

AGREEMENT BETWEEN TECH HEADS, INC. AND YAMHILL COUNTY

THIS AGREEMENT for products and services ("Agreement") is entered into by and between **Yamhill County**, a political subdivision of the State of Oregon, acting by and through its Board of Commissioners ("COUNTY"), and **Tech Heads, Inc.**, a Oregon corporation, located at ~~7060-7070 SW Fir Loop~~ Beveland, Portland ~~Figard, OR, 97223~~ ("CONTRACTOR"), referred to individually as Party and collectively as Parties.

WHEREAS, COUNTY desires to acquire a storage area network and related hardware, software and equipment to support the operational needs of Yamhill County; and

WHEREAS, CONTRACTOR provides Equipment (as defined herein) and was selected to provide the Equipment to COUNTY pursuant to a competitive quote process and pursuant to a quote provided by CONTRACTOR to Yamhill County (the "Proposal"), attached hereto as Exhibit A; and

WHEREAS, COUNTY and CONTRACTOR now desire to enter into this Agreement for CONTRACTOR to provide the Equipment and services to COUNTY in accordance with the terms herein and of the following Exhibits, which are attached hereto and incorporated herein by this reference:

Exhibit A	<u>Tech Heads Quote 10171 Proposal</u>
Exhibit B	<u>Insurance Requirements</u>
Exhibit C	<u>Nimble Storage General Terms and Conditions</u>
Exhibit D	<u>HPE Get 6-Nines Guarantee</u>

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and covenants, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, herein the Parties agree as follows:

1.0 Definitions. As used in this Agreement, the following capitalized terms shall have the following meanings:

1.1 "Confidential" shall have the meaning provided in Section 12.1.

1.2 "Documentation" shall mean manuals, training materials, information or diagrams relating to the Equipment, including Software.

1.3 "Effective Date" shall be the date that the Agreement is fully executed and signed by all Parties to the Agreement.

1.4 "Equipment" means the HPE Nimble Storage and all related hardware and Software licensed and equipment purchased pursuant to this Agreement and as further described in Exhibit A, attached hereto and incorporated herein by this reference.

1.5 "Final Acceptance" shall mean the Equipment has been accepted by COUNTY in accordance with this Agreement.

1.6 "HPE" shall mean Hewlett Packard Enterprise Company

1.7 "HPE Nimble Storage" shall mean the HPE Nimble HF – Series HF 40 Storage Area Network

1.8 "Software" shall mean all of the software applications provided by CONTRACTOR directly or by CONTRACTOR through HPE, including any and all upgrades, updates, error corrections, additions, new releases or versions, modifications, enhancements, interfaces, HPE- or CONTRACTOR-owned software, third-party software, information about such applications, and any related elements pursuant to this Agreement and the General Terms and Conditions in Exhibit C, attached hereto and incorporated herein by this reference..

2.0 Products and Services; Software License

2.1 Work Requirements: In consideration for the payments described in Section 3.0 hereof, unless sooner terminated, CONTRACTOR will provide COUNTY with the Equipment described in Exhibit A.

2.2 Software License Grant: CONTRACTOR, either directly or through HPE, hereby grants to COUNTY a perpetual, nontransferable (except as otherwise provided herein), nonexclusive license to use the Software and Documentation solely in accordance with the terms and conditions set forth in this Agreement, and as provided in the General Terms and Conditions in Exhibit C.

2.3 Software scope of Rights: COUNTY may (i) make copies of the Software for backup and archival purposes only, provided that no more than two (2) copies of the Software are in existence at any one time, (ii) make copies of the Documentation for COUNTY's internal use only.

2.4 Third-Party Software: Rights to commercial off-the-shelf software products provided by CONTRACTOR directly or by CONTRACTOR through HPE or third-party software vendors may be subject to licensing provisions of those third-party software vendors, which licenses the COUNTY hereby accepts.

2.5 New Versions of Software or Software Updates and Upgrades: CONTRACTOR, either directly or through HPE, shall provide COUNTY with new versions of the Software, including all Updates and Upgrades, at no added cost for the duration of the term provided in as part of Exhibit A and in accordance with the Software license and the General Terms and Conditions under Exhibit

C. Before updating or upgrading the Software, CONTRACTOR, either directly or through HPE, shall inform COUNTY of the latest version of the Software and provide the necessary training, ~~if required, as part of services under Exhibit C.~~ CONTRACTOR shall also ensure that COUNTY provides authorization to CONTRACTOR before CONTRACTOR installs the most current version of the Software

3.0 Compensation and Payment Provisions

3.1 COUNTY shall make payment upon receipt and Final Acceptance of the Equipment as invoiced by CONTRACTOR following ~~successful installation and final acceptance by COUNTY.~~ COUNTY shall pay invoices within thirty (30) days after an invoice has been received and approved by the authorized COUNTY representative and they have determined that the Equipment has been ~~successfully installed and accepted.~~

3.2 The costs set forth in Exhibit A constitute the entire compensation due to CONTRACTOR under this Agreement.

3.3 Any and all CONTRACTOR related travel expenses that are incurred as a direct result of this Agreement shall be CONTRACTOR's responsibility.

4.0 Term: The Effective Date of this Agreement will be upon the date of signatures by all Parties. This Agreement, unless terminated or renewed as elsewhere provided in the Agreement, shall terminate on the 31st of December, 2019. The Agreement shall automatically renew each year for an additional year for, including but not limited to, the Software licenses, warranties, maintenance and related services as described herein, subject to the limits of COUNTY available funding. Should COUNTY not be able to obtain funding approval COUNTY will provide 30 days prior written notice before the termination date or the end of the then current term or this Agreement shall renew automatically for another year.

5.0 Access to Records: CONTRACTOR shall maintain fiscal records and all other records pertinent to this Agreement. All fiscal records shall be maintained pursuant to US GAAP, and other records shall be maintained to the extent necessary to clearly reflect actions taken. All such records shall be retained and kept accessible for at least seven (7) years following final payment. COUNTY's authorized representatives shall have the right to direct access to all of CONTRACTOR's books, documents, papers and records related to this Agreement for the purpose of conducting audits and examinations and making copies, excerpts and transcripts. COUNTY shall reimburse CONTRACTOR for CONTRACTOR's reasonable cost of preparing such copies.

6.0 Compliance with Applicable Law: Each Party agrees to comply with all federal, state and local laws, rules and regulations in the performance of its duties and obligations under this Agreement. Any violation by CONTRACTOR of applicable law shall constitute an event of default under this Agreement and CONTRACTOR shall be liable for and hold COUNTY harmless and defend COUNTY from and against any and all liability arising out of, connected with, or as a result of the violation. CONTRACTOR agrees that CONTRACTOR has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620, 305.380(4) and ORS Chapters 316, 317 and 318.

7.0 Indemnification

7.1 Indemnification by CONTRACTOR: CONTRACTOR shall defend, indemnify and hold harmless COUNTY, its officers, agents, and employees from any and all claims, liabilities, demands, damages, actions or proceedings arising from or relating to the negligence, wrongful acts or omissions of CONTRACTOR, its officers, agents, and employees in connection with the Equipment and the performance of any services under this Agreement.

7.2 Infringement Indemnification by CONTRACTOR. CONTRACTOR agrees to indemnify and defend COUNTY against any claim or action brought by any third-party for actual or alleged infringement of any United States patent, copyright, trade secret or other intellectual property law based upon COUNTY's own internal use of the Software in accordance with this Agreement and to pay any damages and costs finally awarded against COUNTY or paid in settlement. CONTRACTOR shall have the sole right to conduct the defense of any claim or action and all negotiations for its settlement, unless the parties to this Agreement agree otherwise in writing. COUNTY agrees to give CONTRACTOR prompt written notice of any threat, warning, or notice of any claim or action that could have an adverse impact on CONTRACTOR's rights in the Software. CONTRACTOR shall not be responsible for any settlement entered into without its consent. In the event of a claim or action under Section 7.3, CONTRACTOR may, in its sole discretion, (a) procure for COUNTY the right to continue using the Software; (b) provide a substitute, non-infringing Software; or (c) terminate this Agreement and refund the license fees paid by CONTRACTOR, less depreciation, using a five-year, straight-line method of calculation. Notwithstanding the above, CONTRACTOR shall have no obligation under this Section 7.2 with respect to any claim or action that is based upon (a) COUNTY's use of the Software in breach of any term or condition of this Agreement; (b) the use or combination of the Software with any third-party product, software, hardware, or system, except as provided herein or; (c) modification of the Software other than by a representative of CONTRACTOR.

8.0 Insurance

8.1 Throughout the term of this Agreement, CONTRACTOR shall maintain at all times commercial general liability insurance and property damage insurance, covering its activities and operations under this Agreement. CONTRACTOR shall add COUNTY, its officers/officials, agents, employees, and volunteers as additional insureds for general liability and property damage insurance coverage and an Endorsement shall be issued by the company showing COUNTY as an Additional Insured and the coverage shall contain a 30-day Notice of Cancellation endorsement. Such insurance shall be in the forms and amounts not less than set forth in ORS 30.260 to 30.300, as requested in the attached Insurance Requirements, Exhibit B, attached hereto and incorporated herein by

this reference. All insurance shall be evidenced by a Certificate of Insurance and Endorsement provided to COUNTY, indicating coverages, limits and effective dates, by an insurance company licensed to do business in the State of Oregon.

