

Business Associate Agreement Addendum

This Business Associate Agreement Addendum (“Addendum” or “BAA”) is entered into by and between Qumulo and Customer and is hereby incorporated by reference into the Qumulo SaaS Subscription Terms and Conditions (“Agreement”) entered into by and between the Parties. This BAA, pursuant to which Qumulo is a Business Associate of Customer, is applicable only where Customer is a Covered Entity or a Business Associate and only in connection with Customer’s use of the Services. If there is any conflict between a provision in this BAA and a provision in the Agreement, this BAA will control.

1. **Definitions.** Except as otherwise defined in this BAA, capitalized terms shall have the definitions set forth in 45 CFR Part 160 and Part 164 (“HIPAA Rules”), as amended from time to time.

“**Protected Health Information**” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103 of the HIPAA Rules, provided that it is limited to such protected health information that is received by Qumulo from, or created, received, maintained, or transmitted by Qumulo on behalf of, Customer through the use of the Services.

“**Services**” means the Subscription Services, excluding any pre-release, beta, or preview features.

“**Unsuccessful Security Incidents**” means, without limitation, pings and other broadcast attacks on Qumulo’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, use, or disclosure of PHI.

2. Use and Disclosure of PHI

a. Qumulo will not use or disclose PHI in a manner other than as permitted or required by the Agreement, this BAA, or by law. Qumulo will not use PHI for any advertising, marketing or similar commercial purpose of Qumulo or any third party, and Qumulo will not violate the HIPAA prohibition on the sale of PHI. Qumulo will use or disclose, to the extent practicable, the minimum necessary amount of PHI to carry out the intended purpose of the use or disclosure, in accordance with Section 13405(b) of the HITECH Act (codified at 42 USC §17935(b)) and any of the act’s implementing regulations adopted by the U.S. Department of Health and Human Services, for each use or disclosure of PHI.

b. Except as otherwise limited in this BAA, Qumulo may use or disclose PHI as reasonably necessary to provide the Services to Customer and to undertake other activities permitted or required of Qumulo by the Agreement or this BAA; provided that such use or disclosure would not violate the HIPAA Rules if done by Customer, unless expressly permitted by Section 2(c).

c. Except as otherwise limited by this BAA, Qumulo may use and disclose PHI in its possession for the proper management and administration of Qumulo’s business and to carry out its legal responsibilities, provided that any such disclosure may only occur if (i) it is required by law; or (ii) Qumulo obtains, in writing, prior to making any disclosure to a third party (1) reasonable assurances from this third party that the PHI will be held confidential as provided under this BAA and used or further disclosed only as required by law or for the purpose for which it was disclosed to this third party and (2) an agreement from this third party to notify Qumulo of any breaches of the confidentiality of the PHI.

3. **Safeguards.** Qumulo will use reasonable and appropriate safeguards to prevent the use or disclosure of PHI other than as provided by the Agreement or this BAA and Qumulo agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of Customer. Qumulo agrees to take reasonable steps, including providing adequate training to its employees to ensure compliance with this BAA and to ensure that the actions or omissions of its employees or agents do not cause Qumulo to breach the terms of this BAA.

4. **Reporting.** Qumulo shall report to Customer: (1) any use and/or disclosure of PHI that is not permitted or

required by this BAA of which Qumulo becomes aware; (2) any Security Incident affecting PHI of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents shall be given; and/or (3) any breach of Customer's unsecured PHI that Qumulo may discover. Notification of a breach will be made without unreasonable delay, but in no event more than five business days after Qumulo's discovery of a breach. The timing of other reporting will be made consistent with Qumulo's and Customer's legal obligations. Notification(s) under this section, if any, will be delivered to Customer pursuant to the notice section of the Agreement.

5. Agreements with Subcontractors. Qumulo shall require its subcontractors who create, receive, maintain, or transmit PHI on behalf of Qumulo to agree in writing to (a) the same or no less restrictive restrictions and conditions that apply to Qumulo with respect to such PHI; (b) appropriately safeguard the PHI; and (c) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule. Qumulo remains responsible for its Subcontractors' compliance with the obligations of this BAA.

6. Disclosure to the Secretary. Qumulo shall make available its internal practices, records, and books relating to the use and/or disclosure of PHI received from Customer to the Secretary of the Department of Health and Human Services for purposes of determining Customer's compliance with HIPAA, subject to attorney-client and other applicable legal privileges.

7. Access to and Amendment of PHI. With regard to the obligations of 45 CFR § 164.524 and 45 CFR § 164.526 of the Privacy Rule, the parties acknowledge and agree that Qumulo does not maintain PHI in a Designated Record Set for Customer.

8. Accounting of Disclosure. Qumulo, at the request of Customer, shall within thirty (30) days make available to Customer such information relating to disclosures of PHI made by Qumulo as required for Customer to make any requested accounting of such disclosures in accordance with 45 CFR § 164.528 of the Privacy Rule.

9. Performance of a Customer's Obligations. To the extent Qumulo is to carry out a Covered Entity obligation under the Privacy Rule, Qumulo shall comply with the requirements of the Privacy Rule that apply to Customer in the performance of such obligation.

10. Responsibilities of Customer. With regard to the use and/or disclosure of PHI by Qumulo, Customer agrees (a) Customer shall not request Qumulo to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Customer (except to the extent permitted by HPAA for a business associate), and (b) Customer is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA, including implementing privacy and security safeguards in the systems, applications, and software that Customer controls, configures, and integrates. Customer is responsible for maintaining appropriate data backups to address any requirements related to the recovery of PHI.

11. Term and Termination. This BAA shall continue in effect until the earlier of (1) termination by a Party for breach as set forth in this BAA, or (2) expiration of the Agreement.

a. Upon written notice, either Party immediately may terminate the Agreement and this BAA if the other Party is in material breach or default of any obligation in this BAA. Either party may provide the other a thirty (30) calendar day period to cure a material breach or default within such written notice.

b. Upon expiration or termination of this BAA, Qumulo shall return or destroy all PHI in its possession, if it is feasible to do so, and as set forth in the applicable termination provisions of the Agreement. If it is not feasible to return or destroy any portions of the PHI upon termination of this BAA, then Qumulo shall extend the protections of this BAA, without limitation, to such PHI and limit any further use or disclosure of the PHI to those purposes that make the return or destruction infeasible for the duration of the retention of the PHI.

12. No Third Party Beneficiaries. This BAA is between the parties hereto. Nothing expressed or implied in this BAA is intended to confer, nor shall anything herein confer, any rights, remedies, obligations, or liabilities whatsoever upon any person other than Qumulo and Customer and any respective successors and assigns.