

STANDARD PRODUCT EVALUATION TERMS & CONDITIONS

These product loan terms and conditions (“Terms”) between Seagate Cloud Systems, Inc. (“Seagate”) and you (“Licensee” including its Affiliates) (each a “party” and collectively the “parties”) set forth the terms and conditions which govern the supply of certain Products to Licensee for the Purpose. Seagate may elect to provide the Products through one or more of its Affiliates.

These Terms, and the Product Evaluation Agreement of which these Terms are included, (collectively, this “Agreement”) constitute the entire, final, complete and exclusive agreement between the parties and supersede all previous agreements or representations, oral or written, relating to the subject matter of this Agreement, except where a prior confidentiality agreement remains in place between the parties the terms of which will be supplemental to the extent they are not inconsistent herewith.

From time to time, Seagate may update this Agreement. By continuing to use the Product for the Purpose, you agree to all of the updates. In consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

1. DEFINITIONS

“**Acceptance Form**” means a Seagate approved acceptance form referencing these Terms;

“**Affiliate**” means an entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with another entity. For the purposes of the foregoing, “own,” “owned,” or “ownership” means ownership of fifty percent (50%) or more of the stock or other equity interest entitled to vote for the election of directors or an equivalent body. The entity will be deemed to be an Affiliate only for so long as the ownership or control exists;

“**Confidential Information**” means any information regardless of the way or form in which it is disclosed or recorded (including but not limited to written, oral or visual): (i) that a party to this Agreement designates as “confidential” or “proprietary” to the party receiving such information (“Recipient”), or (ii) which under the circumstances surrounding disclosure or by the nature of the information, ought to be treated as confidential by Recipient. Confidential Information includes, but is not limited to, all information in respect of either party’s business, existing and planned products/services, specifications, drawings, designs, prototypes, product pricing, roadmaps, software, programming interfaces, marketing plans, product plans, financial data, business methods, computer systems and personnel statistics and the existence and nature of the Agreement itself;

“**Effective Date**” means the date the Product is shipped to the Licensee;

“**Licensed Software**” means the licensed software detailed in the Acceptance Form;

“**Product**” means the product provided to Licensee for the Purpose (which may include Licensed Software and/or Product Hardware), as further described in the relevant Acceptance Form;

“**Product Hardware**” means the product hardware detailed in the Acceptance Form;

“**Purchase Order**” means a purchase order more particularly described in Section 2.1 below; and

“**Purpose**” means the reason for which the Product is being loaned, as either for: (i) evaluation prior to purchase or (ii) as part of a Licensee’s internal testing to determine the compatibility of Licensee’s systems and products with the Product, as set forth on the Acceptance Form.

“**Taxes**” means all applicable taxes, duties, levies, fees, and costs related thereto, including, without limitation, all applicable local VAT and additional taxes, as applicable, imposed by applicable governmental or other regulatory authorities.

2. PURCHASE ORDER, LICENSE GRANT:

- 2.1 Licensee shall issue a Purchase Order to Seagate for a nominal value unless agreed otherwise, to allow shipment of the Product(s) to Licensee. If Licensee elects to return the applicable Product(s) within the ten (10) day period following the end of the evaluation term, then upon Seagate’s receipt of the undamaged Product, this Agreement shall terminate. If Licensee elects to purchase the applicable Product(s) or fails to return such Product(s) within such

ten (10) day period, or returns the Product(s) with damage, then Seagate will have the right to invoice Licensee for such Product, and Licensee shall pay for the Product in accordance with Section 3.3, below.

- 2.2 Subject to compliance with the terms and conditions herein, Seagate grants to Licensee a temporary, personal, non-exclusive, non-assignable, non-transferable, restricted and revocable license free of fees during the Term (as defined at section 3 below) of this Agreement for the Purpose.
- 2.3 Licensee shall not, in whole or in part, (a) reverse compile, reverse engineer, or reverse assemble the Product or any portion thereof; (b) export the Product in violation of any law or regulation, including the regulations of the United States Department of Commerce, Department of State or the export regulations of the country in which the Product is located; or (c) copy, distribute, disclose, market, rent, sell or transfer the Product or any portion thereof to any third party.
- 2.4 Any third party technology or open source software included within the Products is licensed under the terms of the respective third party technology or open source software license agreement, available upon request.
- 2.5 Any updates to licensed software incorporated within the Products provided to Licensee will be automatically incorporated and covered by the terms of this Agreement.
- 2.6 Following installation, Licensee shall not change the location of the Product without prior written notice and approval from Seagate.

