

## Western Digital End User License Agreement

**IMPORTANT - READ CAREFULLY. SECTION 10 OF THIS DOCUMENT CONTAINS A BINDING ARBITRATION PROVISION THAT REQUIRES THE RESOLUTION OF DISPUTES ON AN INDIVIDUAL BASIS, LIMITS YOUR ABILITY TO SEEK RELIEF IN A COURT OF LAW AND YOUR RIGHT TO A JUDGE OR JURY IN A COURT PROCEEDING, AND WAIVES YOUR RIGHT TO PARTICIPATE IN CLASS ACTIONS OR CLASS ARBITRATIONS FOR CERTAIN DISPUTES.**

This End User License Agreement (this “Agreement”) is a legal contract between you, either as an individual or a single entity (“you”), and Western Digital Technologies, Inc., its subsidiaries and affiliates (collectively, “WDT”), governing your use of the software, services, and associated online or electronic documentation published, distributed or otherwise made available by WDT (this software, firmware, services, and documentation, and any applicable updates provided by WDT, collectively referred to as the “Software”), and if applicable, your use of Software designed for application with WDT hardware devices and products (“WDT Devices”). If, however, WDT software or services are accompanied by a separate license agreement, the terms of that separate license agreement will apply to your use of the applicable WDT software or services.

**BY INSTALLING, ACTIVATING, COPYING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, WHICH ARE CONDITIONS TO WDT’S LICENSE GRANT TO YOU PURSUANT TO THIS AGREEMENT, AND THE WDT PRIVACY POLICY, AS INCORPORATED BY REFERENCE IN SECTION 5 BELOW. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT AND THE WDT PRIVACY POLICY, DO NOT INSTALL, ACTIVATE, COPY, OR USE THE SOFTWARE.**

Except as provided in Section 10 of this Agreement, this Agreement may be amended from time to time by WDT; however, any changes to this Agreement will not be binding on you unless you affirmatively assent to the applicable changes.

### **1. LICENSE GRANT AND RESTRICTIONS**

The Software is licensed to you and not sold. Subject to the terms of this Agreement, WDT hereby grants you a personal, non-exclusive, non-transferable, non-sublicensable, and revocable license to use the Software for your personal or internal purposes, and to make a reasonable number of copies of the Software solely as reasonably necessary to use the Software as permitted pursuant to this Agreement.

You acknowledge and agree that you will not, and you agree not to enable others to: (a) reproduce the Software, except as expressly permitted under this Section 1; (b) modify, adapt, translate the Software, or create any derivative works thereof; (c) attempt to circumvent or disable the Software or any technology features or measures in the Software, including without limitation any access controls or copyright protection mechanisms, by any means or in any manner; (d) attempt to decompile, disassemble, reverse engineer, or otherwise attempt to derive

the source code for the Software; (e) distribute, encumber, sell, rent, lease, sublicense, or otherwise transfer, publish or disclose the Software to any third party; (f) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Software or used in connection with the Software; or (g) use the Software in any manner to aid in the violation of any third-party intellectual property rights, including without limitation copyrights, trademarks, trade secrets, and patents, or the applicable laws of any applicable jurisdictions, including without limitation libel, defamation, obscenity, and privacy-related torts.

## **2. RESERVATION OF RIGHTS**

You acknowledge that the Software is protected by copyrights and other intellectual property and proprietary rights. WDT and its third-party licensors (“Licensors”) reserve all of these rights with respect to the Software, except for the license expressly granted to you in Section 1. You acknowledge that, except for the express license granted to you in Section 1, no right, title, interest or license in or to the Software, whether by implication, estoppel or otherwise, is granted, assigned or transferred to you. You agree not to take any action that interferes with or challenges, in any manner, WDT or its Licensors’ rights with respect to the Software.

## **3. USE OF NON-WDT DEVICES**

In some instances, the Software may operate with devices manufactured by entities other than WDT (“Non-WDT Devices”). You acknowledge and agree that WDT makes no representations or warranties with respect to the quality or capability of any of these Non-WDT Devices. You acknowledge that WDT may offer support for some Non-WDT Devices and not others; WDT makes no guarantees that the Software is, will be, or will remain compatible with any applicable Non-WDT Device.

