



## Sales and Support Terms and Conditions

These Quantum Sales and Support Terms and Conditions (“Terms and Conditions”) set forth the terms governing the purchase, licensing, and provision of the Quantum Products, Support Services, Software as a Service, and/or Cloud Services (as defined below) listed on the Quantum Sales Quote (“Quote”) accompanying and/or referencing these terms, and the limited warranty provided thereon, and are available as updated from time to time at [www.Quantum.com](http://www.Quantum.com). If the purchaser (“Customer”) has previously negotiated and executed a reseller, distributor, master purchase, master services, or a similar agreement setting forth terms of purchase of products and/or services from Quantum by Customer which is in effect at the time of this purchase, that agreement will take precedence over these Terms and Conditions. Otherwise, Quantum’s assent to any agreement between Quantum and Customer for any sale in connection with a Quantum Sales Quote (“Quote”) is expressly conditioned on Customer’s assent to these Terms and Conditions. Customer’s assent will be conclusively presumed if Customer responds by issuance of a purchasing document. Any different, conflicting, or additional terms in Customer’s purchasing document are objected to and deemed rejected unless expressly approved by an officer of Quantum in writing. Capitalized terms shall have the meaning prescribed herein.

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### 1. General Definitions

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#### 1.1 Product

“**Product**” shall be defined as Quantum branded hardware and Software collectively.

#### 1.2 Support Services

“**Support Services**” shall be defined as repair, adjustments, and/or part replacements for the covered Quantum Product as Quantum deems necessary to bring Product in compliance with Product warranty or pursuant to the support plan purchased due to normal Product usage during the Support Term. Support Services do not include Professional Services or Limited Support Services (as defined herein).

#### 1.3 Professional Services

“**Professional Services**” means services requested by Customer and provided by Quantum for an additional fee, and that are excluded as part of Support Services or are specifically identified as Professional Services herein. Professional Services are quoted on the Quantum Sales Quote and may be supplemented by a statement of work detailing the deliverables of the services purchased.

## 1.4 Cloud Services

“Cloud Services” shall be defined as the provision of computing and storage capacity as a service over a network.

## 1.5 Software as a Service

“Software as a Service” (SaaS) shall mean Software, delivered, and managed remotely by Quantum or a Quantum authorized provider, and received as a service by customers on a pay-for-use or subscription basis.

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## 2. Quote

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“Quote” shall refer to the Quantum issued Sales Quote to which these terms apply, and against which Customer issues an order purchasing the items quoted therein. Quantum does not warrant the accuracy of its Quotes in terms of sizing, configuration, cabling, porting, and other details specific to Customer’s network.

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## 3. Delivery

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Delivery of purchased Products will be FCA Quantum’s manufacturing facility (INCOTERMS 2010). Title and risk of loss or damage to the Products shall shift to Customer upon release to the initial carrier for holding or shipment. Customer hereby grants Quantum a purchase-money security interest in all Products to secure payment of the purchase price and any other charges due to Quantum. If delivery of the Products to the initial carrier is delayed in excess of twenty Business Days, Customer may cancel the order involved upon notice to Quantum prior to shipment. Such cancellation right is Customer's sole remedy for any delay or failure in delivery by Quantum. Customer purchases of Products from a Quantum Authorized Reseller shall be shipped pursuant to the terms between the Customer and the Reseller.

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## 4. Prices and Payment

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### 4.1 Generally

Quoted pricing will be valid for thirty days unless a different term is set forth in writing. Customer agrees to pay to Quantum the purchase price set forth in the Quote. The price is exclusive of, and Customer agrees to pay, any applicable federal, state, local or foreign sales or use taxes, tariffs, customs, duties and other governmental charges, and shipping charges.

### 4.2 Software License Subscription Fee

Software License Subscriptions (defined below) shall be invoiced for the amount and on the periodic basis specified in the Quote, in advance of the invoice period, throughout the duration of the subscription term. Thereafter, unless terminated as provided herein or otherwise prohibited by law, the Software License Subscription will **automatically renew** for successive one-year periods under the terms of the then-current Quantum Sales and Support Terms and Conditions, and Customer will be invoiced for the then current list price.

#### **4.3 Fees for Training and Professional Services**

Training and Professional Services may be purchased for the fees quoted. Fees shall be non-refundable, and Customer shall have the time period specified in the quote, or one year from the time of purchase if no time period is specified, to schedule and receive such services, or forfeit the fee. Additional fees may be assessed if costs are incurred as a result of waiting, rescheduling, or other accommodations made as a result of lack of Customer availability, or lack of preparation by the Customer for services scheduled.

#### **4.4 Lapse of Support Contract**

In the event that Customer fails to maintain a current and continuous Support Contract with Quantum or a Quantum Authorized Service Provider, and thereafter seeks to re-enroll into a current Support Contract, such re-enrollment shall be at Quantum's discretion and may require a re-enrollment fee in addition to the fees for the upcoming Support Term. Quantum does not guarantee a level of support immediately following purchase of the renewal contract. Service calls received during this time will be addressed on a best effort basis.

#### **4.5 Payment**

For purchases made directly to Quantum, Customer shall either prepay or complete a credit application requesting payment terms. Payment shall be due in full within thirty days from the date of the invoice in the currency quoted. Payment terms are not guaranteed and are subject to approval and ongoing credit history and timely receipt of payment. Customer purchases from a Quantum Authorized Reseller shall be paid by the Customer pursuant to the payment terms between the Customer and the Reseller. Past due invoices of more than thirty days for Support Contracts may result in termination of the contract and services performed there under.

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### **5. Order Cancellation**

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Subject to Quantum's prior written approval, Customer may cancel an order, or any portion thereof, for standard Products at any time prior to thirty days before shipment when shipment is not delayed. This cancellation right is subject to a cancellation charge of fifteen percent of the purchase price.

