



## NetApp Cloud Services Global Terms of Service

These Global Terms of Service (“Terms”) set forth the direct terms and conditions under which NetApp, Inc., NetApp B.V. or any of their affiliates (“NetApp”) provides You a right to access and use its identified Services. “You” or “Your” means the entity you represent in accepting these Terms or, if that does not apply, to you individually. If You are accepting these Terms on behalf of another person, company, or other legal entity, whether as an employee, contractor, distributor, reseller, partner, agent or otherwise, You represent and warrant that You have the full authority to bind that entity. If You electronically accept these Terms, then You agree that these Terms exclusively govern NetApp’s delivery of the Services unless You have a separate written agreement with NetApp that specifically governs the Services. If You do not agree to these Terms, then do not subscribe to, access, or use the Services.

### 1. CLOUD SERVICES

**1.1. Scope.** A list of NetApp Cloud Services subject to these Terms is available at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/> (each a “Service”).

**1.2. Access Rights.** Subject to these Terms and during the specified period of continuous time during which You are duly authorized (“Subscription Term”), You may access and use the Service for Your own internal use, including in support of service offerings You may provide to Your end customers (but, for clarity, not as a standalone product or service). This includes the right, as part of Your authorized use of the Service, to download and use any software that is solely necessary to facilitate Your use of the Service (“Service Enabling Software”), and use any technical documentation describing the features and functions of the Service (“Documentation”). The rights granted in this section are non-exclusive, non-transferable, non-sublicensable, and revocable.

**1.3. Use Limitations.** You will not, nor will You allow any third party, to: (a) modify the Service, any applicable Service Enabling Software, or Documentation; (b) publish or provide any benchmark or comparison test results that pertain to the Service; (c) reverse engineer, decompile or disassemble the Service or any applicable Service Enabling Software, or otherwise reduce either to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses; (d) modify, adapt, or create a derivative work of the Service, any applicable Service Enabling Software, or Documentation; (e) use the Service or any applicable Service Enabling Software in excess of any limitations (e.g., user limits, time limits, capacity limits, free trials) prescribed by NetApp; (f) remove, conceal, or modify any identification, proprietary, intellectual property, or other notices in the Service, any applicable Service Enabling Software, or Documentation; (g) access or use the Service in violation of laws or regulations; (h) use the Service to violate the rights of others; (i) use the Service try to gain unauthorized access to or interrupt any service, device, data, account, or network; or (j) use the Service 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 in which the failure of the Service could lead to severe physical or environmental damages.

**1.4. Unauthorized Use.** Use of the Service, Service Enabling Software, or Documentation outside of the scope of these terms constitute a material breach, and You agree to promptly pay to NetApp upon notice any additional fees calculated in accordance with NetApp’s Price List.

**1.5. Software Notices.** Notwithstanding other statements in this Section 1, third-party software components, including free, copyleft and open-source software components, if any, embedded in the Service or Service Enabling Software (“Third-Party Embedded Software”) are distributed in compliance with the licensing terms and conditions attributable to such Third-Party Embedded Software. Copyright notices and licensing terms and conditions applicable to Third-Party Embedded Software are available for review with the Documentation at <https://mysupport.netapp.com/> or may be included on the media on which You receive the Service Enabling Software, within a “NOTICE” file (e.g., NOTICE.PDF or NOTICE.TXT) or included within the downloaded files, and/or reproduced within the materials or Documentation accompanying the Service or Service Enabling Software.

### 2. ORDERS

**2.1. Pay Per Use, Monthly, Annual, and Multi-Year Service Subscriptions.** The Services offered may be ordered by either a pay per use, monthly subscription, annual subscription, or multi-year subscription basis.

**2.2. Order Acceptance.** NetApp may limit, refuse, or cancel any Service order at its sole discretion. NetApp may also require additional information before accepting or processing any order. NetApp will provide You with an email confirmation upon receipt of Your Service order. Such order confirmation only represents NetApp’s confirmation of receipt, and does not signify NetApp’s acceptance of Your order, nor does it constitute confirmation of NetApp’s offer to sell. NetApp reserves the right at any time after receiving Your order to accept or decline Your order for any reason. However, if NetApp cancels an order after You have submitted payment, NetApp will refund the amount paid.

