

COHESITY, INC. END USER LICENSE AGREEMENT

COHESITY, INC. (TOGETHER WITH ITS AFFILIATES, “**COHESITY**”) AGREES TO SUPPLY CERTAIN OF ITS PRODUCTS AND/OR LICENSE (OR SUPPLY VIA SUBSCRIPTION) CERTAIN SOFTWARE 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 “**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 SOFTWARE.

THIS AGREEMENT MAY ONLY BE SUPERSEDED BY A SEPARATE, SIGNED WRITTEN AGREEMENT WITH COHESITY THAT EXPRESSLY PURPORTS TO SUPERSEDE THIS AGREEMENT.

1. Additional Definitions.

- a) “**Add-On Software**” means all software products and features (other than Core Software) supplied by Cohesity (or by Cohesity’s licensors) to Customer under this Agreement, and which is intended for execution by Hardware which Customer is authorized by Cohesity to use;
- b) “**Beta Products**” means pre-release or early-release Products that Cohesity makes available to select customers before they are made generally available worldwide;
- c) “**Core Software**” means the Cohesity distributed file system intended for execution by Hardware which Customer is authorized by Cohesity to use;
- d) “**Cohesity Hardware**” means hardware and/or firmware products supplied by Cohesity;
- e) “**Eval**” has its meaning given in Section 4;
- f) “**Hardware**” means, collectively, Cohesity Hardware and Third Party Hardware;
- g) “**Order**” means an order which (i) is placed (either directly by Customer or indirectly by an authorized Cohesity channel partner) in response to (and incorporating) a valid Cohesity sales quotation or similar document, and (ii) is accepted by Cohesity for supply of Products;
- h) “**Products**” means all of Cohesity’s and its licensors’, partners’, or suppliers’ products, services, and Software (whether purchased directly from Cohesity or indirectly from an authorized Cohesity channel partner, as applicable);
- i) “**Separate Software**” means all software supplied by Cohesity or its licensors to Customer under this Agreement, and which is intended for execution on separate hardware/firmware (e.g. agents or backup applications) which Customer is authorized by Cohesity to use;
- j) “**Software**” means, collectively, Core Software, Add-On Software and Separate Software;
- k) “**Support Portal**” means a support portal made available to Cohesity support customers;
- l) “**Support Terms**” has its meaning given in Section 5;
- m) “**Third Party Hardware**” means hardware and/or firmware products supplied by a third party and certified for use by Cohesity;
- n) “**Open Source Software**” means any computer software that is made available under licensing terms that allow licensee to use, distribute, and/or create and distribute, derivative works of such computer software without charge, including without limitation the following open source licenses: <https://opensource.org/licenses/category>.

2. Software License. This Agreement covers all Products listed on an Order. Subject to the terms hereof, 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 all fees due (either to Cohesity or to Cohesity’s authorized channel partner, as applicable), and any applicable use, capacity, or other limitations, Cohesity grants Customer a personal, revocable, nonsublicensable, nonexclusive right to use the authorized portions of the Software in object code form only in accordance with applicable documentation.

3. Restrictions.

- a) Software is not sold but is licensed (or made available via subscription) solely for Customer’s use only as installed in the Products and 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 Open Source Software, use of which shall be governed by current respective licenses for such Open Source Software, a copy of which is accessible in the product user interface, in the Support Portal, or by emailing support@cohesity.com.
- c) Customer will not (and will not 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 Software (or portion thereof) in violation of any export control laws or regulations; (v) use or attempt to use portions of the Add-On Software or Separate Software that have not been licensed (or subscribed to) for a fee; (vi) create more instances of Software (or use Software for greater capacity) than expressly permitted in an Order, or (vii) use Software in conjunction

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with any hardware, firmware, or configuration not certified by Cohesity. **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 Hardware may not be resold, exchanged, or otherwise transferred for any purpose, for a minimum period of twelve (12) months after delivery. Cohesity support contracts may not be sold, assigned or otherwise transferred without Cohesity's written consent.

4. **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 Hardware under Eval to Cohesity pursuant to the RMA process, and (ii) discontinue use of (and, if possible, destroy) all copies of any Software under Eval, wherever residing;
- c) All Hardware under Eval is Customer's responsibility until safely and properly returned to Cohesity; and
- d) Customer shall pay Cohesity for any damage to, or loss of, the Hardware while in Customer's possession.

