Qumulo ANQ Hosted Services Agreement

If you have purchased access to and use of the Subscription Services (as defined below) and have not otherwise executed a separate written subscription agreement with us, then please read this Qumulo ANQ Hosted Services Agreement (this **"Agreement"**), together with any associated Order Form carefully because they govern your use of the Services. To make this easier to read, the terms "**Qumulo**," "**we**," and "**us**" refers to Qumulo, Inc., and the term "**you**" refers to you and any organization that you are acting on behalf of. You and Qumulo may be referred to herein collectively as the "**Parties**" or individually as a "**Party.**"

1. **DEFINITIONS**.

(a) "**Authorized User**" means an employee or contractor that you authorize to Use the Subscription Services.

(b) "**Data Protection Claims**" means Qumulo's breach of Section 7 or the Qumulo Global Data Processing Addendum as found at https://qumulo.com/terms-hub/agreements/ in each case, where such breach results in the unauthorized disclosure of Your Data.

(c) **"Documentation**" means the operator and user manuals, training materials, specifications, minimum system configuration requirements, compatible device and hardware list and other similar materials in hard copy or electronic form (including materials found at https://care.qumulo.com/hc/en-us) if, as provided by Qumulo to you (including any revised versions thereof), they relate to the Subscription Services, which may be updated by us from time to time.

(d) **"Effective Date"** means the date you first enter into an Order Form with Qumulo or one of Qumulo's authorized distributors, resellers or channel partners.

(e) "**Intellectual Property Rights**" means patent rights (including patent applications and disclosures), inventions, copyrights, trade secrets, know-how, data and database rights, mask work rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

(f) "**Licensed Volume**" means the limits, volume or other measurement or conditions of permitted Use for the applicable Subscription Service as set forth in the applicable Order Form.

(g) "**Order Form**" means (i) an order form or other ordering document agreed to in writing or electronically by you and Qumulo (or one of Qumulo's authorized distributors, resellers or channel partners); (ii) a purchase order issued by you and accepted by Qumulo (or one of Qumulo's authorized distributors, resellers or channel partners) in writing or electronically; or (iii) a quote issued by Qumulo (or one of Qumulo's authorized distributors, resellers or channel partners) and accepted by you, in each case which references this Agreement and sets forth the applicable Subscription Services to be provided by Qumulo.

(h) "**Person**" means any individual, corporation, partnership, trust, limited liability company, association, governmental authority or other entity.

(i) "**Platform Data**" means any data that is derived or aggregated in deidentified form from (i) Your Data; or (ii) your and/or your Authorized Users' use of the Subscription Services, including any hardware metrics, software event logs, globally unique identifiers for files, usage data or trends with respect to the Subscription Services.

(j) "**Qumulo IP**" means the Subscription Services, the underlying software provided in conjunction with the Subscription Services, algorithms, interfaces, technology, databases, tools, know-how, processes and methods used to provide or deliver the Subscription Services, Documentation and Platform Data, all improvements, modifications or enhancements to, or derivative works of, the foregoing (regardless of inventorship or authorship), and all Intellectual Property Rights in and to any of the foregoing.

(k) "**Restricted Data**" means data containing card holder data as defined in the Payment Cards Industry Data Security Standard; technology restricted for export under International Traffic in Arms Regulations, including information of the types cataloged on the U.S. Munitions List; or any other regulated data that is described as Restricted Data in an Order Form.

(l) "**Subscription Services**" means the Qumulo-hosted services to which you subscribe under this Agreement, as more particularly described or identified in the applicable Order Form, and any updates, patches, bug fixes and upgrades that Qumulo provides to you.

(m) "**Use**" means to use and/or access the Subscription Services in accordance with this Agreement and the Documentation.

(n) "**Your Data**" means all information, data, content and other materials, in any form or medium, that is submitted, posted, collected, transmitted or otherwise provided by or on behalf of you through the Subscription Services or to us in connection with your use of the Subscription Services, but excluding, for clarity, Platform Data and any other information, data, data models, content or materials owned or controlled by us and made available through or in connection with the Subscription Services.

2. **SUBSCRIPTION SERVICES; ACCESS AND USE**.

