



# NetApp Six Nines Data Availability Guarantee Terms and Conditions

This NetApp Six Nines Data Availability Guarantee is governed by the terms and conditions (“Terms”) set forth below.

## DEFINITIONS.

“**Capacity Slab**” means an amount of raw storage of the Eligible Array that factors into the payout calculation for a valid claim under the Guarantee Program

“**Cumulative Duration**” means the total amount of Data Unavailability during one or more Qualifying Events over the Guarantee Term, wherein the duration of each Qualifying Event is calculated as the difference between a Start Time and End Time, less 10 seconds.

“**Customer**” means the end customer purchasing, for their own use, an Eligible Array from NetApp or a NetApp authorized reseller.

“**Data Unavailability**” means a continuous duration of time that data read or write operations are unavailable to a host in the Eligible Array.

“**Eligible Array**” means a new NetApp-branded ASA (all-flash A-Series and C-Series SAN arrays), single HA Pair, running on NetApp hardware appliance(s) purchased after June 26, 2023 that is identified in Order Documentation and is configured to follow NetApp Best Practices. Eligible Arrays do not include previously purchased systems or arrays, or the older generation NetApp AFF All-SAN Array (AFF ASA).

“**End Time**” means the time that data read or write operations are restored to the host in the Eligible Array that is experiencing Data Unavailability during a Qualifying Event, as documented by logs provided by Customer as part of the claims process as described in the remedies section of these terms.

“**Event Date**” means the date that a Qualifying Event occurs.

“**Guarantee Program**” means the NetApp Six Nines Data Availability Guarantee described in these Terms.

“**Guarantee Term**” means the 12 month period of time that begins the earlier of (a) activation and verification of the Eligible Array per the requirements section of the Terms, or (b) 60 days after shipment of the Eligible Array.

“**HA Pair**” means two identical storage controllers that are configured to serve data independently during normal operation, and in the event of an individual controller failure provide high availability by transferring data processes from the failed storage controller to the surviving controller.

“**Health Check**” means Customer performing a periodic audit on the Eligible Array against NetApp Best Practices, as well as reviewing any actions recommended by the “Health Check” section of Active IQ Digital Advisor with respect to the Eligible Array.

“**NetApp Best Practices**” means the guidelines outlined in Exhibit A.

“**NetApp Support**” means NetApp’s generally available technical support and maintenance services for Products to be provided directly by or on behalf of NetApp.

“**Order Documentation**” means the applicable NetApp price quotation (and the Engagement Document, if required for the purchase of Professional Services), corresponding Purchase Order and the associated Product Documentation for the Products and Services purchased or licensed under these Terms.

“**Pre-existing Incident**” means conditions or actions or inaction of Customer that result in Data Unavailability (a) prior to the Guarantee Term, or (b) during a period of non-compliance with NetApp Best Practices or the requirements of these Terms within the Guarantee Term.

“**Product Documentation**” means NetApp-supplied technical documentation describing the features, functions and operation of the associated products.

**“Professional Services”** means NetApp’s consulting, installation, implementation and other services that are not NetApp Support to be provided by or on behalf of NetApp and governed by NetApp Professional Services Terms as further described in the relevant Engagement Document, as applicable.

**“Purchase Order”** means an electronic order provided to NetApp consistent with these Terms and the corresponding price quotation for the purchase of Eligible Array and Services.

