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**SNAPMIRROR CLOUD API LICENSE AGREEMENT**

This SnapMirror Cloud API License Agreement (this “Agreement”) is entered into between NetApp, Inc., a Delaware corporation (“NetApp”) and [ ] (“Licensee”) and is effective as of the date of last signature below (the “Effective Date”).

The parties, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which they acknowledge, and intending to be legally bound, agree as follows:

1. Purpose. Licensee seeks to obtain, and NetApp desires to provide Licensee, under the terms of this Agreement, SnapMirror Cloud APIs, solely to develop software applications created by Licensee (“Licensee Application(s)”) to transfer Licensee data for the purpose of backing up, or replicating for disaster recovery purposes:
	1. from storage systems manufactured by NetApp (“NetApp Systems”) to other NetApp Systems; or
	2. from NetApp Systems to NetApp cloud services or public cloud storage services that are supported and enabled by NetApp, currently including AWS, Azure, or Google Cloud (each a “Cloud Service”) (the “Purpose”).

“SnapMirror Cloud APIs” refers to certain application programming interfaces, functionality and documentation owned by NetApp. In each case, the SnapMirror Cloud APIs will be implemented in a manner that enables Licensee Application to transfer and/or store data only in the NetApp Format (as defined below).

1. Limited License. Subject to the terms and conditions of this Agreement, NetApp grants to Licensee a limited, terminable, revocable, non-exclusive, non-assignable, and non-transferable license, with no right to sublicense, to implement the SnapMirror Cloud APIs in Licensee Applications, only for Licensee internal use and for the Purpose;
2. API Keys. Licensee implementation and use of the SnapMirror Cloud APIs as permitted under the terms of this Agreement may require the use of one or more unique authentication keys (each an “API Key”). If such API Key(s) are required, NetApp will issue such API Keys to Licensee, which must be referenced in all of Licensee Applications’ calls to the SnapMirror Cloud APIs. Such API Keys are NetApp Confidential Information (as defined below), may not be shared or used by any software that is not Licensee Application.
3. License Restrictions. Unless such right is expressly granted in this Agreement, Licensee will not, nor will Licensee permit or induce any third party, to:
	1. decompile, disassemble, decrypt, extract, or otherwise reverse engineer or attempt to reconstruct, or discover any source code of the SnapMirror Cloud APIs or NetApp Format, including any underlying ideas, algorithms, API Keys or file or data formats of, or used in, the SnapMirror Cloud APIs, any portion of Licensee Application implementing the SnapMirror Cloud APIs, or any NetApp products, by any means whatever; provided that the foregoing restriction shall not limit any activity that is required to be permitted under applicable law in a specific jurisdiction; further provided, however, that if Licensee wishes to exercise Licensee rights to engage in activities that are permitted under applicable law in a specific jurisdiction that otherwise would be prohibited by the foregoing restrictions, Licensee will provide prompt written notice to NetApp and provide NetApp with a reasonable amount of time in which to perform the activity and provide related results to Licensee;
	2. remove or conceal any product identification, copyright or other notices contained in or on the SnapMirror Cloud APIs;
	3. publish or provide to a third party any results of benchmark tests run on the SnapMirror Cloud APIs, any portion of Licensee Application implementing a SnapMirror Cloud API, or any NetApp products, without NetApp’s prior written consent;
	4. disable, disrupt, circumvent, interfere with, or otherwise violate or impair the security of the SnapMirror Cloud APIs or any NetApp product;
	5. access any application, system, service, computer, data, account, or network without authorization using the SnapMirror Cloud APIs or any NetApp product;
	6. combine, remix, link against, transform, build upon, create a derivative work with, or otherwise use the SnapMirror Cloud APIs in Licensee Application or otherwise such that the SnapMirror Cloud APIs or NetApp Format would be licensed under a license that requires the SnapMirror Cloud APIs or any portion thereof to be (i) disclosed or distributed in source code form, or (ii) licensed under terms that allow any licensee to copy, create derivative works and distribute the software without any fee or cost;
	7. allow SnapMirror Cloud APIs to be visible, discoverable, usable, accessible, or otherwise expose, either directly or indirectly, by any third party other than Licensee contractors who have a need to know; or
	8. display, reproduce, publish, sell, offer for sale, modify, or create a derivative work of any part of the SnapMirror Cloud APIs except as expressly licensed in this Agreement. Any such unlicensed derivative work is and will be owned entirely by NetApp; and Licensee hereby assigns and agrees to assign to NetApp all right, title and interest in and to such derivative work.

