payment invoices will be issued thirty days prior to the anniversary of the Start Date, and (B) invoices for Bursts will be issued after the end of each 3-month period of the Subscription Term (commencing on the Start Date). The below table summarizes the invoice schedules under each invoicing option:

Fees	Monthly in Arrears	Annual (in advance)
Minimum Payment	Invoices issued following the month for which the Subscription Service is delivered. For clarity, the Minimum Payment plus Fee amounts attributable to Burst will be billed in one invoice as Consumed Capacity.	First invoice due and payable on the Start Date  Subsequent invoices due and payable on the anniversary of the Start Date for each 12-month period of the Subscription Term (where the Subscription Term is greater than one year)
Burst		Invoices issued at the end of each 3-month period of the Subscription Term (commencing on the Start Date)

## 4. Data Protection.

4.1 Scope of Data Protection; Base Protection. Each order for Subscription Services for file and block Performance Levels includes the Base Data Protection Package. The Base Data Protection Package provides Customer with the ability to clone or generate snapshots. Provisioning of capacity and volumes for snapshots and cloning will count towards the volumes provisioned for the purposes of determining Consumed Capacity.

4.2 Options. In addition to the Base Data Protection Package included in these Subscription Services, Customer may choose from the following enhanced NetApp data protection services for file and block Performance Levels (“**Optional Data Protection Packages**” and together with the Base Data Protection Package, the “**Data Protection Packages**”):

(a) *Standard Data Protection Package:* Includes the ability to use SnapMirror® unified replication (asynchronous mirroring) and SnapVault® backup. Fees for the Standard Data Protection Package are based on TiB of capacity to be protected and are set forth in the applicable Keystone Order. Customer can use non-Keystone targets with this package.

(b) *Advanced Data Protection Package:* Includes the ability to use NetApp MetroClusterTM. MetroCluster synchronous mirroring is based on TiB of capacity to be protected. The Advanced Data Protection Package is required for the source capacity. Target capacity must also be subject to a separate Keystone Order. Fees for the Advanced Data Protection Package are based on TiB to be protected and are as set forth in the applicable Keystone Order. Additional Fees may apply for configurations requiring Long Range (> 2km) SFPs.

4.3 Fees for Optional Data Protection Packages. The Rates to be used to determine the Fees payable for Optional Data Protection Packages may be included in an amendment to the Agreement, or as otherwise expressly agreed between NetApp and Customer in such Keystone Order. Such Fees will be invoiced in accordance with the billing frequency selected in the Keystone Order.

## 5. Performance Levels for the Subscription Services.

5.1 Performance Levels. The table below defines the available Performance Levels for the Subscription Services:

	File and Block						Object	Block		
	Extreme	Extreme w/ data tiering	Premium	Premium w/ data tiering	Standard	Value		Extreme	Premium	Standard
Workload Type	Analytics, databases		VDI, virtualization apps, SW dev		File shares, web servers	Backup target	Media repository, archiving	HPC	Video surveillance	Backup
Target IOPS/TiB	6,144	6,144	2,048	2,048	128	N/A	N/A	N/A	N/A	N/A
Max IOPS/TiB	12,288	12,288	4,096	4,096	512	N/A	N/A	5,500	4,000	N/A
Max throughput MBps (32KB/IOP)	384	384	128	128	16	N/A	N/A	43	31	N/A
Latency	<1 ms	<1 ms	< 2 ms	< 2 ms	<17 ms	N/A	N/A	< 0.5 ms	<0.5 ms	N/A
Minimum capacity	100TiB						1 PiB	100 TiB	100 TiB	300 TiB
Protocols	NFS, CIFS, iSCSI, FC						S3	FC, iSCSI		

5.2 IOPS per TiB. Subject to the terms of these terms and the applicable Keystone Order, Performance Levels are defined in terms of target input/output operations per second (“**IOPS**”) per tebibyte (“**TiB**”) ratio and latency. See the Documentation for more information.

5.3 Service Level Objective. NetApp will use reasonable commercial efforts to provide the targeted IOPS/TiB at the specified block sizes and configured volume size, per the related Performance Level set forth in the Keystone Order (“**SLO**”). Customer inquiries regarding this SLO should be directed to NetApp technical support, or email [xdl-americas-revenue@netapp.com](mailto:xdl-americas-revenue@netapp.com). Customer should include the following minimum information: (a) NetApp Subscription Services ID; (b) volume impacted; (c) Customer Site; and (d) time, date, and description of the issue.

## 6. Changes in Subscription Services.

6.1 Committed Capacity Changes.

(a) Customer may increase the amount of Committed Capacity at any time during the Subscription Term by providing a written request to NetApp. NetApp will provide Customer with a written confirmation letter of such increase; provided that NetApp will have no obligation to confirm such increase if such increase would require the addition of Subscription Products within 90 days of the expiration of the 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. Any such increases will not be effective until Customer signs and returns the applicable

NetApp confirmation letter. Once effective, any increases will remain in effect for the remainder of the Subscription Term, and the corresponding Minimum Payment applicable to the new Committed Capacity will be adjusted in accordance with the new agreed upon Committed Capacity. Where Customer has selected annual billing and increases Committed Capacity during the Subscription Term in accordance with this Section, NetApp will promptly invoice Customer for any increases in Minimum Payments owed for the remainder of the Subscription Term.

