



## PROFESSIONAL SERVICES AGREEMENT

(For Customers purchasing professional services through a reseller)

THIS PROFESSIONAL SERVICES 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 THE CUSTOMER (“**CUSTOMER**”) PURCHASING PROFESSIONAL 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 PROFESSIONAL SERVICES OFFERED BY RESELLER. THE QUMULO END USER AGREEMENT (POSTED AT [HTTP://WWW.QUMULO.COM/TERMS-HUB](http://www.qumulo.com/terms-hub)) IS HEREBY INCORPORATED AND ALSO APPLIES.

The parties agree as follows:

### 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.