Qumulo Software License Agreement

This Qumulo Software License Agreement governs the access to and use of the Product/s offered by Qumulo, Inc. ("Qumulo") as set forth in an Order Form to the entity or person placing an Order Form for, or otherwise activating or subscribing to, the Product ("Customer"), unless Customer has entered into a separate written agreement with Qumulo to govern Product use. This Agreement consists of these terms and any associated Order Form(s) (collectively, the "Agreement"). By entering into an Order Form, subscribing in a Marketplace that links to this Agreement, or accessing, activating, or using the Product, Customer agrees to be bound by this Agreement. If Customer is placing an Order Form for the Product as an employee, contractor, or agent of a corporation or similar entity, "Customer" refers to such corporation or similar entity, and the individual represents and warrants that they have the authority to bind such corporation or similar entity to this Agreement. Customer and Qumulo may be referred to herein collectively as the “Parties” or individually as a “Party.” Please refer to Section 14 for defined terms used in this Agreement.

1. SOFTWARE LICENSE; ACCESS AND USE

(a) License Grant. Subject to the terms of this Agreement, Qumulo grants to Customer a limited, non-exclusive, non-transferable, revocable license, without the right to sublicense, during the Subscription Term to: (i) install and use the Product on Qualified Infrastructure during the Subscription Term; (ii) use the Product solely for Customer's internal business purposes; and (iii) use the Documentation in support of the Product. The Product license type, pricing, and capacity limitations are subject to the descriptions and restrictions located in the Software Use Guidelines located on the Qumulo Terms Hub (“Terms Hub”) and the applicable Order Form.

(b) Use Restrictions. Customer will not, and will not permit any person (including Authorized Users) to, directly or indirectly: (i) use the Product beyond the scope of rights expressly granted in this Agreement or in violation of the applicable license class; (ii) copy (except for archival purposes), modify, decrypt, disassemble, reverse compile, reverse engineer, or otherwise attempt to derive the source code of the Product (except to the extent expressly permitted by applicable law); (iii) sell, sublicense, rent, lease, or offer the Product on a service bureau basis to any third party; (iv) use the Product on infrastructure other than Qualified or in any manner that contradicts the license type; (v) remove any copyright notices or proprietary markings; (vi) disclose any performance or benchmarking results or use the Product for competitive analysis; or (vii) use the Product in any manner that infringes any Intellectual Property Rights or violates applicable law.

(c) Authorized Users. Customer will not allow any person other than Authorized Users to Use the Product. Customer may permit Authorized Users to Use the Product, provided that: (i) the Use does not exceed the Product 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 Product.

(d) Third-Party Services. Certain features and functionalities within the Product 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 Product. Qumulo does not provide any aspect of the Third-Party Services and is not responsible for any compatibility issues, errors or bugs in the Product 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 Product.

(e) Cloud Features. From time to time, Qumulo may make available optional updates, features, or functionalities that involve processing, syncing, or storing Customer Data or Metadata within Qumulo's (or its Sub-processors') cloud environments and outside of Customer's Qualified Infrastructure ("Cloud Features"). Customer's access to and use of Cloud Features will be subject to any addendum applicable to that feature located on the Terms Hub and will be incorporated herein by reference. Cloud Features may be enabled by Customer upon execution of an applicable Order Form and/or by configuring in the Product configuration interface (Nexus). Any Cloud Features activated or subscribed to by Customer shall be considered Products for purposes of this Agreement and for any Order Forms or amendments thereto.

(f) 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.

(g) Feedback. From time-to-time Customer or its employees, contractors, or representatives may provide suggestions, comments, feedback or the like with regard to the Product (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 Product.

(h) Previews and Trial Services.

(i) Qumulo may make available to Customer certain products, features, functionalities and services as part of the Product 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 Product 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 and 9 will not apply to Previews and Trial Services.

(i) Resellers and Marketplaces. Customer may procure, or subscribe to, the Product with an Order Form through a Reseller pursuant to a Reseller Arrangement or through a Marketplace pursuant to the applicable Marketplace Terms. For the Product procured through a Reseller, Qumulo will only be obligated to provide the Product 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 Product with the applicable Reseller or Marketplace; (ii) this

Agreement governs Customer's Use of the Product, 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 Product. Notwithstanding the foregoing, to the extent any provision of this Agreement directly conflicts with applicable Marketplace Terms for Orders placed through a Marketplace, such conflicting provisions of this Agreement shall not apply to such Marketplace Orders, and the applicable Marketplace Terms shall govern.

