

# Quantum Corporation

## End User License Agreement

This End User License Agreement (“EULA”) defines the terms and conditions of the license between Quantum Corporation, a Delaware corporation with offices located in San Jose, CA (“Quantum”) and the Licensee (as defined below) for use of Quantum proprietary Software and Documentation. Any right to use the Software or Documentation provided to Licensee by Quantum will be subject to and conditioned upon your acceptance of the terms and conditions of this EULA, and by downloading, installing, or using the Software or Documentation, Licensee signifies its agreement with this EULA. If Licensee does not agree to all of the terms of this EULA, then Licensee may not download, install, use or copy the Software or Documentation, and you must delete any copies of it from your systems.

### 1. Definitions

- a. “**Designated System**” means, without limitation, the specific hardware, workstations, servers, devices (including mechanical, software only or virtual devices), system product key, system MDC, system serial number, Node(s), Primary Storage system, and/or Secondary Storage system, enabled by one instance or copy of Software that is specified by Quantum at the time the Software is licensed.
- b. “**Documentation**” means the manufacturer’s published specifications accompanying Software or made generally available online at Quantum’s website, (as applicable) and any updates thereto, in any form or media provided.
- c. “**Feature**” means a Software functionality which can be licensed for, and depending on, each License Type for a Designated System. For Primary Storage, a Per Tebabyte (TiB) Feature License is available and, depending on Quantum’s product offerings from time to time, may be available in one tier containing all Features or multiple tiers depending on the bundle of Features in such tiers. For Secondary Storage, a Per TiB Feature License is available that enables the use of Secondary Storage. For a Node License, Features can be licensed (not Per TiB) for all Nodes included in the scope of the License.
- d. “**License**” is the license of a bundle of usage rights granted to Licensee by Quantum to use the Software and the Documentation, as further described herein, and shall mean “Perpetual Software License” and “Software License Subscription,” collectively, and the License Types that are available under each.
- e. “**License Fees**” shall mean the fees due by Licensee for the License purchased or a renewal thereof.
- f. “**License Term**” shall mean the period of time Licensee is licensed to use Software, and shall be either:
  - i. perpetual if a Perpetual Software License is purchased and fully paid, or
  - ii. the term of the fully paid subscription if a Software License Subscription is purchased, including any fully paid renewals thereto pursuant to the Terms of Purchase and this EULA.
- g. “**License Type**” means a type of Software License offered and made available for purchase from time to time and may include, but is not limited to, Node License types, Primary Storage Per TiB License types, and Secondary Storage Per TiB License types. A License for any of the License Types can be purchased as a Perpetual Software License or, depending on the type, as a Software License Subscription. For clarification, all legacy Quantum Software licenses and license models are included in the definition of License Type.
- h. “**Licensee**” shall mean the individual or legal entity that downloads, uses, and/or installs Software in any form on the Designated System, including use following installation and/or download on the Designated System by a third party on behalf of the Licensee.
- i. “**Node**” means a device that provides data movement services or primary services for the software and that may be a Quantum branded device or a non-Quantum branded device.
- j. “**Node License**” means a Software License Type that enables a Node or multiple Nodes and authorizes the use of the Software on such Node(s).
- k. “**Open Source Software**” means those third-party software components identified as such in the Documentation or in the “About”, “Readme” or similar files in Software, which are required to be licensed under separate terms and conditions by the supplier of such Open Source Software (“Open Source License”) and which are delivered as part of the Software and any Updates thereto. To obtain a copy of the source code for the Open Source Software, please contact Quantum. A copy of the applicable Open Source License is provided with the Open Source Software, in the Documentation, or via the following link on the Quantum website: <http://www.quantum.com/opensource>.
- l. “**Per Tebabyte**” or “**Per TiB**” means a License that is based on capacity usage with Tebabyte as the base unit (1 tebibyte (TiB) equals 1,099,511,627,776 bytes, or 1024 gibibytes, as defined by the International Electrotechnical Commission). The Licensee is charged a \$\$/per quantity of TiB (\$\$/xx TiB) License Fee based on the quantity of TiB capacity licensed for use. Per TiB Licenses are available for certain License

Types including, but not limited to, licenses for Primary Storage and Secondary Storage (Storage Manager software).

