

Cloud Native Qumulo Offering

Subscription Terms and Conditions

Last Updated: 07-15-2024

If you have purchased access to and use of the Cloud Native Qumulo Software (as further defined below, the “**the CNQ**”) and have not otherwise executed a separate written subscription agreement with us, then please read these Cloud Native Qumulo Subscription Terms and Conditions (the “**Subscription Terms and Conditions**,” and together with any associated Order Form(s), this “**Agreement**”) carefully because they govern your use of the CNQ. By entering into an Order Form or accessing or using the CNQ, you agree to be bound by this Agreement.

To make this Agreement easier to read, the terms “**Qumulo**,” “**we**,” and “**us**” refer to Qumulo, Inc., and the terms “**Customer**” or “**you**” refer to the entity or person (other than a Reseller) placing an Order Form for the CNQ. Customer and Qumulo may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.” For clarity, if you are placing an Order Form for the CNQ as an employee, contractor or agent of a corporation or similar entity, the terms “**Customer**” or “**you**” refer to such corporation or similar entity, and you represent and warrant that you have the authority to bind such corporation or similar entity to this Agreement.

Please refer to [Section 15](#) for defined terms used in these Subscription Terms and Conditions.

SUBSCRIPTION SERVICES; ACCESS AND USE.

(a) **CNQ.** Subject to the terms and conditions of this Agreement, Qumulo hereby grants Customer a limited, non-exclusive, non-transferable (except in compliance with [Section 14\(g\)](#)) right, during the Term, to: (i) install the CNQ on the Customer Cloud Environment; and (ii) Use the CNQ on the Customer Cloud Environment, in each case solely for Customer’s internal business purposes in accordance with, and subject to, the CNQ Software License Class.

(b) **Use Restrictions.** Customer will not at any time and will not permit any Person (including Authorized Users) to, directly or indirectly: (i) use the CNQ in any manner beyond the scope of rights expressly granted in this Agreement; (ii) modify or create derivative works of the CNQ or Documentation, in whole or in part; (iii) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any software component of the CNQ, in whole or in part; (iv) frame, mirror, sell, resell, rent or lease use of the CNQ to any other Person, or otherwise allow any Person to use the CNQ for any purpose other than for Customer’s benefit in accordance with this Agreement; (v) use the CNQ 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; (vi) interfere with, or disrupt the integrity or performance of, the CNQ, or any data or content contained therein or transmitted thereby; or (vii) use the CNQ, 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 CNQ. Further, Customer will only access or search the CNQ (or download any data or content contained therein or transmitted thereby) through the tools supported or approved by Qumulo as set forth in the Documentation.

(c) Authorized Users. Customer will not allow any Person other than Authorized Users to Use the CNQ. Customer may permit Authorized Users to Use the CNQ, provided that: (i) the Use does not exceed the CNQ Software License Class; and (ii) Customer ensures each Authorized User complies with all applicable terms and conditions of this Agreement and Customer is responsible for acts or omissions by Authorized Users in connection with their Use of the CNQ.

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

(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 Customer hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set forth herein.

(f) Feedback. From time-to-time Customer or its employees, contractors, or representatives may provide us with suggestions, comments, feedback or the like with regard to the CNQ (collectively, the “**Feedback**”). Customer hereby grants 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 CNQ.

(g) Previews and Trial Services.

(i) Qumulo may make available to Customer certain products, features, functionalities and services as part of the CNQ prior to their general release that are labeled or otherwise communicated to Customer as “preview,” “beta,” “pre-release” or “non-general release” (collectively, the “**Previews**”). Customer may Use Previews solely for internal evaluation purposes, and such Use may incur applicable Fees. 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. Customer acknowledges that Previews are not ready for production usage, may contain bugs, errors, defects and vulnerabilities, and that Customer’s use of any Previews is at its sole risk and discretion.

(ii) Qumulo may also offer the CNQ to Customer on a trial basis, free of charge (the “**Trial Services**”). Customer may Use Trial Services solely for internal evaluation purposes.

