



## CLOUD SERVICES TERMS

These Cloud Services Terms (“**Cloud Services Terms**”), together with the General Terms, set forth the terms and conditions under which NetApp provides Customer with a right to access or use its identified Cloud Services and (as applicable) Cloud Services Enabling Software, whether acquired directly from NetApp or indirectly from a NetApp Partner or a NetApp Cloud Provider. These Cloud Services Terms (and the General Terms) exclusively govern NetApp’s delivery of the Cloud Services unless Customer has a separate written agreement with NetApp that specifically governs the Cloud Services. Any capitalized terms used herein and not defined have the meaning set forth in the General Terms.

### 1. CLOUD SERVICES

- 1.1 Access Rights.** Subject to these Cloud Services Terms and during the specified period of continuous time for which Customer is authorized (“**Subscription Term**”), Customer may access and use the Cloud Service for Customer’s own internal use, including in support of service offerings Customer may provide to its end customers (but, for clarity, not as a standalone product or service). This includes the right, as part of Customer’s authorized use of the Cloud Service, to download and use any Cloud Service Enabling Software, and related Documentation describing the features and functions of the Cloud Service. The rights granted in this Section are non-exclusive, non-transferable, non-sublicensable, and revocable.
- 1.2 Use Limitations.** Customer will not, nor will Customer allow any third party, to: (a) modify, adopt or create a derivative work of, the Cloud Service, Cloud Service Enabling Software or Documentation; (b) publish or provide any benchmark or comparison test results that pertain to the Cloud Service; (c) reverse engineer, decompile or disassemble the Cloud Service or any applicable Cloud 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) use the Cloud Service or any Cloud Service Enabling Software in excess of any limitations (e.g., user limits, time limits, capacity limits, free trials) prescribed by NetApp; (e) remove, conceal, or modify any identification, proprietary, intellectual property, or other notices in the Cloud Service, Cloud Service Enabling Software or Documentation; (f) access or use the Cloud Service in violation of laws or regulations; (g) use the Cloud Service to violate the rights of others; (h) use the Cloud Service to try to gain unauthorized access to or interrupt any service, device, data, account, or network; or (i) use the Cloud Service in high-risk, hazardous environments requiring fail-safe performance, including in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems in which the failure of the Cloud Service could lead to severe physical or environmental damages.
- 1.3 Unauthorized Use.** Use of the Cloud Service, Cloud Service Enabling Software or Documentation outside of the scope of these Cloud Services Terms constitutes a material breach, and Customer agrees to promptly pay, upon notice, any additional Cloud Service fees calculated in accordance with the Price List.
- 1.4 Third-Party and Open-Source Software.** Notwithstanding other statements in this Section, third-party software components, including free, copyleft and open-source software components, if any, embedded in the Cloud Service or Cloud 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 may be provided with the Cloud Enabling Software or available for review with the Documentation at <https://mysupport.netapp.com/>, 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 Cloud Service or Cloud Service Enabling Software. Third-Party Embedded Software that is delivered as part of the Cloud Service or Cloud Service Enabling Software is included in the applicable warranty, support and indemnification provisions provided it is not removed or used separately from the Cloud Service or Cloud Service Enabling Software.

- 1.5 Third Party Beneficiaries.** If required by NetApp’s agreement with a Third-Party Embedded Software licensor, such licensor will be a direct and intended beneficiary of these Cloud Services Terms and may enforce them directly against Customer.

## **2. DIRECT PURCHASE TERMS**

This Section applies only to Orders for Cloud Services that Customer places directly with NetApp.

- 2.1 Order Acknowledgement.** NetApp may limit, refuse, or cancel any Cloud Service Order at its sole discretion. NetApp may also require additional information before accepting or processing any Order. NetApp will provide Customer with an email confirmation (where applicable) upon receipt of Customer’s Cloud Service Order. Such order confirmation represents NetApp’s confirmation of receipt and does not signify NetApp’s acceptance of Customer’s Order, nor does it constitute confirmation of NetApp’s offer to sell. NetApp reserves the right at any time after receiving Customer’s Order to accept or decline the Order for any reason. However, if NetApp cancels an Order after Customer has submitted payment, NetApp will refund the amount received by NetApp without interest.
- 2.2 Delivery.** Delivery of a Cloud Service occurs when NetApp makes the enabling key or access credentials available electronically to Customer or, if an enabling key is not required, when NetApp makes such Cloud Service available for Customer’s use.
- 2.3 Monthly Billing Date.** Customer’s monthly billing date is the earlier of (a) the date of the month that Customer originally started Customer’s subscription on or (b) the last day of the month. For example, if Customer signed up for its subscription on January 31st, Customer’s 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).
- 2.4 Pay Per Use, Monthly, Annual, and Multi-Year Service Subscriptions.** Cloud Services may be ordered on a pay per use, monthly subscription, annual subscription, or multi-year subscription basis.
- 2.5 Changes, Cancellation, and Renewals.**
- 2.5.1 Monthly Service Subscriptions.** Unless otherwise agreed to in writing, Customer’s monthly Cloud Service subscription will automatically renew for additional one-month terms unless cancelled in accordance with these Cloud Services Terms. Customer must cancel Customer’s monthly subscription in writing no later than fourteen (14) days before Customer’s monthly billing date. In the event Customer cancels its monthly subscription, Customer will not receive a refund, but Customer will receive the Cloud Service for the remainder of the billing month Customer cancels in, and no further



charges will be incurred. NetApp reserves the right to cancel Customer's monthly subscription upon thirty (30) days' prior written notice. If NetApp exercises this right Customer will not receive a refund, but Customer will receive the Cloud 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 thirty (30) days' prior written notice.

