



END USER AGREEMENT

THIS END USER AGREEMENT (“**AGREEMENT**”) IS MADE BY AND BETWEEN QUMULO, INC. (“**QUMULO**”), A DELAWARE CORPORATION HAVING A PRINCIPAL PLACE OF BUSINESS AT 1501 4TH AVE, SUITE 1600, SEATTLE, WA 98101, AND CUSTOMER (“**CUSTOMER**”) PURCHASING OR LICENSING PRODUCT AND/OR SERVICES THROUGH AN AUTHORIZED QUMULO RESELLER. CUSTOMER SHOULD REVIEW THIS AGREEMENT PRIOR TO SUBMITTING A PURCHASE ORDER TO RESELLER. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THIS AGREEMENT, THEN CUSTOMER MUST NOT PURCHASE OR USE ANY QUMULO PRODUCTS OR SERVICES OFFERED BY RESELLER.

1. Definitions.

- a. “**Documentation**” means the current, generally available, technical documents describing the Products.
- b. “**Hardware**” means the Qumulo-branded hardware and applicable components.
- c. “**Products**” means Hardware and/or Software.
- d. “**Reseller**” means a third party authorized to resell Qumulo Products and Services to Customer.
- e. “**Services**” means any technical support and maintenance services provided by Qumulo (“**Support Services**” and consulting and/or installation services (“**Professional Services**”) subject to the terms attached as Exhibit A and Exhibit B, respectively.
- f. “**Software**” means the Qumulo software, in object code, including, but not limited to, the Qumulo Core file system.
- g. “**Statistical Data**” means information and data provided by Customer through the use of the Software, which may include configuration data, systems logs, core dumps, performance and capacity statistics, and hardware and software failure alerts.

2. Software License

- a. Subject to the terms of this Agreement, Qumulo grants to Customer a non-exclusive, non-transferable, worldwide, limited and revocable license, without the right to sublicense, to use the Software, in object code form, for internal business purposes only and use the Documentation in support of the Software. The Software license type shall be identified on the quote from Qumulo to the Reseller and subject to the descriptions and restrictions located on Exhibit C and unless otherwise stated shall begin on Availability. For example, license types may be (i) for a fixed period (a subscription) or (ii) subject to a capacity limit. This license will apply to all Software licensed from Qumulo and any published corrections, updates, new releases and new versions of Software installed by Customer. Other than as specifically described herein, no right or license is granted to Customer to any of Qumulo’s trademarks, copyrights, or other intellectual property rights and Qumulo expressly reserves all rights not granted Customer.
- b. Restrictions. Customer will not, nor will Customer allow a third party to, (i) copy (except for archival purposes), modify, decrypt, disassemble, reverse compile, reverse engineer (except to the extent expressly permitted by applicable law) the Software; (ii) sell, sublicense, rent or offer the Software on service bureau basis; (iii) use the Software in any manner other than installed on Qumulo branded hardware, Qumulo authorized and supported hardware or on a standalone basis as a virtual machine or cloud instance; (iv) remove any copyright or notices; (v) disclose any performance or benchmarking results; (vi) use the Products for competitive analysis or to copy any features, functions or graphics for competitive purposes; or (vii) use the Software in a manner that contradicts the license type.
- c. Statistical Data – Customer agrees and acknowledges that (a) the Products have a remote support and “phone home” access functionality; (b) such functionality is optional and that Customer may opt in to allow such access when configuring the Products; and (c) by opting in, Customer is expressly granting to Qumulo permission to connect to the Products via remote access. The remote access allows Qumulo to quickly troubleshoot and respond to technical issues.

Customer acknowledges that Qumulo will own Statistical Data and to which Qumulo will have access in connection with Customer’s use of the Software. Qumulo will not collect the contents of files stored on the Software and agrees to keep the Statistical Data confidential. Qumulo will use Statistical Data only as necessary to provide technical support and to carry out its obligations under this Agreement (or any other agreement in force between Qumulo and Customer) and for no other purpose; provided, however, that Qumulo may (a) observe and report back to Customer on Customer’s usage of the Software, and make recommendations for improved usage of the Software; and (b) retain and use generic and unidentifiable Statistical Data and information for customer support and performance illustration purposes and to improve Qumulo’s products and services, including benchmarking.

3. Services

- a. Support Services and Professional Services provided by Qumulo, or on Qumulo’s behalf, are subject to additional terms and conditions found on Exhibits A, B and C.

4. Fees and Payment.

- a. Terms related to pricing, payment and other terms of sale shall be agreed upon directly between Customer and Reseller. Qumulo disclaims all liability arising out of disputes between Customer and Reseller. This Agreement may be terminated by Qumulo effective upon notice to Customer if Customer fails to pay in full all fees for the Products.

5. Cloud Usage.

- a. Use of Software in a cloud environment may subject Customer to terms and conditions and fees from the cloud provider. Customer is responsible for compliance with all terms and conditions between Customer and any cloud provider. Qumulo disclaims all liability arising out of disputes between Customer and cloud provider.

6. **Product Evaluation.** If the Products are provided for evaluation purposes without payment to Qumulo or a Reseller then the Products shall be governed by the signed Evaluation Agreement between the parties.