#### 2.3. Changes, Cancellation, and Renewals.

**2.3.1. Monthly Service Subscriptions.** Unless otherwise agreed to in writing, Your monthly Service subscription will automatically renew for additional one-month terms unless cancelled in accordance with these Terms. You must cancel Your monthly subscription no later than 14 days prior before Your monthly billing date. Your monthly billing date is the earlier of (i) the date of the month You originally started Your subscription on, or (ii) the last day of the



month. For instance, if You signed up for Your subscription on January 31st, Your monthly billing date would be the 31st of any month with 31 days, or the day the relevant month ends, which may be the 28th, 29th or 30th, depending on the month in which You decide to cancel. In the event You cancel Your monthly subscription, You will not receive a refund, but You will receive the Service for the remainder of the billing month You cancel in, and no further charges will be incurred. NetApp reserves the right to cancel Your monthly subscription upon 30 days prior written notice. If NetApp exercises this right You will not receive a refund, but You will receive the Service for the remainder of the billing month in which the cancellation is effective, and no further charges will be incurred. NetApp may modify its prices and fees and apply new fees upon (30 days prior written notice).

**2.3.2 Annual and Multi-year Subscriptions.** Annual and multi-year subscriptions are non-cancellable. If You opt to auto renew Your annual or multi-year Service subscription, then it will automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), unless either party gives the other written notice of non-renewal no later than 90 days before the end of the then current Subscription Term.

**2.4. Delivery.** Delivery of a Service occurs when NetApp makes the enabling key or access credentials available electronically via e-mail or otherwise to You or, if an enabling key is not required, when NetApp makes such Service available for Your use electronically via e-mail or otherwise.

### **3. PRICING, PAYMENT AND TAXES**

**3.1. Invoicing.** NetApp is entitled to invoice You for a Service on a periodic basis, as determined by NetApp, upon the start of a Subscription Term. If You are using a Service on a pay per use basis, NetApp calculates and bills fees and charges monthly based on Your actual usage of the Service, and NetApp will be entitled to invoice You for the Service on a periodic basis, as determined by NetApp, in arrears.

**3.2 Payment Terms.** You will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, not later than 30 days of the date of NetApp's invoice.

**3.3. Remedies for Non-Payment.** Your payment of an amount less than the invoice amount will not be deemed as acceptance of payment in full, nor will any endorsement or statement on any check or letter accompanying any payment or check be deemed an accord and satisfaction. NetApp may accept such payment or check without prejudice to NetApp's right to recover the balance of any amount due or pursue any other remedy provided for under these Terms or by law or in equity. NetApp has the right to apply any payment received from You to any of Your accounts that are due and/or delinquent. If You fail to make timely payment, in addition to all other available remedies, NetApp may decline to make further provision of the Service to You.

**3.4. Taxes and Duties.** You are solely responsible for the payment of taxes (except taxes based on NetApp's net income), fees, duties and charges, and all related penalties and interest, that arise from Your utilization or NetApp's provision of the Service. If You are tax-exempt, then You will provide NetApp with tax exemption certificates or other documentation acceptable to the taxing authorities not later than 30 days from the start of the Subscription Term. If You do not provide such documentation to NetApp, NetApp reserves the right to include such taxes in the invoice.

**3.5. Third Party Payment Processing.** NetApp may make available a third-party payment processor as a means of payment for a Service and use of such processors will be subject to the processor's own terms and conditions. NetApp reserves the right, in its sole discretion, to change the permitted methods of payment, including without limitation, the credit cards and/or other types of payment options NetApp will accept, at any time. NetApp is not responsible for, and Customer agrees to hold NetApp harmless from and against, any liability resulting from the acts or omissions of any third-party payment processor.

### **4. BETA, NO-CHARGE, AND TRIAL SERVICES**

**4.1. Beta Service.** NetApp may make a Service or feature of a Service available to You that is identified as alpha, beta, pre-release, demonstration, or preview (each a "Beta Service"). Unless otherwise agreed in writing by NetApp, a Beta Service may only be used in non-production environments and not for commercial purposes.

**4.2. No Charge Services.** NetApp may offer a Service at no cost to You, up to certain limits prescribed by NetApp ("No Charge Service"). You acknowledge and agree that these Terms are applicable and binding upon You for Your access and use of a No Charge Service.

**4.3. Trial Services.** NetApp may offer a no cost, no obligation trial to a Service ("Trial Service") to You. The Trial Service will commence on the initial date You access the Trial Service and will conclude at the end of the trial period delineated by NetApp, or sooner if: (a) You purchase a pre-paid subscription to the Service, (b) You use the Service on a pay as you go basis, or (c) NetApp terminates Your use of the Trial Service. You acknowledge and agree that these Terms are applicable and binding upon You for Your access and use of a Trial Service.