8.2 CONTRACTOR shall obtain and maintain at all times during the term of this Agreement, workers' compensation insurance with statutory limits and employers' liability insurance.

8.3 CONTRACTOR shall provide COUNTY with evidence that it is a carrier-insured or self-insured employer in full compliance with ORS Chapter 656, or that it employs no persons subject to the requirements of ORS 656, Workers' Compensation Coverage.

9.0 Warranty

9.1 CONTRACTOR warrants:

9.1.1 Unless otherwise stated, all Equipment shall be new and current model and shall carry full manufacturer warranties. Additionally, COUNTY has purchased 5 years of HPE vendor support which included all software upgrades, patches and technical support as well as hardware failure and technical support, as provided in CONTRACTOR's proposal in Exhibit A and reflected on the attached invoice and in Exhibit C. CONTRACTOR warrants all Equipment delivered to be free from defects in labor, material and manufacture. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS Chapter 72) are incorporated in this Agreement. All warranties shall run to COUNTY.

9.1.2 The Equipment will perform in accordance with the Proposal and this Agreement including all Exhibits, which are incorporated herein by this reference.

9.1.3 All Equipment will strictly comply with and conform to descriptions and representations of Exhibit A (including performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, function and requirements).

9.1.4 CONTRACTOR acknowledges the standard of performance and professionalism required in the performance of its services in the delivery of the Equipment under this Agreement. CONTRACTOR agrees to perform and deliver the Equipment under this Agreement with the level of professionalism expected in its industry/profession in the community. Further, CONTRACTOR, while performing its obligations under this Agreement, will conduct itself in such a manner that will promote the best interests of the COUNTY. CONTRACTOR further agrees that it will not accept any fee or financial remuneration from any entity or person other than COUNTY for its performance under this Agreement.

10.0 Force Majeure: Neither Party shall be responsible for delays or failures in performance as a result of an Act of God, war, civil disturbance, labor dispute, or other cause beyond the reasonable control of such Party.

11.0 Ownership of Data and Software:

11.1 COUNTY will retain all title, rights, and ownership of all data, and other data created, acquired or stored on the Equipment by use of the Equipment. COUNTY may duplicate the data entered into the Equipment on any media COUNTY will retain ownership of all data created by the use of the System as stored on any media. CONTRACTOR, either directly or through HPE, retains all rights to its Software, and COUNTY may only use such Software pursuant to this Agreement. CONTRACTOR does not have any obligation to convert or transfer any data to any other format, to allow use of its Software other than as set forth in this Agreement. COUNTY or CONTRACTOR may develop, and COUNTY shall retain ownership of, all hooks, interfaces, or similar tools for use with the Software provided that the hook, interface, or tool does not use any part of the Software or require any modification or alteration of the underlying code of the Software. CONTRACTOR shall own all right, title, and interest (including all associated intellectual property rights) in and to any Customizations to the Software.

11.2 It is understood by both Parties that during the term of this Agreement CONTRACTOR may require access to certain data owned by the COUNTY in order to fulfill its duties as required by this Agreement. CONTRACTOR therefore agrees to destroy all such data in CONTRACTOR's possession, if any, and to notify the COUNTY in writing that such destruction has occurred.

11.3 ~~In the event CONTRACTOR, its heirs or assigns cease doing business or otherwise exit the business activity supporting the Software, CONTRACTOR will deliver the most current version of the underlying Software source code to the COUNTY. COUNTY will be free, at COUNTY's sole discretion, to continue use of the Software with no further financial obligation to CONTRACTOR, its heirs or assigns. COUNTY recognizes that the Software will be unsupported at that point and that CONTRACTOR, its heirs or assigns, will have no obligation to COUNTY relating to updates, maintenance or other forms of technical support~~ RESERVED

12.0 Confidential Information

12.1 The Parties acknowledge that in the course of performing its responsibilities under this Agreement, that each Party may be exposed to or acquire information which is proprietary and confidential to the other Party or its affiliated companies or their agents. Any and all information of one Party in any form obtained by the other Party or its employees, agents or representatives in the course of performing this Agreement shall be deemed to be proprietary and confidential information of such Party, subject to the Oregon public records law, ORS Chapter 192. The Parties agree to hold such information in strict confidence and not to copy, reproduce, sell, assign, license, market, transfer, give or otherwise disclose such information to third-parties or to use such information for any purposes whatsoever, without the express written permission of the other Party, other than for the delivery of Equipment or provision of services hereunder, and to advise each of its employees, agents and representatives of its obligations to keep such information confidential. All such confidential and proprietary information described herein and any deliverable provided hereunder, in whatever form, are hereafter collectively referred to as "Confidential Information." The Parties shall use reasonable efforts to assist each other in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing,

the Parties shall use reasonable efforts to advise each other immediately in the event that either learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement, and will reasonably cooperate in seeking injunctive relief against any such person.

12.2 Notwithstanding the obligations set forth in the previous paragraph, the confidentiality obligations of the Parties shall not extend to information that: (i) is, at the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party; (ii) was known to the receiving party as of the time of its disclosure; (iii) is independently developed by the receiving party; (iv) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; or (v) is required to be disclosed pursuant to statute, court order or other governmental authority, whereupon the receiving party shall provide notice to the disclosing party so as to allow the disclosing party to take appropriate steps to protect its interests.

13.0 Termination

13.1 Default by CONTRACTOR: If CONTRACTOR defaults in the performance of any of its material obligations under this Agreement for a period of thirty (30) days after the sending of notice to the address on this Agreement that it is in default, COUNTY may, at its option, terminate the Agreement by delivering written notice to CONTRACTOR at the address in this document, and paying CONTRACTOR, in full satisfaction and discharge of all liabilities and obligations owed to CONTRACTOR, all sums due under this Agreement for all work performed by CONTRACTOR, and accepted by COUNTY, to the initial date of the default. For the purposes of this Agreement, material obligations are any obligation under the terms of this Agreement, which, if not completed according to the terms of the Agreement, would render the Equipment inoperable.

13.2 Mutual Consent/Convenience: All or part of this Agreement may be terminated by mutual consent of both parties; or by either party at any time for cause, upon sixty (60) days' notice in writing, and delivered by certified mail. All or part of this Agreement may be terminated by COUNTY at COUNTY's convenience upon thirty (30) days' notice in writing and delivered by certified mail.

13.3 Breach of Agreement: Should CONTRACTOR breach any of the provisions of this Agreement, COUNTY reserves the right to cancel this Agreement upon written notice to CONTRACTOR. CONTRACTOR shall be liable for any and all damages suffered by COUNTY as the result of CONTRACTOR's breach of the Agreement, including but not limited to incidental and consequential damages, as provided in ORS 72.7110 to 72.7170.

13.4 Funding Out: If COUNTY reduces, changes, eliminates or otherwise modifies funding for the Yamhill County Sheriff's Office for any of the Equipment or services identified, CONTRACTOR agrees to abide by any such decision, including termination.

13.5 Miscellaneous: COUNTY may terminate all or part of this Agreement: (i) with ten (10) days' notice, if funding to COUNTY from federal, state or other sources is not obtained or is not continued at levels sufficient to allow for purchase of the indicated quantity and quality of Equipment or services. COUNTY will give more notice whenever possible; (ii) with thirty (30) days' notice, if federal or state regulations are modified or changed in such a way that the Equipment or services are no longer allowable for purchase under this Agreement; (iii) upon notice of denial, revocation or non-renewal of any licensee or certification required by law or regulation to be held by CONTRACTOR to provide Equipment or a service under this Agreement; (iv) if CONTRACTOR fails to deliver Equipment or start services on the date agreed upon by COUNTY and CONTRACTOR; (v) failure of CONTRACTOR or COUNTY to comply with the provisions of this Agreement or all applicable federal, state and local laws and rules may be cause for termination of this Agreement. Such termination shall be without prejudice to any obligations or liabilities of either party accrued to such termination; or (vi) immediately in the event of an emergency or if it is deemed by COUNTY in its reasonable discretion to be in the public interest. 7 COUNTY shall not be liable for anticipated profits based upon Equipment not yet delivered as of the date of termination. If payments previously made to CONTRACTOR exceed the amount CONTRACTOR is entitled to receive pursuant to this Section, CONTRACTOR shall immediately repay COUNTY the difference.

13.6 Effect of Termination: The termination of this Agreement shall not affect the Customer's rights to the Software pursuant to Section 3.1 provided that Customer has paid all Software license fees and Customer is not in breach of any provision of this Agreement

14.0 Data Backup: Data backup and restoration of data (if any) will be performed and maintained by COUNTY.

15.0 Work Orders

15.1 COUNTY Initiated. In the event that COUNTY desires to modify or amend this Agreement, including any Exhibit, COUNTY will work with CONTRACTOR to initiate a Work Order to CONTRACTOR noting the general scope for the modified Equipment or services requested. CONTRACTOR shall respond in writing within ten (10) days of receipt of a COUNTY Work Order, or at another time as mutually agreed, providing a specific recommendation for the solution, and providing COUNTY with a not-to-exceed cost for the Equipment or services proposed in the Work Order. CONTRACTOR's written response will include a breakdown of the number of staff hours, level of personnel needed to effect this change, and technical design information for the proposed solution. There shall be no charge for the preparation of this response.