## **4. UPDATES; AUTOMATIC FEATURES**

You acknowledge that WDT has no obligation to provide you with any Updates (as defined below) to the Software. WDT may, however, from time to time, issue updated versions of the Software and the Software may automatically connect to WDT or third-party servers via the Internet to check for available updates to the Software, such as bug fixes, patches, upgrades, additional or enhanced functions, plug-ins and new versions (collectively, “Updates”) and may either (a) automatically electronically update the version of the Software that you are using on your personal device or (b) give you the option of manually downloading applicable Updates. By installing the Software and not disabling any automated check for Updates, if applicable, you hereby agree and consent to automatically request and receive Updates from WDT or third-party servers, and that the terms and conditions of this Agreement shall apply to all of these Updates.

## **5. INFORMATION AUTOMATICALLY COLLECTED BY WDT**

The Software may contain automatic communications features which relay certain information to WDT and its third-party data analytics providers in connection with the operation of the Software. For more information about how WDT and its third-party data analytics providers collect and use information provided through the Software, please review the WDT Privacy Policy located at <http://www.wd.com/en/company/corporateinfo/privacy.aspx>, which is incorporated into this Agreement by reference. By agreeing to the terms of this Agreement, you

agree to the terms of the WDT Privacy Policy. If you do not agree to the terms of the Privacy Policy, you should not use the Software.

## **6. REGISTRATION INFORMATION**

As part of any Software or WDT Device registration process, WDT may request registration-related information, including without limitation your name, e-mail address, username, or password. By providing this information, you consent to its collection and use by WDT to provide non-promotional communications regarding any WDT Device purchased with the Software, including notices of Update availability, product recalls, or safety concerns. WDT's use of information it collects from you in connection with the registration process, or that you otherwise provide to WDT in connection with WDT's Software or WDT Devices, shall be governed by the WDT Privacy Policy.

You agree you will maintain the confidentiality of your username and password and assume all responsibility due to any loss, theft, or other destruction of any data as the result of any access to your account via the use of your username and password.

## **7. THIRD PARTY CONTENT AND SERVICE PROVIDERS**

Your use of the Software may allow you to download and use third-party software or link to third-party content accessed through the Software (this third-party software and content collectively, "Third-Party Content"). You acknowledge that all Third-Party Content is the property of the applicable Third-Party Content owners and may be protected by applicable copyright and other intellectual property rights. You may not use any Third-Party Content in any manner that has not been authorized by the applicable service provider ("Service Provider") or Third-Party Content owner. You acknowledge that you may be required to enter into a separate agreement with a Service Provider or Third-Party Content owner, or comply with a Service Provider's terms or conditions of use in order to access or have the right to access and use certain Third-Party Content. It is your responsibility to ensure that accessing, reproducing, displaying or otherwise using Third-Party Content in connection with your use of the Software does not infringe any third-party intellectual property rights.

## **8. DISCLAIMER OF WARRANTY**

THE SOFTWARE IS PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WDT, AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OR LACK OF VIRUSES, AND ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY OR TIMELINESS OF THE SOFTWARE. WDT DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR BE ERROR-FREE. WDT DOES NOT WARRANT THAT USE OF THE SOFTWARE WILL BE CONTINUOUS OR UNINTERRUPTED AND WDT SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SOFTWARE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE REMAINS WITH YOU. YOU UNDERSTAND AND AGREE THAT ANY SOFTWARE, MATERIAL, OR DATA

DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER, DEVICE, SYSTEM, OR NETWORK, INCLUDING WITHOUT LIMITATION ANY LOSS OR CORRUPTION OF DATA. THE FOREGOING WARRANTY DISCLAIMER SHALL NOT MODIFY, CONSTRUE, OR AMEND THE APPLICABLE WARRANTY THAT RELATES TO YOUR USE, IF APPLICABLE, OF WDT DEVICES.

