

END USER AGREEMENT (v27Mar19)

IMPORTANT: PLEASE READ THIS END USER AGREEMENT (“**AGREEMENT**”) BEFORE INSTALLING OR USING THE HARDWARE, SOFTWARE, OR SUBSCRIPTION SERVICES, INCLUDING ANY HARDWARE OR SOFTWARE COMPONENTS THEREOF (COLLECTIVELY, “**PRODUCTS**”) AND PURE-BRANDED PROFESSIONAL SERVICES (“**SERVICES**”) THAT YOU OR THE ENTITY THAT YOU REPRESENT (“**END USER**”) OBTAIN FROM PURE STORAGE, INC. (“**PURE**”) OR FROM ANY THIRD PARTY AUTHORIZED BY PURE TO RESELL THE PRODUCTS AND SERVICES. BY INSTALLING OR USING THE PRODUCTS OR SERVICES, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND END USER AND AGREE THAT END USER IS BOUND BY THIS AGREEMENT WITH PURE, UNLESS A SEPARATE WRITTEN AGREEMENT IS IN EFFECT THAT SPECIFICALLY GOVERNS THE SUBJECT MATTER HEREOF.

1. SOFTWARE LICENSE.

1.1. Software License. Subject to End User’s compliance with the terms and conditions of this Agreement, Pure grants to End User, and any third party that End User authorizes to perform services involving the Product solely for End User’s benefit, a nontransferable, nonexclusive, perpetual license to use and execute the Pure software provided with, or incorporated in, the Pure hardware (the “**Software**”), in executable object code format only, and solely for use in accordance with the applicable Product documentation and Product SKU description. Pure may make Software updates and new releases available for installation by the End User and such updates will be subject to the terms of this Agreement.

1.2. Subscription Services. Software that is offered by Pure subject to permissions and/or limitations identified in the applicable SKU, schedule or quote for a specified period of time is provided to End User under the terms of Pure’s [Subscription Services Addendum](#), incorporated herein by reference.

2. PRODUCT RESTRICTIONS AND TITLE.

2.1. Restrictions. End User will not directly or indirectly (i) reproduce, modify, distribute, assign, disclose or make available any portion of the Products (or any related documentation) to any third party (except as otherwise authorized herein); (ii) rent, lease or sublicense the Products, unless otherwise authorized by Pure in writing; (iii) reverse engineer, decompile, or disassemble any portion of the Products, or otherwise attempt to decrypt, extract or derive source code for, or any algorithms or data structures embodied within, any portion of the Products (except to the extent the foregoing restriction is expressly prohibited by applicable law); (iv) use the Products to develop a similar product or service; (v) transfer or copy the Software to, or use the Software on, any other product or device, including any second-hand or grey market hardware that End User has not purchased from Pure or a Pure authorized reseller; or (vi) publish or disclose to any third party any technical features, performance or benchmark tests, or comparative or competitive analyses relating to the Products, except for internal use by the End User or as may be authorized by Pure in writing. End User will remain fully and primarily responsible to Pure for compliance with this Agreement if End User permits any third party to access the Products. Any future release, update, or other addition to functionality of the Products made available by Pure to End User shall be subject to the terms and conditions of this Agreement, unless Pure expressly states otherwise. End User shall preserve and shall not remove, obscure or alter any copyright labels required by law or other proprietary notices in the Products or related documentation.

2.2. Title. As between Pure and End User, title to Pure hardware purchased by End User will transfer to End User. Except as provided in the foregoing sentence, Pure and its suppliers shall exclusively retain all right, title and interest, in all intellectual property rights, including patent, trademark, trade name and copyright, whether registered or not registered, in and to the Products and related documentation. Pure and its suppliers reserve all rights not expressly

granted herein, and no other license or other implied rights of any kind are granted or conveyed. In the event that items of software code provided with the Products are subject to “open source” or “free software” licenses, nothing herein limits End User’s rights under, or grants rights that supersede, the applicable license therefor.