7. **Availability.** The Products shall be deemed available when delivered to a common carrier and/or if only Software is purchased then when the Software is made available for electronic download (“Availability”). Terms of shipping and transport shall be agreed upon directly between Customer and Reseller.

8. Limited Warranties.

- a. Limited Software Warranty. Qumulo warrants that, for a period of ninety (90) days from the date of Availability the initially installed Software will substantially conform to its published Documentation. Except for the foregoing, the Software is provided AS IS. In no event, does Qumulo warrant that the Software is error free, that the Software will operate with any hardware other than that provided by Qumulo or specified in the Documentation, or that the Software will satisfy Customer’s own specific requirements.
- b. Limited Hardware Warranty. Qumulo warrants that the Qumulo branded Hardware will, during the first year of Hardware Support Services (but terminating earlier if Customer ceases to maintain a valid, paid-up Support Services offering covering each such piece of



Hardware), be free from defects in material and workmanship under normal use and substantially conform to its published Documentation.

- c. Remedies. Customer's exclusive remedy and the entire liability of Qumulo under these limited warranties is, at Qumulo's option, to (i) repair or replace (with a new or reconditioned replacement) any Hardware or Software that fails to substantially conform to published Documentation during the warranty period; or (ii) work with the Reseller to refund the amounts received for the non-conforming Hardware or Software. Any replaced Hardware will be returned to Qumulo. Any replacement Hardware or Software will be warranted for the remainder of the original warranty period of the Product replaced.
- d. Restrictions. The foregoing limited warranties extend only to the original Customer (and not to any subsequent purchasers or third parties), and do not apply if a Product (a) has been altered or serviced, except by Qumulo or an Qumulo-authorized service provider (except that Customer may install end-user replaceable Qumulo parts); (b) has not been installed, operated, repaired, or maintained in accordance with Qumulo's instructions; (c) has been subjected to abnormal physical, environmental or electrical stress, misuse, negligence or accident; (d) is licensed for beta, evaluation, testing or demonstration purposes for which Qumulo does not receive a payment of full purchase price or license fee; (e) has been damaged or rendered defective by the use of parts not manufactured or sold by Qumulo; or (f) has been operated outside the usage parameters stated in the Product Documentation. Qumulo's limited Software warranty only applies to the initially installed Software and does not apply subsequent versions. Qumulo's limited Hardware warranty does not apply to any Product from which the serial number has been removed. The Product is not for resale.

CUSTOMER SHOULD MAKE PERIODIC BACKUP COPIES OF THE DATA STORED ON THE PRODUCT AS A PRECAUTION AGAINST POSSIBLE FAILURES, ALTERATION, OR LOSS OF THE DATA. BEFORE RETURNING THE PRODUCT FOR SERVICE, CUSTOMER SHOULD BACK UP DATA AND REMOVE ANY CONFIDENTIAL, PROPRIETARY, OR PERSONAL INFORMATION. QUMULO IS NOT RESPONSIBLE FOR DAMAGE TO OR LOSS OF, OR SECURITY OF ANY PROGRAMS, DATA OR PHYSICAL MEDIA. QUMULO IS NOT RESPONSIBLE FOR THE RESTORATION OR REINSTALLATION OF ANY PROGRAMS OR DATA OTHER THAN SOFTWARE INSTALLED BY QUMULO WHEN THE PRODUCT IS MANUFACTURED.

EXCEPT FOR THE WARRANTIES SPECIFICALLY DESCRIBED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, QUMULO AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES AND GUARANTEES, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE PRODUCT, DOCUMENTATION, SUPPORT SERVICES AND PROFESSIONAL SERVICES DELIVERED HEREUNDER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

9. Intellectual Property Indemnification.

- a. Claims. Qumulo will, at its expense, defend any suit brought against Customer based upon a claim that the Software or Qumulo branded Hardware, as delivered by Qumulo, directly infringes a patent or copyright and will pay costs and damages finally awarded against Customer that are directly attributable to any such claim, but only on condition that (a) Qumulo is notified promptly in writing of such claim by Customer, (b) Qumulo has sole control of the defense and settlement negotiations, (c) Customer provides Qumulo all information and communications received by Customer concerning such claim, and (d) Customer provides reasonable assistance to Qumulo when requested. Should Qumulo become aware of, or reasonably believe, the Products may be subject to an infringement claim, Qumulo will have the right, at its option and expense, (i) to obtain for Customer the rights

to use the Product, (ii) to replace or modify the Product so it becomes non-infringing, or (iii) if (i) and (ii) are not commercially reasonable, accept return of the Product in exchange for a refund not to exceed the purchase price paid by Customer for such Product.

- b. Restrictions. Qumulo will have no liability for any claim of infringement based on: (i) Customer's use of a Product version that has been superseded by a subsequent version or release where the newer release would have avoided infringement; (ii) use of the Product in combination with other products, equipment or software; (iii) use of the Product in an application or environment not described in the Product Documentation; (iv) services offered or revenue generated by Customer; (v) any data or information stored on the Products by Customer or any other third party; (vi) Product that has been altered or modified in any way by anyone other than Qumulo or according to Qumulo's instructions; or (vii) changes to the Product at the request of Customer.
- c. Entire Liability. The foregoing, subject to the following restrictions, states the exclusive liability of Qumulo to Customer concerning infringement.

