



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: 7/18/2023

Agenda Item: 6J

Department: Information Technology
Prepared By Brian Brower, IT Manager

Subject:

CONSIDERATION OF RESOLUTION NO. 23-67 AWARDED BID IT-036 FOR THE PURCHASE OF COHESITY DATA PROTECTION SYSTEM TO SAVANT SOLUTIONS, INC. AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$137,011 FOR THE THREE-YEAR TERM

Summary:

The City Council identified the implementation of a new backup and recovery system as a high priority item in the 2023 Information Technology Strategic Plan Update. Staff has prepared, for consideration by the City Council, the purchase of the Cohesity Data Protection System (Cohesity), which will support that priority. If purchased, Cohesity will update the City's infrastructure and protect the City's data and technology assets in the event of cyberattack, hardware failure, human error, or natural disaster.

Cohesity is available from a variety of vendors, none of whom are based in San Clemente. Following a competitive bidding process, Savant Solutions, Inc. (with a principal place of business in Sacramento, California) was the lowest responsive and responsible bidder. Before the City Council is consideration of Resolution No. 23-67, awarding Bid IT-036 to Savant Solutions for the purchase of Cohesity in an amount not to exceed \$137,011, which includes \$124,511 for the equipment and software purchase, training, three years of service, maintenance, and support, as well as a contingency of \$12,500 for increased data capacity as needed over the three-year term.

Background:

The City of San Clemente is reliant upon backup systems to prevent the loss of data and/or system functionality in the event of a system failure. Such failures can come in many forms, ranging from the loss of a single file due to accidental deletion, to a complete loss of one or more servers as a result of hardware/software failure, natural disaster, or cyber-attack. In all cases, prompt and reliable recovery is essential to continuity of City operations. Staff recommends replacing the current backup system with a modern system to increase reliability and security, incorporating a combination of on-premise and offsite "cloud" services to provide a layered approach to backup storage and disaster recovery. The Cohesity Data Protection System is the best solution to meet the City's needs.

On June 29, 2023, the City published a 'Notice Inviting Bids' for purchasing Cohesity. Two responsive bids were received and opened on July 10, 2023. No bids were received from local vendors. Savant Solutions, Inc. provided the lowest responsible bid, in the amount of \$124,511.25, which includes the purchase of equipment, software, training, and three years of maintenance and support services.

Bid Summary:

Savant Solutions, Inc.	\$124,511.25
VPrime Tech, Inc.	\$134,878.05

In addition to the base bid amount, a 10% contingency of \$12,500 is recommended to increase data capacity if the need to expand the system arises during the three-year term.

By implementing Cohesity, the City will increase resiliency to cyber-attack or other system failure. The proposed system will both simplify and expedite the recovery process, while minimizing downtime and data loss. The Cohesity solution will enhance the City’s backup and recovery posture with the following features:

Scalability - Cohesity licensing provides the flexibility to increase data capacity on a “pay as we grow” model, eliminating preliminary over-sizing of the system and reducing the total cost of ownership. Cohesity’s node-based architecture also gives the ability to expand the storage cluster, non-disruptively, to accommodate growth while avoiding a complete system replacement.

Simplified data management - The Cohesity solution is noted for ease of use. All data protection services are managed within a single user interface.

Expedited Data Recovery - Cohesity’s instant mass restore will enable IT Staff to recover not just files, but collections of virtual machines instantly, dramatically reducing the chances of downtime for production systems.

Security - The Cohesity platform incorporates modern security controls such as Immutability, which restricts the modification of data that is backed up into the Cohesity platform; Multi-factor authentication, which requires anyone accessing a Cohesity backup to authenticate using two forms of verification; and Threat Detection, which scans backed-up data for anomalous content that may be indicative of ransomware or malware.

Data Isolation - Cohesity FortKnox provides an immutable archive copy of data in a Cohesity-managed cloud vault, protected by a logical air-gap, and restricts accessibility through “Quorum” multi-person authentication.

Premium Support - Cohesity provides 24/7/365 technical support for software and hardware, with next business day delivery on parts and labor as a minimum.

Implementation of a new backup and recovery system was identified as a high priority item in the 2023 Information Technology Strategic Plan Update, and purchasing Cohesity supports the 2022-2023 City Council Strategic Priorities by updating infrastructure that represents the best available technology and maintaining a best-in-class approach to technology.

Council Options:

- Adopt Resolution No. 23-67, awarding Bid IT-036 for the Cohesity Data Protection System to Savant Solutions, Inc. and authorizing the City Manager to execute an agreement for the purchase in an amount not to exceed \$124,511.25, plus a 10% project contingency of \$12,500, for a three-year term.

- Modify and adopt Resolution No. 23-67.
- Continue the item with direction to provide additional information.
- Do not award the contract or implement the proposed data protection system.

Fiscal Impact:

The total amount of the purchase and three years of ongoing maintenance and support is not to exceed \$137,011. This amount is within the FY 2023-24 Adopted Budget in the Information Technology Fund account #063-241-43456-000-00000.

Environmental Review/Analysis:

Not a “project” under the California Environmental Quality Act.

Recommended Actions:

Staff Recommendation

Adopt Resolution No. 23-67, which would:

1. Award Bid IT-036 to Savant Solutions, Inc.;
2. Authorize the City Manager to execute an agreement for the purchase of the Cohesity Data Protection Solution with Savant Solutions, Inc. under substantially the same terms and conditions of State of California Contract SLP-21-70-0276D in an amount not to exceed \$137,011, which includes \$124,511 for the equipment and software purchase, training, three years of service, maintenance, and support, as well as a contingency of \$12,500 for increased data capacity as needed over the three-year term.
3. Authorize City staff to accept the Cohesity End User License Agreement and Cohesity Software-as-a-Service (SAAS) Terms of Service.

Attachment:

1. Resolution No. 23-67.
2. State of California Contract SLP-21-70-0276D
3. Cohesity End User License Agreement
4. Cohesity SAAS Terms of Service

Notification:

Savant Solutions, Inc.
VPrime Tech, Inc.

RESOLUTION NO. 23-67

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AWARDING BID IT-036 FOR THE PURCHASE OF THE COHESITY DATA PROTECTION SYSTEM TO SAVANT SOLUTIONS, INC. AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$137,011 FOR THE THREE-YEAR TERM

WHEREAS, the City wishes to protect the City's data and technology assets in the event of cyberattack, hardware failure, human error, or natural disaster and implementing the Cohesity Data Protection System (Cohesity) is the best way to do that; and

WHEREAS, the City has conducted formal competitive bidding for the purchase of Cohesity ; and

WHEREAS, on July 10, 2023, the City received two bids ranging from \$124,511.25 to \$134,878.05 for Cohesity; and

WHEREAS, Savant Solutions, Inc. was the lowest responsive and responsible bidder with a bid of \$124,511.25.

