THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

SAN BERNARDINO COUNTY

Contract Number
25-231

SAP Number

Human Services – Information Technology and Support Division

Department Contract Representative	Julie West
Telephone Number	(909) 387-2462
Contractor	Cohesity, Inc.
Contractor Representative	David Buchner
Telephone Number	(949) 402-4680
Contract Term	April 17, 2025 – April 16, 2028
Original Contract Amount	N/A
Amendment Amount	N/A
Total Contract Amount	N/A
Cost Center	
Grant Number (if applicable)	N/A

Briefly describe the general nature of the contract:

Approve Cohesity, Inc.'s End User License Agreement, including non-standard terms, for the Cohesity Data Cloud Secure Bundle, for the period of April 17, 2025 through April 16, 2028.

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
Daniella Hernandez	*Patty Steven*	*Gilbert Ramos*
Daniella Hernandez, Deputy County Counsel	Patty Steven, Contracts Manager	Gilbert Ramos, Assistant Executive Officer
Date 4/1/2025	Date 4/1/2025	Date 4/1/2025

COHESITY, INC.
END USER LICENSE AGREEMENT

Please contact legal@cohesity.com with any questions regarding this document.

COHESITY, INC. (TOGETHER WITH ITS AFFILIATES, "**COHESITY**") AGREES TO SUPPLY AND/OR LICENSE CERTAIN OF ITS PRODUCTS TO YOUR BUSINESS OR ORGANIZATION ("**CUSTOMER**") 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 THIS COHESITY END USER LICENSE AGREEMENT (THIS "**EULA**", OR "**AGREEMENT**", INCLUDING ALL DOCUMENTS INCORPORATED HEREIN BY REFERENCE), WHICH 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 LICENSE; YOUR INSTALLATION OR USE OF THE PRODUCTS AND/OR SOFTWARE; OR BY SUCH OTHER CONTRACT FORMATION MECHANISM AS MAY BE RECOGNIZED UNDER APPLICABLE LAW FROM TIME TO TIME. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, DO NOT COPY, INSTALL OR USE THE PRODUCT(S) OR ANY ASSOCIATED SOFTWARE.

- **Software-Defined Business Model:** Cohesity is a software-defined data management company for enterprise and organizations. Cohesity supports customer choice with respect to on-premises hardware, EDGE, cloud and virtual environments, or any certified hybrid utilization of the foregoing. As a result, the Cohesity distributed file system (DataPlatform™) may be executed on any number of certified hardware and software configurations. Other Cohesity Software (such as DataProtect™) and third-party applications may then be run on top of, or in collaboration with, DataPlatform. Cohesity Software may be supplied with Cohesity Platforms and/or third-party supported hardware, or no hardware at all (such as virtual or cloud-only use cases).

- **Indirect Sales:** Cohesity transacts *all* sales – whether for hardware, a subscription (or license) to Software, or a contract for support and maintenance or other Services – through our global network of channel distribution and resale partners. Customers will receive quotes from, and place any Orders for Cohesity Products with, a Cohesity Partner. As a result, this Agreement does not contain any terms dealing with payment, invoicing, taxation, importation, shipment/delivery and the like, as all of those terms are between the Customer and Cohesity Partner.

- **This Agreement covers Software, not SaaS**: This Agreement covers our core Cohesity Platforms and Software offerings (DataPlatform, DataProtect, and related Software). The Customer controls all access to such Software, whether it resides on Customer's premises, in Customer's data center environment, or in Customer's own public or private cloud, and Cohesity does not host Software on behalf of Customers under this Agreement. To avoid confusion, separate terms and conditions apply to use of Cohesity software-as-a-service offerings ("**SaaS Offerings**"), which can be agreed either by click-through/clickwrap in the Cohesity interface, or by signing an Addendum to this Agreement (and which are available at www.cohesity.com/agreements).

- **Incorporated Documents:** The following documents are incorporated into this Agreement by reference (available at www.cohesity.com/agreements):

    - Support and Maintenance Terms and Conditions
    - Scope of License Terms
    - Enhanced Support Services Terms & Conditions (applicable if using Enhanced Support)
    - End-of-Life Terms and Conditions (applicable if using Cohesity Platforms)

Additional documents are available on request from legal@cohesity.com, including our Data Processing Addendum and applicable information security documentation.