(iii) QUMULO PROVIDES ALL PREVIEWS AND TRIAL SERVICES ON AN “AS IS” BASIS WITHOUT WARRANTY OF ANY KIND, AND MAY TERMINATE OR SUSPEND THE AVAILABILITY OF ANY PREVIEW OR TRIAL SERVICE AT ANY TIME. Notwithstanding anything in this Agreement to the contrary, Sections 8(b) and 9(a) will not apply to Previews and Trial Services.

(h) Resellers and Marketplaces. Customer may procure the CNQ through a Reseller pursuant to a Reseller Arrangement or through a Marketplace pursuant to the applicable Marketplace Terms. For

the CNQ procured through a Reseller, Qumulo will only be obligated to provide the CNQ to Customer if Qumulo has accepted the Order Form submitted by the Reseller to Qumulo on Customer's behalf. Customer acknowledges and agrees that: (i) Qumulo may share information related to Customer's Use of the CNQ with the applicable Reseller or Marketplace; (ii) this Agreement governs Customer's Use of the CNQ, notwithstanding anything to the contrary in the applicable Reseller Arrangement or any Marketplace Terms; and (iii) Resellers and Marketplaces are not authorized to make any changes to this Agreement or otherwise authorized to make any warranties, representations, promises or commitments on behalf of Qumulo or in any way concerning the CNQ.

2. **CUSTOMER'S OBLIGATIONS.**

(a) **Customer Cloud Environment.** Customer will (and will be solely responsible for the following): (i) obtain and maintain licenses for the Customer Cloud Environment, including pay all associated fees and charges due to the Customer Cloud Environment's provider; (ii) ensure that the Customer Cloud Environment meets the minimum technical requirements for Use of the CNQ in accordance with the applicable Documentation; and (iii) ensure that the Customer Cloud Environment meets all applicable requirements for the Customer Data that the Customer intends to submit into the CNQ (e.g., qualifying as AWS GovCloud or Azure Government Cloud for data subject to government controls). Qumulo does not provide, and will not be responsible for, any aspect of the Customer Cloud Environment or for any errors or bugs in the CNQ caused in whole or in part by the Customer Cloud Environment.

(b) **Security.** Customer will, and will require all Authorized Users to, use all reasonable means to secure usernames and passwords, hardware and software used to access the CNQ (including Customer's credentials to access and use the Customer Cloud Environment) in accordance with customary security protocols, and will promptly notify Qumulo if Customer knows or reasonably suspects that any username, password or credential has been compromised. Qumulo will not be liable, and Customer will be solely responsible, for: (i) any unauthorized access, damage or loss that may occur through the use or misuse of Customer's usernames, passwords, credentials, hardware or software; and (ii) any activities that occur under any account issued to or created by Customer in connection with Customer's Use of the CNQ, 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. Each account for the CNQ may only be accessed and used by the specific Authorized User for whom such account is created.

3. **INSTALLATION AND TRAINING SERVICES.** If applicable, Qumulo will provide to Customer the Installation and Training Services set forth in the applicable Order Form in accordance with the terms set forth therein. Provision of any other professional services by Qumulo will require the execution of separate agreement.

4. **SUPPORT.** Qumulo will provide Customer with technical support for the CNQ in accordance with the applicable Order Form and 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 CNQ.