(a) Subscription Services. Subject to the terms and conditions of this Agreement, Qumulo hereby grants you a limited, non-exclusive, non-transferable (except in compliance with Section 12(f)) right to Use the Subscription Services during the Term, solely for your internal business purposes in accordance with, and subject to, the Licensed Volume.

(b) Use Restrictions. You will not at any time and will not permit any Person (including Authorized Users) to, directly or indirectly: (i) use the Subscription Services in any manner beyond the scope of rights expressly granted in this Agreement; (ii) store, transmit or transfer any Restricted Data within or in connection with the Subscription Services; (iii) modify or create derivative works of the Subscription Services or Documentation, in whole or in part; (iv) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any software component of the Subscription Services, in whole or in part; (v) frame, mirror, sell, resell, rent or lease use of the Subscription Services to any other Person, or otherwise allow any Person to use the Subscription Services for any purpose other than for your benefit in accordance with this Agreement; (vi) use the Subscription Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable law; (vii) interfere with, or disrupt the integrity or performance of, the Subscription Services, or any data or content contained therein or transmitted thereby; (viii) access or search the Subscription Services (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or Subscription Services features provided, or authorized, by Qumulo for use expressly for such purposes; or (ix) use the Subscription Services, Documentation or any other Qumulo Confidential Information for benchmarking or competitive analysis with respect to competitive or related products or services, or to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Subscription Services.

(c) Authorized Users. You will not allow any Person other than Authorized Users to Use the Subscription Services. You may permit Authorized Users to Use the Subscription Services, *provided* that (i) the Use does not exceed the Licensed Volume; and (ii) you ensure each Authorized User complies with all applicable terms and conditions of this Agreement and you are responsible for acts or omissions by Authorized Users in connection with their Use of the Subscription Services. You will, and will require all Authorized Users to, use all reasonable means to secure usernames and passwords, hardware and software used to access the Subscription Services in accordance with customary security protocols, and will promptly notify us if you know or reasonably suspect that any user name and/or password has been compromised. Qumulo will not be liable, and you will be solely responsible, for (A) any unauthorized access, damage or loss that may occur through the use or misuse of your user names, passwords, hardware or software; or (B) any activities that occur under any account issued to or created by you in connection with your use of the

Subscription Services, including any unauthorized access or usage of any such account, in each case, except to the extent proven to have been directly caused by Qumulo's gross negligence, willful misconduct or fraud.

(d) Third-Party Services. Certain features and functionalities within the Subscription Services may allow you and your Authorized Users to interface or interact with, access and/or use compatible third-party services, products, technology and content (collectively, "**Third-Party Services**") through the Subscription Services. We do not provide any aspect of the Third-Party Services and are not responsible for any compatibility issues, errors or bugs in the Subscription Services or Third-Party Services caused in whole or in part by the Third-Party Services or any update or upgrade thereto. You are solely responsible for maintaining the Third-Party Services and obtaining any associated licenses and consents necessary for you to use the Third-Party Services in connection with the Subscription Services.

(e) Reservation of Rights. Subject to the limited rights expressly granted hereunder, Qumulo reserves and, as between the Parties will solely own, the Qumulo IP and all rights, title and interest in and to the Qumulo IP. No rights are granted to you hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set forth herein.

(f) Feedback. From time to time you or your employees, contractors, or representatives may provide us with suggestions, comments, feedback or the like with regard to the Subscription Services (collectively, "**Feedback**"). You hereby grant Qumulo a perpetual, irrevocable, royalty-free and fully-paid-up license to use and exploit all Feedback in connection with Qumulo's business purposes, including the testing, development, maintenance and improvement of the Subscription Services.

(g) Previews. We may make available to you certain products, features, functionalities and services as part of the Subscription Services prior to their general release that are labeled or otherwise communicated to you as "preview," "beta," "pre-release" or "non-general release" (collectively, "**Previews**"). You may Use Previews solely for internal evaluation purposes, and such Use may incur applicable Fees. Qumulo provides all Previews on an "AS IS" basis without warranty of any kind, and may terminate or suspend the availability of any Preview at any time. Notwithstanding anything in this Agreement to the contrary, Qumulo makes no commitments with respect to any Previews, including any commitment to maintain the availability of such Preview, or otherwise with respect to support, service levels, security, compliance or privacy. You acknowledge that Previews are not ready for production usage, may contain bugs, errors, defects and vulnerabilities, and that your use of any Previews is at your sole risk and discretion.