3. PRE-RELEASE PRODUCTS AND FEEDBACK.

3.1. Pre-Release Products. If mutually agreed by the parties, Pure may make available to End User beta or pre-release versions of the Products (“**Pre-Release Products**”). End User acknowledges that the Pre-Release Products (i) are not at the level of performance or compatibility of final, generally available products; (ii) may not operate correctly; (iii) may be modified prior to being made generally available; (iv) may not be made available for general release; and (v) may not be used in a production environment. End User agrees to notify Pure of any bugs or problems in the Pre-Release Products.

3.2. Feedback. End User may provide feedback to Pure regarding the use, operation, performance, and functionality of the Products and Pre-Release Products, including identifying potential errors and improvements (collectively, “**Feedback**”). End User grants to Pure a perpetual, irrevocable, worldwide, sublicenseable, fully paid-up and royalty-free right to modify and use the Feedback in any manner, provided that Feedback is anonymized and does not identify End User.

4. EVERGREEN SUBSCRIPTION; INSTALLATION. At its option, End User may purchase an innovation and support subscription for a purchased Product (“**Evergreen Subscription**”), which provides End User with additional software and hardware benefits. Under an applicable Evergreen Subscription, Pure will provide the generally available Product maintenance and technical support in accordance with the Pure Storage [Customer Support Guide](#) during the term for which End User has purchased such Evergreen Subscription. Depending on the Product or Evergreen Subscription purchased, certain benefits of the [Evergreen Storage Program Description](#) may also apply. Pure may designate support partners and authorized resellers to deliver the Evergreen Subscription in accordance with the terms of this Agreement. If End User purchases Pure-branded professional installation or other Services, such Services are provided to End User under the terms of Pure’s [Professional Services Addendum](#), incorporated herein by reference.

5. WARRANTY AND DISCLAIMER.

5.1. Hardware Warranty. Subject to this Section 5, Pure warrants that the Pure hardware will perform in substantial accordance with the corresponding Product documentation for three years from the date of shipment by Pure. The Evergreen Subscription benefits described in Section 4 extend beyond the limited warranty for the Pure hardware for the term purchased by End User.

5.2. Software Warranty. Subject to this Section 5, Pure warrants that the Software will perform in substantial accordance with the corresponding Product documentation for 90 days from the date of

shipment by Pure. The Evergreen Subscription benefits described in Section 4 extend beyond the limited warranty for the term purchased by End User.

5.3. Limited Warranty Process. End User may contact Pure via email at support@purestorage.com or phone at +1 (866) 244-7121 for warranty service. If a return is required, End User must obtain a return material authorization number from Pure and return the Product in secure packaging, freight prepaid, as instructed by Pure. Under the hardware warranty, Pure, at its option, either (i) will repair or replace any defective Product with Product or components of equal or greater functionality as the returned Product, or (ii) will refund the purchase price paid to Pure for such Product, reduced on a straight-line basis over a three-year life. Replacement Products or components will continue to be warranted for the remainder of the applicable warranty term. Repair, replacement or refund is the sole and exclusive remedy for breach of this warranty. Under the Software warranty, Pure will provide End User access to bug fixes and emergency patches. This warranty is provided to the original End User only and is not transferable.

5.4. Exclusions. The warranties herein do not cover defects or damages resulting from: (a) use of Products other than in a normal and customary manner in accordance with Pure's documentation; (b) physical or electronic abuse or misuse, accident, or neglect; or (c) alterations or repairs made to Products that are not authorized by Pure in writing. Pre-Release Products are provided without warranty or liability of any kind, for use at End User's own risk. Pure will use reasonable efforts to destroy (but have no liability for any loss or inadvertent disclosure of) data stored or remaining on a Product returned to Pure. Under this Agreement, all returned Products and components become the property of Pure.

5.5. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, PURE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, TO THE EXTENT WARRANTIES MAY BE DISCLAIMED UNDER APPLICABLE LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURE DOES NOT WARRANT AGAINST LOSS OR INACCURACY OF DATA OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS EXPRESSLY STATED IN SECTION 5.1, PURE PROVIDES THE PRODUCTS (INCLUDING ANY SOFTWARE) ON AN "AS IS" BASIS. THE PRODUCT IS NOT DESIGNED OR INTENDED FOR USE WHERE FAILURE OF THE PRODUCT COULD REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY, LOSS OF LIFE OR PROPERTY DAMAGE. END USER IS RESPONSIBLE FOR ENSURING THAT IT HAS APPROPRIATE DATA BACK-UP, DATA RECOVERY, AND DISASTER RECOVERY MEASURES IN PLACE.