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### **6. Termination of Software License Subscription**

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Customer shall have the right to terminate automatic renewal of a Software License Subscription upon notice to Quantum of Customer's decision not to renew at least 60 days prior to the expiration of the subscription term. Quantum shall have the right to terminate a Software License Subscription immediately upon Quantum's determination of breach of the terms of use or upon non-payment. Upon expiration or termination of a Software License Subscription, the license and right to use Quantum Software shall terminate. Subscriptions terminated prior to the end of the pre-paid term shall not be entitled to a pro rata refund of the unused portion of term.

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## **7. Third Party Product**

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Product sold to Customer by Quantum that is the branded product of a third party (“Third Party Product”) shall be identified under the third party brand on the Quote, shall be warranted directly to Customer by the third party, and shall be subject to the terms of use accompanying the product or otherwise distributed by the third party. Certain Third Party Product documentation is available at [www.Quantum.com](http://www.Quantum.com). Notwithstanding any provision herein, subject to any non-excluded rights that you may have under the laws in your country, Quantum makes no representations or warranties regarding Third Party Product, and shall have no ongoing obligations to Customer for the support or maintenance of Third Party Product unless expressly agreed to in writing. Third party software licensed by Quantum and embedded in Quantum branded software or hardware and not separately licensed shall not be considered Third Party Product.

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## **8. Limited Product Warranty**

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SUBJECT TO THE LIMITATIONS SET FORTH BELOW, QUANTUM WARRANTS TO THE END-USER CUSTOMER THAT PRODUCTS (EXCLUDING MEDIA) WILL PERFORM IN ACCORDANCE WITH QUANTUM’S PUBLISHED PRODUCT SPECIFICATIONS, COMMENCING AT THE TIME OF SHIPMENT AND FOR THE DURATION PUBLISHED BY QUANTUM AND SPECIFIED IN THE PRODUCT WARRANTY INFORMATION TABLE ATTACHED HERETO. QUANTUM WARRANTS THAT MEDIA PRODUCTS WILL BE FREE FROM DEFECTS IN MATERIAL AND MANUFACTURE AT THE TIME OF PURCHASE. SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY, CUSTOMER’S SOLE AND EXCLUSIVE REMEDY SHOULD PRODUCT FAIL TO PERFORM ACCORDING TO SPECIFICATIONS, IS REPAIR, REPLACEMENT, OR ACCEPTANCE OF RETURN OF THE DEFECTIVE PRODUCT AT QUANTUM’S SOLE DISCRETION.

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## **9. Support Services and Professional Services Warranty**

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SUBJECT TO THE LIMITATIONS SET FORTH BELOW, QUANTUM WARRANTS TO THE END-USER CUSTOMER THAT THE SUPPORT SERVICES AND PROFESSIONAL SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS WILL BE FREE FROM DEFECTS IN MATERIALS OR WORKMANSHIP FOR THIRTY DAYS FROM THE DATE SUCH SERVICES ARE RENDERED, OR THE REMAINING TERM OF THE THEN CURRENT AND PAID FOR SUPPORT SERVICE PERIOD, WHICHEVER IS LONGER, AND WILL BE PERFORMED BY FULLY TRAINED AND COMPETENT PERSONNEL IN ACCORDANCE WITH INDUSTRY STANDARD TECHNICAL AND PROFESSIONAL PRACTICES AND PROCEDURES. IF A DEFECT COVERED UNDER THIS WARRANTY IS FOUND AND REPORTED TO QUANTUM, SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY, QUANTUM WILL, AT ITS DISCRETION AND AS ITS SOLE RESPONSIBILITY AND LIABILITY, AND AS CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, USE COMMERCIALY REASONABLE MEANS TO CORRECT SUCH DEFECT OR IN THE CASE OF PROFESSIONAL SERVICES REFUND TO CUSTOMER THE SUMS PAID BY CUSTOMER FOR THE DEFECTIVE PROFESSIONAL SERVICES.

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## 10. Disclaimers, and Limitations on Liability

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THE FOREGOING WARRANTIES SHALL BE VOIDED IF THE PRODUCT IS NOT PROPERLY INSTALLED, USED, OR MODIFIED BY A PERSON OTHER THAN QUANTUM OR A QUANTUM AUTHORIZED SERVICE PROVIDER. THIS CLAUSE IS SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY. THE WARRANTIES EXPRESSED HEREIN ARE THE ONLY WARRANTIES MADE BY QUANTUM WITH RESPECT TO THE PRODUCTS AND SERVICES. QUANTUM DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES WILL MEET ALL CUSTOMER REQUIREMENTS, OR THAT THEY WILL BE UNINTERRUPTED OR ERROR FREE. QUANTUM EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, OBLIGATIONS, LIABILITIES, CUSTOMER'S RIGHTS AND REMEDIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE. IN NO EVENT SHALL QUANTUM BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OR ALTERATION OF DATA, DELAYS OR LOST PROFITS OR SAVINGS, EVEN IF QUANTUM IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF THE EXCLUSIVE REMEDIES STATED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. CUSTOMER'S RIGHTS AS STATED HEREIN ARE ITS EXCLUSIVE REMEDIES. EXCEPT FOR QUANTUM'S LIABILITY BASED UPON GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR A VIOLATION OF LAW, QUANTUM'S CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING IN CONNECTION WITH THE PRODUCTS OR SERVICES MAY NOT EXCEED THE MOST RECENT ANNUAL FEE OR THE PRICE PAID. Quantum and its subsidiaries, directors, officers, employees and providers shall in no way be liable for any and all actions, causes of action, liability, claims, suits, judgments, liens, awards or damages of any kind and nature whatsoever (hereinafter referred to as "Claims") for property damage, personal injury or death (including without limitation claims brought by and liabilities to employees of Customer or Quantum or to any other persons) and expenses, costs of litigation and reasonable attorneys' fees related thereto, to the extent such claims arise from any negligent act or omission or willful misconduct of Customer or any of Customer's employees, agents, buyers or contractors (except for Quantum) arising out of or in any way relating to Quantum's presence on Customer's designated premises for the purposes of providing services hereunder. No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of Services, may be brought by either party more than one (1) year after such cause of action accrued.