10. Limitation of Liability and Precautions

- a. INDIRECT DAMAGES. NEITHER QUMULO AND ITS SUPPLIERS NOR CUSTOMER WILL HAVE ANY OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, SUPPORT SERVICES OR PROFESSIONAL SERVICES DELIVERED TO CUSTOMER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. CUMULATIVE LIABILITY. THE COLLECTIVE LIABILITY OF QUMULO AND ITS SUPPLIERS UNDER THIS AGREEMENT SHALL BE THE PRICE PAID TO QUMULO FOR THE PRODUCTS FROM WHICH THE CLAIM ARISES OR \$1,000,000.00 USD, WHICHEVER IS LOWER.
- c. EXCEPTIONS. THE LIMITATIONS SET FORTH IN SECTIONS 10(a) AND 10(b) ABOVE WILL NOT APPLY TO INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS IN SECTION 9 OR VIOLATIONS OF QUMULO'S INTELLECTUAL PROPERTY RIGHTS.
- d. PRECAUTIONS. CUSTOMER SHOULD MAKE PERIODIC BACKUP COPIES OF THE DATA STORED ON ANY QUMULO HARDWARE OR OTHER QUMULO-AUTHORIZED AND SUPPORTED HARDWARE AS A PRECAUTION AGAINST POSSIBLE FAILURES, ALTERATION, OR LOSS OF DATA. QUMULO IS NOT RESPONSIBLE FOR DAMAGE TO OR LOSS OF ANY DATA STORED ON ANY QUMULO HARDWARE OR OTHER QUMULO-AUTHORIZED AND SUPPORTED HARDWARE.

11. Confidentiality

- a. Confidentiality. "Confidential Information" means nonpublic information that either party discloses, or has disclosed, to the other which is designated as being confidential or proprietary, or which is of a nature or presented under circumstances that would cause one to reasonably conclude it should be treated as confidential. "Confidential Information" includes, without limitation, information relating to either party's inventions, intellectual property, research, testing results, released or unreleased products or services, marketing or promotion of any products or service, contracts, business plans, and policies and practices. Confidential Information will not include any information that: (i) is or subsequently becomes publicly available without breach of any obligation of confidentiality by the receiving party; (ii) became rightfully

known to the receiving party prior to disclosure of such information by the disclosing party; (iii) became known to the receiving party from a source other than the disclosing party hereunder, other than by breach of an obligation of confidentiality owed to the disclosing party; or (iv) is independently developed by the receiving party without the use of any Confidential Information received from the disclosing party. Neither party will disclose the Confidential Information of the other party to any third party except to its directors, employees, contractors, or consultants to the extent necessary to carry out the purposes of this Agreement, provided that all such recipients are obligated by a written agreement of confidentiality the substantially the same as that described herein. Each party will protect Confidential Information from unauthorized disclosure in the same manner they use to protect their own proprietary information, and at least a reasonable degree of care. Each party may use the Confidential Information of the other party solely for performing its obligations or exercising its rights under this Agreement. Each party may disclose Confidential Information to the extent required by judicial or governmental order or as necessary to comply with any applicable law or regulation, provided that the party making the disclosure gives the other party reasonable notice prior to such disclosure. Each party will promptly return, or destroy, all Confidential Information at the other party's request or upon termination. Each party acknowledges that monetary damages may not be a sufficient remedy for the unauthorized disclosure of Confidential information of the other party, and the disclosing party may be entitled, without waiving any other rights or remedies, to seek such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

12. U.S. Government Restricted Rights

- a. If any Software is licensed for use by the United States or for use in the performance of a United States government prime contract or subcontract, it is provided with Restricted Rights. 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 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable). Contractor/licensor is Qumulo, Inc., 1501 4th Avenue, Suite 1600, Seattle, WA 98101.

13. Export Controls

- a. The Products are subject to governmental restrictions on exports and imports and Customer agrees to comply with the Export Administration Act, the Export Control Act, all regulations promulgated under such Acts, and all other US government regulations relating to the export of technical data and equipment and products produced therefrom, which are applicable to Customer and the Products. In countries other than the US, Customer agrees to comply with the local regulations regarding importing, exporting or using cryptographic software.

14. Anti-Bribery and Anti-Corruption Laws

- a. Both Parties shall comply with all applicable laws relating to anti-corruption and anti-bribery, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

15. Term and Termination

- a. These terms are effective until terminated or until Customer's license type has expired and there are no Support Services or Professional Services ongoing. Customer may terminate this Agreement ninety (90) days after written notice to Qumulo, except Qumulo may terminate this Agreement immediately if Customer is in breach of its payment obligations or in material breach of this Agreement. If Qumulo chooses to terminate this Agreement due to Customer's breach of its payment obligations, Customer will have thirty (30) days after written notice to correct the breach before this Agreement terminates. Upon termination, Customer's license to the Software shall immediately

cease and Customer shall return or destroy all Software and Documentation in its possession.