2. CUSTOMER'S OBLIGATIONS

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

(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 Product (including Customer's credentials to access and use the Qualified Infrastructure) 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 Product, 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 Product may only be accessed and used by the specific Authorized User for whom such account is created.

3. SUPPORT. Qumulo will provide Customer with technical support for the Product 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 Product.

4. FEES AND PAYMENT

(a) 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. If Customer fully consumes all Product prepayment before the end of the term of any Order Form, and if Customer continues to Use the Product during such term, then until the expiration or termination of the Order Form: (i) the fees due by Customer will be based on the last applicable rates from the then-current Order Form; and (ii) Qumulo will charge such fees in arrears on a monthly basis. Except for consumption-based or

prepaid subscriptions under Section 5(b) below, 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 Monitoring Tool connections required by Qumulo to measure Consumption or comply with the separate usage collection terms detailed in the Order Form.

(b) Consumption and Prepaid Billing.

(i) For consumption-based or prepaid subscriptions as identified on an Order Form, fees will be calculated based on Customer's actual Consumption of the Product, as measured by Qumulo's Monitoring Tools, which must be connected at all times or comply with the separate usage collection terms detailed in the Order Form. Unless otherwise specified in the Order Form, Customer will be billed monthly in arrears for its usage at the rates identified on the Order Form. If Customer has prepaid for Product usage, Qumulo will deduct the fees for monthly Consumption from Customer's prepaid balance until the balance is depleted.

(ii) Qumulo tracks Consumption metrics as specified in the applicable Order Form through its Monitoring Tools. At the end of each month, Qumulo collects all usage data and calculates total Consumption by applying the applicable rates to each usage measurement. For products with per-minute billing, rates are converted to per-minute rates by dividing monthly rates by 43,800 minutes (730 hours/month x 60 minutes/hour), and the per-minute rate is multiplied by the usage recorded for each measurement period. The final rate may vary slightly due to rounding when applying discount percentages to list rates.

(iii) During any subscription term, if Customer's total usage exceeds any prepaid amounts or committed Consumption amounts, then Qumulo may, at its sole discretion, immediately bill Customer (or the applicable Reseller) for additional amounts or deduct excess usage from any next scheduled payment when paid.

(iv) If at the end of a subscription term Customer has entered into a new committed Consumption contract with Qumulo, then Customer may carry over any remaining committed Consumption amount as specified in the applicable Order Form, subject to the carryover limitations and timeframes set forth therein. During any carryover period, all usage will be charged at the original rates using the same calculation methods. All unused committed Consumption amounts expire after the carryover period specified in the Order Form and will be forfeit.

(v) For subscriptions procured through a Marketplace, payment terms will be governed by the applicable Marketplace Terms. Customer is responsible for all fees incurred for its usage of the Product, regardless of whether such usage was authorized by Customer. Qumulo reserves the right to suspend Customer's access to the Product if any payments are delinquent, whether payable directly to Qumulo or through a Marketplace provider. This Consumption and Prepaid Billing subsection supersedes any conflicting terms in this Section 5 with respect to a consumption-based or prepaid subscription.

5. 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.

6. CUSTOMER DATA

(a) Ownership. Qumulo acknowledges that, as between Customer and Qumulo and except as set forth in Section 6(b), Customer owns and retains all right, title and interest in and to all Customer Data.

(b) License Grant. While Qumulo Core, Qumulo Stratus, and Cloud Native Qumulo are installed on Customer's local and cloud environments and do not involve the processing of Customer Data by Qumulo, in the event that Customer provides access to any Customer Data to Qumulo, and unless otherwise agreed in a separate addendum, 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 Product for the benefit of Customer and Customer's use of the Product; (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 Product and Qumulo's other products, services and technologies during and after the Subscription 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 Subscription 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 or cause a breach of any agreement or obligations between Customer and any third party.

(e) Data Processing Addendum. To the extent that Qumulo processes Customer Data that includes Personal Data under this Agreement in connection with the Product, this Agreement expressly incorporates, and each Party will comply with, the Data Protection Addendum.

7. 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 the Product will substantially conform to the applicable Documentation. Qumulo will use commercially reasonable efforts to correct any reported non-conformity with this warranty, 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 Product, 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 7 will constitute Customer's sole and exclusive remedy and Qumulo's entire liability for any failure to meet the warranty set forth herein.

(c) Exclusions. Qumulo's obligations under Section 7(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 Environment or any other software or hardware of Customer or any third-party used by Customer in connection with the Product; (iii) Customer's failure to use any enhancements, modifications, or updates to the Product that have been provided by Qumulo; or (iv) modifications to the Product by anyone other than Qumulo.

