



Hybrid Cloud Managed Services Schedule to the General Terms

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A note on 'you'

'You' and 'your' mean the Customer.

Words defined in the General Terms

Words that are capitalised but have not been defined in this Schedule have the meanings given to them in the General Terms.

Part A – Hybrid Cloud Managed Services

1 Service Summary

BT will provide you with a range of management services to your Cloud Services comprising of the Essential Service or the Premium Service as set out in any applicable Order and up to the point of the Service Management Boundary as set out in Paragraph 4 ("**Hybrid Cloud Managed Service**").

2 Service Components

You will choose a combination of the following management service packages in order for BT to manage the Customer Infrastructure and throughout the duration of the Contract you will ensure that at least 25 per cent of the Customer Infrastructure is managed through the Premium Service, in accordance with the details as set out in any applicable Order:

2.1 Essential Service

BT will provide you with 24x7x365 access to a Service Desk that will offer you support in relation to Customer Infrastructure, as set out in any applicable Order ("**Essential Service**").

2.2 Premium Service

BT will provide you with the following components:

2.2.1 Service Desk

Access to a 24x7x365 Service Desk that will provide support to the Customer Infrastructure, as set out in any applicable Order.

2.2.2 Configuration Management

Reactive and proactive configuration and technical support of the Customer Infrastructure to ensure that the Customer Infrastructure works efficiently with the Cloud Services.

2.2.3 Monitoring and Reporting

Proactive monitoring and reporting of the Customer Infrastructure such as CPU memory, storage and network optimisation.

2.2.4 Virtual Machine and Storage Administration

Management, including fine-tuning, updating and maintaining of the Customer Infrastructure as well as allocation and pro-active monitoring of storage options you have purchased through the Cloud Services.

2.2.5 End User Management

Management of End User accounts to your Cloud Services.

2.2.6 Efficiency Optimisation

Monitoring of your use of the Cloud Services to identify efficiencies that could be made to your use of the Cloud Services.

2.2.7 Backup

Back-up of any data you have stored on the Cloud Services to the same availability zone or region you have chosen to store any data within the Cloud Services.

2.2.8 Security Services

Pro-active monitoring of the security of the Cloud Services and installation of anti-virus and anti-malware as appropriate.

2.2.9 Multi Cloud Management Service



BT will provide you with a fully managed multi-cloud service that provides an access to multi-cloud management platform portal together with the following services that will be included on top of Hybrid Cloud Data Services:

- (a) Provisioning and Orchestration – BT will configure, provision, modify and delete resources based on your needs as well as orchestrate changes with workflows;
- (b) Blueprints and workflows – BT will create new blueprints and workflows to a maximum of 15 requests per month;
- (c) Governance and Policy - based on your business requirements, BT will create policies that allow to govern your infrastructure;
- (d) Multi-cloud and leverage brokering - provides support for multiple cloud providers and products from a single platform;
- (e) Configuration and automation - enables configuration for infrastructure and automate manual steps currently required for managing and provisioning of resources;
- (f) DevOps support – BT will provide team of infrastructure administrators (DevOps team) to support your cloud native operations;
- (g) Infrastructure as code – BT will use infrastructure as a code to enable automating manual tasks to speed service delivery and integrate with tools such as Terraform and Ansible.

(**"Multi Cloud Management Service"**).

(**"Premium Service"**).

3 Service Options

BT will provide you with any of the following options (**"Service Options"**) as set out in any applicable Order and in accordance with the details as set out in that Order:

3.1 Hybrid Cloud Data Services

3.1.1 BT will provide you with additional backup configurations, including:

- (a) data compliance and security;
- (b) backup, snapshots;
- (c) data replication (Array/host), deduplication and cloning;
- (d) continuous data cost optimization;
- (e) data migration; and
- (f) disaster recovery.

(**"Hybrid Cloud Data Services"**)

3.1.2 You need to have the Premium Service in order to use Hybrid Cloud Data Services.

3.2 Cloud Cost Optimization

3.2.1 Cloud Cost Optimization provides visibility into resource usage of Cloud Services, including:

- (a) identifying mismanaged resources;
- (b) locating and removing any unnecessary or unused services;
- (c) providing a detailed report, so you can easily scale your services; and
- (a) adjusting Cloud Services to scale.

3.2.2 You may use this Service Option:

- (a) in order to automate your billing; or
- (b) as a cost optimization service.

3.2.3 You need to have the Premium Service in order to use Cloud Cost Optimization Service Option.

4 Service Management Boundary

- 4.1 BT will provide and manage the Hybrid Cloud Managed Service in accordance with Parts B and C of this Schedule and as set out in any applicable Order (**"Service Management Boundary"**).
- 4.2 BT is responsible for the Services described in this Schedule up to the point where they are delivered on the Cloud Services and BT is not responsible for the availability, applications or any other element or functionality of the Cloud Services.
- 4.3 You are solely responsible for obtaining and maintaining all necessary software licences or other authorisations and consents required for the Cloud Services.
- 4.4 BT will have no responsibility for the Hybrid Cloud Managed Service outside the Service Management Boundary.