(a) **FEES AND PAYMENT.** Customer will pay the fees agreed upon between Customer and the applicable Reseller or Marketplace in accordance with the terms of the applicable Reseller

Arrangement or Marketplace Terms, and, if applicable, any Order Form or Committed Purchase Agreement. As between Qumulo and Customer, all such fees are non-refundable, except as otherwise set forth in this Agreement. Upon expiration of any Order Form or if Customer fully consumes all purchased and prepaid the CNQ before the end of the term of any Order Form, if Customer continues to Use the CNQ, then until a new Order Form is executed or the Parties agree in writing to the contrary: (i) the fees due by Customer will automatically convert to Qumulo's then-current standard consumption-based billing model and applicable list fees; and (ii) Qumulo will charge such list fees in arrears on a monthly basis. Except as otherwise provided herein or in the applicable Order Form or Committed Purchase Agreement, Customer will pay all fees on an annual basis, at the beginning of each annual period. As between Qumulo and Customer, Customer is 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 Customer in connection with this Agreement. Customer will at all times maintain the CNQ connections required by Qumulo to enable measuring of fees.

CONFIDENTIAL INFORMATION.

(a) Confidential Information. 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 and the Customer Data will be deemed Confidential Information of Customer. 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) Obligations. 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. 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) Term. 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 of termination of this Agreement; 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) Order Forms. The terms and conditions of each Order Form 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.

CUSTOMER DATA.

(a) Ownership. Qumulo acknowledges that, as between Customer and Qumulo and except as set forth in Section 7(b), Customer owns and retains all right, title and interest in and to all Customer Data.

(b) License Grant. To the extent that Customer provides access to any Customer Data to Qumulo, Customer hereby grants Qumulo a non-exclusive, worldwide, royalty-free right and license to use, host, reproduce, display, perform, modify, and deidentify Customer Data solely: (i) for the purpose of operating, improving and providing the CNQ and the Installation and Training Services for the benefit of Customer and Customer's use of the CNQ and Installation and Training Services; (ii) for the purpose of developing and deriving Platform Data; or (iii) as otherwise required by applicable law.

(c) Platform Data. Notwithstanding anything to the contrary in this Agreement, Qumulo may (i) collect, create and use Platform Data for the purpose of developing, operating, improving and/or providing the CNQ, the Installation and Training Services and Qumulo's other products, services and technologies during and after the Term; and (ii) disclose Platform Data to third parties in a manner that does not directly identify Customer.

(d) Representations and Warranties. Customer represents and warrants that (i) it has 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 Customer Data, including any personal data included therein, as contemplated by this Agreement, and (ii) Qumulo's use of Customer Data in accordance with this Agreement will not violate any applicable laws or regulations (including, but not limited, to data protection laws, the Health Insurance Portability and Accountability Act ("HIPAA") and the International Traffic in Arms Regulations – ITAR)) or cause a breach of any agreement or obligations between Customer and any third party.

(e) Data Processing Addendum. To the extent that Customer Data to which Customer provides access to Qumulo under this Agreement includes Personal Data, this Agreement expressly incorporates, and each Party will comply with, the Data Protection Addendum.

(f) Business Associate Agreement. If Customer is a "covered entity" or a "business associate" and Customer Data to which Customer provides access to Qumulo under this Agreement includes "protected health information" (each as defined by HIPAA), this Agreement expressly incorporates, and each Party will comply with, the Business Associate Addendum found at <https://qumulo.com/terms-hub/agreements/>.

REPRESENTATIONS AND WARRANTIES.

(a) Mutual. Each Party hereby represents and warrants to the other Party as of the Effective Date that: (i) it is duly organized, validly existing and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; and (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party.

(b) Qumulo Warranties. Qumulo hereby represents and warrants as of the Effective Date that: (i) the CNQ will substantially conform to the applicable Documentation; and (ii) it will provide the Installation and Training Services in a professional and workmanlike manner. Qumulo will use commercially reasonable efforts to correct any reported non-conformity with these warranties, and if Qumulo determines that it is unable to do so in its discretion, Qumulo may terminate this Agreement, in its entirety or with respect to the affected Installation and Training Services or the CNQ, by providing written notice to Customer. In the event of any such termination, Qumulo will refund to Customer 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(b) will constitute Customer's sole and exclusive remedy and Qumulo's entire liability for any failure to meet the warranties set forth in this Section 8(b).