WDT DOES NOT MAKE ANY REPRESENTATIONS ABOUT AND DISCLAIMS ALL WARRANTIES WITH RESPECT TO ANY THIRD-PARTY CONTENT, ANY NON-WDT DEVICE, OR THE ACTIONS OR OMISSIONS OF A SERVICE PROVIDER OR THIRD-PARTY CONTENT OWNER. WDT IS NOT RESPONSIBLE FOR EXAMINING OR EVALUATING THE CONTENT, ACCURACY, COMPLETENESS, TIMELINESS, VALIDITY, COPYRIGHT COMPLIANCE, LEGALITY, DECENCY, QUALITY, OR ANY OTHER ASPECT OF THIRD PARTY CONTENT. WDT, ITS OFFICERS, AFFILIATES, AND SUBSIDIARIES DO NOT WARRANT OR ENDORSE AND DO NOT ASSUME AND WILL NOT HAVE ANY LIABILITY OR RESPONSIBILITY TO YOU OR ANY OTHER PERSON FOR ANY THIRD PARTY CONTENT OR WEB SITES, OR FOR ANY OTHER MATERIALS, PRODUCTS, OR SERVICES OF THIRD PARTIES ACCESSED THROUGH THE SOFTWARE. TO THE EXTENT YOU CHOOSE TO USE OR ACCESS ANY THIRD PARTY CONTENT THROUGH THE SOFTWARE, YOU DO SO AT YOUR OWN INITIATIVE AND ARE RESPONSIBLE FOR COMPLIANCE WITH ANY APPLICABLE LAWS, INCLUDING WITHOUT LIMITATION APPLICABLE LOCAL LAWS AND PRIVACY AND DATA COLLECTION LAWS.

## **9. LIMITATION ON LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WDT OR ITS LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, COMPUTER SYSTEM FAILURE, MALFUNCTION OR OTHER PECUNIARY LOSS RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE USE OF OR INABILITY TO USE THE SOFTWARE, WDT DEVICES, ANY THIRD PARTY CONTENT, OR ANY NON-WDT DEVICE, EVEN IF WDT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN NO EVENT SHALL WDT'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES IN CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE EXCEED \$25. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

WDT IS NOT RESPONSIBLE OR LIABLE FOR ANY INFECTIONS OF, CONTAMINATION OF, OR DAMAGE TO YOUR SYSTEM, OR DELAYS, INACCURACIES, ERRORS OR OMISSIONS ARISING OUT OF OR RELATED TO YOUR USE OF THE SOFTWARE OR WDT DEVICES. THE SOFTWARE IS NOT INTENDED

FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATIONS SYSTEMS OR AIR TRAFFIC CONTROL MACHINES OR ANY OTHER MACHINES IN WHICH CASE THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

## **10. DISPUTES, BINDING INDIVIDUAL ARBITRATION, AND WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS**

**10.1 Disputes.** The terms of this Section 10 shall apply to all Disputes between you and WDT. For the purposes of this Section 10 and subject to the exceptions set forth in this Section 10.1, “Dispute” shall mean any dispute, claim, or action between you and WDT arising out of or relating to the Software, WDT Devices, this Agreement, or other transaction involving you and WDT, whether in contract, warranty, misrepresentation, fraud, tort, intentional tort, statute, regulation, ordinance, or any other legal or equitable basis, and shall be interpreted to be given the broadest meaning allowable under law. **YOU AND WDT AGREE THAT “DISPUTE” AS DEFINED IN THIS AGREEMENT SHALL NOT INCLUDE ANY CLAIM OR CAUSE OF ACTION BY YOU OR WDT FOR (A) TRADE SECRET MISAPPROPRIATION, (B) PATENT INFRINGEMENT, (C) COPYRIGHT INFRINGEMENT OR MISUSE, AND (D) TRADEMARK INFRINGEMENT OR DILUTION. MOREOVER, NOTWITHSTANDING SECTION 10.6, YOU AGREE THAT A COURT, NOT THE ARBITRATOR, MAY DECIDE IF A CLAIM FALLS WITHIN ONE OF THESE FOUR EXCEPTIONS.**

**10.2 Binding Arbitration.** You and WDT further agree: (a) to arbitrate all Disputes between the parties pursuant to the provisions in this Agreement; (b) this Agreement memorializes a transaction in interstate commerce; (c) the Federal Arbitration Act (9 U.S.C. §1, et seq.) governs the interpretation and enforcement of this Section 10; and (d) this Section 10 shall survive termination of this Agreement. **ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JUDGE OR JURY IN A COURT PROCEEDING AND YOUR GROUNDS FOR APPEAL ARE LIMITED.** The arbitrator may award you the same damages as a court sitting in proper jurisdiction could, and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim. In addition, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court. The decision of the arbitrator shall be final and enforceable by any court with jurisdiction over the parties.