- 4.5 BT does not make any representations, whether express or implied, about whether the Hybrid Cloud Managed Service will operate in combination with any Customer Equipment or other equipment and software.

5 Associated Services

- 5.1 You will have the following services in place that will connect to the Hybrid Cloud Managed Service and are necessary for the Hybrid Cloud Managed Service to function and will ensure that these services meet the minimum technical requirements that BT specifies:
- 5.1.1 computer hardware, software and telecommunications equipment and services necessary to access and use the Hybrid Cloud Managed Service;
 - 5.1.2 an Internet connection;
 - 5.1.3 Cloud Services, either purchased from BT or through the Cloud Services providers directly; and
 - 5.1.4 the corresponding applications on the Cloud Services to enable BT to provide the Hybrid Cloud Managed Service, for example, for BT to provide the back-up functionality, as described in Paragraph 2.2.7, you must have in place the corresponding back-up application on the Cloud Services, (“Enabling Services”).
- 5.2 If BT provides you with any services other than the Hybrid Cloud Managed Service (including any Enabling Service) this Schedule will not apply to those services and those services will be governed by their separate terms.
- 5.3 If you are required by Applicable Law to purchase the Hybrid Cloud Managed Service from a third party supplier, BT will manage the Hybrid Cloud Managed Service as your agent. You will provide BT with a letter of agency to enable BT to manage the third party.

6 Specific Terms

6.1 Minimum Period of Service and Renewal Periods

- 6.1.1 Subject to Paragraph 6.2, unless one of us gives Notice to the other of an intention to terminate the Hybrid Cloud Managed Service at least 30 days before the end of the Minimum Period of Service or a Renewal Period, at the end of the Minimum Period of Service or Renewal Period, the Hybrid Cloud Managed Service will automatically extend for a Renewal Period and both of us will continue to perform each of our obligations in accordance with the Contract.
- 6.1.2 If either of us gives Notice to the other of an intention to terminate the Hybrid Cloud Managed Service, BT will cease delivering the Hybrid Cloud Managed Service at the time of 23:59 on the last day of the Minimum Period of Service or subsequent Renewal Period.

6.2 Notice to Amend

- 6.2.1 BT may propose changes to this Schedule, the General Terms or the Charges (or any of them) by giving you Notice at least 90 days prior to the end of the Minimum Period of Service and each Renewal Period (“Notice to Amend”).
- 6.2.2 Within 21 days of any Notice to Amend, you will provide BT Notice:
 - (a) agreeing to the changes BT proposed, in which case those changes will apply from the beginning of the following Renewal Period;
 - (b) requesting revisions to the changes BT proposed, in which case both of us will enter into good faith negotiations for the remainder of that Minimum Period of Service or Renewal Period, as applicable, and, if agreement is reached, the agreed changes will apply from the beginning of the following Renewal Period; or
 - (c) terminating the Contract at the end of the Minimum Period of Service or Renewal Period, as applicable.
- 6.2.3 If we have not reached agreement in accordance with Paragraph 6.2.2(b) by the end of the Minimum Period of Service or the Renewal Period, the terms of this Schedule will continue to apply from the beginning of the following Renewal Period unless you give Notice in accordance with Paragraph 6.2.2(c) or BT may give Notice of termination, in which case BT will cease delivering the Hybrid Cloud Managed Service at the time of 23:59 on the last day of the Minimum Period of Service or subsequent Renewal Period as applicable.

6.3 Minimum Revenue Commitment

- 6.3.1 You will pay BT the Minimum Revenue Commitment throughout the duration of the Contract.
- 6.3.2 BT may terminate the Hybrid Cloud Managed Service on 30 days' Notice if you fail to pay the Minimum Revenue Commitment or any part of it.



6.4 Customer Committed Date

- 6.4.1 If you request a change to the Hybrid Cloud Managed Service, then BT may revise the Customer Committed Date to accommodate that change.
- 6.4.2 BT may expedite delivery of the Hybrid Cloud Managed Service for operational reasons or in response to a request from you, but this will not revise the Customer Committed Date.

6.5 Service Transition

- 6.5.1 If you are transitioning your existing services to BT, you will provide any information or access BT reasonably requests within a reasonable period of time before the Service Start date, including:
 - (a) an inventory list with information relating to the Customer Infrastructure to be transitioned with relevant specifications, including:
 - (i) software licence information;
 - (ii) network diagrams;
 - (iii) Device name and IP addressing; and
 - (iv) details of any third party contracts, service level agreements and equipment;
 - (b) access to the Customer Infrastructure prior to the Service Start Date;
- 6.5.2 Any changes to the inventory provided in accordance with Paragraph 6.5.1 (a) will be made in writing and:
 - (a) may cause delay to the transition of your service or the Service Start Date; and
 - (b) may result in a change to the Charges to reflect the revised scope of the Hybrid Cloud Managed Service.
- 6.5.3 Whether or not you perform Acceptance Tests in accordance with Paragraph 10.2, you will provide reasonable technical support before and after the Service Start Date.

