

# QUMU HARDWARE TERMS

These Hardware Terms outline the terms on which Qumu provides Hardware to a Client pursuant to an Order Form when the Client is using such Hardware in conjunction with Qumu's Cloud Platform or Hybrid Services. These Hardware Terms are made by and between the Qumu entity identified on the Order Form ("Qumu") and the client entity identified in the Order Form (the "Client"). Each Party agrees that the following terms and conditions govern each Order Form and/or SOW that references these Hardware Terms.

## PREAMBLE:

WHEREAS, Qumu, an Affiliate of Qumu, owns and distributes Hardware owned by Qumu or a or a third-party subcontractor of Qumu (as defined below); and

WHEREAS, the Client desires to purchase the Hardware listed in an Order Form in conjunction with its license to use the Cloud Platform, related Software and Hybrid Services (as defined in the Cloud Agreement) pursuant to its agreement to the Qumu Agreement for the Provision of the Qumu Cloud Platform Service (the "Cloud Agreement") and entrance into an Order Form for the use of the Qumu Cloud Platform, related Software and Hybrid Services.

NOW THEREFORE, in consideration of the mutual benefits of the covenants and restrictions herein contained, Qumu and the Client hereby agree to the following terms and conditions:

## 1. ARTICLE 1: DEFINITIONS

The following definitions shall apply to these Hardware Terms and all schedules, exhibits and attachments to these Hardware Terms:

- 1.1. "**Affiliate**" means a company that that is controlled by, controls or has common control with Qumu Corporation or a subsidiary of Qumu Corporation. For the purposes of this article 1.2, "control" means the power to govern the affairs of a company, whether by ownership of shares, by contract or otherwise.
  - 1.2. "**Cloud Platform**" means the systems and data relating to the delivery of video on demand and live video content provided by Qumu. These systems include and are limited to the server and database infrastructure, the media asset store, the application software code, associated components, any relevant configuration options of the Qumu Cloud Platform.
  - 1.3. "**Contract Year**" means a 12 month period commencing with the Effective Date or any anniversary of it.
  - 1.4. "**Delivery Date**" means the date the Hardware is shipped to the Client.
  - 1.5. "**Effective Date**" means either: i) if these Hardware Terms are to be signed, the date the last party executes these Hardware Terms; or ii) if these Hardware Terms will not be signed and will be incorporated by reference under an Order Form or other applicable document, the date the last party executes such Order Form or other applicable document.
  - 1.6. "**FCA**" shall have the meaning given to that term in the Incoterms.
  - 1.7. "**FOB Origin**" shall have the meaning to the term F.O.B the place of shipment as per section 2-319 of the Uniform Commercial Code.
  - 1.8. "**Hardware**" means the tangible items listed in the Order Form and any separate and discrete Hardware devices with integrated software or firmware, on the Client's premises, holding or housing Qumu's intellectual property.
  - 1.9. "**Incoterms**" means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2010 edition.
  - 1.10. "**Order Form**" means an order form attached to or referencing these Hardware Terms.
  - 1.11. "**Qumunity**" means Qumu's help center website available at <https://qumunity.qumu.com>.
  - 1.12. "**Software**" means the software, online use of which is provided to the Client by Qumu pursuant to an Order Form for the Qumu Cloud Platform.
  - 1.13. "**Term**" means a period of time commencing on the Effective Date and continuing until these Hardware Terms is terminated or canceled under article 5.
  - 1.14. "**Third Party Technology**" means third party software, hardware, peripherals, components, devices, equipment and technology used in connection with or related to Hardware.
  - 1.15. "**Warranty Term**" means a period of time commencing on the Delivery Date and ending one year thereafter for Hardware.
2. **ARTICLE 2: HARDWARE**
    - 2.1. Qumu agrees to sell Hardware to the Client pursuant to an Order Form for Hardware between the Client and Qumu.
    - 2.2. Laws and Regulations: The Client shall comply with all applicable laws and regulations of: i) the United States if these Hardware Terms is subject to article 8.8 (b); or ii) the United Kingdom if these Hardware Terms is subject to 8.8 (a), the country in which the Client is located or the Hardware is used, and any other country having jurisdiction.
    - 2.3. End Use: The Client hereby represents and warrants that it shall only use the Hardware for its own use and not for rental, leasing, resale, sublicensing, distribution, outsourcing, or offering service bureau services or software as a service purposes.
3. **ARTICLE 3: DELIVERY AND TRANSFER OF RISK OF LOSS**
    - 3.1. Delivery of Hardware:
      - (a) U.S. shipments. The following terms apply to shipments of Hardware to a destination within the United States:
        - i. Unless otherwise agreed on an Order Form, Qumu shall arrange for the Hardware to be shipped FOB Origin. the Client shall pay all freight charges for the delivery of the Hardware in accordance with these Hardware Terms and the terms of the relevant Order Form. Qumu shall add such freight charges to the Client's invoice for the Hardware purchased by the Client. the Client shall be responsible for procuring all necessary insurance and for filing any claims with the carrier; or
        - ii. Subject to Qumu's prior written agreement, the Client may directly pay a carrier for the Hardware to

