

WESTERN DIGITAL END USER LICENSE AGREEMENT

IF YOU RESIDE IN (OR YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE U.S. PLEASE READ THIS NOTICE REGARDING DISPUTE RESOLUTION: This Agreement contains provisions that govern how claims you and we may have against each other are resolved (see Section 27 below), including an agreement and obligation to arbitrate disputes, which will, subject to limited exceptions, require you to submit claims you have against us to binding arbitration and limits the time period within which you may bring a claim against us, unless you opt-out in accordance with Section 27(g) below. Unless you opt-out of arbitration: you will only be permitted to pursue claims against us on an individual basis, not as part of any class or representative action or proceeding and you will only be permitted to seek relief (including monetary, injunctive, and declaratory relief) on an individual basis.

1. ACCEPTANCE OF TERMS. This Western Digital End User License Agreement (this “Agreement”) is a legal contract between you, either as an individual or acting in your capacity as an employee or other representative of your company or other entity (“you”), and Western Digital Technologies, Inc. and its affiliates (collectively, “WDT”), governing your use of the software, firmware, services, associated online or electronic documentation, and any applicable Updates (as defined below) that are published, distributed, or otherwise made available by WDT (collectively, the “Software”), and if applicable, your use of the Software designed for application with WDT hardware devices and products, including WDT storage devices (collectively, “Devices”). For WDT software or services that are accompanied by a separate license agreement, the terms of that separate license agreement will govern your use of that WDT software or services.

PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING TO ACCEPT THE TERMS IN THIS AGREEMENT OR BY INSTALLING, ACTIVATING, COPYING, OR OTHERWISE USING THE SOFTWARE, YOU REPRESENT AND WARRANT TO WDT THAT YOU HAVE THE FULL RIGHT AND AUTHORITY TO ENTER INTO THIS AGREEMENT, AND YOU AGREE TO BE BOUND BY THIS AGREEMENT (INCLUDING THE PRIVACY STATEMENT, WHICH IS INCORPORATED HERE BY REFERENCE AND AVAILABLE AT [HTTPS://WWW.WESTERNDIGITAL.COM/LEGAL/PRIVACY-STATEMENT](https://www.westerndigital.com/legal/privacy-statement) AND THE ACCEPTABLE USE POLICY, WHICH IS INCORPORATED HERE BY REFERENCE AND AVAILABLE AT [HTTPS://WWW.WESTERNDIGITAL.COM/LEGAL/ACCEPTABLE-USE-POLICY](https://www.westerndigital.com/legal/acceptable-use-policy)), WHICH ARE CONDITIONS TO WDT’S LICENSE GRANT TO YOU PURSUANT TO THIS AGREEMENT.

IF YOU ARE ENTERING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THE APPLICABLE ENTITY TO THIS AGREEMENT. IN THAT CASE, THE TERMS “YOU” OR “YOUR” SHALL ALSO REFER TO THE APPLICABLE ENTITY. IF YOU DO NOT HAVE NECESSARY AUTHORITY, OR IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, THE PRIVACY STATEMENT, OR THE ACCEPTABLE USE POLICY, YOU MAY NOT INSTALL, ACTIVATE, COPY, OR OTHERWISE USE THE SOFTWARE.

You acknowledge that this Agreement is a binding legal contract between you and WDT, even though it is electronic and is not physically signed by you and WDT, and it governs your use of the Software.

2. **CHANGES TO THIS AGREEMENT.** WDT may update or modify this Agreement from time to time. By accepting any modifications to this Agreement, including, by continuing to use the Software after reasonable notice is provided to you, you are agreeing to be bound by the applicable modifications to this Agreement.

3. **PRIVACY STATEMENT.** In connection with your use of the Software, please review our Privacy Statement, to understand how we treat your personal information and protect your privacy when you use the Software. The Privacy Statement is part of and is governed by this Agreement and by agreeing to this Agreement, you agree to be bound by the terms of the Privacy Statement and agree that we may use personal information in accordance with its terms. You can review the most current version of the Privacy Statement at any time by visiting the link at <https://www.westerndigital.com/legal/privacy-statement>.

