

Online Purchase Agreement

This Online Purchase Agreement ("Agreement") applies to sales of Cloud Data Services by NetApp, Inc., NetApp B.V. and/or any of their Affiliates (collectively, "NetApp") directly to a customer for its own use ("Customer" or "You") through the NetApp website or Cloud Data Service application (each a "Site"), unless Customer has entered into a separate agreement with NetApp governing such sale. By ordering, accepting delivery, or using Cloud Data Services or otherwise proceeding with any transaction with NetApp through the Site, Customer agrees to this Agreement. By clicking the mechanism designed to acknowledge agreement to these terms and conditions, Customer is indicating that it has read these terms and conditions, understands them, and agrees to be legally bound to them, on behalf of the company or other legal entity for which Customer is acting, and Customer represents and warrants that it has the right, power, and authority to act on behalf of and bind its company. Customers who place an Order through the Site understand and agree that the version of these terms and conditions in effect on the date Customer places that Order will govern that Order. These online purchase terms may change from time to time, so Customer should review them upon submission of each Order, even if Customer has reviewed them before.

1. DEFINITIONS

1.1. Affiliate(s). Any entity, directly, or indirectly through one or more intermediaries, that is controlled by, or is under common control by NetApp, but only for so long as such relationship exists. For the purposes of this definition, "control" means the ability to direct its affairs and/or to control the composition of its board of directors or ownership of more than fifty percent (50%) (or such lesser percent as may be the maximum that may be owned by foreign interests pursuant to the applicable laws of the country of incorporation) of (a) the shares of stock entitled to vote for directors in the case of a corporation; or (b) the equity or interests in profits in the case of a business entity other than a corporation.

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

1.3. Order. An electronic order submitted to NetApp through the Site for the purchase of a Cloud Data Service.

2. FEES AND PAYMENT

2.1. Cloud Data Service Fees. NetApp calculates and bill fees and charges monthly based on Customer's actual usage of the Cloud Data Service.

2.2. Taxes and Duties. Customer is 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 its utilization or NetApp's provision of the Cloud Data Service. If such taxes are incurred, including any withholding taxes, the sum payable by Customer (in respect of which such deduction or withholding is required to be made) will be increased to the extent necessary to ensure that NetApp receives payment in full of an amount equal to the invoiced amount. If Customer is tax-exempt, then Customer will provide NetApp with tax exemption certificates or other documentation acceptable to the taxing authorities not later than thirty (30) days from the Effective Date. If Customer does not provide such documentation to NetApp, NetApp reserves the right to include such taxes in the invoice.

2.3. Order Delivery. Delivery of the Cloud Data Service occurs when NetApp makes the enabling key or access credentials available electronically via e-mail or otherwise to Customer or, if an enabling key is not required, when NetApp makes such Cloud Data Service available for use electronically via e-mail or otherwise by Customer.

2.4. Order Acceptance. NetApp may limit, refuse, or cancel any 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 upon receipt of Customer's Order. Such Order confirmation only 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 your Order to accept or decline your Order for any reason. If NetApp cancels an Order after Customer has submitted payment for an Order, NetApp will refund the amount paid.

2.4. Refund Policy. All Orders are nonrefundable. Any purchase by Customer is deemed completed upon submission and acknowledgement that the form of payment provided in connection with the transaction may be charged or invoiced by NetApp or a third-party payment processor.

2.5. Invoicing. NetApp is entitled to invoice Customer for the Cloud Data Services on a periodic basis, as determined by NetApp, in arrears.

2.6. Payment Terms. Unless earlier payment is required by applicable law, regulation, or executive order, Customer will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, not later than thirty (30) days of the date of NetApp's invoice.

2.7. Remedies for Non-payment. Customer 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 in this Agreement or by law or in equity. NetApp has the right to apply any payment received from Customer to any account of Customer which is due and/or delinquent. If Customer fails to make timely payment, in addition to all other available remedies, NetApp may decline to provide the Cloud Data Service to Customer.

2.8. Third Party Payment Processing. Customers may utilize a third-party payment processor as a means of payment for a Cloud Data Service and use of such processors will be subject to the processor's own terms and conditions. NetApp reserves the right, in its sole and absolute 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.

2.9. Cloud Data Service Pricing. Pricing for Cloud Data Service is subject to change at any time upon notice.

3. TERMINATION

3.1. Termination. NetApp may terminate access to the Cloud Data Services immediately upon written notice to Customer (a) if Customer commits a material breach of this Agreement, including failure to remit payments when due and, in the event that the breach is remediable, fails to remedy it within thirty (30) days of NetApp's written notice requiring Customer to do so; or (b) if Customer becomes insolvent; applies for or consents to the appointment of a trustee, receiver, or other custodian; makes a general assignment for the benefit of creditors; initiates any bankruptcy, debt arrangement or other case or proceeding under any bankruptcy or insolvency law; or becomes subject to any dissolution or liquidation proceedings.

