End User License Agreement for NVMEQWRT and NVMETEST Software

WARNING: <u>NVMEQWRT</u> and <u>NVMETEST</u> software programs are testing tools for engineers that will destroy preexisting data on the drive being tested.

This End User License Agreement ("EULA") is a legal agreement between You ("You" or "Your") and High Performance Storage, Inc. ("HPSI"). If You are entering into this EULA on behalf of a company or other legal entity, You represent that You have the authority to bind such company or entity, and its subsidiaries, affiliates, and users to this EULA, in which case the term "You" and "Your" refers to such company or entity and its subsidiaries, affiliates, and users. PLEASE READ THE TERMS OF THIS END USER LICENSE AGREEMENT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS, COPYING OR OTHERWISE USING THE SOFTWARE.

High Performance Storage, Inc. is willing to license the NVMEQWRT and the NVMETEST Software (hereinafter referred to both individually and jointly as "Software") only upon the condition that You accept all of the terms contained in this EULA. You agree to be bound by the terms of this EULA through Your download, installation, or use of the Software.

BY INSTALLING, DOWNLOADING, REGISTGERING, OR OTHERWISE USING OR ACCESSING THE SOFTWARE, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN DO NOT USE AND/OR INSTALL THE SOFTWARE.

1. LICENSE GRANT AND RIGHT TO USE.

- 1.1. HPSI grants to You a non-exclusive, non-transferable license to use the Software and any accompanying documentation ("Documentation") solely for Your own internal business needs pursuant to the terms and conditions of this EULA. This license to use the Software is conditioned upon Your compliance with the terms of this EULA.
- 1.2. The license granted under this EULA permits the installation and use of the Software on one computer owned or controlled by You. In no event shall the Software be installed, used, or accessed on more than one computer.
- 1.3. Users. There is no predefined limit for number of users on the permitted and authorized computer.
- 1.4. **Trial License.** If You have acquired a trial version of the Software free-of-charge, the Software is for evaluation use only ("Evaluation Software"). Your right to use the Evaluation Software terminates 60 days from receipt of the Evaluation Software. There is no predefined limit for number of computers or users for the Evaluation Software. Trial versions of the Software may contain limited functionality and are to be used for

evaluation purposes only. HPSI provides Evaluation Software "AS-IS" without support or any express or implied warranty or indemnity for any problems or issues, and HPSI does not have any liability relating to Your use of the Evaluation Software. YOUR USE OF EVALUATION SOFTWARE IS AT YOUR OWN RISK.

2. RESTRICTIONS AND CONDITIONS OF USE.

- 2.1. Licenses are non-transferable. You may not use Software that is licensed for a specific device on a different device. You may not transfer the Software to another entity or person or computer. Any such transfer terminates Your license under this EULA.
- 2.2. You may not reverse engineer, reverse compile, decrypt, dissemble, modify, translate, or make derivative works of the Software.
- 2.3. You may not transfer, assign, sell, rent, lease, time-share, sublicense, publish, disclose, display, monetize or make the functionality of the Software or copies thereof available to others or a third party.
- 2.4. You may not remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks.
- 2.5. You may not use the Software on unauthorized hardware.
- 2.6. You may not copy the Software except to make one copy of the Software for backup or archival purposes in support of Your permitted use of the Software.
- 2.7. You shall not tamper with, bypass or alter any security features of the Software or attempt to do so. You agree that HPSI may audit Your use of the Software for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Software by You other than in full compliance with the terms of this EULA, You shall reimburse HPSI for all reasonable expenses related to such audit in addition to any other liabilities You may incur as a result of such non-compliance.
- 3. Intellectual Property Ownership. The license of the Software is not a sale. Title, ownership rights, and intellectual property rights in and to the Software and Documentation shall remain in HPSI. You agree to abide by the copyright laws and all other applicable laws of the United States. You acknowledge that the Software in source code remains a confidential trade secret of HPSI. Failure to comply with the above restrictions will result in automatic termination of this license and will make available to HPSI other legal remedies. You may not disclose any of HPSI's proprietary or trade secret information relating to the Software to any third party. You agree to secure and protect the Software, Documentation and copies thereof in a manner consistent with the maintenance of HPSI's rights therein and to take appropriate action by instruction or agreement with Your employees or consultants who are permitted access to the Software to satisfy Your obligations hereunder.