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## 11. Proprietary Information

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Pursuant to these Terms and Conditions, each party (the "disclosing party") may occasionally provide the other (the "receiving party") with its confidential and/or proprietary information (e.g., equipment, services, components, instruction manuals or installation information, trade secrets, know-how, ideas, concepts and methodologies, customers, prices, product roadmaps, operations and plans and data, etc.) ("Proprietary Information"). The receiving party acknowledges that use or disclosure of Proprietary Information of the disclosing party in any unauthorized manner will destroy its value to the disclosing party. Unless the disclosing party agrees otherwise in writing, the receiving party (including its employees, agents and contractors) (i) will not sell, disclose, copy or reproduce any Proprietary

Information of the disclosing party; (ii) will only permit or allow access to Proprietary Information of the disclosing party to those employees or third parties who require such access in order to perform work on the disclosing party's behalf pursuant to these Terms and Conditions; (iii) agrees to protect the Proprietary Information of the disclosing party as carefully as it would protect its own proprietary information but never less than a reasonable standard of care; (iv) agrees to be responsible for any unauthorized use or disclosure of Proprietary Information of the disclosing party by any of its employees, agents or contractors; and (v) agrees to leave intact all copyright, patent, trademark, confidentiality and similar notices in connection with the Proprietary Information of the disclosing party. The parties agree to return all Proprietary Information to the disclosing party upon the termination of these Terms and Conditions.

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## **12. Intellectual Property**

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Customer agrees and acknowledges that Quantum, its suppliers and its licensors are the owners of all right, title, and interest in and to Quantum-provided Software, SaaS, and Cloud Services, and all Intellectual Property (IP) therein, and that Customer shall not obtain or claim any ownership interest in (i) any IP in Quantum provided hardware, and (ii) any Quantum-provided Software, SaaS, and Cloud Services. Customer shall not, unless expressly permitted by law or by Quantum (i) obscure, alter or remove any patent, copyright, trademark, or service mark marking or legend contained on or in any Quantum Products, SaaS, or Cloud Services, (ii) use any Quantum Products, SaaS, or Cloud Services except as licensed, (iii) permit or enable any third party to use Quantum Products, SaaS, or Cloud Services, unless Quantum provides its prior written consent to such use, (iv) copy, distribute, or transmit all or any portion of any Quantum Software except as expressly permitted, (v) cause or permit the disclosure, copying, renting, licensing, sublicensing, leasing, dissemination, transfer or other distribution of any Quantum Products, SaaS, or Cloud Services by any means or in any form, without the prior written consent of Quantum.

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## **13. Infringement Indemnification**

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Quantum will indemnify Customer for any damages and costs finally awarded against Customer on the grounds that the Products, Support Services, Professional Services, SaaS, or Cloud Services, in the form and condition delivered by Quantum to Customer hereunder, infringe any valid United States patents or copyrights of any third party, provided that Customer notifies Quantum in writing of any such claim within ten days after learning thereof and that Customer gives Quantum full control over the defense and settlement of the claim and fully cooperates with Quantum with respect thereto. If any such claim is brought or appears to Quantum likely to be brought, Quantum may at its option (1) replace or modify the Products, Support Services, Professional Services, SaaS, or Cloud Services to make them non-infringing, (2) obtain rights for Customer to continue using Products, Support Services, Professional Services, SaaS, or Cloud Services, (3) terminate a subscription with no right of refund, or (4) refund to Customer, upon the return of the Products at issue and termination of any licenses, the price paid there for, less twenty percent for each year which has passed since the date of delivery hereunder. Customer shall discontinue all use of any portion of the Products, Support Services, Professional Services, SaaS, or Cloud Services that has been replaced or modified or for

which such a refund has been tendered. Quantum's obligations hereunder shall not apply to any claim based on (1) Quantum's following Customer's specifications or requests, (2) the use of the Products, Support Services, Professional Services, SaaS, or Cloud Services to practice a process not recommended by Quantum, (3) the use of Products, Support Services, Professional Services, SaaS, or Cloud Services in a way that is illegal, unethical, or immoral, or (4) in conjunction with items not supplied by Quantum, and Customer shall similarly indemnify Quantum with respect to any such claims. THE FOREGOING STATES QUANTUM'S SOLE RESPONSIBILITY, AND CUSTOMER'S SOLE REMEDY, FOR ANY INFRINGEMENTS OF ANY PROPRIETARY RIGHTS.

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## **14. Compliance with Laws**

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### **14.1 General Compliance**

Each Party will comply, and will cause each of its employees, agents and subcontractors to comply, with the laws of all governmental authorities and all governmental regulations to the extent such laws are applicable. Each Party will also obtain all required regulatory approvals, licenses and permits.