16. Miscellaneous

- a. Choice of Law and Venue. This Agreement will be governed by the laws of the State of Washington, USA without regard to its choice of law rules. The provisions of the U.N. Convention on Contracts for the International Sale of Goods will not apply. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in King County, Washington for resolution of any disputes arising out of this Agreement.
- b. Severability. Any provisions found to be unenforceable will not affect the enforceability of the other provisions contained herein, but will instead be replaced with a provision as similar in meaning to the original as possible.
- c. Entire Agreement. This Agreement, and those additional terms referenced within, constitute the entire agreement between the parties with regard to its subject matter. No modification will be binding unless in writing and signed by the parties.
- d. Assignment. This Agreement and any rights or obligations of Customer under it may not be assigned, subcontracted or otherwise transferred by Customer, in whole or in part, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation (except where the successor is not a competitor of Qumulo and agrees to be bound by all the terms and conditions of this Agreement, in which case Qumulo's consent shall not be required), without the prior written consent of Qumulo, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.
- e. Waiver. Failure or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.
- f. Independent Contractors. The relationship of Qumulo and Customer established by this Agreement is that of independent contractors. Nothing contained herein shall constitute either party the agent of the other party, or otherwise grant either party the authority to bind the other party to any obligation, or constitute the parties as partners or joint venturers and neither party shall hold itself out as being an agent having such authority.
- g. Force Majeure. Neither party will incur any liability to the other party because any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, natural disaster, fire and explosions, or any other events reasonably beyond the control of either party, but the inability to meet financial obligations is expressly excluded.
- h. Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. This Agreement may be executed and delivered in Portable Document Format ("PDF") and the parties agree that such PDF execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each party may use such PDF signatures as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.



17. Open Source

- a. The Software also includes software that is subject to open source software licenses and such open source software is licensed under the terms of the license that accompanies such open source software. To the extent portions of the Software are distributed under and subject to open source software licenses obligating Qumulo to make the source code for such portions publicly available, Qumulo will make such source code portions (including Qumulo modifications, as appropriate) available upon request for a period of up to three years from the date

of initial use of the Software. Such request can be made in writing to Qumulo, Inc., 1501 4th Ave, Suite 1600, Seattle, Washington 98101, Attn: Legal. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for such open source software; however, the licenses to the Software include the right to use the open source software included in the Software in the same manner and to the same extent as the Software.



EXHIBIT A

QUMULO CARE SUPPORT SERVICES AGREEMENT

1. Definitions.

- a. **"Hardware"** means the Qumulo-branded hardware and applicable components.
- b. **"Product"** means Hardware and/or Software identified on a purchase order.
- c. **"Reseller"** – means a third party authorized to resell Qumulo Support Services to Customer.
- d. **"Software"** means the Qumulo software, in object code, including, but not limited to, the Qumulo Core file system.
- e. **"Support Services"** means any technical support and maintenance services provided by Qumulo for Hardware and Software as set forth herein, including Annex A, and made available to end users.
- f. **"Support Services Term"** means the length of time listed in a quote or ordering document during which Qumulo will provide Support Services for the Software and/or Hardware.

2. Product Support.

- a. **Services.** Subject to the payment of all fees when due to Qumulo, or its Reseller (as applicable), Qumulo agrees provide to Customer with the Support Services set forth on a purchase order, or other ordering document, for the Support Services Term, but at least use commercially reasonable efforts to correct or fix any failure of a Product to substantially conform to the Documentation. Customer may be required to update the Software to a newer version in order to resolve any failures. Support Services are not transferable.
- b. **Support Service Modification.** Qumulo reserves the right to update, modify or remove available Support Services at its sole discretion, however, such changes will not reduce the level of Customer's active Support Services.
- c. **Method of Support.** Customer may receive Support Services through the Qumulo Care website, by email, by telephone or by any other means available to Qumulo and Customer. The Qumulo Care website is accessed by a unique username and password. Customer will maintain commercially reasonable security practices relating to the username and password, and will immediately report to Qumulo any breach of security. Qumulo will have the right to terminate or suspend Customer's access to the Qumulo Care website in the event of any security breach caused by Customer. Customer acknowledges that Qumulo will be entitled to track usage and other statistics on the website, which information may be used by Qumulo to improve its Services or otherwise for its internal business without restriction.

3. Limitation of Services.

- a. **Services Not Covered.** Support Services do not include the correction of (a) Customer's failure to implement any newer version of Software made available to Customer by Qumulo; (b) changes by Customer, or other third parties, to an operating system, network configuration, or environment that adversely affects the Products; (c) any alterations or modifications of, or additions to, the Products by Customer, or other third parties; (d) use of the Products in a manner for which they were not designed or other than specified in the Documentation; (e) the combination, use or interconnection of the Products with other software, hardware or application not supplied or authorized by Qumulo; (f) use of the Products on or with an unsupported hardware or software platform; (g) abnormal usage or misuse of the Products, including, but not limited to, accident, fire, water damage, earthquake, lightning, or other acts of nature, and other causes external to the Products; (h) installation or maintenance of wiring, circuits, electrical conduits or devices external to the Products; (i) Customer's failure to provide and continually maintain adequate electrical power, air conditioning, and humidity controls in accordance with the Documentation; (j) excessive wear and deterioration of the Products; (k) removal of the Products from the location originally specified by Customer during purchase and reinstalled without the prior written approval of Qumulo; (l) Customer's or a third party's negligence; (m) any breach by Customer of this Agreement; (n) board level repairs made to the Products, other than by Qumulo, unless approved in writing; or (o) Customer's refusal or failure to implement any newer Software version, Hardware firmware version, or replacement part made available to Customer by Qumulo. Qumulo will have no obligation to provide Support Services for any Product in which a tamper label has been altered or the hardware cover has been opened by anyone other than Qumulo, or someone authorized by Qumulo.
- b. **Limitations on Support.** Support Services are limited to addressing problems that are demonstrable and reproducible. Qumulo makes no commitment or representation regarding the amount of time it will take to diagnose or resolve a problem once reported. Except as expressly stated in this Agreement, Qumulo will have no obligation to correct errors in or failures of any Products.

