

## **Quantum Hardware Support and Maintenance Terms and Conditions**

If Customer elects to respond to the Quote accompanying these terms with a Purchase Order or other ordering document, the following terms and conditions will be considered accepted and integrated therein. Any different, conflicting or additional terms in a Purchase Order or other ordering document from Customer are rejected unless expressly approved in writing by Quantum. Pricing set forth in the Quote will be valid for thirty (30) days unless a different term is set forth on the face of the Quote. Quantum reserves the right to reject any Purchase Order issued hereunder.

### **1. MAINTENANCE SERVICES**

1.1. Maintenance Services. Maintenance Service shall be provided on an on-call basis in accordance with the level of Maintenance Service purchased by the Customer. Maintenance Service at the following levels may be purchased subject to regional availability and Equipment applicability (more details available at [www.Quantum.com](http://www.Quantum.com) or from your Quantum service sales representative):

<u>Rapid Exchange</u>	Advance replacement of Equipment once problem has been diagnosed. Equipment is shipped within two business days after diagnosis.
<u>Bronze Support Plan</u>	5x9 telephone support (Monday-Friday, 8AM-5PM local time). Next business day response for on-site support.
<u>Silver Support Plan</u>	5x9 telephone support (Monday-Friday, 8AM-5PM local time). On-site support Monday through Friday with a four-hour target response time after remote problem diagnosis.
<u>NBD Gold Support Plan</u>	7x24 Phone Support (Monday to Sunday, 24 hrs). Next business day on-site support.
<u>Gold Support Plan</u>	7x24 telephone support (Monday-Sunday, 24 hours). On-site support provided 7x24 with a four-hour target response time after remote problem diagnosis.
<u>Platinum Support Plan</u>	Customized support plan. Provides for 7x24 telephone support (Monday-Sunday, 24 hours). On-site support provided 24x365 with a two-hour target response time after remote problem diagnosis.

Quantum will provide to Customer, or will have a third party selected by Quantum under the terms of Section 1.2 provide to Customer, repair, adjustments and part replacements for the Quantum equipment set forth in the attached Quote ("Equipment") as Quantum or such third party deems necessary due to normal Equipment usage ("Maintenance Services"). The Maintenance Services shall include unscheduled, on-call Maintenance Services during the hours specified above for the level of Maintenance Service purchased ("Designated Working Hours"), provided after receipt of notice from Customer that Equipment is malfunctioning or otherwise appears to require maintenance and after Quantum technical support has determined that an on-site visit is necessary. Maintenance Service on additional equipment is not covered by this Agreement. If holiday service is not specifically purchased, service on a Quantum recognized holiday will be deferred to the next Quantum business day. 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.

1.2. Selection of Provider. Quantum shall determine, in its sole and absolute discretion, whether Quantum will provide the Maintenance Services to Customer or whether Quantum will select a third party subcontractor to perform the Maintenance Services (in either case such party is referred to herein as "Provider"). All requests for Maintenance Services or communication regarding status or maintenance of the Equipment shall be made to Quantum.

1.3. Part Replacement. Provider will replace or exchange Equipment parts where required. The Equipment or parts of Equipment that Provider removes or replaces will become property of Quantum. Replacement parts will either be new or reconditioned. All field replaceable units (FRU's) shipped to Customer shall be shipped FOB Customer site for domestic US shipments or DDU Customer site for international shipments in accordance with INCOTERMS 2000. All FRU's returned to Quantum by Customer shall be shipped FOB Customer site for domestic shipments or DDU Customer site for international shipments in accordance with INCOTERMS 2000. Risk of loss while parts are in the care, custody, and control of Customer shall be with Customer. Damage to or loss of parts shall be valued at Quantum's replacement cost.

1.4. Other Services. If Customer requires or requests services for any of the following reasons, the services are covered under the Limited Services Warranty as indicated herein, but shall be considered "Other Services" and subject to One-Time Fees as set forth below: (a) installation or maintenance of any device not quoted by Provider, including but not limited to wiring, electrical conduits, peripherals, or accessories; (b) replacement of parts and/or services to repair damage resulting from accident caused by, or neglect or misuse on the part of, a party other than Provider, or modification of Equipment not approved, authorized or directed by Provider; (c) 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; (d) 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 Provider; (e) replacement or reconditioning of Equipment which Provider 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 Provider; (f) replacement of parts or repair required because Customer or third parties (excluding Provider), without the approval, authorization, or direction of Quantum, performed services on, modified, adjusted, or moved Equipment; (g) services in connection with removal, relocation or reinstallation of Equipment; (h) furnishing or replacing expendable supplies, including media such as cassettes, unless damaged by Provider; (i) services on Equipment which Customer has moved without notifying Provider pursuant to Section 1.5; (j) services performed outside of Designated Working Hours or after the term of this Agreement; provided, however, that if Provider begins to perform services which would otherwise be covered Maintenance 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 the Agreement; (k) services requested after unauthorized resale, transfer, or other assignment (actual or constructive) of Equipment to an entity other than Customer; and (l) services required as a result of use of the Equipment beyond its rated capacity or not in accordance with specifications. With the exception of installation and maintenance of other devices specified in section 1.4(a) above, the occurrence of events necessitating Other Services herein shall render the Warranty void and/or subject an extended maintenance contract to termination.

