COHESITY, INC.
SAAS TERMS OF SERVICE

COHESITY, INC. (TOGETHER WITH ITS AFFILIATES, "**COHESITY**") AGREES TO SUPPLY ACCESS TO SPECIFIED COHESITY SAAS SERVICES TO YOUR BUSINESS OR ORGANIZATION ("**CUSTOMER**," "**YOU**" OR "**YOUR**") PROVIDED (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 "**SAAS TERMS**," INCLUDING ALL DOCUMENTS INCORPORATED HEREIN BY REFERENCE). THE FOREGOING SHALL BE DEFINITIVELY EVIDENCED BY CLICKING THE "ACCEPT," "CONTINUE," OR A SIMILAR BUTTON; SIGNING A TANGIBLE COPY OF THIS AGREEMENT; USING OR CONTINUING TO USE SERVICES; OR BY SUCH OTHER CONTRACT FORMATION MECHANISM AS MAY BE RECOGNIZED BY LAW. IF YOU DO NOT AGREE TO THESE TERMS, CEASE ALL ACCESS AND/OR USE OF SERVICES.

1. SCOPE OF SAAS TERMS
   1.1 These SaaS Terms shall apply to Services. Cohesity's Global Terms also apply to all Cohesity Offerings.
   1.2 Separate terms and conditions apply to use of customer-managed software, available at https://www.cohesity.com/agreements.

2. SERVICES AND RESTRICTIONS
   2.1 <u>Service Scope and Access</u>. Customer may access and use the Services to which Customer is Entitled for Customer's internal business purposes only, subject to the Agreement (including the Scope of SaaS Offerings), payment of the relevant fees, and all applicable use, capacity, or other limitations specified in writing. Services may be supplied using third-party infrastructure such as Amazon Web Services or Microsoft Azure.
   2.2 <u>Service Levels</u>. The Services will be provided in accordance with the applicable Service Level Agreement (if applicable).
   2.3 <u>Overages</u>. 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.
   2.4 Notwithstanding anything else, 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).

3. CUSTOMER CONTENT AND RESPONSIBILITIES
   3.1 <u>Customer Content</u>. Customer Content is Customer's Confidential Information and 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 Services. 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.
   3.2 <u>Customer Responsibilities</u>. Customer is responsible for:
      (a) ensuring Customer Content and its use of Services comply with the Agreement and Law, including that Customer agrees not to store or process protected health information using the Services without first entering into a business associate addendum to these SaaS Terms with Cohesity;
      (b) any claims that Customer Content infringes, misappropriates, or violates any third party's rights, including handling notices claiming Customer Content violates such rights;
      (c) security and confidentiality of its account information (including usernames, passwords, and access information) and shall notify Cohesity immediately if any such information is lost, stolen, or compromised;
      (d) selecting appropriate available security options and configurations within the Services in accordance with Documentation and based on Customer's organization, security posture, regulatory standing, and the nature of the Customer Content (for example, Customers using Services to store Customer Content containing sensitive regulated data should self-manage private encryption keys); and
      (e) configuring and using the Services and other systems, tools, and technology properly to conform to applicable requirements specified in Documentation.

3.3 <u>Customer Content After Termination.</u> 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 Evaluations, the Retrieval Period shall be no greater than seven (7) days. 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 (E.G. INGRESS AND EGRESS FEES).

4. SERVICES WARRANTY
   4.1 Cohesity warrants that the Services will operate substantially in accordance with, and as described in, the Documentation.
   4.2 Cohesity's sole obligation under the warranty set forth in Section shall be, at Cohesity's expense, to repair or replace the applicable Services in accordance with the Support Terms. If Customer believes Cohesity is in breach of this Section, Customer shall notify Cohesity in writing specifying the breach, following which Cohesity shall have not less than thirty (30) days to remedy same.

5. DEFINITIONS
   Capitalized terms used but not defined herein shall have their meaning given in the Global Terms.

   5.1 "**Cohesity SaaS**" means Cohesity-managed proprietary software-as-a-service offerings supplied by Cohesity under the Agreement.
   5.2 "**Customer Content**" means Customer's content and application data received by the Data Plane for management and storage.
   5.3 "**Data Plane**" means data storage and associated services supplied by Cohesity through Cohesity SaaS;
   5.4 "**Global Terms**" means Cohesity's Global Terms and Conditions at https://www.cohesity.com/agreements or signed by the Parties.
   5.5 "**Scope of SaaS Offerings**" means Cohesity's Scope of SaaS Offerings at https://www.cohesity.com/agreements.
   5.6 "**Service Level Agreement**" means Cohesity's SaaS Service Level Agreement at https://www.cohesity.com/agreements.
   5.7 "**Services**" means those elements of Cohesity SaaS and related services/components to which Customer becomes Entitled under the Agreement.
   5.8 "**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).

