COHESITY, INC.
SAAS TERMS OF SERVICE

COHESITY, INC. (TOGETHER WITH ITS AFFILIATES, "**COHESITY**") SUPPLIES A MODERN DATA MANAGEMENT PLATFORM WITH COHESITY-MANAGED (SAAS) AND CUSTOMER-MANAGED (SOFTWARE) DEPLOYMENT OPTIONS AND FEATURES. THESE TERMS APPLY ONLY TO COHESITY SAAS.

COHESITY AGREES TO SUPPLY ACCESS TO SPECIFIED COHESITY SAAS SERVICES TO YOUR BUSINESS OR ORGANIZATION ("**CUSTOMER**," "**YOU**" OR "**YOUR**") ONLY IF (A) YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER AND (B) YOU ACCEPT AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS IN THESE COHESITY SAAS TERMS OF SERVICE (THE "**TERMS**," INCLUDING ALL DOCUMENTS INCORPORATED HEREIN BY REFERENCE). THE FOREGOING SHALL BE DEFINITIVELY EVIDENCED BY ANY ONE OF THE FOLLOWING MEANS: YOUR CLICKING THE "ACCEPT," "CONTINUE" OR A SIMILAR BUTTON, AS APPLICABLE; YOUR SIGNATURE ON A TANGIBLE COPY OF THIS AGREEMENT; YOUR USE (OR CONTINUED USE) OF THE SERVICES OR BY SUCH OTHER CONTRACT FORMATION MECHANISM AS MAY BE RECOGNIZED UNDER APPLICABLE LAW. IF YOU DO NOT AGREE TO THIS AGREEMENT, CEASE ALL ACCESS AND/OR USE OF THE SERVICE(S).

1. SERVICE AND RESTRICTIONS

a) **Service Scope and Access**. Subject to the Terms, including the Scope of SaaS Offerings at www.cohesity.com/agreements incorporated herein, Customer may access and use the Services to which Customer is Entitled for Customer's internal business purposes only. To the extent use of a Service requires Customer to install Cohesity software, Cohesity grants Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Period to use the object code form of such software internally in connection with Customer's use of the Service, subject to the Terms (and any license agreement contained therein, if applicable and accepted by Customer). For clarity, subscription Entitlements include both a license and Support for the duration of the subscription. Services may be supplied using third-party infrastructure such as Amazon Web Services ("**AWS**") or Microsoft Azure Cloud Services.

b) **Service Levels.** The Services will be provided in accordance with the applicable Service Level Agreement located at www.cohesity.com/agreements (if applicable).

c) **Restrictions.** Customer will not (and will not knowingly allow any third party to): (i) modify, reverse engineer, decompile, disassemble, or otherwise attempt to discover the underlying structure, ideas, source code, or algorithms of the Services or any software used to provide or make the Services available (except to the extent that applicable law prohibits such restrictions); (ii) remove or otherwise alter any copyright, patent, or other proprietary rights notices or labels from the Services or any portion thereof; (iii) access or use the Services to develop, promote, distribute, sell or support any product or service competitive with any Services; (iv) disclose any details about benchmarking results or technical specifications of any Services; or (v) make representations, warranties, or guarantees to any person or entity with respect to any Services that purport to be by or on behalf of Cohesity or its suppliers. Customer may permit its Representative to use the Services on Customer's behalf so long as such use is for Customer's sole benefit and Customer is responsible for the Representative's compliance with the Terms. For avoidance of doubt, Customer may not utilize, host, support or otherwise deploy the Services as a service on behalf of any unaffiliated third party without the express written agreement of Cohesity.

d) **Overages**. Customer is permitted a thirty (30) day grace period for excess Usage or unforeseen events leading to non-compliance with its Entitlements. Subsequently, Customer is expected to make an additional purchase or expansion to Entitlements to address any prior or continued excess capacity Usage.

e) **Ownership**. Cohesity retains all rights, title, and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Services, and any and all software, products, works or other intellectual property created, used, provided or made available by Cohesity under or in connection with the Terms. Customer grants Cohesity a perpetual and irrevocable right to use, in any way and for any purpose without restriction or compensation to Customer, suggestions, enhancement requests, ideas, corrections, or other feedback provided by Customer (or its Users) relating to Cohesity products or services.

