



EVALUATION AGREEMENT

THIS EVALUATION CONFIRMATION (this “Agreement”) is made and entered into as of the date identified as the “Effective Date” below, by and between PURE STORAGE, INC. a Delaware corporation having a principal place of business at 650 Castro Street, Mountain View, CA 94041 (“Pure Storage” or “Pure”), and the legal entity identified below as “End User” or “Customer”. Capitalized terms not otherwise defined in this cover section document have the meaning set forth in the Pure Evaluation Agreement

1. EVALUATION PRODUCT TERMS.

1.1. Evaluation Product Delivery. Pure shall deliver the Pure Storage FlashArray product(s), including all hardware, embedded software, and documentation (“**Evaluation Product**”) to Customer at the address agreed to by the parties. Risk of loss shall pass to Customer upon delivery to Customer, and Customer shall have and maintain appropriate insurance to cover loss of or damage to the Evaluation Product. The Evaluation Product shall remain Pure’s sole and exclusive personal property, and Customer shall not encumber, sell, or otherwise dispose of the Evaluation Product without having received prior written authorization from Pure.

1.2. Evaluation Product License and Term. Subject to the terms and conditions of this Agreement, Pure hereby provides Customer the right and license to use the Evaluation Product, royalty free, solely for the purposes of evaluating the performance and functionality of the Evaluation Product and not for use in a production environment. Customer agrees to use and evaluate the Evaluation Product (in accordance with the Evaluation Product documentation made available by Pure on-line) for the fifteen (15) days from the date of delivery (“**Evaluation Term**”). The license in this Section 1.2 and all of Customer’s rights to use the Evaluation Product will terminate immediately upon expiration of the Evaluation Term or in the event that Customer materially breaches any provision of this Agreement. Upon any termination of this Agreement, Sections 1.3 and 3-9 will survive, and Customer shall promptly discontinue all use of the Evaluation Product.

1.3. Return of Evaluation Product. At the end of the Evaluation Term or upon earlier termination, if Customer elects not to purchase the Evaluation Product, then Customer shall (i) promptly contact Pure regarding the return of the Evaluation Product to obtain an RMA number, packaging instructions and shipping address; and (ii) promptly return the Evaluation Product to Pure in its original packaging and in accordance with Pure’s reasonable shipping instructions. Customer shall reimburse Pure for reasonable repair or reasonable replacement costs associated with any damage to the Evaluation Product (other than normal wear and tear) while in Customer’s possession or the use of unapproved packaging. Pure assumes risk of loss upon shipment by Customer.

1.4. Purchase of Evaluation Product. If Customer elects to purchase the Evaluation Product, then once the applicable purchase order has been accepted by Pure or its authorized reseller: (i) Customer will not be required to return the Evaluation Product in accordance with Section 1.3; and (ii) the Evaluation Product currently in Customer’s possession will become a purchased Product and the terms of Pure’s then-current End User Agreement shall supersede the terms of this Evaluation Agreement. For clarity, Pure will not replace the Evaluation Product in Customer’s possession with a new product. In addition, if Customer purchases the Evaluation Product (or other Pure product) within one year following the conclusion of the Evaluation Term, Customer waives the “Love Your Storage” 30-day money back guarantee offered under Pure’s End User Agreement.

2. EVALUATION PRODUCT RESTRICTIONS.

2.1. Restrictions. Customer agrees that it will not (i) reproduce, modify, distribute, publish, rent, lease, sublicense or assign, disclose, transfer, or make available to any third party any portion of the Evaluation Product in any form; (ii) reverse engineer, decompile, or disassemble any portion of the Evaluation Product or otherwise attempt

to decrypt, extract, or derive source code for, or any algorithms or data structures embodied within, the Evaluation Product or any parts thereof; (iii) use the Evaluation Product in order to build a similar or competitive product or service; (iv) transfer, copy, or use the Evaluation Product to or on any other product or device for any purpose; (v) physically move or relocate the Evaluation Product to a different location than the shipping address agreed upon by the parties or (vi) publish or disclose to any third party any performance or benchmark tests or analyses or other non-public information relating to the Evaluation Product, or the use thereof, except as may be authorized by Pure in writing.