15.2 CONTRACTOR Initiated. In the event that CONTRACTOR desires to modify or amend Exhibit A, CONTRACTOR may submit an unsolicited Work Order Request to COUNTY for consideration. CONTRACTOR's submission of an unsolicited Work Order Request to COUNTY does not modify or amend this Agreement or Exhibit A in any way, and creates no COUNTY obligations whatsoever.

15.3 Approval. COUNTY approval for any modification or amendment to Exhibit A will be indicated solely through COUNTY's written approval of a specific Work Order.

15.4 Out of Scope. In the event CONTRACTOR believes that COUNTY is requiring work outside the scope of the Agreement requirements, CONTRACTOR's sole remedy is to provide a written Work Order Request for COUNTY's approval or disapproval. CONTRACTOR shall include within such Work Order Request a description of the work required that CONTRACTOR considers to be outside the scope of the Agreement requirements, the date CONTRACTOR would start the work, and the complete cost of such work, including the cost and time to complete such work. COUNTY shall have fifteen (15) days from the date of receipt of the written Work Order Request, or such amount of time as is mutually agreed, to approve or disapprove the Work Order Request. During the pendency of the Work Order Request, CONTRACTOR shall continue working without stoppage on all contractual work, including the work that is the subject of a Work Order Request. For clarification, and not as a limitation, stopping work during the pendency of a CONTRACTOR Work Order Request shall be considered a material breach.

15.5 All Work Order Requests will be in writing and approved by both Parties and will be treated as an amendment to this Agreement pursuant to subsection 16.7 of this section.

16 Miscellaneous

16.2 Governing Law and Venue: All questions concerning the validity, interpretation and performance of this Agreement will be governed by and decided in accordance with the laws of the State of Oregon. The Parties hereby submit and consent to the exclusive jurisdiction of the Yamhill County Circuit Court and irrevocably agree that all actions or proceedings relating to this Agreement will be litigated in this court and each of the Parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in this court.

16.3 Equitable Remedies: The Parties agree that in the event of any breach or threatened breach of any provision of this Agreement concerning (i) Confidential Information, (ii) intellectual property rights or (iii) other matters for which equitable rights may be granted, money damages may be an inadequate remedy. Accordingly, such provisions may be enforced by the preliminary or permanent, mandatory or prohibitory injunction or other order of a court of competent jurisdiction.

16.4 Integration: This Agreement and the attached exhibits constitute the entire agreement between the Parties with respect to the subject matter described herein. No agreements, representations, or warranties other than those specifically included in this Agreement and the attached exhibits shall be binding on either of the Parties. In case of a conflict between the terms of this Agreement and any attached exhibit, the terms of this Agreement shall prevail.

16.5 Notices: Any notices or reports required by this Agreement to be given by one Party to the other Party shall be made in writing. The writing shall be delivered personally or mailed by United States Mail, postage prepaid, certified mail, return receipt requested. Notices shall be addressed to that Party at the address shown below or at such other address as that Party may designate in writing. Notice is deemed to have been given immediately if delivered in person, or on the third day following mailing.

Notice to Contractor:

TechHeads, Inc.

Attn:

7060 SW Beveland 7070 SW Fir Loop

FigardPortland, OR 97223

Yamhill County

Notice to COUNTY:

Attn.: Shane Hoffmann

434 NE Evans

McMinnville, OR 97128

16.6 Assignment: This Agreement shall be binding on the Parties hereto and its respective successors and assigns. Neither Party shall have the power to assign this Agreement without the prior written consent of the other.

16.7 Subcontractor: CONTRACTOR shall not enter into any subcontracts for any of the work scheduled under this Agreement, nor assign or transfer any of its interest in this Agreement, without the prior written consent of COUNTY.

16.8 Waiver and Amendments: No waiver, consent, modification or change in the terms of this Agreement shall bind either party unless executed in writing signed by the authorized representatives of the Parties. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given once signed by both parties. A waiver of any part of this Agreement shall not be a waiver of the entire Agreement. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of either party to enforce at any time any of the terms of this Agreement, or to exercise any option which is provided, or to require at any time performance by the other party of any of the provisions, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of any part of this Agreement, or the right of either party to thereafter enforce each and every provision.

16.9 Severability: If any provision of this Agreement is unenforceable, that provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect in order to best accomplish the original intent of the parties.

16.10 CONTRACTOR Responsibility for Taxes: Property, sales, and use taxes shall not be included in invoices submitted to COUNTY pursuant to this Agreement.

16.11 Delivery: If applicable, CONTRACTOR shall arrange for delivery of any CONTRACTOR supplied Equipment to the appropriate COUNTY installation site(s) in accordance with Exhibit A. Shipment of the Equipment shall be F.O.B. destination, COUNTY's receiving point at the installation site(s) with all transportation charges paid by CONTRACTOR.

16.12 Risk of Loss & Title: CONTRACTOR shall bear the risk of loss or damage to the Equipment while in transit to COUNTY's premises, and the installation site(s). COUNTY shall bear all risk of loss or damage to the Equipment (except as to latent defects,

fraud and CONTRACTOR's warranty obligations) after delivery to the premises installation site(s) and written acceptance by COUNTY, unless such loss or damage is due to the negligence or willful acts of CONTRACTOR, its employees, agents, representatives or subcontractors. CONTRACTOR shall transfer title to the EQUIPMENT to COUNTY upon COUNTY's full payment for said Equipment.

16.13 Inspections: Equipment furnished and installed under this Agreement shall be subject to inspection and test by COUNTY at times and places determined by COUNTY. If COUNTY finds Equipment furnished or installed to be incomplete or not in compliance with the specifications in Exhibit A, COUNTY may reject the Equipment and require CONTRACTOR to either correct them without charge or deliver them at a reduced price, whichever is equitable under the circumstances. If CONTRACTOR is unable or refuses to cure any defects within a time deemed reasonable by COUNTY, COUNTY may reject the Equipment and cancel this Agreement in whole or in part. Nothing in this paragraph shall in any way affect or limit COUNTY's rights as buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080

16.14 Independent Contractor Status: CONTRACTOR is, and shall remain at all times, an independent contractor with respect to activities and conduct while engaged in the performance of this Agreement.

16.15 Project Team Replacement: COUNTY reserves the right to reject or request removal of any employee of CONTRACTOR identified as a key resource for the implementation and installation of the Equipment provided under this Agreement. Any change or replacement of a key resource must have prior approval by COUNTY and the key resource replacement must have substantially similar experience and knowledge of the Equipment as the individual being replaced, and such approval shall not be unreasonably withheld.

16.16 Integration and Merger: This written Agreement and the attached exhibits, all of which are incorporated herein by this reference, and any subsequent amendments executed in accordance with Section 16.7 and all exhibits constitute the entire Agreement between the parties and supersede any prior oral or written statements, discussions, or understanding between the parties.

16.17 Attachments: Attached to and made part of the Agreement are the following:

- Exhibit A Tech Heads Quote 10171 Proposal
- Exhibit B Insurance Requirements
- Exhibit C Nimble Storage General Terms and Conditions
- Exhibit D HPE Get 6-Nines Guarantee

In the event of a conflict between this document and its exhibits, this document shall control over the Proposal and the Proposal shall control over the other exhibits. In the event of any inconsistency between any of the provisions of the Agreement documents, the inconsistency shall be resolved by giving precedence in the following order:

- A. — This Agreement,
- B. — Exhibit A
- C. — Exhibit B
- D. — Exhibit C
- Exhibit D

16.18 Further Documentation: The Parties agree to promptly execute such other and further documents and agreements as may be reasonably necessary or advisable to effectuate the terms of this Agreement.

16.19 Survival: The terms of Sections 5, 7, 9, 11, 12 and Exhibits A, B, C and D hereof shall survive the expiration or termination of this Agreement for a period of ~~six (6)~~ five (5) years.

16.20 Civil Rights: CONTRACTOR agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states, in part, that no qualified person shall on the basis of disability, race, color, sex, religion, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

16.21 Incorporation of statutory provisions required for public contracts. CONTRACTOR shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the provision of goods under this Agreement, including without limitation, the provisions of ORS 279C.505, 279C.515 and 279B.235, as set forth below and elsewhere herein, and all amendments of and regulations and administrative rule established pursuant to those laws; and all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

16.21 Payments Required by ORS 279C.505 and 279B.220: For all goods and Equipment provided under this Agreement, Contractor shall (i) pay promptly as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the CONTRACTOR or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against COUNTY or a subdivision thereof; and (iv) pay to the Department of Revenue, all sums withheld from employees pursuant to ORS 316.167.

16.22 COUNTY Payment of CONTRACTOR Claims: If CONTRACTOR fails, neglects or refuses to pay promptly as due, any claim for labor or services furnished to the CONTRACTOR or any subcontractor by any person in connection with the goods provided under this Agreement, COUNTY may, but is not required to, pay such claim and charge the amount of the payment against funds due or to become due the CONTRACTOR under this Agreement. The payment of a claim by COUNTY pursuant to this section shall not relieve the CONTRACTOR or its surety, if any, from obligation with respect to any unpaid claims.

