



CLOUD DATA SERVICE TERMS

Terms for All Transactions

These Cloud Data Service Terms (“Terms”) set forth the terms and conditions under which NetApp provides Customers a right to access and use Cloud Data Services. If Customer electronically accepts these Terms, then Customer agrees that these Terms exclusively govern NetApp’s delivery of Cloud Data Services, unless Customer has a separate applicable written agreement with NetApp that specifically pertains to a Cloud Data Service. If an individual is accepting these Terms on behalf of another person, company or other legal entity, whether as an employee, contractor, distributor, reseller, partner, agent or otherwise, that individual represents and warrants that it has the full authority to bind the Customer. If Customer does not agree to these Terms then do not subscribe to, access, or use the Cloud Data Service.

1. DEFINITIONS

1.1. Cloud Data Service. A NetApp cloud service made available to Customers on demand via the internet. A complete list of NetApp Cloud Data Services subject to these Terms can be accessed at: <https://www.netapp.com/us/how-to-buy/stc.aspx>.

1.2. Cloud Data Service Subscription. The specified period of continuous time during which Customer may access and use the Cloud Data Service.

1.3. Customer Information. Any information provided by Customer, whether it includes Customer Personal Information, that NetApp manages, where such management is on the Customer’s behalf as part of providing the Cloud Data Service.

1.4. Personal Information. Has the meaning defined in the NetApp Privacy Policy, which can be accessed at <https://www.netapp.com/us/legal/privacypolicy/index.aspx>.

1.5. NetApp Cloud Provider. A third party authorized by NetApp to offer or enable the use of the Cloud Data Service as part of such provider’s cloud-based services.

1.6. Functional Data. Data generated as a result of NetApp providing the Cloud Data Service, which informs NetApp in the development, deployment, operations, maintenance, and securing of the Cloud Data Service. Functional Data does not contain Customer Information or Personal Information.

1.7. Security Incident. A breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Information in the possession or control of NetApp.

1.8. Support Information. Information provided to NetApp by or for a Customer for the purpose of providing technical support pertaining to a Cloud Data Service and/or maintaining a Customer’s Cloud Data Service account. Support Information does not contain Customer Information or Personal Information.

2. CLOUD DATA SERVICES

2.1. RIGHT TO ACCESS AND USE. NetApp will provide Customer a non-exclusive, non-transferable and revocable right to access and use the Cloud Data Service during the Cloud Data Service Subscription. Customer may be required to download and install an agent, plug-in or similar client-based software (“CDS Software Agent”) to use the Cloud Data Service. NetApp retains all right, title, and interest in and to the Cloud Data Service, the CDS Software Agent, and logos and trademarks reproduced through the Cloud Data Service, and these Terms do not grant Customer any intellectual property rights in the Cloud Data Service or CDS Software Agent. Customer may use the Cloud Data Service for its own internal use, including in support of service offerings Customer may provide its end customers (but, for clarity, not as a standalone product or service of Customer). NetApp grants Customer a limited, non-exclusive, non-sublicensable, non-transferable and revocable license to use the CDS Software Agent solely as required to

use the Cloud Data Service during the Cloud Data Service Subscription. The Cloud Data Service and CDS Software Agent may include software that is openly and freely licensed under the terms of a public license designated by a third party (“Open Source Software”). Nothing in these Terms grants Customers rights that supersede those delineated in an applicable license for the Open Source Software.

2.2. Acceptable Use. Customer will not, nor will Customer allow any third party to, (a) modify the Cloud Data Service or CDS Software Agent without NetApp’s prior written approval; (b) publish or provide any benchmark or comparison test results that pertain to the Cloud Data Service; (c) reverse engineer, decompile or disassemble the Cloud Data Service or CDS Software Agent, 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 Cloud Data Service or the CDS Software Agent; (e) use the Cloud Data Service or the CDS Agent in excess of any limitations (e.g. user limits, time limits, capacity limits, free trials) prescribed by NetApp; or (f) remove, conceal, or modify any identification, proprietary, intellectual property, or other notices in the Cloud Data Service or CDS Software Agent.

Customer will not use the Cloud Data Service or CDS Software Agent:

- a) in violation of laws or regulations;
- b) to violate the rights of others;
- c) to try to gain unauthorized access to or interrupt any service, device, data, account or network;
- d) in a manner that could negatively impact the Cloud Data Service or impair anyone else’s use of it; or
- e) 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 Cloud Data Service could lead to severe physical or environmental damages.

2.3. Functional Data. NetApp retains all right, title and interest in and to Functional Data. Without limiting the foregoing, NetApp may collect and use Functional Data to improve and enhance the Cloud Data Service and NetApp’s other products and services.

3. CUSTOMER INFORMATION

3.1. Ownership of Customer Information. As between Customer and NetApp, Customer retains all right, title and interest in and to Customer Information. NetApp acquires no rights in Customer Information, other than the rights Customer grants to NetApp hereunder to provide the Cloud Data Service to Customer.