**10.3 Small Claims Court.** Notwithstanding the foregoing, you may bring an individual action in the small claims court of your state or municipality if the action is within that court’s jurisdiction and is pending only in that court.

**10.4 Dispute Notice.** In the event of a Dispute, you or WDT must first send to the other party a notice of the Dispute that shall include a written statement that sets forth the name, address and contact information of the party giving it, the facts giving rise to the Dispute, and the relief requested (the “Dispute Notice”). The Dispute Notice to WDT must be addressed to: Western Digital Technologies, Inc., ATTN: Legal Department, 3355 Michelson Drive, Suite 100, Irvine, CA 92612, U.S.A. (the “WDT Notice Address”). The Dispute Notice to you will be

sent by certified mail to the most recent address WDT has on file or otherwise in our records for you. If WDT and you do not reach an agreement to resolve the Dispute within sixty (60) days after the Dispute Notice is received, you or WDT may commence an arbitration proceeding pursuant to this Section 10. Following submission and receipt of the Dispute Notice, each of the parties agrees to act in good faith to seek to resolve the Dispute before commencing arbitration.

**10.5 WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS. YOU AND WDT AGREE THAT EACH PARTY MAY BRING DISPUTES AGAINST THE OTHER PARTY ONLY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, INCLUDING WITHOUT LIMITATION FEDERAL OR STATE CLASS ACTIONS, OR CLASS ARBITRATIONS. ACCORDINGLY, UNDER THE ARBITRATION PROCEDURES OUTLINED IN THIS SECTION, AN ARBITRATOR SHALL NOT COMBINE OR CONSOLIDATE MORE THAN ONE PARTY'S CLAIMS WITHOUT THE WRITTEN CONSENT OF ALL AFFECTED PARTIES TO AN ARBITRATION PROCEEDING.**

**10.6 Arbitration Procedure.** If a party elects to commence arbitration, the arbitration shall be governed by the rules of JAMS that are in effect at the time the arbitration is initiated (the "JAMS Rules"), available at <http://www.jamsadr.com> or by calling 1-800-352-5267, and under the rules set forth in this Agreement. If there is a conflict between the JAMS Rules and the rules set forth in this Agreement, the rules set forth in this Agreement shall govern. You may, in arbitration, seek any and all remedies otherwise available to you pursuant to federal, state, or local laws. All Disputes shall be resolved by a single neutral arbitrator, and both parties shall have a reasonable opportunity to participate in the selection of the arbitrator. The arbitrator is bound by the terms of this Agreement. The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of this Agreement, including without limitation any claim that all or any part of this Agreement is void or voidable. Notwithstanding this broad delegation of authority to the arbitrator, a court may determine the limited question of whether a claim or cause of action is for (a) trade secret misappropriation, (b) patent infringement, (c) copyright infringement or misuse, or (d) trademark infringement or dilution, which are excluded from the definition of "Disputes" in Section 10.1. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. You may choose to engage in arbitration hearings by telephone. Arbitration hearings not conducted by telephone shall take place in a location reasonably accessible from your primary residence, or in Orange County, California, at your option.

(a) Initiation of Arbitration Proceeding. If either you or WDT decides to arbitrate a Dispute, both parties agree to the following procedure:

(i) Write a Demand for Arbitration. The demand must include a description of the Dispute and the amount of damages sought to be recovered. You can find a copy of a Demand for Arbitration at <http://www.jamsadr.com> ("Demand for Arbitration").

