



**Seagate Cloud Systems and Silicon Group Terms (the "CSS Terms")
U.S. Version**

The complete and entire Agreement between Company and Customer is comprised of: (i) these CSS Terms; (ii) the Special Terms (as defined below); and (iii) the supplemental modular terms applicable to such Solutions (the "Modular Terms"), which are hereby incorporated by reference. This Agreement supersedes and replaces all previous and contemporaneous agreements, understandings and arrangements with respect to the subject matter hereof, whether oral or written. Company does not accept and hereby rejects, any additional or different terms or conditions that Customer presents. By ordering, receiving, accepting or using Solutions or otherwise proceeding with any transaction after receipt of notice of these CSS Terms, Customer accepts these CSS Terms.

In the event of a conflict between the CSS Terms, Special Terms and Modular Terms, the CSS Terms will prevail unless the parties expressly agree otherwise. For explanatory purposes only, the CSS Terms contain the main terms and conditions that govern the commercial relationship between Company and Customer, the Modular Terms include supplemental terms specific to Solutions, and the Special Terms include certain other documents or communications provided by the Company that describe the Solutions.

1. DEFINITIONS.

"Company" means Seagate Systems (US) Inc. or the affiliated Seagate entity providing Product to Customer and named in the Special Terms.

"Company Information" means (i) any technical or other information related to Solutions (including, but not limited to, any documentation, services offerings, and written, visual, and oral instructions), and (ii) any Intellectual Property owned, or provided to Customer, by Company.

"Confidential Information" means any confidential, proprietary or trade secret information of the disclosing party ("Discloser") that is marked as confidential, secret or with a comparable legend or that is disclosed under circumstances that place the receiving party ("Recipient") on reasonable notice that the information is confidential. Customer Data is deemed to be Customer's Confidential Information. Company Information is deemed to be Company's Confidential Information. Confidential Information does not include information that (i) is generally known as a result of no act or omission of the Recipient; (ii) was lawfully received by the Recipient without restriction on disclosure; (iii) was already known by the Recipient without any duty of confidentiality; or (iv) was independently developed by the Recipient without the use of Confidential Information of the Discloser.

"Customer Data" means the data that Customer provides to Company for the purpose of performing Services for Customer.

"Documentation" means Company's then-current, generally available user guides and manuals for Solutions.

"Hardware" means the tangible products or parts thereof that Company agrees to deliver to Customer, excluding any Software that may be contained therein.

"Intellectual Property" means any computer program, algorithms, know-how, hardware and/or software configurations, inventions, documentation, translations, text and other works of authorship, data, databases, information, designs, utility models, symbols, logos, marks, names, procedures, processes, technical improvements and any other intangibles.

"Product" means Hardware, Software and/or Work Product.

"Proprietary Rights" means any and all worldwide and/or territorial rights, title, ownership and interest in and to copyrights, mask works, industrial designs, trademarks, service marks, trade names, trade secrets, patents, and any other rights to Intellectual Property, whether or not perfected.

"Services" means the remote storage services, professional services and other services that Company agrees to deliver to Customer.

"Software" means the Company's proprietary software, including all related Documentation and any modifications or updates. Software does not include any computer programs provided under a third party license agreement, but it may include third party software sublicensed to Customer by Company under the terms of this Agreement.

"Solutions" means Products, Services and combinations of Products and Services.

"Special Terms" means the terms of the specific quote, order, order acknowledgment, statement of work, invoice, master agreement, sales contract and/or other document or communication provided by Company that describes the Solutions purchased or licensed and which incorporates these CSS Terms by reference

"Statement of Work" means a statement of work, in a form specified by Company, pursuant to which Company provides Services to Customer.

"Third Party Products" means any products that are produced by third parties and do not bear Company's name, logo, or mark and may include, without limitation, (i) Products recommended or delivered by Company; (ii) software licensed under third party license agreements, and (iii) components of Products delivered by Company, unless such components are not recognizable as separate items and are not identified as separate items in Company's price list or Documentation.

"Work Product" means any tangible or intangible results or deliverables that Company agrees to create or deliver, or intentionally delivers to Customer, as a result of performing services, including, but not limited to, configurations, computer programs or other information, or customized hardware, and any Intellectual Property developed in connection therewith.