16.23 Hours of Labor: No person shall be employed by the CONTRACTOR for more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases the laborer shall be paid at least time-and-a-half pay for all overtime in excess of eight hours a day and for the work performed on Saturday and on any legal holiday specified in ORS 279B.020 and 279C.540[A1]

16.24 Safety and Health Requirements: Equipment and services provided under this Agreement shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers Compensation Division.

16.25 Award to Foreign Contractor: If CONTRACTOR is not domiciled in or registered to do business in the State of Oregon, CONTRACTOR shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement.

16.26 Recyclable Products: CONTRACTOR shall use recyclable products to the maximum extent economically feasible in the performance of this Agreement and shall specify the minimum percentage of recycled product in the goods and Equipment provided.

16.27 Attorney fees and costs. In the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any non-judicial action

16.28 Use of COUNTY Facilities. CONTRACTOR and its employees or agents shall have the right to use COUNTY facilities to perform under this Agreement and shall have no right of access to any facility of COUNTY without the prior written approval of COUNTY management. COUNTY shall have no responsibility for the loss, theft, mysterious disappearance of or damage to equipment, tools, materials, supplies and other personal property of CONTRACTOR or its employees, subcontractors or agents which may be stored on COUNTY premises, except to the extent that such loss, theft, disappearance or damage is caused by the sole negligence of COUNTY.

16.29 Incorporation. The introductory paragraph and recitals appearing at the beginning of this Agreement are hereby incorporated into and made a part of this Agreement as if fully set forth herein.

16.30. No Third Party Beneficiaries. COUNTY and CONTRACTOR are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.

16.31 Counterparts. This Agreement may be executed by facsimile and in counterparts which together form one legal instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**YAMHILL COUNTY
BOARD OF COMMISSIONERS:**

**CONTRACTOR
TECHHEADS, INC.**

[Signature] 7/25/18
Chair Date

Randy Richardson
Name: _____

[Signature] 7/31/18
Commissioner Date

[Signature] 07-20-2018
Signature Date

[Signature] 7-25-18
Commissioner Date

93-1221141
Tax ID#

Recommended by:
[Signature] 8/1/18
Yamhill County IT Manager Date

APPROVED AS TO FORM:
[Signature] 7/25/18
County Counsel Date

Accepted by Yamhill County
Board of Commissioners on
7/12/18 by Board Order
18-261

EXHIBIT A

PROPOSAL

(Attached as separate document.)



7070 SW Fir Loop
 Portland, Oregon 97223
 (P) 1 (503) 639-8542
 (F) 1 (503) 639-2383
 www.TechHeads.com

Quotation (Open)
 Doc #: 10171 1 rev of 1
 Modified Date: Jun 14, 2018 09:06 AM PDT
 Expiration Date: 2018-07-14
 Description: HPE Nimble HF40 (Hybrid) with 5 Years Support

AE / Tech
Name: Kasey Flicker
Email: kasey.flicker@techheads.com
Mobile: 503-260-2916

Customer Contact
 Hoffman, Shane
 hoffmans@co.yamhill.or.us
 (P) 503-434-7505 ext. 3236

Customer
 Yamhill County
 Hoffman, Shane
 636 NE 7th Street
 McMinnville, OR 97128-4523
 United States
 (P) 503-434-7505

Bill To
 Yamhill County
 636 NE 7th Street
 McMinnville, OR 97128-4523
 United States
 (P) 503-434-7505

Ship To
 Yamhill County
 636 NE 7th Street
 McMinnville, OR 97128-4523
 United States
 (P) 503-434-7505

#	Description	Qty	Unit Price	Total
1	Nimble Storage Adaptive Flash HF-Series HF40, 2x10GbaseT, Dual 10GbE Optical (Qty. 1 pair), 21x4TB HDD, 6x1.92TB	1	\$86,331.00	\$86,331.00
2	Nimble Premium 4-Hour - 5 Years - Extended service agreement - advance parts replacement - shipment - response time: 4 h	1	\$41,009.32	\$41,009.32
			Subtotal:	\$127,340.32
			Shipping:	\$0.00
			Misc:	\$0.00
			Total:	\$127,340.32

Invoices for all parts, supplies, or equipment (software or hardware) purchased are due upon receipt. Unless otherwise requested, shipping method is ground and shipping charges are added at time of invoice. Tech Heads collects a 3% processing fee for any invoice amount paid using a credit card. Tech Heads will assess a monthly late fee of 1.5% on any unpaid balance remaining after 30 days. Tech Heads does not warrant any equipment (hardware and software) it sells. Customer shall look solely to the relevant manufacturer or third-party supplier in the event of a claim related to such equipment. Returns are subject to the relevant manufacturer or third-party supplier's return policy.

Signature: _____ Date: _____

EXHIBIT B

INSURANCE REQUIREMENTS

During the entire term of this Agreement (and for 5 years following expiration of this Agreement for Professional Liability Insurance), Contractor shall maintain in force, at its own expense, each insurance checked below. In the event of conflict in language regarding Insurance Requirements between this Exhibit B and the Agreement document, this Exhibit B shall take precedence.

TYPE OF INSURANCE	EXPLANATION OF REQUIREMENTS
<p>WORKERS' COMPENSATION, in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their workers.</p> <p><input checked="" type="checkbox"/> Required <input type="checkbox"/> Not required <i>(Contractor has one Or more employees) (Contractor has no Employees Must Provide written statement as such)</i></p>	<p>This coverage is necessary because COUNTY is self-insured for Workers' Compensation and any claim would affect COUNTY directly. Proof of this insurance must be provided before work begins. Coverage is required only if the Contractor has one or more employees.</p>
<p>PROFESSIONAL LIABILITY INSURANCE WITH A COMBINED SINGLE LIMIT, OR THE EQUIVALENT, OF NOT LESS THAN \$31,000,000 FOR EACH CLAIM, INCIDENT, OR OCCURRENCE.</p> <p><input checked="" type="checkbox"/> Required <input type="checkbox"/> NOT Required</p>	<p>This is to cover damages caused by error, omission or negligent acts related to the Equipment and services to be provided under this Agreement.</p> <p>COUNTY does not need this insurance when the Contractor's activity or advice holds almost no risk of damaging property or harming employees, visitors, families, or others. Examples include: author, lecturer, staff trainer, interpreter, photographer, musician.</p> <p>This coverage is required when there is a chance the Contractor's work could do harm and someone might have reason to blame COUNTY or department that retained the Contractor. Examples include: architect, engineer, investigator, accountant, legal advisor, and public works/improvement projects.</p>
<p>GENERAL LIABILITY insurance with a combined single limit of not less than \$2,000,000 for each occurrence, \$3,000,000 aggregate for bodily injury and property damage.</p> <p><input checked="" type="checkbox"/> Required <input type="checkbox"/> NOT Required <input type="checkbox"/> Exclusion approved by COUNTY</p>	<p>This insurance is required unless its deletion is approved by COUNTY. Insurance shall include contractual liability coverage for the indemnity provided under this Agreement and provide by separate written endorsement that COUNTY its officials, agents, employees and volunteers, are added as insured, but only with respect to the Contractor's services to be provided under this Agreement.</p>
<p>AUTOMOBILE LIABILITY insurance with a combined single limit, or the equivalent, of not less than (check one):</p> <p><input type="checkbox"/> Oregon Financial Responsibility Law, ORS 806.060 (\$25,000 property damage/\$50,000 bodily injury, \$5,000 personal injury). OR For each accident for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles, as applicable. (Coverage limits required for this Agreement will depend on nature of contracted maintenances.)</p> <p><input checked="" type="checkbox"/> \$500,000 each accident <input type="checkbox"/> \$1,500,000 each accident <input type="checkbox"/> N/A</p>	<p>Automobile liability coverage is required of a Contractor when it, its subcontractor, or the employees of either will operate, maintain, load, or unload vehicles as part of the work or Services provided under this Agreement.</p> <p><u>COUNTY will determine the appropriate amount of coverage Contractor will need to provide depending on the severity of what could go wrong.</u> For instance, a Contractor transporting clients or staff is at a much greater risk than a Contractor driving his or her vehicle from one meeting site to another without passengers. Larger construction projects may require the higher combined single limit or equivalent. Contractor shall name COUNTY, its officials, agents, employees and volunteers, as additional insureds by a separate written endorsement, but only with respect to the Contractor's services provided under this Agreement.</p>
<p>Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s).</p>	
<p>Certificate of Insurance. Prior to commencing work, the Contractor shall provide a Certificate evidencing the insurance required by this Agreement and a separate written endorsement adding COUNTY its officials', agents, employees, and volunteers as insured. The Certificate shall state that coverage afforded COUNTY as an Insured shall apply as primary and not excess to any insurance issued COUNTY, provide a Cross Liability Clause, and state that the Contractor is responsible for payment of all insurance deductibles on the above-described policies.</p>	
<p>Send the Certificate of Insurance to: COUNTY, ATTN: County Counsel, 434 NE Evans, McMinnville, OR 97128</p>	

ANY CHANGES IN COVERAGE MUST BE APPROVED IN ADVANCE BY COUNTY - Revised March 2018

EXHIBIT C

(see attached)

GENERAL TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS

Nimble Storage, Inc., located at 211 River Oaks Parkway, San Jose, CA 95134 (“**Nimble**” or “**Nimble Storage**”), is willing to sell Products and license the Software to you (“**you**” or “**Customer**”) under these General Terms and Conditions (the “**Terms**”) and only upon the condition that you accept all of these Terms. By clicking on the “I accept” button or by installing or using the Products, Software or Support Services, you indicate that you understand and agree to all of these Terms. If you are entering into these Terms on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these Terms, in which case “**Customer**” shall refer to such entity. If you do not agree to these Terms, you may not install or use the Products, Software or any Support Services. A copy of these Terms is available at www.nimblestorage.com/docs.