### **5. CUSTOMER CONTENT AND SECURITY**

**5.1. Ownership.** You retain all right, title, and interest in any information that You provide to NetApp, including personal information (as defined in NetApp's then current privacy policy at: <https://www.netapp.com/company/legal/privacy-policy/>), that NetApp manages, and where such management is on the Your behalf as part of providing the Service ("Customer Content"). NetApp acquires no rights in Customer Content, other than the rights You grant to NetApp to provide the Service.



**5.2. Use.** NetApp will use Customer Content solely to provide the Service and, if applicable, related technical support.

**5.3. Disclosure.** NetApp will not disclose Customer Content outside of NetApp or its subsidiaries and affiliates except to the extent required to make the Service available for Your use or to the extent such disclosure is required by applicable law. NetApp will give You reasonable notice of a request of a governmental or regulatory body for Customer Content to allow You to seek a protective order or other legal remedies (except to the extent NetApp's compliance with this section would cause it to violate a court order or other legal requirement).

**5.4. Security.** NetApp will implement reasonable technical and organizational safeguards designed to protect Customer Content against unauthorized loss, destruction, alteration, access, or disclosure. NetApp may modify such safeguards from time to time, provided that such modifications will not materially reduce the overall level of protection for Customer Content. NetApp also maintains a compliance program that includes independent third-party audits and certifications.

**5.5. Security Incident.** If NetApp discovers that a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Content in the possession or control of NetApp (a "Security Incident") has occurred, NetApp will notify You promptly and without undue delay, unless otherwise prohibited by law or otherwise instructed by a law enforcement or supervisory authority. In addition to providing such notification, NetApp will promptly take reasonable steps to mitigate the effects of the Security Incident and to minimize any damage resulting from the Security Incident. You must notify NetApp promptly about any possible misuse of its accounts or authentication credentials of which it becomes aware related to the Service.

## **6. PERFORMANCE AND OPERATIONS**

**6.1. Service Level Agreements.** NetApp's commitment to uptime and connectivity for applicable Services are set forth at <https://www.netapp.com/us/how-to-buy/stc.aspx>.

**6.2. Support.** During the Subscription Term, NetApp will provide You support for the Service in accordance with the Documentation.

**6.3. Professional Services.** Customer may purchase Professional Services pursuant to the NetApp Professional Services terms set forth at <https://www.netapp.com/us/how-to-buy/stc.aspx>.

## **7. WARRANTY**

**7.1. Warranty and Remedy.** NetApp warrants that during the Subscription Term, the Service will perform substantially in accordance with the applicable Service Level Agreement. If NetApp does not meet this limited warranty, then Your sole and exclusive remedy is as set forth in the applicable Service Level Agreement.

**7.2. Disclaimer.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING ARE YOUR SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE RELATED TO THE SERVICE, DOCUMENTATION AND SERVICE ENABLING SOFTWARE. NETAPP AND ITS SUPPLIERS DO NOT WARRANT THAT SERVICES WILL BE UNINTERRUPTED OR FREE FROM DEFECTS OR ERRORS, OR THAT SERVICES WILL MEET OR ARE DESIGNED TO MEET YOUR BUSINESS REQUIREMENTS. ANY BETA, NO-CHARGE OR TRIAL SERVICE THAT NETAPP PROVIDES TO YOU IS PROVIDED "AS IS".

## **8. INTELLECTUAL PROPERTY RIGHTS AND PROTECTIONS**

**8.1. General.** The Service, Service Enabling Software, and Documentation are protected by intellectual property laws and treaties worldwide, and contain trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to You. No right, title or interest to any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to You.

**8.2. IP Claims.** Subject to the terms and conditions of this section, NetApp will defend or settle any claim brought by a third party against You that the Service, Service Enabling Software, or Documentation sold or delivered to You under these Terms infringe any patent, trademark, or copyright ("IP Claim"). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, "Damages") against You to the extent such Damages are specifically attributable to the IP Claim, if You: (a) promptly notify NetApp in writing of the IP Claim; (b) provide information and assistance to NetApp to defend such IP Claim; and (c) provide NetApp with sole control of the defense or settlement negotiations.

**8.3. Remedies.** NetApp may, at its option, substitute or modify the applicable Service, Service Enabling Software or Documentation, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the Service, Service Enabling Software or Documentation, if NetApp determines that none of these alternatives is reasonably available, then You may terminate Your subscription and NetApp will refund Your purchase price less any Services already rendered.