3.2. Rights upon Termination or Expiration. Termination of access to the Cloud Data Service will not relieve Customer from its payment obligations with respect to any sums accrued prior to termination or expiration, and upon termination nor expiration all payment obligations will become immediately due and payable. Upon termination of access to the Cloud Data Service, all rights to use the Cloud Data Service cease. The rights and obligations imposed by Sections 2, 3.2 and 5 survive termination of the Agreement.

4. TERMS OF SERVICE.

Additional terms and conditions applicable to

the Cloud Data Services associated with an Order are set forth at <https://www.netapp.com/us/how-to-buy/stc.aspx> and are incorporated by reference.

5. CONTRACTING ENTITY, GOVERNING LAW, AND VENUE. The NetApp entity entering into this Agreement, the address to which You should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where You are domiciled or registered, all as specified in the table below:

Customer	The NetApp entity entering into agreement is:	Notices should be addressed to:	Governing law is:	Courts with exclusive jurisdiction are:
if the Customer is in APAC (excluding Australia or Japan which are set forth below)	NetApp BV	Boeing Avenue 300, 1119 PZ Schiphol-Rijk, Netherlands	Netherlands	Amsterdam, Netherlands
if the Customer is in EMEA (excluding Austria, Belgium, France, Germany, Ireland, Israel, Italy, Spain, or Switzerland, which are set forth below), Central America, or South America	NetApp BV	Boeing Avenue 300, 1119 PZ Schiphol-Rijk, Netherlands	Netherlands	Amsterdam, Netherlands
if the Customer is in the United States or Mexico	NetApp, Inc.	3060 Olsen Drive, San Jose, CA 95128	the State of California	San Francisco, California
if the Customer is established and registered in Australia	NetApp Australia Private Ltd.	Level 7, 100 Pacific Highway, Sydney NSW, Australia	Australia	Sydney, Australia
if the Customer is established and registered in Austria	NetApp Austria GmbH	EURO PLAZA Gebäude G, Stiege 7, 3. OG Am Euro Platz 2 1120 Wien, Austria	Austria	Vienna, Austria
if the Customer is established and registered in Belgium	NetApp Belgium BBVA	Culliganlaan 2 Park Lane Building D Diegem 1831 Belgium	Belgium	Brussels, Belgium

if the Customer is established and registered in Canada	NetApp Canada Ltd.	100 Milverton Dr #404, Mississauga, ON L5R 4H1, Canada	Canada.	Toronto, Canada
if the Customer is established and registered in France	NetApp France SAS	Tour Ariane 5 Place de la Pyramide Paris La Defense, 92088 France	France	the Commercial Court of Paris, France
if the Customer is established and registered in Germany	NetApp Deutschland GmbH	Sonnenallee 1 Kirchheim, 85551 Germany	Germany	Munich, Germany
if the Customer is established and registered in Japan	NetApp Japan KK	Japan, 〒104-0031 Tokyo, Chuo City, Kyobashi, 2 Chome -1-3 京橋トラストタワー 9F & 10F	Japan	Tokyo, Japan
if the Customer is established and registered in Ireland	NetApp BV	Boeing Avenue 300, 1119 PZ Schiphol-Rijk, Netherlands	England and Wales	English Courts in London
if the Customer is established and registered in Israel	NetApp Israel	Aharon Bart St 18, Petah Tikva, Israel	Israel	Tel Aviv, Israel
if the Customer is established and registered in Italy	NetApp Italia SRL	Via Vittoria Colonna, 4, 20149 Milano MI, Italy	Italy	Milan, Italy
if the Customer is established and registered in Spain	NetApp Spain Sales LTD	Calle de Rosario Pino, 14, 28020 Madrid, Spain	Spain	Madrid, Spain
if the Customer is established and registered in Switzerland	NetApp Switzerland GmbH	Hammerweg 1, 8304 Wallisellen, Switzerland	Switzerland	Zurich, Switzerland
if the Customer is established and registered in the United Kingdom	NetApp UK Ltd.	Rivermead Oxford Road Middlesex UB9 4BF United Kingdom	England and Wales	English Courts in London

6. MISCELLANEOUS. This Agreement, together with the terms incorporated in Section 4, represent the entire agreement and understanding between the parties with respect to an Order. This Agreement supersedes any previous communications, representations or agreements between the parties and prevails over any conflicting or additional terms in any applicable quote,

purchase order, acknowledgement, or similar communications between the parties. Any documentation pertaining to the Cloud Data Service referenced herein that is issued by Customer will be deemed to incorporate and be subject to this Agreement, except where the parties expressly agree in writing to variations thereto. The pre-printed terms or general terms and conditions on any purchase order, contractual document or other similar correspondence originating by either party will have no effect.