2. GENERAL.

2.1 Performance. Company shall perform its obligations as set forth in the Special Terms and Statement(s) of Work applicable to the Solution.

2.2 Cooperation. Customer shall provide Company with the information, materials and cooperation necessary for Company to provide the Solutions or as otherwise reasonably requested by Company. If Customer fails to meet its obligations under this Agreement, Company may delay or suspend its performance and Customer shall be responsible for any resulting costs.

2.3 WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY WARRANTED IN THE APPLICABLE MODULAR TERMS, SOLUTIONS ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, WHICH ARE HEREBY DISCLAIMED.

3. **PAYMENT TERMS.** Customer shall pay Company the applicable license, subscription, hosting, support, purchase price and other fees (if any) for those Solutions purchased or licensed by Customer, as set forth in the applicable Special Terms or Statement of Work (collectively, the "Fees"). Except as specifically set forth in the Agreement, all Fees are non-refundable. Payments due under the Agreement shall be made in U.S. currency in the manner and amounts and at the times set forth in the applicable Special Terms or Statement of Work or, if not indicated therein, within 30 days of the date of invoice. If it is Customer's standard business practice to issue purchase orders prior to payment of invoices, then Customer will ensure that a purchase order accompanies each of the Special Terms submitted to Company. If Customer fails to timely pay any amount when due and following the expiry of 5 business days written notice from Company of such failure, Customer shall pay, in addition, interest at the rate of 1½% per month, but not to exceed the maximum allowed by law, on such delinquent amount. All Fees are exclusive of sales, service, value-added, and foreign withholding taxes, customs duties, and other taxes and charges, insurance, and costs related to transportation and special packaging requested by Customer, if any. Any such charges and costs shall be paid or reimbursed by Customer, except for taxes imposed on Company's net income. If any withholding taxes apply, Customer shall gross up the invoiced amount to ensure that, after such withholding, Company receives the full amount invoiced.

4. **INDEMNIFICATION.**

4.1 **Indemnity.** Company will defend and indemnify Customer from and against (a) all infringement claims brought against Customer with respect to the Products if and to the extent that the Products infringe any third party's copyright, trade secret or United States patent, and (b) third party claims brought against Customer if and to the extent relating to personal injury or tangible property damage caused by the Company's negligence, in each case on the condition that Customer (i) notifies Company in writing within 15 days of the date on which Customer becomes first aware of such claim; (ii) gives Company, at Company's expense, sole authority and control of the defense or settlement of such claim; and (iii) provides all reasonable information and assistance requested by Company to handle the defense or settlement of any such claim.

4.2 **Remedial Measures.** If a Product infringes, or Company reasonably believes it may infringe, third party rights, Company may, at its own expense and sole discretion (i) procure for Customer the right to continue use of such Product; (ii) replace or modify such Product so that it becomes non-infringing; or (iii) refund amounts paid by Customer for such Product in exchange for return of the affected Product.

4.3 **Exclusions.** Company shall have no indemnity obligation for any infringement claim based on any (i) use of any Product after notification to Customer to discontinue use; (ii) modifications of the Products not made or authorized by Company; (iii) Customer-specific requests, specifications, or instructions; (iv) use of the Products with hardware, software or materials not supplied by Company; (v) Third Party Products, or (vi) use of Products in violation of this Agreement.

4.4 **Customer Indemnification.** Customer shall defend and indemnify Company from and against claims arising from or related to Customer's (i) violations of law or regulations in connection with the use of the Solutions, (ii) actual or alleged infringement of a third party's Proprietary Rights (except to the extent such infringement is covered by Company's indemnification obligations as set forth above), or (iii) acts or omissions causing personal injury or tangible property damage; in each case, on the condition that Company (a) notifies Customer in writing within 15 days of the date on which Company becomes first aware of such claim, (b) gives Customer, at Customer's expense, sole authority and control of the defense or settlement of such claim, and (c) provides all reasonable information and assistance requested by Customer to handle the defense or settlement of any such claim.