### **14.2 Import/Export/Re-Export**

#### **14.2.1 Generally**

Customer shall not, unless otherwise authorized by the U.S. Government, supply Products or enable use of SaaS or Cloud Services to entities identified on restricted lists (such as Denied Parties List, Debarred Parties, Specially Designated Nationals, Terrorists, Narcotics Traffickers, Blocked Persons and Vessels, or Entity List). Customer shall not ship or transfer Product or enable use of SaaS or Cloud Services, either directly or indirectly, to the countries identified as restricted in the U.S. Export Administration Regulations, without written approval from the United States Bureau of Industry and Security. Customer will comply with the export and re-export restrictions set forth in any export license (if applicable) or license exception used to ship Products or enable use of SaaS or Cloud Services. Terms of sale or other specific agreement will denote the Importer of Record. Importer of Record shall not violate any import laws, rules, or regulations of the United States and/or any other applicable country. Importer of Record is responsible for all Customs duties and other Customs related fees. Importer of Record is eligible for duty drawback rights to the Products, SaaS, or Cloud Services. Quantum shall mark each Product with the country of origin in compliance with the marking requirements of the United States.

#### **14.2.2 Cloud/SaaS Services**

Customer acknowledges that it will have exclusive responsibility for compliance with United States and multilateral export controls applicable to the data or software it uploads through SaaS or Cloud Services. This responsibility extends to the controls applicable to the computations and derivations (output) from the use of the software or data through SaaS or Cloud Services. Quantum assumes no responsibility to screen the Customer or its own employees from access to such data or Software and their output, or to track or control their export or transfer. Customer agrees to strictly prevent access, export, or transfer of its data, Software, and related output on the Cloud that is controlled under the mentioned regimes to countries and individuals sanctioned by the US Office of Foreign Assets Control (OFAC), the US Export Administration Regulations (EAR), the US International Traffic in Arms

Regulations (ITAR), and other related laws and regulations, as applicable. Customer also agrees to prevent its Software and data uploaded to the Cloud from being used in the development, production, use, or proliferation of weapons of mass destruction (as defined in the aforementioned laws and regulations), to include chemical, biological or missile technologies. Any violation of these and other applicable laws and regulations will be the exclusive responsibility of the Customer. The Customer will indemnify Quantum and its affiliates in the event of investigation or prosecution by any government or government agency responsible for such controls and compensate Quantum for any costs and hardship incurred during and as a result of such an event.

#### **14.2.3 Access Control**

Customer acknowledges and agrees that any access to SaaS, Quantum's Cloud, or Cloud Services given by Customer to any person outside of the countries of the European Economic Area shall be considered as an express written consent to Quantum to supply such services and data, and such consent shall be deemed given by Customer and the relevant person/data subject. Customer shall indemnify Quantum without limit from and against any loss, damage, cost, expense claim, demand, liability, judgment, detriment, fine or compensation it incurs as a result of any breach of data protection rules due to Customer's activity in allowing such access.

#### **14.3 Data Protection**

Customer (a) acknowledges that Customer is the Data Controller and that Quantum is a Data Processor as defined in the European Data Protection Directive 95/46/EC; (b) agrees to comply with Customer's obligations under applicable data protection legislation implementing the European Data Protection Directive 95/46/EC and any amendments, revisions, re-enactments or consolidations thereof in relation to Customer's collection, processing and provision of personal data and sensitive personal data ("Data") provided to Quantum in connection with SaaS or Cloud Services; (c) shall indemnify and keep Quantum indemnified against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of the above provisions by Customer and/or Customer's employees, agents and/or sub-contractors; and (d) acknowledges that Quantum is reliant on Customer for direction as to the extent to which Quantum is entitled to use and process Data. Consequently, Quantum will not be liable for any claim brought by Customer or any Data subject arising from any action or omission by Quantum to the extent that such action or omission resulted from Customer's instructions. Customer shall be responsible to notify Quantum if any Customer data managed, accessed, hosted, or otherwise actively controlled by Quantum in conjunction with Cloud Services is subject to regulatory security or handling processes. Data residing in a customer environment shall not be considered managed, accessed, hosted, or otherwise actively controlled by Quantum.

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## **15. SaaS and Cloud Services**

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Quantum's SaaS and Cloud Services shall be provided under these Terms and Conditions supplemented by the terms of service, use policies, and other documents accompanying the download and available at [www.quantum.com](http://www.quantum.com) by Product ("Supplemental Agreements"). The Supplemental Agreements are hereby incorporated by reference and to the extent the terms of the Supplemental Agreements conflict with these Terms and Conditions, the term of the Supplemental Agreement shall prevail. Download



and/or use of SaaS or Cloud Services constitutes acceptance of the terms of Supplemental Agreements. Customer's use of SaaS and/or Cloud Services shall be limited to the use parameters specified at the time of purchase including but not limited to capacity and/or bandwidth. Customer shall deploy Quantum recommended policies to ensure use within such limitations. Use beyond such limitations will result in additional charges to Customer following Quantum's assessment of the use.

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## **16. Excluded Uses**

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Customer acknowledges that Products, SaaS, and Cloud Services are not absolutely fault-tolerant, and are not designed for use in or resale into hazardous environments requiring fail-safe performance in which the failure of the products could lead directly to death, personal injury or severe physical or environmental damage such as, but not limited to, the operation of nuclear facilities, aircraft navigation or communication systems, direct life support systems, critical safety systems, medical devices, weapons systems or satellite equipment ("high risk activities"). Quantum disclaims any express or implied warranty of fitness for high risk activities. Quantum will have no liability for any claims or damages arising from high risk activities, and Customer will indemnify, defend (with counsel approved in advance in writing by Quantum) and hold harmless Quantum against any and all claims, costs, damages, expenses and liabilities arising out of or in connection with any such use.