1. Definitions.
   a) "**Addendum**" means an addendum or other writing duly executed by authorized representatives of the Parties referencing and intending to supplement or amend this Agreement (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) "**Analytics Data**" means (i) usage data which may be used to improve Products; and/or (ii) metadata about Products which may be used to automate or perform certain Support functions, but in each case excluding data or software code backed up by (or stored on) Software in Customer's environment;

d) "**Beta Products**" means pre-release or early-release Products that Cohesity makes available to select customers before they are made generally available;

e) "**Cohesity Partner**" means a Cohesity channel distribution, alliance and/or resale partner that has the right to transact sales of Cohesity Products;

f) "**Cohesity Platforms**" mean hardware configurations which are both certified by Cohesity for use with Software and eligible for Support from Cohesity;

g) "**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 this Agreement and any benchmarking or comparative studies involving the Products – disclosed by a Party before or during the term of this Agreement, but excluding (a) information already known by the Recipient without obligation of confidentiality, (b) information that is or becomes publicly known other than through breach of this Agreement, (c) 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 (d) information independently developed by the Recipient without reference to or use of the Discloser's Confidential Information;

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 Products;

j) "**Enhanced Support**" means enhanced support and/or implementation services Customer may opt to purchase as described in (and subject to) the Enhanced Support Services Terms and Conditions at www.cohesity.com/agreements (incorporated herein by reference);

k) "**Entitlement**" means a Customer's right pursuant to a valid Order to (i) use a Product licensed (or subscribed to) or (ii) receive Services, in each case (i & ii) for a fee and subject to any applicable use, capacity, or other limitations (and "**Entitled**" shall be given its meaning accordingly);

l) "**Eval**" has its meaning given in Section 5;

m) "**Hardware**" means Cohesity Platforms, Third-Party Hardware and/or Virtual/Cloud Environments, as applicable;

n) "**Order**" means a binding order placed by Customer with a Cohesity Partner reflecting a valid Cohesity sales quotation or similar document;

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

p) "**Personal Data**" means information disclosed 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;

q) "**Products**" means all of Cohesity's and its licensors' or suppliers' products, Services, and Software supplied by Cohesity under this Agreement, including Cohesity Platforms and Third-Party Software but excluding (i) other Hardware, and (ii) SaaS Offerings;

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

s) "**Representatives**" means, in respect of a Party, (i) its and its Affiliates' employees, and (ii) its representatives and consultants whom a reasonable person in the technology industry would understand not to be Cohesity competitors;

t) "**Services**" means the Support and Enhanced Support Services, and any other services Cohesity is obligated to provide Customer during the term of this Agreement;

u) "**Software**" means, collectively, all Cohesity proprietary software and Third-Party Software supplied by Cohesity under this Agreement;

v) "**Support**" has its meaning given in the Support Terms;

w) "**Support Portal**" means a support portal made available to Cohesity Support customers;

x) "**Support Terms**" has its meaning given in Section 6.6;

y) "**Third-Party Hardware**" means hardware and/or firmware products supplied by a third party and certified for use by Cohesity;

z) "**Third-Party Software**" means any (i) open source computer software that is made available under licensing terms that allow licensee to copy, use, distribute, and/or create and distribute, modifications and derivative works of such computer software without charge; or (ii) software owned or licensed on a

commercial basis by a third party, in each case to the extent supplied by Cohesity under this Agreement (e.g. contained in a Product); and

aa) "**Virtual/Cloud Environments**" means Cohesity-compatible virtual machines, containers or similar technologies supplied by a third party to run and operate Software, either on premises or in the private or public cloud (e.g. AWS, GCP or Azure).

2. General.

2.1 Scope of Agreement. This Agreement shall apply to all Cohesity Products. Customer's contractual arrangements with any Cohesity Partner (e.g., any purchase orders) are not part of this Agreement, but Cohesity Products (howsoever obtained by Customer) are subject to this Agreement.

2.2 Composition of Agreement. This Agreement includes all of its accompanying text, the documents incorporated herein by reference, and any Addenda hereto, and constitutes the exclusive and entire agreement between Customer and Cohesity on its subject matter.