**“Qualifying Event”** means Data Unavailability for over 10 seconds caused directly by an error or malfunction of the Eligible Array. A Qualifying Event does not include any Data Unavailability that is due to circumstances other than those caused directly and solely by an error or malfunction of the Eligible Array, including but not limited to the following:

- Planned or scheduled activities by NetApp or Customer, including but not limited to planned ONTAP upgrades, automated firmware updates, maintenance or troubleshooting actions, or other planned activities;
- A failure caused by an external event, including but not limited to a power failure, network outage, natural disaster, excessive heat, or any other problem outside the Eligible Array;
- Customer not properly configuring the Eligible Array to follow NetApp Best Practices;
- The Eligible Array being used in an environment, manner or purpose for which it was not designed;
- Modification, alteration, disassembly, or repair of the Eligible Array by anyone other than NetApp or its authorized representatives;
- Failure of Customer to remediate an issue related to the Eligible Array that NetApp has proactively raised.
- A known defect where a fix has been released and recommended by NetApp, but not deployed within a timeframe identified by NetApp

**“Services”** means NetApp Support and Professional Services.

**“Start Time”** means the time that Data Unavailability begins, as documented by logs provided by Customer as part of the claims process as described in the remedies section of these terms.

**THE GUARANTEE.** NetApp guarantees to Customer that in the event an Eligible Array experiences one or more Qualifying Events with a Cumulative Duration of more than 31.56 seconds and Event Dates that occur during the Guarantee Term (representing 99.9999% data availability), then NetApp will issue Customer a payout as described below, provided that the Requirements are met during the Guarantee Term, and otherwise subject to these Terms (the **“Guarantee”**).

#### **REQUIREMENTS.**

To be eligible for the Guarantee, each of the following requirements (**“Requirements”**) must be met:

- Customer must purchase:
  - An Eligible Array.
  - A contract for NetApp Support that covers the Eligible Array for the Guarantee Term.
  - A current and valid license to NetApp Cloud Insights Premium Edition for the Guarantee Term with enough managed units to cover the capacity of the Eligible Array.
- Customer must be in full compliance with all applicable NetApp licenses.
- Customer must successfully configure the Eligible Array per NetApp Best Practices. Such configuration must remain in place for the entirety of the Guarantee Term.
- For the duration of the Guarantee Term, an instance of NetApp Cloud Insights Premium Edition must be configured to monitor and collect data from the Eligible Array. Any delay in this configuration will delay the start of the Guarantee Term.
- For the duration of the Guarantee Term, AutoSupport must be enabled on the Eligible Array such that AutoSupport messages are periodically sent to NetApp. In addition, AutoSupport On Demand must be enabled to allow NetApp Support to initiate the collection of AutoSupport messages to resolve support tickets.
- To activate the Guarantee Program for the Eligible Array, Customer must provide notice to [ng-ps-sixnines@netapp.com](mailto:ng-ps-sixnines@netapp.com) that the Eligible Array is configured according to NetApp Best Practices and that an instance of NetApp Cloud Insights Premium is configured to monitor and collect data from the Eligible Array. Customer must promptly cooperate with

NetApp to provide access to data from NetApp Cloud Insights Premium for the purpose of verifying NetApp Best Practices. NetApp will then verify that the Eligible Array is properly configured and that the monitoring is active.

- **Customer must complete this requirement of activation and verification within 60 days of shipment of the Eligible Array. Failure to do so will result in the Guarantee being void for the Eligible Array.**
- The Eligible Array must run the ONTAP version that is installed upon shipment. Any released patches for ONTAP containing critical bug fixes or security updates must be applied as soon as they are released, and regular ONTAP updates must be installed no later than 60 days after release.
- Customer must perform monthly Health Checks on the Eligible Array, and remedy any gaps in the configuration of the Eligible Array against NetApp Best Practices and take any recommended actions in a timely manner.
- Customer must operate the Eligible Array in accordance with all applicable Product Documentation.
- If Customer purchases additional HA Pairs as part of the same or different cluster as the Eligible Array, each of the HA Pairs must be separately verified under these requirements.

## REMEDIES.

Subject to these Terms, and as a prerequisite for a Qualifying Event to count towards the Cumulative Duration for a claim under the Guarantee, at least the following steps must take place:

For any error, malfunction, or other anomaly that may result in a Qualifying Event (a “**Precursor Event**”), or for any incident involving data unavailability that may be classified as a Qualifying Event:

- a) Customer must immediately submit a priority one technical support ticket with NetApp Support notifying them of the incident.
- b) Customer must engage in active troubleshooting until the incident is resolved, and provide NetApp with prompt and timely access to the Eligible Array and any documentation necessary to prevent any subsequent Qualifying Event, including provision of remote access, and upload of core files and any relevant logs.
- c) Customer must immediately take any corrective or preventative measure recommended by NetApp Support.

