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

Contract Number 24-160

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative	Dan Munsey
Telephone Number	387-5779
Contractor	Cohesity, Inc.
Contractor Representative	
Telephone Number	
Contract Term	Indefinite
Original Contract Amount	Non-financial
Amendment Amount	N/A
Total Contract Amount	Non-financial
Cost Center	

Briefly describe the general nature of the contract:

A non-financial Terms of Service Agreement, which contains the Business Associate Agreement, including non-standard terms, with Cohesity, Inc. for Cohesity Data Cloud Services, beginning upon download, installation, or use of the services, and continuing until terminated by either party.

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Bonnie Uphold	►	►
Bonnie Uphold, Supervising Deputy County Counsel		
Date 2/21/2024	Date	Date

Non-Standard Contract Coversheet

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 Customer 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)*

COHESITY, INC.
BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("**BAA**") is made and entered into as of the date this BAA is signed by both parties ("**Effective Date**") by and between Cohesity, Inc., a Delaware corporation having a principal place of business at 300 Park Avenue, San Jose, CA 95110 (together with its affiliates, "**Cohesity**" or "**Business Associate**"), and the entity identified as "Customer' below (together with its affiliates, "**Customer**" or "**Covered Entity**"), each individually a "**Party**" and together the "**Parties**."

Customer Name:	**Additional Special Terms and Conditions (if any)**:
County of San Bernardino **Address**: 385 N. Arrowhead Ave. San Bernardino, CA 92415	

This BAA has two parts as follows:

Applicable Terms	Description
Part 1	All Cohesity offerings (**except** Cohesity SaaS Azure): • Cohesity Software hosted by Customer in Customer-managed environment(s), e.g. on-premises or Customer-controlled cloud; and • Customer uses Cohesity-managed Software-as-a-Service in a Cohesity-managed Amazon Web Services environment.
Part 2	Cohesity-managed Software-as-a-Service in a Cohesity-managed Microsoft Azure Cloud Services environment ("**Cohesity SaaS Azure**").

ONLY THE TERMS APPLICABLE TO THE USE CASE(S) CUSTOMER ACTUALLY PURCHASES SHALL APPLY. For example, if Customer does not use Cohesity Software-as-a-Service in a Microsoft Azure Cloud Services environment, Part 2 shall **not** apply.

Notwithstanding anything else in this Addendum, where Customer is a business associate of a covered entity pursuant to HIPAA, Cohesity shall be deemed Customer's downstream business associate and this Addendum shall be read – and deemed amended – accordingly, with Cohesity having all obligations of Business Associate hereunder.

The Customer must have an Underlying Agreement in place for this BAA to be valid and effective. Together with the applicable Underlying Agreement, this BAA will govern each Party's respective obligations regarding PHI. If there is any conflict between a provision in this BAA and a provision in the Underlying Agreement, this BAA will control.

In witness whereof, the Parties' authorized representatives have, in consideration of the mutual covenants and agreements set forth herein, executed this BAA with intent to be bound. Documents executed, scanned and transmitted electronically, and electronic signatures, shall be deemed, and shall have the same legal effect as, original signatures for purposes of this BAA and all related matters.

COHESITY:	**CUSTOMER:** San Bernardino County Fire Protection District
DocuSigned by: Fiona Denton DC40551099C34D7...	Dawn Rowe
(signature)	(signature)
Signatory's Name: Fiona Denton	Signatory's Name: Dawn Rowe
Signatory's Title: VP, Deal Management	Signatory's Title: Chair
Date of signature: Feb 19, 2024	Date of signature: FEB 2 7 2024

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD
LYNNA MONEZ
Secretary

By _____ Deputy

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

Part 1

1. DEFINITIONS

Unless otherwise expressly defined in this BAA, all capitalized terms in this BAA will have the meanings set forth in an Underlying Agreement or in HIPAA. Defined terms used in this Part 1 with initial letters capitalized have the meanings given below:

a) "**Agreement**" means the BAA and Underlying Agreement, together.