(c) Exclusions. Qumulo's obligations under Section 8(b) will not apply if the reported non-conformance arises from or as a result of: (i) Customer's breach of this Agreement; (ii) the Customer Cloud Environment or any other software or hardware of Customer or any third-party used by Customer in connection with the CNQ; (iii) Customer's failure to use any enhancements, modifications, or updates to the CNQ that have been provided by Qumulo; or (iv) modifications to the CNQ by anyone other than Qumulo. Further, for Installation and Training Services, Qumulo's obligations under Section 8(b) will not apply unless Customer provides written notice of the non-conformity within thirty (30) days after completion of the Installation and Training Services.

INDEMNIFICATION.

(a) Qumulo Indemnification. Subject to Sections 9(b) and 9(e), Qumulo will defend Customer against any claim, suit or proceeding brought by a third party ("**Claims**") alleging that Customer's Use of the CNQ infringes or misappropriates such third party's Intellectual Property Rights, and will indemnify Customer and hold Customer harmless against any damages and costs awarded against Customer or agreed in settlement by Qumulo (including reasonable attorneys' fees) resulting from such Claim.

(b) Exclusions. Qumulo's obligations under Section 9(a) will not apply if the underlying third-party Claim arises from or as a result of: (i) Customer's breach of this Agreement, negligence, willful misconduct or fraud; (ii) Customer Data; (iii) Customer's failure to use any enhancements, modifications, or updates to the CNQ that have been provided by Qumulo; (iv) modifications to the CNQ by anyone other than Qumulo; or (v) combinations of the CNQ with software, data or materials not provided by Qumulo.

(c) IP Remedies. If Qumulo reasonably believes the CNQ (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 CNQ, or any component or part thereof, to make it non-infringing; or (ii) procure the right for Customer to continue its 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 Customer. In the event of any such termination, Qumulo will refund to Customer a pro-rata portion of the Fees that have been paid for the unexpired portion. The rights and remedies set forth in this Section 9 will constitute Customer's sole and exclusive remedy and Qumulo's entire liability for any infringement or misappropriation of Intellectual Property Rights in connection with the CNQ.

(d) Customer's Indemnification. Subject to Section 9(e), Customer will defend Qumulo against Claims arising from: (i) Customer Data, including (A) any Claim that Customer 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 Customer Data as permitted by this Agreement violates any applicable law or regulation; and (ii) any Customer-offered products or services used in connection with the CNQ; and (iii) Use of the CNQ by Customer or its Authorized Users in a manner that is not in accordance with this Agreement, the Documentation, or any applicable law 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 Customer (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 unless the settlement is for a monetary amount, unconditionally releases the Indemnified Party from all liability without prejudice, does not require any admission by the Indemnified Party, and does not place restrictions upon the Indemnified Party's business, products or services). 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.

WARRANTY; DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, the CNQ, THE INSTALLATION AND TRAINING SERVICES AND ALL OTHER QUMULO IP ARE PROVIDED ON AN "AS IS" BASIS, AND QUMULO MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER, CUSTOMER'S AUTHORIZED USERS OR TO ANY OTHER PARTY REGARDING the CNQ, THE INSTALLATION AND TRAINING SERVICES, THE QUMULO IP, 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 CNQ WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

LIMITATIONS OF LIABILITY.

(a) Exclusion of Damages. SUBJECT TO SECTION 11(C), 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, THE QUMULO