2. CUSTOMER CONTENT & RESPONSIBILITIES

a) **Customer Content.** Customer Content shall not be deemed part of any Services by virtue of being located on or processed through the Services. As between the Parties, Customer or its licensors retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Content and any modifications made thereto in the course of the operation of the Service. Cohesity is hereby expressly granted a non-exclusive, worldwide, royalty-free right to access and process the Customer Content strictly to the extent necessary to provide the Services or as may be required by law. For clarity (and without limitation), Customer Content is Customer's Confidential Information.

b) **General Responsibilities.** Customer is responsible for:
   i. ensuring Customer Content and its use of Services complies with the Terms and applicable law, including that Customer agrees not to store or process protected health information using the Services without first entering into a business associate agreement/addendum to these Terms with Cohesity;
   ii. any claims that Customer Content infringes, misappropriates, or violates any third party's rights, including handling notices claiming Customer Content violates such rights;
   iii. security and confidentiality of its account information (including usernames, passwords, and access information) and will notify Cohesity immediately if any such information is lost, stolen, or compromised; and
   iv. configuring and using the Services and other systems, tools and technology properly to conform to applicable requirements specified in Documentation and maintain appropriate security and protection of Customer Content.

c) **Service Analytics Data.** Customer understands and consents to Cohesity's collection, use, processing, storage and deletion of Service Analytics Data to provide, automate, or improve Services or support functions (or develop recommendations relating thereto).

d) **Offers and Binding Orders.** If Customer accepts an offer via a third-party marketplace or similar (e.g., by clicking "create contract" or similar in AWS Marketplace) or otherwise places a binding Order for Services, Customer agrees to also meet its obligations thereunder (including timely payment of any amounts and associated taxes and fees due).

e) **Acts of Representatives.** Each Party will be responsible for its Affiliates and Representatives to the extent they act under or in relation to the Terms.

3. EVALUATION LICENSE. Cohesity may, from time to time, provide Customer with Cohesity products and services pursuant to a free or discounted evaluation/testing arrangement or proof-of-concept ("**Eval**"). Evals may include Beta and/or pre-release features or products. Absent a written arrangement defining the scope of an Eval, the Eval shall be subject to the Evaluation Terms & Conditions at www.cohesity.com/agreements and last for a maximum of thirty (30) days (unless otherwise authorized by Cohesity in writing).

4. TERM AND TERMINATION

a) **Term.** The term of this agreement shall commence on the earlier of the date Customer accepts it or first uses Services (the "**Effective Date**") and will remain in effect until terminated by a Party in accordance with its terms (the "**Term**"). If there is no Entitlement in effect, either Party may terminate the Terms upon written notice to the other Party.

b) **Decrease or Suspension of Service.** Cohesity may decrease or suspend Customer's access to or use of Services if (i) Customer has become insolvent, ceased to operate in the ordinary course, made an assignment for the benefit of creditors, or become the subject of any proceeding in any jurisdiction related thereto; (ii) Cohesity reasonably in good faith believes Customer's use of the Service poses an immediate security risk to the Services or any third party, or (iii) as required by law or a governmental authority.

c) **Termination by Cohesity.** Cohesity may terminate the Terms on seven (7) days written notice if Customer fails to cure 4(b)(i) or 4(b)(ii) within a reasonable period as determined by Cohesity in its discretion. Cohesity may also terminate the Terms on written notice in the event of a material breach of the Terms by Customer which remains uncured following expiration of a thirty (30) day notice specifying the breach, or effective immediately if the breach is incapable of cure.

d) **Termination by Customer.** Customer may terminate the Terms on written notice (a) in the event of a material breach of the Terms by Cohesity which remains uncured following expiration of a thirty (30) day notice specifying the breach, or (b) at any time for convenience on sixty (60) days' prior written notice.

e) **Effects of Termination.** All terms of the Terms which must survive in order to fulfill their essential purpose shall survive termination or expiration of the Terms. For clarity, upon termination of the Terms all rights and

Entitlements granted Customer hereunder to use or access Services terminate immediately, Customer will make no further use of the Services, and each Party shall upon request return or destroy all Confidential Information of the other Party.

f) **Customer Content After Termination.** Access to Entitled Services ceases on the last day of the applicable Subscription Period, provided however that Customer may continue to access the Services for thirty (30) days thereafter solely to the extent necessary to retrieve Customer Content ("**Retrieval Period**"). During Evals, the Retrieval Period shall be no greater than seven (7) days and Customers are advised to use test data. UPON EXPIRATION OF THE RETRIEVAL PERIOD, COHESITY RESERVES THE RIGHT TO DELETE CUSTOMER CONTENT AND SEEK COMPENSATION FOR USAGE BY CUSTOMER DURING THE RETRIEVAL PERIOD.

