DATA PROCESSING ADDENDUM

This Data Processing Addendum ("**Addendum**") forms part of the Qumulo SaaS Subscription Terms and Conditions, available at https://qumulo.com/wp-content/uploads/2021/03/Qumulo-SaaS-Subscription-Terms-and-Conditions-Final-.pdf (the "**Agreement**") between you ("**Company**," "**you**," or "**your**") and Qumulo, Inc. ("**Service Provider**," "**us**," or "**our**").

1. **Subject Matter and Duration.**

   a) **Subject Matter.** This Addendum reflects the parties' commitment to abide by Data Protection Laws concerning the Processing of Your Personal Data in connection with our execution of the Agreement. All capitalized terms that are not expressly defined in this Addendum will have the meanings given to them in the Agreement. If and to the extent language in this Addendum or any of its Exhibits conflicts with the Agreement, this Addendum shall control.

   b) **Duration and Survival.** This Addendum will become legally binding upon the effective date of the Agreement or upon the date that the parties sign this Addendum if it is completed after the effective date of the Agreement. We will Process Your Personal Data until the relationship terminates as specified in the Agreement.

2. **Definitions.**

For the purposes of this Addendum, the following terms and those defined within the body of this Addendum apply.

   a) "**Your Personal Data**" means Personal Data Processed by us on your behalf.

   b) "**Data Protection Laws**" means all applicable data privacy, data protection, and cybersecurity laws, rules and regulations to which the Your Personal Data are subject. "Data Protection Laws" shall include, but not be limited to, the California Consumer Privacy Act of 2018 ("**CCPA**") and the EU General Data Protection Regulation 2016/679 ("**GDPR**").

   c) "**Personal Data**" has the meaning assigned to the term "personal data" or "personal information" under applicable Data Protection Laws.

   d) "**Process**" or "**Processing**" means any operation or set of operations which is performed on Personal Data or sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction.

   e) "**Security Incident(s)**" means the breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Your Personal Data attributable to us.

   f) "**Services**" means the services that we perform under the Agreement.

   g) "**Subprocessor(s)**" means our authorized vendors and third-party service providers that Process Your Personal Data.

3. **Data Use and Processing.**

   a) Documented Instructions. We shall Process Your Personal Data to provide the Services in accordance with the Agreement, this Addendum, any applicable Statement of Work, and any instructions agreed upon by the parties. We will, unless legally prohibited from doing so, inform you in writing if we reasonably believe that there is a conflict between your instructions and applicable law, or if we otherwise seek to Process Your Personal Data in a manner that is inconsistent with your instructions.

   b) Authorization to Use Subprocessors. To the extent necessary to fulfill our contractual obligations under the Agreement, you hereby authorize us to engage Subprocessors.

   c) Service Provider and Subprocessor Compliance. We agree to (i) enter into a written agreement with Subprocessors regarding such Subprocessors' Processing of Your Personal Data that imposes on such Subprocessors data protection requirements for Your Personal Data that are consistent with this Addendum; and (ii) remain responsible to you for our Subprocessors' failure to perform their obligations with respect to the Processing of Your Personal Data.

   d) Right to Object to Subprocessors. Where required by Data Protection Laws, we will notify you via email prior to engaging any new Subprocessors that Process Your Personal Data, and allow you ten (10) days to object. If you have legitimate objections to the appointment of any new Subprocessor, the parties will work together in good faith to resolve the grounds for the objection.

e) Confidentiality. Any person authorized to Process Your Personal Data must contractually agree to maintain the confidentiality of such information or be under an appropriate statutory obligation of confidentiality.

f) Personal Data Inquiries and Requests. Where required by Data Protection Laws, we agree to provide reasonable assistance and comply with reasonable instructions from you related to any requests from individuals exercising their rights in Your Personal Data granted to them under Data Protection Laws.

g) Sale of Your Personal Data Prohibited. We shall not sell Your Personal Data as the term "sell" is defined by the CCPA.

h) Data Protection Impact Assessment and Prior Consultation. Where required by Data Protection Laws, we agree to provide reasonable assistance at your expense to you where, in your judgement, the type of Processing performed by us requires a data protection impact assessment and/or prior consultation with the relevant data protection authorities.

i) Demonstrable Compliance. We agree to provide information reasonably necessary to demonstrate compliance with this Addendum upon your reasonable request.

j) Limitation on Disclosure of Your Personal Data. To the extent legally permitted, we shall: (i) promptly notify you in writing upon receipt of an order, demand, or document purporting to request, demand or compel the production of Your Personal Data to any third party, including, but not limited to the United States government for surveillance and/or other purposes; and (ii) not disclose Your Personal Data to the third party without providing you at least forty-eight (48) hours' notice, so that you may, at your own expense, exercise such rights as you may have under applicable laws to prevent or limit such disclosure.

k) Service Optimization. Where permitted by Data Protection Laws, we may Process Your Personal Data: (i) for our internal uses to build or improve the quality of our services; (ii) to detect Security Incidents; and (iii) to protect against fraudulent or illegal activity.

l) Aggregation and De-Identification. We may: (i) compile aggregated and/or de-identified information in connection with providing the Services, provided that such information cannot reasonably be used to identify you or any data subject to whom Your Personal Data relates ("**Aggregated and/or De-Identified Data**"); and (ii) use Aggregated and/or De-Identified Data for our lawful business purposes.