(h) Trial Services. Qumulo may also offer Subscription Services to you on a trial basis, free of charge ("**Trial Services**"). You may Use Trial Services solely for internal evaluation purposes. We provide all Trial Services on an "AS IS" basis without warranty of any kind, and may terminate or suspend the availability of any Trial Services at any time.

3. **FEES AND PAYMENT**.

(a) Fees. If you have obtained the Subscription Service directly from Qumulo, then you will pay Qumulo the non-refundable fees set forth in the relevant Order Form in accordance with the terms therein ("**Fees**") and without offset or deduction. Upon expiration of any Order Form, if you continue to use the Subscription Services, then until a new Order Form is executed or the Parties agree in writing to the contrary, the Fees will automatically convert to Qumulo's then-current standard consumption-based billing model and applicable list fees, as may be updated by Qumulo from time-to-time ("**Consumption Billing**"). Except as otherwise provided in the relevant Order Form, Qumulo will issue invoices to you on a monthly basis during the Term, and you will pay all amounts set forth on any such invoice no later than thirty (30) days after the date of such invoice. If you have signed up for automatic billing, we will charge your selected payment method (such as a credit card, debit card, gift card/code, or other method available in your home country) for any Fees on the applicable payment date, including any applicable taxes. If we cannot charge your selected payment method for any reason (such as expiration or insufficient funds), you remain responsible for any uncollected amounts, and we will attempt to charge the payment method again as you may update your payment method information. In accordance with local law, we may update information regarding your selected payment method if provided such information by your financial institution. For clarity, the Fees do not include any fees payable to any third party for Third Party Services, including any fees payable to your hosting

provider in connection with the download, upload or transmission of Your Data.

(b) Payments. Payments due to Qumulo under this Agreement must be made in U.S. dollars by check, wire transfer of immediately available funds to an account designated by us or such other payment method mutually agreed by the Parties. All payments are non-refundable and neither Party will have the right to set off, discount or otherwise reduce or refuse to pay any amounts due to the other Party under this Agreement. If you fail to make any payment when due, late charges will accrue at the rate of 1.5% per month or, if lower, the highest rate permitted by applicable law. You will reimburse Qumulo for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any late payments or interest.

(c) Taxes. You are responsible for all sales, use, ad valorem and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, multinational or local governmental regulatory authority on any amount payable by you to Qumulo hereunder, other than any taxes imposed on Qumulo's income. Without limiting the foregoing, in the event that you are required to deduct or withhold any taxes from the amounts payable to Qumulo hereunder, you will pay an additional amount, so that Qumulo receives the amounts due to it hereunder in full, as if there were no withholding or deduction.

(d) Channel Orders. If you have obtained the Subscription Services through a Qumulo-authorized distributor, reseller, channel partner or cloud service provider, then you acknowledge that: (a) different terms regarding invoicing, payment and taxes may apply as agreed between you and such distributor, reseller or channel partner; (b) Qumulo may share information with such distributor, reseller or channel partner related to your use and consumption of the Subscription Services for account management and billing purposes; (c) the termination provisions of Section 11(c) will apply if such distributor, reseller or channel partner fails to pay applicable Fees on your behalf to Qumulo; and (d) such distributor, reseller or channel partner is not authorized to make any changes to this Agreement or to make any warranties, representations, promises or commitments on behalf of Qumulo.

4. **CONFIDENTIAL INFORMATION**.

(a) As used herein, "**Confidential Information**" means any information that one Party (the "**Disclosing Party**") provides to the other Party (the "**Receiving Party**") in connection with this Agreement, whether orally or in writing, that is designated as confidential or that reasonably should be considered to be confidential given the nature of the information and/or the circumstances of disclosure. For clarity, the Qumulo IP will be deemed Confidential Information of Qumulo. However, Confidential Information will not include any information or materials that: (i) were, at the date of disclosure, or have subsequently become, generally known or available to the public through no act or failure to act by the Receiving Party; (ii) were rightfully known by the Receiving Party prior to receiving such information or materials from the Disclosing Party; (iii) are rightfully acquired by the Receiving Party from a third party who has the right to disclose such information or materials without breach of any confidentiality or non-use obligation to the Disclosing Party; or (iv) are independently developed by or for the Receiving Party without use of or access to any Confidential Information of the Disclosing Party.