5. CONFIDENTIALITY

a) **Ownership of Confidential Information**. The Confidential Information of the Discloser is and will remain the property and asset of the Discloser. Except for the licenses expressly granted herein, nothing in the Terms shall be deemed to constitute a license in favor of a Party to any proprietary rights of the other, including, without limitation, any patents, copyrights, trademarks or trade secrets.

b) **Confidentiality Obligation.** Except as required by law, the Recipient shall in respect of the Discloser's Confidential Information for the Term and three (3) years thereafter (but for trade secrets for so long as it is a trade secret):
   i. hold it in confidence using reasonable care and discretion;
   ii. not intentionally disclose it or information derived from it to any third party other than its Representatives with a business need to know;
   iii. not use it, except solely for the purposes contemplated by the Terms;
   iv. not export or reexport it or any product of it except in compliance with applicable laws and regulations; and
   v. not copy, reverse engineer, or attempt to derive its underlying composition, information, structure or ideas.

c) **Compelled Disclosures**. The Recipient may disclose Confidential Information required by law, order or legal process, provided it uses reasonable efforts to:
   i. promptly notify the Discloser of such requirement;
   ii. limit disclosure; and
   iii. obtain confidential treatment or a protective order.

d) **Return of Confidential Information**. The Recipient will upon request by the Discloser at any time return or destroy Discloser's Confidential Information, including any reproductions, summaries or extracts, provided however that the Recipient:
   i. unless the Terms has been terminated, may retain such Confidential Information as it reasonably requires in order to perform its obligations under, and otherwise comply with, the Terms;
   ii. may retain one (1) copy of Confidential Information to the extent required for legal or regulatory purposes; and
   iii. will not be required to delete electronic copies of Confidential Information stored in disaster recovery or archival storage.

The Recipient's obligations of confidentiality survive return or destruction of Confidential Information and continue to apply to any Confidential Information retained.

e) **Independent Product Development.** The Terms shall not (provided they are complied with) limit a Party's right to:
   i. independently develop or acquire products or services similar to those included in any Confidential Information;
   ii. enter any transaction with a third party which owns or has rights to such similar products or services; or
   iii. disclose or use general learning, skills or know-how developed by its employees if to do so would not be regarded by a person of ordinary skill in the relevant area as a disclosure or use of Confidential Information hereunder.

f) **Unauthorized Use**. The Recipient will notify the Discloser promptly upon discovery of any confirmed unauthorized use or disclosure of Confidential Information or other material breach of the Terms, and reasonably cooperate with the Discloser to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. The Recipient acknowledges and agrees that due to the unique nature of the Discloser's Confidential Information, there can be no adequate remedy at law for breach of its

obligations hereunder, and such breach may allow the Recipient or third parties to unfairly compete with the Discloser, resulting in irreparable harm. Therefore, if the Recipient or its Representatives breach (or attempt or threaten to breach) the Terms, the Discloser shall have the right, in addition to any other remedies, to seek equitable and injunctive relief without the requirement of posting a bond or other security.

6. INDEMNIFICATION

a) **Indemnification by Customer**. Customer will defend, indemnify, and hold Cohesity, its affiliates, suppliers and licensors, and each of their respective officers, directors, employees and representatives, harmless from and against any third-party claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) ("**Losses**") arising from any third-party action brought against Cohesity based upon a claim with respect to breach of the Terms or violation of applicable law by Customer or its Users in its use of the Services.