2.3 Order of Precedence. In the event of a conflict between or among this Agreement, the documents incorporated herein by reference, any Addendum hereto and/or an Order, the conflict will be resolved in the following order of precedence: this Agreement; documents incorporated herein by reference; any Addendum hereto; any Order.

3. Software License. Cohesity grants Customer a personal, revocable, nonsublicensable, nonexclusive right to use Software (or portions thereof) to which Customer is Entitled, in object code form only, subject to the Cohesity Scope of License Terms and End-of-Life Terms and Conditions found at www.cohesity.com/agreements (incorporated herein by reference), payment of the relevant fees, the terms of this Agreement, and all applicable use, capacity, or other limitations specified in writing. For clarity, subscription Entitlements include both a license and Support for the duration of the subscription.

4. Restrictions.

a) Software is not sold but is licensed (or made available via subscription) solely for Customer's use strictly in accordance with this Agreement. Cohesity retains ownership of all copies and Customer will maintain the copyright notice and any other notices that appear on the Product on any copies and media. Except as expressly set forth herein, no rights in or to any intellectual property are transferred, assigned, or licensed under this Agreement.

b) Customer acknowledges that Products may contain or be distributed with Third-Party Software, use of which shall be governed by current respective licenses for such Third-Party Software, a copy of which is accessible in the product user interface, in the Support Portal, or by emailing support@cohesity.com (or if no license is specified, then subject to this Agreement). Cohesity warrants that it complies with all licenses applicable to Third-Party Software in Products. Additionally, the Products may include certain third-party commercial offerings resold by Cohesity pursuant to a separately-identified SKU in an Order which are subject to supplemental or substitute terms and conditions, subject to being agreed by Customer.

c) Customer will not (and will not knowingly allow any third party to): (i) alter or remove any of Cohesity's or its licensors', partners', or suppliers' copyright, patent, or other proprietary rights notices or legends appearing on or in the Products; (ii) modify, reverse engineer, or attempt to discover any source code or underlying ideas or algorithms of, any Software (except to the extent that applicable law prohibits such restrictions); (iii) provide, lease, lend, disclose, use for timesharing or service bureau purposes, or otherwise use (or allow others to use) any Software for the benefit of any third party (except as expressly and specifically authorized by Cohesity in writing); (iv) allow the transfer, transmission, export, or re-export of any Product (or portion thereof) in violation of any export control laws or regulations; (v) use or attempt to use portions of the Software without Entitlement; (vi) create more instances of Software (or use Software for greater capacity) than Entitled, or (vii) use Products in conjunction with any hardware, firmware, virtual/cloud environment or other configuration not certified by Cohesity. Notwithstanding the foregoing, Customer may with Cohesity's prior written consent permit a third-party contractor of the Customer to use Products on Customer's behalf so long as Customer procures the contractor's compliance with terms of this Agreement. *For the avoidance of doubt, Customer may not utilize, host, support or otherwise deploy Products as a service on behalf of any unaffiliated third party without the express written agreement of Cohesity.*

d) All use of Third-Party Hardware is at Customer's own risk and is Customer's responsibility. Cohesity support contracts may not be sold, assigned or otherwise transferred without Cohesity's written consent.

5. Evaluation License. Cohesity may, from time to time, provide Customer with Cohesity Products pursuant to a free or discounted evaluation/testing arrangement ("**Eval**"). Absent a written arrangement defining the scope of an Eval, a thirty (30) day Eval period shall be assumed. Notwithstanding anything to the contrary, all Evals shall be subject to the following:

a) Eval license(s) shall be of limited duration and shall expire automatically upon completion of the Eval;

b) Upon expiration or termination of an Eval, Customer shall immediately (i) return all Cohesity Platforms under Eval to Cohesity pursuant to the Return Materials Authorization ("**RMA**") process, and (ii) discontinue use of (and, if possible, destroy) all copies of any Software under Eval, wherever residing;

c) All Cohesity Platforms under Eval are Customer's responsibility until safely returned to Cohesity; and

d) Customer shall pay Cohesity for damage to, or loss of, Cohesity Platforms while in Customer's possession.