COHESITY, INC.
GLOBAL TERMS AND CONDITIONS

1. OFFERINGS AND ORDERS
   1.1 <u>Scope of Agreement</u>. These Global Terms and Conditions ("**Global Terms**") apply to all products and services supplied by Cohesity ("**Offerings**"). Additional terms apply to specific Offerings (available at https://www.cohesity.com/agreements) and such additional terms are hereby incorporated into these Global Terms. The Global Terms, together with terms applicable to specific Offerings, documents incorporated by reference, and any amendment/addendum to any of the foregoing, are collectively the "**Agreement.**" In the event of a conflict between or among any of the foregoing, the Global Terms control unless expressly agreed otherwise in writing.
   1.2 <u>Orders</u>. Cohesity transacts sales through Cohesity Partners; Customers receive quotes from, and place Orders with, such a Cohesity Partner. Accordingly, the Agreement does not contain direct purchasing terms (e.g. payment, taxation, shipment/delivery) as such terms (if any) are between Customer and the applicable Cohesity Partner. Customer's contractual arrangements with any Cohesity Partner are not part of the Agreement. If Customer accepts an offer via a third-party marketplace or similar (e.g., by clicking "create contract" or similar in AWS Marketplace or Azure Marketplace) or otherwise places a binding Order, Customer agrees to meet its obligations thereunder (including timely payment of applicable fees, charges, and taxes). Each Order automatically incorporates and is subject to the Agreement.

2. RESTRICTIONS
   2.1 Customer will not (and will not knowingly allow a third party to): (a) alter or remove any copyright, patent, or other proprietary rights notices from Offerings; (b) modify, reverse engineer, decompile, disassemble, or otherwise attempt to discover any source code or underlying ideas or algorithms of any Offerings (except to the extent that Law prohibits such restrictions); (c) use or attempt to use portions of Offerings without Entitlement; (d) at any time create or use more instances, capacity, or users than Entitled (or otherwise exceed Customer's Entitlements); (e) use Offerings with any hardware, firmware, virtual/cloud environment or other configuration not certified by Cohesity; (f) use Offerings to develop, promote, distribute, sell, or support any product or service competitive with Cohesity; or (g) make representations, warranties, or guarantees to any third party with respect to any Offerings that purport to be by or on behalf of Cohesity or its suppliers.
   2.2 Customer may permit its Representatives to use Offerings provided such use is for Customer's sole benefit. Customer will not (and will not knowingly allow a third party to) provide, lease, or lend Offerings to—or otherwise use, host, support, or deploy Offerings as a service on behalf or for the benefit of—any unaffiliated third party, except as specifically authorized by Cohesity in writing. Entitlements may not be sold or otherwise transferred without Cohesity's written consent.

3. EVALUATIONS
   Cohesity may, from time to time, provide Customer with Offerings pursuant to a free or discounted evaluation/testing arrangement (which may include beta, pre-release and/or early-release Offerings that Cohesity makes available to select customers before they are made generally available) ("**Evaluation**"). Customers are advised to use test data during Evaluations. Absent a written arrangement to the contrary, Evaluations shall be subject to the Evaluation Terms & Conditions at https://www.cohesity.com/agreements and shall not exceed thirty (30) days.

4. OWNERSHIP
   Cohesity retains all rights, title, and interest (including all patent, copyright, trademark, trade secret, and other intellectual property rights) in and to the Offerings and all software, products, works, or other intellectual property created, used, provided, supplied, or otherwise made available by Cohesity. Except for the limited rights expressly set forth herein, no rights in or to any intellectual property are transferred, assigned, or licensed under the Agreement. Customer grants Cohesity a perpetual and irrevocable right to use, in any way and for any purpose and without compensation to Customer, suggestions, enhancement requests, ideas, corrections, or other feedback provided by or on behalf of Customer relating to Offerings.

5. CONFIDENTIALITY

5.1 <u>Ownership of Confidential Information</u>. The Confidential Information of the Discloser is and will remain the property and asset of the Discloser.

5.2 <u>Confidentiality Obligations</u>. 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): (a) hold it in confidence using the care and discretion it uses with its own Confidential Information (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 Law; and (e) not copy, reverse engineer, or attempt to derive its underlying composition, information, structure or ideas.