4.5 **ENTIRE OBLIGATION.** THE INDEMNIFICATION OBLIGATIONS SET FORTH IN THESE CSS TERMS AND THE APPLICABLE MODULAR TERMS ARE EACH PARTY'S ENTIRE OBLIGATION AND LIABILITY FROM OR RELATED TO THIRD PARTY CLAIMS.

5. **LIMITATION OF LIABILITY.**

5.1 **Waiver of Consequential Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOSS OF REVENUE, DATA OR GOODWILL, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5.2 **Cap on Liability.** THE LIABILITY OF COMPANY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH ANY SOLUTION SHALL NOT EXCEED IN TOTAL AN AMOUNT EQUAL TO THE GREATER OF \$1000 OR THE FEES PAID OR PAYABLE BY CUSTOMER FOR THE PORTION OF THE SOLUTION PRINCIPALLY RESPONSIBLE FOR SUCH DAMAGES, WHICH SHALL IN NO EVENT EXCEED FEES PAID WITHIN THE PRECEDING 12 MONTHS FOR SOLUTIONS LASTING MORE THAN 12 MONTHS.

5.3 **Scope.** THE FOREGOING DISCLAIMERS AND LIMITATIONS APPLY TO ALL CAUSES OF ACTION, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. THE LIMITATIONS OF LIABILITY ABOVE SHALL NOT APPLY WITH RESPECT TO CONTRACTUAL INDEMNIFICATION AND BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS SET FORTH IN THESE CSS TERMS.

6. **INFORMATION.**

6.1 **Confidentiality.** Recipient will protect the secrecy of Discloser's Confidential Information with the same degree of care as it uses to protect its own confidential information, but in no event with less than due care. Subject to Recipient's obligation to comply with applicable law and regulatory requirements, Recipient shall not disclose the Confidential Information of Discloser except to employees (including independent contractors), affiliates, subsidiaries, consultants and other agents of Recipient who have at least an equivalent confidentiality obligation to Recipient and who have a need to know such Confidential Information. The Confidential Information disclosed by Discloser may only be used by Recipient as necessary to perform its obligations or exercise its rights under the Agreement.

6.2 **Security.** Company has adopted a written security policy that includes administrative, technical and physical safeguards that are intended to protect Customer's Confidential Information from unauthorized access and use. However, the parties acknowledge and agree that the use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to Confidential Information. Accordingly, Company cannot and does not (and nothing in the Agreement is intended to) guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet. Unless otherwise authorized by Company, any Customer Information that is subject to specific legal requirements or safeguards regarding security and/or privacy shall be encrypted by Customer prior to transmission to Company.

6.3 **Return.** If and when Confidential Information is no longer needed for the performance of obligations or exercise of rights under the Agreement, Recipient shall promptly destroy or return such Confidential Information to the Discloser upon the Discloser's written request.

6.4 **Proprietary Rights.** Customer acknowledges and agrees that, as between Company and Customer, title to and ownership of the Products (excluding any Hardware and/or Third Party Software purchased by Customer), including all corrections, enhancements, or other modifications to the Software, whether made by Company or any third party, and all Proprietary Rights therein, are and will at all times be deemed the sole and exclusive property of Company or its suppliers, as applicable. All rights not expressly granted to Customer in the Agreement are reserved by Company. Company acknowledges and agrees that, as between Company and Customer, title to and ownership of the Customer Information and all Proprietary Rights therein, are the property of Customer or its suppliers, as applicable.

7. CHOICE OF LAW AND MEDIATION. The Agreement and any related dispute between the parties ("Disputes") shall be governed by the laws of the State of California, excluding its conflict of laws principles and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). The parties will attempt to resolve any dispute relating to the Agreement by good faith negotiation between business principals for 10 business days. Thereafter, the parties will submit their dispute to mediation before an agreed mediator from Judicial Arbitration and Mediation Services ("JAMS") or its successor, to be scheduled within 10 business days. The parties will conduct all mediations at a JAMS facility in San Francisco County, California, USA, to whose jurisdiction the parties consent, and will bear their own costs. The parties hereby consent to the jurisdiction of, and waive any venue objections against, the United States District Court for the Northern District of California, San Francisco Branch and the Superior and Municipal Courts of the State of California, San Francisco County, in any litigation arising out of or in connection with the Agreement. Notwithstanding the foregoing, a party will have the right at any time to seek a temporary or permanent injunction or other equitable remedy or relief in any court having subject matter jurisdiction anywhere in the world.