IP OR THE PROVISION OF THE CNQ AND INSTALLATION AND TRAINING SERVICES, 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) Total Liability. SUBJECT TO SECTION 11(C), IN NO EVENT WILL THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY (THE “**LIABLE PARTY**”) TO THE OTHER PARTY ARISING FROM ALL CLAIMS UNDER OR RELATED TO THIS AGREEMENT EXCEED THE REFERENCE FEES LESS ALL AMOUNTS PAID BY THE LIABLE PARTY TO THE OTHER PARTY FOR ALL PAST CLAIMS OF ANY KIND MADE UNDER OR RELATED TO THIS AGREEMENT, 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) Exclusions. NOTHING IN THIS AGREEMENT WILL EXCLUDE OR LIMIT EITHER PARTY’S LIABILITY FOR: (I) ANY INFRINGEMENT BY ONE PARTY OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS; (II) INDEMNIFICATION OBLIGATIONS AS DESCRIBED IN SECTION 9; (III) BREACH OF CONFIDENTIALLY OBLIGATIONS AS DESCRIBED IN SECTION 6 OTHER THAN AS IT PERTAINS TO CUSTOMER DATA; OR (IV) FRAUD OR WILFUL MISCONDUCT BY EITHER PARTY.

(d) Basis of the Bargain. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 11 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN QUMULO AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

TERM; SUSPENSION 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 applicable Order Form (the “**Initial Term**”). Following the Initial Term, if Customer continues to maintain Customer Data within the CNQ or otherwise Use the CNQ, 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, Customer’s use of the CNQ will be subject to the increase set forth in Section 5.

(b) Suspension. In addition to any of its other rights or remedies under this Agreement, Qumulo reserves the right to suspend provision of the CNQ: (i) if any fees due to Qumulo under or related to this Agreement are overdue; (ii) if Qumulo deems such suspension necessary as a result of Customer’s breach of Sections 1(b) (Use Restrictions) or Section 2(b) (Security); (iii) if Qumulo reasonably determines that suspension is necessary to avoid material harm to Qumulo or its customers, including if the CNQ are experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of Qumulo’s control; or (iv) as required by applicable law or at the request of governmental entities. Qumulo will use commercially reasonable efforts to provide written notice of any suspension to Customer and restore Customer’s access to the CNQ promptly following resolution of the cause of suspension.

(c) Termination for Cause. Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party: (i) 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; (ii) ceases doing business as a going concern; or (iii) makes an assignment for the

benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated to be bankrupt or insolvent, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any applicable law, or consents to or acquiesces in the appointment of, or has its business placed in the hands of, a trustee, receiver, assignee, or liquidator of it or any substantial part of its business, assets or properties, whether by voluntary act or otherwise.

(d) Termination during Renewal Term. During any Renewal Term: (i) Customer may terminate this Agreement providing thirty (30) days' written notice to Qumulo; and (ii) Qumulo may terminate this Agreement by providing ninety (90) days' written notice to Customer.

(e) Effect of Termination. Upon expiration or termination of this Agreement: (i) the rights granted pursuant to Section 1(a) will terminate; (ii) Customer will permanently uninstall the CNQ from the Customer Cloud Environment and permanently delete all copies of the Documentation in its possession and will certify in writing to Qumulo that it has complied with such obligations; and (iii) Customer will return or destroy, at Qumulo's sole option, all other Qumulo Confidential Information in Customer's 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 its possession or under its control, and at Qumulo's request, certify in writing to Qumulo that such Qumulo Confidential Information has been returned, destroyed or, in the case of electronic communications, deleted. No expiration or termination will affect Customer's obligation to pay all fees that may have become due or otherwise accrued through the effective date of expiration or termination, or entitle Customer to any refund.

(f) Survival. This Section 12 (f) and Sections 1(b), 1(e), 1(f), 5, 6, 7(c), 9, 11, 12(e), 13, 14 and 15 will survive any termination or expiration of this Agreement.

13. RECORDS; AUDIT. Upon Qumulo's request at any time during the Term, Customer will provide Qumulo with a certification signed by an officer of Customer verifying that the CNQ are being used in compliance with the terms of this Agreement. During the Term and for two (2) years thereafter: (a) Customer will maintain complete and accurate records sufficient to demonstrate Customer's compliance with the CNQ license and Use restrictions of this Agreement to include, without limitation, compliance with the CNQ Software License Class; and (b) Qumulo will have the right, upon reasonable prior notice to Customer, subject to Customer's standard security procedures and during Customer's normal business hours, audit Customer's use and records with respect to the CNQ solely to verify compliance with this Agreement.