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## **17. Classified Environments**

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Purchases of Quantum Product or Services (of any kind) to be located, utilized or performed in US federally classified environments, and requiring response or services by cleared personnel, must be supported by a DD254 which must be generated by the Prime Contractor or the appropriate US Government Agency and issued to Quantum before services can be provided. Failure to do so may result in a delay of or inability to provide service for which Quantum shall not and does not assume liability. Customer shall, at or before the time of purchase, (1) confirm to Quantum whether classified environments are involved, (2) if so, that a DD254 will be issued, and (2) provide the name and contact information for the responsible Prime Contractor Contracting Officer.

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## **18. Software License and Software License Subscription**

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Software Products are licensed, not sold, for use solely on the Designated System under the terms of the license agreement included within the Software or the Software package, however titled. Software Products licensed and paid for on a subscription basis ("Software License Subscription") are licensed for use only during the paid-for period of a subscription term. Use of Software beyond the Designated System or following termination of the subscription shall constitute violation of the License. If used or acquired by the U.S. government, then the U.S. government acknowledges that (a) the software constitutes "commercial computer software" and accompanying documentation constitutes "commercial computer software documentation" for purposes of 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-3, as applicable, and (b) the U.S. government's rights are limited to those specifically granted to Customer pursuant to said license agreement. The contractor/manufacturer is Quantum, 224 Airport Parkway, San Jose, CA 95110.

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## 19. Support Services

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### 19.1 Definitions

In addition to terms defined elsewhere in these Terms and Conditions, the following terms will have the following specified meanings when used throughout these Terms and Conditions:

**"Business Day"** means any day except a Saturday, Sunday, or a holiday observed by Quantum;

**"Business Hours"** means hours between 8:00 a.m. and 5:00 p.m. local time on a Business Day;

**"Critical Error"** means any Software or Firmware Error that is an emergency condition and that causes the Software or Firmware to completely fail to function in accordance with its applicable Documentation and where there is no work-around to temporarily resolve or lessen the problem;

**"Designated System"** means the specific capacity, hardware, workstations, servers, and/or devices enabled by one instance or copy of Software that is specified by Quantum at the time the Software is licensed;

**"Documentation"** means technical manuals describing the operation and use of Product;

**"Error"** means any reproducible failure of the Software or Firmware to substantially comply with its specifications as set forth in the applicable Documentation;

**"Firmware"** means software that resides in or is embedded in hardware, such as programmable read-only memory, and is not separately licensed by Quantum;

**"Major Error"** means any Software or Firmware Error that causes one or more material components to fail to function as specified in its applicable Documentation;

**"Minor Error"** means any Software or Firmware Error that is not a Major Error that causes one or more components of the Software to fail to function as specified in its applicable Documentation;

**"Support Contract"** means an agreement governed by these Terms and Conditions for Quantum to provide Support Services on designated Product;

**"Software"** means the Quantum branded software designated at the time of sale and sold and licensed separately for a Designated System. Software does not include any third party software;

**"Support Term"** means the period of the fully paid Support Contract, available for purchase on a one year or multi-year basis, as may be extended under the terms of a renewal;

**"Update"** means changes to Software or Firmware that Quantum designates as bug fixes, or as minor or incremental updates, and designated by a change in the number to the right of the decimal point of the version number such as 1.1, 1.2, 1.3, etc.; and,

**"Upgrade"** means changes to Software resulting in new functionality or features for which Quantum separately charges its customers in the normal course of its business, and designated by a change in the number to the left of the decimal point of the version number such as 1.0, 2.0, 3.0, etc.

### 19.2 Selection of Provider

Quantum shall determine, in its sole and absolute discretion, whether Quantum will provide the Support Services to Customer or whether Quantum will select a third party subcontractor to perform the Support Services. All requests for Support Services or communication regarding status or maintenance of the Product shall be made to Quantum.

### 19.3 Support Contract Term and Termination

Support Contracts will commence upon issuance of a purchase order by Customer, and will continue for the duration of the purchased Support Term. Thereafter, unless customer notifies Quantum at least 60 days prior to the expiration of the Support Term of Customer's decision not to renew, the Support Contract will **automatically renew** for successive one-year periods under the terms of the then-current Quantum Sales and Support Terms and Conditions, and Customer will be invoiced for the then-current list price. Quantum will not be obligated to provide any Support Services, Updates, or other support after the end of the Support Contract.

### 19.4 Product Support

Support Services shall include unscheduled, on-call Support Services during the hours specified for the level of Support purchased ("Designated Working Hours"), provided after receipt of notice from Customer that Product is malfunctioning or otherwise appears to require support and after Quantum technical support has determined that an on-site visit is necessary. Service on a Quantum recognized holiday will be deferred to the next Quantum Business Day unless 7x24 support is purchased. Recognition of holidays is per custom in each country. A list of Quantum holidays is available upon request from your local service representative. The above reference time frames shall not apply to delivery of non-critical spare parts to remote locations.

#### 19.4.1 Warranty Support

The warranty period and the level of service provided during the warranty period for each Product can be found in the Quantum Product Warranty Information Table at [www.Quantum.com](http://www.Quantum.com).

#### 19.4.2 Uplifted/Extended Support

Uplifted and/or extended Support Services shall be available for purchase subject to regional availability and Product applicability, and provided on an on-call basis in accordance with the level of Support purchased by the Customer.

#### 19.4.3 Parts Replacement

Replaceable parts shall be designated by Quantum as either a Customer Replaceable Unit ("CRU") or a Field Replaceable Unit ("FRU"). CRU's shall be replaced by Customer unless CRU replacement by Quantum is purchased pursuant to a Support Contract. FRU's shall be replaced by Quantum. Subject to any non-excludable rights that you may have under local law, replacement parts shall be either new or reconditioned, and shipped or replaced in accordance with the terms of the level of service purchased.

Certain Product may include spare parts as part of the initial Product shipment ("Critical Spare Parts"). Critical Spare Parts shall be utilized only upon authorization by Quantum after diagnosis by Quantum of the reported service issue.