b) "**Business Associate**" generally has the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the Party to this BAA, means Cohesity.

c) "**Covered Entity**" generally has the same meaning as the term "covered entity" at 45 CFR 160.103, in reference to the Party to this BAA, means Customer.

d) "**Covered Services**" are the products and services provided to Covered Entity pursuant to an applicable Underlying Agreement .

e) "**Electronic PHI**" has the same meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Business Associate creates, receives, maintains or transmits from or on behalf of Covered Entity.

f) "**HIPAA**" means the Administrative Simplification Subtitle of the Health Insurance Portability and Accountability Act of 1996, as amended by Subtitle D of the 2009 Health Information Technology for Economic and Clinical Health (HITECH) Act, and their implementing regulations.

g) "**PHI**" means "protected health information" as defined in 45 C.F.R. 160.103 that is received by Business Associate from or on behalf of Covered Entity. PHI includes Electronic PHI.

h) **"Privacy Rule"** means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R., Parts 160 and 164, Subparts A and E.

i) "**Security Rule**" means the HIPAA Security Standards (45 C.F.R. Parts 160 and 164, Subpart C).

j) "**Underlying Agreement**" means the written agreement(s) for services between Covered Entity and Business Associate available at www.cohesity.com/agreements, including the SaaS Terms of Service.

2. SCOPE

This BAA applies to the extent Customer acts as a Covered Entity and, as a result, Cohesity is deemed under HIPAA to act as a Business Associate. Nothing herein obliges a Party to comply with laws not applicable to such Party as a matter of law.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

3.1. Business Associate agrees to:

a) Use or Disclose PHI only as permitted by the Agreement or required by law, provided such Use or Disclosure would not violate HIPAA if done by a Covered Entity, unless permitted under HIPAA for a Business Associate.

b) use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI other than as permitted by the Agreement and consistent with the requirements of Subpart C of 45 C.F.R. Part 164.

c) take appropriate measures to ensure subcontractors used to perform its obligations in the Underlying Agreement to process, create, receive, maintain, or transmit PHI on behalf of Business Associate agree to (i) restrictions and conditions at least as stringent as those found in this BAA and (ii) implement reasonable and appropriate safeguards to protect PHI consistent with the requirements of Subpart C of 45 C.F.R. Part 164. Business Associate shall be liable for the acts and omissions of its subcontractors to the same extent as if performing the services of each subcontractor directly.

d) make available to the Covered Entity information required to provide an accounting of Disclosures of which Business Associate is aware in accordance with Covered Entity's obligations under 45 CFR 164.528. Because Business Associate cannot readily identify which Individuals are identified or what types of PHI are included in content that Covered Entity uploads to the Covered Services or is otherwise processed in connection with the Business Associate's services, Covered Entity will be solely responsible for identifying which Individuals, if any, may have been included in Covered Entity's content that Business Associate has disclosed and for providing a brief description of the PHI disclosed.

e) to the extent required by applicable law, make its internal books, records, and policies and procedures relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the U.S. Department of Health and Human Services for purposes of monitoring Business Associate's compliance with this BAA.

3.2. **Reporting**

a) For all reporting obligations under this BAA, the Parties acknowledge that: (i) because Business Associate does not know the nature of PHI contained in any of Covered Entity's content, Business Associate will not be able to provide information about the identities of the Individuals who may have been affected, or a description of the type of information that may have been subject to a Security Incident, Impermissible Use or Disclosure, or Breach, and (ii) Business Associate may provide such reporting to the email address associated with Covered Entity.

b) Business Associate will report to Covered Entity any Use or Disclosure of PHI not permitted or required by this BAA of which Business Associate becomes aware.