1. DEFINITIONS.

“**Business Day**” means any day other than Saturday, Sunday, or a statutory holiday observed by Nimble Storage.

“**Customer Technical Personnel**” means any of the employees of Customer who have completed training by Nimble Storage or Nimble Storage’s authorized training representatives regarding the proper operation of the Products and are designated by Customer to serve as customer service contacts for Nimble Storage.

“**Documentation**” means the Product end user documentation furnished by Nimble Storage to users.

“**Error**” means a material failure of the Product to operate substantially in accordance with the Documentation that Nimble Storage is able to replicate in its test environment. Any condition that is described as a warranty exclusion under Section 4 will not be deemed an Error.

“**Hardware**” means the new or like new hardware incorporated into a Product.

“**Pre-Release Software**” means a beta or pre-release version of the Software.

“**Product(s)**” means the Nimble Storage product(s) described in the Quotation hereto or other order documentation provided by Nimble Storage, including the Hardware and Software components thereof.

“**Purchase Order**” means a written, faxed, or emailed purchase order issued to Nimble Storage for the purchase (or, to the extent applicable to Software, license) of Products and/or Support Services.

“**Quotation**” means a Nimble Storage-issued sales quotation that specifies the Products and/or Support Services available for purchase (or, to the extent applicable to Software, license) by Customer.

“**Reseller**” means an entity that has entered into and maintains a valid reseller agreement with Nimble Storage and who is authorized to resell Products and/or Support Services to Customer subject to these Terms.

“**Software**” means the software provided or used with, or incorporated in, the Product, as well as any Updates thereto, but does not include Pre-Release Software.

“**Support Services**” means the maintenance and support services for the Products offered by Nimble Storage, as described in Section 5 of these Terms.

“**Update**” means error corrections, bug fixes, emergency patches, workarounds, modifications, and new releases to the Software made generally available by Nimble Storage at no additional fee to its customers contracted to receive Support Services for the time period during which the Update is made generally available.

2. ORDERS; DELIVERY.

Products and Support Services may be ordered from Nimble Storage through Customer’s appointed Reseller. All orders (including without limitation in response to a Quotation and any Purchase Orders) shall be subject to acceptance by Nimble Storage. Nimble Storage may accept or reject orders at its discretion. Customer acknowledges and agrees that payment and delivery terms for each accepted order will be subject to terms and conditions as between Customer and Reseller. If Customer purchases directly from Nimble Storage, delivery shall be FCA Incoterms 2010 Product shipping origin location and payment shall be made within thirty (30) days of Customer receipt of invoice. In all cases, all Products will be deemed to be irrevocably and unconditionally accepted by Customer upon delivery or download, as applicable, with no Customer right of return; provided, however, that the foregoing shall in no way limit Nimble Storage’s warranty obligations as set forth under Section 4 below.

3. LICENSE RIGHTS.

3.1 License. Subject to Customer’s agreement to and compliance with these Terms, Nimble Storage grants to Customer (and any Customer contractors authorized by Customer to perform services with respect to the Products solely for the benefit of Customer), a limited, nonexclusive, perpetual (subject to Section 10), nontransferable license (except as set forth in Section 11.2), without the right to sublicense, to execute and use the Software in executable object code form only, solely for the purpose of operating the Products, at a location owned or controlled by Customer, in accordance with the Documentation for Customer’s business purposes.

3.2 Restrictions. Customer acknowledges and agrees that the Software and its structure, organization, source code, and Documentation constitute valuable Intellectual Property Rights (as defined in Section 9.1) of Nimble. Accordingly, Customer shall not nor allow any third party to: (a) modify, adapt, alter, translate, or create derivative works from the Software or Documentation; (b) merge the Software (in whole or in part) with any other software; (c) distribute, sublicense, lease, rent, loan, or otherwise transfer the Software or Documentation to any third party; (d) reverse-engineer the Products or decompile, disassemble, or otherwise attempt to derive the source code for the Software; (e) publish, disclose or otherwise discuss with third parties: (i) the performance of the Software (or Products) or its functionality or (ii) the results of any

benchmarking, testing or other performance or evaluation information or analyses relating to the Software (or Products); (f) access or use the Software (or Products) for any competitive purpose, including but not limited to designing or developing a competitive product or service; or (g) otherwise use or copy the Software except as expressly permitted hereunder. Customer must reproduce, on all copies made by it, and must not remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of Nimble and its licensors on or within the copies of the Software and Documentation.

3.3 Open Source Software. Certain items of software included with the Software are subject to “open source” or “free software” licenses (“**Open Source Software**”). A list of attributions required for certain of the Open Source Software components is included with the Product(s). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of this Agreement. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Nimble Storage makes such Open Source Software, and Nimble Storage’s modifications to that Open Source Software, available by written request at Nimble Storage’s address specified above.

4. WARRANTY.

4.1. Hardware. For a period of one year after the date of receipt by Customer of the applicable Hardware (the “**Hardware Warranty Period**”), Nimble Storage warrants that the Hardware, when used as permitted under these Terms and in accordance with the Documentation, will be free from Error. If the Hardware (or any component or portion thereof) fails to conform to the foregoing warranty, Nimble Storage will, at its own expense and as its sole obligation, and Customer’s sole and exclusive remedy, for breach of this warranty: (a) use commercially reasonable efforts to repair or replace any Hardware for which a reproducible Error is reported in writing to Nimble Storage by Customer during the Hardware Warranty Period; or (b) if Nimble Storage is unable to repair or replace such defective Hardware so that it is free from Error, will accept the return of the Product incorporating the defective Hardware, and effect a refund to Customer for the purchase price actually paid by Customer for such Product, reduced for depreciation, which is calculated on a straight-line basis over a three-year useful life, and, at Nimble Storage’s option, terminate these Terms. Replacement Hardware may be refurbished and/or different models, but will be functionally equivalent to the Hardware being replaced. Nimble Storage’s warranty obligations under this Section 4.1 are conditioned on Customer complying with Nimble Storage’s then-current RMA guidelines and shipping the affected Hardware to Nimble Storage for repair or replacement. Nimble Storage will have no warranty obligations under this Section 4.1 with respect to returned Hardware, if Nimble Storage determines, in its reasonable discretion, after analysis of that returned Hardware, that the Hardware has no Error (such Product, an “**Ineligible Product**”). Nimble Storage will bear all costs of shipping to and

from Nimble Storage under this Section 4.1, except with respect to any Ineligible Product, for which Customer will bear all shipping costs. The provision of any repair or replacement by Nimble Storage to Customer in performance of the warranty obligations in this Section 4.1 will not operate to extend the original Hardware Warranty Period. Nimble Storage will have no warranty obligation under this Section 4.1 to the extent any claims for warranty service result from or relate to (a) any modifications, alterations, or servicing of the Hardware by any party other than Nimble Storage (or under the express direction of Nimble Storage Support Services) or Nimble Storage’s subcontractors; (b) handling, storage, installation, or use not in accordance with the applicable Documentation; (c) damage from accidents, abuse, misuse, or negligence, or any factors beyond Nimble Storage’s control such as fire or flood; (d) any breakdowns, fluctuations, or interruptions in electric power, air conditioning, the telecommunications network, or any combination with products not supplied by Nimble Storage; (e) any defect or nonconformance that is not reproducible by Nimble Storage; or (f) any violation of these Terms. Customer will not extend on Nimble Storage’s behalf any representation or warranty from Nimble Storage.

4.2. Software. For a period of ninety (90) days after the date of receipt by Customer of the Product incorporating the Software or the date that Customer downloads the Software, as applicable (the “**Software Warranty Period**”), Nimble Storage warrants that the Software, when used as permitted under these Terms and in accordance with the Documentation, will be free from Error. If the Software (or any module or portion thereof) fails to conform to the foregoing warranty, Nimble Storage will, at its own expense and as its sole obligation, and Customer’s sole and exclusive remedy, for breach of this warranty: (a) use commercially reasonable efforts to correct any reproducible Error which is reported in writing to Nimble Storage by Customer during the Software Warranty Period; or (b) if Nimble Storage is unable to correct such nonconformity, accept, as applicable, return of the Product incorporating the affected Software and effect a refund to Customer of the fees actually paid by Customer for the affected Products, reduced for depreciation, which is calculated on a straight-line basis over a three-year useful life, in which case Customer’s right to use such Software will be terminated. The provision of any bug fix, patch, or error correction by Nimble Storage to Customer in performance of the warranty obligations in this Section 4.2 will not operate to extend the original Software Warranty Period. Nimble Storage will have no warranty obligation under this Section 4.2 to the extent any claims for warranty service result from or relate to: (a) any use of a version of the Software other than the current version or the immediately preceding version provided by Nimble Storage; (b) any use of the Products in a computing environment not meeting the system requirements and security requirements set forth in the Documentation or applicable order documentation, including hardware and operating system requirements; (c) any issues arising from the failure of the Software to interoperate with any other software, except to the extent that such interoperability is mandated in the applicable Documentation; (d) any violation of these Terms; or (e) any other conditions listed in clauses (a) through (f) of Section 4.1.