b) **Indemnification by Cohesity.** Cohesity will defend, indemnify, and hold Customer, its Affiliates, suppliers and licensors, and each of their respective officers, directors, employees and Representatives, harmless against any Losses arising from any third-party action brought against Customer based upon a claim (a) with respect to Cohesity's violation of applicable law in its provision of the Services to its customers generally; or (b) that any of the Services (properly utilized by such persons in the form provided by Cohesity) infringes any third-party intellectual property rights. If any portion of the Services become, or in Cohesity's opinion are likely to become, the subject of an infringement claim, Cohesity may, at its sole option and expense, either (a) procure for Customer the right to continue exercising the rights licensed to it in the Terms; (b) replace or modify the affected Service or portion thereof so that it becomes non-infringing; or (c) take any other action reasonably deemed advisable by Cohesity related to such infringement claim. In the event none of these remedies is available and/or practical, Cohesity may, in its sole discretion, terminate the right to use the Service and return to Customer the fees paid with respect to the infringing Service, reduced on a prorated basis for each month the Service is used by Customer. This indemnification obligation shall not apply to infringement actions or claims to the extent that such actions or claims are based on or result from: (i) modifications made to the Services by a party other than Cohesity, unless Cohesity approves such modification; (ii) the combination of the Services with products, processes, services or materials not supplied by Cohesity, unless Cohesity approves such combination; (iii) any activities with respect to the Services by Customer not authorized by the Terms or the Documentation; or (iv) any Services (or portions or components thereof) not created by Cohesity.

c) **Notice of Claim and Indemnity Procedure.** In the event of a claim for which a Party seeks indemnity or reimbursement under this Section 6 (each an "**Indemnified Party**") from the other Party (each an "**Indemnifying Party**") and as a condition of the indemnity, the Indemnified Party shall:
   i.   notify the Indemnifying Party in writing as soon as practicable, but in no event later than thirty (30) days after receipt of such claim, together with such further information as reasonably necessary for the Indemnifying Party to evaluate the claim (to the extent in the Indemnified Party's possession or knowledge). Any delay in giving such notice shall preclude or limit the Indemnified Party from seeking indemnification or reimbursement hereunder only to the extent such delay (i) materially prejudices the Indemnifying Party's ability to defend the claim or (ii) materially affects the amount of damages awarded for, or paid in settlement of, the claim;
   ii. allow the Indemnifying Party to assume full control of the defense of the claim, including retaining counsel of its own choosing; and
   iii. reasonably cooperate with the Indemnifying Party in the defense of the claim.
Notwithstanding the foregoing provisions, the Indemnifying Party shall have no obligation to indemnify or reimburse for any Losses paid by any Indemnified Party voluntarily, and without the Indemnifying Party's prior written consent, to settle a claim. Neither Party will be responsible for any settlement it does not approve in writing. Upon the assumption by the Indemnifying Party of the defense of a claim, the Indemnifying Party will not be liable for the fees or expenses of counsel retained by any Indemnified Party.

7. WARRANTY AND SUPPORT
a) Cohesity is responsible for compliance of its contractors and subcontractors who perform activities hereunder with the Terms and with applicable laws and regulations. Cohesity warrants that: (i) each Service will operate in substantial conformity with applicable Documentation and (ii) its personnel will perform in a professional and workmanlike manner consistent with industry standards.

b) TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE SERVICES AND ANY SOFTWARE HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS. COHESITY HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, SECURITY, ACCURACY, QUALITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. COHESITY ALSO EXPRESSLY DISCLAIMS AND MAKES NO WARRANTY REGARDING ERROR-FREE USE, NON-INTERRUPTION OF USE OR FREEDOM FROM BUGS, AND – EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN A SERVICE LEVEL (OR SIMILAR) AGREEMENT BETWEEN THE PARTIES – COHESITY DOES NOT WARRANT ANY PARTICULAR PERFORMANCE OR RESULTS RELATING TO SERVICES. THE SERVICES ARE NOT DESIGNED OR INTENDED FOR USE IN APPLICATIONS IN WHICH FAILURE OF SUCH SERVICES COULD REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY, LOSS OF LIFE, OR CATASTROPHIC PROPERTY DAMAGE.

c) Cohesity advises all Customers to have a comprehensive data management plan which includes – at minimum – data protection and disaster recovery strategies for critical data, i.e. multiple copies and a diversified protection strategy.

d) In addition to any applicable service level agreement, support and maintenance services to which Customer is Entitled with respect to Services shall be provided in accordance with Cohesity's standard Support and Maintenance Terms found at www.cohesity.com/agreements.