(b) The Receiving Party will maintain the Disclosing Party's Confidential Information in strict confidence, and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or exercise its rights under this Agreement; *provided* that Qumulo may use and modify your Confidential Information in deidentified form for purposes of developing and deriving Platform Data, and Platform Data may be shared with third parties in a manner that does not directly identify you. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (i) to those employees, representatives, or contractors of the Receiving Party who have a bona fide need to know such Confidential Information to perform under this Agreement and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in this Agreement, or (ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the Receiving Party providing to the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or otherwise contest the disclosure.

(c) Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the

Effective Date and will expire five (5) years from the date first disclosed to the Receiving Party; *provided*, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

(d) The terms and conditions of this Agreement will constitute Confidential Information of each Party but may be disclosed on a confidential basis to a Party's advisors, attorneys, actual or bona fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes.

5. **SUPPORT AND SERVICE LEVELS**.

Qumulo will provide you with technical support and availability for the Subscription Services in accordance with the support terms set forth at https://qumulo.com/terms-hub/support-offerings/, which Qumulo may update from time to time; provided that no such update materially downgrades level of support offered by Qumulo with respect to the Subscription Services.

6. YOUR MATERIALS AND DATA.

(a) Qumulo acknowledges that, as between you and Qumulo and except as set forth in Section 6(b), you own and retain all right, title and interest in and to all Your Data.

(b) You hereby grant Qumulo a non-exclusive, worldwide, royalty-free right and license to use, host, reproduce, display, perform, modify Your Data solely for the purpose of hosting, operating, improving and providing the Subscription Services and Qumulo's other related products, services and technologies during the Term or as otherwise required by applicable law.

(c) You represent and warrant that you have obtained and will obtain and continue to have, during the Term, all necessary rights, authority, consents and licenses for the access to and use of Your Data, including any personal data provided in connection with your Use of the Subscription Services, as collected pursuant to your privacy policy, or as otherwise contemplated by this Agreement.

(d) You represent and warrant that Qumulo's use of Your Data in accordance with this Agreement will not violate any applicable laws or regulations (including but not limited to privacy laws, the Health Insurance Portability and Accountability Act (HIPAA), and ITAR) or cause a breach of any agreement or obligations between you and any third party.

(e) If you are a "covered entity" or a "business associate" and Your Data includes "protected health information" (each as defined by HIPAA), this Agreement expressly incorporates the Business Associate Addendum as found at https://qumulo.com/terms-hub/agreements/**.**

7. **REPRESENTATIONS AND WARRANTIES**.

(a) Mutual. Each Party hereby represents and warrants to the other Party as of the Effective Date that it is duly organized, validly existing and in good standing under its jurisdiction of organization and has the right to enter into this Agreement.

(b) Qumulo Warranties. Qumulo hereby represents and warrants as of the Effective Date that (i) it will provide the Subscription Services in a professional and workmanlike manner in accordance with industry standards; and, (ii) the Subscription Services will substantially conform to the Documentation.

8. **INDEMNIFICATION**.

(a) Qumulo Indemnification. Subject to Section 8(b), Qumulo will defend you against any claim, suit or proceeding brought by a third party ("**Claims**") alleging that your Use of the Subscription Services infringes or

misappropriates such third party's Intellectual Property Rights, and will indemnify you and hold you harmless against any damages and costs awarded against you or agreed in settlement by Qumulo (including reasonable attorneys' fees) resulting from such Claim.

(b) Exclusions. Qumulo's obligations under Section 8(a) will not apply if the underlying third-party Claim arises from or as a result of: (i) your breach of this Agreement, negligence, willful misconduct or fraud; (ii) Your Data; or (iii) combinations of the Subscription Services with software, data or materials not provided by Qumulo.

(c) IP Remedies. If Qumulo reasonably believes the Subscription Services (or any component thereof) could infringe any third party's Intellectual Property Rights, Qumulo may, at its sole option and expense use commercially reasonable efforts to: (i) modify or replace the Subscription Services, or any component or part thereof, to make it non-infringing; or (ii) procure the right for you to continue Use. If Qumulo determines that neither alternative is commercially practicable, Qumulo may terminate this Agreement, in its entirety or with respect to the affected component, by providing written notice to you. In the event of any such termination, Qumulo will refund to you a pro-rata portion of the Fees that have been paid for the unexpired portion. The rights and remedies set forth in this Section 8 will constitute your sole and exclusive remedy for any infringement or misappropriation of Intellectual Property Rights in connection with the Subscription Services.