NOW, THEREFORE, the City Council of the City of San Clemente does hereby find, determine and resolve as follows:

SECTION 1. That the above recitations are true and correct and incorporated herein.

SECTION 2. That Bid IT-036 for the purchase of the Cohesity Data Protection System is awarded to Savant Solutions, Inc.

SECTION 3. That the City Manager is authorized to execute an agreement to purchase the Cohesity Data Protection System from Savant Solutions, Inc. under terms and conditions substantially similar to State of California Contract SLP-21-70-0276D in an amount not to exceed \$137,011, which includes \$124,511 for the equipment and software purchase, training, three years of service, maintenance, and support, as well as a contingency of \$12,500 for increased data capacity as needed over a three-year term.

SECTION 4. That City staff is authorized to accept the Cohesity End User License Agreement and Cohesity Software-as-a-Service Terms of Service as presented to City Council on July 18, 2023.

SECTION 3. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this _____ day of July, 2023.

Mayor of the City of
San Clemente, California

ATTEST:

CITY CLERK of the City of
San Clemente, California

STATE OF CALIFORNIA)
 COUNTY OF ORANGE) §
 CITY OF SAN CLEMENTE)

I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 23-67 was adopted at a regular meeting of the City Council of the City of San Clemente held on _____ day of July 2023, by the following vote:

AYES:

NOES:

ABSENT:

 CITY CLERK of the City of
 San Clemente, California

Approved as to form:

 Elizabeth A. Mitchell, City Attorney

State of California SOFTWARE LICENSING PROGRAM (SLP)



Contractor: Savant Solutions, Inc.
 Contract Number: SLP-21-70-0276D
 SLP Contract Term: 01/28/2021 through 12/12/2024
 Contract Base: Cohesity Offer Number Cohesity-SLP-2020

This contract is available for use by State of California departments and any city, county, special district, educational agency, local government body or corporation empowered to expend public funds. While the state makes this contract available, each local agency should make its own determination whether the SLP is consistent with their procurement policies and regulations.

The SLP Contractor is required to provide all SLP contract terms and conditions with the list of products, services and prices.

Terms and conditions listed below are hereby incorporated by reference and made a part of this SLP Agreement as if attached herein and shall apply to the purchase of goods or services made under this Participating Agreement. Contractor non-compliance with the requirements of this contract may result in contract termination.

By signing below, Contractor agrees to the General Provisions dated September 5, 2014, SaaS Cloud Computing Services Special Provisions dated March 15, 2018 and all other provisions included herein.

- 1) General Provisions – Information Technology (GSPD-401IT), effective 9/5/2014
- 2) Cloud Computing Services Special Provisions (Software as a Service) effective 3/15/2018
- 3) Cloud Computing – Software as a Service (SaaS) General Provisions effective 6/07/2019

For State of CA:

Original Signature on File

Patrick Mullen
 Manager
 Multiple Award Programs Section
 Procurement Division
 Department of General Services

Date

For Contractor:

Original Signature on File

Signature

Printed Title

Printed Name

Company Name

Date

**SOFTWARE LICENSING PROGRAM (SLP)
SAVANT SOLUTIONS, INC.
SLP-21-70-0276D**

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

The SLP Contractors are required to provide the entire contract that consists of the following:

- SLP Cover sheet with signatures from the DGS Procurement Division Deputy Director or designee and Contractor.
- Ordering instructions.
- Std. 204 Payee Data Record.
- SLP Contract terms and conditions (General provisions).
- Software License Agreement pricing.
- Supplements, if applicable

CONTRACTOR QUARTERLY REPORTS

Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, Software Licensing Program. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Contractors with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete and returned to the contractor.

All SLP contractors, including certified Small Businesses and Disabled Veteran Business Enterprises, will be required to pay DGS-PD a 1.25% incentive fee for all orders placed by local government agencies via a SLP contract. This policy however, does not affect orders placed by State government offices. State agencies will continue to be billed the applicable administrative use fee by the DGS-PD.

The SLP Quarterly Business Activity Report form separates sales to State and local government agencies.

SLP Quarterly Business Activity Reports are due in the SLP Unit within two weeks after the end of each quarter as shown below:

Quarter 1	Jan 1 to Mar 31	Due Apr 15
Quarter 2	Apr 1 to Jun 30	Due Jul 15
Quarter 3	Jul 1 to Sep 30	Due Oct 15
Quarter 4	Oct 1 to Dec 31	Due Jan 15

Each contractor is required to remit to the DGS-PD an incentive fee equal to 1.25% of the total of all local government agency orders (excluding sales tax and freight) placed against their SLP contract(s) for the applicable quarter.

The check covering this fee shall be made payable to the Department of General Services, Software Licensing Program, and be attached to the supporting SLP Quarterly Report.

Mail report and check to:

Department of General Services
Procurement Division, SLP Unit
Quarterly Report Processing
PO Box 989052, MS 2-202
Attn: Software Licensing Program
West Sacramento, CA 95798-9052

SLP Quarterly Reports which include a check made payable to the DGS-SLP Unit must be mailed via hard-copy, and cannot be accepted via facsimile or e-mail.

New contracts for contractors with existing contracts, and extensions or renewals of existing contracts, will be approved ONLY if the contractor has submitted to the SLP Unit all quarterly reports, due. Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

**SOFTWARE LICENSING PROGRAM (SLP)
SAVANT SOLUTIONS, INC.
SLP-21-70-0276D**

The report must include the agency name, purchase order number, purchase order date, state agency billing code, pre-tax total order cost, agency contact name, address and phone number, and total dollars for the quarter. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order.

A sample quarterly report indicating required format and information is attached for your reference (Attachment A).

CONTRACTOR INVOICES

Unless otherwise stipulated, the contractor must send their invoices to the department address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- State Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable. The company name on the SLP contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

CONTRACTOR OWNERSHIP INFORMATION

Savant Solutions, Inc. certified small business enterprise. Their Office of Small Business and DVBE Services (OSDS) certification #2002783 expires on 10/31/2021.

If this certification has expired, the current expiration date for this company's certification should be verified at: CaleProcure (<https://caleprocure.ca.gov/pages/index.aspx>) or by contacting the Office of Small Business and DVBE Services at (916) 375-4940. Note that some companies have been assigned a new certification number, so use the company name and/or certification number when checking status on-line.

AGENCY NON-COMPLIANCE

Agency non-compliance with the requirements of this contract may result in the loss of delegated purchasing authority to use the SLP.

PLEASE REQUEST A COPY OF ALL CONTRACT TERMS AND CONDITIONS FROM THE CONTRACTOR, IF NOT PROVIDED INITIALLY.

AVAILABLE PRODUCTS AND/OR SERVICES

This contract provides for the purchase and warranty of software, software maintenance, technical support, and software as a service.