(ii) Send three copies of the Demand for Arbitration, plus the appropriate filing fee, to:

JAMS  
500 North State College Blvd., Suite 600  
Orange, CA 92868, U.S.A.

(iii) Send one copy of the Demand for Arbitration to the other party at the same address as the Dispute Notice, or as otherwise agreed to by the parties.

(b) Hearing Format. In all hearing formats, the arbitrator shall issue a written decision that explains the essential findings and conclusions on which an award, if any, is based. During the arbitration, the amount of any settlement offer made by WDT or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or WDT is entitled. The discovery or exchange of non-privileged information relevant to the Dispute may be allowed during the arbitration. The parties shall maintain the confidential nature of the arbitration proceeding and the award, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

(c) Arbitration Fees. WDT shall pay, or (if applicable) reimburse you for, all JAMS filing, administration, and arbitrator fees for any arbitration commenced (by you or WDT) pursuant to provisions of this Agreement.

(d) Award in Your Favor. For Disputes in which you or WDT seeks \$75,000 or less in damages exclusive of attorney's fees and costs, if the arbitrator's decision results in an award to you in an amount greater than WDT's last written offer, if any, to settle the Dispute, WDT will: (i) pay you \$1,000 or the amount of the award, whichever is greater; (ii) pay you twice the amount of your reasonable attorney's fees, if any; and (iii) reimburse you for any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing the Dispute in arbitration. Except as agreed upon by you and WDT in writing, the arbitrator shall determine the amount of fees, costs, and expenses to be paid by WDT pursuant to this Section 10.6(d).

(e) Attorney's Fees. WDT will not seek its attorney's fees and expenses for any arbitration commenced involving a Dispute under this Agreement. Your right to attorney's fees and expenses under Section 10.6(d) above does not limit your rights to attorney's fees and expenses under applicable law; notwithstanding the foregoing, the arbitrator may not award duplicative awards of attorney's fees and expenses.

(f) Opt-out. You may elect to opt-out (exclude yourself) from the final, binding, individual arbitration procedure and waiver of class and representative proceedings specified in this Agreement by sending a written letter to the WDT Notice Address within thirty (30) days of your assent to this Agreement (including without limitation the purchase, download, installation of the Software or other applicable use of WDT Devices, products and services) that specifies (i) your name, (ii) your mailing address, and (iii) your request to be excluded from the final, binding individual arbitration procedure and waiver of class and representative proceedings specified in this Section 10. In the event that you opt-out consistent with the procedure set forth

above, all other terms shall continue to apply, including the requirement to provide notice prior to litigation.

**10.7 Amendments to Section 10.** Notwithstanding any provision in this Agreement to the contrary, you and WDT agree that if WDT makes any future amendments to the dispute resolution procedure and class action waiver provisions (other than a change to WDT's address) in this Agreement, WDT will obtain your affirmative assent to the applicable amendment. If you do not affirmatively assent to the applicable amendment, you are agreeing that you will arbitrate any Dispute between the parties in accordance with the language of this Section 10.

**10.8 Severability.** If any provision in this Section 10 is found to be unenforceable, that provision shall be severed with the remainder of this Agreement remaining in full force and effect. The foregoing shall not apply to the prohibition against class or representative actions as provided in Section 10.5; if Section 10.5 is found to be unenforceable, the entire Section 10 (but only Section 10) shall be null and void.

## **11. U.S. GOVERNMENT RESTRICTED RIGHTS**

The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are an agency of the U.S. Government or any contractor therefor, you receive only those rights with respect to the Software as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other U.S. Government licensees and their contractors.

## **12. EXPORT AND IMPORT RESTRICTIONS**

WDT makes no representation that the Software is appropriate for use in your country of use. You acknowledge that no part of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported into (or to a national or resident of) any countries or regions subject to U.S. trade embargo (currently Iran, Cuba, Syria, North Korea, Sudan, and the region of Crimea), or anyone on any of the U.S. government's Lists of Parties of Concern including, the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Persons List and Entity List. By using the Software, you are agreeing to the foregoing, and are representing and warranting that you are not located in or under the control of a national or resident of any such country or on any such list and you agree that you will not use the Software in any activities directly or indirectly related to the proliferation of weapons of mass destruction, except as authorized under applicable laws and regulations. You further acknowledge and understand that certain functionality of the Software, such as encryption or authentication, may be subject to export and import restrictions and you are responsible for complying with all applicable restrictions and regulatory requirements.