4. End of Support Life.

- a. All Products and Support Services are subject to Qumulo's end of support policy.

5. New Versions of Software.

- a. Any bug fixes, error corrections or necessary changes to the Software under this Agreement will be made, at Qumulo's sole discretion, in either (i) the next generally available version of the Software or (ii) as an update to an existing version of the Software.
- b. During the Support Services Term applicable to Software Support Services, Qumulo will provide Customer with access to newer, generally available, versions of the Software, which will be covered under the same Support Services as originally purchased by Customer. All new versions of Software will be subject to the same license as the previous Software version. Qumulo does not guarantee that outdated hardware will be compatible with all future



Software updates. Qumulo is not responsible for downloading and installing new versions of the Software for Customer.

6. Time and Materials.

- a. Qumulo, at its sole discretion, may offer to Customer the option to purchase technical services beyond the Support Services on a time and material basis. Any engagement on a time and materials basis will be governed by a separate agreement and not covered under this Agreement.

7. Hardware replacement.

- a. Subject to the Support Services offering, Qumulo will, at its option, repair or replace (with a new or reconditioned replacement) Hardware or a component that fails during the Support Services Period at no cost to Customer, provided Customer complies with Qumulo's return policies. Upon receipt of a Customer's notification of a Hardware failure, Qumulo and Customer shall promptly exchange all relevant data reasonably necessary to determine the root cause of the alleged non-conformance and cooperate in good faith to establish a corrective action plan. Qumulo reserves the right to examine any alleged non-conforming Hardware and perform a failure analysis to determine the cause of the non-conformance. Customer shall have no right for repair or replacement of Hardware where Qumulo determines the alleged non-conformance (a) does not exist, (b) results from issues external to the Hardware such as problems with Customer's network or systems, or (c) was caused by improper use, installation, or damage while in transit or while in the control of Customer. If Qumulo determines that the non-conformance was due to defective materials or workmanship, Qumulo will issue a Return Material Authorization ("RMA") for the nonconforming Hardware and Customer will return the nonconforming Hardware or components in accordance with Section 7(b) below.
- b. RMA Process. Hardware returned to Qumulo must be pre-authorized by Qumulo with an RMA number. After Qumulo's confirmation of a failure, repaired or replacement Hardware will be shipped to Customer within the timeframe stated in the applicable Support Service offering. Upon receipt of replacement Hardware, Customer will return the failed Hardware or component under the RMA number issued. The RMA number must be marked on the outside of the package, sent using Qumulo's prepaid shipping label and packaged appropriately for safe shipment. Qumulo may invoice the Customer for any failed Hardware or components that are not returned within ten (10) days of shipment of replacement Hardware or if the failure is caused by Customer, or any of its agents, (including actions detailed in Section 3). Title to any Hardware returned to Qumulo will transfer to Qumulo upon receipt. Customer is responsible, at its expense, for removing or erasing all data from returned Hardware in a manner that does not further damage or destroy the Hardware. Qumulo is not obligated to approve an RMA for any Hardware outside of the Support Services Term. For Hardware outside of the Support Services Term, Qumulo may repair or replace such Hardware at standard list prices.
- c. Spare Parts. Qumulo may store spare parts or components at Customer's facility. Customer understands and agrees to store any reasonable spare parts or components and that such shall only be accessed and used by Qumulo authorized personnel.

8. Support Services Warranty.

- a. Qumulo warrants that the Support Services will be performed in a professional and workmanlike manner and shall conform to standards of the industry. Qumulo's entire liability and Customer's

sole remedy for Qumulo's breach of this warranty shall be for Qumulo to re-perform the Support Services.

9. Customer responsibilities.

- a. Remote Access. Qumulo may request, and Customer may permit, remote access by Qumulo to the Products to enable Qumulo to perform certain Support Services. Customer understands and acknowledges that if it elects to not permit such remote access, Qumulo's ability to provide the Support Services may be delayed.
- b. Cooperation. Customer will provide Qumulo with reasonable cooperation and assistance and with information as is reasonably necessary for Qumulo to provide Support Services. If Qumulo decides, in its sole discretion, that it is appropriate to perform the Support Services at a Customer facility then Customer will provide the necessary accommodation to provide such Support Services (accommodation may include, a safe space, power, telephone, internet access, and access to any other items reasonably requested by Qumulo). Customer will indemnify, defend, and hold harmless Qumulo for any liabilities, claims, costs, or expenses (including, but not limited to, reasonable attorneys' fees) arising from or relating to injury to Qumulo personnel, agents, or equipment during provision of the Support Services at a Customer facility.
- c. Designated Contact. Customer will be responsible for maintaining a designated technical contact in connection with the Support Services.
- d. Data. Customer will be responsible for maintaining back-up copies of all data residing in or relying in any way on the Products. Qumulo will have no liability or responsibility for the loss of any data during the provision of the Support Services.