4.3 Disclaimer. EXCEPT AS OTHERWISE SET FORTH IN SECTION 4 (“WARRANTIES”), NIMBLE STORAGE PROVIDES THE PRODUCTS, INCLUDING THE SOFTWARE,

DOCUMENTATION, AND SUPPORT SERVICES, "AS IS" WITHOUT WARRANTIES OF ANY KIND. WITHOUT LIMITING THE FOREGOING, NIMBLE STORAGE DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND RELATING TO PRODUCTS, SOFTWARE OR SERVICES PROVIDED HEREUNDER, WHETHER EXPRESS, IMPLIED, STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, ACCURACY, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS. NIMBLE STORAGE DOES NOT WARRANT THAT THE SOFTWARE WILL IN EVERY CASE PROCESS ALL DATA CORRECTLY, OR THAT OPERATION OF THE PRODUCTS, INCLUDING SOFTWARE, WILL BE UNINTERRUPTED, FREE FROM ERROR, OR SECURE. BOTH PARTIES ACKNOWLEDGE THAT THEY HAVE NOT ENTERED INTO THESE TERMS IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION. THE DISCLAIMERS IN THIS SECTION 4.3 WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. WITHOUT LIMITING THE FOREGOING, TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON THE DURATION OF IMPLIED WARRANTIES, THE ABOVE LIMITATION MAY NOT APPLY. THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR FROM JURISDICTION TO JURISDICTION. THE PRODUCTS ARE NOT DESIGNED, INTENDED, OR CERTIFIED FOR USE IN COMPONENTS OF SYSTEMS INTENDED FOR THE OPERATION OF WEAPONS, WEAPONS SYSTEMS, NUCLEAR INSTALLATIONS, MEANS OF MASS TRANSPORTATION, AVIATION, MEDICAL SYSTEMS, DEVICES, IMPLANTS, OR EQUIPMENT, POLLUTION CONTROL, HAZARDOUS SUBSTANCES MANAGEMENT, OR FOR ANY OTHER DANGEROUS APPLICATION IN WHICH THE FAILURE OF THE PRODUCTS COULD CREATE A SITUATION WHERE BODILY INJURY OR DEATH MAY OCCUR. CUSTOMER UNDERSTANDS THAT USE OF THE PRODUCTS IN ANY SUCH APPLICATION IS SOLELY AT CUSTOMER'S RISK.

5. MAINTENANCE AND SUPPORT.

5.1 Fees. Subject to Customer's payment of the applicable purchase price for the Support Services for each Product, Nimble Storage or its designated support partners will provide the Support Services to Customer for the support term determined in accordance with Section 5.2. In the event that Customer fails to pay for Support Services on a timely basis, then without limiting Nimble Storage's other rights and remedies, Nimble Storage reserves the right to immediately suspend or discontinue Support Services.

5.2. Support Term; Termination. The term of the Support Services will commence on the Support Services effective date specified in the Quotation and will continue for a period of one (1) year or as otherwise specified in the Quotation or applicable order documentation, unless earlier terminated in accordance with

the Terms. The term of the Support Services will automatically terminate upon the termination or expiration of these Terms. Upon the termination or expiration of Support Services for any reason, Nimble Storage will have no further obligation to provide Support Services (or other services) for the Products.

5.3. Lapsed Support. For a period of one (1) year after any lapse of Support Services, Customer may request to reinstate such Support Services for such Products upon the terms set forth in these Terms; provided, however, that (a) such Support Services for the applicable Product have not been discontinued by Nimble Storage; (b) these Terms are otherwise still in effect; (c) Customer provides Nimble Storage, upon request, reasonable access to the Products for the purpose of ascertaining that the Products are in satisfactory condition; and (d) Customer pays to Nimble Storage (i) an amount equal to all of the fees that would have been due had the Support Services been provided under these Terms during the entire period of such lapse and the fees for the renewed term, and (ii) a reinstatement fee equal to twenty-five percent (25%) of the Nimble Storage then-current list price for one (1) year of Support Services. Notwithstanding the foregoing, Nimble Storage will have the right to deny reinstatement of Support Services, in Nimble Storage's sole discretion.

5.4. Support Services. On condition that Customer has paid the applicable purchase price for the Support Services, Nimble Storage will provide the following Support Services to Customer pursuant to these Terms:

(a) Timeless Storage.

(i) Provided Customer has maintained continuous eligible Support Services for not less than three (3) years, if Customer purchases three (3) additional years of eligible Support Services, Nimble Storage will, at the beginning of the three (3) year renewal, upgrade the controllers for the applicable Product to either: (x) then-current controllers that most closely match, in Nimble Storage's reasonable discretion, such Product's existing controllers; or (y) then-current controllers that perform at least twenty-five (25%) faster, in Nimble Storage's reasonable discretion, than the Product's existing controllers, depending upon the level of eligible Support Services purchased by Customer. Customers that purchase the entry level Adaptive Flash Product (CS1000H or its equivalent) may need to purchase a capacity upgrade (to be fully populated with disks) to be eligible for this offer. As a condition to receiving the controller upgrades, Customer must take receipt of the upgraded controllers within ninety (90) days from notice (which may include email to Customer's designated contact) that an controller upgrade is available, and return the existing controllers to Nimble Storage within forty-five (45) days from receipt of the upgraded controllers. Without limiting the foregoing, any time Customer purchases *any* controller upgrade, whether or not through the Timeless Storage program, Customer shall return the existing controllers to Nimble no later than forty-five (45) days from receipt of the upgraded controllers.

(ii) Nimble Storage will not increase the renewal rate for Support Services above the rate for the initial Support Services for a Product purchased by Customer (after applying the same Support Services term and applicable pre-renewal in-rack configuration for the Product, excluding any subsequent

Hardware upgrades to the Product (including but not limited to controller upgrades, cache upgrades, disk or expansion shelves)), provided that such Support Services remains generally available for the applicable Product at the time of the renewal. Customer is not obligated to renew Support Services. Notwithstanding the foregoing, in the event of a severe inflation event (defined as annual inflation in excess of seven percent (7%) as measured by the Producer Price Index), Nimble Storage and Customer will negotiate in good faith, reasonable adjustments to the renewal rate in amount not to exceed the inflation over the period since the last renewal.

(iii) Nimble Storage may from time to time modify the Timeless Storage program as referenced in this Section 5.4(a). If Nimble Storage makes modifications that have a material and negative impact on Customer, an existing Product will be governed by the terms in effect immediately prior to such modification until the later of: (x) the date the Customer next receives upgraded controllers under Section 5.4(a)(i), or (y) the expiration of the original or last Support Services renewal term, with respect to the applicable Product, after which the modified Timeless Storage program terms will apply to such Product. Nimble Storage may at any time terminate the Timeless Storage program under this Section 5.4(a) with respect to future Product purchases.

(b) **Helpdesk Support.** Nimble Storage or its designated support partners will provide telephone and e-mail support for the use of the Products twenty-four hours a day, seven days a week. Such support will be provided solely to Customer Technical Personnel, and will consist of answering questions regarding the proper operation of the Products, providing troubleshooting assistance, and rendering general information, advice, and instructions in connection with the use of the Products. Customer will be responsible for providing first-line helpdesk support for individual end- users of the Products, and Customer will be responsible for screening first-line technical inquiries and escalating to Nimble Storage only those issues that cannot be resolved by the Customer Technical Personnel. Nimble Storage will have no obligation to accept calls or messages directly from, or otherwise interact directly with, personnel other than the Customer Technical Personnel. The number of Customer Technical Personnel will not exceed the limit set forth on the Quotation or applicable order documentation and, if no number is specified therein, then the number will not exceed five (5). Nimble Storage will also provide a user account to Customer for online access to Nimble Storage's online support portal.

