# END USER AGREEMENT - US FEDERAL

THIS END USER AGREEMENT ("**AGREEMENT**") IS MADE BY AND BETWEEN QUMULO, INC. ("**QUMULO**"), A DELAWARE CORPORATION, HAVING A PRINCIPAL PLACE OF BUSINESS AT 1501 4TH AVE, SUITE 1600, SEATTLE, WA 98101, AND THE EXECUTIVE AGENCY OR JUDICIAL BODY OF THE US GOVERNMENT LISTED AS THE "ORDERING ACTIVITY" UNDER THE GSA SCHEDULE CONTRACTS OR OTHERWISE IDENTIFIED IN AN ORDER, ("**CUSTOMER**") FOR PURCHASING OR LICENSING PRODUCT AND/OR SUPPORT THROUGH AN AUTHORIZED QUMULO RESELLER. CUSTOMER SHOULD REVIEW THIS AGREEMENT PRIOR TO SUBMITTING AN ORDER TO RESELLER. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THIS AGREEMENT, THEN CUSTOMER MUST NOT PURCHASE OR USE ANY QUMULO PRODUCTS OR SUPPORT OFFERED BY RESELLER.

1. **Definitions**

a. **"Availability"** means the subscription start date identified in the subscription confirmation issued to Customer by Qumulo.

b. "**Certified Hardware**" means hardware that has been certified by Qumulo for compatibility with the Products.

c. "**Documentation**" means the current, generally available, technical documents describing the Products.

d. "**Order**" means the ordering document, such as a purchase order, task order, statement of work, or similar document, that evidences Customer's purchase or licensing of Products and/or Support.

e. "**Products**" means the Qumulo software, in object code, including, but not limited to, the Qumulo Core file system.

f. "**Reseller**" means a third party authorized to resell Qumulo Products and Support to Customer.

g. "**Support**" means any technical support and maintenance services provided by Qumulo.

h. "**Statistical Data**" means information and data provided by Customer through the use of the Products, which may include configuration data, systems logs, core dumps, performance and capacity statistics, and hardware and software failure alerts.

i. "**Terms Hub**" means the website located at the URL: https://qumulo.com/terms-hub, and the applicable information about the Product, Support and Documentation available on said website on the date of the purchase order quote to Qumulo.

2. **Product License**

a. Subject to the terms of this Agreement, Qumulo grants to Customer a non-exclusive, non-transferable, worldwide, limited and revocable license, without the right to sublicense, to use the Products during the Product subscription term, for internal business purposes only and use the Documentation in support of the Products. The Product license type is subject to the descriptions and restrictions located on the Terms Hub and unless otherwise stated shall begin on Availability. Qumulo expressly reserves all other rights. In the unlikely event that any description or restriction located on the Terms Hub creates an unauthorized obligation for Customer, then such description or restriction is deemed stricken.

b. Restrictions. Customer will not, nor will Customer allow a third party to, (i) copy (except for archival purposes), modify, decrypt, disassemble, reverse compile, reverse engineer (except to the extent expressly permitted by applicable law) the Products; (ii) sell, sub-license, rent or offer the Products on service bureau basis; (iii) use the Products in any manner other than installed on Certified Hardware or on a standalone basis as a virtual machine or cloud instance; (iv) remove any copyright or notices; (v) disclose any performance or benchmarking results; (vi) use the Products for competitive analysis or to copy any features, functions or graphics for competitive purposes; or (vii) use the Products in a manner that contradicts the license type.

c. Statistical Data – Customer agrees and acknowledges that (a) the Products have a remote support and "phone home" functionality; (b) such functionality is optional and that Customer may opt in to allow such access when configuring the Products; and (c) by opting in, Customer is expressly granting to Qumulo permission to connect to the Products via remote access. The remote access allows Qumulo to quickly troubleshoot and respond to technical issues. Customer grants Qumulo a non-exclusive, worldwide, royalty-free right and license to use Statistical Data as necessary to provide technical support and to carry out its obligations under this Agreement (or any other agreement in force between Qumulo and Customer) and for no other purpose; provided, however, that Qumulo may (a) observe and report back to Customer on Customer's usage of the Products, and make recommendations for improved usage of the Products; and (b) retain and use de-identified and anonymized Statistical Data to improve Qumulo's products and services.

d. If the Products are in preview or pre-release, provided for evaluation purposes, or made available to Customer without payment, (collectively, "**Evaluation Products**") then Customer may only use the Evaluation Products for internal testing and evaluation purposes using non-production data. Notwithstanding anything to the contrary in this Agreement, Evaluation Products are provided "AS IS," AND WITHOUT A WARRANTY OF ANY KIND.