## **13. INDEMNITY**

You hereby agree to indemnify, defend, and hold WDT and its Licensors harmless from and against any and all liabilities, damages, claims, fines, and expenses arising out of any breach of this Agreement by you.

#### **14. TERMINATION**

Without prejudice to any other WDT rights, WDT shall have the right to immediately terminate this Agreement, including without limitation termination of any user accounts associated with the Software, with or without notice to you if WDT deems that you fail to comply with your obligations under this Agreement. Upon termination, you must immediately cease all use of the Software and destroy all copies of the Software.

#### **15. TRANSFER**

You may not assign or otherwise transfer, by operation of law or otherwise, this Agreement or the Software.

#### **16. OPEN SOURCE SOFTWARE**

The Software licensed under this Agreement may include “Open Source” software (computer software that is distributed under a licensing arrangement, which provides that the computer code can be shared, viewed, and modified by the public). The restrictions of Section 1, 2, 14, and 15 of this Agreement only apply to any applicable Open Source software when and to the extent that they do not conflict with any terms of the Open Source software’s respective license(s). To the extent necessary to comply with the terms of the included Open Source software’s respective licenses, WDT makes available the necessary portion of the source code for Software at <http://support.wdc.com/> for a period of at least three years after your receipt of the Software from WDT. WDT provides no support for the Open Source software.

#### **17. SUPPORT**

For questions regarding the Software, please visit WDT’s support forum at <http://support.wdc.com> or submit an email to WDT’s customer support using the web form at <http://wdc.custhelp.com/app/ask/>.

#### **18. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings.

#### **19. GOVERNING LAW; EXCLUSIVE VENUE FOR LITIGATION**

Except for Section 10, this Agreement shall be governed by the laws of the State of California, without regard to conflicts of law provisions. In the event of a Dispute in which the provisions in Section 10 are inapplicable, severed from the remainder of this Agreement by a court of competent jurisdiction, or you opt-out pursuant to the provisions of Section 10, you and WDT both consent to the exclusive jurisdiction of the state and federal courts sitting in Orange County, California.

## **20. UNITED NATIONS CONVENTION ON CONTRACTS FOR THE SALE OF INTERNATIONAL SALE OF GOODS**

This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

## **21. SEVERABILITY; WAIVER**

Subject to Section 10.7 of this Agreement, if any provision of this Agreement is held unenforceable by a court of competent jurisdiction, the applicable provision shall be modified to the extent necessary to render it enforceable without losing its intent or severed from this Agreement if no applicable modification is possible, and other provisions of this Agreement shall remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive the applicable term or condition or any subsequent breach thereof.

## **22. SURVIVAL**

Sections 2, 8, 9, 10, 13 and 19 of this Agreement, and any other provisions of this Agreement that require or contemplate performance after the termination of this Agreement, shall be enforceable notwithstanding termination of this Agreement.

## **23. EXCUSED PERFORMANCE**

Neither party shall be in default or be liable for any delay, failure in performance (excepting the obligation to pay), or interruption of service resulting directly or indirectly from any cause beyond its reasonable control.

## **24. MICROSOFT-SPECIFIC PROVISIONS**

Notwithstanding anything to the contrary in this Agreement, your use of the Software with Microsoft products and services shall be subject to the following additional terms in this Section 24. You agree and acknowledge that: (a) you may download and run the Software on a minimum number of devices (described below) that are associated with your Microsoft account, without payment of any additional fees to WDT (from either Microsoft or you); for purposes of subsection (a) above, the minimum number of devices is as follows: for Windows Store Apps, up to eighty-one (81) personal Windows 8, Windows RT or successor devices and for Windows Phone Store Apps, up to five (5) Windows Phone devices; and (b) Microsoft and your phone manufacturer, device manufacturer and network operator (if applicable), are not responsible for support services for the Software.

4078-705066-A06 August 2015