In addition, Licensee will include the license restrictions set forth in this Section in all agreements with contractors who use the SnapMirror Cloud APIs.

1. Ownership. All rights, title, and interest in and to the SnapMirror Cloud APIs remains with NetApp. Subject to NetApp’s pre-existing rights in the SnapMirror Cloud APIs and any implementation thereof made by NetApp, all rights, title and interest in and to the Licensee Application are retained by Licensee.
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	1. are in or enter the public domain not in violation of the proprietary or other rights of NetApp;
	2. were lawfully in the possession of, or known by, Licensee prior to its receipt from NetApp;
	3. are rightfully disclosed to Licensee by another person not in violation of the proprietary or other rights of NetApp; or
	4. are independently developed by Licensee not using any Confidential Information.

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1. Term; Termination**.** This Agreement will remain in effect until expiration or termination. Either party may terminate this Agreement for any reason at any time. Upon termination for any reason, Licensee will immediately cease all uses of the SnapMirror Cloud APIs and API Keys, return or destroy all copies of the SnapMirror Cloud APIs and API Keys, and so certify in writing to NetApp. Termination is not an exclusive remedy and all other remedies at law or in equity will be available to NetApp whether or not the Agreement is terminated. Sections 3 through 9 of the Agreement and applicable defined terms will survive expiration or termination of this Agreement.
2. Warranty Disclaimer; Limitation of Liability. Licensee acknowledges that the SnapMirror Cloud APIs and API Keys may have defects or deficiencies that cannot or will not be corrected by NetApp. THE SNAPMIRROR CLOUD APIS AND API KEYS ARE PROVIDED BY NETAPP "AS IS" AND WITHOUT WARRANTY OF ANY KIND. ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. NETAPP WILL HAVE NO LIABILITY IN CONNECTION WITH, OR RELATING TO, THIS AGREEMENT OR USE OF THE SNAPMIRROR CLOUD APIS, API KEYS OR LICENSEE APPLICATIONS, FOR DAMAGES OF ANY KIND SUFFERED OR ALLEGED TO BE SUFFERED BY ANYONE, INCLUDING BUT NOT LIMITED TO DIRECT, INCIDENTAL AND CONSEQUENTIAL DAMAGES, OR FOR LOSS OR INTERRUPTION OF BUSINESS, LOSS OF REVENUE OR PROFITS, OR LOSS OR CORRUPTION OF DATA, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, INCLUDING CONTRACT OR TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE DOWNLOAD, INSTALLATION, USE, OPERATION, OR MAINTENANCE OF THE SNAPCLOUD MIRROR APIS AND API KEYS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OF IMPLIED WARRANTIES; THESE LIMITATIONS MAY NOT APPLY.
3. General. This Agreement is governed by the laws of the State of California, excluding its conflict of laws provisions. In addition to the license restrictions of this Agreement, Licensee acknowledges that the SnapMirror Cloud APIs and API Keys supplied by NetApp are subject to export controls under the laws and regulations of the United States, and other countries as applicable. Licensee agrees to comply with such laws and regulations, including but not limited to those governing use, export, re-export (to embargoed countries, persons and entities), and transfer of the SnapMirror Cloud APIs and API Keys. Each party acknowledges that any breach of this Agreement may cause irreparable harm to the other and that the other party may seek equitable relief in addition to all other remedies available at law. This Agreement contains the entire agreement between the parties with respect to the subject matter set forth herein and supersedes all prior or contemporaneous oral or written communications between the parties relating to the SnapMirror Cloud APIs, Licensee Applications and API Keys. If any provision of this Agreement is held to be unenforceable, this Agreement will remain in effect with the provision omitted, unless omission would frustrate the intent of the parties, in which case this Agreement will immediately terminate. No failure by NetApp to enforce any of its rights related to the SnapMirror Cloud APIs or API Keys, or to a breach of this Agreement, will act as a waiver of such rights. This Agreement may not be modified or changed in any manner except in writing by authorized representatives of both parties. This Agreement may not be assigned by Licensee to any third party. In the event Licensee assigns this Agreement to a third party (including as a result of a Change of Control), NetApp may immediately terminate this Agreement. In this Agreement, “Change of Control” means the sale of all or substantially all of the assets of a party; any merger, consolidation or acquisition of a party with, by or into another entity; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a party in one or more related transactions. Any purported assignment without the prior written consent of NetApp is null and void.

The parties have caused this Agreement to be executed by their duly authorized representatives.

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| **NetApp, Inc.**  | **Licensee**  |
| By:  | By:  |
| Name:  | Name:  |
| Title:  | Title:  |
| Date:  | Date:  |