4. **ACCEPTABLE USE POLICY.** Please review our Acceptable Use Policy, to understand your responsibilities when using our Software, which may include services made available to you by WDT. The Acceptable Use Policy is part of and is governed by this Agreement and by agreeing to this Agreement, you agree to be bound by the terms of the Acceptable Use Policy. You can review the most current version of the Acceptable Use Policy at any time by visiting the link at <https://www.westerndigital.com/legal/acceptable-use-policy>.

5. **SOFTWARE LICENSE.** The Software is licensed to you and not sold. Subject to your continuous compliance with the terms of this Agreement, WDT grants you a limited, non-exclusive, non-transferable, non-sublicensable, and revocable license to use the Software for your internal purposes only, and to make a reasonable number of copies of the Software solely for the purpose of using the Software as permitted pursuant to this Agreement.

6. **RESTRICTIONS ON USE.** You agree to use the Software responsibly, and except as expressly permitted under this Agreement, you represent and agree that you will not and you will not enable others to: (a) copy, distribute, encumber, sell, rent, lease, lend, sublicense, or otherwise transfer, publish, or disclose the Software to any third party; (b) modify, translate, adapt, or create derivative works of the Software; (c) decompile, reverse engineer, disassemble, decrypt, or attempt to derive the source code of the Software; (d) use the Software to do anything illegal or violate any laws or regulations; (e) use the Software in any manner to infringe or violate the rights of any other party (including copyrights, trademarks, trade secrets, and patents) or the applicable laws of any applicable jurisdictions, including libel, defamation, obscenity, and privacy-related torts; (f) attempt to circumvent or disable the Software or any technology features or measures in the Software, including any access controls or copyright protection mechanisms, by any means or in any manner; (g) 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; (h) exploit the Software in any unauthorized manner (including by transmitting any software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware); (i) interfere with, disrupt, burden, or overload any servers, networks, systems, or other devices in connection with your use of the Software; (j) misuse or abuse the Software in any manner (including as described in our Acceptable Use Policy,

see Section 4 above); or (k) use the Software to access, submit, upload, store, share, post, transmit, publish, display, or otherwise make available to others any content that is threatening, abusive, harassing, harmful, violent, pornographic, obscene, tortious, defamatory, libelous, invasive of another's privacy, profane, discriminatory, offensive, hate speech, intimidating, disruptive, or otherwise objectionable.

You shall promptly notify WDT at PSIRT@WDC.COM if you learn of a security breach related to the Software. Please see <https://www.westerndigital.com/support/productsecurity> for additional information on security reporting.

7. **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 and retain ownership of all right, title, and interest in and to the Software, including any and all intellectual property rights. WDT and its Licensors reserve all rights not expressly granted to you. You agree not to take any action that interferes with or challenges, in any manner, WDT's or its Licensors' rights with respect to the Software.

8. **USE OF YOUR FEEDBACK.** If you send us any feedback or suggestions regarding the Software, WDT may use any applicable feedback or suggestions for any purpose without any obligation to you, subject to any restriction of use under applicable law or regulation.

9. **SOFTWARE UPDATES; AUTOMATIC FEATURES.** You acknowledge that WDT has no obligation to provide you with, but may, from time to time, issue updates to the Software, including bug fixes, patches, upgrades, additional or enhanced functions, plug-ins, and new versions (collectively, "Updates"). The Software may automatically connect to WDT or third-party servers via the Internet to check for available Updates and may automatically download and install Updates on your device or give you the option of manually downloading and installing Updates. By accepting this Agreement and/or using the Software, you agree to receiving these types of automatic Updates.

10. **INTERNET ACCESS; AVAILABILITY OF THE SOFTWARE.** Some Software may require access to the Internet to use the Software. You are responsible for acquiring and paying for all equipment and licenses necessary to access and use the Internet in connection with your use of any applicable Software. The Software may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, or because of other causes beyond our reasonable control, including your inability to access the Internet.