Only products from the manufacturer listed below are available within the scope of this contract:

- **Cohesity**

UNAVAILABLE PRODUCTS AND/OR SERVICES

The following products and/or services are not available under this contract:

- **STANDALONE HARDWARE**
- **CONSULTING**
- **TRAINING**

**SOFTWARE LICENSING PROGRAM (SLP)
SAVANT SOLUTIONS, INC.
SLP-21-70-0276D**

• **INSTALLATION SERVICES**

**SOFTWARE MAINTENANCE,
SUBSCRIPTION AND SAAS RENEWALS**

Software Maintenance, Subscription and SaaS renewals shall be fixed at the agencies prior applicable rates (or lower), with a 0% uplift (no up-lift) and no additional increases, fees or charges added, for the duration of this SLP contract.

SERVICE CREDITS

Service credits are acceptable only if they meet the following requirements:

- Service credits must never expire even when this contract term ends.
- Unused service credits can be used for other services such as training, installation, implementation. Example: If \$1,000 is purchased in training credits, the department may use the remainder of unused credits for other services such as installation, and implementation.

FIRST-YEAR MAINTENANCE

First –year maintenance will be calculated at a maximum of 20% of the publisher’s SLP price.

ISSUE PURCHASE ORDER TO

Agency purchase orders must be mailed to the following address, or fax to (916) 999-1266:

**Savant Solutions, Inc.
1007 7th Street, 5th Floor
Sacramento, CA 95814
Attn: Caleb Kwong**

Agencies with questions regarding products and/or services may contact the contractor as follows:

Phone: (916) 836-8182

E-mail: caleb@savantsolutions.net

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Destination

DELIVERY

30 days after receipt of order, or as negotiated between agency and Contractor and included in the purchase order.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

Each agency is responsible for its own contracting program and purchasing decisions, including use of the SLP program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State’s interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

**SOFTWARE LICENSING PROGRAM (SLP)
SAVANT SOLUTIONS, INC.
SLP-21-70-0276D**

**ORDER REQUIREMENTS AND
MAXIMUM ORDER LIMIT**

- Unless otherwise determined by an individual ordering agency purchasing authority, no SLP order may be executed by a State agency that exceeds that agency's purchasing authority threshold. State agencies with approved purchasing authority, along with their dollar thresholds can be obtained at the List of State Departments with Approved Purchasing Authority.
- Agencies must adhere to the detailed requirements in the State Contracting Manual (SCM) when using SLP contracts. The requirements for the following bullets are in the SCM, Volume 3, (for IT): If soliciting offers from a certified DVBE, include the Disabled Veteran Business Enterprise Declarations form (Std. 843) in the Request for Offer. This declaration must be completed and returned by the DVBE prime contractor and/or any DVBE subcontractors. (See the SCM Volume 3, Chapter 3)
- This is not a bid transaction, so the small business preference, DVBE participation goals, protest language, intents to award, evaluation criteria, advertising, etc., are not applicable.
- If less than 3 offers are received, State agencies must document their file with the reasons why the other suppliers solicited did not respond with an offer.
- Assess the offers received using best value methodology, with cost as one of the criteria.
- Issue a Purchase Order to the selected contractor.
- For SLP transactions under \$10,000, only one offer is required if the State agency can establish and document that the price is fair and reasonable. The fair

and reasonable method can only be used for non-customizable purchases.

Local governments set their own order limits, and are not bound by the order limits on the cover page of this contract.

SPLITTING ORDERS

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (SAM 3572).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

There is no minimum dollar value limitation on orders placed under this contract.

ORDERING PROCEDURES

1. Order Form

State departments shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing web site: <http://www.dgs.ca.gov/osp> (select Standard Forms). The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business

**SOFTWARE LICENSING PROGRAM (SLP)
SAVANT SOLUTIONS, INC.
SLP-21-70-0276D**

Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65: (<http://www.osp.dgs.ca.gov/pdf/std065.pdf>)

2. Purchase Orders

All Ordering Agency purchase order documents executed under this SLP must contain the applicable SLP contract number as show on page 1.

1. State Departments:

Std. 65 Purchase Documents – State departments not transacting in FI\$Cal must use the Purchasing Authority Purchase Order (Std. 65) for purchase execution. An electronic version of the Std. 65 is available at the DGS-PD website at <http://www.dgs.ca.gov/pd/Forms.aspx> (select Standard STD Forms).

FI\$Cal Purchase Documents – State departments transacting in FI\$Cal will follow the FI\$Cal procurement and contracting procedures.

2. Local Governmental Departments:

Local governmental agencies may use their own purchase document for purchase execution.

The agency is required to complete and distribute the order form. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be

included in the order, not just system totals.

The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

3. Service and Delivery after Contract Expiration

Purchase orders must be issued before the SLP contract end term expires.

Also, purchase order amendments cannot be issued to add product and software maintenance if the SLP contract end term has expired.

CONTRACT PRICES

Contract prices for products and/or services are maximums. The ordering department is encouraged to negotiate lower prices.

PRODUCT AND PRICING CHANGES AND/OR UPDATES ARE NOT AUTHORIZED UNTIL REVIEWED AND APPROVED BY DGS PROCUREMENT DIVISION SOFTWARE LICENSING PROGRAM.

Said documents are to be sent to the Department of General Services (DGS) Procurement Division, Software Licensing Program, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention SLP Unit.

CONTRACT EXTENSIONS

The initial term of this SLP contract is 2 years and may be extended for an additional 2-years, however an amendment must be issued prior to contract end date.

**SOFTWARE LICENSING PROGRAM (SLP)
SAVANT SOLUTIONS, INC.
SLP-21-70-0276D**

NOTE: Extensions are optional and are at the discretion of the state.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the SLP, state departments shall, whenever practicable, first consider offers from small businesses that have established SLP contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when department files are reviewed.

SMALL BUSINESS/DVBE – TRACKING

State departments are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering department with the name of the small business or DVBE used and the dollar amount the ordering department can apply towards its small business or DVBE goal.

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering department can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering department with the following information at the time the order is quoted:
 - a. The Contractor will state that, as the prime Contractor, it shall be

responsible for the overall execution of the fulfillment of the order.

- b. The Contractor will indicate to the ordering department how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
 - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering department towards the small business or DVBE goal; and
 - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.
3. The ordering department's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

PRODUCTIVE USE REQUIREMENTS

The customer in-use requirement applies to all procurements of information technology equipment and software, per the SCM, Volume 3, Chapter 2, Section 2.B6.2 and SCM, Volume FI\$Cal, Chapter 2, Section 2.E3.2.

**SOFTWARE LICENSING PROGRAM (SLP)
SAVANT SOLUTIONS, INC.
SLP-21-70-0276D**

Each equipment or software component must be in current operation for a paying customer and the paying customer must be external to the contractor's organization (not owned by the contractor and not owning the contractor).