Failure to timely, promptly, and fully report a Precursor Event or potential Qualifying Event to NetApp Support, or promptly take all corrective or preventative measures recommended by NetApp, will disqualify any related incident from classification as a Qualifying Event. Further, any delay by Customer in reporting a potential Qualifying Event or providing access to the Eligible Array during a potential Qualifying Event will not count towards the Cumulative Duration. Finally, any delays inherent in the process of providing relevant data to NetApp Support during a potential Qualifying Event (including the time required to segment and upload core files) will not count towards the Cumulative Duration.

Upon NetApp’s confirmation via email that Customer has completed of the steps above for a potential Qualifying Event:

- d) Customer must, within 30 days of the potential Qualifying Event, submit a claim in writing to their account representative and [ng-six-nines-dataguarantee@netapp.com](mailto:ng-six-nines-dataguarantee@netapp.com). Such claim must reference the serial numbers for the Eligible Array and all support tickets associated with the potential Qualifying Event, including support tickets for related Precursor Events (if applicable).
- e) Customer must provide NetApp, to its satisfaction, with any documentation necessary to determine the cause and duration of the potential Qualifying Event, including access to data from NetApp Cloud Insights Premium and any relevant logs (including logs from the ONTAP environment of the Eligible Array, and logs from the customer’s environment such as host, application, and network devices).

Customer may only submit a claim for a Qualifying Event if its Event Date occurs during the Guarantee Term.

Determination of whether an incident is categorized as a Qualifying Event, the duration of a Qualifying Event, and whether a claim is valid, will be made solely in accordance with an assessment performed by NetApp.

Any incidents external to the Eligible Array that interrupt NetApp’s ability to monitor the Eligible Array will not be categorized as a Qualifying Event. Additionally, if NetApp is unable to determine the root cause of an incident, the incident will not be categorized as a Qualifying Event.

Any claim submitted after the Guarantee Term is expired or terminated is not covered by the Guarantee unless Customer has already created a ticket under a) above informing NetApp Support of a potential Qualifying Event.

If NetApp determines that an Eligible Array has failed to meet the Guarantee, then NetApp will, in its sole discretion, provide a payout to Customer based on the Cumulative Duration associated with the Qualifying Events in the covered claim.

- The payout is calculated as follows:

Cumulative Duration	Capacity Slab Payout Percentage
31.57 seconds to 30 min	25%
30.01 min to 4 hrs	50%
4.01hrs to 8hrs	75%
8.01hrs and longer	100%

The translation of a Capacity Slab Payout Percentage to a payout amount is based on tables maintained by NetApp, which are subject to change.

Customer may submit more than one claim request per Eligible Array during the Guarantee Term, provided that any claim requests beyond an initial claim shall only result in a payout that is cumulative to any previous payouts if the Cumulative Duration reaches a higher range in the table above.

For example, if there is a first Qualifying Event that is 10 minutes long and Customer submits a valid claim, they will be eligible for a payout at a Capacity Slab Payout Percentage of 25%. If there is a second Qualifying Event that is 15 minutes long, and Customer submits a valid claim, then the Cumulative Duration is 25 minutes and the Customer will not be eligible for an additional payment as the Cumulative Duration is still in the "31.57 seconds to 30 minutes" range. If there is a third Qualifying Event that is 1 hour long and Customer submits a valid claim, then the Cumulative Duration will be 1 hour and 25 minutes, and the Customer will be eligible for an additional payout at a Capacity Slab Payout Percentage of 25% to match the 50% level that corresponds to the range of "30.01 min to 4 hours".