2.2. Title. Pure and its suppliers shall retain all right, title, and interest in the Evaluation Product and all intellectual property rights therein, including without limitation all patent, trademark, trade name and copyright, whether registered or not registered. No license or other express or implied rights of any kind are granted or conveyed except for the limited internal license expressly provided above. Any rights not expressly granted by Pure in this Agreement are reserved.

3. THIRD PARTY CODE. Certain items of the software code provided with the Evaluation Product are subject to “open source” or “free software” licenses (“**Third Party Code**”) which may provide Customer with rights in addition to those set out in this Agreement.

4. FEEDBACK. To the extent Customer provides Pure with feedback regarding the Evaluation Product (“**Feedback**”). Customer hereby grants to Pure a perpetual, irrevocable, worldwide, sublicenseable, and royalty-free right to use the Feedback, and such right shall survive any expiration or termination of this Agreement.

5. LIMITED WARRANTY AND DISCLAIMERS.

5.1. Limited Warranty. Pure represents and warrants that: (i) the Evaluation Product shall function in accordance with the Evaluation Product documentation; (ii) it has obtained and will obtain valid licenses for the Evaluation Product, Third Party Code, software, and technology provided to Customer hereunder; (iii) any of the installation support provided by Pure will be rendered using high industry practices and in a competent, workmanlike, and professional manner; (iv) it owns or has the right to license to Customer the Evaluation Product furnished hereunder, free and clear of all liens, claims, encumbrances, or other restrictions; and (v) the Evaluation Product and Third Party Code will not contain any virus, “time bomb,” or any other worm, including but not limited to, codes, commands, or instructions that may be used to access, alter, delete, damage, or disable any Customer information, systems, software, or other Customer property.

5.2. Stored Data. In the event that the Evaluation Product is returned pursuant to Section 1.3 above, Customer shall ensure that all information stored on the Evaluation Product is removed in its entirety. If any such data is not removed by Customer from the Evaluation Product, Pure shall destroy the stored data.

5.3. Technical Support. Although Pure does not provide a warranty or maintenance and support for Evaluation Products, Customer should promptly notify Pure of any problems with an Evaluation Product and Pure will use reasonable commercial efforts to assist Customer in resolving such identified problems. Customer agrees that any issues or bugs found during Customer’s evaluation of Evaluation Products are not guaranteed by Pure to be fixed.

5.4. Disclaimer. THE EVALUATION PRODUCT IS PROVIDED “AS IS”, FOR USE BY CUSTOMER AT ITS OWN RISK. EXCEPT AS SET FORTH EXPRESSLY HEREIN, PURE AND ITS SUPPLIERS HEREBY DISCLAIM ALL EXPRESS, IMPLIED,

STATUTORY, AND ANY OTHER WARRANTIES RELATING TO THE EVALUATION PRODUCT INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, COURSE OF PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. PURE DOES NOT WARRANT THAT THE OPERATION OF THE EVALUATION PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE.

6. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CUSTOMER AGREES THAT NEITHER PURE NOR ITS SUPPLIERS SHALL BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO CUSTOMER, ITS CUSTOMERS, OR THIRD PARTIES CAUSED BY FAILURE OF PURE TO DELIVER THE EVALUATION PRODUCT, FAILURE OF THE EVALUATION PRODUCT TO FUNCTION, OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR TECHNOLOGY. IN NO EVENT WILL PURE OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES, INCLUDING LOST PROFITS, IN CONNECTION WITH THE USE OF THE EVALUATION PRODUCT OR OTHER MATERIALS PROVIDED ALONG WITH THE EVALUATION PRODUCT OR IN CONNECTION WITH ANY OTHER CLAIM ARISING FROM THIS AGREEMENT, EVEN IF PURE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PURE'S AGGREGATE CUMULATIVE LIABILITY UNDER OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF \$5,000.00 US DOLLARS. CUSTOMER AGREES THAT PURE'S SUPPLIERS WILL HAVE NO LIABILITY TO CUSTOMER OF ANY KIND UNDER OR AS A RESULT OF THIS AGREEMENT.