To substantiate compliance with the Productive Use Requirements, the SLP contractor must provide upon request the name and address of a customer installation and the name and telephone number of a contact person.

The elapsed time such equipment or software must have been in operation is based upon the importance of the equipment or software for system operation and its cost. The following designates product categories and the required period of time for equipment or software operation prior to approval of the replacement item on SLP.

Category 1 - Critical Software: Critical software is software that is required to control the overall operation of a computer system or peripheral equipment. Included in this category are operating systems, data base management systems, language interpreters, assemblers and compilers, communications software, and other essential system software.

<u>Cost</u>	<u>Installation</u>	<u>Final Bid Submission</u>
More than \$100,000	8 months	6 months
\$10,000 up to \$100,000	4 months	3 months
Less than \$10,000	1 month	1 month

Category 2 - All Information Technology Equipment and Non-Critical Software: Information technology equipment is

defined in State Administrative Manual (SAM) § 4819.2.

<u>Cost</u>	<u>Installation</u>	<u>Final Bid Submission</u>
More than \$100,000	6 months	4 months
\$10,000 up to \$100,000	4 months	3 months
Less than \$10,000	1 month	1 month

STATE AND LOCAL GOVERNMENTS CAN USE THE SLP

State and local government use of the SLP contracts is optional. A local government is any city, county, special district or other local governmental body or corporation, including UC, K-12 schools and community colleges,

that is empowered to expend public funds. While the state makes this contract available, each local government agency should make its own

determination whether the SLP is consistent with their procurement policies and regulations.

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies and guidelines are applicable. THE USE OF THE SLP DOES NOT REDUCE OR RELIEVE STATE DEPARTMENTS OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into The SLP contracts. Notwithstanding this, there is no guarantee that "every" possible requirement that

**SOFTWARE LICENSING PROGRAM (SLP)
SAVANT SOLUTIONS, INC.
SLP-21-70-0276D**

pertains to all the different and unique state processes has been included.

TERMINATION OF SLP CONTRACT

1. The State or Contractor may terminate this SLP Contract at any time upon 30 days prior notice.
2. Upon termination or other expiration of this Contract, each party will assist the other party in orderly termination of the Contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.
3. This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

STATEWIDE PROCUREMENT REQUIREMENTS

Departments must carefully review and adhere to the following Procurement Requirements, such as:

- SAM Section 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Departments are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Unemployment Insurance Code Section 1088.8, state and local government agencies must report to the Employment Development Department (EDD) all payments for services that

equal \$600 or more to independent sole proprietor contractors. See the contractor's Std. Form 204, Payee Data Record, in the SLP contract to determine sole proprietorship. All inquiries regarding this subject should be forwarded to EDD: Technical questions: 916/651-6945 or Information and forms: 916/657-0529.

- Annual small business and disabled veteran reports.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

Effective July 1, 2002, in accordance with Public Contract Code 10116, state departments are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Departments are responsible for developing their own guidelines and forms for collecting and reporting this information.

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. Payment Terms

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt

**SOFTWARE LICENSING PROGRAM (SLP)
SAVANT SOLUTIONS, INC.
SLP-21-70-0276D**

of an undisputed invoice, whichever is later.

2. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g. between specific departments and certain types of non-profit organizations, or when paying another government agency (Government Code (GC) § 11256 – 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription and may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Software warranty upgrades and extensions may also be paid for in advance, one time.

3. Payee Data Record (Std. 204)

State Agencies not transacting in FI\$Cal, must obtain a copy of the Payee Data Record (Std. 204) in order to process payments. State Ordering Agencies forward a copy of the Std. 204 to their accounting office(s). Without the Std. 204, payment may be unnecessarily delayed. State Agencies should contact the Contractor for copies of the Payee Data Record

4. DGS Administrative and Incentive Fees

Orders from State Agencies:

The Department of General Services (DGS) will bill each State agency

directly an administrative fee for use of SLP contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS.

5. Credit Card

Savant Solutions, Inc. accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all SLP orders to suppliers not California certified as a small business.

FEDERAL DEBARMENT

When federal funds are being expended, the department is required to obtain (retain in file) a signed “Federal Debarment” certification from the contractor before the purchase order is issued. This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

AMERICANS WITH DISABILITY ACT (ADA)

(See attachment B)

**DGS PROCUREMENT DIVISION
CONTACT AND PHONE NUMBER**

Department of General Services
Procurement Division, SLP Unit
707 Third Street, 2nd Floor

**SOFTWARE LICENSING PROGRAM (SLP)
SAVANT SOLUTIONS, INC.
SLP-21-70-0276D**

West Sacramento, CA 95605-2811

Phone no.: 916/375-4365
Faxination no.: 916/376-6371

ATTACHMENT A

SLP QUARTERLY BUSINESS ACTIVITY REPORT

Company Name: _____

Reporting Calendar Year: _____

Software Publisher: _____

Reporting Quarter: Q1 (January to March)

Contract Number: _____

Q2 (April to June)

For Questions Regarding this Report: _____

Q3 (July to September)

E-mail: _____

Q4 (October to December)

Check Here if No New Orders for This Quarter

STATE GOVERNMENT AGENCY PURCHASES

State Agency Name	Purchase Order Number	Purchase Order Date	Agency Billing Code	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total State Agency Dollars Reported for Quarter: \$ _____

LOCAL GOVERNMENT AGENCY PURCHASES

Local Government Agency Name	Purchase Order Number	Purchase Order Date	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total Local Government Agency Dollars for Quarter: \$ _____

1.25% Remitted to DGS (does not apply to CA certified Small Businesses): \$ _____

Total of State and Local Government Agency Dollars Reported for this Quarter: \$ _____

ATTACHMENT A

SLP QUARTERLY BUSINESS ACTIVITY REPORT

Instructions for completing the SLP Quarterly Business Activity Report.

1. Complete the top of the form with the appropriate information for your company.
2. **Agency Name** - Identify the State agency or Local Government agency that issued the order.
3. **Purchase Order Number** - Identify the purchase order number (and amendment number if applicable) on the order form. This is not your invoice number. This is the number the State agency or Local Government agency assigns to the order.
4. **Purchase Order Date** - Identify the date the purchase order was issued, as shown on the order. This is not the date you received, accepted, or invoiced the order.
5. **Agency Billing Code** - Identify the State agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Billing codes are not applicable to Local Government agencies.
6. **Total Dollars Per PO** - Identify the total dollars of the order excluding tax and freight. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount (less tax and freight) regardless of when you invoice order, perform services, deliver product, or receive payment.
7. **Agency Contact** - Identify the ordering agency's contact person on the purchase order.
8. **Agency Address** - Identify the ordering agency's address on the purchase order.
9. **Phone Number** - Identify the phone number for the ordering agency's contact person.
10. **Total State Sales & Total Local Sales** - Separately identify the total State dollars and/or Local Government agency dollars (pre-tax) for all orders placed in quarter.
11. **1.25% Remitted to DGS** - Identify 1.25% of the total Local Government agency dollars reported for the quarter.
12. **Grand Total** - Identify the total of all State and Local Government agency dollars reported for the quarter.