Customer shall be responsible to replace used Critical Spare Parts, and arrange for acceptance of replacement parts and make them available at the time of on-site service. Delays in acceptance and/or failure to maintain stock of Critical Spare Parts may result in additional cost and/or delay in delivery of onsite service. The Product or parts of Product that are removed or replaced, either by Customer or Quantum will become property of Quantum and must be return shipped to Quantum within 10 business days. All replacement parts shipped to Customer shall be shipped DAP Customer site in

accordance with INCOTERMS 2010. All replaced parts returned to Quantum by Customer shall be shipped DAP designated Quantum return facility in accordance with INCOTERMS 2010. Risk of loss while parts are in the care, custody, and control of Customer shall be with Customer. Damage to, loss of, or failure to return ship replaced parts within 10 business days shall be charged to the Customer and may result in withholding of support until resolution.

Subject to any non-excludable rights that you may have under the laws in your country, IN ORDER TO HAVE ACCESS TO SPARE PARTS, INCLUDING CRITICAL SPARE PARTS, PRODUCT MUST BE COVERED UNDER WARRANTY OR A THEN-CURRENT SUPPORT CONTRACT.

#### **19.4.4 Exclusions**

Support Services do not include: (a) replacement of parts and/or services to repair damage or errors resulting from accident, neglect, or misuse on the part of a party other than Quantum, or modification of Product not approved, authorized or directed by Quantum; (b) replacement of parts and/or services to repair damage resulting from any act of God, including but not limited to storms, fires, floods, and earthquakes; (c) replacement of parts and/or services to repair damage caused by failure to provide or maintain adequate or appropriate electrical power, air conditioning, humidity controls, electrical surge protection, or other facilities or environmental conditions unless such failure is caused by the negligent act or omission of Quantum; (d) replacement or reconditioning of Product which Quantum reasonably believes cannot be reliably maintained or repaired because of excessive wear or deterioration not resulting from any negligent act or omission on the part of Quantum; (e) services on Product which Customer has moved or relocated without notifying Quantum; (f) services requested after unauthorized resale, transfer, or other assignment (actual or constructive) of Product; (g) services required as a result of use of Product beyond its rated capacity, not in accordance with manufacturer published specifications, or not in compliance with these Terms and Conditions or Documentation; (h) services performed outside of Designated Working Hours or after the term of these Terms and Conditions; provided, however, that if Quantum begins to perform services which would otherwise be covered Support Services less than two hours before the end of Designated Working Hours, the first two hours immediately following Designated Working Hours are considered covered by these Terms and Conditions; (i) on-site Software or Firmware Support; (j) services required for correcting Errors if Customer fails to implement any Error correction or Update made available by Quantum; (k) services in connection with removal, relocation or reinstallation of Product; (l) furnishing or replacing expendable supplies, including media such as cassettes, unless damaged by Quantum; (m) installation or maintenance on third party equipment or software, or on product not quoted by Quantum; and (n) production of written reports related to service performed. Service requested for any of the above exclusions shall be considered Professional Services for which Quantum will charge an additional fee. THE OCCURRENCE OF EVENTS (A)-(G) ABOVE SHALL RENDER THE WARRANTY VOID AND/OR SUBJECT A SUPPORT CONTRACT TO TERMINATION.

#### **19.4.5 Installation**

Quantum Products or upgrades that are designated non-customer installable shall require purchase of Professional Services for installation from Quantum, and failure to do so and self-installing such Products or upgrades may void the applicable warranty and/or support contract.

#### **19.4.6 Movement of Product**

If Customer plans to move, relocate, or delete any part of the Product from a Support Services contract, Customer must provide Quantum with 30 days prior written notice. If Customer requests that Quantum dismantle, supervise, inspect, remove or reinstall the Product as part of any move, Quantum will provide a quote for such services. Whether Product is moved by Customer or Quantum, Customer shall be responsible for shipment of Product to new location. Considering the new location of the Product, Quantum may, in its sole discretion: (i) continue performance of Support Services with the condition that Customer is responsible for any additional mileage charges; (ii) terminate the Support Services contract; or (iii) designate a different provider. Movement of Product that is designated non-customer installable as designated by Quantum without notifying Quantum prior to the move shall void the Product warranty and/or any then current Support Contract. Manufacturer supplied packaging is required to move all or partial units to a new location to ensure safe transit and can be purchased from Quantum if not retained by Customer. Inadequate packaging may void the warranty, subject a support contract to termination and/or require Customer to recertify unit at Customer's cost.

#### **19.4.7 Customer Responsibilities**

In addition to responsibilities for fees hereunder, Customer will be responsible for: (a) properly using and controlling access to the Product; (b) permitting Quantum's access to Customer's facilities consistent with Customer's security and operational requirements; (c) promptly notifying Quantum if Customer becomes aware of any unsafe conditions or hazardous materials to which Quantum's personnel may be exposed at any of Customer's facilities; (d) complying with all applicable government laws and regulations; (e) providing prompt notice to Quantum of any malfunction or request for services for the Product; (f) providing full and accurate Product and service installation descriptions as necessary to allow Quantum to fulfill its duties hereunder; (g) performing visual inspection of Product; and, (h) performing standard operational activities. Upon Quantum's request, Customer will provide Quantum remote access to Quantum Product system performance data as reasonably required for Quantum to perform the Support Services and its other obligations hereunder. Obligations of Customer which must be fulfilled prior to Quantum performing any on-site services shall be communicated to Customer at the time services are scheduled. If Customer obligations are not complete upon arrival of the Quantum engineer, Quantum shall have the right to withdraw the engineer and reschedule once Customer obligations are fulfilled, and charge customer the standard rate plus expenses for any time spent on-site while waiting for obligations to be fulfilled. Customer shall advise Quantum of any non-business hour or Saturday/Sunday requirements at the time of scheduling on-site services and may be charged up to a 50% rate increase.