10. Charges, payment and taxes.

- a. The terms of this Section 10 shall only be applicable where Customer purchases Support Services directly with Qumulo. Where Customer purchases Support Services from a Reseller, Qumulo will provide the Support Services set forth in this Agreement but the payment and other related terms shall be between Customer and the Reseller.
- b. Fees. Customer will pay to Qumulo the amount listed on the applicable purchase order or other ordering document ("Fees"). Customer will make payment to Qumulo Net 30 days from the invoice date. Qumulo may require prepayment of all Fees subject to Customer's credit with Qumulo. A late charge of the lesser of 1.5% of the outstanding amount per month or the maximum rate permitted by law may be charged to Customer on past due accounts. All Fees will be invoice and paid in United States Dollars. Partial payment shall never be construed as payment in full.
- c. Taxes. Customer is responsible for, and will promptly pay, all taxes of whatever nature associated with this Agreement except for the taxes based on Qumulo's net income. All payments due will be made without any deduction or withholding for any tax or mandatory payment to government agencies.

11. Ownership and Proprietary rights.

- a. Qumulo retains all right, title and interest in and to any intellectual property resulting from the Support Services and Documentation. Except for as described in this Agreement, Customer does not acquire any rights, express or implied, to any intellectual property



in the Support Services or Documentation and Customer will not delete or alter any copyright, trademark or other proprietary rights notices in the Products or Documentation.

12. Term.

- a. Support Services for Software. Support Services for Software shall begin on the date of electronic availability of the Software, or if licensed as part of a Hardware purchase, when delivered to a common carrier and continue for the Support Services Term. Any subsequent renewals of Software Support Services shall begin and terminate with the length of the subscription term on an accepted purchase order.
- b. Support Services for Hardware. Support Services for Hardware shall begin on the date the Hardware is delivered to a common carrier and shall continue for the Support Services Term. Any subsequent renewals of Hardware Support Services shall begin and terminate with the length of the subscription term on an accepted purchase order.

13. Lapsed Support.

- a. If Customer purchases Support Services for a Product on which Support Services have lapsed then Customer shall pay the amount

equal to the cost of Support Services accrued during the period of lapse, any resumption of support fee and the amount due for the future Support Service Term.

14. Failure to Maintain Support Services.

- a. For clarity, without current and active Support Services, Customer will be unable to receive technical assistance and maintenance from Qumulo; will not have access to newer versions of the Software that may contain bug fixes, new features and security patches; will not have access to the support web portal; Slack communications; and will not have access to any information and reports generated by Qumulo, such as Qumulo Trends Service.

15. Exclusive Remedy.

- a. Termination of this Agreement will be Customer's sole and exclusive remedy for any breach of this Agreement by Qumulo. Upon termination by Customer for a breach of this Agreement by Qumulo, Qumulo will refund to Customer a pro-rata portion of the Fees received from Customer for the period after the effective date of termination, less any amounts due Qumulo for the Support Services provided before the effective date of the termination, or work with the Reseller to do the same.



Annex A

Qumulo Customer Success Program Offerings

Our mission is to give you the advice and assistance you need to be successful with Qumulo software. The Qumulo Customer Success program is available:

- As part of a Qumulo subscription.
- While you have Qumulo for AWS consumption credits.
- For purchase when you buy Qumulo hardware.

INCLUDED BENEFITS	DESCRIPTION	COVERAGE
<p>AVAILABILITY The Qumulo Care team is available 24x7.</p> <p>Phone: North America: +1 855 577 7544</p> <p>United Kingdom: +44 808 164 6656</p> <p>Germany: +49 800 000 7047</p> <p>Australia: +61 1800 954 952</p> <p>Email: care@qumulo.com Support Portal: Qumulo Care *Severity Level 1 - 4 cases receive support on a 24x5 basis.</p>	<p>You can contact Qumulo by telephone, Slack, email, or the web site 24x7 to report software or hardware issues.</p> <p>The Qumulo Customer Success team will help you to diagnose and resolve technical problems with your Qumulo cluster.</p>	<p>The initial response time is based on the severity level and is calculated from when the Qumulo Care team first learns about the problem:</p> <p>Severity Level 0: 2 hours; 24x7 Severity Level 1: 2 hours; 24x5 Severity Level 2: 2 hours; 24x5 Severity Level 3: 6 hours; 24x5 Severity Level 4: 6 hours; 24x5</p>
<p>QUMULO ONSITE</p>	<p>We'll work together to determine if a Qumulo representative should come on-site to help resolve the issue.</p>	<p>Most on-site visits are for "break-fix" scenarios. We'll make sure the product swap goes smoothly. We may also decide, during the visit, to resolve some software issues.</p>
<p>HARDWARE REPLACEMENT PARTS</p>	<p>Qumulo repairs or replaces any hardware that fails during your Hardware Support term at no cost.</p> <p>Field replacement units include: HDDs, SSDs, power supplies, fans, optics, cables, NICs, and whole nodes.</p>	<p>Replacements are shipped with next business day delivery as soon as the Qumulo Customer Success team verifies the failure of the original component and approves its replacement.</p>
<p>NEW SOFTWARE RELEASES</p>	<p>You have access to the most current version of Qumulo software.</p>	<p>New features and bug fixes may be included in each new software release. To take advantage of a new feature or to fix a bug, download and install the latest version. Qumulo supports software releases for the longer of six (6) months from their respective release dates or the last twelve (12) releases, including the most current release.</p>
<p>24X7 REMOTE MONITORING</p>	<p>If you enable it, Qumulo will provide proactive online monitoring over a secure VPN. The service looks for both software and hardware events. It also reports on your cluster uptime, performance and capacity usage</p>	<p>Qumulo Customer Success actively responds to software and hardware events. They will notify you of the problem and work with you to diagnose and resolve it. The timeframe depends on the severity of the issue.</p>