Notes:

- A report is required for each SLP contract each quarter even when there are no new orders for the quarter.
- Quarterly reports are due two weeks after the end of the quarter.

ATTACHMENT B

ADA NOTICE

Procurement Division (State Department of General Services)
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice: 1-800-735-2922 or 1-888-877-5379
TTY: 1-800-735-2929 or 1-888-877-5378
Speech-to-Speech: 1-800-854-7784

**COHESITY, INC.
END USER LICENSE AGREEMENT**

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

COHESITY, INC. (TOGETHER WITH ITS AFFILIATES, “**COHESITY**”) AGREES TO SUPPLY AND/OR LICENSE CERTAIN OF ITS PRODUCTS TO YOUR BUSINESS OR ORGANIZATION (“**CUSTOMER**”) ONLY IF (A) YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER AND (B) YOU ACCEPT AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS IN THIS COHESITY END USER LICENSE AGREEMENT (THIS “**EULA**”, OR “**AGREEMENT**”, INCLUDING ALL DOCUMENTS INCORPORATED HEREIN BY REFERENCE), WHICH SHALL BE DEFINITELY EVIDENCED BY ANY ONE OF THE FOLLOWING MEANS: YOUR CLICKING THE “ACCEPT”, “CONTINUE” OR A SIMILAR BUTTON, AS APPLICABLE; YOUR SIGNATURE ON A TANGIBLE COPY OF THIS LICENSE; YOUR INSTALLATION OR USE OF THE PRODUCTS AND/OR SOFTWARE; OR BY SUCH OTHER CONTRACT FORMATION MECHANISM AS MAY BE RECOGNIZED UNDER APPLICABLE LAW FROM TIME TO TIME. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, DO NOT COPY, INSTALL OR USE THE PRODUCT(S) OR ANY ASSOCIATED SOFTWARE.

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

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

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

- **Incorporated Documents:** The following documents are incorporated into this Agreement by reference (available at www.cohesity.com/agreements):
 - Support and Maintenance Terms and Conditions
 - Scope of License Terms
 - Enhanced Support Services Terms & Conditions (applicable if using Enhanced Support)
 - End-of-Life Terms and Conditions (applicable if using Cohesity Platforms)

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

1. Definitions.

- a) “**Addendum**” means an addendum or other writing duly executed by authorized representatives of the Parties referencing and intending to supplement or amend this Agreement (collectively “**Addenda**”);
- b) “**Affiliate**” means, with respect to a Party, any individual, company, or other entity, directly or indirectly, controlled by, or under common control with, such Party, but, for clarity, excluding those individuals, companies or entities that are controlling such Party;
- c) “**Analytics Data**” means (i) usage data which may be used to improve Products; and/or (ii) metadata about Products which may be used to automate or perform certain Support functions, but in each case excluding data or software code backed up by (or stored on) Software in Customer’s environment;

- d) **“Beta Products”** means pre-release or early-release Products that Cohesity makes available to select customers before they are made generally available;
- e) **“Cohesity Partner”** means a Cohesity channel distribution, alliance and/or resale partner that has the right to transact sales of Cohesity Products;
- f) **“Cohesity Platforms”** mean hardware configurations which are both certified by Cohesity for use with Software and eligible for Support from Cohesity;
- g) **“Confidential Information”** means all financial, business, strategic, technical and/or product information (and any other information that a reasonable person in the technology industry would understand to be confidential), in any form or medium and whether or not marked as confidential – including without limitation this Agreement and any benchmarking or comparative studies involving the Products – disclosed by a Party before or during the term of this Agreement, but excluding (a) information already known by the Recipient without obligation of confidentiality, (b) information that is or becomes publicly known other than through breach of this Agreement, (c) information received by the Recipient from a third party not known (in good faith) by the Recipient to be under an obligation of confidence to the Discloser, and (d) information independently developed by the Recipient without reference to or use of the Discloser’s Confidential Information;
- h) **“Discloser”** means a Party or its Affiliate that furnishes Confidential Information to the other Party or its Affiliate;
- i) **“Documentation”** means the operating manuals, user guides and any other documentation which Cohesity generally makes available to its customers (directly or indirectly) in connection with the Products;
- j) **“Enhanced Support”** means enhanced support and/or implementation services Customer may opt to purchase as described in (and subject to) the Enhanced Support Services Terms and Conditions at www.cohesity.com/agreements (incorporated herein by reference);
- k) **“Entitlement”** means a Customer’s right pursuant to a valid Order to (i) use a Product licensed (or subscribed to) or (ii) receive Services, in each case (i & ii) for a fee and subject to any applicable use, capacity, or other limitations (and **“Entitled”** shall be given its meaning accordingly);
- l) **“Eval”** has its meaning given in Section 5;
- m) **“Hardware”** means Cohesity Platforms, Third-Party Hardware and/or Virtual/Cloud Environments, as applicable;
- n) **“Order”** means a binding order placed by Customer with a Cohesity Partner reflecting a valid Cohesity sales quotation or similar document;
- o) **“Party”** means Cohesity or Customer, as applicable, and collectively the **“Parties”**;
- p) **“Personal Data”** means information disclosed hereunder which relates to an identified or identifiable natural person, i.e. one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- q) **“Products”** means all of Cohesity’s and its licensors’ or suppliers’ products, Services, and Software supplied by Cohesity under this Agreement, including Cohesity Platforms and Third-Party Software but excluding (i) other Hardware, and (ii) SaaS Offerings;
- r) **“Recipient”** means the Party or its Affiliate that receives Confidential Information from the other Party or its Affiliate;
- s) **“Representatives”** means, in respect of a Party, (i) its and its Affiliates’ employees, and (ii) its representatives and consultants whom a reasonable person in the technology industry would understand not to be Cohesity competitors;
- t) **“Services”** means the Support and Enhanced Support Services, and any other services Cohesity is obligated to provide Customer during the term of this Agreement;
- u) **“Software”** means, collectively, all Cohesity proprietary software and Third-Party Software supplied by Cohesity under this Agreement;
- v) **“Support”** has its meaning given in the Support Terms;
- w) **“Support Portal”** means a support portal made available to Cohesity Support customers;
- x) **“Support Terms”** has its meaning given in Section 6.6;
- y) **“Third-Party Hardware”** means hardware and/or firmware products supplied by a third party and certified for use by Cohesity;
- z) **“Third-Party Software”** means any (i) open source computer software that is made available under licensing terms that allow licensee to copy, use, distribute, and/or create and distribute, modifications and derivative works of such computer software without charge; or (ii) software owned or licensed on a