be shipped FOB Origin, in which event the Client shall be directly responsible for all shipping costs, procuring all necessary insurance and for filing any claims with the carrier.

(b) Non-U.S. shipments. The following terms apply to shipments to a destination outside the United States:

- i. Unless otherwise agreed on an Order Form, Qumu shall arrange for the Hardware to be shipped FCA, Qumu's premises or other point of origin. The Client shall pay all charges for shipping or related costs after the Hardware leaves Qumu's premises; and
- ii. the Client shall be directly responsible for paying all shipping costs, procuring all necessary insurance and for filing any claims with the carrier.

(c) All shipments of Hardware:

- i. Qumu does not guarantee delivery on a specific date. Delivery schedules are estimates only and are based upon prompt receipt from the Client and appropriate governmental authorities of all necessary information and documentation. The date and time of delivery is not of the essence. In the event that Qumu, or the nominated carrier, fails to deliver within an agreed schedule, for any reason, such failure shall not entitle the Client to terminate these Hardware Terms or cancel the order, and shall not form the basis for a claim for consequential, liquidated or other damages.
- ii. In the event Qumu determines it cannot deliver the full amount ordered, Qumu may allocate deliveries among the affected licensees, including without limitation the Client.
- iii. Qumu reserves the right to deliver in partial shipments or installments.
- iv. the Client hereby agrees that it shall be deemed to have waived any non-conformity which is discoverable upon visual inspection if such non-conformity is not reported to Qumu in writing within three (3) business days after delivery by the carrier or reported orally to Qumu within three (3) business days and confirmed in writing within five (5) business days after delivery by the carrier.

3.2. Transfer of Risk of Loss for Hardware: All risk of loss or damage will transfer to the Client at the time of shipment from Qumu's premises or other point of origin.

3.3. Transfer of Title to the Hardware: Title to the Hardware shall only pass to the Client once Qumu receives payment in full (in cash or cleared funds) for the Hardware. Until title to the Hardware passes to the Client, the Client shall (a) keep the Hardware separate from all other hardware so that they remain readily identifiable as Qumu's property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware; and (c) not encumber, charge, sell or otherwise dispose of the Hardware.

#### 4. **ARTICLE 4: PAYMENT**

4.1. Price and Invoicing: Except as expressly set forth in the applicable Order Form or SOW, the Client shall pay the amounts listed on the applicable Order Form or SOW pursuant to the terms of the applicable invoice and shall pay all invoices within 30 days of the date of invoice.

4.2. Costs: The Client shall pay all third-party costs incurred by Qumu in performing these Hardware Terms. Such costs shall include (without limitation) freight and related insurance fees.