In addition, if Cohesity provides Customer early access to Beta Products (or other early release functionality), Customer acknowledges and agrees that such access is (i) subject to this Section 5; (ii) on an "as-is" basis (without liability to Cohesity) and without warranty or support, and (iii) may require a separate Entitlement when made generally available.

6. Warranties.

6.1 General Warranties.

Cohesity warrants to Customer that:

a) Cohesity uses commercially reasonable efforts to procure (and is responsible for) compliance of its contractors and subcontractors who perform activities hereunder with this Agreement and with applicable laws and regulations; and

b) Cohesity will not cause Customer to be in violation of any regulation administered by U.S. Department of the Treasury's Office of Foreign Assets Control's ("**OFAC**"), and neither any individual, entity, or organization holding any material ownership interest (at least 25% of voting shares) in Cohesity, nor any officer or director of Cohesity, has been determined to be an individual, entity, or organization with whom applicable law prohibits a United States company or individual from dealing (including names appearing on the OFAC Specially Designated Nationals and Blocked Persons List).

6.2 Software Warranties.

Cohesity warrants to Customer that:

a) the Software will operate, for a period of ninety (90) days from the date of availability to Customer, substantially in accordance with, and as described in, the Documentation;

b) it uses commercially reasonable efforts designed to ensure that, on delivery, the Software will not contain any malware, viruses, worms, Trojan horses, ransomware, spyware, adware, scareware, disabling code, trap door devices or other malicious programs or instructions (but excluding normal agreed license restrictions such as time-limited licenses/subscriptions) intended to: (i) inhibit the use of the Software; (ii) erase, corrupt or modify any data, programs, or information, or (iii) bypass internal or external Customer security measures for the purpose of gaining unauthorized access; and

c) provided it is used in compliance with this Agreement, the Software shall not obligate Customer to (i) grant a third party any rights to Customer's intellectual property; (ii) cause any portion of the Customer's intellectual property to become subject to any open source or similar license, or (iii) require Customer to make any of its own source code (or derivative works thereof) available to third parties for no fee.

6.3 Hardware Warranties.
Cohesity warrants that Cohesity Platforms and/or each hardware component thereof will be free from material defect in workmanship (under normal use and conditions) for one (1) year from the date of purchase. This warranty does not apply to (a) expendable or consumable parts, (b) any software contained on the Products or otherwise supplied by Cohesity, (c) Products which are returned in any manner that is not in compliance with Cohesity's then-current RMA policies, (d) any Product from which the serial number has been removed, or (e) any Product that has been damaged or rendered defective for any reason other than caused by Cohesity or a Cohesity-authorized service provider.

6.4 Services Warranties.
Cohesity warrants to Customer that:

a) all Services are performed in a professional and workmanlike manner using Cohesity personnel who are familiar with the technology, processes and procedures used to deliver the Services, and

b) its employees who perform any Services under this Agreement have (to the extent permitted by applicable law) at the time of hiring undergone a background check compliant with the Fair Credit Reporting Acts ("**FCRA**") and/or other applicable laws and regulations, including:

    i. Seven-year criminal background check of relevant available records;

    ii. verification of identity through Social Security numbers or other such identification authentication;

      iii.   verification that such person's name does not appear on the OFAC Specially Designated Nationals and Blocked Persons List, U.S. State Department's Debarred Parties List and Bureau of Industry and Security's Denied Persons List;

      iv.   verification of employment history, educational history; and

      v.   reference checks including work-related references.

6.5 Mutual Warranties. Each Party represents and warrants that:

a) it has all requisite legal and corporate power, and has taken all corporate action necessary, to authorize, execute and deliver this Agreement;

b) (i) it is aware of, understands, and will comply with, the provisions of the U.S. Foreign Corrupt Practices Act (the "**FCPA**") 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 this Agreement and incurred in connection with performance hereunder in accordance with applicable law, and

c) none of its activities under this Agreement is restricted by, contrary to, in conflict with, or ineffective under any law or regulation to which such Party is subject.