5.3 <u>Compelled Disclosures</u>. The Recipient may disclose Confidential Information to the extent required by Law, 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.

5.4 <u>Return of Confidential Information</u>. The Recipient shall, upon termination or expiration of this Agreement (or promptly upon earlier request by the Discloser), return or destroy Discloser's Confidential Information in the Recipient's possession, provided however that the Recipient: (a) 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) shall not be required to delete electronic copies of Confidential Information stored in disaster recovery or archival storage. The Recipient's obligations of confidentiality survive and continue to apply to any Confidential Information retained.

5.5 <u>Independent Product Development</u>. 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.

5.6 <u>Unauthorized Use</u>. The Recipient shall notify the Discloser promptly upon discovery of unauthorized disclosure of Confidential Information and cooperate with the Discloser to regain its possession and prevent further unauthorized use or disclosure. The Recipient 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 confidentiality obligations, and that such breach may result in irreparable harm.

6. TERM AND TERMINATION

6.1 <u>Term</u>. The term of the Agreement shall commence when executed by the Parties, when Customer accepts it, or when Customer first uses Offerings (whichever is earlier) and will remain in effect until terminated by a Party in accordance with its terms (the "**Term**").

6.2 <u>Decrease or Suspension of Service</u>. Cohesity may decrease or suspend Customer's access to or use of Offerings: (a) if 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; (b) if Cohesity reasonably and in good faith believes Customer's use of the Offerings poses an immediate security risk; (c) in the event of a material breach by Customer; or (d) as required by Law.

6.3 <u>Termination for Cause</u>. A Party may terminate this Agreement on written notice: (a) in the event of a material breach of this Agreement by the other Party which remains uncured following expiration of a thirty (30) day written notice specifying the breach, or effective immediately if the breach is incapable of cure; or (b) 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.

6.4 <u>Termination for Convenience</u>. Customer may terminate the Agreement for convenience on sixty (60) days' prior written notice. If there is no Entitlement in effect, either Party may terminate the Agreement on written notice.

7. SUPPORT SERVICES
Support services are provided for the Subscription Period in accordance with the Support Terms.

8. GENERAL WARRANTIES
    8.1 <u>Cohesity Warranties</u>. Cohesity represents and warrants that:
        (a) all Support services are performed in a professional and workmanlike manner using Cohesity personnel familiar with the applicable technology, processes, and procedures;
        (b) its employees who perform Support services have (to the extent permitted by Law) at the time of hiring undergone a background check compliant with the Fair Credit Reporting Acts and other Laws, 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 U.S. Department of the Treasury's Office of Foreign Assets Control ("**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 and educational history; and (v) reference checks including work-related references; and
        (c) it will not cause Customer to be in violation of any regulation administered by 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, appears on the OFAC Specially Designated Nationals and Blocked Persons List or has otherwise been determined to be an individual, entity, or organization with whom Law prohibits a U.S. company or individual from dealing.
    8.2 <u>Mutual Warranties</u>. 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; and
        (b) it shall obey all Laws, and none of its activities under this Agreement is restricted by or contrary to any Law, including that: (i) it is aware of, understands, and shall 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 shall not take any action that might be a violation of the Acts or other anti-corruption Laws that prohibit the same type of conduct (including without limitation the making of corrupt payments); (iii) it has, and shall have, policies in place sufficient to ensure compliance with the provisions of the Acts, as applicable; and (iv) any amounts paid or deemed paid to Customer by Cohesity hereunder, including without limitation any discounts or credits furnished by Cohesity 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 Law.
    8.3 <u>Remedy for Breach of Warranty</u>. Cohesity's sole obligation under the warranty in Section 8.1(a) shall be to correct or re-perform the Support services in accordance with the Support Terms. If Customer believes Cohesity is in breach of this Section, Customer shall notify Cohesity in writing specifying the breach, following which Cohesity shall have not less than thirty (30) days to remedy same.

9. DISCLAIMER
EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT AND TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, COHESITY AND ITS SUPPLIERS MAKE NO WARRANTIES OF ANY KIND AND DISCLAIM ALL IMPLIED AND STATUTORY WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, SECURITY, ACCURACY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE/RESULTS, ERROR-FREE OR UNINTERRUPTED USE, OR FREEDOM FROM BUGS.