11. **REGISTRATION.** As part of any Software or Device registration process, WDT may request registration-related information, including your name, email address, username, or password. By providing this information, you consent to its collection and use by WDT in accordance with the Privacy Statement (see Section 3 above), to provide non-promotional communications regarding the Software or any Device purchased with the Software, including notices related to your account, transactions, Update availability, product recalls, safety concerns, or changes to our policies and terms. You are responsible for maintaining the confidentiality of your user name, password, and account, and for all activities that occur under your user name and password or account. You are also responsible for the accuracy of the information you provide in connection with your account and for keeping it up to date. You assume all responsibility for any loss, theft, or other destruction of any data resulting from any failure to comply with these obligations.

12. **AFFIRMATIVE REPRESENTATIONS REGARDING YOUR USE OF THE SOFTWARE.** By installing, activating, copying, or otherwise using the Software, you represent that (a) you are at least eighteen (18) years of age (or have reached the age of majority if that is not eighteen (18) years of age where you reside), (b) you are fully able and competent to enter into and comply with the terms and conditions in this Agreement, and (c) your use of the Software does not violate any applicable law or regulation. The Software is not directed to children under thirteen (13), so if you are under thirteen (13) years of age, you are not permitted to access or use the Software. If you have registered for an account and we become aware that you are using the Software even though you are under thirteen (13), we will terminate your account.

13. **OUR MANAGEMENT OF THE SOFTWARE; USER MISCONDUCT.** To the extent permissible under applicable law, we reserve the right, but do not undertake the obligation to: (a) monitor or review your use of the Software for violations of this Agreement and for compliance with our policies and guidelines; (b) report to law enforcement authorities anyone who violates this Agreement and cooperate with law enforcement authorities in the prosecution of anyone who violates this Agreement; (c) take legal action against anyone who violates this Agreement; (d) pre-screen, refuse, restrict access to or the availability of, remove, delete, edit, or disable access to any of your content or any portion thereof, or your access to the Software, as applicable and to the extent technologically feasible, if your content is found to be in violation of this Agreement, our policies, or our guidelines, or is otherwise objectionable; (e) manage your use of the Software in a manner designed to protect our and third parties' rights and property or to facilitate the proper functioning of the Software; (f) screen our users or members, or attempt to verify the statements of our users or members; and (g) monitor issues between you and other users or to terminate or block you and other users for violating this Agreement.

14. **ACCESS TO YOUR ACCOUNT AND YOUR CONTENT.** To the extent permissible under applicable law, you acknowledge, consent, and agree that WDT may, in accordance with the terms of the Privacy Statement, access, preserve, and disclose your account information and content as applicable, if required to do so by law or under a good faith belief that applicable access, preservation, or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any of your activity violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety of WDT, its users, or the public.

15. **SHARING SERVICES; INFORMATION COLLECTION.** Some Software may provide sharing services to allow you to share content with other users and may display information about you (e.g., name, email address, username) when using those sharing services. By choosing to use the applicable Software that provides sharing services, you consent to the sharing of your information for this purpose. The Software may also contain automatic communication features that relay certain information to WDT and its third-party data analytics providers in connection with the operation of the Software. WDT's use of information it collects from you or that you otherwise provide to WDT in connection with the Software, shall be governed by the Privacy Statement (see Section 3 above).

16. **THIRD-PARTY CONTENT AND SERVICE PROVIDERS.** The Software may allow you to access and use third-party software, services, websites, or content (collectively, "Third-Party Content"). You acknowledge that all Third-Party Content is the property of the applicable Third-Party Content owner(s) and may be protected by copyright and other intellectual property rights.

You may not use any Third-Party Content in any manner that has not been authorized by any service provider that makes Third-Party Content available to you (“Service Provider”) or Third-Party Content owner(s). You acknowledge that you may be required to enter into a separate agreement with a Service Provider or Third-Party Content owner(s), 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.