3. **Support**

a. Subject to the terms of this Agreement, Qumulo agrees to provide Support to Customer during the term identified in the applicable purchase order or other ordering document.

b. Qumulo will use commercially reasonable efforts to correct or fix any failure of a Product to substantially conform to the Documentation. Support are limited to addressing problems that are demonstrable and reproducible. Qumulo makes no commitment or representation regarding the amount of time it will take to diagnose or resolve a problem once reported.

c. Qumulo reserves the right to update, modify or remove available Support at its sole discretion, however, such changes will not reduce the level of Customer's active Support.

d. Customer may receive Support through the Qumulo Care website, by email, by telephone or by any other means available to Qumulo and Customer. Qumulo will have the right to terminate or suspend Customer's access to the Qumulo Care website in the event of any security breach caused by Customer. Customer acknowledges that Qumulo will be entitled to track usage and other statistics on the website, which information may be used by Qumulo to improve its Support or otherwise for its internal business without restriction.

e. Support does not include the correction of (a) issues caused by Customer's failure to implement any newer version of a Product made available to Customer by Qumulo; (b) changes by Customer, or other third parties, to an operating system, network configuration, or

environment that adversely affects the Products; (c) any alterations or modifications of, or additions to, the Products by Customer, or other third parties; (d) use of the Products in a manner for which they were not designed or other than specified in the Documentation; (e) the combination, use or interconnection of the Products with other software, hardware or application not supplied or authorized by Qumulo; or (f) use of the Products on or with hardware other than Certified Hardware.

4. **Fees and Payment**

a. Where Customer purchases from a Reseller, terms related to pricing, payment and other terms of sale shall be agreed upon directly between Customer and Reseller. Qumulo disclaims all liability arising out of disputes between Customer and Reseller.

5. **Limited Warranties**

a. Limited Product Warranty. Qumulo warrants that, during the term of this Agreement, the Products will substantially conform to its published Documentation. Except for the foregoing, the Product is provided AS IS. In no event, does Qumulo warrant that the Product is error free, that the Product will operate with any hardware other than Certified Hardware, or that the Product will satisfy Customer's own specific requirements.

b. Remedies. Customer's exclusive remedy and the entire liability of Qumulo under these limited warranties is to repair or replace any Product that fails to substantially conform to published Documentation during the warranty period.

c. Restrictions. The foregoing limited warranties do not apply if a Product (a) has been altered or serviced, except by Qumulo or an Qumulo-authorized service provider; (b) has not been installed, operated, repaired, or maintained in accordance with Qumulo's instructions; (c) is licensed for beta, evaluation, testing or demonstration purposes for which Qumulo does not receive a payment of full purchase price or license fee; or (d) has been operated outside the usage parameters stated in the Product Documentation.

EXCEPT FOR THE WARRANTIES SPECIFICALLY DESCRIBED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, QUMULO DISCLAIMS ANY AND ALL WARRANTIES AND GUARANTEES, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE PRODUCT DOCUMENTATION AND SUPPORT DELIVERED HEREUNDER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

6. **Intellectual Property Indemnification**

a. Claims. Qumulo will, at its expense, have the right to intervene to defend any suit brought against Customer based upon a claim that the Products directly infringe a patent, copyright, or trade secret and will pay costs and damages finally awarded against Customer that are directly attributable to any such claim, but only on condition that (a) Qumulo is notified promptly in writing of such claim by Customer, (b) Qumulo has joint control (with Customer) of the defense and settlement negotiations, (c) Customer provides Qumulo all information and communications received by Customer concerning such claim, and (d) Customer provides reasonable assistance to Qumulo when requested. Should Qumulo become aware of, or reasonably believe, the Products may be subject to an infringement claim, Qumulo will have the right, at its option and expense, (i) to obtain for Customer the rights to use the Product, (ii) to replace or modify the Product so it becomes non-infringing, or (iii) if (i) and (ii) are not commercially reasonable, accept return of the Product in exchange for a refund not to exceed the purchase price paid by Customer for such Product. Nothing contained herein will be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

b. Restrictions. Qumulo will have no liability for any claim of infringement based on: (i) Customer's use of a Product version that has been superseded by a subsequent version or release where the newer release would have avoided infringement; (ii) use of the Product in combination with other products, equipment or software; (iii) use of the Product in violation of this Agreement; (iv) services offered or revenue generated by Customer; (v) any data or information stored on the Products by Customer or any other third party; (vi) Product that has been altered or modified in any way by anyone other than Qumulo or according to Qumulo's instructions; or (vii) changes to the Product at the request of Customer.

7. **Limitation of Liability and Precautions**

a. INDIRECT DAMAGES. NEITHER QUMULO NOR CUSTOMER WILL HAVE ANY OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS OR SUPPORT DELIVERED TO CUSTOMER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. CUMULATIVE LIABILITY. THE COLLECTIVE LIABILITY OF QUMULO AND ITS SUPPLIERS UNDER THIS AGREEMENT SHALL BE THE PRICE PAID TO QUMULO FOR THE PRODUCTS FROM WHICH THE CLAIM ARISES. FOR PRODUCTS PROVIDED FREE OF CHARGE, QUMULO'S LIABILITY IS LIMITED TO DIRECT DAMAGES OF UP TO $5,000 USD.

c. EXCEPTIONS. THE LIMITATIONS SET FORTH IN SECTIONS 7(a) AND 7(b) ABOVE WILL NOT APPLY TO (A) QUMULO'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS OR VIOLATIONS OF QUMULO'S INTELLECTUAL PROPERTY RIGHTS; OR (B) FOR FRAUD OR CRIMES ARISING OUT OF THE AGREEMENT AS PERMITTED UNDER ANY APPLICABLE FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT (31 U.S.C. 3729-3733).