4.3. Taxes: The Client shall pay any and all taxes attributable to these Hardware Terms, to the transactions contemplated hereunder, and to the transactions performed by the Client or third parties using the Hardware, including, without limitation, any applicable value added sales or use taxes. Notwithstanding the foregoing, the Client shall not be responsible for paying any income taxes assessed against Qumu. If the Client is required by applicable law to make any tax deduction or withholding in relation to any payment pursuant to these Hardware Terms, it shall do all things in its power which may be necessary to enable or assist Qumu to claim exemption from the deduction or withholding or (if this is not possible) a credit under any applicable double taxation or similar agreement or treaty from time to time in force, and shall, on reasonable notice, give Qumu proper evidence as to the deduction or withholding and payment over of the tax deducted or withheld.

4.4. Late Fee: Any amount which is not paid when due may, at Qumu's option, be increased by a late charges as follows: i) where article 8.8 (b) applies to these Hardware Terms, a sum equal to 1% of such unpaid amount for each month (or portion thereof) in which such amount is due and not paid, not to exceed the maximum rate allowed by applicable laws or regulations; or ii) where article 8.8 (a) applies to these Hardware Terms, an annual rate equal to the then current rate provided for under the Late Payment of Commercial Debts (Interest) Act 1998, from the due date until up to and including the date that payment is made in full.

4.5. Electronic Payments: If the Client purchases Products from Qumu by means of a Qumu provided electronic purchase or payment system, the Client is responsible for maintaining the confidentiality of the Client's account and password and for restricting access to the Client's computer(s), and the Client agrees to accept responsibility for all activities that occur under the Client's account or password. Qumu will use commercially reasonable endeavors to protect the confidentiality of the Client's credit card or other financial information. the Client is solely responsible for controlling the use or dissemination of any such information within or outside of its organization. **SAVE AS EXPRESSLY SET OUT IN THIS ARTICLE, QUMU SHALL HAVE NO RESPONSIBILITY WHATSOEVER UNDER ANY CIRCUMSTANCES WITH REGARD TO CREDIT CARD OR ANY OTHER FINANCIAL INFORMATION OF THE CLIENT.**

4.6. Purchase Orders: If the Client issues a purchase order in addition to signing an Order Form, then it shall be for the full amount set forth in the applicable Order Form or SOW, and Qumu hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by the Client, and conditions assent solely based on the terms and conditions of these Hardware Terms. Upon request, Qumu shall reference the purchase order number on its invoices, provided, however, that the Client acknowledges that it is the Client's responsibility to provide the corresponding purchase order information (including a purchase order number) to Qumu upon the signing of any Order Form. The Client agrees that a failure to provide Qumu with the corresponding purchase order shall not relieve the Client of its obligations to provide payment to Qumu.

