

# Open Composable Compatibility Lab Terms of Participation

These Terms of Participation (“**Terms**”) govern your (“**you**” or “**Participant**”) use of facilities and services offered by Western Digital Technologies, Inc. or its affiliates (collectively “**Western Digital**”) as part of its Open Composable Compatibility Lab (“**OCCL**”) (such services and facilities, collectively, the “**Services**”).

## OCCL

The OCCL is a lab environment where parties can test and verify compatibility between fabric attached devices, composition and orchestration software, and related infrastructure equipment as laid out in the OCCL Testing Methodology, which is incorporated hereto by reference (“**Purpose**”). When you use the Services, you and other Participants may verify or test your products, equipment, or methods with certain Western Digital products, partner-provided equipment, and other Participant equipment as available and agreed. Testing will be performed by Western Digital personnel, Participant personnel, or a combination thereof. Testing will follow the procedures delineated in the OCCL Testing Methodology and any additional procedures agreed to by you and Western Digital.

## Acceptance of These Terms of Participation

By using the Services, clicking accept, or otherwise indicating your acceptance: you represent and warrant that you are at least the age of majority in your jurisdiction and have all power, authority, and permissions necessary to enter into and be bound by these Terms; you acknowledge that you have read and understood, and agree to be bound by, these Terms; and you agree to comply with all applicable laws and regulations in connection with your use of the Services.

If you use the Services on behalf of a company, organization, or other entity, then: “you” includes you and that entity; you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to these Terms and that you agree to these Terms on the entity’s behalf; and you agree that such entity is legally and financially responsible for your use of the Services as well as for the use of your Access Credentials (as defined below) by others affiliated with your entity, including any employees, agents, or contractors.

## Changes to These Terms of Participation

Western Digital may, in its sole discretion, change these Terms at any time by updating this document. Such change will apply to any use of the Services after the change.

## Additional Terms

Western Digital offers a broad range of products and services, including software products and services. Some products or services available on Western Digital websites or through its facilities may be subject to other or additional terms and conditions (“**Additional Terms**”). Those Additional Terms will be made available with the relevant products or services, such as by being posted directly on the website of those products or services or being presented as a separate set of terms and conditions at the time of purchase, download, access, browsing, or use of those products or services. To the extent these Terms apply to those products or services (e.g., because they are made available as part of the Services) but are inconsistent with the Additional Terms applicable to those products or services, those Additional Terms will supersede any inconsistent provisions in these Terms and will control with respect to those products or services.

## Use Restrictions

Western Digital hereby grants you a limited, revocable, non-exclusive right to access and use the Services for the Purpose. You may use the Services only as expressly authorized by Western Digital and in compliance with these Terms. This permission terminates automatically if you breach any of these Terms and may be terminated at any time by Western Digital in its sole discretion.

You agree that you will not: remove or alter any copyright or other proprietary rights’ notice or restrictive rights legend contained or included in the Services; decompile, disassemble, reverse compile, reverse assemble, or otherwise reverse engineer any Services, any updates, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law); use any means to discover any confidential source code of

any portion of the Services; or circumvent any functionality that controls access to or otherwise protects the Services.

You further agree not to use the Services in any manner to harass, abuse, stalk, threaten, defame, infringe, or otherwise violate the rights of any other party, or to upload, post, email, transmit, or otherwise make available any content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable. You agree that you will not intentionally or unintentionally violate any applicable law in connection with your use of the Services.

### **Intellectual Property**

You acknowledge that, except as expressly set forth herein, nothing in these Terms shall be construed as conferring any license to you in Western Digital's or any of its licensors' patents or other intellectual property rights, whether by estoppel, implication, or otherwise, and you agree that you have sole responsibility for obtaining such licenses by separate written agreement. Unauthorized use of any Services may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes.

Unless done so in writing, no Participant is granting licenses to another Participant or Western Digital (by implication, estoppel or otherwise) to any intellectual property, including without limitation, licenses to trademarks, copyrights, patents, mask works and trade secrets, as a result of use of the Services or exposure to Confidential Information (as defined below).