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

18. **TERMINATION.** WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT OR ANY REMEDY WE MAY HAVE UNDER LAW OR IN EQUITY, WE RESERVE THE RIGHT TO, IN OUR SOLE DISCRETION, AND WITHOUT NOTICE OR LIABILITY, TERMINATE THIS AGREEMENT, TERMINATE YOUR ACCOUNT, DENY ACCESS TO AND USE OF THE SOFTWARE, OR MODIFY OR TERMINATE THE SOFTWARE OR ANY PART THEREOF. Cause for termination shall include: (a) your breach of any representation, warranty, or covenant contained in this Agreement; (b) your violation of this Agreement or any of our policies or guidelines; (c) your request to cancel or terminate your account; (d) a request or order from law enforcement, a judicial body, or other government agency; (e) your violation of any applicable law or regulation; (f) where provision of the Software to you is or may become unlawful; (g) unexpected technical or security issues or problems; and (h) failure to pay any fees owed by you in relation to the Software, provided that in the case of non-material breach, WDT will be permitted to terminate only after giving you reasonable notice and a reasonable time period for you to cure the breach. In addition, WDT may terminate your account if there is a general discontinuance of the Software or any part thereof. If we decide to discontinue the Software, we will give you reasonable prior notice. Upon termination, you must immediately cease all use of the Software and destroy all copies of the Software subject to this Agreement.

Sections 3, 6, 7, 8, 11, 13, 14, 15, 18, 19, 20, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 37, 38, and 39 of this Agreement, and any other terms of this Agreement that require or contemplate performance after the termination of this Agreement, shall survive and be enforceable notwithstanding termination of this Agreement.

19. **DISCLAIMER OF WARRANTIES.**

- a. **SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE EXCLUSION OF MANDATORY CONSUMER GUARANTEES, OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHICH MEANS THAT SOME OF THE BELOW LIMITATIONS MAY NOT APPLY TO YOU. IN THESE JURISDICTIONS, WDT’S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. WDT SHALL USE REASONABLE SKILL AND DUE CARE IN**

PROVIDING THE SOFTWARE. THE FOLLOWING DISCLAIMERS ARE SUBJECT TO THIS EXPRESS WARRANTY.

- b. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND WDT AND ITS LICENSORS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT WDT DOES NOT WARRANT THAT THE SOFTWARE WILL BE CONTINUOUS, UNINTERRUPTED, TIMELY, SECURE, RELIABLE, ERROR-FREE, OR VIRUS-FREE, NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY YOU FROM WDT OR THROUGH THE SOFTWARE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. WDT SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SOFTWARE.
- c. 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 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 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 DEVICES.
- d. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WDT DOES NOT MAKE ANY REPRESENTATIONS ABOUT, AND DISCLAIMS ALL WARRANTIES WITH RESPECT TO, ANY THIRD-PARTY CONTENT, ANY THIRD-PARTY 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 DOES NOT WARRANT OR ENDORSE AND DOES NOT ASSUME AND WILL NOT HAVE ANY LIABILITY OR RESPONSIBILITY TO YOU OR ANY OTHER PERSON FOR ANY THIRD-PARTY CONTENT, 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 APPLICABLE LOCAL LAWS AND PRIVACY AND DATA COLLECTION LAWS.

- e. NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON, OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION, OR PROMISE ON BEHALF OF WDT THAT DIFFERS FROM THE TERMS OF THIS AGREEMENT.

20. LIMITATION OF LIABILITY.

- a. SUBJECT TO SECTION 19(a) ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL WDT OR ITS LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR: (i) ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, SALES, BUSINESS, GOODWILL OR DATA; FOR BUSINESS INTERRUPTION; FOR COMPUTER SYSTEM FAILURE OR MALFUNCTION; FOR INFECTIONS OR CONTAMINATIONS OF, OR DAMAGE TO, YOUR SYSTEM; FOR DELAYS, INACCURACIES, ERRORS, OR OMISSIONS; OR FOR OTHER PECUNIARY LOSS, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SOFTWARE OR DEVICES, EVEN IF WDT HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES; AND (ii) ANY MATTER BEYOND OUR REASONABLE CONTROL. IN NO EVENT SHALL WDT'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES IN CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE EXCEED FIFTY U.S. DOLLARS (\$50.00).
- b. THE PROVISIONS OF THIS SECTION 20 ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER THIS AGREEMENT.
- c. THE FOREGOING LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- d. WDT SHALL USE REASONABLE SKILL AND DUE CARE IN PROVIDING THE SOFTWARE. THE LIMITATIONS IN THIS SECTION 20 DO NOT APPLY WITH RESPECT TO LOSS RESULTING FROM (i) WDT'S FAILURE TO USE REASONABLE SKILL AND DUE CARE; (ii) WDT'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUDULENT REPRESENTATION; OR (iii) DEATH, PERSONAL INJURY, OR INJURY TO HEALTH.