7. CONFIDENTIAL INFORMATION. "CI" or "Confidential Information" means any nonpublic information of a party (the "DP"), whether disclosed orally or in written or digital media, that is identified as "confidential" or with a similar legend at the time of such disclosure or that the receiving party (the "RP") knows or should have known is the confidential or proprietary information of the DP. Information will not constitute a party's CI if it (i) is already known by the RP without obligation of confidentiality; (ii) is independently developed by the RP without access to the DP's CI; (iii) is publicly known without breach of this Agreement; or (iv) is lawfully received from a third party without obligation of confidentiality. The RP shall: (a) not use or disclose any CI except as expressly authorized by this Agreement; (b) protect the DP's CI using the same degree of care that it uses with respect to its own confidential information, but in no event with safeguards less than a reasonably prudent business would exercise under similar circumstances; and (c) limit access to the CI 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. The RP shall take prompt and appropriate action to prevent unauthorized use or disclosure of the DP's CI. The RP's obligations under this Section 7 will survive termination and will continue for five (5) years from the date of receipt of such CI. All tangible materials containing CI shall remain the property of the DP. Upon termination, the RP will cease any use of CI. Upon written request of the DP, the RP will promptly return (or at the DP's option,

destroy) all documents and tangible materials containing any portion of, or summarizing, the DP's CI. At the DP's request, an officer of the RP will provide a certificate attesting to compliance with this section. If any CI must be disclosed to any third party by reason of legal, accounting, or regulatory requirements, the RP shall promptly notify the DP of the order or request and permit the DP (at its own expense) to seek an appropriate protective order.

8. EVALUATION PRODUCT DIAGNOSTIC TESTING. Customer acknowledges that the Evaluation Product will store certain diagnostic information about the routine operations of the Evaluation Product (including, without limitation, its performance, data reduction ratios, configuration data, and any hardware faults) and will periodically transmit this diagnostic information to Pure. For clarity, no actual user data of Customer or Customer CI is transmitted or provided to Pure in connection with this diagnostic information. Customer agrees that Pure has a perpetual, irrevocable, worldwide, sublicenseable, and royalty-free right to use such diagnostic information and Customer will not interfere with the collection or transmission of such diagnostic information to Pure.

9. GENERAL PROVISIONS. 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 that require the application of the law of a different state. 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. This Agreement, and Customer's rights and obligations herein, may not be assigned without Pure's prior written consent.

9.1. Export Compliance. Customer agrees not to export, re-export, or transfer, directly or indirectly, any U.S. technical data acquired from Pure, or any products incorporating such data, in violation of the United States export laws or regulations. The Evaluation Product is identified as "commercial items" as defined in 48 CFR 2.101 and use thereof is subject to the policies set forth in 48 CFR 12.211, 48 CFR 12.212 and 48 CFR 227.7202, as applicable.

9.2. 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, governmental action, labor conditions, earthquakes, material shortages or any other cause that is beyond the reasonable control of such party.

9.3. Notices. All notices required under this Agreement shall be in writing and shall be delivered by overnight courier, or registered mail (return receipt requested) and shall be deemed given upon personal delivery or upon confirmation of receipt.

9.4. This Agreement constitutes the entire agreement between Customer and Pure and supersedes in its entirety any and all oral or written agreements previously existing between Customer and Pure with respect to the subject matter hereof. This Agreement may only be amended in a writing signed by authorized representatives of the parties.