#### 5. **ARTICLE 5: TERMINATION**

- 5.1. Termination Limitations: This Hardware Terms may only be terminated or canceled as provided under this article 5.
- 5.2. Term and Termination:
- (a) This Hardware Terms shall, unless otherwise terminated in accordance with the terms of these Hardware Terms, continue in force for as long as there is an Order Form or SOW existing between Qumu and the Client which incorporates these Hardware Terms.
  - (b) Qumu may terminate these Hardware Terms if the Client fails to make any payment within thirty (30) days after receiving written notice from Qumu that such payment is delinquent; or
  - (c) Either party may terminate these Hardware Terms immediately on written notice if the other party (the **"Defaulting Party"**):
    - i. becomes insolvent (i.e. becomes unable to pay its debts in the ordinary course of business as they come due);
    - ii. makes an assignment of these Hardware Terms for the benefit of its creditors
    - iii. a notice of intention to appoint an administrator is filed with the court or served on any creditor or an application for an administration order is issued at court in respect of the Defaulting Party;
    - iv. a nominee, supervisor, receiver, administrator, administrative receiver or liquidator is appointed in respect of the Defaulting Party, or any creditor takes possession of, or any lien, execution or other process is levied or enforced upon, the assets of the Defaulting Party;
    - v. a winding up petition is presented or any decision is made to convene a meeting to pass a resolution for the winding up of the Defaulting Party; or
    - vi. any event analogous to the foregoing sub-clauses of this article 5.2 (c) occurs in any jurisdiction.
    - vii. Products delivered under hosting arrangements are for specified time periods and may not be cancelled until the end of such agreed period, provided that Qumu may suspend the provision of such Products where the Client commits a material breach of these Hardware Terms, and Qumu may terminate the provision of such Products where it terminates these Hardware Terms.
- 5.3. Cancellation for Cause: If either party commits a material breach of its obligations under these Hardware Terms:
- (a) if the breach is not remediable, the non-breaching party may cancel these Hardware Terms immediately by sending a notice containing full particulars of the material breach to the breaching party; or
  - (b) if the breach is capable of remedy, the non-breaching party may send a notice containing full particulars of the material breach to the breaching party, and the breaching party shall have thirty (30) days from the date of such notice to cure such breach. If the material breach is not cured within the required thirty (30) day period, the non-breaching party shall have the right to cancel these Hardware Terms as of the thirty-first day after the date of the aforementioned notice.
- 5.4. Return: Upon termination or cancellation of these Hardware Terms, the Client shall promptly remove (at Client's expense) any Hardware for which Client has not fully paid, and all materials provided by Qumu to Client hereunder, and shall provide Qumu with a certificate of compliance with this article 5.4 signed by an authorized representative of the Client. Notwithstanding the foregoing, the Client shall be entitled to retain the Hardware purchased and paid for by the Client.
6. **ARTICLE 6: WARRANTY AND LIABILITY**
- 6.1. Hardware Warranty and exclusions:
- (a) Hardware Warranty: Qumu warrants the Hardware against defects in materials and workmanship under normal use for the Warranty Term. If a Hardware defect arises and a valid claim is received within the Warranty Term, at its option and to the extent permitted by law, Qumu will either:
    - i. repair the defect at no charge, using new or refurbished replacement parts; or
    - ii. exchange the Hardware with Hardware that is new or has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original Hardware.
  - (b) Exclusions: Neither the foregoing warranty in article 6.1 (a) nor the terms of any maintenance or support agreement apply:
    - i. to damage caused by use with non-Qumu products without the written permission of Qumu;
    - ii. to damage caused by accident, abuse, neglect, misuse, flood, fire, earthquake, or other external causes;
    - iii. to damage caused by operating the Hardware outside the permitted or intended uses;
    - iv. to damage caused by services (including upgrades and expansions) performed by anyone who is not a representative of Qumu or a Qumu authorized service provider;
    - v. to Hardware that has been modified to alter functionality or capability without the written permission of Qumu;
    - vi. to cosmetic damage, including but not limited to scratches, dents, and broken plastic on ports;
    - vii. if any Qumu serial number has been removed or defaced; or
    - viii. after the Warranty Term has expired.
- 6.2. Third Party Warranties: To the extent permitted under the terms of Qumu's agreements with the relevant manufacturers, Qumu hereby assigns to the Client the benefit of any and all manufacturer warranties for Third Party Technology, and may cooperate (as mutually agreed by the parties) with the Client in securing the benefit of any remedies available to the Client under any such manufacturer warranty.
- 6.3. Disclaimer: THE WARRANTIES SET FORTH IN ARTICLES 6.1, 6.2 AND 6.4 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, QUMU HEREBY DISCLAIMS AND THE CLIENT HEREBY WAIVES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED,

INCLUDING (WITHOUT LIMITATION) ANY AND ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY.

6.4. Express Warranties: The Client hereby acknowledges and agrees that Qumu (including Qumu's officers, employees, agents, directors, independent contractors, affiliates, distributors and successors) has not made or granted any warranties concerning the Hardware except as expressly set forth in this article 6.