(d) Your Indemnification. Subject to Section 8(e), You will defend Qumulo against Claims arising from (i) Your Data, including (A) any Claim that Your Data infringes, misappropriates or otherwise violates any third party's Intellectual Property Rights or privacy or other rights; or (B) any Claim that the use, provision, transmission, display or storage of Your Data violates any applicable law, rule or regulation; (ii) any of your products or services; and (iii) Use of the Subscription Services by you or your Authorized Users in a manner that is not in accordance with this Agreement, the Documentation, or any applicable law, rule or regulation, and in each case, will indemnify and hold harmless Qumulo against any damages and costs awarded against Qumulo or agreed in settlement by you (including reasonable attorneys' fees) resulting from such Claim.

(e) Indemnification Procedures. The Party seeking defense and indemnity (the "**Indemnified Party**") will promptly (and in any event no later than thirty (30) days after becoming aware of facts or circumstances that could reasonably give rise to any Claim) notify the other Party (the "**Indemnifying Party**") of the Claim for which indemnity is being sought, and will reasonably cooperate with the Indemnifying Party in the defense and/or settlement thereof. The Indemnifying Party will have the sole right to conduct the defense of any Claim for which the Indemnifying Party is responsible hereunder (*provided* that the Indemnifying Party may not settle any Claim without the Indemnified Party's prior written approval). The Indemnified Party may participate in the defense or settlement of any such Claim at its own expense and with its own choice of counsel.

9. **WARRANTY; DISCLAIMER**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SUBSCRIPTION SERVICES, AND OTHER QUMULO IP ARE PROVIDED ON AN "AS IS" BASIS, AND QUMULO MAKES NO WARRANTIES OR REPRESENTATIONS TO YOU, YOUR AUTHORIZED USERS OR TO ANY OTHER PARTY REGARDING THE QUMULO IP, THE SUBSCRIPTION SERVICES OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, QUMULO HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, QUMULO HEREBY DISCLAIMS ANY WARRANTY THAT USE OF THE SUBSCRIPTION SERVICES WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

10. **LIMITATIONS OF LIABILITY**.

(a) Exclusion of Damages. EXCEPT FOR: (I) ANY INFRINGEMENT BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (II) FRAUD OR WILFUL MISCONDUCT BY EITHER PARTY, (III) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS AS DESCRIBED IN SECTION 8, OR (IV) BREACH OF YOUR PAYMENT OBLIGATIONS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR THE COST OF COVER OR SUBSTITUTE SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT,

WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

(b) General Liability Cap. EXCEPT FOR: (I) ANY INFRINGEMENT BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (II) FRAUD OR WILFUL MISCONDUCT BY EITHER PARTY, (III) BREACH OF YOUR PAYMENT OBLIGATIONS, (IV) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS AS OUTLINED IN SECTION 8, OR (V) DATA PROTECTION CLAIMS, IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT, EXCEED THE FEES ACTUALLY PAID BY YOU TO QUMULO IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

(c) Data Protection Cap. WITH RESPECT TO DATA PROTECTION CLAIMS, EACH PARTY'S TOTAL LIABILITY TO THE OTHER PARTY FOR ALL CLAIMS, LOSSES AND DAMAGES IN THE AGGREGATE WILL NOT EXCEED TWO MILLION DOLLARS ($2,000,000.00).

11. **TERM AND TERMINATION**.

(a) Term. The initial term of this Agreement begins on the Effective Date and expires at the end of the initial term specified in the relevant Order Form (the "**Initial Term**"). Following the Initial Term, if you continue to maintain Your Data within the Subscription Services or otherwise use the Subscription Services, then until a new Order Form is executed or this Agreement is otherwise terminated hereunder, this Agreement will automatically renew for additional periods of one (1) month (each, a "**Renewal Term**," and together with the Initial Term, the "**Term**"), and during each such Renewal Term, your use of the Subscription Services will be subject to Consumption Billing as described in Section 3(a).