8. **Confidentiality**

a. Confidentiality. "Confidential Information" means nonpublic information that either party discloses, or has disclosed, to the other which is designated as being confidential or proprietary, or which is of a nature or presented under circumstances that would cause one to reasonably conclude it should be treated as confidential. Confidential Information will not include any information that: (i) is or subsequently becomes publicly available without breach of any obligation of confidentiality by the receiving party; (ii) became rightfully known to the receiving party prior to disclosure of such information by the disclosing party; (iii) became known to the receiving party from a source other than the disclosing party hereunder, other than by breach of an obligation of confidentiality owed to the disclosing party; or (iv) is independently developed by the receiving party without the use of any Confidential Information received from the disclosing party. Neither party will disclose the Confidential Information of the other party to any third party except to its directors, employees, contractors, or consultants to the extent necessary to carry out the purposes of this Agreement, provided that all such recipients are bound by confidentiality obligations substantially the same as those described herein. Each party will protect Confidential Information from unauthorized disclosure in the same manner it uses to protect its own proprietary information, and at least a reasonable degree of care. Each party may use the Confidential

Information of the other party solely for performing its obligations or exercising its rights under this Agreement. Each party may disclose Confidential Information to the extent required by judicial or governmental order or as necessary to comply with any applicable law or regulation, provided that, unless prohibited, the party making the disclosure gives the other party reasonable notice prior to such disclosure. Subject to the Freedom of Information Act, 5 U.S.C. 552, Qumulo represents, and the Customer acknowledges, that Qumulo's Confidential Information includes trade secrets or other data exempted from release due to competitive harm or based on the proprietary nature of the data. However, nothing in this Section restricts any individual from lawfully reporting waste, fraud, or abuse related to the performance of a government contract or subcontract.

9. **U.S. Government Restricted Rights**

a. The Product is a "Commercial Computer Software" as defined in 48 C.F.R. § 2.101. In accordance with 48 C.F.R. § 12.212, any use of the Product by the U.S. Government is, to the maximum extent permitted by law, subject to and limited by the terms and conditions of this Agreement.

10. **Compliance with Laws.**

a. Customer will comply with all applicable laws related to its use of the Products and all applicable import, sanctions, anti-boycott, and export control laws, including the Export Administration Act, the Export Control Act, and end-user, end-use, and destination restrictions issued by the United States and other governments.

11. **Term and Termination**

a. The terms of this Agreement are effective until terminated or until Customer's Order has expired. Customer may terminate this Agreement in accordance with 48 C.F.R. §§ 52.212-4(l) and (m) or GSA Schedule contract clause 552.212-4(l) and (m), whichever applies. Subject to and to the extent not prohibited by 41 U.S.C. § 71 (Contract Disputes Act), Qumulo may terminate this Agreement if it is determined that Customer failed to comply with the terms of this Agreement. During any dispute under the disputes clause, Qumulo shall use commercially reasonable efforts to diligently perform its obligations under this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement. Upon termination, Customer's license to the Products shall immediately cease and Customer shall return or destroy all Products and Documentation in its possession.

12. **Miscellaneous**

a. Choice of Law and Venue. Subject to the Contracts Disputes Act 41 U.S.C. § 71, this Agreement will be governed by the Federal laws of the USA without regard to its choice of law rules, unless federal laws of the United States are not dispositive, then to the extent permitted by federal law, the laws of the State of Washington will govern the Agreement without regard to its choice of law rules. In the event the

Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Agreement or the associated Order.

b. Dispute Resolution and Standing. Any disputes relating to the terms of this Agreement will be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable Orders, and the Contract Disputes Act. The Customer expressly acknowledges that the reseller associated with the Order, on behalf of Qumulo, shall have standing to bring such claim under the Contract Disputes Act.

c. Severability. Any provisions found to be unenforceable will not affect the enforceability of the other provisions contained herein, but will instead be replaced with a provision as similar in meaning to the original as possible.

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

e. Assignment. This Agreement and any rights or obligations of Customer under it may not be assigned, subcontracted or otherwise transferred by Customer, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Qumulo, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

f. Waiver. Failure or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

g. Independent Contractors. The relationship of Qumulo and Customer established by this Agreement is that of independent contractors. Nothing contained herein shall constitute either party the agent of the other party, or otherwise grant either party the authority to bind the other party to any obligation, or constitute the parties as partners or joint venturers and neither party shall hold itself out as being an agent having such authority.

h. Force Majeure. Subject to excusable delays under FAR 52.212-4(f), Qumulo will be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Qumulo and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. .