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

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

2. General.

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

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

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

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

4. Restrictions.

- a) Software is not sold but is licensed (or made available via subscription) solely for Customer’s use strictly in accordance with this Agreement. Cohesity retains ownership of all copies and Customer will maintain the copyright notice and any other notices that appear on the Product on any copies and media. Except as expressly set forth herein, no rights in or to any intellectual property are transferred, assigned, or licensed under this Agreement.
- b) Customer acknowledges that Products may contain or be distributed with Third-Party Software, use of which shall be governed by current respective licenses for such Third-Party Software, a copy of which is accessible in the product user interface, in the Support Portal, or by emailing support@cohesity.com (or if no license is specified, then subject to this Agreement). Cohesity warrants that it complies with all licenses applicable to Third-Party Software in Products. Additionally, the Products may include certain third-party commercial offerings resold by Cohesity pursuant to a separately-identified SKU in an Order which are subject to supplemental or substitute terms and conditions, subject to being agreed by Customer.
- c) Customer will not (and will not knowingly allow any third party to): (i) alter or remove any of Cohesity’s or its licensors’, partners’, or suppliers’ copyright, patent, or other proprietary rights notices or legends appearing on or in the Products; (ii) modify, reverse engineer, or attempt to discover any source code or underlying ideas or algorithms of, any Software (except to the extent that applicable law prohibits such restrictions); (iii) provide, lease, lend, disclose, use for timesharing or service bureau purposes, or otherwise use (or allow others to use) any Software for the benefit of any third party (except as expressly and specifically authorized by Cohesity in writing); (iv) allow the transfer, transmission, export, or re-export of any Product (or portion thereof) in violation of any export control laws or regulations; (v) use or attempt to use portions of the Software without Entitlement; (vi) create more instances of Software (or use Software for greater capacity) than Entitled, or (vii) use Products in conjunction with any hardware, firmware, virtual/cloud environment or other configuration not certified by Cohesity. Notwithstanding the foregoing, Customer may with Cohesity’s prior written consent permit a third-party contractor of the Customer to use Products on Customer’s behalf so long as Customer procures the contractor’s compliance with terms of this Agreement. **For the avoidance of doubt, Customer may not utilize, host, support or otherwise deploy Products as a service on behalf of any unaffiliated third party without the express written agreement of Cohesity.**
- d) All use of Third-Party Hardware is at Customer’s own risk and is Customer’s responsibility. Cohesity support contracts may not be sold, assigned or otherwise transferred without Cohesity’s written consent.

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

- a) Eval license(s) shall be of limited duration and shall expire automatically upon completion of the Eval;
- b) Upon expiration or termination of an Eval, Customer shall immediately (i) return all Cohesity Platforms under Eval to Cohesity pursuant to the Return Materials Authorization (“**RMA**”) process, and (ii) discontinue use of (and, if possible, destroy) all copies of any Software under Eval, wherever residing;
- c) All Cohesity Platforms under Eval are Customer’s responsibility until safely returned to Cohesity; and
- d) Customer shall pay Cohesity for damage to, or loss of, Cohesity Platforms while in Customer’s possession.

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

6. Warranties.

6.1 General Warranties.

Cohesity warrants to Customer that:

- a) Cohesity uses commercially reasonable efforts to procure (and is responsible for) compliance of its contractors and subcontractors who perform activities hereunder with this Agreement and with applicable laws and regulations; and
- b) Cohesity will not cause Customer to be in violation of any regulation administered by U.S. Department of the Treasury’s Office of Foreign Assets Control’s (“**OFAC**”), and neither any individual, entity, or organization holding any material ownership interest (at least 25% of voting shares) in Cohesity, nor any officer or director of Cohesity, has been determined to be an individual, entity, or organization with whom applicable law prohibits a United States company or individual from dealing (including names appearing on the OFAC Specially Designated Nationals and Blocked Persons List).

6.2 Software Warranties.

Cohesity warrants to Customer that:

- a) the Software will operate, for a period of ninety (90) days from the date of availability to Customer, substantially in accordance with, and as described in, the Documentation;
- b) it uses commercially reasonable efforts designed to ensure that, on delivery, the Software will not contain any malware, viruses, worms, Trojan horses, ransomware, spyware, adware, scareware, disabling code, trap door devices or other malicious programs or instructions (but excluding normal agreed license restrictions such as time-limited licenses/subscriptions) intended to: (i) inhibit the use of the Software; (ii) erase, corrupt or modify any data, programs, or information, or (iii) bypass internal or external Customer security measures for the purpose of gaining unauthorized access; and
- c) provided it is used in compliance with this Agreement, the Software shall not obligate Customer to (i) grant a third party any rights to Customer’s intellectual property; (ii) cause any portion of the Customer’s intellectual property to become subject to any open source or similar license, or (iii) require Customer to make any of its own source code (or derivative works thereof) available to third parties for no fee.

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

6.4 Services Warranties. Cohesity warrants to Customer that:

- a) all Services are performed in a professional and workmanlike manner using Cohesity personnel who are familiar with the technology, processes and procedures used to deliver the Services, and
- b) its employees who perform any Services under this Agreement have (to the extent permitted by applicable law) at the time of hiring undergone a background check compliant with the Fair Credit Reporting Acts (“**FCRA**”) and/or other applicable laws and regulations, including:
 - i. Seven-year criminal background check of relevant available records;
 - ii. verification of identity through Social Security numbers or other such identification authentication;

- iii. verification that such person's name does not appear on the OFAC Specially Designated Nationals and Blocked Persons List, U.S. State Department's Debarred Parties List and Bureau of Industry and Security's Denied Persons List;
- iv. verification of employment history, educational history; and
- v. reference checks including work-related references.

6.5 Mutual Warranties. Each Party represents and warrants that:

- a) it has all requisite legal and corporate power, and has taken all corporate action necessary, to authorize, execute and deliver this Agreement;
- b) (i) it is aware of, understands, and will comply with, the provisions of the U.S. Foreign Corrupt Practices Act (the "**FCPA**") and the U.K. Bribery Act, as applicable (collectively the "**Acts**"); (ii) it will not take any action that might be a violation of the Acts or other applicable anti-corruption laws that prohibit the same type of conduct (including without limitation the making of corrupt payments); (iii) it has, and will have, policies in place sufficient to ensure compliance with the provisions of the Acts, as applicable; and (iv) all amounts paid to Customer by Cohesity hereunder, including without limitation any discounts or credits furnished by Cohesity (if any) shall not be paid or given to any other person, firm, corporation or other entity, except in payment for a bona fide business purpose authorized by this Agreement and incurred in connection with performance hereunder in accordance with applicable law, and
- c) none of its activities under this Agreement is restricted by, contrary to, in conflict with, or ineffective under any law or regulation to which such Party is subject.

