



## 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**”) as set forth on the Terms Hub.
- 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.
- h. “**Terms Hub**” means the website located at the URL: <https://qumulo.com/terms-hub>, and the applicable information about the Product, Services and Documentation available on said website on the date of the purchase order quote to Qumulo.

### 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 the Terms Hub and unless otherwise stated shall begin on Delivery. 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 the Terms Hub.

### 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 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.
- 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.

#### 9. Intellectual Property Indemnification.

#### 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 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.