6. INDEMNIFICATION. Pure will indemnify and defend End User, at Pure's expense, against any action brought by a third party against End User to the extent that the action is based upon a claim that the Products directly infringe any copyrights or U.S. patents or misappropriate any trade secrets, and Pure will pay those costs and damages finally awarded by a court of competent jurisdiction against End User in any such action that are specifically attributable to such claim or those costs and damages agreed to by Pure in a monetary settlement of such action. If End User's use of the Product is, or in Pure's opinion is likely to become, enjoined as a result of an infringement claim, Pure will, at its option and expense, either (i) procure the right to continue using the Product; (ii) replace or modify the Product so that it becomes non-infringing and remains functionally equivalent; or (iii) if, despite its commercially reasonable efforts, Pure is unable to do either (i) or (ii), Pure will accept return of the Product, terminate the rights herein, and pay to End User a prorated refund of the money paid to Pure for the purchase of such Product reduced on a straight-line basis over a three-year life. Notwithstanding the foregoing, Pure will have no obligation with respect to any infringement claim

based upon (a) any use of the Product that is not in accordance with this Agreement or the corresponding Product documentation; (b) any use of the Product in combination with other products, equipment, software, or data not supplied by Pure if such infringement would not have arisen but for such combination; (c) the use of any release of the Software other than the current and immediately preceding version; or (d) any modification of the Product by any person other than Pure if such infringement would not have arisen but for such modification. This Section 6 states Pure's entire liability, and End User's sole and exclusive remedy, for infringement claims and actions. The foregoing obligations are subject to End User notifying Pure promptly in writing of such action, giving Pure sole control of the defense thereof and any related settlement negotiations, and cooperating and assisting in such defense at Pure's reasonable request and expense (including reasonable attorneys' fees).

7. LIMITATION OF LIABILITY. IN NO EVENT WILL PURE, ITS PARENTS, SUBSIDIARIES, AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES NOR ITS SUPPLIERS (COLLECTIVELY, THE "PURE PARTIES") BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR LOST PROFITS, LOST OR CORRUPTED DATA, OR INTERRUPTION OF BUSINESS ARISING IN CONNECTION WITH THE USE OF THE PRODUCT OR SERVICES OR IN CONNECTION WITH ANY OTHER CLAIM ARISING FROM THIS AGREEMENT, EVEN IF THE PURE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OTHER THAN PURE'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 6, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PURE PARTIES' AGGREGATE LIABILITY UNDER OR RELATING TO THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY END USER FOR PRODUCTS OR SERVICES THAT GAVE RISE TO SUCH CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

8. PRODUCT DIAGNOSTIC REPORTING. End User acknowledges that the Products store certain diagnostic information about the routine operations of the Product, including performance, capacity usage, data reduction ratios, configuration data, and hardware faults ("Pure1 Reports") and, when enabled by End User, periodically transmit these Pure1 Reports to Pure and authorized End User partners. End User understands and agrees that End User data stored on the Products is not accessed, transmitted or provided to Pure or any third party as part of the Pure1 Reports. Pure retains all right, title, and interest in the Pure1 Reports. End User agrees that the collection and transmission of such Pure1 Reports is necessary to facilitate any Subscription Services and certain support services under an Evergreen Subscription.

9. CONFIDENTIAL INFORMATION.

9.1. Data Privacy. End User is solely responsible for data (including personal data) managed or stored using the Products and for compliance with all applicable data privacy laws related thereto. In the event End User provides Pure with personal data in connection with the performance of this Agreement, the parties will ensure that such personal data is disclosed and handled in accordance with applicable data protection laws.

9.2. Confidentiality. "Confidential Information" means any nonpublic information of a disclosing party ("Discloser"), whether disclosed orally or in written or digital media, received by the receiving party ("Recipient"), that is identified as "confidential" or with a similar legend at the time of such disclosure or that Recipient knows or should have known is the confidential or proprietary information of Discloser. Pure's Confidential Information includes all non-public information relating to, or derived from, the Products and Services, including technical features, benchmark results, or performance results.