8. LIMITATION OF LIABILITY

NEITHER CUSTOMER NOR COHESITY (NOR ITS SUPPLIERS OR LICENSORS) WILL BE LIABLE WITH RESPECT TO ANY SERVICE OR OTHER SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY (A) AMOUNTS IN EXCESS OF THE AGGREGATE OF THE AMOUNTS PAID TO COHESITY FOR THE APPLICABLE SERVICE (DIRECTLY OR INDIRECTLY) BY CUSTOMER DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION FIRST AROSE OR TWO HUNDRED FIFTY THOUSAND U.S. DOLLARS ($250,000), WHICHEVER IS GREATER; (B) ANY LOST OR INACCURATE DATA, LOST PROFITS, BUSINESS INTERRUPTION OR DELAY, REPLACEMENT SERVICES OR OTHER PUNITIVE, INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. THE FOREGOING LIMITATIONS APPLY TO ALL CLAIMS UNDER OR RELATING TO THIS AGREEMENT HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY, AND EVEN IF THE PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE OR IF A LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THE LIMITATIONS OF LIABILITY IN THIS SECTION 8 SHALL NOT APPLY TO:

i) ANY LIABILITY WHICH, UNDER APPLICABLE PRODUCTS LIABILITY LAW, CANNOT BE PRECLUDED BY CONTRACT;

ii) BODILY INJURY OR DEATH RESULTING FROM A PARTY'S NEGLIGENCE;

iii) DAMAGES ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (INCLUDING INTENTIONAL BREACH OF ENTITLEMENTS);

iv) A PARTY'S BREACH OF SECTION 5 (CONFIDENTIALITY) BUT EXCLUDING OBLIGATION/CLAIMS RELATING TO CUSTOMER CONTENT OR PERSONAL DATA; AND

v) EACH PARTY'S OBLIGATION TO INDEMNIFY UNDER SECTION 6 (INDEMNIFICATION).

9. DATA PROCESSING. The Parties shall comply with the Data Processing Addendum (incorporated herein by reference) available at www.cohesity.com/agreements.

10. COMPLIANCE WITH LAW

a) **General.** Each Party shall obey all applicable laws and regulations in its use of Services and its performance under the Terms.

b) **Anti-Bribery.** Each Party represents and warrants that (i) it is aware of, understands, and will comply with, the provisions of the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, as applicable (collectively the "**Acts**"); (ii) it will not take any action that might be a violation of the Acts or other applicable anti-corruption laws that prohibit the same type of conduct (including without limitation the making of corrupt payments); (iii) it has, and will have, policies in place sufficient to ensure compliance with the provisions of the Acts, as applicable; and (iv) all amounts paid to Customer by Cohesity hereunder, including without limitation any discounts or credits furnished by Cohesity (if any) shall not be paid or given to any other

person, firm, corporation or other entity, except in payment for a bona fide business purpose authorized by the Terms and incurred in connection with performance hereunder in accordance with applicable law.

11 GOVERNING LAW AND DISPUTE RESOLUTION.

a) If Customer is incorporated in the European Economic Area or United Kingdom ("**Europe**"):

    i. the Terms shall be governed by and construed in accordance with the laws of Ireland as applied to contracts made (and to be performed) in Ireland, without applying conflict of laws rules, including legally binding regulations of the European Union, and the Parties consent to jurisdiction and venue in the courts of Dublin, Ireland; and

    ii. any dispute arising from or relating to the subject matter of the Terms that cannot be resolved within a period of thirty (30) days after written notice of same has been given by one Party hereunder to the other (the "**Arbitration Date**") shall be finally settled by arbitration in Dublin, Ireland, using the English language, in accordance with the Arbitration Rules and Procedures of JAMS then in effect, by an arbitrator with substantial experience in resolving complex technology contract disputes, who will be chosen from the appropriate list of JAMS arbitrators.

b) If Customer is incorporated anywhere other than Europe:

    i. the Terms shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of California as applied to contracts made (and to be performed) in California, without applying conflict of laws rules, and the Parties consent to jurisdiction and venue in the United States Federal Courts located in the Northern District of California; and

    ii. any dispute arising from or relating to the subject matter of the Terms that cannot be resolved within a period of thirty (30) days after written notice of same has been given by one Party hereunder to the other (the "**Arbitration Date**") shall be finally settled by arbitration in San Jose, California, using the English language, in accordance with the Arbitration Rules and Procedures of JAMS then in effect, by an arbitrator with substantial experience in resolving complex technology contract disputes, who will be chosen from the appropriate list of JAMS arbitrators.