21. NOTICE TO NEW JERSEY USERS. Notwithstanding any terms set forth in this Agreement, if any of the provisions set forth in Sections 19 or 20 of this Agreement are held unenforceable, void or inapplicable under New Jersey law, then any applicable provision shall not apply to you but the rest of this Agreement shall remain binding on you and WDT. In addition, for New Jersey residents, the limitation on liability is inapplicable where attorneys' fees, court costs,

or other damages are mandated by statute. Notwithstanding any provision in this Agreement, nothing in this Agreement is intended to, nor shall it be deemed or construed to, limit any rights available to you under the Truth-in-Consumer Contract, Warranty and Notice Act.

22. NOTICE TO CALIFORNIA USERS. Under California Civil Code § 1789.3, users located in California are entitled to the following consumer rights notice. If users have a question or complaint regarding the Software, users may contact us by writing to Western Digital Technologies, Inc., ATTN: Legal Department, 5601 Great Oaks Parkway, San Jose, CA 95119, U.S.A. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

23. NOTICE AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT. We respect the rights of copyright owners to control the uses of their intellectual property and require our users to do the same. It is WDT's policy to respond to notices of alleged infringement that comply with the U.S. Digital Millennium Copyright Act and other applicable intellectual property laws. Responses may include removing or disabling access to material and terminating the accounts of users who may infringe or repeatedly infringe the copyrights or other intellectual property rights of WDT or others. In connection with your use of the Software, please review our Copyright Policy, which is part of and is governed by this Agreement. You can review the most current version of the Copyright Policy at any time by visiting the link at <https://www.westerndigital.com/legal/copyright-policy>.

24. U.S. GOVERNMENT RESTRICTED RIGHTS. The Software contains "commercial items," as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as these terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Accordingly, if you are using the Software on behalf of the U.S. government, or any contractor therefor, the government shall receive only those rights with respect to the Software as are granted to all other end users under license, in accordance with 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or 48 C.F.R. § 12.212, with respect to all other U.S. government licensees and their contractors.

25. INTERNATIONAL USE; EXPORT RESTRICTIONS. To the maximum extent permitted by law, WDT makes no representation or warranty that the Software is appropriate or available for use in your country of use. We may limit the availability of the Software, in whole or in part, to any person, geographic area, or jurisdiction we choose, at any time and in our sole discretion. You acknowledge and agree that some or all of the Software, including the materials contained thereon, may be subject to the U.S. Export Administration Regulations, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") Economic Sanctions Regulations, as well as export and sanction laws of other countries or intergovernmental organizations (including the E.U. and the United Nations), and that diversion of these portions of the Software or materials contrary to U.S. law or other applicable laws is prohibited. You agree that no part of the Software, nor any direct product thereof or materials thereon, will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the U.S. government (and other relevant government) for these specific purposes/projects. You acknowledge and agree that no part of the Software, underlying information or technology, or data/materials thereon may be directly or indirectly downloaded or otherwise exported, re-exported, shipped, transferred, or

acquired for/to: any countries or regions subject to U.S., E.U., or U.N. trade embargoes (and/or the citizens, nationals, or residents of these countries or regions); anyone on the OFAC list of Specially Designated Nationals And Blocked Persons or similar lawful sanctions lists; or anyone on the restricted or denied party lists maintained by the U.S. government or Wassenaar member countries. By accessing and using the Software, you agree to the foregoing, and represent and warrant that you are not on any applicable list and are not a citizen of, located in, customarily resident in, or under the control of a national or resident of any applicable country/region. You further acknowledge and understand that certain functionality of the Software, including encryption or authentication, as well as your own materials, files, data, or use may be subject to export or import restrictions and you agree to comply strictly with all export, re-export, and import laws and assume sole responsibility for obtaining licenses to export, re-export, or import as may be required.

