



## Service Specific Terms for Spot by NetApp

Last Modified: November 2023

### Terms

These Service Specific Terms for NetApp's Spot Service ("Service Specific Terms") is a part of the NetApp Cloud Services – Global Terms of Service ("Terms"). Capitalized terms used, but not defined in the Service Specific Terms, will have the meaning assigned to them in the Terms.

#### 1. Service Level Agreement (Connect, ECO, Elastigroup, Ocean, Ocean for Apache Spark, Ocean CD, Security)

If the Service does not achieve the service levels described in this Service Level Agreement ("SLA"), then you may be eligible for a service credit.

We reserve the right to change the terms of this SLA or discontinue the SLA at our discretion. We will honor the SLA in effect at the outset of your subscription for the duration of your initial Subscription Term. However, if you renew your subscription, the version of this SLA that is in effect the time of renewal will apply throughout your renewal term.

#### Definitions

"Allowable Downtime" means scheduled NetApp maintenance and upgrades.

"Downtime" means the total accumulated minutes that are part of Maximum Available Minutes that have no Service Connectivity, excluding a period when the Service is not available due to Allowable Downtime.

"Maximum Available Minutes" means the total number of minutes in a month.

"Service Connectivity" means that the Service can be accessed.

"Uptime Percentage" means  $\text{Monthly Uptime Percentage \%} = (\text{Maximum Available Minutes} - \text{Downtime}) / \text{Maximum Available Minutes}$ .

#### The Availability Service Level

NetApp will use commercially reasonable efforts to make the Service available with an Uptime Percentage of at least 99.99%, during any monthly billing cycle.

#### Claims Process

If, at any time during your Subscription Term, you determine that you are not receiving the Availability Service Level, complete a webform at <https://support.spot.io>, or send an email to [ng-spot-cs@netapp.com](mailto:ng-spot-cs@netapp.com) and include the following information:

- Calculated Downtime
- Relevant Elastigroup, Ocean, ECO, or Security ID
- Relevant Instance ID
- All applicable documentation to corroborate your claimed outage:
  - Username, phone number and email address of the affected individual(s)
  - Description of the technical problem(s), including screenshots of any error messages where possible
  - Completed steps to reproduce the issue
  - URL or API call utilized, if applicable
  - Web browser used, if applicable

#### Service Credits

We will evaluate all information provided and make a good faith determination as to whether a service credit is owed for the future use of the Service. The service credit will apply to future use of the Services and will be deducted from your next billing cycle/invoice, as detailed in the following table:



Uptime Percentage	Allowable Service Credit
Below 99.99%	10%
Below 99.0%	30%

### Limitations

You must contact NetApp in the manner defined above, within four (4) weeks of the incident, and you are only eligible to receive a service credit once per month per account. The service credit can only be applied towards your future payments for the Service.

### Exceptions

This SLA does not apply to any issues which are attributable to: (i) Allowable Downtime; (ii) administrative actions taken by non-NetApp personnel that impact end user access; (iii) a force majeure event or factors which are outside NetApp's reasonable ability to control; (iv) your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within NetApp's direct control); (v) your use of the Service after we advised you to discontinue or modify your use of the Service, if you did not modify your use as advised; (vi) preview, pre-release, beta or trial versions or features of the Service; (vii) your failure to adhere to Service restrictions or the Acceptable Use Policy as identified in the Terms; (viii) data in transit authentication and/or encryption (signing and/or sealing); and/or (ix) any suspension and termination of your right to use the Service in accordance with the Terms.

## 2. Spot Eco Service

You will provide NetApp with the AWS reserved instances ("RIs") and savings plans ("SPs") and/or Microsoft Azure RIs, SPs and reserved capacity ("RC") and/or Google Cloud Platform committed usage discounts ("GCP CUD") strategy selection (the "Strategy"). The Strategy may be modified in writing between you and NetApp from time to time.

You authorize NetApp to manage your RIs, SPs and RC across all AWS and/or Microsoft Azure services offering "Reserved" capacity and/or GCP CUD, subject to the applicable Strategy. Such authorization includes making and modifying RI, SP, RC and/or GCP CUD commitments, selling and any other RI, SP, RC and/or GCP CUD actions offered by AWS and/or Microsoft Azure and/or Google Cloud Platform, including any commitment management actions.

You will reasonably cooperate with NetApp in performance of the services including, without limitation: (i) responding within forty-eight (48) hours of request from NetApp regarding a material change in your AWS and/or Microsoft Azure and/or Google Cloud Platform usage patterns, (ii) providing NetApp with advance notice of any expected or planned material changes in AWS and/or Microsoft Azure and/or Google Cloud Platform usage that would affect any RI, SP, similar RC and/or GCP CUD utilization.

For the avoidance of doubt, upon expiration of the Subscription Term, you will continue to be solely responsible for the obligations under any RI, SPs, RC and/or GCP CUD commitments then in effect with AWS and/or Microsoft Azure and/or Google Cloud Platform, based on the applicable Strategy, and for the management of such RIs, SPs, RC and/or GCP CUD and NetApp will have no responsibility in this regard.