8. TERM AND TERMINATION.

8.1 Term. This Agreement shall remain in effect unless and until it is terminated in accordance with this section. The termination rights and consequences specified in this section apply in addition to any other remedies available under this Agreement, including, but not limited to any additional termination rights and consequences specified in the applicable Modular Terms.

8.2 Termination of Agreement. Each party may terminate this Agreement for convenience with 60 days prior written notice to the other party. Except as expressly provided in this Agreement, any termination of this Agreement shall not affect any rights or obligations of the parties under any accepted Special Terms that became legally binding before the termination of the Agreement became effective.

8.3 Survival. Sections 3 through 9 of these CSS Terms will survive the termination or expiration of the Agreement, and any other provisions of the Agreement that by reasonable interpretation are intended by the parties to survive the termination or expiration of the Agreement.

9. MISCELLANEOUS.

9.1 Compliance. Each party shall be responsible for its own compliance with laws, regulations and other legal requirements applicable to the conduct of its business and the Agreement. The Product, including any Third Party Software, licensed or sold 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 and may also be subject to the customs and export laws and regulations of the country in which the products are manufactured or received. Further, under U.S. law, the Products shipped 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. Customer acknowledges that it is its responsibility to comply with and abide by those laws and regulations, and that any third party that you request Company to route Product to directly has also been made aware of the associated export controls.

9.2 Written Form. All notices, consents and approvals under the Agreement must be delivered in writing by e-mail, by courier, by overnight mail service or by certified mail (postage prepaid and return receipt requested) to the other party at the address for Customer set forth in the Special Terms (or if none is specified, that address to which Customer invoices are sent) and for Company, to Company's Legal Department at 10200 S. De Anza Blvd., Cupertino, CA 95014, Attn: CSS Contracts, and will be effective upon receipt. Either party may change its address by giving written notice of the new address to the other party in writing.

9.3 Dates and Timelines. All references to days shall be to calendar days, except as expressly noted otherwise. All scheduled shipment dates, delivery dates, and other dates are non-binding estimates, unless a duly authorized representative of Company expressly agrees in a duly signed writing that a certain date shall be legally binding.

9.4 No Waiver. The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and shall in no way affect that party's right to later enforce or exercise it.

9.5 Assignment and Delegation. Neither party will transfer or assign any rights under the Agreement, in whole or part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may, without the prior written consent of the other party, assign the Agreement to a subsidiary or affiliated entity as part of a divestiture, corporate reorganization or consolidation or to another party in connection with a merger, acquisition, or sale of substantially all assets or stock to which the Agreement relates. Any other assignments will be void. Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns. Notwithstanding the foregoing, all or certain portions of Solutions sold or licensed under the Agreement may be provided by a subsidiary or subcontractor of Company or its suppliers. Company will be responsible for its subsidiaries and subcontractors and their performance under the Agreement.

9.6 Insolvency. If either party (i) becomes insolvent, (ii) suspends its business, or (iii) files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, which petition is not dismissed within 30 days, then in each case the other party may immediately cancel any outstanding part of any order without penalty.

9.7 Force Majeure. Except for Customer's payment obligations for Products, neither party will be liable for any failure or delay in performance under the Agreement which might be due in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of, any nature beyond the reasonable control of such party, including, without limitation, fire, earthquake, storm, flood, power outage, strike, war, act of terrorism, law, export control regulation, instructions of government authorities or judgment of a court (not arising out of breach by such party of the Agreement).

9.8 Severability. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree that any invalid provision will be deemed to be restated so as to be enforceable to the maximum extent permissible under law consistent with the original intent and economic terms of the invalid provision.

9.9 Press Release. In the event that Company wishes to issue a press release announcing the existence of the relationship between the parties and the nature of the Agreement, Company will provide such press release to Customer for Customer's prior written approval and consent. Such approval and consent will be in Customer's sole discretion. No other press release that mentions the other party shall be issued without the other party's prior written approval.