6.6 Remedies for Breach of Warranty.

- a) Cohesity's sole obligation under the express warranty set forth in Sections 6.2 and 6.3 shall be, at Cohesity's option and expense, to repair or replace the applicable component and/or Product; provided that in the event of a breach of the foregoing warranty within thirty (30) days of shipment, Cohesity will replace any non-compliant Product with a new Product within five (5) business days of notice via its then-current RMA procedure described in Cohesity's standard Support and Maintenance Terms and Conditions (the "**Support Terms**") found at www.cohesity.com/agreements (incorporated herein by reference). After the warranty period, Customer is entitled to receive only the support and maintenance services specified for the applicable support level and term that Customer is Entitled to receive in the Support Terms. Cohesity will use commercially reasonable efforts to provide the support and maintenance services for the Products as, and to the extent described in, the Support Terms.
- b) Customer must contact Cohesity's technical support center within the applicable warranty period to obtain an RMA number as set forth in the Support Terms. In order to obtain warranty services, dated proof of purchase may be required by Cohesity in its sole discretion. Products may not be returned without an RMA number.
- c) Access to Cohesity's technical support center for any and all questions, consultation, deployment assistance, or problem reports regarding the Products shall be provided only pursuant to Customers who have purchased current Support. The warranties hereunder do not provide advance replacement parts.
- d) If Customer believes Cohesity is in breach of the warranties in this Section 6, Customer shall notify Cohesity in writing specifying the breach, following which Cohesity shall have not less than thirty (30) days to remedy same.

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

7. Confidentiality; Proprietary Rights.

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

7.2 Confidentiality Obligation. Except as required by law, the Recipient shall in respect of the Discloser's Confidential Information for the term of this Agreement and three (3) years thereafter (but for trade secrets for so long as it is a trade secret):

- a) hold it in confidence using the care and discretion it uses with its own sensitive information and trade secrets (but no less than reasonable care and discretion);
- b) not intentionally disclose it or information derived from it to any third party other than its Representatives with a business need to know;
- c) not use it, except solely for the purpose contemplated by this Agreement;
- d) not export or reexport it or any product of it except in compliance with applicable laws and regulations; and
- e) not copy, reverse engineer, or attempt to derive its underlying composition, information, structure or ideas.

The Recipient will procure and be responsible for compliance of its Affiliates and Representatives with this Agreement.

7.3 Compelled Disclosures. The Recipient may disclose Confidential Information required by law, order or legal process, provided it uses reasonable efforts to:

- a) promptly notify the Discloser of such requirement;
- b) limit disclosure; and
- c) obtain confidential treatment or a protective order.

7.4 Return of Confidential Information. The Recipient will immediately upon request by the Discloser at any time return or destroy Discloser's Confidential Information, including any reproductions, summaries or extracts, provided however that the Recipient:

- a) unless this Agreement has been terminated, may retain such Confidential Information as it reasonably requires in order to perform its obligations under, and otherwise comply with, this Agreement;
- b) may retain one (1) copy of Confidential Information to the extent required for legal or regulatory purposes; and
- c) will not be required to delete electronic copies of Confidential Information stored in disaster recovery or archival storage.

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

7.5 Independent Product Development. This Agreement shall not (provided its terms are complied with) limit a Party's right to:

- a) independently develop or acquire products or services similar to those included in any Confidential Information;
- b) enter any transaction with a third party which owns or has rights to such similar products or services; or
- c) disclose or use general learning, skills or know-how developed by its employees if to do so would not be regarded by a person of ordinary skill in the relevant area as a disclosure or use of Confidential Information hereunder.

7.6 Unauthorized Use. The Recipient will notify the Discloser promptly upon discovery of any unauthorized use or disclosure of Confidential Information or other breach of this Agreement, and reasonably cooperate with the Discloser to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. The Recipient acknowledges and agrees that due to the unique nature of the Discloser's Confidential Information, there can be no adequate remedy at law for breach of its obligations hereunder, and such breach may allow the Recipient or third parties to unfairly compete with the Discloser, resulting in irreparable harm. Therefore, if the Recipient or its Representatives breach (or attempt or threaten to breach) this Agreement, the Discloser shall have the right, in addition to any other remedies, to seek equitable and injunctive relief without the requirement of posting a bond or other security.

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

9. Termination; Suspension.

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

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

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

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

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

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

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

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

12. LIMITATION OF LIABILITY. NEITHER CUSTOMER NOR COHESITY (NOR ITS SUPPLIERS OR LICENSORS) WILL BE LIABLE WITH RESPECT TO ANY PRODUCT OR OTHER SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY (A) AMOUNTS IN EXCESS OF THE AGGREGATE OF THE AMOUNTS PAID TO COHESITY (DIRECTLY OR INDIRECTLY) BY CUSTOMER DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION FIRST AROSE OR TWO HUNDRED FIFTY THOUSAND U.S. DOLLARS (\$250,000), WHICHEVER IS GREATER; (B) INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. THE LIMITATIONS OF LIABILITY IN THIS SECTION 12 SHALL NOT APPLY TO:

- I) ANY LIABILITY WHICH, UNDER APPLICABLE PRODUCTS LIABILITY LAW, CANNOT BE PRECLUDED BY CONTRACT;
- II) BODILY INJURY OR DEATH RESULTING FROM A PARTY'S NEGLIGENCE;
- III) DAMAGES ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (INCLUDING INTENTIONAL BREACH OF ENTITLEMENTS);
- IV) A PARTY'S BREACH OF SECTION 7 (CONFIDENTIALITY; PROPRIETARY RIGHTS); AND
- V) EACH PARTY'S OBLIGATION TO INDEMNIFY UNDER SECTION 14.

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

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

14. Indemnities.

14.1 Intellectual Property Indemnity. Cohesity will defend, indemnify, and hold Customer, its Affiliates, suppliers and licensors, and each of their respective officers, directors, employees and Representatives, harmless against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) ("**Losses**") arising from any third-party action brought against Customer based upon a claim that any of the Products or Services (in the form provided by Cohesity) infringes any third-party intellectual property rights. If the Products become, or in Cohesity's opinion are likely to become, the subject of an infringement claim, Cohesity may, at its sole option and expense, either (a) procure for Customer the right to continue exercising the rights licensed to it in this Agreement; (b) replace or modify the affected Product so that it becomes non-infringing; or (c) accept return of the affected Products and refund to Customer prorated payments of fees for such returned Products made by Customer for such Products, reduced on a straight-line basis over three (3) years from the date of delivery of such Product by Cohesity. This indemnification obligation shall not apply to infringement actions or claims to the extent that such actions or claims are based on or result from: (i) modifications made to the Products by a party other than Cohesity, unless Cohesity approves such modification; (ii) the combination of the Product with products, processes, or materials not supplied by Cohesity, unless Cohesity approves such combination; (iii) any activities with respect to the Products by Customer not authorized by this Agreement or the Documentation; or (iv) any Products (or portions or components thereof) not created by Cohesity.