- m. **"Perpetual Software License"** shall mean the right to use Software on a perpetual basis.
- n. **"Primary Storage"** means the storage tier in which data originates, as allocated into a file system. Primary Storage devices include, but are not limited to, hard-disk drives, shared block storage such as iSCSI and Fibre Channel, or other block based storage devices.
- o. **"Sales Quote"** shall mean Quantum's or Quantum's Authorized Reseller's sales or price quote against which Licensee placed an order concurrently or prior to the effectiveness of this EULA.
- p. **"Secondary Storage"** means the storage used as part of an archiving and/or data protection scheme, generally configured via policy within StorNext. Data in Secondary Storage originates from a Primary Storage source and is then copied to Secondary Storage. Secondary Storage includes, but is not limited to, tape, public cloud, private cloud, NFS, and block based storage devices.
- q. **"Software"** means the current version of Quantum proprietary software components or software Features identified on, or the License to which is identified by type on, the Sales Quote and/or accompanying this EULA, and any Updates thereto in executable/object code format and/or accessed by remote means. Software, as the defined term is used herein, does not include Open Source Software, although some of the Software components may work together with, rely on, or be relicensed as Open Source Software components by Quantum, such Open Source Software components are subject to their respective separate licenses as specified in the Documentation and shall not be deemed as part of the Software and thus not subject to this EULA, provided that by accepting this EULA, the Licensee agrees to be bound by such separate licenses as are identified in the Documentation.
- r. **"Software License Subscription"** shall mean Software licensed and paid for on a subscription basis.
- s. **"Standard Maintenance and Support"** as used herein shall refer to: (i) "Maintenance," defined as the provision by Quantum of any non-custom Updates, workarounds, or corrections made generally available by Quantum to customers entitled to them, and (ii) "Support," defined as the e-mail and telephone technical services that Quantum offers regarding the use and function of the Software. Maintenance and Support are made available by Quantum to customers based on terms and conditions under a separately purchased support contract for some License Types, or at no additional charge under a Software License Type that includes such Maintenance and Support in the License Fees. For the avoidance of doubt, Maintenance does not include the right of access to and use of new or bundled product offerings made available by Quantum for a fee, unless licenses for such offerings are separately purchased.
- t. **"Terms of Purchase"** shall mean the Quantum sales and support terms and conditions (however titled) accompanying the Sales Quote (also available at [www.Quantum.com](http://www.Quantum.com)) and incorporated herein, unless other negotiated terms of purchase have been agreed upon in writing between, and executed by, Licensee and Quantum. A Quantum issued document (including Sales Quote and confirmation letter, however named) or online interface (such as Quantum's StorNext licensing website, however named, that serves as a license management tool) that identifies, monitors, or provides visibility into, the specific licensed Software and usage rights being licensed including, without limitation, Designated System, License Type, version, quantity, capacity, License Term, territory, status, authorization, usage, and such other license compliance elements as may be applicable, shall be considered included and incorporated into both the Terms of Purchase and this EULA.
- u. **"Update"** means changes to Software or Firmware that Quantum designates as bug fixes, or as minor or incremental updates, which may be 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., or which may be included in Standard Maintenance provided as part of a Software License Subscription or a Perpetual Software License.

## 2. License

- a. **License Grant.** Licenses shall be sold and granted as either a Perpetual Software License or a Software License Subscription as described on the Sales Quote ("License Term"). Subject to, (i) Licensee's compliance with the Terms of Purchase and this EULA, (ii) payment in full of the applicable License Fees, and (iii) the license constraints applicable to the License Type purchased, Quantum grants to Licensee, for the period of the License Term purchased, a limited, personal, non-exclusive, non-transferable license for internal use, without the right to sublicense, to (i) use, install, and operate, within the authorized scope of the License Type purchased for the Designated System, a single copy of, and/or manage access to, the purchased Software or Features on the Designated System, and within the purchased capacity of the fully paid Per TIB license(s), or of the total amount of data that the Designated System can or has been enabled to hold and/or process or that may be under authorized management by the licensed Software, as specified by Quantum in the Terms of Purchase applicable to Licensee's purchase of the Software License, and (ii) make a reasonable number of copies of the Documentation for Licensee's internal use, and use the Documentation solely in support of Licensee's internal authorized use of the Software.