3. TERM, TERMINATION & PRODUCT PURCHASE:

- 3.1 This Agreement shall commence on the Effective Date and continue for the period listed on the Agreement (the “Term”) subject to extension by written agreement, unless terminated sooner by Seagate who may terminate this Agreement at any time and for any reason.
- 3.2 If the Product is returned in the same condition (fair wear and tear excepted) in which it was supplied within ten (10) business days after the Term has expired in accordance with the terms and conditions of this Agreement, this Agreement will terminate, and the Purchase Order will be cancelled at no cost to Licensee (as applicable).
- If Licensee does not purchase the Product, Licensee must return the Product to Seagate in its original packaging, and return all materials shipped with the Product including, but not limited to, software, documentation, cables, etc.
 - When returning evaluation equipment, Licensee must follow the specific RMA instructions provided by the Seagate contact (i.e., must indicate the RMA number provided in LARGE letters on all cartons and label each carton with the part number and quantity, specified incoterms and commercial invoice data for international shipments, etc.). In addition, it is critical that the shipping tracking number and a digital photo of the unit in its original packaging is provided to Licensee’s Seagate contact. This information is mandatory and required by Seagate operations for correct processing of the returned Product, and closure of the RMA.
 - Licensee will be responsible for returning the Product in accordance with Section 6, below.
 - The Product must be returned in the same condition as when originally delivered, excluding ordinary wear and tear.
 - Seagate retains the right to invoice Licensee for Product that is not returned within the ten (10) business day period following the expiration of the Evaluation Period or is not returned in original working condition (reasonable wear and tear excepted).
 - Until the Product is received back by Seagate, Licensee will be responsible for loss or damage to the Product. Licensee shall keep and maintain the Product in good condition and working order, and shall not alter the Product without Seagate’s prior written consent. Licensee shall keep Product free and clear of any levies, liens or encumbrances.
- 3.3 If (i) Licensee does not return the Product within ten (10) business days after the expiry of the Term, (ii) the Product is not returned in

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original working condition, or (iii) Licensee wishes to purchase the Product (whereupon Licensee will inform Seagate in writing of the purchase request), and provided Seagate elects to sell the Product, then Seagate will invoice and Licensee shall pay the price set forth in the Product Evaluation Agreement, or as otherwise quoted by Licensee's sales account manager, for the Products (which price is exclusive of all applicable Taxes), in accordance with the then current Seagate standard terms and conditions of sale. In the event Licensee purchases the Product after importation, Licensee shall account for and take liability for all Taxes, as applicable.

- 3.4 Unless and until purchased by Licensee, Licensee may only use Product for evaluation and qualification purposes. Licensee may not under any circumstances, use the Product in a production setting. If Licensee opts to purchase the Product whose Purpose was for internal testing, Licensee acknowledges that the Product may be a prototype Product still under development, is not intended for commercial sale or use, and is provided "As-Is". If the Product's Purpose was for evaluation prior to purchase, Licensee acknowledges that the Product may be a refurbished Product or contain refurbished parts, that the relevant warranty period for the Product began from shipment, and that other than the warranty stated herein, the purchase will be subject to Seagate's Standard Product Sales Terms and Conditions as set forth at <http://www.seagate.com/qb/en/css/terms-us/>.
- 3.5 Sections 1, 2.3, 3, 5, 6, 7, 8, 9, 10, 11 shall survive expiration or termination of this Agreement.
- 4. PRODUCT FEEDBACK:** Licensee will provide Product suggestions, comments or feedback to Seagate ("Feedback"). Feedback will be provided on a monthly basis via the use of conference calls, meetings or written reports. Feedback, even if designated as confidential by Licensee, shall not create any confidentiality obligation for or upon Seagate. Seagate will be free to use, disclose, reproduce, license or otherwise distribute, own and exploit the Feedback provided to it as it sees fit. Licensee shall maintain any Feedback in confidence.
- 5. WARRANTY DISCLAIMER:** LICENSEE ACKNOWLEDGES EACH PRODUCT IS PROVIDED "AS IS" (AND MAY BE A REFURBISHED PRODUCT OR CONTAIN REFURBISHED PARTS) WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SEAGATE DOES NOT WARRANT THAT THE USE OF THE PRODUCT SHALL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. SEAGATE SHALL NOT BE OBLIGED TO PROVIDE ANY MAINTENANCE OR SUPPORT SERVICES. LICENSEE ASSUMES THE ENTIRE RISK FOR USE OF THE PRODUCT.
- 6. SHIPPING AND TRANSPORTATION:** Unless otherwise agreed to in writing, Licensee shall be the importer of record of the Product and shall be responsible for all associated customs formalities and costs. Seagate shall be responsible for the transportation and delivery of the Product to the named location or premises per Incoterm 2010 CPT, and shall install the Product in the named location or premises. Unless otherwise agreed in writing, Licensee will be responsible for returning the Product to the Seagate location where the evaluation unit was originally shipped at Licensee's expense under Incoterms 2010, DAP Destination Warehouse. Shipping and transportation costs (plus the amount of all Taxes, as appropriate) shall be added to the cost of the Product if subsequently purchased by Licensee. In the event Licensee purchases the Product after importation, Licensee shall account for and take all liability for all Taxes, as applicable. All Product returned from Licensee located in China must be shipped back to Seagate from the Licensee's site.
- 7. TITLE, RISK OF LOSS OR DAMAGE:** The Product shall remain the property of Seagate unless and until paid for in full. Licensee will not relocate the Product from the ship-to address or make alterations to the Product without the prior written consent from a Seagate senior director for the relevant product. Responsibility for risk of loss or damage to the Product shall remain with the Licensee while such product is within Licensee's possession. Licensee shall be solely responsible for: (a) operation methods and audit controls; (b) establishing back-up plans; (c) implementing procedures to satisfy Licensee's requirements for security, accuracy of input and output, and re-start and recovery in the event of a Product