(b) Termination by You. If you entered into this Agreement by subscribing through any authorized marketplace or hosting provider (e.g., Microsoft Azure Marketplace), then you may terminate this Agreement by unsubscribing through the applicable standard procedures available through such authorized marketplace or hosting provider. If you entered into this Agreement directly with Qumulo, you may terminate this Agreement by providing Qumulo with at least thirty (30) days' written notice of your intent not to renew this Agreement prior to the end of the Initial Term or then-current Renewal Term, as applicable.

(c) Termination for Breach. Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach.

(d) Termination by Qumulo. During any Renewal Term of one (1) month or less, Qumulo may terminate this Agreement by providing ninety (90) days' written notice to you.

(e) Survival. This Section 11(e) and Sections 1, 2(b), 2(c), 2(f), 3, 4, 6, 7, 8, 9, 10, 11(f), and 12 survive any termination or expiration of this Agreement.

(f) Effect of Termination. Upon expiration or termination of this Agreement: (i) the rights granted pursuant to Section 2(a) will terminate; and (ii) you will return or destroy, at Qumulo's sole option, all Qumulo Confidential Information in your possession or control, including permanent removal of such Qumulo Confidential Information (consistent with customary industry practice for data destruction) from any storage devices or other hosting environments that are in your possession or under your control, and at Qumulo's request, certify in writing to Qumulo that the Qumulo Confidential Information has been returned, destroyed or, in the case of electronic communications, deleted. No expiration or termination will affect your obligation to pay all Fees that may have become due or otherwise accrued through the effective date of expiration or termination, or entitle you to any refund.

12. **GENERAL**.

(a) Entire Agreement. This Agreement, including their exhibits, is the complete and exclusive agreement between the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, communications and understandings, both written and oral, with respect to its subject matter. This Agreement may be amended or modified only by a written document executed by duly authorized representatives of the Parties.

(b) Notices. All notices required or permitted under this Agreement will be in writing, will reference this Agreement, and will be sent, if to Qumulo, to legalnotice@qumulo.com or, if to you, to the then-current contact information provided by or on behalf of you to Qumulo.

(c) Waiver. Either Party's failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the Party granting the waiver.

(d) Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the Parties, and the remaining provisions of this Agreement will remain in full force and effect.

(e) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Washington without giving effect to any principles of conflict of laws that would lead to the application of the laws of another jurisdiction. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in King County, Washington and the Parties irrevocably consent to the personal jurisdiction and venue therein.

(f) Assignment. Neither Party may assign or transfer this Agreement, by operation of law or otherwise, without the other Party's prior written consent. Any attempt to assign or transfer this Agreement without such consent will be void. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a third party that succeeds to all or substantially all of the assigning Party's business and assets relating to the subject matter of this Agreement, whether by sale, merger, operation of law or otherwise. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of each of the Parties and their respective successors and permitted assigns.

(g) Equitable Relief. Each Party agrees that a breach or threatened breach by such Party of any of its obligations under Section 4 or, in your case, Section 2(b), would cause the other Party irreparable harm and significant damages for which there may be no adequate remedy under law and that, in the event of such breach or threatened breach, the other Party will have the right to seek immediate equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(h) Force Majeure. Neither Party will be responsible for any failure or delay in the performance of its obligations under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, which may include labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, telecommunications failure or degradation, pandemics, epidemics, public health emergencies, governmental orders and acts (including government-imposed travel restrictions and quarantines), material changes in law, war, terrorism, riot, or acts of God.

(i) Export Regulation. You will comply with all applicable federal laws, regulations and rules that prohibit or restrict the export or re-export of the Subscription Services or software, or Your Data, outside the United States ("**Export Rules**"), and will complete all undertakings required by Export Rules, including obtaining any necessary export license or other governmental approval.

(j) U.S. Government End Users. The Subscription Services, software and Documentation are "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and other relevant government procurement regulations. Any use, duplication, or disclosure of the software or its documentation by or on behalf of the U.S. government is subject to restrictions as set forth in this Agreement.

(k) Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing in this Agreement will be construed to establish any partnership, joint venture or agency relationship between the Parties. Neither Party will have the power or authority to bind the other or incur any obligations on the other's behalf without the other Party's prior written consent.

(l) No Third-Party Beneficiaries. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last signed below.

Qumulo, Inc.	**[customer name]**
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____