- b. By accessing and commencing use of the Software under these terms and the Terms of Purchase, Licensee agrees to obtain additional Licenses for the Software before it exceeds, or is likely to exceed, or if Quantum has notified Licensee that it exceeds or will soon exceed, any of the scope, capacity, time and use limitations applicable to Licensee's License Grant, and failure to do so is a violation of the terms of the License. Should Licensee exceed any such License limitations without payment therefor Licensee shall be out of compliance and shall have a 30-day grace period to purchase the additional or renewal license in order to return to or remain in compliance. Failure to do so may result in reduced functionality of the Software or its Features, or the withholding of delivery of license keys or the provisioning of Maintenance and Support. In addition, Quantum shall have the right to accelerate the due date of all remaining payments and Licensee will owe the entire outstanding balance as soon as Licensee receives written notice from Quantum that payment is overdue.
- c. Exclusions. The License does not include the right to sublicense or transfer the Licensee's user rights in the Software or the Documentation to any third party by means of sale, lease, loan, rent, license or otherwise. Except if otherwise explicitly agreed in writing by Quantum, Licensee is not entitled to resell or distribute the Software or the Documentation. Licensee expressly acknowledges that operation of the Software requires that Licensee has or obtains, at Licensee's sole cost and expense, appropriate hardware and third-party software such as (but not limited to) operating systems. This EULA does not grant any license in or to any other software than the Software, and Licensee is responsible for procuring all such necessary third-party software or other hardware or equipment.
- d. Open Source. Licensee acknowledges that Open Source Software is licensed separately pursuant to the applicable Open Source License. Licensee's use of any Open Source Software shall be subject to and Licensee agrees to comply with the applicable restrictions and other terms and conditions of the applicable Open Source License.
- e. Licensee Feedback. Licensee is encouraged to communicate to Quantum any useful or relevant information that may complement or improve the Software or may be useful to Quantum's activities, such as technical improvements to the Software, marketing opportunities or existence of competing solutions. To the extent that Licensee provides such information to Quantum, Quantum will be entitled to freely use and exploit such information (even after expiration or termination of the License) for whatever reason or purpose and in whatever form or manner, without reference to its source or other obligation to Licensee.
- f. US Government Rights. If the Licensee is the United States government, Licensee understands and agrees that the Software, Documentation, Maintenance, Support, installation and repair services are provided as "Commercial Items" as defined at 48 CFR 2.101 and are being licensed to U.S. Government end users consistent with 48 CFR 12.212 and DFARS Section 227.7202, as applicable.
- g. Import/Export Regulation. Software and Documentation, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import laws and regulations in other countries. Licensee agrees to comply strictly with all such laws and regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software or Documentation. Without limiting the generality of the foregoing, Licensee will not export, make accessible, or transfer the Software, or any direct product thereof, to any destination, person, national or entity blocked, denied, designated, restricted or prohibited by the export control laws and regulations. Licensee expressly acknowledges and agrees that only Licensee, and not Quantum, is responsible for verifying whether the applicable laws and regulations of the country where Licensee intends to install and use the Software and Documentation, allows the installation and/or use of the Software and Documentation, and for obtaining all necessary permits, licenses and authorizations required to be able to so install and use the Software and Documentation.
- h. License Compliance Monitoring and Reporting. Licensee will monitor and track access to and use of the Software and shall have sole responsibility to ensure Licensee's compliance with this EULA and all laws and regulations which apply to the Software, its installation, use, payment for use, and accounting thereof, including the Sarbanes-Oxley Act. Licensee hereby agrees that Quantum's compliance with such laws requires it to maintain controls over accurate financial reporting of Software usage and payment therefor. Accordingly, Licensee shall input a product key when prompted to do so to activate the Software, and upon request Licensee hereby agrees to provide to Quantum, or provide Quantum access to, relevant payments and usage information, documents, Log-files, etc., on at least a quarterly basis (including through uploads to Quantum's licensing website and license management tool) as reasonably necessary to permit Quantum to monitor Software access and usage and to allow it to have a reasonable assurance that it is and remains in compliance with the accuracy and integrity requirements for financial reports relating to Licensee's acquisition, payment and use of the Software License purchased from Quantum. Licensee will not use the Licensed Software or the license management tool in a manner that circumvents or interferes with the proper operation of the Software or license management tool, or any

other technological measure that controls, regulates, monitors or reports access to and usage of the Software.