(b) In addition to the right to increase the Committed Capacity at any time described in Section 6.1(a) above, where Customer has selected annual billing and a Subscription Term of at least 24 months, Customer may also decrease the Committed Capacity for each 12-month period following the initial 12 months of the Subscription Term, subject to the following: (i) Customer requests for decreases must be in writing and received by NetApp not less than 60 days prior to the start of the 12-month period for which the adjustment will apply; (ii) no such decrease may reduce the Committed Capacity by an amount greater than 25% of the then-current Committed Capacity, and such decrease will be effective only on the commencement of the subsequent 12-month period; (iii) the 90 day restriction relating to the addition of Subscription Products described in Section 6.1(a) applies; and (iv) any reduction under this Section 6.1(b) is subject to written NetApp approval.

**6.2 Data Protection Package Changes**. Customer may upgrade the then-current Data Protection Package at any time during the Subscription Term by providing a written request to NetApp. Customer cannot downgrade the then-current Data Protection Package during the Subscription Term; provided that, where Customer has selected annual billing and a Subscription Term of at least 24 months, Customer may downgrade the then-current Data Protection Package by not more than a single level at the time and in the manner prescribed in Section 6.1(b) above.

**6.3 Transition Services**. Customer may request an extension for transition Subscription Services beyond the Subscription Term for a period of one calendar month to facilitate an orderly transfer of data out of Subscription Services. This request shall be made in writing and at least 90 days prior to expiration of the current Subscription Term and must be accepted by NetApp.

## **7. Keystone Success Manager (“KSM”).**

The Subscription Services include the assignment of a KSM having the following responsibilities: (a) serving as a single point of contact and customer satisfaction owner for the Subscription Services; (b) conducting review calls, including (i) capacity consumption, forecasting, planning review, (ii) performance consumption, forecasting, planning review, (iii) maintenance review, (iv) incident review, (v) billing review, and (vi) best practices review; (c) teaming with service delivery manager (if applicable); (d) serving as escalation point of contact; and (e) serving as a Customer advocate.

## **8. Responsibilities.**

**8.1 NetApp Responsibilities**. In delivering the Subscription Services, NetApp will provide: (a) required Subscription Products; (b) deployment of the Subscription Services; (c) remote capacity, performance, and health monitoring; (d) technical support; (e) routine maintenance; (f) capacity, performance, and health management; (g) storage capacity consumption dashboards, and billings reports; and (h) KSM.

## **8.2 Customer Responsibilities**.

(a) Customer represents and warrants to NetApp that, on or prior to delivery of the Subscription Products, the Customer Site will be prepared and ready for the prompt installation and deployment of the Subscription Products, including without limitation, all necessary power requirements, racks, cooling, network connectivity, security access, etc. NetApp agrees to provide reasonable assistance to Customer to complete such preparation and installation; provided that NetApp may, in its discretion, provide written notice to Customer that no further action is required upon the part of NetApp for the commencement of the Subscription Term, and designate a Start Date. Such Start Date will be deemed effective upon Customer’s receipt of such notice, and NetApp will be authorized to commence invoicing Customer for the Fees. Chronic or sustained failure by Customer or any authorized agent to ensure and facilitate the prompt installation of any Subscription Products constitutes a material breach under the Agreement.

(b) In addition to the obligations set forth in the Agreement, Customer will be responsible for providing: (i) space, power, cooling; (ii) racks and PDUs; (iii) cabling to storage controller ports; (iv) Internet connectivity to enable (A) continuous outbound transfer of service consumption, health, and other telemetry data to enable delivery of the Subscription Services, and (B) on-demand inbound connection to remotely administer, manage, troubleshoot, repair and update Subscription Products; and (v) Customer network configurations including a (X) DNS Server, (Y) NTP Server, and (Z) firewall.

(c) In addition to the obligations set forth in the Agreement, Customer is solely responsible for: (i) backup, recovery, business continuity and disaster recovery of its data and applications; (ii) conversion and migration of data to the Subscription Products; (iii) integration and or automation of the Subscription Services with Customer environment or applications; and (iv) migration, deletion and wiping of data from the Subscription Products upon the expiration or termination of the Subscription Term and prior to returning the Subscription Products to NetApp.

(d) In addition to the restrictions set forth in the Agreement, Customer may not: (i) modify ONTAP version; (ii) disable or turn OFF ASUP; (iii) add or remove NICs, or alter the Subscription Hardware in any manner; (iv) remove NetApp's physical or logical access to controller's management ports; (v) disable data efficiencies, including compression, compaction, deduplication, thin provisioning; or (vi) disable or remove NetApp's ability to monitor consumption or health.

## **9. Initial Migration Period.**

Notwithstanding Section 8.2(d) of these terms or the Location and Use of Subscription Services section of the Agreement, Subscription Products and non-Keystone NetApp ONTAP systems can be part of the same cluster for the limited purposes of initial data migration only, and for up to a maximum of 90 days following the Start Date.