26. **INDEMNIFICATION.** To the maximum extent permitted by law, you shall defend, indemnify, and hold harmless WDT and its respective directors, officers, employees, and agents and WDT's Licensors from and against any claims, actions, or demands, including any losses, liabilities, damages, fines, expenses, and reasonable legal and accounting fees and costs, arising from or relating to your breach of this Agreement or your use or misuse of the Software. WDT shall provide notice to you of any applicable claim, suit, or demand. WDT reserves the right to assume the exclusive defense and control of any matter involving a third party that is subject to indemnification under this Section. In that case, you agree to cooperate with any reasonable requests assisting WDT's defense of these matters. **YOU WILL NOT BE REQUIRED TO INDEMNIFY AND HOLD US HARMLESS FROM AND AGAINST ANY APPLICABLE CLAIMS, SUITS, OR DEMANDS TO THE EXTENT RESULTING FROM WDT'S OWN NEGLIGENT CONDUCT.**

27. **LEGAL DISPUTES AND ARBITRATION AGREEMENT.**

IF YOU RESIDE IN (OR YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE U.S.: PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

- a. **INFORMAL DISPUTE RESOLUTION.** You may contact us at Western Digital Technologies, Inc., ATTN: Legal Department, 5601 Great Oaks Parkway, San Jose, CA 95119, U.S.A. to address any concerns you may have regarding your use of the Software. Most concerns may be quickly resolved in this manner. Each of you and we agree to use best efforts to settle any dispute, claim, question, or disagreement directly through consultation and good faith negotiations which shall be a precondition to either party initiating a lawsuit or arbitration.
- b. **AGREEMENT TO BINDING ARBITRATION.** If we do not reach an agreed-upon solution within a period of sixty (60) days from the time informal dispute resolution is pursued pursuant to Section 27(a) above, then either party may initiate binding arbitration pursuant to the terms set forth in this Agreement. All claims arising out of or relating to the terms set forth in this Agreement (including their formation, performance, and breach), the Software, Devices, or the parties' relationship with each other, under any legal theory, including contract, warranty, misrepresentation, fraud, tort, intentional tort, statute, regulation, ordinance, or any other legal or equitable basis,

shall be finally settled by binding arbitration administered by JAMS, in accordance with the JAMS Streamlined Arbitration Rules and Procedures, excluding any rules or procedures governing or permitting class actions. Each party will have the right to use legal counsel in connection with arbitration at its own expense. The parties shall select a single neutral arbitrator in accordance with the JAMS Streamlined Arbitration Rules and Procedures. 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, scope, enforceability, or formation of the Agreement, including any claim that all or any part of this Agreement is void or voidable, and except as provided for in Sections 27(d)-(f) below. 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 in the U.S., or in Santa Clara County, California, U.S.A., at your option. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity including, if applicable, public injunctions. The arbitrator's award shall be in writing and provide a statement of the essential findings and conclusions, shall be binding on the parties, and may be entered as a judgment in any court of competent jurisdiction. You and WDT agree that this Section 27 shall survive termination of this Agreement. This Agreement memorializes a transaction involving interstate commerce and the interpretation and enforcement of this Section 27 shall be governed by the U.S. Federal Arbitration Act (9 U.S.C. § 1 et seq.).

The JAMS rules governing the arbitration may be accessed at <https://www.jamsadr.com/adr-rules-procedures> or by calling 1-800-352-5267. If you initiate arbitration, to the extent the filing fee for the arbitration exceeds Two Hundred and Fifty U.S. Dollars (\$250.00), we will pay the additional cost. If we are required to pay the additional cost of the filing fees, you should submit a request for payment of fees to JAMS along with your form for initiating the arbitration, and we will make arrangements to pay all necessary fees directly to JAMS. We will also be responsible for paying all other arbitration costs arising in connection with the arbitration, other than costs incurred by you for legal counsel, travel, and other out-of-pocket costs and expenses not constituting fees or amounts payable to JAMS. You will not be required to pay fees and costs incurred by us if you do not prevail in arbitration. We will also pay JAMS to reimburse you for any portion of the \$250.00 filing fee that is more than what you would otherwise have to pay to file suit in a court of law. Unless otherwise 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 27.