c) Business Associate will report to Covered Entity any Security Incidents of which Business Associate becomes aware within five (5) business days, provided however it is acknowledged by Covered Entity that (if applicable) AWS will report to Business Associate on no less than a quarterly basis any Security Incidents involving PHI of which AWS becomes aware in which there is

a successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in the Covered Services in a manner that risks the confidentiality, integrity, or availability of PHI, and Business Associate shall in turn notify Covered Entity thereof within five (5) business days. Notice is hereby deemed provided, and no further notice will be provided, for unsuccessful attempts at such unauthorized access, use, disclosure, modification, or destruction, such as pings and other broadcast attacks on a firewall, denial of service attacks, port scans, unsuccessful login attempts, or interception of encrypted information where the key is not compromised, or any combination of the above.

d) Business Associate will report to Covered Entity any Breach of Unsecured PHI that Business Associate may discover to the extent required by 45 C.F.R. § 164.410 within five (5) business days, provided however it is acknowledged by Covered Entity that (if applicable) AWS will make such report to Business Associate without unreasonable delay, and in no case later than sixty (60) calendar days after AWS's discovery of such Breach, and Business Associate shall in turn notify Covered Entity thereof within five (5) business days.

3.3. Permitted Uses and Disclosures by Business Associate.

a) Business Associate may Use or Disclose PHI for or on behalf of Covered Entity in connection with carrying out the services specified in an Underlying Agreement.

b) Business Associate may Use and Disclose PHI as necessary for the proper management and administration of Business Associate. Any Disclosures under this subsection will be made only if Business Associate obtains reasonable assurances from the recipient of the PHI that (a) the recipient will hold the PHI confidentially and will Use or Disclose the PHI only as required by law or for the purpose for which it was disclosed to the recipient, and (b) the recipient will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c) Business Associate may Use or Disclose PHI as required by law or to carry out the legal responsibilities of Business Associate.

d) Business Associate agrees to use best efforts to make Uses and Disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures notified to it.

e) Business Associate will use best efforts not to Use or Disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

4. OBLIGATIONS OF COVERED ENTITY

a) Covered Entity must encrypt all PHI stored in or transmitted using the services in accordance with the Secretary of the U.S. Department of Health and Human Services Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals, available at http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brguidance.html, as it may be updated from time to time, and as may be made available on any successor or related site designated by HHS.

b) Covered Entity warrants that it shall use appropriate safeguards designed to prevent the unauthorized use or disclosure of PHI, and as other required under HIPAA with respect to Covered Entity's use of Covered Services.

c) Covered Entity warrants that it has obtained any necessary authorizations, consents, and other permissions that may be required under applicable law prior to disclosing Covered Entity's information, including without limitation PHI, to Business Associate.

d) Covered Entity will not agree to any restriction requests or place any restrictions in any notice of privacy practices that would cause Business Associate to violate this BAA or any applicable law.

e) Covered Entity will not request or cause Business Associate to make a Use or Disclosure of PHI in a manner that does not comply with HIPAA or this BAA.

f) Covered Entity shall ensure that (i) it will use all controls available to it within the Covered Services, to ensure that its use of the Covered Services is in compliance with HIPAA and it shall be solely responsible for ensuring that its Users of the Covered Services comply with HIPAA.

g) Covered Entity will indemnify, defend and hold harmless Business Associate and its employees, directors, officers, subcontractors, agents and affiliates from and against all third-party claims, actions, damages, losses, liabilities, fines, penalties, costs or expenses (including, without limitation, reasonable attorneys' fees) against Business Associate arising from or in connection with any breach of this BAA, or any negligent or wrongful acts or omissions in connection with this BAA, by Covered Entity or by its employees, directors, officers, subcontractors, agents or representatives.

5. TERM AND TERMINATION

a) **Term**. The term of this BAA will commence on the Effective Date and will immediately terminate upon the earlier of (i) termination of the Underlying Agreement for any reason, or (ii) termination of this BAA by either Party as set forth in this Section 5.

b) **Termination by Covered Entity.** Covered Entity may terminate this BAA for any reason upon notice to Business Associate provided that Covered Entity must discontinue all services with Business Associate that require the processing or storage of PHI.

c) **Termination by Business Associate.** Business Associate may terminate this BAA for any reason upon 90 days' prior written notice to Covered Entity.

d) **Effect of Termination.** At termination of this BAA, Business Associate, if feasible, will return or destroy all PHI that Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not

feasible, extend the protections of this BAA to the information and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

6. NOTICES

Except as otherwise expressly set forth in this BAA, all notices required under this BAA 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.