6.6 Remedies for Breach of Warranty.

a) Cohesity's sole obligation under the express warranty set forth in Sections 6.2 and 6.3 shall be, at Cohesity's option and expense, to repair or replace the applicable component and/or Product; provided that in the event of a breach of the foregoing warranty within thirty (30) days of shipment, Cohesity will replace any non-compliant Product with a new Product within five (5) business days of notice via its then-current RMA procedure described in Cohesity's standard Support and Maintenance Terms and Conditions (the "**Support Terms**") found at www.cohesity.com/agreements (incorporated herein by reference). After the warranty period, Customer is entitled to receive only the support and maintenance services specified for the applicable support level and term that Customer is Entitled to receive in the Support Terms. Cohesity will use commercially reasonable efforts to provide the support and maintenance services for the Products as, and to the extent described in, the Support Terms.

b) Customer must contact Cohesity's technical support center within the applicable warranty period to obtain an RMA number as set forth in the Support Terms. In order to obtain warranty services, dated proof of purchase may be required by Cohesity in its sole discretion. Products may not be returned without an RMA number.

c) Access to Cohesity's technical support center for any and all questions, consultation, deployment assistance, or problem reports regarding the Products shall be provided only pursuant to Customers who have purchased current Support. The warranties hereunder do not provide advance replacement parts.

d) If Customer believes Cohesity is in breach of the warranties in this Section 6, Customer shall notify Cohesity in writing specifying the breach, following which Cohesity shall have not less than thirty (30) days to remedy same.

EXCEPT AS EXPRESSLY PROVIDED ABOVE, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, ALL PRODUCTS, SOFTWARE AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY WHATSOEVER, AND COHESITY AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, AND STATUTORY INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND 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. COHESITY WILL HAVE NO LIABILITY FOR THE LOSS OR CORRUPTION OF ANY DATA STORED ON ANY PRODUCT FOR ANY REASON.

7. Confidentiality; Proprietary Rights.

7.1 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 this Agreement 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.

7.2 Confidentiality Obligation. Except as required by law, the Recipient shall in respect of the Discloser's Confidential Information for the term of this Agreement and three (3) years thereafter (but for trade secrets for so long as it is a trade secret):
 a) hold it in confidence using the care and discretion it uses with its own sensitive information and trade secrets (but no less than reasonable care and discretion);
 b) not intentionally disclose it or information derived from it to any third party other than its Representatives with a business need to know;
 c) not use it, except solely for the purpose contemplated by this Agreement;
 d) not export or reexport it or any product of it except in compliance with applicable laws and regulations; and
 e) not copy, reverse engineer, or attempt to derive its underlying composition, information, structure or ideas.
The Recipient will procure and be responsible for compliance of its Affiliates and Representatives with this Agreement.

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

7.4 Return of Confidential Information. The Recipient will immediately 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:
 a) unless this Agreement has been terminated, may retain such Confidential Information as it reasonably requires in order to perform its obligations under, and otherwise comply with, this Agreement;
 b) may retain one (1) copy of Confidential Information to the extent required for legal or regulatory purposes; and
 c) 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.

7.5 Independent Product Development. This Agreement shall not (provided its terms are complied with) limit a Party's right to:
 a) independently develop or acquire products or services similar to those included in any Confidential Information;
 b) enter any transaction with a third party which owns or has rights to such similar products or services; or
 c) 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.

7.6 Unauthorized Use. The Recipient will notify the Discloser promptly upon discovery of any unauthorized use or disclosure of Confidential Information or other breach of this Agreement, 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) this Agreement, 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.

8. Personal Data. Should a Party choose to provide the other from time to time with Personal Data (e.g., the business email address of an employee, for business, Support or other purposes hereunder), the receiving Party shall process such Personal Data only for the purpose for which it was provided and in compliance with this Agreement and laws applicable to such Party. Personal Data shall be treated as Confidential Information for so long as it remains in the receiving Party's possession. If Customer is legally required, due to its location or other factors, to conclude a data processing agreement, Customer shall advise Cohesity of same and Cohesity shall promptly supply its form Data Processing Addendum on request.

9. Termination; Suspension.
9.1 Termination by Cohesity. In the event of a material breach of this Agreement by Customer, Cohesity may in its discretion (a) suspend or revoke any or all of Customer's rights hereunder, and/or (b) terminate this Agreement,

and/or (c) suspend or terminate Customer's right to receive support and maintenance services notwithstanding the existence of a valid support contract, in each case by giving advance warning to Customer effective in seven (7) days unless Customer first cures such breach, or effective immediately if the breach is incapable of cure.