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 any and all prior or contemporaneous agreements, communications and understandings, both written and oral, with respect to its subject matter.

(b) Amendments. From time to time, Qumulo may modify these Subscription Terms and Conditions. Unless otherwise specified by Qumulo, changes become effective for Customer upon renewal of the then-current Initial Term or Renewal Term or upon the effective date of a new Order Form after the updated version of these Subscription Terms and Conditions go into effect. Qumulo will use reasonable efforts to notify Customer of the changes through communications via Customer's account,

email or other means. Customer may be required to click to accept or otherwise agree to the modified Subscription Terms and Conditions before renewing an Order Form or upon the effective date of a new Order Form, and in any event continued use of the CNQ after the updated version of this Agreement goes into effect will constitute Customer's acceptance of such updated version.

(c) 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 Customer, to the then-current contact information provided by or on behalf of Customer to Qumulo.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) Equitable Relief. Each Party agrees that a breach or threatened breach by such Party of any of its obligations under Section 5 (Confidentiality) or, in Customer's case, Section 1(b) (Use Restrictions), 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, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(i) 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.

(j) Export Regulation. Customer affirms that Customer is not named on, owned by, or acting on behalf of any U.S. government denied-party list, and Customer agrees to comply fully with all relevant export control and sanctions laws and regulations of the United States ("**Export Laws**") to ensure that neither the CNQ, software, any of Customer Data, nor any technical data related thereto is: (i) used, exported or re-exported directly or indirectly in violation of Export Laws; or (ii) used for any purposes prohibited by the Export Laws, including, but not limited to, nuclear, chemical, or biological weapons proliferation, missile systems or technology, or restricted unmanned aerial vehicle applications. Customer will complete all undertakings required by Export Laws, including obtaining any necessary export license or other governmental approval.

(k) U.S. Government End Users. the CNQ, software and Documentation were developed solely at private expense and are "commercial products", "commercial items", or "commercial computer software" as defined in the Federal Acquisition Regulation 2.101 and other relevant government procurement regulations including agency supplements. Any use, duplication, or disclosure of the CNQ, software and Documentation by or on behalf of the U.S. government is subject to restrictions as set forth in this Agreement as consistent with federal law and regulations. If these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue its use of the CNQ, software and Documentation.

(l) 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.

(m) 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.

DEFINITIONS.

(a) "**Affiliate**" means any legal entity that controls, is controlled by, or that is under common control with a party. "Control" for the purposes of this definition means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

(b) "**Authorized User**" means a Customer's or its Affiliates' employee or contractor that Customer authorizes to Use the CNQ.

(c) "**CNQ**" means: (i) Qumulo's cloud native software image, (ii) the associated Qumulo's hosted services, in case of (i) and (ii) as more particularly described or identified in the applicable Order Form; and (iii) any updates, patches, bug fixes and upgrades thereto that Qumulo provides to Customer.

(d) "**CNQ Software License Class**" means the license class applicable to the CNQ (which sets forth the limits, performance, volume or other measurement or conditions of permitted Use) as set forth in the applicable Order Form.