7. MISCELLANEOUS

Except as amended by this BAA, any Underlying Agreement pertaining to the services performed by Business Associate will remain in full force and effect. This BAA, together with the Underlying Agreement as amended by this BAA: (a) is intended by the parties as a final, complete, and exclusive expression of the terms of their agreement pertaining to PHI; and (b) supersedes all prior agreements and understandings (whether oral or written) between the parties with respect to the subject matter hereof. If any terms of this BAA conflict with or are inconsistent with the terms of the Underlying Agreement, the terms of this BAA will prevail. This BAA may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same BAA. The parties shall be entitled to sign and transmit an electronic signature of this BAA (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed BAA upon request. Nothing express or implied in this BAA is intended to: (x) make either Party an agent of the other, (y) to confer upon a Party the right or authority to control the other Party's conduct in the course of complying with the Underlying Agreement or (z) confer, upon any person other than the Parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

Part 2

This Part 2 applies only if Customer uses Cohesity Software-as-a-Service in a Microsoft Azure Cloud Services environment.

1. DEFINITIONS.

Except as otherwise defined in this BAA, capitalized terms shall have the definitions set forth in HIPAA, and if not defined by HIPAA, such terms shall have the definitions set forth in the Underlying Agreement.

a) **"Breach Notification Rule"** means the Breach Notification for Unsecured Protected Health Information Final Rule.
b) **"Business Associate"** shall have the same meaning as the term "business associate" in 45 CFR § 160.103 of HIPAA.
c) **"Covered Entity"** shall have the same meaning as the term "covered entity" in 45 CFR § 160.103 of HIPAA.
d) **"Covered Services"** are the products and services provided to Covered Entity pursuant to an applicable Underlying Agreement.
e) **"Customer"**, for this BAA only, means Customer and its affiliates.
f) **"HIPAA"** collectively means the administrative simplification provision of the Health Insurance Portability and Accountability Act enacted by the United States Congress, and its implementing regulations, including the Privacy Rule, the Breach Notification Rule, and the Security Rule, as amended from time to time, including by the Health Information Technology for Economic and Clinical Health ("HITECH") Act and by the Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule.
g) **"Privacy Rule"** means the Standards for Privacy of Individually Identifiable Health Information.
h) **"Protected Health Information"** shall have the same meaning as the term "protected health information" in 45 CFR § 160.103 of HIPAA, provided that it is limited to such protected health information that is received by Cohesity from, or created, received, maintained, or transmitted by Cohesity on behalf of, Customer (a) through the use of the Cohesity Covered Services, (b) for Cohesity's performance of the Covered Services.
i) **"Security Rule"** means the Security Standards for the Protection of Electronic Protected Health Information.
j) **"Underlying Agreement"** means the written agreement(s) for services between Covered Entity and Business Associate available at www.cohesity.com/agreements, including the SaaS Terms of Service.

2. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.

a) **Performance of the Agreement.** Except as otherwise limited in this BAA, Cohesity may Use and Disclose Protected Health Information for, or on behalf of, Customer as specified in the Underlying Agreement; provided that any such Use or Disclosure would not violate HIPAA if done by Customer, unless expressly permitted under paragraph b of this Section.

b) **Management, Administration, and Legal Responsibilities.** Except as otherwise limited in this BAA, Cohesity may Use and Disclose Protected Health Information for the proper management and administration of Cohesity and/or to carry out the legal responsibilities of Cohesity, provided that any Disclosure may occur only if: (1) Required by Law; or (2) Cohesity obtains written reasonable assurances from the person to whom the Protected Health Information is Disclosed that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and the person notifies Cohesity of any instances of which it becomes aware in which the confidentiality of the Protected Health Information has been breached.