3.2. Use of Customer Information. NetApp will use Customer Information solely to provide the Cloud Data Service and, if applicable, related technical support.

3.3. Disclosure of Customer Information. NetApp will not disclose Customer Information outside of NetApp or its controlled subsidiaries and affiliates except to the extent required to make the Cloud Data Service available for Customer use or to the extent such disclosure is required by applicable law. NetApp will give Customer reasonable notice of a request of a governmental or regulatory body for Customer Information to allow Customer 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).

3.4. GDPR and CCPA Compliance. 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. Additional terms and conditions applicable to NetApp acting in a role as a data processor are set forth at <https://www.netapp.com/us/how-to-buy/index.aspx>. To the extent NetApp acts as a data processor, as defined in the California Consumer Privacy Act, of Personal Information on Customer's behalf, NetApp will not retain, use, or disclose such Personal Information for any purpose other than providing services to Customer in accordance with these Terms. NetApp certifies that it understands the foregoing restrictions and will comply with them.

4. DATA SECURITY

4.1. Security. NetApp will implement reasonable technical and organizational safeguards designed to protect Customer Information 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 Information.

4.2. Security Incident. If NetApp discovers that a Security Incident has occurred, NetApp will notify Customer 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. Customer must notify NetApp promptly about any possible misuse of its accounts or authentication credentials or any Security Incident of which it becomes aware related to the Cloud Data Service.

5. TRIAL SERVICES AND COMPLIMENTARY SERVICES. NetApp may, in its sole discretion, offer a no cost, no obligation trial to a Cloud Data Service ("Trial Service") to customers. The Trial Service will commence on the initial date a Customer accesses the Cloud Data Service and will conclude at the end of the trial period delineated by NetApp, or sooner if: (a) the Customer purchases a subscription to the applicable Cloud Data Service, or (b) if NetApp terminates Customer's use of the Cloud Data Service in accordance with these Terms. NetApp may, in its sole discretion, offer Cloud Data Services at no cost to Customers, up to certain limits prescribed by NetApp ("Complimentary Services"). Customer acknowledges and agrees that these Terms are applicable and binding upon Customer to Trial Services or Complimentary Services. NOTWITHSTANDING SECTIONS 9 (SERVICE LEVEL AGREEMENT) AND SECTION 11.1 (IP CLAIMS), NETAPP HAS NO OBLIGATION TO DEFEND OR SETTLE IP CLAIMS

OR HONOR AN APPLICABLE SERVICE LEVEL WITH RESPECT TO TRIAL SERVICES OR COMPLIMENTARY SERVICES.

6. BETA SERVICE. From time to time NetApp may make available a Cloud Data Service (or a feature of a Cloud Data Service) that is identified by NetApp as alpha, beta, pre-release, demonstration or preview ("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. Customers using a Beta Service agree to cooperate with NetApp in testing the Beta Service and providing feedback, to NetApp, which NetApp can use without restriction, concerning the functionality and performance of the Beta Service. ("Feedback"). Customer acknowledges that the Beta Service and Feedback are proprietary and confidential information of NetApp ("Confidential Information"). Customer will not make the Confidential Information available in any form to any person other than to its employees or consultants with a need to know and who are under an obligation of confidentiality not to disclose such Confidential Information. Customer understands and agrees that its use of a Beta Service is voluntary, and NetApp is not obligated to provide Customer with a commercial version of the Beta Service. Customer acknowledges and agrees that all use of a Beta Services is at its sole risk.

7. SERVICE LEVEL AGREEMENT. Specific Service Level Agreements (SLAs) delineate NetApp's commitment to uptime and connectivity for the Cloud Data Services. If available, SLAs for each respective Cloud Data Service are set forth on <https://www.netapp.com/us/how-to-buy/stc.aspx>.

8. WARRANTY

8.1. Warranty. CUSTOMER ACCEPTS THE CLOUD DATA SERVICE AND CDS SOFTWARE AGENT "AS IS" AND AS AVAILABLE. NETAPP PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) NETAPP DOES NOT REPRESENT OR WARRANT THAT THE CLOUD DATA SERVICE(S) WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) NETAPP DOES NOT REPRESENT OR WARRANT THAT THE CLOUD DATA SERVICE(S) IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER CONTENT WILL REMAIN PRIVATE OR SECURE.

9. INTELLECTUAL PROPERTY PROTECTION

9.1. IP Claims. Subject to the terms and conditions of this Section, NetApp will defend or settle any claim brought by a third party against Customer that the Cloud Data Service or CDS Software Agent sold and delivered by or for NetApp to Customer 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 Customer to the extent such Damages are specifically attributable to the IP Claim, provided that Customer: (a) promptly notifies NetApp in writing of the IP Claim; (b) provides information and assistance to NetApp to defend such IP Claim; and (c) provides NetApp with sole control of the defense or settlement negotiations.