4. WARRANTY AND DISCLAIMER.

4.1. **Performance Warranty.** HPSI warrants that the Software will perform substantially in accordance with its Documentation for 45 days after the date of receipt. Your sole and

exclusive remedy for any non-compliance with the above warranty is limited to the following: HPSI will, at HPSI's option, either use reasonable commercial efforts to supply You with a replacement copy of the Software that substantially conforms to the Documentation, provide a replacement for defective media, or refund Your purchase price for the Software provided that You reported in writing the noncompliance to HPSI within forty-five (45) days following delivery to You. HPSI shall have no responsibility if the Software has been altered in any way, if the media has been damaged by misuse, accident, abuse, modification or misapplication, or if the failure arises out of use of the Software with other than a recommended hardware configuration. Any such misuse, accident, abuse, modification or misapplication of the Software will void the warranty above. THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO YOU FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE. THIS LIMITED WARRANTY DOES NOT APPLY TO UPDATES, EVALUATION, OR TRIAL SOFTWARE.

- 4.2. **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4(a) ABOVE, HPSI MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION AND **SPECIFICALLY DISCLAIMS** THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. HPSI DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. THE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. HPSI **SPECIFICALLY DISCLAIMS** ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.
- 4.3. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY HPSI, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.
- 4.4. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

5. LIMITATION OF LIABILITY.

5.1. NEITHER HPSI NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), SOFTWARE LIABILITY OR OTHERWISE, EVEN IF HPSI OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH

- DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- 5.2. HPSI'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE.
- 6. **Notice to Government End Users.** The Software and its Documentation are "commercial computer software" and "commercial computer software documentation", respectively, and are provided with RESTRICTED RIGHTS under Federal Acquisition Regulations and agency supplements to them. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 et seq. and DFARS 252.227-7015, and subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227- 19, as applicable, or similar clauses in the NASA FAR Supplement. Manufacturer is High Performance Storage, Inc., PO BOX 20302, Boulder, CO 80308.
- 7. **Term and Termination.** The term of this EULA shall continue in perpetuity unless terminated earlier as provided herein. You may terminate this EULA at any time by destroying or erasing Your copy of the Software. HPSI may terminate this EULA immediately and without notice if You fail to comply with any term or condition of this EULA. In the event of termination of this EULA, all the sections of this EULA will survive except for Sections 1 and 4.1.
- 8. **Governing Law.** This EULA shall be governed by and construed in accordance with the laws of the State of Colorado, U.S.A., without reference to conflicts of laws provisions or the 1980 U.N. Convention on Contracts for the International Sale of Goods and, as to matters affecting copyrights, trademarks and patents, by U.S. federal law. Any dispute with respect to this EULA shall be brought and heard either in the District Court of the 20th Judicial District located in Boulder, Colorado, or the federal district court for the District of Colorado. In such event, the parties to this EULA each consent to the in personam jurisdiction and venue of such courts. The parties agree that service of process upon them in any such action may be made if delivered in person, by courier service, or by first class mail with proof of delivery, and shall be deemed effectively given upon receipt.
- 9. General Provisions. This EULA sets forth the entire agreement between You and HPSI pertaining to the licensing of the Software, and supersedes in its entirety any and all written or oral agreements previously existing between the parties with respect to such subject matter. If any provision of this EULA is held invalid or unenforceable, such provision shall be revised to the extent necessary to cure the invalidity or unenforceability, and the remainder of this EULA shall continue in full force and effect. In the event of any conflict between any provision of this EULA and any applicable law, the provision or provisions of this EULA affected shall be modified to remove such conflict

and permit compliance with such law and as so modified this EULA shall continue in full force and effect. This EULA may not be assigned without the written consent of HPSI.