10. SHARED RESPONSIBILITY
No technology (including Offerings) is a substitute for an organization maintaining a robust information security program and data protection plan, adapted to its unique requirements, policies, and IT topography. Cohesity advises all customers to have a comprehensive data management plan which includes—at minimum—encryption, password management, and diversified data protection and disaster recovery strategies for critical data (e.g., multiple copies in multiple locations). In addition, while using Offerings may help Customer obtain insurance or lower premiums, they are not a substitute for such insurance. The Offerings are not designed or intended for use in applications where failure could reasonably be expected to result in personal injury, loss of life, or catastrophic property damage.

11. INDEMNIFICATION
    11.1 <u>Intellectual Property Infringement</u>.

11.1.1 Cohesity shall (a) defend Customer and its Affiliates, suppliers, and Representatives against Claims against Customer alleging that any Offering (in the form provided by Cohesity) infringes any third-party intellectual property rights and (b) indemnify Customer for Losses to the extent resulting therefrom.

11.1.2 If an Offering becomes, or in Cohesity's opinion is likely to become, the subject of an infringement claim, Cohesity may, at its sole 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 Offering so that it becomes non-infringing; or (c) accept return of the affected Offering (and Customer shall be entitled to receive a prorated refund of any applicable unused, prepaid fees received by Cohesity for such returned Offering).

11.1.3 This indemnification obligation shall not apply to Claims to the extent based on: (a) modifications to the Offering not made or approved by Cohesity; (b) combination of the Offering with products, processes, or materials not supplied or approved by Cohesity; (c) activities with respect to the Offering by or on behalf of Customer not authorized by this Agreement or the Documentation; or (d) any Offering (or portions or components thereof) not created by Cohesity.

11.2 Breach of Applicable Laws. Each Party shall (a) defend the other Party and its Affiliates, suppliers, and Representatives against Claims against such other Party alleging violation of Laws by the indemnifying Party and (b) indemnify such other Party for Losses to the extent resulting therefrom.

11.3 Indemnity Procedure. The indemnified Party shall as a condition of its right to indemnification:

(a) notify the indemnifying Party in writing as soon as practicable, but in no event later than thirty (30) days after receipt of a Claim for which indemnity is sought. Any delay in giving such notice shall not preclude or limit the indemnified Party from seeking indemnification or reimbursement hereunder except to the extent such delay materially (i) prejudices the Indemnifying Party's ability to defend the Claim or (ii) affects the amount of damages awarded for, or paid in settlement of, the Claim;

(b) provide such information as is reasonably available and necessary for the indemnifying Party to evaluate the Claim, and reasonably cooperate with the indemnifying Party in the defense of the Claim; and

(c) allow the indemnifying Party to assume full control of the defense and settlement of the Claim.

11.4 Notwithstanding anything else, an indemnifying Party shall have no liability with respect to any Losses paid or settlement entered by an indemnified Party without the indemnifying Party's prior written consent. The indemnifying Party shall not be liable for the fees or expenses of counsel retained by any indemnified Party.

12. LIMITATION OF LIABILITY

12.1 NEITHER CUSTOMER NOR COHESITY (NOR ITS SUPPLIERS OR LICENSORS) SHALL BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY (A) AMOUNTS IN EXCESS OF THE TOTAL PAID OR PAYABLE BY CUSTOMER DURING THE TWELVE (12) 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; OR (B) INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THE LIMITATIONS HEREUNDER APPLY TO ALL CLAIMS UNDER OR RELATING TO THE AGREEMENT HOWEVER CAUSED, 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.

12.2 THE LIMITATIONS OF LIABILITY HEREUNDER SHALL NOT APPLY TO THE FOLLOWING:
(A) LIABILITY WHICH BY LAW CANNOT BE PRECLUDED BY CONTRACT;
(B) BODILY INJURY OR DEATH RESULTING FROM NEGLIGENCE;
(C) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT;
(D) DISCLOSURE OF CONFIDENTIAL INFORMATION IN BREACH OF THE AGREEMENT; AND
(E) INDEMNIFICATION OBLIGATIONS.

13. GOVERNING LAW

13.1 The Agreement and all disputes hereunder shall be governed (a) by the laws of the State of California as applied to contracts made (and to be performed) in California and the Parties consent to jurisdiction and venue in the U.S. Federal Courts located in the Northern District of California, or (b) if Customer is

incorporated in the European Economic Area or United Kingdom, by the laws of Ireland as applied to contracts made (and to be performed) in Ireland and the Parties consent to jurisdiction and venue in the courts of Dublin, Ireland. Conflict of laws rules shall not apply.

13.2 Notwithstanding anything else: (a) each Party shall have the right to seek in a court of proper jurisdiction injunctive or other equitable relief at any time without the requirement of posting a bond or other security; (b) the language to be used in all matters and proceedings related to the Agreement shall be English; and (c) each Party's remedies under this Agreement are cumulative, not exclusive.