- i. **Standard Maintenance and Support.** Standard Maintenance and Support (excluding onsite support/professional services) related to the Licensed Software shall be governed by the applicable Quantum support terms and conditions (however titled) included in the Terms of Purchase on the Sales Quote, and those terms are incorporated herein by reference. The License Fees for some License Types include the Standard Maintenance and Support and, subject to full payment thereof, for such Licenses Standard Maintenance and Support is provided for the duration of the purchased License Term applicable to the Licensed Software and shall co-terminate with the expiration or termination of such License Term. Support for License Types that do not include Standard Maintenance and Support in the License Fee shall be provided for the duration of the separately purchased support contract. Standard Maintenance and Support services that remain unused at the end of, or upon termination of, the License Term will be forfeited and Licensee shall not be entitled to any refund for unused portions.

### 3. **Software Ownership and Protection**

- a. **Title to Software.** The Software, Open Source Software and Documentation are licensed, not sold. All right, title, and interest in and to the Software, Open Source Software and Documentation and in any ideas, know-how, and programs which may be developed by Quantum in the course of providing support and maintenance, including any enhancements or modifications and all intellectual property rights embodied therein, will at all times remain the property of Quantum or its licensors. Licensee hereby acknowledges that Software is protected by the copyright laws and other laws pertaining to intellectual property and proprietary rights in the United States and other countries. Licensee is aware that this License confers only the right to the use of the Software under the scope and capacity limitations applicable to the purchased License, while this License is in effect. It does not convey any rights of ownership in or to the Software, Open Source Software or Documentation. Nothing in this EULA shall limit in any way Quantum's right to develop, use, license, create derivative works of, or otherwise exploit the Software or the Documentation, or to permit third parties to do so. Licensee shall reproduce and include all, and shall not remove, alter or obscure any, copyright, trademark and other proprietary notices in and on any copies of the Software and Documentation.
- b. **Restrictions.** Licensee will not itself or permit others to do any of the following:
  - i. use the Software or exceed the License Grant without payment for such use;
  - ii. sell, sublicense, transfer, assign, publish, disclose, display, provide access via a network or otherwise make available the Software or Documentation or any copy thereof to others;
  - iii. remove, obscure, or alter any copyright, trade secret, trademark, patent or other proprietary rights notice affixed to or displayed on the Software or Documentation;
  - iv. modify, merge with other programs or translate any portion of the Software or Documentation into any other assembly or language;
  - v. attempt to reverse-assemble, reverse engineer, decompile, disassemble or otherwise reduce the Software to any human perceivable form, or extract or attempt to extract any source code, algorithms, methods, ideas, techniques, workflows or hierarchies from or embodied in the Software or any portion thereof, except to the extent expressly permitted by law;
  - vi. modify, adapt, translate, rent, lease, loan or create derivative works based upon, distribute, display or publish (publicly or otherwise), relicense or sublicense, the Software, Documentation or any part thereof, or use the Software or Documentation for third-party training, commercial time-sharing or service bureau use;
  - vii. disclose or publish performance benchmark results for the Software without the prior written approval of Quantum; or
  - viii. time-sharing or the rental of the Software or use of the Software in the development or marketing of a competitive or compatible product.
- c. **Access Protections.** Licensee agrees to secure and protect the Software, Designated Systems and Documentation, and copies thereof, from unauthorized access and use in a manner consistent with Quantum's rights therein, and to take appropriate action to meet its obligations in this EULA by instruction of or agreement with its employees, agents, subcontractors or others who are permitted access to the Software, Documentation and Designated Systems. All derivative works, programs or copies developed by or for Licensee whether in compliance with, or in violation of, this EULA, including translations, compilations, partial copies and up-dates, are owned by Quantum ab initio, or otherwise the proprietary rights thereto shall hereby be deemed automatically assigned to Quantum as of the moment of their creation.
- d. **Licensee Responsibility for Data Protection.** Licensee has sole responsibility for use of Software and any information entered, used, or stored thereon, including responsibility for protection of its data against modification, destruction, or disclosure, and for the accuracy and integrity of the data. Quantum assumes