(c) **Errors.** Nimble Storage will use commercially reasonable efforts to respond to each reported Error. Such response may take the form of Updates, procedural solutions, correction of Documentation errors, Hardware replacement, or other remedial measures as Nimble Storage may determine, in Nimble Storage's sole discretion, to be appropriate. If Nimble Storage determines, in its reasonable discretion, that a Hardware component contains an Error, Nimble Storage will respond within the timeframes specified in [Appendix A](#), depending on the level of support purchased by Customer. Nimble will use commercially reasonable efforts to issue an RMA number and deliver a replacement for such component to Customer within the timeframe specified by the level of support purchased by the Customer. Customer is responsible for providing to Nimble Storage Customer's current and correct contact information, including shipping address

and name and phone number of a key contact at the applicable location. The response times described in [Appendix A](#) will not be applicable if Customer has moved the Product to a different location than that specified on the Purchase Order applicable to such Product and accordingly, Nimble Storage, in its sole discretion, is unable to provide such response time, in which event, Nimble Storage will use commercially reasonable efforts to respond within a reasonable timeframe. Customer acknowledges that for timely response and attempted resolution by Nimble Storage, the applicable Product must have enabled heartbeats and auto-support alerts to Nimble Storage's support team, as well as external network access from the Products, enabling Nimble Storage's support team to have webex/support tunnel access. Customer's inability or unwillingness to do the foregoing will materially impair Nimble Storage's ability to provide support services on a timely basis, if at all. Customer will be responsible for shipping any replaced component(s) to Nimble Storage within ten (10) Business Days after receipt of the replacement in accordance with Nimble Storage's then-current RMA guidelines. Customer shall pay Nimble Storage the cost to Nimble Storage of the replacement component, if (i) Customer fails to return the replaced component to Nimble Storage in accordance with this subsection (b), or (ii) Nimble Storage determines, in its reasonable discretion, after failure analysis of the replaced component that such component is an Ineligible Product (or, as applicable, an Ineligible Product component, or an "Ineligible Component"). Replacement Hardware may be refurbished and/or different models, but will be functionally equivalent to the Hardware being replaced. All returned or replaced Hardware components will become Nimble Storage's property. Nimble Storage will bear all costs of shipping related to the replacement of a component under this Section 5.4(c), except with respect to any Ineligible Component, for which Customer will bear all shipping costs for the delivery of the replacement to Customer and the delivery of the Ineligible Component to Nimble Storage. Customer acknowledges and agrees that the resolution of certain Errors may require Customer to upgrade to a certain Software release.

(d) **Additional Support.** If Customer desires support other than that specified under these Terms, Nimble Storage may choose to offer such support on a time and materials basis at Nimble Storage's then-current fees.

(e) **Updates.** Customer will be entitled to obtain and use all Updates that are generally released during the term of these Terms to customers that are under current Support Services for the Products. All Products within a Group must be under current Support Services to receive Updates. A "Group" is a collection of up to four (4) arrays that are managed by the Customer as a single entity. Nimble Storage may make such Updates available to Customer through electronic download or on optical, magnetic, or other removable media. Certain Updates may require the use of new or upgraded Hardware. Such Hardware is not included under the Support Services and must be purchased separately. The provision of any Update to Customer will not operate to extend the original warranty period on the Products.

(f) **Support Lifecycle.** Nimble Storage provides different levels of support depending on where a Product is in its lifecycle. Information on Nimble Storage's product lifecycles and related Support Services is set forth in Nimble Storage's then-current end of availability and end of support policy, a copy of

which will be provided to Customer upon request. Nimble Storage reserves the right to update or amend its policies from time to time.

5.5. Customer Responsibilities.

(a) **Responsibilities.** As a condition to all of Nimble Storage's obligations under this Section 5, Customer will provide the following:

(i) Customer will ensure that all of its personnel who use the Products in the course of their employment are familiar with the Products to the extent necessary for them to operate the Products as necessary to perform their duties with reasonable competence. Without limiting the generality of the foregoing, at Customer's expense, Customer will cause all Customer Technical Personnel to complete such Product-related training and instruction as Nimble Storage may reasonably require from time to time. Upon the appointment of any new Customer Technical Personnel, Customer will take reasonable steps to expeditiously train the new individual to appropriate standards of technical competence. Customer will cooperate with Nimble Storage to the extent that such cooperation would facilitate Nimble Storage's provision of Support Services hereunder. By way of example, but not limitation, Customer acknowledges that Support Services are not a substitute for proper training on the Products.

(ii) Without limiting the foregoing, Customer will (a) provide Nimble Storage, at its request, with reasonable access to appropriate personnel, records, network resources, and maintenance logs; and (b) comply with Nimble Storage's instructions regarding the use and operation of the Products.

(iii) Customer agrees and acknowledges that Nimble Storage's obligations under these Terms are limited to the Products, and that Nimble Storage is not responsible for the operation and general maintenance of Customer's computing environment. Without limiting the foregoing, Customer will keep a detailed operations log for the Products and will document any Errors that arise. Customer will also be responsible for activities related to data backup, and Customer will ensure that all necessary data backup functions have been performed. Nimble Storage will not be responsible for any losses or liabilities arising in connection with any failure of data backup processes.

(b) **Exclusions.** Notwithstanding anything to the contrary in these Terms, Nimble Storage will have no obligation to provide any Support Services to Customer to the extent that such Support Services arise from or relate to any conditions that are listed as warranty exclusions in Section 4.

6. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL NIMBLE STORAGE BE LIABLE FOR (A) ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES, OR (B) ANY DAMAGES FOR LOST DATA, LOST PROFITS, LOST ANTICIPATED SAVINGS, OR THE COST OF PROCUREMENT OF SUBSTITUTE OR ALTERNATIVE HARDWARE, SOFTWARE OR SERVICES, IN

EITHER EVENT ARISING FROM OR RELATING TO THESE TERMS, THE PRODUCTS, THE SOFTWARE OR THE SUPPORT SERVICES, EVEN IF NIMBLE STORAGE KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. NIMBLE STORAGE'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THESE TERMS, THE PRODUCTS, THE SOFTWARE OR THE SUPPORT SERVICES, WHETHER IN CONTRACT, WARRANTY, INDEMNIFICATION, TORT, STATUTE, OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER HEREUNDER FOR THE PRODUCT OR SERVICE AT ISSUE. THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. CUSTOMER ACKNOWLEDGES THAT THE PURCHASE PRICE REPRESENTS THE ALLOCATION OF RISK SET FORTH IN THESE TERMS, AND THAT IN THE ABSENCE OF THESE LIMITATIONS ON NIMBLE STORAGE'S LIABILITY, THE PURCHASE PRICE WOULD BE SUBSTANTIALLY DIFFERENT. NIMBLE STORAGE DISCLAIMS ANY AND ALL LIABILITY ON BEHALF OF NIMBLE STORAGE'S SUPPLIERS AND LICENSORS. NIMBLE STORAGE DOES NOT LIMIT OR EXCLUDE ANY LIABILITY TO THE EXTENT THAT IT CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW.

7. INDEMNIFICATION. Nimble Storage will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Software infringes any U.S. patents issued as of the date of purchase, U.S. copyrights, U.S. trademarks, or trade secrets recognized under the Uniform Trade Secrets Act, and Nimble Storage will pay those damages finally awarded against Customer in any such action that are specifically attributable to such claim or those damages agreed to in a monetary settlement of such action. The foregoing obligation is conditioned on: (a) Customer notifying Nimble Storage promptly in writing of such action, (b) Customer giving Nimble Storage sole control of the defense thereof and any related settlement negotiations, and (c) Customer cooperating with Nimble Storage and, at Nimble Storage's request and expense, assisting in such defense. If any Software becomes, or in Nimble Storage's opinion is likely to become, the subject of an infringement claim, Nimble Storage may, at its option and expense, either (i) procure for Customer the right to continue using the Software, (ii) replace or modify the Software so that it becomes non-infringing, or (iii) accept return of (1) the Product incorporating the affected Software and effect a refund to Customer the fees actually paid by Customer for the affected Products, reduced for depreciation, which is calculated on a straight-line basis over a three-year useful life, in which case Customer's right to use such affected Software will be terminated. Notwithstanding the foregoing, Nimble Storage will have no obligation under this Section 7 or otherwise with respect to any infringement claim based upon (i) any use of the Software not in accordance with these Terms or the applicable Documentation or for purposes not intended by Nimble Storage, (ii) any use of Software in combination with other products, equipment, software, or data not supplied by Nimble Storage, or (iii) any modification or alteration of the Software or Product by any person other than Nimble Storage or its authorized representatives, and Customer will indemnify, defend, and hold Nimble Storage harmless from and against all claims, suits, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising from or relating to such infringement claim.

THIS SECTION 7 STATES NIMBLE STORAGE'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR INFRINGEMENT CLAIMS AND ACTIONS.

8. CONFIDENTIALITY. The Software, Pre-Release Software, any benchmark or performance tests relating to the Products or Software, and certain information regarding the Products and Nimble Storage's business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information, is considered Nimble Storage's "**Confidential Information**". Customer shall protect the Confidential Information from unauthorized dissemination and use with the same degree of care that Customer uses to protect its own like information and, in any event, will use no less than a reasonable degree of care in protecting such Confidential Information. Customer will use the Confidential Information only for those purposes expressly authorized in these Terms. Customer will not disclose to third parties the Confidential Information without the prior written consent of Nimble Storage.

9. OWNERSHIP.

9.1. Intellectual Property Rights. Customer acknowledges and agrees that Nimble Storage and its suppliers exclusively own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, and other intellectual property rights worldwide (collectively, "**Intellectual Property Rights**") in and to the Products, Software, Pre-Release Software, the Documentation, and all Confidential Information. Nimble Storage and its suppliers expressly reserve all rights not expressly granted to Customer in these Terms. There are no implied licenses granted hereunder. Customer shall not engage, and will not authorize or direct any third party to engage, in any act or omission that would impair any Intellectual Property Right of Nimble Storage or any of its suppliers.