14. PERSONAL DATA

Personal Data shall be handled in accordance with the Data Processing Addendum, as applicable.

15. MISCELLANEOUS

15.1 Entire Agreement. The Agreement constitutes the exclusive and entire agreement between the parties and supersedes all previous written and oral agreements and communications relating to its subject matter. Only the terms expressly stated on an Order, or in an amendment, addendum, or other writing 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 SHALL HAVE NO EFFECT AND SHALL NOT BE DEEMED AGREED TO BY COHESITY.

15.2 Data Collection. Depending on the applicable Offering, collection and use of Service Analytics Data may be optional (subject to configuration by Customer) or necessary to provide the Offering. Where so configured or necessary, Customer consents to such collection and processing of Service Analytics Data to provide, automate, and improve Offerings, provided that Service Analytics Data (a) may be used to improve Offerings only if it has been anonymized and/or deidentified and (b) shall be maintained as confidential and may not be resold, commercialized, or used for any other purpose.

15.3 Affiliates and Representatives. Each Party is responsible for its Affiliates' and Representatives' compliance with the Agreement.

15.4 No Waiver. 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.

15.5 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 be affected or impaired thereby.

15.6 Force Majeure. Neither Party shall be liable under this Agreement 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, cyberterrorism, labor conditions, earthquakes, material shortages, or any other cause which is beyond the reasonable control of such Party.

15.7 Survival. All terms of the Agreement which must survive in order to fulfill their essential purpose shall survive termination or expiration of this Agreement, excluding, for clarity, Entitlements, rights, or licenses to use Offerings.

15.8 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.

15.9 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.

15.10 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.

15.11 Construction. Section headings in the Agreement are solely for convenience and are not to be used to interpret, construe, define, or describe the scope of any aspect of the Agreement. As used in the

Agreement, "including" means "including but not limited to." Capitalized terms shall have their meanings set forth in the Agreement.

16. DEFINITIONS
    16.1 "**Affiliate**" means, with respect to a Party, any individual, company, or other entity directly or indirectly controlling, controlled by, or under common control with, such Party; each for so long as it operates, with such Party, within a corporate group that functions collectively as a single economic entity.

    16.2 "**Claim**" means a claim, action, or other proceeding brought by a third party.

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

    16.4 "**Confidential Information**" means all 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 financial, business, strategic, technical and/or product information, the Agreement, and any benchmarking or comparative studies involving the Offerings—disclosed by a Party before or during the Term, 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 the 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.

    16.5 "**Data Processing Addendum**" means Cohesity's Data Processing Addendum at https://www.cohesity.com/agreements.

    16.6 "**Discloser**" means a Party or its Affiliate that furnishes Confidential Information to the Recipient.

    16.7 "**Documentation**" means the operating manuals, guides, and other documentation Cohesity makes generally available to its customers in connection with the Offerings.

    16.8 "**Entitlement**" or "**Entitled**" means a Customer's right pursuant to a valid Order to use Offering(s) specified in such Order subject to applicable use, capacity, and other agreed limitations (e.g. Subscription Period).

    16.9 "**Law**" means, with respect to a Party, laws, orders, and other legal instruments or process applicable to such Party as a matter of law.

    16.10 "**Losses**" means damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) awarded against the indemnified Party.

    16.11 "**Order**" means a binding order (a) placed by Customer with a Cohesity Partner or (b) validly processed through a Cohesity Partner interface (e.g. AWS Marketplace) or other process, in each case to the extent reflecting a valid Cohesity-issued sales quotation or similar document.

    16.12 "**Party**" means Cohesity or Customer, as applicable, and collectively the "**Parties**."

    16.13 "**Recipient**" means the Party or its Affiliate that receives Confidential Information from the Discloser.

    16.14 "**Representatives**" means, in respect of a Party, (a) its and its Affiliates' employees and (b) its representatives, contractors, and consultants, in each case whom a reasonable person in the technology industry would understand not to be Cohesity competitors.

    16.15 "**Service Analytics Data**" means data about the operation, support, and/or use of Offerings (e.g. usage data and metadata) but excluding Customer's data or software code backed up to (or stored on) Offerings.

    16.16 "**Subscription Period**" means the period of time Customer is Entitled to use an Offering under an Order.

    16.17 "**Support**" means the support and maintenance services as described in the Support Terms.

    16.18 "**Support Terms**" means Cohesity's Support and Maintenance Terms and Conditions at https://www.cohesity.com/agreements.