no responsibility for Licensee's negligence or failure to protect its data. Licensee agrees to follow the operation procedures published by Quantum including, but not limited to, procedures for routine maintenance of the Software. Licensee shall implement, and is solely responsible for implementing, procedures for the back-up and protection of data and other information in the event of errors or malfunctions of the Software or Designated Systems on which the Software is used. Licensee shall properly train its staff in the use and application of the Software and of any Designated Systems on which the Software is used or installed.

#### 4. **Term and Termination**

- a. **Commencement and Duration.** The term of this EULA commences on the earlier of (i) the date of shipment of the Software to the Licensee or (ii) the date on which the Software is delivered to Licensee or otherwise made available to Licensee for access or download, and will remain effective through the purchased License Term unless and until earlier terminated by Quantum or not renewed by Licensee in accordance with the terms of this EULA. A License purchased as a Software License Subscription, upon expiration of the initial License Term or renewal term thereof, and without written notice of Licensee's intent not to renew at least sixty (60) days prior to expiration of the then current term, will automatically renew for another consecutive term of twelve (12) months (or of the same duration as the License Term originally purchased) and Quantum will issue to Licensee a Sales Quote and/or invoice for the applicable renewal subscription License Fee due, which shall be based upon a true-up/reconciliation of the licensed capacity, scope and usage of the Software with the actual capacity and usage of the Software as of the date of the renewal, in order for Licensee to remain in compliance.
- b. **Termination for Cause.** Without prejudice to either party's other rights accorded to it by this EULA or by law, Quantum may terminate this EULA with immediate effect by written notice to Licensee if Licensee is in non-compliance herewith or breaches this EULA in any way, and does not in good faith cure, or initiate a cure of, such breach within thirty (30) after receipt of notice of such breach. Licensee's failure to make full payment for the Software License purchased and/or for use of the Software in excess of the scope of the paid-for License shall constitute breach hereof.
- c. **Termination or Non-Renewal of Software License.** Licensee shall not be entitled to a refund of any pre-paid License Fees upon termination or non-renewal of a License for any reason and regardless of the effective date of termination or non-renewal. In addition, Quantum shall be entitled to charge in arrears, and receive payment of, License Fees for any usage or continued usage of the Software in excess of the paid-for License scope or capacity and/or beyond the period of the paid-for License Term in the event such usage extends beyond the effective date of termination or non-renewal of the License.
- d. **Effect of Termination.** If the License Term expires or is terminated for any reason:
  - i. Licensee's right to use Software shall cease immediately;
  - ii. Licensee shall immediately cease access to or use of the Software and Documentation;
  - iii. Licensee will continue to have the ability to retrieve data for the time period specified by Quantum if data retrieval functionality will cease;
  - iv. Quantum shall have no further obligation to support Software functionality (co-termination of support contract).
  - v. Licensee shall have no further access to Software Updates.
  - vi. Upon request by Quantum, Licensee shall certify, within thirty (30) days after the effective date of termination that access has been terminated and/or that Licensee has permanently deleted, destroyed, or, at Quantum's option, has returned to Quantum, the Software and the Documentation and all copies thereof.