The foregoing are Customer's sole and exclusive remedies for a Qualifying Event.

#### **LIMITATION OF LIABILITY.**

EXCEPT AS EXPRESSLY SET FORTH IN THE REMEDIES SECTION OF THESE TERMS, IN NO EVENT WILL NETAPP OR ITS SUPPLIERS BE LIABLE (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS GUARANTEE PROGRAM, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE; AND NETAPP'S TOTAL LIABILITY TO CUSTOMER UNDER THE GUARANTEE PROGRAM SHALL NOT EXCEED ONE MILLION AND FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) UNDER ANY CIRCUMSTANCES. Multiple claims or Qualifying Events shall not expand the limitation specified in the foregoing sentence. If the limitation of liability in this Section is determined to be invalid under applicable law, this Guarantee shall be deemed null and void.

#### **EXCEPTIONS TO GUARANTEE.**

The following are exceptions and situations not covered by the Guarantee:

- Incidents in which the integrity of data in an Eligible Array is compromised.
- Periods of time where NetApp Cloud Insights Premium is not configured to monitor and collect data from the Eligible Array, or is recording or generating erroneous data.
- Incidents caused by errors, accidents, negligence, abuse, misuse, or unauthorized alteration or modification of the Eligible Array by Customer or its third party contractors.
- Incidents related to Customer's failure to implement any corrective or preventative actions that NetApp has recommended to Customer.

- Any downtime of applications that are connected to an Eligible Array.
- Any period of controller failover in the HA Pair of an Eligible Array.
- Any period of time required by Customer to recover the environment or any system external to the Eligible Array, such as power and cooling systems or network resources.
- Incidents that fall outside the definition of Qualifying Event.
- Pre-existing Incidents.

#### **VOIDANCE OF GUARANTEE.**

Any of the following causes the Guarantee to be void:

- Failing to meet the requirements under these Terms.
- Any non-compliance with an applicable NetApp license.
- Tampering with or not providing a complete copy of any data or log file shared with NetApp during the Guarantee Program.
- Replacement of the Eligible Array under any applicable NetApp hardware warranty.

#### **MISCELLANEOUS.**

**General.** This Guarantee Program is exclusively governed by these Terms and is void where prohibited or restricted by law. NetApp reserves the right to change the Terms of the Guarantee Program, including modifying or terminating the Guarantee, at any time without notice and without recourse to the Customer. Such early termination will not affect any tickets or claims that have been filed by Customer prior to termination. Unless otherwise restricted by law, these Terms will be construed pursuant to the governing law as set forth in (a) Customer's separate written agreement with NetApp that governs Customer's purchase of the Eligible Array, or (b) in the absence of such agreement, or if the Customer is purchasing the Eligible Array from a NetApp reseller, the applicable terms of sale on NetApp's How to Buy site at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/> that apply to Customer's purchase of the Eligible Array. In the event of any conflict between these Terms and the terms referenced in (a) or (b) above, as applicable, these Terms will prevail. All other terms and conditions in the terms referenced in (a) or (b) above that are not expressly modified by this Guarantee Program remain in full force and effect.

**Third Party Beneficiaries.** These Terms are not intended to and shall not be construed to give any third party any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby. For the avoidance of doubt, only the Customer has the right to enforce these Terms or pursue claims relating to it against NetApp.

**No Insurance.** This Guarantee Program is not intended to constitute an offer to insure, does not constitute insurance or an insurance contract, and does not take the place of insurance obtained or obtainable by the Customer. Any fees paid by Customer in connection with the Eligible Array and NetApp Cloud Insights Premium are solely for the use of such products and are not to be construed as an insurance premium.

## **Exhibit A – SAN Configuration Best Practices**

The NetApp Best Practices that Customer must follow when configuring the Eligible Array are outlined under the “SAN Configuration Best Practices” in TR-4968, located at <https://www.netapp.com/pdf.html?item=/media/85671-tr-4968.pdf>.