6.6 Termination of Cloud Services

If the Cloud Services are terminated for whatever reason, BT will automatically terminate the Hybrid Cloud Managed Service and you will pay the Termination Charges and any other charges as set out in any applicable Order and this Contract.

6.7 Access to Emergency Services

BT will not provide the ability for Users to call the emergency services by dialling "999" or "112" and you will make alternative arrangements for Users, including the maintenance of a fixed telephone number.

6.8 Invoicing

- 6.8.1 Unless set out otherwise in any applicable Order, BT will invoice you for the following Charges in the amounts set out in any applicable Order:
 - (a) Minimum Revenue Commitment;
 - (b) Installation Charges, on the Service Start Date, or where the installation period is estimated to be longer than one month, monthly in arrears starting from when you place an Order until the Service Start Date;
 - (c) Usage Charges, monthly or quarterly in arrears (depending on your billing frequency), calculated at the then current rates;
 - (d) Professional Services Charges;
 - (e) De-installation Charges within 30 days of de-installation of the Hybrid Cloud Managed Service; and
 - (f) any Termination Charges incurred in accordance with Paragraph 6.9.
- 6.8.2 BT may invoice you for any of the following Charges in addition to those set out in any applicable Order:
 - (a) Charges for investigating Incidents that you report to BT where BT finds no Incident or that the Incident is caused by something for which BT is not responsible under the Contract;
 - (b) Charges for commissioning the Hybrid Cloud Managed Service in accordance with Paragraph 7.2 outside of Business Hours;
 - (c) Charges for expediting provision of the Hybrid Cloud Managed Service at your request after BT has informed you of the Customer Committed Date; and
 - (d) any other Charges as set out in any applicable Order or the BT Price List or as otherwise agreed between both of us.
- 6.8.3 Where BT has agreed that the Hybrid Cloud Managed Service may be included within one of BT's standard pricing packages or schemes, during the period that the Hybrid Cloud Managed Service is included in the pricing package or scheme, the Charges specified in the Schedule may be amended



by the terms of the pricing package or scheme and upon termination of the pricing package or scheme, the Charges will revert to those specified in the Schedule.

6.9 Termination Charges

- 6.9.1 If you terminate the Contract or the Hybrid Cloud Managed Service for convenience in accordance with Clause 17 of the General Terms you will pay BT:
- (a) all outstanding Charges or payments due and payable under the Contract;
 - (b) De-installation Charges;
 - (c) any other Charges as set out in any applicable Order; and
 - (d) any charges reasonably incurred by BT from a supplier as a result of the early termination.
- 6.9.2 In addition to the Charges set out at Paragraph 6.9.1 above, if you terminate any parts of the Hybrid Cloud Managed Service:
- (a) during the first 12 months of the Minimum Period of Service, you will pay BT Termination Charges, as compensation, equal to 75 per cent of the average Usage Charges (based on the average monthly Usage Charge from the Service Start Date to the date of termination of the Hybrid Cloud Managed Services) for any remaining months of the first 12 months of the Minimum Period of Service or the Minimum Revenue Commitment for any remaining months of the first 12 months of the Minimum Period of Service, whichever sum is greater;
 - (b) during any remaining months of the Minimum Period of Service (other than the first 12 months of the Minimum Period of Service) or any Renewal Period, you will pay BT Termination Charges, as compensation, equal to one month's Minimum Revenue Commitment; and
 - (c) you will pay BT any waived Installation Charges.
- 6.9.3 BT will refund to you any money you have paid in advance after deducting any Charges or other payments due to BT under the Contract.

6.10 PCI DSS Compliance Obligations

- 6.10.1 The Hybrid Cloud Managed Service is not compliant with PCI DSS nor is it designed or intended to be and you will not use the Hybrid Cloud Managed Service for the processing, storage or transmission of any Cardholder Data or any data that is subject to PCI DSS.
- 6.10.2 You will indemnify BT for any Claims, losses, costs or liabilities that it incurs as a result of you storing, processing or transmitting data that is subject to PCI DSS.

6.11 TUPE

- 6.11.1 You warrant that, as a result of BT providing the Hybrid Cloud Managed Service, there is no person whose contract of employment with you will have the effect as if it was originally made between that person and BT in accordance with TUPE or otherwise.
- 6.11.2 You will indemnify BT and keep BT indemnified from and against any TUPE Liabilities that BT suffers or incurs arising from the transfer to BT of the contract of employment of any person in breach of the warranty given at Paragraph 6.11.1 including, without limitation, any TUPE Liabilities suffered or incurred in connection with:
- (a) any Employment Costs of any such person; or
 - (b) the employment or termination of employment of any such person prior to, on or after the Service Start Date.
- 6.11.3 The full or partial transfer of the Hybrid Cloud Managed Service from BT to you or any Successor Supplier may be a Relevant Transfer.
- 6.11.4 Where a Relevant Transfer occurs, except where any Outgoing Employees have objected in accordance with regulation 4(7) of TUPE, the employment contracts of the Outgoing Employees will be effective on and from the Service Transfer Date as if they were originally made between the Outgoing Employees and you (or where appropriate the Successor Supplier) except to the extent provided by TUPE.
- 6.11.5 Where Paragraph 6.11.4 applies:
- (a) BT will provide Employee Liability Information for the Outgoing Employees in accordance with regulation 11 of TUPE;
 - (b) BT will discharge the Employee Costs for the Outgoing Employees up to the Service Transfer Date;
 - (c) you will, or will ensure that any Successor Supplier will, discharge the Employee Costs for the Outgoing Employees on and from the Service Transfer Date and make all necessary apportionments;