#### 5. **Disclaimer and Limitation of Liability**

- a. THE LICENSEE HAS THE SOLE RESPONSIBILITY FOR THE ADEQUATE PROTECTION AND BACK-UP OF ITS DATA USED IN CONNECTION WITH SOFTWARE. IN NO EVENT SHALL QUANTUM BE LIABLE TO CUSTOMER OR ANY THIRD PARTY UNDER ANY THEORY OF LIABILITY FOR LOST PROFITS AND/OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, (I) LOSS OF REVENUE, BUSINESS OR USE; (II) LOSS OF ANTICIPATED SAVINGS; (III) LOSS OF ACTUAL OR ANTICIPATED BUSINESS AND/OR GOODS; (IV) LOSS OF GOODWILL; (V) LOSS AND/OR CORRUPTION OF DATA AND/OR OTHER INFORMATION, (VI) LOSS AS A RESULT OF THIRD PARTY CLAIMS; AND/OR (VII) THE COST OF PROCURING REPLACEMENT GOODS AND/OR SERVICES. FOR THE AVOIDANCE OF DOUBT, THE TYPES OF LOSS AND/OR DAMAGE SPECIFIED IN (I) THROUGH (VII) SHALL NOT CONSTITUTE DIRECT LOSSES FOR THE PURPOSES OF THIS EULA. THE FOREGOING LIMITATION WILL APPLY EVEN IF QUANTUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, QUANTUM'S AGGREGATE LIABILITY TO CUSTOMER FOR CLAIMS ARISING FROM THE

SOFTWARE, THE DOCUMENTATION OR THIS EULA, WHETHER FOR BREACH, INFRINGEMENT, IN TORT, INDEMNIFICATION OR OTHERWISE, SHALL BE LIMITED TO THE LICENSE FEES ACTUALLY RECEIVED BY QUANTUM HEREUNDER FOR CUSTOMER'S USE OF THE SOFTWARE. For the avoidance of doubt, Quantum shall have no liability or responsibility for problems in the Software, Documentation or other deliverables caused by misuse or the malfunction of the network or any third-party software, hardware or equipment or any other cause not attributable to Quantum.

- b. Open Source Software is provided "AS-IS", WITHOUT ANY WARRANTY OF ANY KIND, AND QUANTUM FURTHER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO OPEN SOURCE SOFTWARE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER QUANTUM NOR THE LICENSORS OF OPEN SOURCE SOFTWARE SHALL HAVE ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF DATA AND LOST PROFITS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OR DISTRIBUTION OF THE OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 6. General

- a. Non-Waiver. The failure by Quantum at any time to enforce any of the provisions of this EULA or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this EULA. The waiver of any default by Quantum shall not be deemed a continuing waiver but shall apply solely to the instance to which such waiver is directed.
- b. Verification and Audit. Upon ten (10) days' notice to Licensee, Quantum shall have the right to (or to have a third party) inspect and audit Licensee's books, records and systems to confirm Licensee's compliance with the use, scope and capacity of the License it purchased and the provisions of this EULA. Licensee agrees to fully cooperate in good faith with any such inspection and audit and shall provide all access to its books, records and systems as reasonably required for Quantum to confirm Licensee's compliance. In the event that the audit reveals unauthorized use of the Software, or use beyond the purchased and paid for License Term or scope of usage limitations and restrictions applicable to the Software, then, without prejudice to Quantum's other rights (including termination of the License), Licensee shall promptly pay the License Fees to cover all unauthorized, unlicensed and/or unpaid use of the Software disclosed by the audit starting from the date such use was presumed to have begun. A reinstatement fee of fifty percent (50%) of the License Fees payable for such unlicensed use may apply. Licensee agrees that all unlicensed use of the Software shall be presumed to have started on the first day on which the Software was made available to Licensee (through shipment, delivery or otherwise), unless Licensee proves otherwise to the satisfaction of Quantum. If the audit determines that Licensee underpaid the License Fees by more than five percent (5%), Licensee shall pay Quantum's reasonable costs and expenses for the audit (including transportation, travel, and if applicable the cost of the third-party auditor). Such payments shall be in addition to and without limitation of any rights or remedies which Quantum may have hereunder, at law, or in equity, arising out of or related to any other breach by Licensee of its obligations hereunder, nor shall it relieve Licensee of otherwise complying with this EULA. This Verification/Audit clause shall survive the expiration and/or termination of this EULA for any reason and shall stay effective until three (3) years after the expiration or termination of this EULA.
- c. No Assignment or Modification. This EULA may not be assigned, delegated or otherwise transferred by Licensee, by merger, acquisition, change of control, operation of law or otherwise, without the express prior written authorization of Quantum, which may withhold consent in its sole discretion. Any attempt by Licensee to assign, delegate or otherwise transfer this EULA in violation of the foregoing restrictions shall be null and void and a breach and Quantum shall have the right, in addition to any other remedy available at law or in equity, to terminate this EULA immediately or at any time subsequent to such breach. This EULA can only be modified by a written agreement executed by the parties.
- d. Governing Law and Venue. This EULA shall be governed by and construed in accordance with the laws of the State of California, United States of America, as if performed wholly within the state and without regard to any conflict of laws rules thereof. All disputes arising under this EULA shall be resolved by a court of competent jurisdiction in Santa Clara County, California and the parties hereby irrevocably agree to submit to the personal and exclusive jurisdiction and venue of such courts.