9.2 Termination by Customer. Customer may terminate this Agreement on written notice (a) in the event of a material breach of this Agreement 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.

9.3 Insolvency Termination. A Party may terminate this Agreement if the other Party becomes subject to appointment of a trustee or receiver for all or any part of its assets, becomes insolvent or bankrupt, or makes any assignment for the benefit of creditors.

9.4 Effect of Termination. Upon termination or expiration of this Agreement, all rights and licenses granted to Customer hereunder shall immediately terminate and each Party shall return or destroy all Confidential Information of the other Party.

9.5 Remedies. Each Party shall be entitled to all remedies available to it at law in the event of termination of this Agreement for the other Party's material breach. Each Party's remedies for breach of this Agreement are cumulative not exclusive.

10. Downstream Product Users. Cohesity may, in its sole discretion, revoke the rights made available hereunder in respect of any entity using Products not obtained directly from Cohesity or via an authorized Cohesity Partner.

11. Records; Audit Rights. Customer covenants and agrees that, without any additional consideration, it will provide any information reasonably requested and perform any acts that are or may become necessary to effectuate the purposes of this Agreement and/or an Order(s), including without limitation the following: With at least fifteen (15) days' advance notice, Customer shall provide to Cohesity (and internal and external auditors) reasonable access during normal business hours (9am – 5pm) to Customer personnel, financial records, and other pertinent information, to the extent relevant to the purposes of this Agreement and/or an Order(s). Such access shall be provided for the purpose of performing audits and inspections of Customer's compliance with this Agreement and/or an Order(s) (including without limitation any capacity and usage limitations associated therewith) and/or to enable Cohesity to meet applicable accounting, legal, regulatory or contractual requirements. If any such audit reveals non-compliance, Customer shall promptly place such Order, pay such additional fees, and/or take such additional actions, in each case as are reasonably necessary to become compliant. If such non-compliance is, in aggregate, more than five percent (5%) in Cohesity's favor, Customer shall promptly reimburse Cohesity for the actual cost of the audit.

12. LIMITATION OF LIABILITY. NEITHER CUSTOMER NOR COHESITY (NOR ITS SUPPLIERS OR LICENSORS) WILL BE LIABLE WITH RESPECT TO ANY PRODUCT 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 (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) INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. THE LIMITATIONS OF LIABILITY IN THIS SECTION 12 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 7 (CONFIDENTIALITY; PROPRIETARY RIGHTS); AND
   V)   EACH PARTY'S OBLIGATION TO INDEMNIFY UNDER SECTION 14.

13. EXCLUDED USES. THE COHESITY PRODUCTS ARE NOT DESIGNED OR INTENDED FOR USE IN APPLICATIONS IN WHICH FAILURE OF SUCH PRODUCTS COULD REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY, LOSS OF LIFE, OR CATASTROPHIC PROPERTY DAMAGE (THE "**EXCLUDED USES**"). IF CUSTOMER USES PRODUCTS FOR OR IN CONNECTION WITH AN EXCLUDED USE, CUSTOMER HAS THE SOLE RESPONSIBILITY FOR PROTECTING ITS DATA—BY PERIODICALLY CREATING REDUNDANT COPIES OR OTHERWISE—AND COHESITY IS NOT RESPONSIBLE FOR LOST OR

CORRUPTED DATA, WORK STOPPAGE, RE-RUN TIME, INACCURATE OUTPUT, OR COMPUTER FAILURE OR MALFUNCTION ASSOCIATED WITH (OR OCCURRING DURING) ANY EXCLUDED USE.

14. Indemnities.

14.1 Intellectual Property Indemnity. 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 claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) ("**Losses**") arising from any third-party action brought against Customer based upon a claim that any of the Products or Services (in the form provided by Cohesity) infringes any third-party intellectual property rights. If the Products 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 this Agreement; (b) replace or modify the affected Product so that it becomes non-infringing; or (c) accept return of the affected Products and refund to Customer prorated payments of fees for such returned Products made by Customer for such Products, reduced on a straight-line basis over three (3) years from the date of delivery of such Product by Cohesity. 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 Products by a party other than Cohesity, unless Cohesity approves such modification; (ii) the combination of the Product with products, processes, or materials not supplied by Cohesity, unless Cohesity approves such combination; (iii) any activities with respect to the Products by Customer not authorized by this Agreement or the Documentation; or (iv) any Products (or portions or components thereof) not created by Cohesity.