- (d) we will each indemnify the other party (or where appropriate, the Successor Supplier) against all TUPE Liabilities arising from either of our failures to comply with the obligations set out in this Paragraph 6.11.5;
- (e) BT will indemnify you (or where appropriate any Successor Supplier) from and against all TUPE Liabilities arising in connection with, or as a result of any act or omission of BT relating, to any Outgoing Employees' employment prior to the Service Transfer Date; and
- (f) you will indemnify BT from and against all TUPE Liabilities arising in connection with, or as a result of any act or omission of you (or where appropriate any Successor Supplier) relating to, any Outgoing Employees' employment on or after the Service Transfer Date.

6.11.6 Any Successor Supplier will have the right to enforce the obligations owed to you, and the indemnities given to you by BT under Paragraph 6.11.2, in accordance with section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

6.12 Exclusive Access to the Cloud Services

- 6.12.1 If you have ordered the Premium Service, you will grant BT Exclusive Management Access to the Cloud Services in order that BT can provide you with the Hybrid Cloud Managed Service.
- 6.12.2 If you require BT to grant you Exclusive Management Access to the Cloud Services, you will notify BT in writing in advance of the time period you require Exclusive Management Access.
- 6.12.3 BT will then confirm to you in writing the time period that BT is able to grant you Exclusive Management Access and throughout any such period the Service Levels will not apply.
- 6.12.4 When you have Exclusive Management Access you will not do anything on the Cloud Services that, when BT retakes Exclusive Management Access, will result in BT having to remedy any actions you have taken on the Cloud Services in order for BT to provide the Hybrid Cloud Managed Service.
- 6.12.5 During any time period that BT does need to remedy any issues with the Cloud Services in accordance with Paragraph 6.12.4, the Service Levels will continue to not apply.
- 6.12.6 You will indemnify BT against any Claims brought by any Cloud Services provider or a third party during the time period you have Exclusive Management Access.
- 6.12.7 At the end of the agreed time period in which BT has granted you Exclusive Management Access, BT will retake Exclusive Management Access and BT will confirm to you in writing when the Service Levels will apply.

6.13 EULA

- 6.13.1 BT will only provide the Hybrid Cloud Data Services or the Multi Cloud Management Service if you have entered into the end user licence agreement with the supplier:
 - (a) for the Hybrid Cloud Data Services: in the form set out at Appendix 1,
 - (b) for the Multi Cloud Management Service, in the form set out at <https://morpheusdata.com/terms-and-conditions/>;as may be amended or supplemented from time to time by the supplier ("EULA").
- 6.13.2 You will observe and comply with the EULA for all any use of the applicable Software.
- 6.13.3 In addition to what it says in Clause 15 of the General Terms, if you do not comply with the EULA, BT may restrict or suspend the Hybrid Cloud Data Services or the Multi Cloud Management Service upon reasonable Notice, and:
 - (a) you will continue to pay the Charges for the Hybrid Cloud Data Services or for the Multi Cloud Management Service until the end of the Minimum period of Service; and
 - (b) BT may charge a re-installation fee to re-start the Hybrid Cloud Data Services or the Multi Cloud Management Service.
- 6.13.4 You will enter into the EULA for your own benefit and the rights, obligations, acknowledgements, undertakings, warranties and indemnities granted in accordance with the EULA are between you and the supplier and you will deal with the supplier with respect to any loss or damage suffered by either of you as such loss or damage will not be enforceable against BT.
- 6.13.5 Where the EULA is presented in a 'click to accept' function and you require BT to configure or install Software on your behalf, BT will do so as your agent and bind you to the EULA.



Part B – Service Delivery and Management

7 BT's Obligations

7.1 Service Delivery

Before the Service Start Date and, where applicable, throughout the provision of the Hybrid Cloud Managed Service, BT will provide you with contact details for the Service Desk.

7.2 Commissioning of the Service

Before the Service Start Date, BT will:

7.2.1 configure the Hybrid Cloud Managed Service;

7.2.2 conduct a series of standard tests on the Hybrid Cloud Managed Service to ensure that it is configured correctly;

7.2.3 connect the Hybrid Cloud Managed Service to each Enabling Service; and

7.2.4 on the date that BT has completed the activities in this Paragraph 7.2, confirm to you that the Hybrid Cloud Managed Service is available for performance of any Acceptance Tests in accordance with Paragraph 8.1.3.