6.5. Limitation of Damages:

i. Each of Qumu and the Client shall not be liable to the other in connection with or relating to these Hardware Terms (including under any indemnity), the Hardware, or any transactions involving the Hardware for any: (a) indirect or special losses or damages; (b) lost profits (whether direct or indirect); (c) consequential losses; (d) exemplary losses; (e) incidental losses or damages; (f) loss of or damage to goodwill or reputation (whether direct or indirect); (g) loss of data or use of data; (h) punitive damages; (i) loss of data; (j) loss of business (whether direct or indirect), regardless of the form of action, whether in contract or in tort (including breach of warranty, negligence or under any indemnity), regardless of whether the other party has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable.

ii. Notwithstanding anything herein to the contrary and save in respect of the Client's obligation to pay all undisputed amounts under Order Forms, the liability of Qumu and the Client in any Contract Year for any reason and for any cause of action whatsoever in connection with or relating to these Hardware Terms, the Hardware and any transactions involving the Hardware shall be limited to the fees paid or payable (assuming the Hardware Terms is not terminated, whether or not it is actually terminated) for the use of the Hardware during the then current Contract Year.

6.6. Cooperation: The Client shall cooperate with Qumu by providing Qumu with information concerning Hardware as may be requested by Qumu from time to time and by providing Qumu with access to the personnel, facilities, computers, computer software and data of the Client.

6.7. Repossession: If the Client fails to pay the balance of the price when due (as provided in article 4.1), and the Client fails to make any payment within thirty (30) days after receiving written notice from Qumu that such payment is delinquent, Qumu shall have the right to require the Client to return to Qumu the Hardware and all materials provided by Qumu to the Client hereunder. If the Client fails to return the Products, Qumu shall have the right to enter the Client's facilities and to repossess the Hardware without further notice. If any event of bankruptcy occurs before payment of the balance of the price when due (as provided in article 4.1), Qumu shall be entitled to any and all remedies available to a secured creditor under applicable law, including, as applicable and without limitation, the U.S. Bankruptcy Code and applicable state or federal law.

## 7. **ARTICLE 7: INTELLECTUAL PROPERTY**

7.1. Ownership and Title: Unless otherwise provided for in an Order Form or expressly stated elsewhere, title to Hardware including all ownership rights to patents, copyrights,

trademarks and trade secrets therein or in connection therewith, shall be the exclusive property of Qumu.

7.2. Trademarks: Qumu trademarks, trade dress, logos, trade names or insignia ("**Qumu Marks**") are owned exclusively by Qumu. Qumu shall retain all rights, title and ownership interests in Qumu Marks.

## 8. **ARTICLE 8: MISCELLANEOUS**

8.1. Entire Hardware Terms and Non-reliance: This Hardware Terms and any Order Forms, and any other attachment or exhibit to these Hardware Terms contain the entire understanding of the parties and supersede:

(a) previous verbal and written agreements between the parties; and

(b) the Client's order confirmation or other purchasing related document concerning the Products; and all conflicting terms of such verbal statement or document shall be of no force or effect.

Each party agrees that it has not entered into these Hardware Terms (or any agreement or document entered into pursuant to these Hardware Terms) in reliance upon any statement, representation, covenant, warranty, undertaking or understanding (whether negligently or innocently made) of any person (whether party to these Hardware Terms or not) except as expressly set out in these Hardware Terms. Nothing in this provision shall exclude any liability on the part of either party for fraud or fraudulent misrepresentation.

8.2. Conflict.

(a) In the event of a conflict between the terms of the Terms and the terms of an Order Form, Statement of Work, Schedule, attachment or exhibit to these Hardware Terms, the terms of such Order Form, Statement of Work, Schedule, attachment or exhibit shall prevail.

(b) In the event of a conflict between the terms of the Terms and the terms of the Cloud Agreement, then the terms of the Terms will prevail in relation to Hardware only and the terms of the Cloud Agreement shall prevail in all other circumstances.