### **Access Credentials**

To access the Services, Western Digital may require you to register an account or setup credentials to use certain features or sections of the Services ("**Access Credentials**"). You may create Access Credentials by completing the process set forth on the applicable section of the Services. You are responsible for providing accurate and current account information.

You are the sole authorized user of your Access Credentials. You are responsible for maintaining the confidentiality of any password and account number provided by you or Western Digital for using the Services. You are fully responsible for all activities that occur under your Access Credentials. Western Digital may not have control over the use of your or any other user's Access Credentials, and Western Digital expressly disclaims any liability derived therefrom.

### **No Endorsement**

Invitation to or use of the Services or OCCL facilities in no way indicates sponsorship, endorsement, or certification by or of the OCCL, Western Digital, or of any products or results displayed or tested by any Participant at the OCCL, except as delineated in the OCCL Testing Methodology, indicated in OCCL compatibility lists, or otherwise permitted by Western Digital.

### **Participant Confidentiality**

You may be exposed to pre-release product information for Western Digital or one or more Participants that is considered confidential. The use of the Services, test results, and pre-release product information of other Participants and Western Digital shall be deemed the confidential information ("**Confidential Information**") of such the disclosing party. Likewise, your use of the Services, your test results, and your pre-release product information shall be deemed to be your Confidential Information. You agree that you will protect Western Digital and the other Participants' Confidential Information from wrongful use or disclosure using the same degree of care that you use to protect your own information of a similar nature, but in no case less than reasonable care. You agree not to disseminate, use or disclose such Confidential Information to any other party for any purpose. You acknowledge that pursuant to these Terms, other Participants and Western Digital are obligated to treat your Confidential Information in the same manner that you are obligated hereunder.

Your obligations of non-disclosure and non-use will terminate five (5) years after your receipt of the Confidential Information. Notwithstanding the foregoing, a party's Confidential Information expressly excludes information of such party rightfully in the public domain other than by a breach of a duty to the party disclosing it, rightfully received from a third party without any obligation of confidentiality, rightfully known to Participant without any

limitation on use or disclosure prior to receipt, independently developed by Participant employees, or generally made available to Participant without restriction on disclosure. In the event you are required by law, regulation or court order to disclose any of the Confidential Information of another Participant, you will promptly notify the applicable Participant in writing prior to making any such disclosure in order to allow the Participant to seek a protective order or other appropriate remedy from the proper authority. You will cooperate with the applicable Participant in seeking such order or other remedy or in defining the scope of any required disclosure. Upon written request, you will return all tangible Confidential Information to the Participant who provided it or destroy it and certify such destruction in writing. Notwithstanding the foregoing, compatibility test results may be shared among Participants for the Purpose.

You agree not to coordinate testing or use of the Services with other Participants without Western Digital's knowledge and approval. You agree not to enter into separate agreements with Participants (including NDAs) covering the same subject matter as these Terms.

### **Access from Outside the United States**

The Services are controlled and operated by Western Digital from its offices within the United States. Western Digital makes no representation that the Services are appropriate or available for use in other locations. Those who choose to use the Services from other locations do so on their own initiative and are responsible for compliance with applicable local laws. If you use the Services from other locations, you are responsible for compliance with applicable local laws, including the export and import regulations of other countries. You acknowledge that some or all of the Services, may be subject to the United States Export Administration Laws and Regulations, the United States Treasury Department's Office of Foreign Assets Control ("OFAC") Economic Sanctions Regulations, as well as export laws of other countries and that diversion of the Services contrary to the law of the United States or other applicable countries is prohibited. You agree that none of the Services, nor any direct product thereof, is being or will be acquired for, shipped, transferred, exported, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear activities, chemical biological weapons, or missile projects, unless specifically authorized by the United States government (or other relevant government) for such purposes. By accessing the Services, you represent and warrant that you are not a citizen or resident of, and are not customarily resident in, any country or region that is subject to an embargo by the United States government, that you are not listed as a sanctioned party on the list of specially designated nationals and blocked persons maintained by OFAC, and that you are not a military end user or engaged in supporting or contributing to military end uses, as those terms are defined under the applicable regulations (including under Parts 744.9, 744.17, and 744.21 of the EAR). You agree to comply strictly with all export, re-export, and import laws and assume sole responsibility for obtaining licenses to export, re-export, or import as may be required.

