

Partner Marketing Agreement

This Partner Marketing Agreement (the "Agreement") is made and entered into by and between the parties listed below who have caused this Agreement to be signed and effective as of the last signature date (the "Effective Date"). This Agreement sets forth the terms and conditions under which Qumulo may permit Partner to (i) use certain Qumulo trademarks and (ii) market Products obtained by Partner under an agreement with Qumulo or an authorized Qumulo distributor ("Distributor"), all as more specifically described below.

Company Name:	Qumulo, Inc. ("Qumulo")	_____
		("Partner")
Address:	1501 4th Ave., Suite 1600 Seattle, WA 98101	
Contact Person: (name and title)		
Telephone:		
Email:		
Authorized Territory: ("Territory");		

Qumulo Inc.

Partner

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

1. Definitions:

a. "Documentation" means the current, generally available, technical documents describing the Products as made available by Qumulo from time-to-time.

b. "Partner Application" means the application form submitted to Qumulo by Partner for consideration as as an authorized Qumulo Partner in the Territory.

c. "Partner Program" means the terms and conditions of the Qumulo Partner Program which are hereby incorporated into this Agreement, as amended from time to time.

d. "Products" means the software and services of Qumulo made available for resale subject to this Agreement.

- e. "Trademarks" means the marks, registered or unregistered, identify by each party at that approved, in writing, for use under this Agreement.
- f. "Terms Hub" means the website located at the URL: <https://qumulo.com/terms-hub>, and the applicable agreements and information available there.

2. Representations and Restrictions

- a. Partner represents and warrants that it has already or is in the process of entering into an agreement with a Distributor. Partner's agreement with Distributor shall allow Partner to remarket the Products in the Territory. Partner agrees that Qumulo may disclose the information on the Partner Application and the terms of this Agreement to Distributor.
- b. Partner will represent the Products to customers in a knowledgeable and professional manner and will not represent any Product in a manner that is false or misleading or that may adversely affect the reputation or goodwill of Qumulo or its Products. This Agreement does not authorize Partner to perform professional services on behalf of Qumulo or for any Product
- c. Partner shall not use sub-distributors or other third parties to market, promote, sell or otherwise distribute the Products without Qumulo's prior written consent.
- d. Partner may be entitled to certain benefits under the Partner Program, as communicated by Qumulo from time to time, provided Partner fulfills and maintains the qualifying requirements. Partner benefits and requirements may change at Qumulo's sole discretion based upon corporate-wide programmatic changes in Qumulo's channel programs.
- e. Partner acknowledges and agrees that it will represent to end users that all Products are governed by the terms and conditions located on the Terms Hub. Partner will not, nor will Partner allow a third party to, (i) sub-license or rent the Products; (ii) remove any copyright or notices; (iii) use the Products for competitive analysis or to copy any features, functions, or graphics for competitive purposes; or (iv) engage in unlicensed use of the Products or use the Products in a manner that contradicts the license type or terms as described on the Terms Hub.

3. Trademark & Logo:

- a. During the Term of this Agreement and subject to the other party's approval, each party hereby grants to the other party a nonexclusive license to use and display each other's Trademarks solely in connection with the rights granted in this Agreement and any advertising or other promotional activities relating thereto.

4. Term and Termination.

- a. Term. The initial term of this Agreement will be for one (1) year and will automatically renew for successive one-year terms, unless this Agreement is terminated earlier as provided herein.
- b. Termination at Will. Either party may terminate this Agreement at any time with at least thirty (30) days prior written notice to the other party.
- c. This Agreement shall automatically terminate if Partner ceases to have a valid agreement with a Distributor, except that Qumulo may agree, in its discretion, to continue this Agreement if Partner is actively negotiating a new or renewal agreement with a Distributor.
- d. Upon termination of this Agreement, any rights granted under this Agreement for use of a trademark or other intellectual property right shall terminate completely and both parties shall discontinue any use within 15 business days of termination.

e. Survival. All provisions of this Agreement will survive any termination or expiration if by its nature and context it is intended to survive.

5. DISCLAIMER

QUMULO PROVIDES ACCESS TO THE QUMULO PARTNER PORTAL WEBSITE AND DOCUMENTATION ON AN "AS IS" BASIS AND MAKES NO WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

QUMULO'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE, WILL NOT EXCEED \$5,000 USD. NEITHER PARTY WILL HAVE ANY OBLIGATION OR LIABILITY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, SERVICES, OR THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Partner Indemnity

a. Partner shall indemnify, defend and hold harmless Qumulo from and against all claims, suits, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs) which arise out of, relate to or result from any act or omission of Partner in connection with its obligations under this Agreement.

7. Confidentiality

a. "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 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 which is 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.

8. Compliance with Law. The Parties will comply with all applicable laws, regulations, standards and such other requirements that are or may be promulgated by authorized governmental agencies,

including (i) obtaining all necessary licenses, permits and approvals as may be required, (ii) all export, import, sanctions, and anti-boycott restrictions imposed by U.S. law and the laws of the country of import, and (iii) the United States Foreign Corrupt Practices Act, the U.K. Bribery Act of 2010, and any other similar laws in other jurisdictions. The parties agree that the data protection addendum available at www.qumulo.com/PartnerDPA, which may be updated from time to time, sets forth their respective obligations regarding the processing of personal data.

9. Choice of Law and Venue

a. This Agreement shall be governed by the law of the State of Washington, without reference to conflict of laws principles. The United Nations Convention on the International Sale of Goods does not apply to this Agreement. The parties hereby consent to the exclusive jurisdiction of the courts located in Seattle, Washington for resolution of any disputes arising out of this Agreement.

10. Miscellaneous

a. **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.

b. **Entire Agreement.** This Agreement, and those additional terms referenced within, constitute the entire agreement between the parties regarding its subject matter. No modification will be binding unless in writing and signed by the parties.

c. **Assignment.** This Agreement and any rights or obligations of Partner under it may not be assigned, subcontracted or otherwise transferred by Partner, 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.

d. **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.

e. **Independent Contractors.** The relationship of Qumulo and Partner 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.