8.3. Amendments and Modifications: Alterations, modifications or amendments of a provision of these Hardware Terms shall not be binding unless such alteration, modification or amendment is in writing and signed by Qumu and the Client.

8.4. Severability: If a provision of these Hardware Terms is rendered invalid, the remaining provisions shall remain in full force and effect. This shall not apply if it would be unreasonable for one of the parties to continue to be obligated under the terms of these Hardware Terms.

8.5. Captions: The headings and captions of these Hardware Terms are inserted for convenience of reference and do not define, limit or describe the scope or intent of these Hardware Terms or any particular section, article, paragraph, or provision thereof.

8.6. Governing Law:

(a) For Qumu Ltd Order Forms: This Hardware Terms and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England without reference to conflicts of law principles. In the

event of litigation arising out of these Hardware Terms, each party shall pay its own costs and expenses of litigation, without prejudice to applicable laws governing recovery of the costs of litigation. Venue for any proceeding arising from or related to these Hardware Terms or the transactions contemplated shall be in the courts of London, England and the parties hereby consent to the exclusive personal jurisdiction of such courts. The Client irrevocably waives any objection to the jurisdiction of, or venue in, these courts and agrees that the acceptance of Qumu's Products or Services under these Hardware Terms constitutes doing business in England. The United Nations Convention for the International Sale of Goods shall not apply to these Hardware Terms, its execution, delivery or performance

- (b) For all other Order Forms: Unless an express definition herein or the context hereof otherwise requires, all terms used in these Hardware Terms which are defined in the Uniform Commercial Code, as adopted in the state of Minnesota, shall have the same definition and meaning for purposes of these Hardware Terms and all related transactions and documents. This Hardware Terms and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of the state of Minnesota, without reference to conflicts of law principles. Both parties waive their right to a jury trial. In the event of litigation arising out of these Hardware Terms, each party shall pay its own costs and expenses of litigation. Venue for any proceeding arising from or related to these Hardware Terms or the transactions contemplated shall be in the federal or state courts located in the state of Minnesota and the parties hereby consent to the exclusive personal jurisdiction of such courts. The the Client irrevocably waives any objection to the jurisdiction of, or venue in, either of these courts and agrees that the acceptance of Qumu's Products or Services under these Hardware Terms constitutes doing business in the state of Minnesota. The United Nations Convention for the International Sale of Goods shall not apply to these Hardware Terms, its execution, delivery or

performance.

- 8.7. Notices: Any notice required or permitted to be given in accordance with these Hardware Terms will be effective only if it is in writing and sent using either: (a) Qumunity or e-mail; (b) certified or registered mail; or (c) a nationally recognized overnight courier, to the appropriate party at the address set forth on the Order Form, with a copy, in the case of Qumu, to [legal@qumu.com](mailto:legal@qumu.com). Each party hereto expressly consents to service of process by registered mail. Either party may change its address for receipt of notice by notice to the other party through a notice provided in accordance with this article 8.7. Notices are deemed given one (1) business day after posting on Qumunity if delivered using Qumunity, two (2) business days following the date of mailing, or one (1) business day following delivery to a courier. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).
- 8.8. Import and Export Compliance: In connection with these Hardware Terms, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, the Client is solely responsible for compliance related to the manner in which the Client chooses to use the Products, including the transfer and processing of the Client's content or data and the provision of the Client's content or data to any third party.
- 8.9. Force Majeure: Neither Qumu nor the Client shall be liable for any failure to perform its obligations under these Hardware Terms because of circumstances beyond its reasonable control, which circumstances include (without limitation) natural disaster; terrorism; riot; sabotage; labor disputes; war; acts or omissions of any government, governmental authority or third party; declarations of governments; transportation delays; power failure; computer failure; telecommunications failure; third party technology; or failure of a party to cooperate with the reasonable requests of the other party. Qumu shall not be liable for misuse of the Hardware by the Client or a third party.