- (e) **“Committed Purchase Agreement”** means an agreement entered into by Customer and Qumulo which enables Customer to order the CNQ under Qumulo’s Qumulo One Program.
- (f) **“Confidential Information”** has the meaning defined in Section 6(a).
- (g) **“Customer Cloud Environment”** means the Customer-controlled cloud services environment provided by Amazon Web Services (AWS) or Microsoft (Azure).
- (h) **“Customer 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 Customer through the CNQ, but excluding, for clarity, Platform Data and any other information, data, data models, content or materials owned or controlled by Qumulo and made available through or in connection with the CNQ.
- (i) **“Data Protection Addendum”** means the Data Processing Addendum found at <https://qumulo.com/terms-hub/agreements/> (**“Global DPA”**).
- (j) **“Disclosing Party”** has the meaning defined in Section 5(a).
- (k) **“Documentation”** means the technical documentation and user manuals and guides found at <https://docs.qumulo.com/> and <https://care.qumulo.com/hc/en-us> that relate to the CNQ, as updated by Qumulo from time to time.
- (l) **“Effective Date”** means the date Customer first enters into an Order Form with Qumulo or one of Qumulo’s Reseller.
- (m) **“Feedback”** has the meaning defined in Section 1(f).
- (n) **“General Liability Cap”** has the meaning defined in Section 11(b).
- (o) **“HIPAA”** has the meaning defined in Section 7(d).
- (p) **“Installation and Training Services”** means the installation and/or training services, if any, set forth in the applicable Order Form.
- (q) **“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.
- (r) **“Liable Party”** has the meaning defined in Section 11(b).
- (s) **“Marketplace”** means the AWS and Microsoft Azure commercial marketplaces.
- (t) **“Marketplace Terms”** means the terms and conditions governing use of a Marketplace.
- (u) **“Multi-Year Order Form”** means an Order Form that: (i) has a term of more than one (1) year; and (ii) provides for payment by Customer of fees for the entire term of the Order Form at the beginning of the first year of the term.

(v) **“Order Form”** means: (i) an order form or other ordering document agreed to in writing or electronically by Customer and one of Qumulo’s Resellers and accepted by Qumulo; or (ii) an order form or other ordering document agreed to in writing or electronically by Customer and Qumulo through a Marketplace, in each case which references these Subscription Terms and Conditions and further describes or identifies the CNQ to be provided by Qumulo to Customer.

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

(x) **“Personal Data”** means any data or information that: (i) is linked or reasonably linkable to an identified or identifiable natural person; or (ii) is otherwise “personal data,” “personal information,” “personally identifiable information,” or similarly defined data or information under applicable data protection laws.

(y) **“Platform Data”** means any data that is derived or aggregated in deidentified form from: (i) Customer Data; or (ii) Customer and/or its Authorized Users’ use of the CNQ, including any hardware metrics, software event logs, globally unique identifiers for files, usage data or trends with respect to the CNQ.

(z) **“Previews”** has the meaning defined in [Section 1\(g\)](#).

(aa) **“Qumulo IP”** means the CNQ, the underlying software provided in conjunction with the CNQ, algorithms, interfaces, technology, databases, tools, know-how, processes and methods used to provide or deliver the CNQ, Documentation, 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.

(bb) **“Receiving Party”** has the meaning defined in [Section 6\(a\)](#).

(cc) **“Reference Fees”** means the fees actually paid or payable to Qumulo under or related to this Agreement in the twelve (12) month period immediately preceding the first event giving rise to the applicable claim made under or related to this Agreement, provided that, in the case of Multi-Year Order Forms, the Reference Fees will be determined by pro-rating the total fees payable during the term of the Multi-Year Order Form across the number of months of that term, and multiplying that by 12.

For illustrative purposes, if a Multi-Year Order Form has a term of two (2) years and the total fees paid or payable to Qumulo are due at the beginning of the first year of the term and are \$500,000, then the Reference Fees will be calculated as follows:

$$\text{Reference Fees} = (\text{total fees}/\text{number of months in term}) \times 12$$

$$\text{Reference Fees} = (\$500,000/24) \times 12$$

$$\text{Reference Fees} = \$20,833 \times 12$$

$$\text{Reference Fees} = 250,000$$

(dd) **“Reseller”** means a Qumulo-authorized distributor or reseller of the CNQ.

- (ee) **“Reseller Arrangement”** means a separate agreement between Customer and a Reseller.
- (ff) **“Third-Party Services”** has the meaning defined in Section 1(d).
- (gg) **“Trial Services”** has the meaning defined in Section 1(h).
- (hh) **“Use”** means to use and/or access the CNQ in accordance with this Agreement and the Documentation.