**8.4. Exclusions.** Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement that arises from or relates to: (a) NetApp's compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by You or on behalf of You; (b) modifications made by or on



behalf of You without NetApp's prior written authorization; (c) Your failure to upgrade or use a new version of the Service Enabling Software; (d) Your failure to make a change or modification requested by NetApp, implement or configure the Service or Service Enabling Software in a manner set forth by NetApp, or to cease using the Service or Service Enabling Software, if requested by NetApp; (e) Your use of the Service or Service Enabling Software, or any portion thereof, in combination with any other product or service; (f) Your breach of the use limitations prescribed by NetApp; or (g) any content or information stored on or used by You or a third party in connection with the Service.

**8.5. Entire Liability.** Notwithstanding any term to the contrary in these Terms, this section states NetApp's entire liability and Your sole and exclusive remedies for IP Claims.

## **9. CONFIDENTIALITY**

**9.1. General.** "Confidential Information" means any information disclosed by a party to the other party in connection with these Terms that (a) is marked "confidential" or "proprietary" at the time of disclosure; (b) if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure and summarized in a writing delivered to the receiving party within 30 days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. "Confidential Information" includes any reproduction of such information, but does not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the receiving party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving party. Each party ("Disclosing Party") may disclose Confidential Information to the other party ("Receiving Party"). Confidential Information will remain the exclusive property of the Disclosing Party. Each party will have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under these Terms. The Receiving Party agrees to disclose the Disclosing Party's Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The Receiving Party will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care.

**9.2. Period of Disclosure.** Each party's obligations regarding the other Party's Confidential Information will expire three years from the date of disclosure.

**9.3. Legally Compelled Disclosure.** The Receiving Party may disclose the Disclosing Party's Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that, unless prohibited by applicable law, the Receiving Party gives the Disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

**9.4. Return/Destruction.** Upon the Disclosing Party's written request, all Confidential Information (including all copies thereof) of the Disclosing Party will be returned or destroyed, unless the Receiving Party is required by law to retain such information, and the Receiving Party will provide written certification of compliance with this Section.

## **10. LIMITATION OF LIABILITY**

**10.1. Cumulative Liability.** Regardless of the basis of the claim (e.g., contract, tort, or statute), the total liability of NetApp under or in connection with these Terms will not exceed the amounts received by NetApp for the applicable Service in the 12 months preceding the event that gave rise to the claim or the minimum amounts permitted by applicable laws, if greater.

**10.2. Liability Exclusions.** NetApp will not be liable for: (a) any indirect, consequential, incidental, exemplary, or special damages; (b) loss or corruption of data; (c) loss of revenues, profits, goodwill, or anticipated savings; (d) procurement of substitute goods and/or services; or (e) interruption to business. To the extent permitted by law, NetApp disclaims all liability arising out of Your use of a Beta, No-Charge, or Trial Service. These exclusions are independent of any remedy set forth in these Terms.

**10.3. Exceptions.** The limitations and exclusions set forth above will not apply to liability for death or bodily injury caused by negligence or gross negligence; willful misconduct or fraud; IP Claims under Section 8.2; or any other liability that cannot be excluded under applicable laws.

## **11. SUSPENSION OF SERVICES, EXPIRATION, OR TERMINATION OF TERMS**

**11.1. Suspension.** NetApp may suspend or terminate Your access and use of any Service if You (a) fail to remit payments when due; (b) otherwise breach these Terms; or (c) use the Services in a manner that violates the law. NetApp will provide reasonable notice before suspending or Your access to a Service unless NetApp, in its sole discretion, believes an immediate suspension or termination is required.

**11.2. Termination.** Either party may terminate these Terms on written notice if (a) the other party fails to meet any material obligation and, in the event that the breach is remediable, fails to remedy it within 30 days following written notice; or (b) if You become insolvent, apply for or consent to the appointment of a trustee, receiver or other custodian; make a general assignment for the benefit of creditors; initiate any bankruptcy, debt arrangement or other case or proceeding under any bankruptcy or insolvency law; or become subject to any dissolution or liquidation proceedings.



**11.3. Effect of Service Expiration or Termination.** Termination or expiration of these Terms will not (a) relieve You from your payment obligations with respect to any sums accrued prior to termination or expiration, which will become immediately due and payable, or (b) entitle You to any refund. NetApp will use commercially reasonable efforts to notify You that your access to the Service will be discontinued and that all Customer Content will be deleted, at a time to be determined by NetApp, without the option of recovery. NetApp expressly disclaims all liability if You do not receive or act in accordance with this notice, or if any Customer Content is deleted. Any provision that by its nature extends beyond termination or expiration of the Terms will remain in effect until fulfilled and will apply to each party's successors and permitted assigns.