3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION.

a) **Cohesity's Responsibilities.** To the extent Cohesity is acting as a Business Associate, Cohesity agrees to the following:

(i) **Limitations on Use and Disclosure.** Cohesity shall not Use and/or Disclose the Protected Health Information other than as permitted or required by the Underlying Agreement and/or this BAA or as otherwise Required by Law. Cohesity shall not disclose, capture, maintain, scan, index, transmit, share or Use Protected Health Information for any activity not authorized under the Underlying Agreement and/or this BAA. Cohesity Covered Services shall not use Protected Health Information for any advertising, Marketing or similar commercial purpose of Cohesity or any third party. Cohesity shall not violate the HIPAA prohibition on the sale of Protected Health Information. Cohesity shall make reasonable efforts to Use, Disclose, and/or request the minimum necessary Protected Health Information to accomplish the intended purpose of such Use, Disclosure, or request.

(ii) **Safeguards.** Cohesity shall: (1) use reasonable and appropriate safeguards to prevent Use and Disclosure of Protected Health Information other than as permitted in Section 2 herein; and (2) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule.

(iii) **Reporting.** Cohesity shall report to Customer: (1) any Use and/or Disclosure of Protected Health Information that is not permitted or required by this BAA of which Cohesity becomes aware; (2) any Security Incident of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents shall be given; and/or (3) any Breach of Customer's Unsecured Protected Health

Information that Cohesity may discover (in accordance with 45 CFR § 164.410 of the Breach Notification Rule). Notification of a Breach will be made without unreasonable delay, but in no event more than seventy-two (72) hours after Cohesity's discovery of a Breach. Taking into account the level of risk reasonably likely to be presented by the Use, Disclosure, Security Incident, or Breach, the timing of other reporting will be made consistent with Cohesity's and Customer's legal obligations. For purposes of this Section, "Unsuccessful Security Incidents" mean, without limitation, pings and other broadcast attacks on Cohesity's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, Use, or Disclosure of Protected Health Information. Notification(s) under this Section, if any, will be delivered to contacts identified by Customer pursuant to Section 3b(ii) (Contact Information for Notices) of this BAA by any means Cohesity selects, including through e-mail. Cohesity's obligation to report under this Section is not and will not be construed as an acknowledgement by Cohesity of any fault or liability with respect to any Use, Disclosure, Security Incident, or Breach.

(iv) **Subcontractors.** In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2) of HIPAA, Cohesity shall require its Subcontractors who create, receive, maintain, or transmit Protected Health Information on behalf of Cohesity to agree in writing to: (1) the same or more stringent restrictions and conditions that apply to Cohesity with respect to such Protected Health Information; (2) appropriately safeguard the Protected Health Information; and (3) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule. Cohesity remains responsible for its Subcontractors' compliance with obligations in this BAA.

(v) **Disclosure to the Secretary.** Cohesity shall make available its internal practices, records, and books relating to the Use and/or Disclosure of Protected Health Information received from Customer to the Secretary of the Department of Health and Human Services for purposes of determining Customer's compliance with HIPAA, subject to attorney-client and other applicable legal privileges. Cohesity shall respond to any such request from the Secretary in accordance with applicable law.

(vi) **Access.** The Parties acknowledge and agree that Cohesity does not maintain Protected Health Information in a Designated Record Set for Customer. In the event that there is a change in the Cohesity Covered Services that Cohesity provides to Customer such that Cohesity commences maintaining Protected Health Information in a Designated Record Set, then Cohesity, at the request of Customer, shall within fifteen (15) days make access to such Protected Health Information available to Customer in accordance with 45 CFR § 164.524 of the Privacy Rule.

