

Ref: 00014255



MASTER EVALUATION AGREEMENT

Effective Date: March 16, 2018

THIS MASTER EVALUATION AGREEMENT (this "**Agreement**") is made and entered into as of the date identified above ("**Effective Date**"), 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 **POMONA COLLEGE** ("**Customer**").

Evaluation Schedule:

Product Name	Ship To Address
Qty 1 FA-m10-10TB-10/0	550 N College Ave Claremont, CA 91711-4434 Country: USA
Evaluation Term:	Evaluation Cost to Customer:
30 days from date of delivery	\$0
Installation Support:	
As reasonably requested at Pure's discretion.	

Customer Contact: Asya Shklyar
Email: asya.shklyar@pomona.edu

IN WITNESS WHEREOF, the parties' authorized representatives have executed this Agreement as of the Effective Date.

PURE STORAGE:

Name: Gwen Harrison
Title: Associate General Counsel
Date: March 16, 2018

CUSTOMER: POMONA COLLEGE

Name: Asya Shklyar
Title: Director of HPC
Date: 3/20/2018

1. EVALUATION PRODUCT TERMS.

1.1. Evaluation Product. “Beta Product” means any alpha, beta, or other pre-release version of Pure hardware and/or software. “GA Product” means any generally available release version of Pure hardware and/or software. “Evaluation Product” means either Beta Product or GA Product, as applicable, including all hardware, embedded software, documentation, and all materials related thereto.

1.2. Evaluation Product Delivery. Pure shall deliver the Evaluation Product(s) identified in a schedule that references this Agreement (each, an “Evaluation Schedule”) to Customer at the address identified in that Evaluation Schedule. Each Evaluation Schedule shall: (a) be executed by Pure and Customer; and (b) identify the period of time that Customer is permitted to access or use the Evaluation Product (“Evaluation Term”). Risk of loss shall pass to Customer upon delivery. The Evaluation Product remains Pure’s sole and exclusive personal property. Customer shall not encumber, sell, or otherwise dispose of the Evaluation Product.

1.3. Evaluation Product License. Subject to the terms and conditions of this Agreement, Pure grants Customer a limited, royalty-free right and revocable license, during the Evaluation Term, to access and use the Evaluation Product in a non-production environment for the purpose of evaluating the performance and functionality of the Evaluation Product or for other purposes set forth in the applicable Evaluation Schedule.

1.4. Beta Product. For Beta Products, Customer acknowledges and agrees that: (a) the Beta Product is not at the level of performance or compatibility of a final, generally available offering and may not operate correctly; (b) Customer agrees to notify Pure of any and all problems relating to the use of the Beta Product; (c) the Beta Product may be substantially modified prior to it being made commercially available as a general release by Pure; (d) Pure is not obligated to deliver a general release version of the Beta Product; and (e) Pure is under no obligation to sell to Customer, or otherwise allow Customer to maintain its use of, the Beta Product. For any software Beta Product, Customer shall remove the software Beta Product from any hardware running or utilizing software Beta Product upon Evaluation Expiry or Pure’s request, and Customer shall certify the same to Pure in writing. For the purpose set forth herein, all Beta Product is provided as is without warranties of any kind.

1.5. Term and Termination. This Agreement commences as of the Effective Date and continues through the Evaluation Term unless terminated as set forth herein. If no Evaluation Term is specified in the Evaluation Schedule, the Evaluation Term shall be sixty (60) days. Either party may terminate this Agreement or an Evaluation Schedule upon 5 days’ prior written notice.

1.6. Return of Evaluation Product. Customer shall return the Evaluation Product to Pure upon the earlier of the expiration of the Evaluation Term or termination of the Evaluation Schedule or this Agreement (“Evaluation Expiry”), pursuant to the terms of this Section 1.5 if Customer does not purchase the Evaluation Product. To return the Evaluation Product, Customer shall: (i) promptly discontinue use of the Evaluation Product; (ii) contact Pure regarding the return of the Evaluation Product to obtain an RMA number, packaging instructions, and shipping address; and (iii) 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. Pure assumes risk of loss upon shipment by Customer.

1.7. Purchase of Evaluation Product. If Customer elects to purchase the Evaluation Product, then the Evaluation Product

currently in Customer’s possession will become a purchased Product once the applicable purchase order has been accepted by Pure or its authorized reseller, and the terms of the Pure end user agreement (or such equivalent agreement as may be negotiated and signed by the parties) will supersede the terms of this Evaluation Agreement. For clarity, Pure will not replace the Evaluation Product in Customer’s possession with a new product. If Customer purchases the Evaluation Product (or other Pure product) within one year following the conclusion of the Evaluation Term, Pure’s “Love Your Storage” 30-day money back guarantee shall not apply.

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 in the Evaluation Schedule without prior written notice to Pure; 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 retain all right, title, and interest in the Evaluation Product and all intellectual property rights therein, including without limitation all patent, trademark, trade secret, know-how, 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 any derivatives thereof, 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 the Evaluation Product, Third Party Code, software, and technology provided to Customer hereunder do 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 this Agreement, Customer shall ensure that all information stored on the Evaluation Product is removed in its entirety. Pure: (a) shall destroy the stored data if any such data is not removed by Customer from the Evaluation Product; and (b) disclaims any and all liability in any way associated with or related to any stored data remaining on the Evaluation Product when returned to Pure.

5.3. Technical Support. Pure does not provide a warranty or maintenance and support for Evaluation Products. Customer shall promptly notify Pure of any problems with an Evaluation Product and Pure may use commercially reasonable efforts to assist Customer in addressing such identified problems.

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 NON-INFRINGEMENT. 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, ITS PARENTS, SUBSIDIARIES, AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES NOR ITS SUPPLIERS (COLLECTIVELY, THE "PURE PARTIES") 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 SHALL THE PURE PARTIES BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES, OR LOST PROFITS, IN CONNECTION WITH THE USE OF 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, THE PURE PARTIES' AGGREGATE CUMULATIVE LIABILITY UNDER OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF \$5,000.00 US DOLLARS.

7. CONFIDENTIAL INFORMATION. "CI" or "Confidential Information" means any nonpublic information of a disclosing 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 does not constitute a party's CI if it (a) is already known by the RP without obligation of confidentiality; (b) is independently developed by the RP without access to the DP's CI; (c) is publicly known without breach of this Agreement; or (d) is lawfully received from a third party without obligation of confidentiality. The RP shall: (i) not use or disclose any CI except as expressly authorized by this Agreement; (ii) 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 (iii) 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 survive termination and continue for five (5) years from the date of termination of this Agreement. All tangible materials containing CI

shall remain the property of the DP. Upon termination, the RP shall cease any use of CI. Upon written request of the DP, the RP shall 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 shall 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 stores 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 periodically transmits this diagnostic information to Pure. 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. Customer shall not interfere with the collection or transmission of such diagnostic information to Pure.

9. GENERAL PROVISIONS.

9.1. Governing Law. This Agreement is 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.

9.2. Export Compliance. Customer shall not 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.

9.3. Force Majeure. Neither party is 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.

9.4. 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.

9.5. Entire Agreement. 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. This Agreement, and Customer's rights and obligations herein, shall not be assigned without Pure's prior written consent. Any assignment in violation of the foregoing is void. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement remain enforceable and the invalid or unenforceable provision is 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 is not deemed a waiver of any other provision or of such provision on any other occasion.