#### **19.4.8 Firmware**

Customer is required to maintain the product at no more than one Firmware revision removed from current production Firmware level to ensure proper operation and servicing of the product. The Customer may be required to install the latest Firmware Update prior to making any CRU or FRU replacements. Quantum will provide Customer with information on any upgrade charges prior to installation of the upgrade. Firmware upgrades may be available for download and able

to be installed by Customer. At Quantum's discretion and upon prior notice to Customer, an additional fee may be levied for Firmware upgrades requiring an onsite visit.

#### **19.4.9 Telephone Support**

Telephone support included with a support contract purchase provides the following: (i) assistance in identifying and verifying causes of suspected Errors; (ii) work-around for identified Errors; (iii) answering questions regarding Software installation and configuration; and, (iv) answering questions regarding differences between Software versions.

#### **19.4.10 Error Corrections**

Quantum will use commercially reasonable efforts to correct any Errors reported by Customer (e.g., by providing a workaround or correction in a Update). If Customer encounters an Error with the Software, Customer must sufficiently define the Error to Quantum so that Quantum can reproduce the reported Error. Non-reproducible Errors may require dispatch of an engineer on-site, which will be charged on a time and materials basis. After receipt of any such written notice of an Error from Customer, Quantum will promptly notify Customer if Quantum cannot reproduce the Error. If Quantum cannot reproduce the Error, Customer will provide such additional information regarding the Error as Quantum may request in order to assist Quantum with reproducing the Error. Customer will provide a separate written notice for each Error encountered by Customer. In its notice of an Error, Customer will reasonably classify for Quantum the initial priority of the Error. Customer will use the nature of the Error and Customer's business circumstances to initially classify each Error. Customer will classify each Error as a Critical Error, Major Error or Minor Error. To the extent that Quantum disagrees with any Error classification provided by Customer, Quantum will promptly advise Customer of the revised classification of any Error.

#### **19.4.11 Updates and Upgrades**

During such periods that Customer purchases Support Services hereunder and pays all fees in connection therewith, Quantum will make available to Customer any and all Updates at no additional charge to Customer. Customer will install any and all Updates within a reasonable time after receipt of such Update or notice of availability. Support is available only for the Update that is currently shipping and the immediately prior Update. Support for the immediate prior Update shall be available for no longer than 12 months after a new Update is generally available. Quantum will provide Customer with access to Updates through Quantum's web site ([www.Quantum.com](http://www.Quantum.com)). These Updates and/or patches will be customer installable, with technical assistance available from Quantum's Technical Assistance Center. Changes to Software designated by Quantum as Upgrades are sold separately and not included in a contract for Support Services. Quantum on-site installation services for Updates and/or Upgrades shall be available to Customer for a fee as Professional Services.

#### **19.5 Limited Support Services**

"**Limited Support Services**" means that the standard Support Services are no longer offered for Product. Limited Support contracts are offered by Quantum for the prices and duration quoted. Limited Support consists of support for errors which can be remedied utilizing the bug fixes and updates then known to Quantum, and does not include support for resolution of novel errors or bugs.

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## **20. Notices**

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All notices, demands, and other communications called for or required by these Terms and Conditions shall be in writing and shall be addressed to the parties at their respective corporate headquarter addresses or to such other address as a party may subsequently designate by ten days' advance written notice to the other party except as otherwise provided in these Terms and Conditions.

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## **21. Integration and Notification**

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Each party acknowledges that it has read these Terms and Conditions, understands it, and agrees to be bound by it. The parties further agree that these Terms and Conditions are the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof, and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. Any provisions or conditions of any purchase order or other document submitted by Customer which are in any way inconsistent with or in addition to these Terms and Conditions are hereby rejected and shall not be binding upon Quantum. No waiver or modification of these Terms and Conditions or of any provision contained herein shall be valid unless in writing and duly executed by Quantum and Customer.

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## **22. Choice of Law**

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These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of California, USA without regard to any conflict of laws rules thereof. In the event of any dispute arising under these Terms and Conditions, the parties agree to the exclusive jurisdiction of the courts located in Santa Clara County, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

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## **23. Severability and Waiver**

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In the event that any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permitted by applicable law and the remaining provisions shall continue in full force and effect. Failure or delay on the part of any party in exercising any rights, power, or privileges under these Terms and Conditions shall not be deemed a waiver of such right, power or privilege.

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## **24. Force Majeure**

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Neither party will be liable hereunder for, or be considered to be in breach of or default under these Terms and Conditions on account of, any delay or failures to perform as required by these Terms and Conditions if such delay or failure is due in whole or substantial part to causes or conditions beyond such party's reasonable control which render timely performance hereunder commercially impracticable, including without limitation strikes, riots, wars, government regulations or acts, acts of God or the elements, fire, flood, material shortages or other causes. The existence of such causes of

delay shall justify extension of the time of performance to the extent reasonably necessary to enable such party to satisfy its obligation hereunder after the cause of delay has been removed.

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## 25. Assignment

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Neither party may assign its benefits or delegate its obligations under these Terms and Conditions without the advance written consent of the other party unless in the context of a sale of all or substantially all of the assigning parties' assets to another entity who is not a competitor to the non-assigning party and who has a reasonably acceptable credit rating.

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## 26. Reseller Provisions

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If purchaser has been authorized to resell Product and/or Services through Quantum's channel partner program ("Reseller"), and has not otherwise executed an agreement with Quantum to do so, the terms specified in this Section 25 shall also apply, as well as any terms and conditions associated with Quantum's channel partner registration process.