c) **Additional Arbitration Provisions**. If the Parties cannot agree upon the identity of an arbitrator within fifteen (15) days following the Arbitration Date, then an arbitrator shall be selected on an expedited basis in accordance with the Arbitration Rules and Procedures of JAMS. The arbitrator shall have the authority to grant specific performance and to allocate between the Parties the costs of arbitration (including without limitation service fees, arbitrator fees and all other fees related to the arbitration) in such equitable manner as the arbitrator may determine. The prevailing Party in the arbitration shall be entitled to receive reimbursement of its reasonable expenses (including reasonable attorneys' fees, expert witness fees and all other expenses) incurred in connection therewith. Judgment upon the award so rendered may be entered in a court having jurisdiction, or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each Party shall have the right to institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator, provided that a permanent injunction and damages shall only be awarded by the arbitrator.

d) **Equitable Relief**. Notwithstanding the foregoing and regardless of whether Section 11(a) or Section 11(b) applies, (a) each Party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief at any time, and (b) the language to be used in any and all proceedings arising out of or related to the Terms shall be English.

12. MISCELLANEOUS

a) **Amendment**. Only the terms expressly stated on an Order, Addendum or other writing that refers explicitly to the Terms and is signed by duly authorized representatives of the Parties may modify or supplement the terms hereof. THE TERMS OF ANY PURCHASE ORDER, CONFIRMATION OR SIMILAR DOCUMENT WILL HAVE NO EFFECT AND WILL NOT BE CONSIDERED AGREED TO BY COHESITY. Notwithstanding the foregoing, Cohesity may apply modified terms to the Services, provided such modification(s) shall not become effective for Customer until renewal of the then-current subscription (unless otherwise specified).

b) **No Waiver**. Cohesity's performance is expressly conditioned on Customer's assent to the Terms. A waiver of any default hereunder, or of any provision of the Terms, shall not be deemed to be a continuing waiver or a waiver of any other default or of any other provision, but shall apply solely to the instance to which such waiver is directed.

c) **Severability**. In the event any provision of the Terms is found to be invalid, illegal or unenforceable, a modified provision shall be substituted which carries out as nearly as possible the original intent of the Parties, and the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired thereby.

d) **Force Majeure**. Neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, internet failure, fires, floods, storms, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such Party.

e) **Survival**. All terms of the Terms which must survive in order to fulfill their essential purpose shall survive termination or expiration of the Terms. For avoidance of doubt, no rights granted Customer hereunder shall survive termination.

f) **Notices**. Except as otherwise expressly set forth in the Terms, all notices required under the Terms shall be in writing and shall be delivered by personal delivery, certified overnight delivery such as Federal Express, or registered mail (return receipt requested), and shall be deemed given upon personal delivery or confirmation of receipt. Notices may be sent to the Parties at their primary business address(es) or such address as either Party may designate for itself in writing.

g) **Assignment.** Customer may not delegate, assign or transfer the Terms or any of Customer's rights or duties hereunder without Cohesity's express prior written consent, and any attempt to do so shall be null and void. Cohesity may freely assign the Terms, and its rights and/or obligations hereunder, in whole or part.

h) **Independent Contractors**. Each Party hereto is an independent contractor and nothing contained herein shall be construed as creating any agency, employment, partnership, principal-agent or other form of joint enterprise relationship between the Parties. Neither Party shall make any commitment, by contract or otherwise, binding upon the other or represent that it has authority to do so. The Parties' relationship is non-exclusive.

i) **Entire Agreement.** The Terms (including all of its accompanying text, the documents hyperlinked to or otherwise incorporated herein by reference, and any addendum hereto) shall constitute the complete and exclusive statement of the terms of agreement between Cohesity and Customer, and cancels and supersedes all previous written and oral agreements and communications relating to its subject matter. Only the terms expressly stated on an Order, Addendum or other writing that, in each case, refers explicitly to the Terms and is signed by duly authorized representatives of both Parties may modify or supplement the terms hereof. THE TERMS OF ANY PURCHASE ORDER, CONFIRMATION OR SIMILAR DOCUMENT WILL HAVE NO EFFECT AND WILL NOT BE CONSIDERED AGREED TO BY COHESITY.

j) **Scope of Agreement and Precedence**. The Terms shall apply only to the Services. Customer's contractual arrangements with any Cohesity Partner (e.g., any purchase orders) are not part of the Terms, but the Services (howsoever obtained by Customer) are subject to the Terms. In the event of a conflict between or among the Terms, the documents incorporated herein by reference, and any Addendum hereto, the conflict will be resolved in the following order of precedence: the Terms; documents incorporated herein by reference; any Addendum; any Order.

k) **Construction.** The headings of sections of the Terms are solely for convenience and are not to be used to interpret, construe, define, or describe the scope of any aspect of the Terms. As used in the Terms, the word "including" means "including but not limited to."