8. INDEMNIFICATION

(a) Qumulo Indemnification. Subject to Sections 8(b) and 8(e), Qumulo will defend Customer against any claim, suit or proceeding brought by a third party ("**Claims**") alleging that Customer's Use of the Product in accordance with the Agreement 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 8(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, updates, or patches to the Product that have been provided by Qumulo; (iv) modifications to the Product by anyone other than Qumulo; or (v) combinations of the Product with software, data or materials not provided by Qumulo.

(c) IP Remedies. If Qumulo reasonably believes the Product (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 Product, 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 8 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 Product.

(d) Customer's Indemnification. Subject to Section 8(e), Customer will defend Qumulo against Claims arising from: (i) Customer Data, including (A) any Claim that Customer Data provided to Qumulo infringes, misappropriates or otherwise violates any third party's Intellectual Property Rights; or (B) any Claim that Qumulo's use 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 Product; and (iii) Use of the Product 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.

9. WARRANTY; DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PRODUCT 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 PRODUCT, 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 PRODUCT WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

10. LIMITATIONS OF LIABILITY

(a) Exclusion of Damages. SUBJECT TO SECTION 10(C), NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING 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 PRODUCT, 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 10(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 FEES PAID OR PAYABLE TO QUMULO UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE APPLICABLE CLAIM, 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 8; (III) BREACH OF CONFIDENTIALITY 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 10 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.

11. TERM; SUSPENSION AND TERMINATION

(a) Term. This Agreement is effective as of the Effective Date and will remain in effect until terminated in accordance with its terms. Each Order Form will terminate upon expiration of the applicable Subscription Term, unless expressly stated otherwise in the Order Form or this Agreement. Unless expressly stated otherwise in the Order Form, each Order Form will automatically renew for an additional twelve (12) month period (each, a "Renewal Term") unless either Party provides written notice of its intent not to renew at least ninety (90) days prior to the end of the then-current Subscription Term. Qumulo may invoice Customer for the applicable fees or the renewed committed contract amount for each Renewal Term in advance. Pay-as-you-go subscriptions through Marketplace do not auto-renew and are subject to the applicable Marketplace Terms. Committed prepaid subscriptions through a Marketplace that are not renewed will automatically convert to a Pay-as-you-go subscription subject to the applicable Marketplace Terms and listed rates. Customer acknowledges that any renewal is subject to the Software Subscription Terms in effect at the time of such renewal. Customer's continued use of the Product following a renewal constitutes acceptance of such terms. If Customer provides less than ninety (90) days' notice of its intent not to renew prior to the expiration of the then-current Subscription Term, a termination fee equal to six months of the expiring total committed contract amount (for Order Forms with committed contract amounts) or six months of the then-current subscription fees (for other

subscriptions) will be due, and Qumulo may invoice Customer for such fee, excluding pay-as-you-go subscriptions. If there is no Order Form currently in effect, either Party may terminate this Agreement upon written notice to the other Party.

(b) Suspension. In addition to any of its other rights or remedies under this Agreement, Qumulo reserves the right to suspend provision of the Product and/or any individual Cloud Feature: (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 Product 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 Product promptly following resolution of the cause of suspension. For suspensions due to overdue payments, excluding pay-as-you-go subscriptions, a re-activation fee equal to six months of the expiring total committed contract amount (for Order Forms with committed contract amounts) or six months of the then-current subscription fees (for other subscriptions) will be due, and Qumulo may invoice Customer for such fee.

(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. If Customer terminates this Agreement for cause in accordance with this Section 11(c), Customer will be entitled to a refund of any prepaid, unused fees Qumulo received under an Order Form.

(d) 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 Product from the Qualified Infrastructure 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; (iii) Customer will return or destroy, at Qumulo's sole option, all other Qumulo Confidential Information in Customer's possession or control and, at Qumulo's request, certify in writing to Qumulo that such Qumulo Confidential Information has been returned or destroyed; and (iv) notwithstanding the foregoing, upon expiration of any Order Form (but not termination of this Agreement), Customer's access to the Product will automatically convert to read-only access for thirty (30) days, after which all access to the Product will terminate. 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.