7.3 During Operation

On and from the Service Start Date, BT:

7.3.1 will respond and use reasonable endeavours to remedy an Incident without undue delay and in accordance with the Service Care Levels in Part C of the Contract, if BT detects or if you report an Incident;

7.3.2 will fulfil Service Requests;

7.3.3 may carry out Maintenance from time to time and will use reasonable endeavours to inform you at least five Business Days before any Planned Maintenance on the Hybrid Cloud Managed Service, however, BT may inform you with less notice than normal where Maintenance is required in an emergency; and

7.3.4 may, in the event of a security breach affecting the Hybrid Cloud Managed Service, require you to change any or all of your passwords.

7.4 The End of the Service

On termination of the Hybrid Cloud Managed Service by either of us, BT:

7.4.1 will provide configuration information relating to the Hybrid Cloud Managed Service provided at the Site(s) in a format that BT reasonably specifies; and

7.4.2 may delete any Content if required by Applicable Law.

8 Your Obligations

8.1 Service Delivery

Before the Service Start Date and, where applicable, throughout the provision of the Hybrid Cloud Managed Service, you will:

8.1.1 ensure that you have all necessary authorisations, licences and consents to allow BT to provide you with the Hybrid Cloud Managed Service;

8.1.2 in jurisdictions where an employer is legally required to make a disclosure to its Users and other employees:

(a) inform your Users that as part of the Hybrid Cloud Managed Service being delivered by BT, BT may monitor and report to you the use of any targeted applications by them;

(b) ensure that your Users have consented or are deemed to have consented to such monitoring and reporting (if such consent is legally required); and

(c) agree that BT will not be liable for any failure by you to comply with this Paragraph 8.1.2, you will be liable to BT for any Claims, losses, costs or liabilities incurred or suffered by BT due to your failure to comply with this Paragraph 8.1.2.

8.1.3 allow BT to install all necessary software on your servers or other systems in order for BT to provide the Hybrid Cloud Managed Service.

8.2 Acceptance Tests

8.2.1 You will carry out the Acceptance Tests for the Hybrid Cloud Managed Service within 10 Business Days after receiving Notice from BT in accordance with Paragraph 7.2.4 ("**Acceptance Test Period**").



- 8.2.2 The Hybrid Cloud Managed Service is accepted by you if you confirm acceptance in writing during the Acceptance Test Period or is treated as being accepted by you if you do not provide BT with Notice to the contrary by the end of the Acceptance Test Period.
- 8.2.3 Subject to Paragraph 8.2.4, the Service Start Date will be the earlier of the following:
- (a) the date that you confirm or BT deems acceptance of the Hybrid Cloud Managed Service in writing in accordance with Paragraph 8.2.2; or
 - (b) the date of the first day following the Acceptance Test Period.
- 8.2.4 If, during the Acceptance Test Period, you provide BT Notice that the Acceptance Tests have not been passed, BT will remedy the non-conformance without undue delay and provide you Notice that BT has remedied the non-conformance and inform you of the Service Start Date.

8.3 During Operation

On and from the Service Start Date, you will:

- 8.3.1 ensure that Users report Incidents to the Customer Contact and not to the Service Desk;
- 8.3.2 ensure that the Customer Contact will take Incident reports from Users and pass these to the Service Desk using the reporting procedures agreed between both of us, and is available for all subsequent Incident management communications;
- 8.3.3 monitor and maintain any Customer Equipment connected to the Hybrid Cloud Managed Service or used in connection with a Hybrid Cloud Managed Service;
- 8.3.4 ensure that any Customer Equipment that is connected to the Hybrid Cloud Managed Service or that you use, directly or indirectly, in relation to the Hybrid Cloud Managed Service is:
- (a) adequately protected against viruses and other breaches of security;
 - (b) technically compatible with the Hybrid Cloud Managed Service and will not harm or damage BT Equipment, or any of BT's suppliers' or subcontractors' network or equipment; and
 - (c) approved and used in accordance with relevant instructions, standards and Applicable Law and any safety and security procedures applicable to the use of that Customer Equipment;
- 8.3.5 immediately disconnect any Customer Equipment, or advise BT to do so at your expense, where Customer Equipment:
- (a) does not meet any relevant instructions, standards or Applicable Law; or
 - (b) contains or creates material that is in breach of the Acceptable Use Policy and you are contacted by BT about such material,
- and redress the issues with the Customer Equipment prior to reconnection to the Hybrid Cloud Managed Service;
- 8.3.6 distribute, manage and maintain access profiles, passwords and other systems administration information relating to the control of Users' access to the Hybrid Cloud Managed Service;
- 8.3.7 maintain a written list of current Users and provide a copy of such list to BT within five Business Days following BT's written request at any time;
- 8.3.8 in relation to Multi Cloud Management Service, agree that:
- (a) BT will provide the Multi Cloud Management Service to you on an **"as is"** and **"as available"** basis. BT does not guarantee that the Multi Cloud Management Service:
 - (i) will be performed error-free or uninterrupted or that BT will correct all errors in the Multi Cloud Management Service;
 - (ii) the Multi Cloud Management Service will operate in combination with your content or applications or with any other software, hardware, systems or data;
 - (iii) the Multi Cloud Management Service, including any products, information or other material you obtain under or in connection with this Contract, will meet your requirements; and
 - (iv) the Multi Cloud Management Service is not designed, intended or licensed for use in hazardous environments requiring fail-safe controls;
- 8.3.9 ensure the security and proper use of all valid User access profiles, passwords and other systems administration information used in connection with the Hybrid Cloud Managed Service and:
- (a) immediately terminate access for any person who is no longer a User;
 - (b) inform BT immediately if a User's ID or password has, or is likely to, become known to an unauthorised person, or is being or may be used in an unauthorised way;
 - (c) take all reasonable steps to prevent unauthorised access to the Hybrid Cloud Managed Service;
 - (d) satisfy BT's security checks if a password is lost or forgotten; and