4. Cross-Border Transfers of Personal Data.

a) Cross-Border Transfers of Personal Data. You authorize us and our Subprocessors to transfer Your Personal Data across international borders, including from the European Economic Area, Switzerland, and/or the United Kingdom to the United States.

b) Standard Contractual Clauses. If Your Personal Data that originates in the European Economic Area, Switzerland, and/or the United Kingdom is transferred by you to us in a country that has not been found to provide an adequate level of protection under Data Protection Laws, the parties agree that the terms of the transfer shall be governed by the Standard Contractual Clauses attached hereto as **Exhibit A**. The parties agree that: (i) the audits described in Clause 5(f) and Clause 12(2) of the Standard Contractual Clauses shall be carried out in accordance with Section 7 of this Addendum; (ii) pursuant to Clause 5(h) and Clause 11 of the Standard Contractual Clauses, we may engage new Subprocessors in accordance with Section 3(b) – (d) of this Addendum; and (iii) the Subprocessor agreements referenced in Clause 5(j) and certification of deletion referenced in Clause 12(1) of the Standard Contractual Clauses shall be provided only upon Your written request. Each party's acceptance of the Agreement shall be considered a signature to the Standard Contractual Clauses to the extent that the Standard Contractual Clauses apply hereunder.

5. Information Security Program.

a) Security Measures. We will use commercially reasonable efforts to implement and maintain reasonable administrative, technical, and physical safeguards designed to protect Your Personal Data.

6. Security Incidents.

a) Notice. Upon becoming aware of a Security Incident, we agree to provide written notice to you without undue delay and within the time frame required under Data Protection Laws. Where possible, such notice will include all available details required under Data Protection Laws for you to comply with your own notification obligations to regulatory authorities or individuals affected by the Security Incident.

7. Audits.

a) Company Audit. Where Data Protection Laws afford you an audit right, you (or your appointed

representative) may carry out an audit of our policies, procedures, and records relevant to the Processing of Your Personal Data. Any audit must be: (i) conducted during our regular business hours; (ii) with reasonable advance notice to us; (iii) carried out in a manner that prevents unnecessary disruption to our operations; and (iv) subject to reasonable confidentiality procedures. In addition, any audit shall be limited to once per year, unless an audit is carried out at the direction of a government authority having proper jurisdiction.

8. **Data Deletion.**

   a) <u>Data Deletion</u>. At the expiry or termination of the Agreement, we will, at your option, delete or return all Your Personal Data (excluding any back-up or archival copies which shall be deleted in accordance with our data retention schedule), except where we are required to retain copies under applicable laws, in which case we will isolate and protect Your Personal Data from any further Processing, except to the extent required by applicable laws.

9. **Processing Details.**

   a) <u>Subject Matter</u>. The subject matter of the Processing is the Services pursuant to the Agreement.
   b) <u>Duration</u>. The Processing will continue until the expiration or termination of the Agreement.
   c) <u>Categories of Data Subjects</u>. Data subjects whose Your Personal Data will be Processed pursuant to the Agreement.
   d) <u>Nature and Purpose of the Processing</u>. The purpose of the Processing of Your Personal Data by us is the performance of the Services.
   e) <u>Types of Your Personal Data</u>. Your Personal Data that is Processed pursuant to the Agreement.

Exhibit A

Standard Contractual Clauses (Processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

Name of the data exporting organisation: Company (as defined in the Addendum).

(the data **exporter**)

And

Name of the data importing organisation: Service Provider (as defined in the Addendum).

(the data **importer**)

each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

(a)   *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b)   '*the data exporter*' means the controller who transfers the personal data;

(c)   *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d)   *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e)   '*the applicable data protection law*' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f)   *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h)   to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i)   that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j)   that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a)   to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b)   that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c)   that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d)   that it will promptly notify the data exporter about:

      (i)   any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

      (ii)   any accidental or unauthorised access, and

      (iii)   any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e)   to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f)   at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g)   to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h)   that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i)   that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j)   to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1.   The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2.   If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

        The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3.   If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1.   The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

        (a)   to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

        (b)   to refer the dispute to the courts in the Member State in which the data exporter is established.

2.   The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1.   The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2.   The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3.   The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1.   The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2.   The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3.   The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4.   The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1.   The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2.   The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.
The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter
The data exporter is: Company.

Data importer
The data importer is: Service Provider.

Data subjects
The personal data transferred concern the following categories of data subjects: As set forth in Section 9(c) of the Addendum.

Categories of data
The personal data transferred concern the following categories of data: As set forth in Section 9(e) of the Addendum.

Special categories of data (if appropriate)
The personal data transferred concern the following special categories of data: As set forth in Section 9(e) of the Addendum.

Processing operations
The personal data transferred will be subject to the following basic processing activities: Processing to carry out the Services pursuant to the Agreement.

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

Service Provider will use commercially reasonable efforts to implement and maintain reasonable administrative, technical, and physical safeguards designed to protect Your Personal Data in accordance with the Addendum.