24X7 ACCESS TO ONLINE QUMULO CARE PORTAL	You can always access the Qumulo Knowledge Base and self-help tools through the Qumulo Care portal.	With the portal, you can report support issues, download new software releases, access Knowledge Base articles, read release notes and interact with the Qumulo community.
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SEVERITY LEVELS

Severity 0

Outage, data loss or corruption. Example: Cluster is down or there are not enough nodes up to form a quorum.

Severity 1

High business impact, but the cluster is still functional. Example: A node is down but the cluster is still in quorum.

Severity 2

Bad bug, but a workaround is available. Example: Poor performance if you ls and dd from the same client. The workaround could be to mount two different nodes and run ls against node 1 and dd against node 2.

Severity 3

Poor user experience or annoyance. Example: A hover dialog lingers for ~5s after changing.

Severity 4

Cosmetic, other. Example: Change in the background color of a dialog box.



EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

1. Definitions.

- a. **"Datasheet"** means a document approved by Qumulo describing the tasks, schedule and/or Deliverables to be provided by Qumulo, including, but not limited to a statement of work, service description or datasheet.
- b. **"Deliverables"** means any tangible materials, including reports, guides or scripts, described in the relevant Datasheet.
- c. **"Intellectual Property Rights"** means (by whatever name or term known or designated) copyrights, trade secrets, trademarks, patents, and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals and extensions of such rights.
- d. **"Pre-Existing Intellectual Property"** means Intellectual Property Rights owned, licensed or held by Qumulo or Customer prior to entering in this Agreement.
- e. **"Professional Services"** means those services purchased through a Reseller and provided by Qumulo to Customer as described in a Datasheet.
- f. **"Professional Services Materials"** means any Deliverables, materials, code, know-how, practices, methodologies and/or other information used or created as part of, or response to, Qumulo providing the Professional Services.
- g. **"Reseller"** means a third party authorized to resell Qumulo Professional Services to Customer.

2. Services

- a. Qumulo will provide Professional Services pursuant to the Datasheet and this Agreement. Each Datasheet shall incorporate by reference this Agreement and thereby become an exhibit hereto. All Professional Services are accepted upon completion of the Datasheet.
- b. Change Request. Any modification to a material provision of a Datasheet will be requested by means of a change request. If a change request is initiated by either party, Customer will work with Reseller and Qumulo to promptly estimate the financial and schedule impacts, respectively, if any, that the proposed change request would have. The parties will promptly meet to review the estimate and to determine whether, and with what modifications, the change request would be acceptable.

3. Fees

- a. Terms related to pricing, payment and other terms of sale shall be agreed upon directly between Customer and Reseller. Qumulo disclaims all liability arising out of disputes between Customer and Reseller.

4. IP Ownership

- a. Each Party will retain all ownership and rights in and to any Pre-Existing Intellectual Property. Qumulo will retain all ownership and rights in and to, including any Intellectual Property Rights therein, Professional Services and Professional Services Materials. Customer grants Qumulo a non-exclusive, non-transferable license,

without the right to sublicense, to use any Customer Pre-Existing Intellectual Property for the sole purpose of performing the Professional Services and producing the Professional Services Materials, however, Qumulo shall not include Customer's Pre-Existing Intellectual Property into the Professional Services Materials. Subject to Qumulo's receipt of payment by Reseller, Qumulo grants Customer a non-exclusive, non-transferable, royalty-free, worldwide license, with no right to sublicense, to use the Professional Services Materials for internal business purposes.

- b. Qumulo will not be limited in using and reproducing products or services that are similar to the Professional Services and Professional Services Materials provided herein for any other projects, whether for Customer or for others.

5. Term

- a. Customer shall have the right to terminate a Datasheet at any time, without cause, by providing Qumulo with written notice, which termination shall become effective upon thirty (30) days after receipt of such notice by Customer. Qumulo may terminate a Datasheet immediately upon written notice if Customer is in material breach of this Agreement. Any termination of this Agreement or a Datasheet will not relieve Customer of its payment obligations for Professional Services already performed.