THE PARTIES UNDERSTAND THAT, ABSENT THIS MANDATORY PROVISION, THEY WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. THEY FURTHER UNDERSTAND THAT THE RIGHT TO DISCOVERY MAY BE MORE LIMITED IN ARBITRATION THAN IN COURT.

- c. CLASS ACTION AND CLASS ARBITRATION WAIVER. YOU AND WDT EACH FURTHER AGREE THAT ANY ARBITRATION SHALL BE CONDUCTED IN OUR RESPECTIVE INDIVIDUAL CAPACITIES ONLY AND NOT AS A CLASS ACTION OR OTHER REPRESENTATIVE ACTION. YOU AND WDT EACH EXPRESSLY WAIVE OUR RESPECTIVE RIGHT TO FILE A CLASS ACTION OR SEEK RELIEF ON A CLASS BASIS, INCLUDING U.S. FEDERAL OR STATE CLASS ACTIONS, OR CLASS ARBITRATIONS. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above in Section 27(b) shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.
- d. EXCEPTION – U.S. SMALL CLAIMS COURT CLAIMS. Notwithstanding the parties’ agreement to resolve all disputes through arbitration, either party may bring an individual action in a U.S. small claims court if that action is within that court’s jurisdiction and is pending only in that court.
- e. EXCEPTION – CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT (PAGA) ACTION. Notwithstanding the parties’ agreement to resolve all disputes through arbitration, either party may seek relief in a court of law for a claim arising under California’s Private Attorneys General Act.
- f. EXCEPTION – CLAIMS INVOLVING INTELLECTUAL PROPERTY RIGHTS. Notwithstanding the parties’ agreement to resolve all disputes through arbitration, either party may seek relief in a court of law for a claim relating to the enforcement, infringement, or validity of (i) trade secrets, (ii) patents, (iii) copyrights, or (iv) trademarks. Notwithstanding the broad delegation clause set forth in Section 27(b) above, the parties agree that a court, not the arbitrator, may decide if a claim falls within one of these four exceptions.
- g. 30-DAY RIGHT TO OPT-OUT. You can opt out of this agreement to arbitrate by sending a written letter to Western Digital Technologies, Inc., ATTN: Legal Department, 5601 Great Oaks Parkway, San Jose, CA 95119, U.S.A. within thirty (30) days of your acceptance of this Agreement, or within thirty (30) days of any subsequent modification to the arbitration agreement set forth in this Section 27. Your letter to opt-out of arbitration must include your (i) name, (ii) user name, (iii) mailing address, (iv) email address, and (v) express request to opt-out from the arbitration agreement set forth in this Section 27. If you opt-out of this agreement to arbitrate consistent with the procedure set forth above, all other terms and conditions set forth in this Agreement shall continue to apply to your use of the Software.
- h. TIME LIMITATION. TO HELP RESOLVE ANY ISSUES BETWEEN THE PARTIES PROMPTLY AND DIRECTLY, YOU AND WDT AGREE THAT ANY ARBITRATION OR SMALL CLAIMS COURT PROCEEDING REGARDING A CLAIM UNDER THIS AGREEMENT MUST BE INITIATED WITHIN ONE YEAR AFTER THE CLAIM FIRST AROSE; OTHERWISE THE CLAIM IS PERMANENTLY BARRED.

28. OPEN SOURCE SOFTWARE. The Software licensed under this Agreement may include open source software that is subject to open source license terms. Notwithstanding anything to the contrary herein, use of applicable open source software shall be subject to the applicable open source license terms to the extent required by the applicable licensor. WDT provides no support for applicable open source software.

29. SUPPORT. For questions regarding the Software, please visit the relevant support forum on the WDT website related to your product or contact WDT at <https://www.westerndigital.com/support>.

30. GOVERNING LAW.

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

IF YOU RESIDE IN (OR YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE U.S.: Except as provided for in Section 27, all claims arising out of or relating to this Agreement, the Software, or the parties' relationship with each other shall be governed by the laws of the State of California, without regard to conflict of law provisions.

IF YOU RESIDE IN (OR YOUR PRINCIPAL PLACE OF BUSINESS IS IN) A COUNTRY OUTSIDE OF THE U.S.: The laws of your country of residence will apply to all claims arising out of or relating to this Agreement, the Software, or the parties' relationship with each other.