1.5. Movement of Equipment. If Customer plans to move the Equipment, or delete any part of the Equipment from this Agreement, Customer must provide Quantum with 30 days prior written notice. If Customer requests that Provider dismantle, supervise, inspect, remove or reinstall the Equipment as part of any move, Quantum will invoice Customer at Quantum's standard published daily rate for such services. Whether Equipment is moved by Customer or Quantum, Customer shall be responsible for shipment of Equipment to new location. Considering the new location of the Equipment, Quantum may, in its sole discretion: (i) continue performance of the Agreement with the condition that Customer is responsible for any additional mileage charges; (ii) terminate the Agreement; or (iii) designate a different Provider. Absent written notice of Quantum's decision to select (ii) or (iii), Quantum shall be presumed to elect option (i) and Customer will be responsible for any additional mileage charges. Movement of Equipment that is designated non-customer installable equipment as designated by Quantum without notifying Quantum prior to the move, shall void the Equipment warranty and/or any then current service contract.

### **2. CUSTOMER RESPONSIBILITIES**

In addition to responsibilities for fees hereunder, Customer will be responsible for: (a) properly using and controlling access to the Equipment; (b) permitting Provider access to Customer's facilities consistent with Customer's security and operational requirements; (c) promptly notifying Quantum and Provider if Customer becomes aware of any unsafe conditions or hazardous materials to which Provider'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 Equipment; and (f) providing full and accurate equipment and service installation descriptions as necessary to allow Quantum to fulfill its duties hereunder.

### **3. FEES AND CHARGES**

3.1. Maintenance Fee. Quantum will invoice Customer, and Customer agrees to pay the quoted and agreed upon maintenance fee. Fees for subsequent terms will be as set forth on Quantum's current price sheet or, as agreed to by the parties.

3.2. One-Time Fees. Quantum will invoice Customer for any one-time fees and charges. These one-time fees and charges include fees incurred if Customer requests Provider to perform Other Services or services not covered by this Agreement. Quantum will invoice Customer at Quantum's standard published hourly rates, and for parts utilized in performance of such services. All such charges will include actual travel time, waiting time if caused by the Customer, Customer approved travel expenses, and costs incurred due to rescheduling or other accommodations made as a result of lack of availability or preparation by the customer for services scheduled. Quantum may authorize Provider to bill Customer directly for one-time fees.

3.3. Payment Due. Payment for Maintenance Services invoiced is due 30 days from the date of the invoice. If Customer does not pay an invoice when due Quantum may withhold further services and/or terminate this Agreement upon no less than 10 days' notice.

3.4. Taxes. Prices and fees listed above do not include taxes. Customer agrees to pay all municipal, state and federal taxes which apply to any transaction under this Agreement (except taxes based solely on Quantum's net income), unless Customer provides its tax-exempt status documentation together with its PO or other ordering document.

3.5. Firmware and Software. Changes to firmware which Quantum designates as bug fixes or as minor or incremental updates are covered under the terms of this Agreement. Quantum will provide Customer with access to non-billable library updates and bug fixes through Quantum's web site for Equipment under warranty or current service contract. Firmware changes that Quantum designates as upgrades, and for which Quantum normally charges its customers, will be provided to Customer for the applicable fee. Quantum will provide Customer with information on any upgrade charges prior to installation of the upgrade. Quantum will also be willing to perform the firmware upgrade when allowed remote access to the customer's system through the Remote Management Utility ("RMU"). At Quantum's discretion and upon prior notice to Customer, an additional fee may be levied for firmware upgrades requiring an onsite visit, either as a result of a library not having an RMU, or as a result of Customer's request. Software licensed and sold separately by Quantum shall be governed by the terms provided in the Quantum Software Support and Maintenance Terms and Conditions which shall supplement these Quantum Hardware Support and Maintenance Terms and Conditions. As to separately licensed and sold Software, the Software Support and Maintenance Terms and Conditions shall take precedence in case of a conflict with terms herein.

### **4. PROPRIETARY INFORMATION**

Pursuant to this Agreement, 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, operations and plans and data, etc.) (the "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 this Agreement; (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 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 this Agreement.

### **5. TERM AND TERMINATION**

5.1. Term. The term of this Agreement shall commence upon issuance of a purchase order by Customer and shall continue in effect for the period of Maintenance Service purchased.

5.2. Termination. With the exception of warranty service provided hereunder, either party may terminate this Agreement hereof without penalty upon ninety (90) days advance written notice. If Customer elects such termination, it shall pay Quantum for all services performed and expenses incurred through the date of termination. In the event multiple years of Maintenance Service were purchased up front, upon termination of this Agreement for reasons other than breach by Customer, Quantum shall promptly refund to Customer a prorated amount of the Annual Fee less any outstanding One-Time Fees. If a multi-year discount was given, the prepay discount shall be added back into the contract price and then a credit will be derived based on the list price. If either party breaches this Agreement and fails to cure such breach within ninety (90) days of receiving written notice of such breach (or 10 days as set forth in section 3.3), the other party shall have the right to terminate this Agreement immediately upon the conclusion of such notice period.