malfunction; (d) ensuring that the Product is secure and not accessed or used by any third party and (e) ensuring that the Product is compatible with Licensee's own hardware and software. In the event of damage, missing or incomplete parts, Licensee agrees to pay Seagate for the cost of repair and refurbishment to return Product to a saleable state.

- 8. LIMITATION OF LIABILITY:** SEAGATE SHALL NOT BE LIABLE (WHETHER IN CONTRACT, TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) TO LICENSEE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS OR DAMAGE INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR USE OF THE PRODUCT.
- 9. CONFIDENTIALITY:**
- 9.1 Licensee shall use the Confidential Information solely for the purposes of and in strict accordance with this Agreement, and shall maintain the confidentiality of the Confidential Information with at least the same degree of care that it uses to protect its own confidential and proprietary information, but with no less than a reasonable degree of care under the circumstances.
- 9.2 Licensee shall not disclose any Confidential Information to any third parties except to Licensee's employees and independent contractors who have a legitimate need to know, who know they owe a duty of confidence to Licensee and who agree to abide by non-disclosure terms at least as comprehensive as those set forth herein; provided that Licensee will be liable for breach by any such person. Licensee shall not make any copies of the Confidential Information except as necessary for such employees and independent contractors or as previously authorized in writing by Seagate. Licensee shall ensure that each copy of the Confidential Information allowed hereunder contains and states the same confidential or proprietary notices or legends, if any, which appear on the original. This Agreement shall not limit or restrict, but shall only be deemed to supplement, any and all protections of Confidential Information inherent in any agreement between the parties.
- 9.3 The foregoing provisions shall not prevent the disclosure or use by Licensee of any information which is or hereafter, through no fault of the Licensee, becomes public knowledge or to the extent required by law.
- 9.4 Licensee agrees that Seagate may seek injunctive relief to remedy any actual or threatened unauthorized use or disclosure of the Confidential Information, without requiring the posting of any bond or security, in addition to any other damages that can be demonstrated.
- 10. PROPRIETARY RIGHTS:** Licensee acknowledges and agrees that Seagate owns the Product, the source code and the ideas, methods of operation and intellectual property rights therein.
- 11. MISCELLANEOUS:**
- 11.1 All conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 11.2 Licensee shall not transfer, assign or delegate this Agreement or any rights or obligations hereunder, in whole or in part, whether voluntarily, by operation of law or otherwise, without the prior written consent of Seagate which shall not be unreasonably withheld. Any such purported assignment without such prior written consent shall be null and void. Seagate may assign this Agreement in whole or in part. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties to it and their respective heirs, successors, assigns and legal representatives.
- 11.3 No term of this Agreement shall be enforceable by a person who is not a party to this Agreement.
- 11.4 In the event of any conflict between the terms and conditions contained within this Agreement and those contained within any other previous or contemporaneous agreement between the parties regarding the subject matter of this Agreement including, without limitation, a sales agreement, Seagate or Licensee purchase order, the terms and conditions of this Agreement shall prevail. For the avoidance of doubt, in the event that the parties enter into any subsequent agreement concerning the subject matter of this

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Agreement, including, without limitation, a sales agreement, then the terms and conditions of such agreement shall prevail.

- 11.5 No delay or omission by Seagate to exercise any right or power hereunder shall be construed to be a waiver thereof.
- 11.6 The headings of the sections and sub-sections used in this Agreement are included for convenience only and cannot be used in interpreting the Agreement.
- 11.7 The invalidity of one or more provisions of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement.
- 11.8 Each party hereby agrees to comply with all applicable export laws, restrictions, national security controls and regulations. The Product under this Agreement, and the transaction contemplated by this Agreement, which may include technology and software, are subject to the customs and export control laws and regulations of the United States ("U.S.") and may also be subject to the customs and export laws and regulations of the country in which the products and/or services are manufactured or received. Further, under U.S. law, the goods shipped and/or services provided under this Agreement may not be sold, leased or otherwise transferred to restricted countries, or used by a restricted end-user or an end-user engaged in activities related to weapons of mass destruction including, without limitation, activities related to designing, developing, producing or using nuclear weapons, materials, or facilities, missiles or supporting missile projects, or chemical or biological weapons. Each party agrees to comply.
- 11.9 This Agreement shall be governed by California law and the parties agree to jurisdiction and venue for claims or actions arising under this Agreement in the state or federal courts located in Santa Clara County, California, USA.