(vii) **Amendment.** Subject to Section 3a (vi) above, if Cohesity maintains Protected Health Information in a Designated Record Set for Customer, then Cohesity, at the request of Customer, shall within fifteen (15) days make available such Protected Health Information to Customer for amendment and incorporate any reasonably requested amendment in the Protected Health Information in accordance with 45 CFR § 164.526 of the Privacy Rule.

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

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

b) **Customer Responsibilities.**

(i) **No Impermissible Requests.** Customer shall not request Cohesity to Use or Disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by a Covered Entity (unless permitted by HIPAA for a Business Associate).

(ii) **Contact Information for Notices.** Customer hereby agrees that any reports, notification, or other notice by Cohesity pursuant to this BAA will be provided as set forth in the Underlying Agreement.

(iii) **Safeguards and Appropriate Use of Protected Health Information.** Customer is responsible for implementing appropriate privacy and security safeguards to protect its Protected Health Information in compliance with HIPAA. Without limitation, it is Customer's obligation to:

1) Not include Protected Health Information in: (1) information Customer submits to technical support personnel through a technical support request or to community support forums outside of Covered Services, or, for Covered Services, within the subject or body of a support case management or support ticket; and (2) Customer's address book or directory information. In addition, Cohesity does not act as, or have the obligations of, a Business Associate under HIPAA with respect to Protected Health Information once it is sent to or from Customer outside Cohesity Covered Services over the public Internet, or if Customer fails to follow applicable instructions regarding physical media transported by a common carrier.

2) During use of Cohesity Covered Services or in an engagement with Cohesity to obtain Covered Services, implement privacy and security safeguards in the systems, applications, and software that Customer controls, configures, and uploads.

4. APPLICABILITY OF BAA.

This BAA applies to the extent Customer acts as a Covered Entity and, as a result, Cohesity is deemed under HIPAA to be acting as a Business Associate. Nothing herein obliges a Party to comply with laws not applicable to such Party as a matter of law. It is Customer's obligation to not store or process in an online service, or provide to Cohesity for performance of a professional service, protected health information (as that term is defined in 45 CFR § 160.103 of HIPAA) until this BAA is effective as to the applicable service.

5. TERM AND TERMINATION.

a) **Term.** This BAA shall continue in effect until the earlier of (1) termination by a Party for breach as set forth in Section 5.b., below, or (2) expiration of Customer's Underlying Agreement.

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

c) **Return, Destruction, or Retention of Protected Health Information Upon Termination.** Upon expiration or termination of this BAA, Cohesity shall return or destroy all Protected Health Information in its possession, if it is feasible to do so, and as set forth in the applicable termination provisions of the Underlying Agreement. If it is not feasible to return or destroy any portions of the Protected Health Information upon termination of this BAA, then Cohesity shall extend the protections of this BAA, without limitation, to such Protected Health Information and limit any further Use or Disclosure of the Protected Health Information to those purposes that make the return or destruction infeasible for the duration of the retention of the Protected Health Information.

6. MISCELLANEOUS.

a) **Interpretation.** The Parties intend that this BAA be interpreted consistently with their intent to comply with HIPAA and other applicable federal and state law. Except where this BAA conflicts with the Underlying Agreement, all other terms and conditions of the Underlying Agreement remain unchanged. Any captions or headings in this BAA are for the convenience of the Parties and shall not affect the interpretation of this BAA.

b) **Amendments; Waiver.** This BAA may not be modified or amended except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, as a bar to, or as a waiver of any right or remedy as to subsequent events.

c) **No Third-Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything in this BAA confer, upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

d) **Severability.** In the event that any provision of this BAA is found to be invalid or unenforceable, the remainder of this BAA shall not be affected thereby, but rather the remainder of this BAA shall be enforced to the greatest extent permitted by law.

e) **No Agency Relationship.** It is not intended that an agency relationship (as defined under the Federal common law of agency) be established hereby expressly or by implication between Customer and Cohesity under HIPAA or the Privacy Rule, Security Rule, or Breach Notification Rule. No terms or conditions contained in this BAA shall be construed to make or render Cohesity an agent of Customer.