## **12. COMPLIANCE WITH LAWS**

**12.1. Compliance.** Each party will comply with all applicable laws and regulations.

**12.2. Export.** You acknowledge that the Services and any applicable Service Enabling Software are subject to export controls under the laws and regulations of the United States, the European Union, and other countries (as applicable), and the Services may include technology controlled under export and import regulations, including encryption technology. You agree to comply with such laws and regulations and to provide NetApp destination end use and end user information upon NetApp's request. You agree to obligate, by contract or other similar assurances, the parties to whom You re-export or otherwise transfer the Services or Service Enabling Software to comply with all obligations set forth in this section.

**12.3. Anti-Bribery.** Each party will comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

**12.4. Privacy.** In the event You provide NetApp with access to personal information (as defined above) for NetApp to provide the Service, the parties will ensure that such personal information is disclosed and handled in accordance with all applicable data protection laws and the confidentiality provisions set forth in these Terms. Article 28 (1) of the European Union General Data Protection Regulation ("GDPR") requires an agreement between a controller and processor, and between a processor and sub processor, that processing of personal information be conducted in accordance with technical and organizational measures that meet the requirements of the GDPR and ensure the protection of the rights of data subjects. To the extent NetApp acts as a data processor of personal information on Your behalf: (a) additional terms and conditions applicable to NetApp acting in a role as a data processor are set forth at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/>; and (b) NetApp will not retain, use, or disclose such personal information for any purpose other than providing or improving the Service in accordance with these Terms. NetApp certifies that it understands the foregoing restrictions and will comply with them.

## **13. MISCELLANEOUS**

**13.1. U.S. Federal Government Customers.** This section applies only to U.S. Federal Government customers. The Services and any applicable Service Enabling Software are "commercial" computer software and are licensed to You in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g., FAR, DFARS) pertaining to commercial computer software. Any dispute will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these Terms is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other provisions of these Terms remain in effect as written.

**13.2. Force Majeure.** Neither party will be liable to the other for any failure or delay in the performance of its obligations resulting from acts of God, fire, floods, earthquakes, epidemics, pandemics, quarantine, government-imposed restrictions, energy crises, strikes, labor trouble, acts of terrorism, war, riots, material shortages, delays in transportation or any other causes beyond the reasonable control of a party (collectively, "Force Majeure"). Force Majeure will not relieve You of the obligation to remit any payments due hereunder for Services delivered. For the avoidance of doubt, Force Majeure does not include any event that, in relation to a party is attributable to the willful act, neglect and/or failure to take reasonable precautions against such event by that party; and/or merely increases the cost of that party's performance of its obligations.

**13.3. Waiver.** Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either party's exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.

**13.4. Severability.** In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.

**13.5. Assignment and Subcontracting.** You may not assign any rights or delegate any obligations under these Terms without the prior written consent of NetApp. Any purported assignment by You without NetApp's prior written consent will be null and void. NetApp may use subcontractors to fulfill its obligations under these Terms.

**13.6. Independent Contractors.** The relationship of the parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent,



franchisor/franchisee, joint venture, or employer and employee between the parties. Neither party will act or represent itself, directly or by implication, as an agent of the other party.

**13.7. Publicity.** No advertising, publicity releases, or similar public communications concerning these Terms, the Services or any applicable Service Enabling Software will be published or caused to be published by either party without the prior written consent of the other party. Notwithstanding the foregoing, You agree to be mentioned in the list of buyers of the Service and that Your logo and trademark may be used for this purpose only.

**13.8. Audit.** You grant NetApp and its independent accountants the right to audit You or Your subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses Service or applicable Service Enabling Software over-usage or any other material noncompliance, You will promptly pay to NetApp any fees.

**13.9. Governing Law and Enforcement Rights.** These Terms will be construed pursuant to the laws of: (a) the State of California, United States, excluding its conflicts of law provisions, if You are in the United States or in a country in which NetApp has no local sales subsidiary, or (b) the country in which You are located if NetApp has a local sales subsidiary in that country. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Your use of the Services.

**13.10. Functional Data.** NetApp retains all right, title and interest in data which is generated in the performance of the Service and that informs NetApp in the development, deployment, operations, maintenance, and securing of the Service ("Functional Data"). Without limiting the foregoing, NetApp may collect and use Functional Data to improve and enhance the Services and NetApp's other products and services.

**13.11. Improvements.** You may provide NetApp with any suggested improvements to the Service ("Suggestions"). If You provide any Suggestions, NetApp may use the Suggestions without restriction.