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

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

- a) notify the Indemnifying Party in writing as soon as practicable, but in no event later than thirty (30) days after receipt of such claim, together with such further information as reasonably necessary for the Indemnifying Party to evaluate the claim (to the extent in the Indemnified Party's possession or knowledge). Any delay in giving such notice shall preclude or limit the Indemnified Party from seeking indemnification or reimbursement hereunder only to the extent such delay (i) materially prejudices the Indemnifying Party's ability to defend the claim or (ii) materially affects the amount of damages awarded for, or paid in settlement of, the claim;
- b) allow the Indemnifying Party to assume full control of the defense of the claim, including retaining counsel of its own choosing; and
- c) reasonably cooperate with the Indemnifying Party in the defense of the claim.

Notwithstanding the foregoing provisions, the Indemnifying Party shall have no obligation to indemnify or reimburse for any Losses paid by any Indemnified Party voluntarily, and without the Indemnifying Party's prior written consent, to settle a claim. Neither Party will be responsible for any settlement it does not approve in writing. Upon the assumption by the Indemnifying Party of the defense of a claim, the Indemnifying Party will not be liable for the fees or expenses of counsel retained by any Indemnified Party.

15. Governing Law and Dispute Resolution.

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

- a) this Agreement shall be governed by and construed in accordance with the laws of Ireland as applied to contracts made (and to be performed) in Ireland, without applying conflict of laws rules, including legally binding regulations of the European Union; and
- b) any dispute arising from or relating to the subject matter of this Agreement that cannot be resolved within a period of thirty (30) days after written notice of same has been given by one Party hereunder to the other (the "**Arbitration Date**") shall be finally settled by arbitration in Dublin, Ireland, using the English language, in accordance with the Arbitration Rules and Procedures of JAMS ("**JAMS**") then in effect, by an arbitrator with substantial experience in resolving complex technology contract disputes, who will be chosen from the appropriate list of JAMS arbitrators.

15.2 If Customer is incorporated anywhere other than Europe:

- a) this Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of California as applied to contracts made (and to be performed) in California, without applying conflict of laws rules; and
- b) any dispute arising from or relating to the subject matter of this Agreement that cannot be resolved within a period of thirty (30) days after written notice of same has been given by one Party hereunder to the other (the “**Arbitration Date**”) shall be finally settled by arbitration in San Jose, California, using the English language, in accordance with the Arbitration Rules and Procedures of JAMS (“**JAMS**”) then in effect, by an arbitrator with substantial experience in resolving complex technology contract disputes, who will be chosen from the appropriate list of JAMS arbitrators.

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

15.4 Equitable Relief. Notwithstanding the foregoing and regardless of whether Section 15.1 or Section 15.2 applies, (a) each Party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief at any time, and (b) the language to be used in any and all proceedings arising out of or related to this Agreement shall be English.

16. Miscellaneous.

- a) Amendment. Only the terms expressly stated on an Order, Addendum or other writing that refers explicitly to this Agreement and is signed by duly authorized representatives of the Parties may modify or supplement the terms hereof. THE TERMS OF ANY PURCHASE ORDER, CONFIRMATION OR SIMILAR DOCUMENT WILL HAVE NO EFFECT AND WILL NOT BE CONSIDERED AGREED TO BY COHESITY.
- b) Data Collection. Unless Customer configures the Product settings to prevent it, the Products may collect and transmit Cohesity Analytics Data to Cohesity which Cohesity may use for purposes of providing Services and/or improving Products. Cohesity Analytics Data (i) which identifies Customer shall at all times be maintained as confidential, and (ii) may not be resold, commercialized or used for any purpose other than as expressly provided under this Agreement. Further information is available from Cohesity by emailing legal@cohesity.com.
- c) No Waiver. Cohesity’s performance is expressly conditioned on Customer’s assent to this Agreement. A waiver of any default hereunder, or of any provision of this Agreement, shall not be deemed to be a continuing waiver or a waiver of any other default or of any other provision, but shall apply solely to the instance to which such waiver is directed.
- d) Severability. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, a modified provision shall be substituted which carries out as nearly as possible the original intent of the Parties, and the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired thereby.
- e) Force Majeure. Neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, internet failure, fires, floods, storms, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such Party.
- f) Survival. All terms of this Agreement which must survive in order to fulfil their essential purpose shall survive termination or expiration of this Agreement. For avoidance of doubt, no rights granted Customer hereunder shall survive termination.
- g) Notices. Except as otherwise expressly set forth in this Agreement, all notices required under this Agreement shall be in writing and shall be delivered by personal delivery, certified overnight delivery such

as Federal Express, or registered mail (return receipt requested), and shall be deemed given upon personal delivery or confirmation of receipt. Notices may be sent to the Parties at their primary business address(es) or such address as either Party may designate for itself in writing.

- h) Compliance with Laws – Generally. Each Party shall obey all applicable laws and regulations in its use of Products and its performance under this Agreement.
- i) Compliance with Laws – Export/Import. Customer acknowledges that the Products may contain technical data or elements, the export or re-export of which may be restricted to certain destinations and end users as a result of license restrictions, laws, rules and regulations. Customer agrees not to engage in (and not to cause) export or re-export of Product(s) or any part thereof without first satisfying all legal requirements, including without limitation all necessary United States and foreign government import/export licenses, approvals or registrations. Upon request, Cohesity shall make available its documentation related to obtained export licenses and/or license exceptions. The Products may not be distributed, or otherwise exported or re-exported (i) into, or to a national or resident of, any country to which the U.S. has embargoed goods or trade restrictions; or (ii) to anyone on the OFAC Specially Designated Nationals and Blocked Persons List or the U.S. Commerce Department's Denied Persons, Denied Entities, and Unverified List. Customer shall indemnify Cohesity from and against any liabilities, costs, fines, penalties, and other expenses (including reasonable attorneys' fees) incurred by Cohesity as a result of Customer's breach of the foregoing obligations.
- j) Assignment. Customer may not delegate, assign or transfer this Agreement or any of Customer's rights or duties hereunder without Cohesity's express prior written consent, and any attempt to do so shall be null and void. Cohesity may freely assign this Agreement, and its rights and/or obligations hereunder, in whole or part.
- k) Independent Contractors. Each Party hereto is an independent contractor and nothing contained herein shall be construed as creating any agency, employment, partnership, principal-agent or other form of joint enterprise relationship between the Parties. Neither Party shall make any commitment, by contract or otherwise, binding upon the other or represent that it has authority to do so. The Parties' relationship is non-exclusive.
- l) Construction. The headings of sections of this Agreement are solely for convenience and are not to be used to interpret, construe, define, or describe the scope of any aspect of this Agreement. As used in this Agreement, the word "including" means "including but not limited to."

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 DEFINITELY 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)