### **6. LIMITED SERVICES WARRANTY**

SUBJECT TO THE LIMITATIONS SET FORTH BELOW, QUANTUM WARRANTS THAT THE SERVICES PROVIDED UNDER THIS AGREEMENT WILL BE FREE FROM DEFECTS IN MATERIALS OR WORKMANSHIP FOR THIRTY (30) DAYS FROM THE DATE SUCH SERVICES ARE RENDERED, OR THE REMAINING TERM OF THE THEN CURRENT AND PAID FOR MAINTENANCE 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. THE FOREGOING WARRANTY SHALL BE VOIDED IF THE EQUIPMENT IS NOT PROPERLY INSTALLED, USED, OR MODIFIED BY A PERSON OTHER THAN QUANTUM OR PROVIDER AFTER SERVICES ARE PROVIDED. IF A DEFECT COVERED UNDER THIS WARRANTY IS FOUND AND REPORTED TO PROVIDER, QUANTUM WILL, AS ITS SOLE RESPONSIBILITY AND LIABILITY AND AS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF SUCH WARRANTY, USE COMMERCIALY REASONABLE MEANS TO CORRECT SUCH DEFECT OR REFUND TO CUSTOMER THE SUMS PAID BY CUSTOMER FOR THE DEFECTIVE SERVICES. THE LIMITED WARRANTY SET FORTH IN THIS PARAGRAPH IS THE ONLY WARRANTY MADE BY QUANTUM OR PROVIDER WITH RESPECT TO THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE EQUIPMENT WARRANTY, QUANTUM EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES CONCERNING THE EQUIPMENT OR THE SERVICES TO BE RENDERED HEREUNDER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

### **7. LIMITATION ON LIABILITY**

Except for Quantum's or Provider's liability based upon gross negligence, willful misconduct and/or a violation of law, Quantum's or Provider's cumulative liability for any claims arising in connection with this Agreement may not exceed the most recent Annual Fee. This limitation on liability applies to any claims against Quantum, Provider, or both. QUANTUM AND PROVIDER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY THIRD PARTY CLAIMS AGAINST CUSTOMER FOR LOSSES OR DAMAGES OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, DELAYS, LOSS OF DATA, LOST BUSINESS OPPORTUNITIES OR LOST PROFITS OR SAVINGS, ARISING OUT OF ANY BREACH OF ANY REPRESENTATION OR WARRANTY OR THE PERFORMANCE OR BREACH OF ITS AGREEMENT OR THE USE OR INABILITY TO USE THE EQUIPMENT, OR ANY PORTION THEREOF HOWEVER CAUSED (INCLUDING AS A RESULT OF NEGLIGENCE), EVEN IF QUANTUM OR PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE LIMITED REMEDIES SET FORTH HEREIN ARE FOUND TO FAIL IN THEIR ESSENTIAL

**PURPOSE.** Quantum and their 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 Provider 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, Provider, or both) arising out of or in any way relating to the presence on Customer's designated premises of Quantum or Provider for the purposes of providing maintenance or other support 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 under this Agreement, may be brought by either party more than one (1) year after such cause of action accrued.

## **8. NOTICES**

All notices, demands and other communications called for or required by this Agreement 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 (10) days' advance written notice to the other party except as otherwise provided in this Agreement.

## **9. GENERAL**

9.1. Integration; Modifications. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that the Agreement is 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 the terms and conditions set forth in this Agreement are hereby rejected and shall not be binding upon Quantum. No waiver or modification of this Agreement or of any provision contained herein shall be valid unless in writing and duly executed by Quantum and Customer.

9.2. Choice of Law. This Agreement 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 this Agreement, the parties agree to the exclusive jurisdiction of the courts located in Santa Clara County, California.

9.3. Severability; Waiver. In the event that any provision of the Agreement 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 this Agreement shall not be deemed a waiver of any exercise of any right, power or privilege.

9.4. Force Majeure. Neither party will be liable hereunder for, or be considered to be in breach of or default under this Agreement on account of, any delay or failures to perform as required by this Agreement 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.

9.5. Assignment. Neither party may assign its benefits or delegate its obligations under this Agreement without the advance written consent of the other party unless in the context of a merger, acquisition, or sale of all or substantially all of the assigning party's assets to or by another entity who is not a competitor to the non-assigning party and who has a reasonably acceptable credit rating.

9.6. Disputes. The Parties shall attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between executives of the Parties. If a controversy or claim should arise, one Party shall give written notice to the other Party of such controversy or claim (the "Invoking Party"). The Parties shall use their best efforts to arrange personal meetings or telephone conferences as needed, at mutually convenient times and places, between negotiators for the Parties to try and resolve the controversy or claim.