If, from time to time, Cohesity provides Customer early access to Beta Products, Customer acknowledges and agrees that (i) such access is subject to this Section 4; (ii) Beta Products are provided on an 'as-is' basis (without liability to Cohesity), and (iii) Customer is not entitled to any warranty or support in relation to such Beta Product(s).

5. **Limited Warranty & Support.** Cohesity supplies a limited warranty, the current version of which is available 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 has ordered and paid for (in accordance with Cohesity's standard Support and Maintenance Terms (the "**Support Terms**") found at www.cohesity.com/agreements (incorporated herein by reference). Cohesity will use reasonable commercial efforts to provide the support and maintenance services for the Products as, and to the extent described in, the Support Terms.

6. **Confidentiality; Proprietary Rights.** Cohesity pricing; non-public information relating to the Products (including without limitation benchmarking or comparative studies involving the Products), and other Cohesity materials which are marked 'confidential', 'proprietary', or with a similar legend, or which a reasonable person would understand from the circumstances of disclosure to be confidential in nature, shall be treated as confidential, and Customer shall not use or disclose same except as expressly authorized by this Agreement or by Cohesity in writing. Information will not be considered confidential if it (i) is already known by Customer without obligation of confidentiality, (ii) is or becomes public other than through breach of this Agreement, or (iii) is received by Customer from a third party not known (in good faith) to be under an obligation of confidence to Cohesity.

7. **Termination; Suspension.** In the event of a material breach of this Agreement by Customer, Cohesity may in its discretion (i) suspend or revoke any or all of Customer's rights hereunder, and/or (ii) terminate this Agreement, and/or (iii) 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 7 days unless Customer first cures such breach, or effective immediately if the breach is incapable of cure Cohesity's remedies for Customer's breach of this Agreement are cumulative not exclusive.

8. **Downstream Product Users.** Cohesity may, in its sole discretion, revoke the rights hereunder in respect of any entity using Products not obtained directly from Cohesity or via an authorized Cohesity channel partner.

9. **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.

10. **LIMITATION OF LIABILITY.** EXCEPT FOR BODILY INJURY, NEITHER 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 (I) AMOUNTS IN EXCESS OF THE AGGREGATE OF THE AMOUNTS PAID TO COHESITY BY CUSTOMER DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION FIRST AROSE OR \$10,000, WHICHEVER IS GREATER; (II) INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE ANY LIABILITY WHICH, UNDER APPLICABLE PRODUCTS LIABILITY LAW, CANNOT BE PRECLUDED BY CONTRACT.

11. **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**"). 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.

12. Miscellaneous.

- a) **Entire Agreement.** This Agreement shall constitute the complete and exclusive statement of the terms of agreement between Cohesity and Customer regarding its subject matter. Only the terms expressly stated on a binding and valid Cohesity sales quotation or a written instrument signed by a valid Cohesity signatory 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. IF THE TERMS AND CONDITIONS IN THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS AND CONDITIONS.
- b) **Data Collection.** Unless Customer configures the Product settings to prevent it, the Products may collect and transmit anonymous usage data to Cohesity for purposes of improving the Products. For further information, please refer to our Privacy Policy at www.cohesity.com/privacy.
- 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) **Compliance with Laws - Generally.** Each party shall obey all applicable laws and regulations in its use of Products and its performance under this Agreement.
- h) **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 U.S. Treasury Department's list of Specially Designated Nationals 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.
- i) **Compliance with Laws - Antibribery.** Customer represents and warrants that (a) 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"); (b) 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); (c) it has, and will have, policies in place sufficient to ensure compliance with the provisions of the Acts, as applicable; and (d) 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.
- 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) **Governing Law.** 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. The United Nations Convention on Contracts for the International Sale of Goods (1980) is hereby excluded in its entirety from application to this Agreement.
- l) **Disputes.** 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. 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

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final decision by the arbitrator, provided that a permanent injunction and damages shall only be awarded by the arbitrator. The parties consent to exclusive jurisdiction and venue in the United States Federal Courts located in the Northern District of California.