13. DEFINITIONS

a) "**Addendum**" means an addendum or other writing duly executed by authorized representatives of the Parties referencing and intending to supplement or amend the Terms (collectively "**Addenda**");

b) "**Affiliate**" means, with respect to a Party, any individual, company, or other entity, directly or indirectly, controlled by, or under common control with, such Party, but, for clarity, excluding those individuals, companies or entities that are controlling such Party;

c) "**Cohesity Partner**" means a Cohesity channel distribution, alliance and/or resale partner that has the right to transact sales of the Services, including via a marketplace or similar (e.g. AWS Marketplace);

d) "**Cohesity SaaS**" means all Cohesity proprietary software-as-a-service offerings supplied by Cohesity under the Terms;

e) "**Confidential Information**" means all financial, business, strategic, technical and/or product information (and any other information that a reasonable person in the technology industry would understand to be confidential), in any form or medium and whether or not marked as confidential – including without limitation

the Terms and any benchmarking or comparative studies involving the Services – disclosed by a Party before or during the Term, but excluding (i) information already known by the Recipient without obligation of confidentiality, (ii) information that is or becomes publicly known other than through breach of the Terms, (iii) information received by the Recipient from a third party not known (in good faith) by the Recipient to be under an obligation of confidence to the Discloser, and (iv) information independently developed by the Recipient without reference to or use of the Discloser's Confidential Information;

f) "**Customer Content**" means Customer's content and application data received by the Data Plane for management and storage;

g) "**Data Plane**" means data storage and associated services supplied by Cohesity through Cohesity SaaS;

h) "**Discloser**" means a Party or its Affiliate that furnishes Confidential Information to the other Party or its Affiliate;

i) "**Documentation**" means the operating manuals, user guides and any other documentation which Cohesity generally makes available to its customers (directly or indirectly) in connection with the Services;

j) "**Entitlement**" means a Customer's right pursuant to a valid Order to use Service(s), for the Subscription Period in (and subject to any applicable use, capacity, or other limitations specified in) such Order (and "**Entitled**" shall be given its meaning accordingly);

k) "**Order**" means an order which is either (i) placed by Customer with a Cohesity Partner, or (ii) validly processed through a Cohesity Partner interface (e.g. AWS Marketplace) or other process, in each case to the extent reflecting a valid Cohesity sales quotation or similar document;

l) "**Party**" means Cohesity or Customer, as applicable, and collectively the "**Parties**";

m) "**Personal Data**" means information disclosed by Customer hereunder which relates to an identified or identifiable natural person, i.e. one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

n) "**Recipient**" means the Party or its Affiliate that receives Confidential Information from the other Party or its Affiliate;

o) "**Representatives**" means, in respect of a Party, its and its Affiliates' employees, representatives, and consultants;

p) "**Services**" means those elements of Cohesity SaaS and related services to which Customer becomes Entitled under the Terms;

q) "**Service Analytics Data**" means data (including usage data and metadata) about the operation, support, and/or Customer's use of, Services (but excluding Customer Content);

r) "**Subscription Period**" means the period of time Customer is Entitled to use specified Services under an Order;

s) "**Usage**" means Customer's highest point of capacity consumption of an Entitled Service during a specified period of measure (or if not so separately specified in an Entitlement, the Subscription Period); and

t) "**Users**" means individual Representatives that Customer authorizes to operate the Services on behalf of Customer.

Version History
- *1.0 (October 23, 2020 – April 26, 2021)*
- *2.0 (April 27, 2021 – September 26, 2021)*
- *3.0 (September 27, 2021 – November 28, 2022)*
- *4.0 (November 29, 2022 – May 7, 2023)*
- *5.0 (May 8 – Present)*