6. Warranty

- a. Qumulo warrants the Professional Services will be performed in a professional and workmanlike manner and shall conform to standards of the industry. Customer must notify Qumulo of any failure to so perform within ten (10) days of performing the Service. Qumulo's entire liability and Customer's sole remedy for Qumulo's failure to so perform shall be for Qumulo to, at its option, (i) use reasonable efforts to promptly correct such failure, and/or (ii) terminate the applicable SOW and, work with the Reseller to refund that portion of any fees paid to Reseller that correspond to such failure to perform.
- b. Disclaimer of Additional Warranties. THE EXPRESS WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES AND DELIVERABLES, OR AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM, AND QUMULO DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. QUMULO WILL NOT BE LIABLE FOR ANY THIRD-PARTY SERVICES OR PRODUCTS IDENTIFIED OR REFERRED TO CUSTOMER BY QUMULO.

7. General Indemnification

- a. Each party (an "Indemnifying Party") agrees to defend the other party (an "Indemnified Party") against any third party claim or cause of action for any injuries, including death to any person, or damage to tangible or real property, resulting or arising from any willful misconduct or grossly negligent act of the Indemnifying Party while on the Customer's premises in connection with the performance of its obligations under this Agreement and shall indemnify the Indemnified Party from the resulting costs and damages awarded against the Indemnified Party by a court of competent jurisdiction or agreed to in a settlement.



8. **Insurance**

- a. Qumulo shall, at its sole cost and expense for the term of this Agreement, carry general and professional liability, automobile, and workers compensation insurance for claims for personal injury

(including death) or damage to tangible or real property, which may arise or result from Qumulo's performance under this Agreement. Qumulo agrees that it shall provide Customer with its then-current Memorandum of Insurance upon reasonable request.



EXHIBIT C

SOFTWARE USE GUIDELINES

Qumulo provides a modern, highly scalable file data platform that runs in the data center and the public cloud. We offer flexibility in both where you store your data and how you use Qumulo's file data platform. Qumulo's file data platform is available as either a subscription license or on a consumption basis. A subscription license allows you to use Qumulo's file data platform on hardware of your choosing in your own data center. Qumulo's file data platform is available in various classes with each software class having unique performance characteristics and features designed to meet specific needs. To determine the appropriate subscription license for your workloads, you choose the Qumulo software class, the capacity, and the time period you need. Your Qumulo Subscription is all-inclusive of our world-class support and every feature released for the Qumulo Software Class licensed during the subscription term. Since additional features and future releases are included in your Subscription, the value provided by Qumulo's file data platform increases with every release.

During your Subscription, you are entitled to receive all Qumulo product updates on the cadence that best meets the needs of your environment, whether quarterly or biweekly. You can easily switch between the two update plans at any time during your Subscription.

Interested in a denser hardware platform, moving to a new server manufacturer, or cloud platform? Your Qumulo Subscription is transferable on an equivalent capacity basis to any new infrastructure supported by the Qumulo Software Class you've licensed, at any time during your Subscription term and without any additional charge.

Has your business model changed such that you need more performance from your storage or want to move your storage to a public cloud? Your Qumulo Subscription can be transferred across Software Subscription Classes on a dollar equivalent basis for any unused term. The highly portable nature of your Subscription provides you with the ability to move to all-NVMe or the cloud as your workflow requirements change.

Qumulo Subscription License:

Each Qumulo Software Class can be licensed to run on certain hardware platforms. The Qumulo Subscription is a license for a specific capacity for a fixed period to time. See the Qumulo Software Class Matrix to determine currently compatible hardware platforms.

License Type & Platform Compatibility Matrix:

Hardware Platform	License Types		
	Qumulo-L1	Qumulo-L2	Qumulo-L3
P-23T	X		
P-92T	X		
P-184T	X		
P-368T	X		
QC24		X	
QC40		X	



C-72T	X	
C-168T	X	
QC104	X	
QC208	X	
QC260	X	
QC360	X	
K-144T		X
K-168T		X
HPE Apollo 4200 Gen 9 90TB	X	
HPE Apollo 4200 Gen 9 180TB	X	
HPE Apollo 4200 Gen 10 90TB	X	
HPE Apollo 4200 Gen 10 192TB	X	
HPE Apollo 4200 Gen9 288T		X
HPE Apollo 4200 Gen10 336T		X
AWS	X	
GCP	X	

Qumulo File Data Platform Transferability:

Within License Type:

You can transfer your licensed capacity amongst any hardware platform within the same License Type (See Matrix above). For example, if you licensed 288 TB of Qumulo License Type 2 for C-series nodes (4 x C-72T), you can transfer that subscription to any other C-series node. Transfer within License Type Cloud will be on a dollar-for-dollar basis.



Cross License Type:

You can transfer, on a dollar-for-dollar basis, the capacity and remaining subscription term of one License Type to another License Type (See Matrix above). For example, if you licensed 96 TB of Qumulo License Type 2 for Qumulo C-series nodes (4 x C-72T) for 36 months, you can apply the current remaining value of that subscription towards a subscription for Qumulo License Type 1 for Qumulo P-series nodes.

Subscriptions Expiration:

Subscriptions are a term license and are valid for the length of time licensed. The license expires the day after the Subscription expires.