### **Precautions for Physical Attendance**

You agree that you and any of your employees and agents that physically visit or attend OCCL facilities to use the Services will comply with any personal safety instructions provided at the facility, including the wearing of personal protective equipment. You also agree that Western Digital may perform security checks of you, your employees and agents, or equipment that come to OCCL facilities. Western Digital reserves the right to deny entry, remove, or restrict access to the Services for any Participant for any reason, including failure to comply with safety and security guidelines or these Terms.

If physical visits or attendance to the OCCL are postponed or cancelled due to any reason, including health restrictions or government orders, then Western Digital will not be liable for any travel expenses or other expenses incurred by any Participant.

### **Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WESTERN DIGITAL AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY, "THE WESTERN DIGITAL PARTIES") SHALL NOT BE LIABLE FOR ANY DAMAGES SUFFERED AS A RESULT OF USING OR BEING UNABLE TO USE THE SERVICES. IN NO EVENT SHALL THE WESTERN DIGITAL PARTIES BE LIABLE FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE),

HOWEVER ARISING, WHETHER FOR BREACH OR IN TORT, EVEN IF THE WESTERN DIGITAL PARTIES HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

YOU AGREE THAT YOU HAVE SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF DATA AND/OR EQUIPMENT USED IN CONNECTION WITH THE SERVICES AND WILL NOT MAKE A CLAIM OF ANY NATURE AGAINST THE WESTERN DIGITAL PARTIES FOR LOST DATA, INACCURATE OUTPUT, WORK DELAYS, OR LOST PROFITS RESULTING FROM THE USE OF, OR INABILITY TO USE, THE SERVICES.

YOU AGREE TO HOLD THE WESTERN DIGITAL PARTIES ENTIRELY HARMLESS FROM, AND YOU COVENANT NOT TO SUE THE WESTERN DIGITAL PARTIES FOR, ANY CLAIMS RELATED TO THE SERVICES. IF YOU HAVE ANY BASIS FOR RECOVERING DAMAGES (INCLUDING BREACH OF THESE TERMS) FROM ANY WESTERN DIGITAL PARTIES IN CONNECTION WITH THE SERVICES OR THESE TERMS, YOU AGREE THAT YOUR EXCLUSIVE REMEDY IS TO RECOVER FROM THE WESTERN DIGITAL PARTIES DAMAGES UP TO AN AMOUNT EQUAL TO YOUR SERVICES FEE FOR THE MONTH DURING WHICH THE BREACH OCCURRED (OR UP TO \$100.00 IF THE CLAIMS RELATE TO SERVICES THAT ARE FREE).

THESE LIMITATIONS ON THE WESTERN DIGITAL PARTIES' LIABILITY SHALL APPLY WHETHER OR NOT WESTERN DIGITAL HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

#### **Disclaimer**

YOU EXPRESSLY ACKNOWLEDGE THAT USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH YOU. ALL PARTS OF THE SERVICES ARE PROVIDED BY WESTERN DIGITAL ON AN "AS IS," "WITH ALL FAULTS," AND "AS AVAILABLE" BASIS ONLY, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. WESTERN DIGITAL HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WITH RESPECT TO THE SERVICES (INCLUDING THE USE, PERFORMANCE, AND SUPPORT THEREOF), WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, AND NON-INFRINGEMENT. WESTERN DIGITAL DOES NOT MAKE ANY ASSURANCES WITH REGARD TO THE ACCURACY OF THE RESULTS OR OUTPUT THAT DERIVES FROM THE SERVICES.

#### **Choice of Law; Severability**

Any claim arising from or relating to the Services, including the use of (or inability to use) the Services, is governed by, the laws of the State of California without regard to conflicts of laws principles. You agree to submit to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, for the resolution of any and all disputes arising from or relating to your use of the Services. If any provision of these Terms shall be deemed invalid, void, or for any reason unenforceable, that provision shall be deemed severable and shall not affect the validity and enforceability of any remaining provision of these Terms.

#### **Changes to the Services**

Western Digital reserves the right to change or discontinue, temporarily or permanently, the Services (or any part thereof) at any time without notice.