Information does not constitute a party's Confidential Information if it (a) is already known by Recipient without obligation of confidentiality; (b) is independently developed by Recipient without use of Discloser's Confidential Information; (c) is publicly known without breach of this Agreement; or (d) is lawfully received from a third party without obligation of confidentiality. Recipient shall: (i) not use or disclose any Confidential Information except as expressly authorized by this Agreement or Discloser; (ii) protect Discloser's Confidential Information using the same degree of care that it uses with respect to its own confidential information of a like nature, but in no event with safeguards less than a reasonably prudent business would exercise under similar circumstances; and (iii) limit access to Discloser's Confidential Information to its employees, affiliates, agents, or authorized representatives having a need to know and who are bound by confidentiality obligations no less protective to those contained herein. Recipient shall take prompt and appropriate action to prevent unauthorized use or disclosure of Discloser's Confidential Information. Recipient's obligations under this Section 9.2 survive termination and continue for five (5) years from the date of termination of this Agreement. All tangible materials containing Confidential Information shall remain the property of Discloser. Upon termination, Recipient shall cease any use of Confidential Information. Upon Discloser's written request, the receiving party shall promptly return (or at Discloser's option, destroy) all documents and tangible materials containing any portion of, or summarizing, Discloser's Confidential Information. At Discloser's request, an authorized representative of Recipient shall provide a certificate attesting to compliance with this section. If any Confidential Information must be disclosed to any third party by reason of legal, accounting, or regulatory requirements, Recipient shall promptly notify Discloser of the order or request and permit Discloser (at its own expense) to seek an appropriate protective order.

10. GENERAL PROVISIONS.

10.1. Governing Law and Venue. This Agreement will be governed and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles. The parties expressly consent to the personal jurisdiction and venue in the state and federal courts in Santa Clara County, California for any lawsuit filed there arising from or related to this Agreement. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

10.2. Termination. The license in Section 1.1, and End User's rights to use the Software, will terminate immediately in the event that: (i) End User returns the Product to Pure as provided herein; or (ii) End User materially breaches any provision of this Agreement and, if capable of cure, fails to cure such breach within 30 days from the date of Pure's written notice to End User. Upon any such termination, End User shall promptly discontinue all use of the Software. Sections 2, 3.2, 5.4, 6, 7, 9, and 10 will survive any termination of this Agreement.

10.3. Notices. Except as specifically stated, all notices or other communications required or permitted under this Agreement shall be in writing and shall be delivered by personal delivery, certified overnight delivery such as Federal Express, or registered mail (return receipt

requested) and shall be deemed given upon personal delivery or upon confirmation of receipt.

10.4. Compliance with Laws. The parties agree to comply with all laws applicable to the distribution and use of the Products and performance of its obligations under this Agreement.

10.5. Severability; Waiver. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

10.6. Export. The Products and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. End User agrees not to export, re-export, or transfer, directly or indirectly, any technical data acquired from Pure, or any products incorporating such data, in violation of applicable export laws or regulations. For purposes of Pure's compliance with applicable export laws, End User agrees to provide Pure with applicable end use information upon Pure's request.

10.7. No Assignment. This Agreement, and End User's rights and obligations herein, may not be assigned by End User without Pure's prior written consent, which consent will not be unreasonably withheld, and any attempted assignment in violation of the foregoing will be null and void.

10.8. U.S. Government End Users. The Products and related documentation are "commercial off the shelf items" as defined in FAR 2.101 and their use is subject to the policies set forth in FAR 12.211, FAR 12.212 and FAR 227.7202, as applicable.

10.9. Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations under this Agreement on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, volcanic eruption, material shortages or any other cause that is beyond the reasonable control of the party.

10.10. Privacy. This Agreement is subject to [Pure's Privacy Policy](#), which constitutes an integral part of this Agreement. End User is solely responsible for personal data managed or stored using the Products and for compliance with all applicable data privacy laws related thereto.

10.11. Entire Agreement; Modification. This Agreement, including any terms referenced herein, is the entire agreement between the End User and Pure with respect to the subject matter hereof. Any varying or additional terms relating to the subject matter hereof in any purchase order, discussion, or other written document will be of no effect. This Agreement, including any rights hereunder, may be extended or amended by the parties in writing.