31. EXCLUSIVE VENUE FOR LITIGATION.

IF YOU RESIDE IN (OR YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE U.S.: To the extent that the arbitration provisions set forth in Section 27 do not apply, or if you have opted out of arbitration, the parties agree that any litigation between them shall be filed exclusively in state or federal courts located in Santa Clara County, California (except for small claims court actions which may be brought in the county where you reside). The parties expressly consent to exclusive jurisdiction in Santa Clara County, California for any litigation other than small claims court actions. In the event of litigation relating to this Agreement, the parties agree to waive, to the maximum extent permitted by law, any right to a jury trial, except where a jury trial waiver is not permissible under applicable law.

IF YOU RESIDE IN (OR YOUR PRINCIPAL PLACE OF BUSINESS IS IN) A COUNTRY OUTSIDE OF THE U.S.: The courts of your country of residence will apply to all claims arising out of or relating to this Agreement, the Software, or the parties' relationship with each other.

32. ENFORCEABILITY. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be interpreted to give the fullest possible effect to its original intent or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

33. COMPLETE AGREEMENT. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and terminates all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement. As used in this Agreement, the term "include(s)" or "including" means "include(s) (or

including) without limitation” and shall not be construed to limit any general statement that it follows.

34. **RELATIONSHIP OF THE PARTIES.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and you do not have any authority of any kind to bind WDT in any respect whatsoever.

35. **ASSIGNMENT.** You may not assign this Agreement without the prior written consent of WDT, except, if you are a company or other legal entity, you may assign this Agreement in connection with a merger, re-organization, or acquisition of all or a substantial portion of your assets by another company, but only upon thirty (30)-days’ prior notice to WDT. WDT may assign or transfer this Agreement, in whole or in part, without restriction.

36. **NOTICES.** Notices provided by WDT under this Agreement, including those regarding modifications to this Agreement, may be given by email, by posting on WDT’s website, or via an in-product notification. You agree that any applicable notices that we send you electronically will satisfy any legal communication requirements.

37. **WAIVER.** The failure of WDT to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of the applicable right or provision. The waiver of any applicable right or provision will be effective only if in writing and signed by a duly authorized representative of WDT.

38. **EVENTS BEYOND REASONABLE CONTROL.** Neither party shall be in default or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from any cause beyond its reasonable control.

39. **ADDITIONAL PROVISIONS FOR APPLE USERS.** Notwithstanding anything to the contrary in this Agreement, your use of the Software with Apple, Inc. (“Apple”) devices shall be subject to the following additional terms in this Section. You agree and acknowledge that: this Agreement is concluded between you and WDT only, and not with Apple, and WDT, not Apple, is solely responsible for the Software and the content thereof to the extent described in this Agreement; the license in Section 5 of this Agreement is a non-transferable license to use the Software on any Apple products that you own or control and as permitted by the Usage Rules set forth in the Apple App Store Terms of Service, except that the Software may be accessed, acquired, and used by other accounts associated with the purchaser via Apple Family Sharing; WDT is solely responsible for providing any maintenance and support services with respect to the Software, to the extent specified in this Agreement, or as required under applicable law, and Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Software; in the event of any failure of the Software to conform to any applicable warranty, if any, you may notify Apple, and Apple will refund the purchase price for the Software to you, and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Software, and any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any warranty, if applicable and not disclaimed herein, will be WDT’s sole responsibility; to the extent not already disclaimed in this Agreement and subject to Section 27 above, WDT, not Apple, is responsible for addressing any claims from you or any third party relating to the Software or your possession and/or use of the Software, including product liability claims, any claim that the Software fails to conform to any applicable legal or regulatory requirement, and claims arising under consumer protection or similar

legislation; to the extent not already disclaimed in this Agreement and subject to Section 27 above, WDT, not Apple, will be solely responsible for the investigation, defense, settlement, and discharge of any intellectual property rights claims; and Apple and Apple's subsidiaries are third-party beneficiaries of this Agreement, and upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary thereof.

Last Updated October 2019