



QUMULO CARE SUPPORT SERVICES AGREEMENT

THIS SUPPORT 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**”) THAT PURCHASED OR LICENSED PRODUCTS FROM QUMULO, OR AN AUTHORIZED QUMULO RESELLER. CUSTOMER SHOULD REVIEW THIS AGREEMENT PRIOR TO PURCHASING OR LICENSING ANY PRODUCTS. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THIS AGREEMENT, THEN CUSTOMER MUST NOT PURCHASE OR USE ANY QUMULO SUPPORT SERVICES. THE QUMULO END CUSTOMER AGREEMENT (POSTED AT [HTTP://WWW.QUMULO.COM/TERMS-HUB](http://www.qumulo.com/terms-hub)) IS HEREBY INCORPORATED AND ALSO APPLIES.

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 on the Terms Hub.
- 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.
- g. **“Terms Hub”** means the website located at the URL: <http://www.qumulo.com/Terms-Hub>, and the applicable information about the Product, Support Services and Documentation on the website on the date of the purchase order to Qumulo.

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, as updated and published on the Terms Hub.

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.