- e. Modification. This EULA may not be modified or amended except in a writing signed by a duly authorized representative of each party. No other act, document, usage or custom will be deemed to amend or modify this EULA.
- f. Severability. If any part of this EULA is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this EULA, which will continue to be valid and enforceable to the fullest extent permitted by applicable law. The invalid or unenforceable part or provision shall be replaced with a provision negotiated in good faith between the parties which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner.
- g. Language. This EULA is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the parties. All communications and notices to be made or given pursuant to this EULA shall be in the English language. Licensee waives any right to have it written in any other language. Section headings are for convenience only.
- h. Confidentiality Obligations. "**Confidential Information**" shall mean the Software, its source code, the content of the Documentation, any financial, statistical, business, technical, copyright, and confidential or proprietary information relating to the Software or to Quantum's business, software, products and/or services, which is disclosed by Quantum or its affiliates to Licensee, or which is deduced from the Software or Quantum's business, software, products and/or services by Licensee; Licensee agrees to keep the Confidential Information of Quantum confidential and not to disclose it to third parties, unless expressly otherwise agreed by a duly authorized representative of Quantum. Licensee shall be entitled to disclose Quantum's Confidential Information only to those of its personnel, consultants and agents that have a reasonable need to know such Confidential Information for the purposes of this EULA, and provided the Licensee instructs its personnel, consultants and agents to keep such information confidential by using the same care and discretion that it uses for its own Confidential Information and in no event, less than a reasonable degree of care. Confidentiality Obligations set forth in this section shall not apply to any information which: (i) is published or otherwise becomes available to the general public through no fault of Licensee; (ii) has been validly obtained by Licensee from a third party not being bound by any confidentiality or similar secrecy obligation; (iii) was in Licensee's possession without proprietary restrictions prior to the date of disclosure by Quantum to Licensee; (iv) was developed by Licensee without reference to the Confidential Information; or (v) is required to be disclosed pursuant to applicable law, to the extent of such requirement only and provided that Licensee shall, if feasible, give to Quantum prior notice of such proposed disclosure and a reasonable opportunity to contest such disclosure. Upon termination of this EULA, Licensee shall have a senior officer certify to Quantum within thirty (30) days of termination that it has destroyed or returned to Quantum, at Quantum's option, all Confidential Information, and all copies thereof, whether or not modified or merged into other materials.
- i. Force Majeure. Each party shall be excused from delays in performing or its failure to perform hereunder (other than payment of monetary obligations) to the extent that such delays or failures result from any event beyond the reasonable control of a party that causes the delay in or failure to perform such party's obligations under this EULA, including (but not limited to) natural disasters, riots, war and military operations, national or local emergencies, actions or omissions of the government, economic disputes of whatever nature, actions of employees, fire, flooding, faults or errors in a third-party's hardware or software, unavailability of third party communication lines or devices, lightning strikes, explosions, collapses, Internet or other communication network "brownouts" or failures, as well as any action or omission of a person or entity beyond the reasonable control of the affected party. The affected party will cooperate with the other party and reasonably assist this other party in minimizing the impact of the circumstances on the other party.
- j. References. Licensee agrees that Quantum may use Licensee's name and logo in press releases, product brochures, financial reports and other promotional materials in any media indicating that Licensee is a customer and end user of Quantum.
- k. Representations. Each party represents and warrants to the other that it has full authority to enter into this EULA, that the execution and/or performance of this EULA does not and will not violate or interfere with any other agreement by which such warranting party is bound; and that the warranting party will not enter into any agreement whose execution/performance would violate or interfere with this EULA.