(e) Survival. This Section 11(e) and Sections 1(b) (Use Restrictions), 1(e) (Reservation of Rights), 1(f) (Feedback), 4 (Fees and Payment), 5 (Confidential Information), 6(c) (Platform Data), 7(c) (Exclusions), 8 (Indemnification), 9 (Warranty; Disclaimer), 10 (Limitations of Liability), 11(d) (Effect of Termination), 12 (Records; Audit), and 14 (Definitions) will survive any termination or expiration of this Agreement.

12. 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 Product 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 Product license and Use restrictions of this Agreement to include, without limitation, compliance with the Product 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 Product solely to verify compliance with this Agreement.

13. 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 this Agreement. Unless otherwise specified by Qumulo, changes become effective for Customer upon the effective date of a new Order Form entered into after the updated version of this Agreement goes into effect. Existing Order Forms will remain governed by the version of this Agreement in effect when such Order Form was executed; provided that for any Order Form that automatically renews, the version of this Agreement in effect at the time of renewal will apply to the renewal term, unless a separate written subscription agreement between the Parties provides otherwise. 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 Agreement before executing a new Order Form, and in any event continued use of the Product under a new Order Form 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 New York 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 New York County, New York 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 (Confidential Information) 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 Product, 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 Product was 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 Product 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 Product.

(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.

14. 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 Product.

(c) **"Cloud Features"** means any cloud-connected, data-syncing, or cloud-hosted features, capabilities, or endpoints provided by Qumulo (or providers on Qumulo's behalf) and integrated into the Product, as further described in an Order Form or the Documentation.

(d) "**Committed Purchase Agreement**" means an agreement entered into by Customer and Qumulo which enables Customer to order the Product under Qumulo's Qumulo One Program.

(e) "**Consumption**" means Customer's measurable use of the Product as tracked and recorded by Qumulo's Monitoring Tools and/or in accordance with the metrics, measurement methods, and calculation procedures specified in the applicable Order Form.

(f) "**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 Product, 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 Product.

(g) "**Data Protection Addendum**" means the Data Processing Addendum found at https://qumulo.com/terms-hub/agreements/.

(h) "**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 Product, as updated by Qumulo from time to time.

(i) "**Effective Date**" means the date Customer first enters into an Order Form with Qumulo or one of Qumulo's Reseller.

(j) "**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.

(k) "**Marketplace**" means any third-party commercial marketplace or digital storefront through which Qumulo makes the Product available for purchase or subscription, including but not limited to cloud provider marketplaces.

(l) "**Marketplace Terms**" means the terms and conditions You agreed to that govern Your use of a Marketplace.

(m) "**Monitoring Tool**" means Mission Q Services, Nexus, or an equivalent monitoring tool made available by Qumulo to Customer.

(n) "**Order Form**" means: (i) an order form or other ordering document agreed to in writing or electronically by Customer and a Reseller 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, including Pay-as-You-Go Subscriptions, in each case which references this Agreement and further describes or identifies the Product to be provided by Qumulo to Customer.

(o) "**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.

(p) "**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 Product, including any hardware metrics, software event logs, globally unique identifiers for files, usage data or trends with respect to the Product.

(q) "**Product**" means the Qumulo software image, including any updates, patches, or bug fixes, Documentation, and any Qumulo-hosted components or Cloud Features that may be provided or integrated with the software. For clarity, Product expressly excludes Customer Data, Third-party Services, and any SaaS-based Qumulo offerings.

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

(s) "**Qualified Infrastructure**" means Customer-controlled infrastructure that meets Qumulo's technical requirements for the applicable Product, which may include, as applicable: (i) hardware that has been certified by Qumulo for compatibility or complies with the minimum system or hardware infrastructure technical and performance specifications published by Qumulo; and (ii) cloud services environment provided by a third-party cloud provider, such as Amazon Web Services (AWS) Microsoft (Azure), Google Cloud Platform (GCP) and Oracle Cloud Infrastructure (OCI), that meets the minimum technical requirements set forth in the Documentation.

(t) "**Qumulo IP**" means the Product, the underlying software provided in conjunction with the Product, algorithms, interfaces, technology, databases, tools, know-how, processes and methods used to provide or deliver the Product, 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.

(u) "**Reseller**" means a Qumulo-authorized distributor or reseller.

(v) "**Reseller Arrangement**" means a separate agreement between Customer and a Reseller.

(w) "**Subscription Term**" means the period of time during which Customer is licensed to use the Product as specified in the applicable Order Form, including any Renewal Terms.

(x) "**Term**" means the period from the Effective Date until the expiration or termination of this Agreement in accordance with its terms.

(y) "**Use**" means to use and/or access the Product in accordance with this Agreement and the Documentation.