9.2. Pre-Release Software. Nimble Storage may make available to Customer Pre-Release Software. Customer agrees that the Pre-Release Software: (i) is not to be used in a production environment; (ii) may or may not ever be made generally available to Nimble Storage customers as part of an Update or otherwise; (iii) is not under warranty or support; (iv) is not at the level of compatibility, performance and/or scalability of Software; (v) may not operate correctly; and, (vi) may be subject to additional terms and conditions that are specific to such Pre-Release Software. Customer agrees to notify Nimble Storage or any bugs, errors or problems with respect to Pre-Release Software.

9.3. Feedback. Any questions, comments, or feedback provided by Customer to Nimble Storage regarding the Products and/or Pre-Release Software and any other products, services, or materials provided by Nimble Storage (collectively, "**Feedback**") will be deemed non-confidential and non-proprietary information for purposes of these Terms. Nimble Storage will have no obligation to Customer or any third party with respect to such Feedback, and be free to use and exploit such Feedback in any form or manner and for any purpose and without payment of any consideration to Customer or any third party.

9.4. Unauthorized Products and Brand Protection. Customer will not remove, deface, or obscure any Nimble Storage

copyright or trademark notices and/or legends or other proprietary notices on, incorporated in, or associated with the Products and Documentation. Customer may not alter, unbundle or break the Product down to components for distribution, transfer, resale or any other purposes. Customer is strictly prohibited from separating a Product key from the associated Software and transferring the Product key to a third party for any purposes. All Product must only be obtained in the first instance from Nimble Storage or a Reseller. If, in Nimble Storage's reasonable judgment, the original acquisition of a Product from Nimble Storage or a Reseller occurred through unauthorized means, Nimble Storage has no obligations to provide customer services or any Support Services to Customer for the Product in question or to allow any associated Software licenses to continue.

9.5. Logo/References. Nimble Storage may use Customer's name and logo in Nimble Storage's marketing materials, website(s) and communications, subject to Customer's then-current trademark usage guidelines, for the purpose of indicating Customer is a user of the Products, Software and/or Services.

10. TERM AND TERMINATION. Nimble Storage may terminate these Terms immediately upon written notice if Customer breaches these Terms, regardless of cure. In addition, these Terms will automatically terminate upon cessation of any Support Services, subject to any reinstatement after lapse under the terms of Section 5.3. Notwithstanding the foregoing, unless Nimble Storage terminates these Terms for cause, Customer retains a license under Section 3.1. Sections 1, 3.2, 4.3, 6, 8, 9, 10, and 11 will survive the termination or expiration of these Terms for any reason. In addition, upon any expiration or termination of these Terms, Nimble Storage may cancel or reschedule any Purchase Orders outstanding as of such termination or expiration date.

11. GENERAL.

11.1. Governing Law. These Terms will be governed by the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will apply only to the extent that it establishes the provisions of these Terms as exclusively binding the parties with respect to the subject matter of these Terms. Any action or proceeding arising from or relating to these Terms must be brought in a state or federal court located in Santa Clara County, California, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding, except that Nimble Storage may file a claim or take action in any court having jurisdiction to protect its Intellectual Property Rights or Confidential Information.

11.2. Miscellaneous. Nimble Storage may freely assign its rights or delegate any of its duties under these Terms. Customer may not assign or transfer, by operation of law or otherwise, any of its rights under these Terms without Nimble Storage's prior written consent. Any attempted assignment or transfer by Customer in violation of the foregoing will be void. All waivers must be in writing. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All Purchase Orders and invoices under these Terms will

be subject only to these Terms. In the event the terms of any such Purchase Order, invoice or any confirmation or similar document conflict with or are additional to these Terms, these Terms alone shall apply and shall govern regardless of execution of such document by one or both parties. Furthermore, unless otherwise expressly agreed to in writing by Nimble Storage, no usage of trade, course of dealings, course of performance, understanding, or any term or condition in any Purchase Order, confirmation, or other document furnished by Customer that in any way modifies, is inconsistent with, is different from, attempts to explain and/or is in addition to these Terms shall be part of these Terms, and shall be regarded as null and void and is hereby expressly rejected. Additionally, Nimble Storage's failure to object to any term or condition in any oral or written communication from Customer, will not constitute an acceptance thereof or a waiver of any term or condition contained in these Terms. If any provision of these Terms is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. All notices, consents, and approvals under these Terms must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth on the Quotation and will be effective upon receipt or five business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party. Nimble Storage will be excused from performance of its obligations under these Terms if such failure to perform results from compliance with any requirement of applicable law, acts of God, fire, strike, embargo, terrorist attack, war, blackout, telecommunications or network failure, insurrection or riot or any causes beyond the reasonable control of Nimble Storage. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

11.3. Export Restrictions; Entire Agreement.

Customer acknowledges that the laws and regulations of the United States may restrict the export and re-export of certain commodities and technical data of United States origin. Customer agrees that it will not export or re-export the Products in any form without the appropriate United States and/or foreign government licenses. Customer shall not, unless authorized by U.S. export license or other government authorizations, directly or indirectly export Products and Services to (or use Products and Support Services in) countries subject to U.S. embargoes or trade sanctions programs. Customer is not a party, nor will it export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and will not use Products and Support Services for any purposes prohibited by US law. The Product is a "commercial item," as that term is defined at 48 C.F.R. 2.101. Any technical data provided with such Product is commercial technical data as defined in 48 C.F.R. 12.211. All Software and Documentation constitute "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212, and are provided to the U.S. Government only as commercial end items. Consistent with 48 C.F.R. 12.211 through 12.212, 48 C.F.R. 227.7202-1 through 227.7202-4, and 48 C.F.R. 252.227-7015, all U.S. Government customers acquire the Product with only those rights set forth in these Terms. Each party shall

comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, and the UK Bribery Act. Headings used in these Terms are for ease of reference only and shall not be used to interpret any aspect of these Terms. Unless the context clearly requires otherwise, "includes" and "including" are not limiting. These Terms may be amended only by a writing signed by both parties. The parties are independent contractors under these Terms and no other relationship is intended including, without limitation, a partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or other special relationship. Neither party shall act in a manner that expresses or implies a relationship other than that of independent contractor. These Terms constitute the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter. Nothing in these Terms, express or implied, is intended to nor shall be construed to confer upon or give to any third party (including any customer) other than the parties hereto, any interest, right, remedy, or other benefit with respect to or in connection with these Terms.

Appendix A - Standard Response Levels Available For Purchase

This Appendix A describes the Nimble Storage Support Services offerings that are available for purchase by Customer for the Products. Such offerings are available subject to Nimble Storage's then-current technical support policies. Nimble Storage may revise and update this Appendix A and/or such technical support policies from time to time.

Type of Response	Response Time	Restrictions/Special Terms
Next Business Day Parts Delivery	Following telephone-based troubleshooting and diagnosis, parts will be dispatched to arrive on-site the next business day.	<ul style="list-style-type: none"> Available five (5) days each week, ten (10) hours each day - excluding holidays. Customer will be solely responsible for installing the replacement part Calls received by Nimble Support after 3:00 PM** local Customer time (Monday - Friday) may require an additional business day for parts to arrive at Customer's location.
4 Hour Parts Delivery	Following completion of telephone-based troubleshooting and diagnosis, parts will be dispatched to arrive on- site within 4 hours.	<ul style="list-style-type: none"> Available seven (7) days each week, twenty-four (24) hours each day - including holidays. Available in defined four (4) hour response locations (e.g. zip codes). Customer will be solely responsible for installing the replacement part
4 Hour Onsite Parts Replacement	Following completion of telephone-based troubleshooting and diagnosis identifying root cause, parts will be dispatched to arrive on- site within 4 hours.	<ul style="list-style-type: none"> Available seven (7) days each week, twenty-four (24) hours each day - including holidays. Available in defined four (4) hour response locations (e.g. zip codes). Nimble Storage will install the replacement part
Concierge Manager Services	<p>Reactive Escalation Support</p> <ol style="list-style-type: none"> 1. Case management – priority case handling 2. Technical Root cause analysis 3. Nimble Storage process and tools reviews (InfoSight) 4. Product tech talk facilitation 5. Corporate advocate 6. System and performance health monitoring <p>Account Management:</p> <ol style="list-style-type: none"> 1. Install base data management 2. Weekly/monthly service review meetings 3. Proactive reporting – case trending analysis, update advice, release recommendations 4. Customized reporting specific to Customer requirements 5. Customer advocate 	<ul style="list-style-type: none"> Concierge Manager available (7) seven days a week, 24 hours a day – including holidays Concierge Manager may be shared or dedicated depending upon the level of service Customer has purchased. Any one individual Concierge Manager will handle no more than ten (10) accounts or two hundred (200) arrays in total. Customer must have current Support; standard Support terms apply Customer must have heartbeats and alerts enabled; Nimble Storage must be receiving autosupports Concierge Manager may make up to one (1) visit per quarter to Customer site, in Nimble Storage's sole discretion No architecture planning No professional services

EXHIBIT D

(see attached)

HPE Get 6-Nines Guarantee