- (e) change any or all passwords or other systems administration information used in connection with the Hybrid Cloud Managed Service if BT requests you to do so in order to ensure the security or integrity of the Hybrid Cloud Managed Service; and
- 8.3.10 not allow any User specific subscription to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case you will ensure the prior User will no longer have any right to access or use the Hybrid Cloud Managed Service.

9 Notification of Incidents

- 9.1 Where you become aware of an Incident:
- 9.1.1 the Customer Contact will report any Severity Level 1 Incidents and Severity Level 2 Incidents via telephone to the Service Desk otherwise if the Severity Level 1 Incidents and Severity Level 2 Incident is not reported via telephone it will be deemed a Severity Level 3 Incident;
 - 9.1.2 BT will give you a Ticket;
 - 9.1.3 BT will inform you when it believes the Incident is cleared and will close the Ticket when:
 - (a) you confirm that the Incident is cleared within 24 hours after having been informed; or
 - (b) BT has attempted unsuccessfully to contact you, in the way agreed between both of us, and you have not responded within 24 hours following BT's attempt to contact you.
- 9.2 If you confirm that the Incident is not cleared within 24 hours after having been informed, the Ticket will remain open, and BT will continue to work to resolve the Incident.
- 9.3 Where BT becomes aware of an Incident, Paragraphs 9.1.2, 9.1.3 and 9.2 will apply.



Part C – Service Levels

10 Incident Resolution Service Level

10.1 From the Service Start Date and subject to you reporting at least four Qualifying Incidents per calendar month in accordance with Paragraph 9, BT will provide the Hybrid Cloud Managed Service with the response and resolution times for Qualifying Incidents in accordance with the below table ("**Incident Resolution Service Level**"):

Incident Category	Response and Resolution Service Levels
Severity Level 1	BT will aim to respond to 95% of Qualifying Incidents in any given calendar month within 20 minutes and to resolve 90% of Qualifying Incidents in any given calendar month within four hours of you reporting the Qualifying Incident to BT in accordance with Paragraph 9.
Severity Level 2	BT will aim to respond to 95% of Qualifying Incidents in any given calendar month within 30 minutes and to resolve 85% of Qualifying Incidents in any given calendar month within 12 hours of you reporting the Qualifying Incident to BT in accordance with Paragraph 9.
Severity Level 3	BT will aim to respond to 90% of Qualifying Incidents in any given calendar month within four hours and to resolve 80% of Qualifying Incidents in any given calendar month within 24 hours of you reporting the Qualifying Incident to BT in accordance with Paragraph 9.
Severity Level 4	BT will aim to respond to 95% of Qualifying Incidents in any given calendar month within one Business Day and to resolve 90% of Qualifying Incidents in any given calendar month within 72 hours of you reporting the Qualifying Incident to BT in accordance with Paragraph 9.

10.2 If BT fails to meet the Incident Resolution Service Level, you may request Service Credits at the rate of four per cent of the Usage Charges for the Hybrid Cloud Managed Service with the Usage Charges being based on the month the Incident was reported to BT in accordance with Paragraph 9.

11 Requests for Service Credits

11.1 You may request applicable Service Credits within 28 days of the end of the calendar month in which a Qualifying Incident occurred by providing details of the reason for the claim. Any failure by you to submit a request in accordance with this Paragraph 11.1 will constitute a waiver of any claim for Service Credits for that calendar month.

11.2 Upon receipt of a valid request for Service Credits in accordance with Paragraph 11.1:

11.2.1 BT will issue you with the applicable Service Credits by deducting those Service Credits from your invoice within two billing cycles of the request being received; and

11.2.2 following termination of the Contract where no further invoices are due to be issued by BT, BT will pay you the Service Credits in a reasonable period of time.

11.3 Service Credits for all Service Levels will be aggregated and are available up to a maximum amount equal to 100 per cent of the monthly Usage Charges based on the calendar month the Qualifying Incident was reported to BT in accordance with Paragraph 9.