9.2. Remedies. NetApp may, at its option, substitute or modify the applicable Cloud Data Service or CDS Software Agent, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the Cloud Data Service. If NetApp determines that none of these alternatives is reasonably available, then Customer may terminate its subscription and NetApp will refund Customer's purchase price.

9.3. 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 or on behalf of Customer; (b) modifications made by or on behalf of Customer without NetApp's prior written authorization; (c) Customer's failure to upgrade or use a new version of the CDS Software Agent, to make a change or modification requested by NetApp, implement or configure the Cloud Data Service in a manner set forth by NetApp, or to cease using the Cloud Data Service or CDS Software Agent, if requested by NetApp; (d) the Cloud Data Service or CDS Software Agent, or any portion thereof, in combination with any other product or service (including NetApp Cloud Provider services); (e) Customer's breach of the acceptable use policy; or (f) any content or information stored on or used by Customer or a third party in connection with the Cloud Data Service.

9.4. Entire Liability. Notwithstanding any term to the contrary in these Terms, this Section 9 states NetApp's entire liability and Customer's sole and exclusive remedies for IP Claims.

10. LIMITATION OF 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 Cloud Data Service(s) in the 12 months preceding the event that gave rise to the claim or the minimum amounts permitted by applicable laws, if greater. 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.

The limitations and exclusions above will not apply to liability for death or bodily injury caused by negligence, gross negligence, willful misconduct, fraud, IP Claims under Section 9, or any other liability that cannot be excluded under applicable laws.

11. CLOUD DATA SERVICE EXPIRATION, SUSPENSION OR TERMINATION

11.1. Suspension or Termination. Customers that violate Section 2.2 may be subject to having their Cloud Data Service(s) Subscription suspended or terminated at NetApp's discretion. NetApp will provide reasonable notice before suspending or terminating a Cloud Data Service unless NetApp believes an immediate suspension or termination is required. Upon suspension or termination of the Cloud Data Service(s), Customer will promptly return or destroy all copies of the CDS Software Agent.

11.2. Data Retention. NetApp will use commercially reasonable efforts to notify Customer that its access to the Cloud Data Service will be discontinued and all Customer Information will be deleted, at a time to be determined by NetApp, without the option of recovery. NetApp expressly disclaims all liability if Customer does not receive or act in accordance with this notice, or if any Customer Information is deleted.

12. EXPORT CONTROLS. Customer acknowledges that the Cloud Data Service(s) and CDS Software Agent supplied by NetApp under these Terms are subject to export controls under the laws and regulations of the United States, the European Union and other countries (as applicable), and the Cloud Data Service(s) may include technology controlled under export and import regulation, including encryption technology. Customer agrees to comply with such laws and regulations and represents and warrants that Customer:

- a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export the Cloud Data Service to or use the Cloud Data Service in countries subject to U.S. embargoes or trade sanctions programs;
- b) is not a party, nor will Customer export or re-export to a party, identified on any applicable government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists;
- c) will not use the Cloud Data Service for any purposes prohibited by U.S. law, including the development, design, manufacture or production of nuclear, missile, chemical, or biological weaponry or other weapons of mass destruction; and
- d) is responsible for compliance with all local encryption laws and regulations, where applicable, and for obtaining any permits and licenses required under those laws and regulations for Customer's use of the Cloud Data Service(s).

Customer agrees to provide NetApp destination end use and end user information upon NetApp's request. Customer will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Customer agrees to obligate, by contract or other similar assurances, the parties to whom Customer re-exports or otherwise transfers the Cloud Data Service(s) to comply with all obligations set forth in this Section 12.

13. MISCELLANEOUS

13.1. U.S. Federal Government Customers. This Section applies only to U.S. Federal Government Customers. The Cloud Data Services and CDS Software Agents are "commercial" computer software and are licensed to Customer 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 alleged loss or damages resulting from acts of God, acts of civil or military authority, governmental priorities, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation or any other causes beyond the reasonable control of a Party (collectively, "Force Majeure").

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. Customer may not assign any rights or delegate any obligations under these Terms without the prior written consent of NetApp. Any purported assignment by Customer 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 Cloud Data Service or CDS Software Agent will be published or caused to be published by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, Customer agrees to be mentioned in the list of buyers of NetApp Cloud Data Services and that its logo and trademark may be used for this purpose only.

13.8. Audit. Customer grants NetApp and its independent accountants the right to audit Customer or Customer's subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses Cloud Data Service(s) or CDS Software Agent over-usage or any other material noncompliance, Customer 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 the Customer is in the United States or in a country in which NetApp has no local sales subsidiary, or (b) the country in which the Customer is 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 Customer's use of the Cloud Data Service.