**2.5.2 Annual and Multiyear Subscriptions.** Annual and multi-year subscriptions are non-cancellable. If Customer has agreed that its annual or multi-year subscription will automatically renew at the end of a Subscription Term, then the subscription will automatically renew for additional periods equal to the expiring Subscription Term or one (1) year (whichever is shorter), unless either party gives the other written notice of non-renewal no later than ninety (90) days before the end of the then current Subscription Term.

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

### **3. CUSTOMER CONTENT AND SECURITY**

**3.1 Ownership.** Customer retains all right, title, and interest in Customer Content. NetApp acquires no rights in Customer Content, other than the rights Customer grants to NetApp to provide the Cloud Service.

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

**3.3 Disclosure.** NetApp will not disclose Customer Content outside of NetApp or its Affiliates except to the extent required to make the Cloud Service available for Customer's 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 Content 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 Security.** NetApp will implement reasonable technical and organizational safeguards designed to protect Customer Content against unauthorized loss, destruction, alteration, access, or disclosure, including as described in the InfoSec Addendum. 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.

**3.5 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 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 of which it becomes aware related to the Cloud Service.

#### **4. PERFORMANCE AND OPERATIONS**

- 4.1 Service Specific Terms.** Certain Cloud Services may be subject to additional terms specific to that Cloud Service (e.g., NetApp's commitment to specific service level agreements); these are set forth in the "Cloud Services – Service Specific Terms" on NetApp's How to Buy Site.
- 4.2 Support.** During the Subscription Term, NetApp will provide Customer with remote technical support necessary to ensure the purchased Cloud Service performs in accordance with the applicable Documentation and warranty provisions herein.

#### **5. WARRANTY**

- 5.1 Warranty and Remedy.** NetApp warrants that during the Subscription Term (a) the Cloud Service will perform substantially in accordance with the applicable service level agreement; (b) these Cloud Service Terms and the Documentation accurately describe the applicable administrative, technical and physical safeguards for the protection and security of Customer Content; (c) NetApp will not materially decrease the security of the Cloud Services; and (d) NetApp will not materially decrease the functionality of the Cloud Service. If NetApp does not meet the warranty set forth in (a), then Customer's sole and exclusive remedy is as set forth in the applicable Service Level Agreement. For breach of any of the other warranties in this Section that continue for thirty (30) days after Customer provides written notice of such breach, as Customer's sole and exclusive remedy and NetApp's sole liability, Customer may terminate the affected Cloud Service, and NetApp will refund any prepaid subscription fees received by NetApp covering that part of the Subscription Term for the affected Cloud Service after the effective date of termination. Notwithstanding the foregoing, this warranty will not apply to any breach due to a modification of or defect in the Cloud Service made or caused by any party other than NetApp or a person acting at NetApp's direction.
- 5.2 Disclaimer.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING ARE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THESE CLOUD SERVICES TERMS, NETAPP MAKES NO OTHER WARRANTIES AND SPECIFICALLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING 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 CLOUD SERVICE, DOCUMENTATION AND CLOUD SERVICE ENABLING SOFTWARE. NETAPP AND ITS SUPPLIERS DO NOT WARRANT THAT CLOUD SERVICES WILL BE UNINTERRUPTED OR FREE FROM DEFECTS OR ERRORS, OR THAT CLOUD SERVICES WILL MEET OR ARE DESIGNED TO MEET CUSTOMER'S BUSINESS REQUIREMENTS.



## 6. SUSPENSION, EXPIRATION OR TERMINATION OF CLOUD SERVICES

- 6.1 Suspension/Termination.** NetApp may suspend or terminate Customer's access to, and use of, any Cloud Service if Customer (a) fails to remit payments when due; (b) otherwise breaches these Cloud Services Terms or the General Terms, as applicable; or (c) uses the Cloud Services in a manner that violates the law. NetApp will provide reasonable notice before suspending Customer's access to a Cloud Service unless NetApp, in its sole discretion, believes an immediate suspension or termination is required.
- 6.2 Refund or Payment upon Termination.** If an Order subject to these Cloud Services Terms is terminated by Customer due to NetApp's breach in accordance with the Term and Termination Section set forth in the General Terms, NetApp will refund any prepaid fees received by NetApp covering the remainder of the term of such Order after the effective date of termination. If these Cloud Services Terms are terminated by NetApp due to Customer's breach in accordance with the Term and Termination Section set forth in the General Terms, Customer will pay any unpaid fees covering the remainder of the term of all Orders to the extent permitted by applicable law. In no event will any termination relieve Customer of its obligation to pay any fees payable to NetApp for the period prior to the effective date of termination.
- 6.3 Effect of Cloud Service Expiration or Termination.** In the event of expiration or termination of the Cloud Service, NetApp will use commercially reasonable efforts to notify Customer that its access to the Cloud 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 Customer does not receive or act in accordance with this notice, or if any Customer Content is deleted.

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