11.4 All Service Levels and Service Credits will be calculated in accordance with information recorded by, or on behalf of, BT.

11.5 The Service Levels under this Schedule will not apply:

11.5.1 in the event that Paragraph 6.12.2 and Paragraph 6.12.3 applies;

11.5.2 the Cloud Services are unavailable for whatever reason and this is due to no fault of BT;

11.5.3 in the event that Clause 8 or Clause 23 of the General Terms applies; or

11.5.4 during any trial period of the Hybrid Cloud Managed Service.



Part D – Defined Terms

Defined Terms

In addition to the defined terms in the General Terms, capitalised terms in this Schedule will have the below meanings (and in the case of conflict between these defined terms and the defined terms in the General Terms, these defined terms will take precedence for the purposes of this Schedule). BT has repeated some definitions in this Schedule that are already defined in the General Terms. This is to make it easier for you to find the definitions when reading this Schedule.

“Acceptance Test Period” has the meaning given in Paragraph 8.2.1.

“Acceptance Tests” means those objective tests conducted by you that when passed confirm that you accept the Hybrid Cloud Managed Service and that the Hybrid Cloud Managed Service is ready for use save for any minor non-conformities that will be resolved as an Incident in accordance with Paragraph 7.3.1.

“BT Personnel” means all those employees of BT who are engaged in the provision of the Hybrid Cloud Managed Service (or relevant part of the Hybrid Cloud Managed Service) from time to time.

“BT Price List” means the document containing a list of BT’s charges and terms that may be accessed at: www.bt.com/pricing (or any other online address that BT may advise you).

“Business Hours” means between the hours of 0800 and 1700 in a Business Day.

“Cardholder Data” means the unique payment card number (typically for credit or debit cards) that identifies the issuer and the particular cardholder account. Cardholder data may also include any of the following: cardholder name, expiration date, service code or Sensitive Authentication Data.

“Cloud Services” means the cloud based computing infrastructure platforms known as Amazon Web Services and Microsoft Azure provided by Amazon Inc. and Microsoft Inc. respectively or any other cloud based computing infrastructure platform that BT confirms is compatible with the Hybrid Cloud Managed Service.

“Content” means applications, data, information (including emails), video, graphics, sound, music, photographs, software or any other material.

“Contracted Maintenance Hours” means the times during which BT will provide maintenance for BT Equipment, which are Business Hours unless set out otherwise in any applicable Order.

“Customer Equipment” means any equipment including any Purchased Equipment and any software, other than BT Equipment, used by you in connection with a Hybrid Cloud Managed Service.

“Customer Infrastructure” means the virtual machines, assets, networks, systems or other virtual infrastructure that you use in connection with your Cloud Services and which BT has agreed to support through the Hybrid Cloud Managed Service, as set out in any applicable Order.

“De-installation Charges” means the charges payable by you on de-installation of the Hybrid Cloud Managed Service that are equal to the then current rates for Installation Charges on the date of de-installation.

“Device” means any mobile handset, laptop, tablet or other item of handheld equipment, including all peripherals, excluding SIM Cards and applications, which are in scope of the Hybrid Cloud Managed Service, as set out in the Order.

“Employment Costs” means all employment costs including all salaries, wages, commissions, incentive payments, bonuses, all statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, pension and employer insurance contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE), expenses and all other emoluments, benefits and outgoings.

“Employee Liability Information” mean such information as set out in regulation 11(2) of TUPE.

“Enabling Service” has the meaning given in Paragraph 5.1.

“Essential Service” has the meaning given in Paragraph 2.1.

“EU” means European Union.

“EULA” has the meaning given in Paragraph 6.13.1.

“Exclusive Management Access” means the exclusive right to manage the Cloud Services to the exclusion of all others, including the other party to this Contract.

“General Terms” means the general terms to which this Schedule is attached or can be found at www.bt.com/terms, and that form part of the Contract.

“Hybrid Cloud Data Services” has the meaning given in Paragraph 3.1.1.

“Hybrid Cloud Managed Service” has the meaning given in Paragraph 1.

“Incident” means an unplanned interruption to, or a reduction in the quality of, the Hybrid Cloud Managed Service or particular element of the Hybrid Cloud Managed Service.

“Installation Charges” means those Charges set out in any applicable Order in relation to installation of the Hybrid Cloud Managed Service.

“Internet” means a global system of interconnected networks that use a standard Internet Protocol to link devices worldwide.



"IP Address" means a unique number on the Internet of a network card or controller that identifies a device and is visible by all other devices on the Internet.

"Local Contracted Business Hours" means the times during which maintenance of any Access Line is provided, which are Business Hours unless set out otherwise in any applicable Order.

"Merchant" means for the purposes of the PCI DSS, any entity that accepts payment cards bearing the logos of any of the five members of PCI SSC (American Express, Discover, JCB, MasterCard or Visa) as payment for goods or services.

"Minimum Period of Service" means a period of 12 consecutive months beginning on the Service Start Date, unless set out otherwise in any applicable Order.