14.2 Indemnity for Breach of Applicable Laws. Each Party shall defend, indemnify, and hold the other Party, its Affiliates, suppliers and licensors, and each of their respective officers, directors, employees and Representatives, harmless from and against any Losses arising from any third-party action brought against the Indemnified Party (as defined below) with respect to violation of applicable laws or regulations by the other Party (each an "**Indemnifying Party**").

14.3 Notice of Claim and Indemnity Procedure. In the event of a claim for which a Party seeks indemnity or reimbursement under this Section 14 (each an "**Indemnified Party**") and as a condition of the indemnity, the Indemnified Party shall:

a) 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;

b) allow the Indemnifying Party to assume full control of the defense of the claim, including retaining counsel of its own choosing; and

c) 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.

15. Governing Law and Dispute Resolution.

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

a) this Agreement 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

b) any dispute arising from or relating to the subject matter of this Agreement 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 ("**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.

15.2 If Customer is incorporated anywhere other than Europe:
  a) this Agreement 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
  b) any dispute arising from or relating to the subject matter of this Agreement 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 ("**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.

15.3 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. The Parties consent to jurisdiction and venue in the courts of Dublin, Ireland and United States Federal Courts located in the Northern District of California.

15.4 Equitable Relief. Notwithstanding the foregoing and regardless of whether Section 15.1 or Section 15.2 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 this Agreement shall be English.

16. Miscellaneous.
  a) Amendment. Only the terms expressly stated on an Order, Addendum or other writing that refers explicitly to this Agreement 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.
  b) Data Collection. Unless Customer configures the Product settings to prevent it, the Products may collect and transmit Cohesity Analytics Data to Cohesity which Cohesity may use for purposes of providing Services and/or improving Products. Cohesity Analytics Data (i) which identifies Customer shall at all times be maintained as confidential, and (ii) may not be resold, commercialized or used for any purpose other than as expressly provided under this Agreement. Further information is available from Cohesity by emailing legal@cohesity.com.
  c) No Waiver. Cohesity's performance is expressly conditioned on Customer's assent to this Agreement. A waiver of any default hereunder, or of any provision of this Agreement, 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.
  d) Severability. In the event any provision of this Agreement 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.
  e) 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.
  f) Survival. All terms of this Agreement which must survive in order to fulfil their essential purpose shall survive termination or expiration of this Agreement. For avoidance of doubt, no rights granted Customer hereunder shall survive termination.
  g) Notices. Except as otherwise expressly set forth in this Agreement, all notices required under this Agreement 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.

h) Compliance with Laws – Generally. Each Party shall obey all applicable laws and regulations in its use of Products and its performance under this Agreement.

i) Compliance with Laws – Export/Import. Customer acknowledges that the Products may contain technical data or elements, the export or re-export of which may be restricted to certain destinations and end users as a result of license restrictions, laws, rules and regulations. Customer agrees not to engage in (and not to cause) export or re-export of Product(s) or any part thereof without first satisfying all legal requirements, including without limitation all necessary United States and foreign government import/export licenses, approvals or registrations. Upon request, Cohesity shall make available its documentation related to obtained export licenses and/or license exceptions. The Products may not be distributed, or otherwise exported or re-exported (i) into, or to a national or resident of, any country to which the U.S. has embargoed goods or trade restrictions; or (ii) to anyone on the OFAC Specially Designated Nationals and Blocked Persons List or the U.S. Commerce Department's Denied Persons, Denied Entities, and Unverified List. Customer shall indemnify Cohesity from and against any liabilities, costs, fines, penalties, and other expenses (including reasonable attorneys' fees) incurred by Cohesity as a result of Customer's breach of the foregoing obligations.

j) Assignment.   Customer may not delegate, assign or transfer this Agreement 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 this Agreement, and its rights and/or obligations hereunder, in whole or part.

k) 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.

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