### 26.1 Order Process

Reseller shall follow Quantum's designated order process and provide buyer, end-user, Customer, and/or licensee information as required by Quantum.

### 26.2 Export Controls

Reseller agrees to comply with all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce and trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"). Reseller will not -- directly or indirectly -- sell, export, reexport, transfer, divert, or otherwise dispose of Products to any destination, entity, or person prohibited by the laws or regulations of the United States or any other applicable jurisdiction, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Without limiting the foregoing, Reseller agrees to comply with the following:

- a) Reseller will not sell, export, reexport, transfer, divert, or otherwise dispose of Products to prohibited End-Users (as listed on a government maintained list, such as the list of Specially Designated Nationals, the Entity List, Denied Parties Lists, and the List of Debarred Parties) or prohibited destinations (including Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of the Ukraine).
- b) Regardless of any disclosure made by Reseller to Quantum of an ultimate destination of Products, Reseller will not directly or indirectly export or re-export Product without first obtaining, at the Reseller's sole risk and expense, any and all required licenses from the Bureau of Industry and Security ("BIS") at the U.S. Department of Commerce (or its successor), OFAC and any other governmental agency having jurisdiction.
- c) Reseller will inform Customers or any third party to whom Reseller ships Products that such Products are subject to export laws and regulations of the U.S. and applicable foreign countries.



- d) Terms of sale or other specific agreement will denote the Importer of Record. Importer of Record shall comply with all applicable import laws, rules, and regulations of the United States and/or any other applicable country. Importer of Record is responsible for all customs duties and other customs related fees. Importer of Record is eligible for duty drawback rights to Product.
- e) Reseller agrees to indemnify, to the fullest extent permitted by law, Quantum from and against any and all fines, penalties, liabilities or other costs incurred for any reason arising from or connected with any such violation. This export control clause shall survive termination or cancellation of this Agreement.

### 26.3 Ethical and Lawful Behavior

Reseller shall:

- a) At all times comply with all applicable laws and regulations.
- b) Fully comply with any and all applicable laws or regulations regarding the prevention of bribery and corruption, including but not limited to the United States Foreign Corrupt Practices Act of 1977, as amended, the United Kingdom Bribery Act, the United Nations Convention Against Corruption, the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and any similar local, regional, national, or international requirements (collectively "Anticorruption Requirements"). Reseller shall not provide anything of value to any government official or employee, directly or indirectly, in connection with its relationship with Quantum without the prior written consent of the Company. Reseller represents that it is in compliance, and warrants that it shall at all times comply, with Anticorruption Requirements, and shall make no unlawful payment, bribe, payoff, rebate, or other illegal provision to any person. Reseller agrees to permit reasonable inspection of its books and records for audit purposes. If Reseller commits, or if Quantum in good faith believes that Reseller has committed, an action that may result in any violation of Anticorruption Requirements, Quantum shall have the right to immediately terminate this agreement as a termination for cause, and Reseller shall indemnify Quantum for any and all costs Quantum incurs in relation to such action. Reseller acknowledges and agrees that it has no authority to obligate Quantum to third parties except as approved in writing by Quantum.
- c) Refrain from (1) paying or giving any salaries, commissions, fees, payments or rebates, to any employee or officer of Quantum, or to any designee of any such person; or (2) favoring any employee or officer of Quantum, or any designee of any such person, with gifts or entertainment of significant cost or value or with service or goods sold at less than full market value.

### 26.4 Licensing and Terms of Sale

- a) Fully comply with all End-User License Agreements accompanying Software and ensure that Product is distributed only to persons or entities that have reviewed and agree upon the applicable End-User License Agreement available at [www.Quantum.com](http://www.Quantum.com).
- b) Ensure that Product is distributed only to persons or entities that have received and agree upon the Quantum Sales and Support Terms and Conditions contained herein and available at [www.Quantum.com](http://www.Quantum.com). Reseller shall not, under any circumstances, make any representations or

warranties to any End-User or other person or entity that are inconsistent with or in addition to the warranties and representations contained in the Quantum Sales and Support Terms and Conditions.

- c) Ensure that prior to or at the time of sale, the Designated System for which Software is licensed is described with the specificity designated by Quantum to the End-User and/or purchaser. Reseller shall ensure that End-Users comply with the terms of applicable End-User License Agreements and use of the Software on only the Designated System within the Capacity purchased. Reseller shall not enable unauthorized use of Software and shall report any unauthorized use to Quantum immediately.
- d) Ensure compliance with Open Source Software ("OSS") Licenses. Reseller acknowledges that Software may contain OSS and OSS is licensed separately pursuant to the applicable Open Source License. Reseller's use, resale, and distribution of Software containing OSS shall be subject to and Reseller agrees to comply with the applicable restrictions and other terms and conditions of the applicable Open Source License.

### 26.5 WEEE Directive

Reseller shall be considered a "producer" within the meaning of the Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on Waste Electrical and Electronic Equipment (the "WEEE Directive") and shall assume all responsibilities that the WEEE Directive as well as any law or regulations of any member state of the European Union, enacted in connection with such directive, impose on a producer including but not limited to the responsibility to finance and provide for the collection, treatment, and environmentally sound disposal of equipment subject to the WEEE Directive. If Reseller fails to comply with such responsibilities, Reseller agrees to, and does hereby, indemnify and hold Quantum harmless from and against any and all loss, cost, expense, or liability of any kind or nature whatsoever, including without limitation reasonable attorneys' fees, that Quantum may suffer or incur as a result of or in connection with any claim which is based on a producer's obligations and responsibilities under the WEEE Directive.