"Minimum Revenue Commitment" means the minimum amount you are required to pay BT per month throughout the duration of the Contract, as set out in any applicable Order.

"Multi Cloud Management Service" has the meaning given in Paragraph 2.2.9.

"Outgoing Employees" means the BT Personnel who are assigned to the provision of the Hybrid Cloud Managed Service (or any relevant part of the Hybrid Cloud Managed Services) at any Service Transfer Date.

"PCI DSS" means the Payment Card Industry Data Security Standards, a set of policies and procedures, issued by the PCI Security Standards Council LLC (as may be adopted by local regulators) and intended to optimise the security of credit and debit card transactions and protect cardholders against misuse of their personal information.

"PCI SSC" means Payment Card Industry Security Standards Council.

"Provider Independent Resources" or **"PIR"** means resources assigned to Users that include autonomous system numbers, provider independent IPv4 addresses, any cast assignments, provider independent IXP IPv6 addresses and all future provider independent resources.

"Planned Maintenance" means any Maintenance BT has planned to do in advance.

"Premium Service" has the meaning given in Paragraph 2.2.

"Professional Services" means those services provided by BT which are labour related services.

"Qualifying Incident" means an Incident, except where any of the following events have occurred:

- (a) the Hybrid Cloud Managed Service has been modified or altered in any way by you, or by BT in accordance with your instructions;
- (b) Planned Maintenance;
- (c) you have performed any network configurations that BT did not approve;
- (d) an Incident has been reported and BT cannot confirm that an Incident exists after performing tests; or
- (e) you requested BT to test the Hybrid Cloud Managed Service at a time when no Incident has been detected or reported.

"Recurring Charges" means the Charges for the Hybrid Cloud Managed Service or applicable part of the Hybrid Cloud Managed Service that are invoiced repeatedly in every payment period (e.g. every month), as set out in any applicable Order.

"Relevant Transfer" means a relevant transfer as defined in TUPE.

"Renewal Period" means for each Hybrid Cloud Managed Service, the initial 12 month period following the Minimum Period of Service, and each subsequent 12 month period.

"Service Desk" means the English speaking helpdesk that you are able to contact to submit Service Requests, report Incidents and ask questions about the Hybrid Cloud Managed Service.

"Service Level" means the Incident Resolution Service Level.

"Service Management Boundary" has the meaning given in Paragraph 4.

"Service Options" has the meaning given in Paragraph 3.

"Service Requests" means pre-approved requests to deliver a service on the Cloud Services as agreed between BT and you and as set out in any applicable Order.

"Service Transfer Date" means the date on which the Hybrid Cloud Managed Services transfers from BT to you or any Successor Supplier.

"Severity Level 1" means a Qualifying Incident that cannot be circumvented and that constitutes a complete loss of the Hybrid Cloud Managed Service.

"Severity Level 2" means a Qualifying Incident that has a large impact on the Hybrid Cloud Managed Service and, for example, results in part of the Hybrid Cloud Managed Service not functioning properly.

"Severity Level 3" means a Qualifying Incident that has a minor impact on the Hybrid Cloud Managed Service such as a component of the Hybrid Cloud Managed Service not functioning correctly that causes a minor degradation to the performance or functionality of the Hybrid Cloud Managed Service.

"Severity Level 4" means a Qualifying Incident that has no observable impact on the Hybrid Cloud Managed Service.

"Site" means a location at which the Hybrid Cloud Managed Service is provided.

"Standard Service Components" has the meaning given in Paragraph 2.



“Successor Supplier” means any person or entity that provides all or part of the Hybrid Cloud Managed Service or services similar or equivalent to all or part the Hybrid Cloud Managed Services as a substitute for BT (or its Subcontractors).

“Ticket” means the unique reference number provided by BT for an Incident and that may also be known as a **“fault reference number”**.

“TUPE” means Transfer of Undertakings (Protection of Employment) Regulations 2006 (as may be amended or replaced from time to time) and the legislation, regulation, enactment, agreement or other instrument implementing the provisions of EC Directives No. 77/187 dated 14 February 1977, 2001/23 dated 12 March 2001 or any other equivalent local legislation.

“TUPE Liability” and **“TUPE Liabilities”** means all awards, compensation, costs, expenses, losses, liabilities, damages, claims, proceedings, awards, fines, orders, demands, actions, payments by way of settlement, penalties, tribunal awards and other liabilities (including legal and other professional fees and expenses on an indemnity basis and any liability to taxation) whenever or howsoever they arise or are brought.

“Usage Charges” means the Charges for the Hybrid Cloud Managed Service or applicable part of the Hybrid Cloud Managed Service that are calculated by multiplying the volume of units that you used or incurred in a period (e.g. number of agents using the Hybrid Cloud Managed Service, or the number of minutes the Hybrid Cloud Managed Service was used for) with the relevant fee as set out in any applicable Order.



Appendix 1 – EULA for Hybrid Cloud Data Services



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 humanreadable 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-tobuy/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 reexport 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.