

COHESITY EVALUATION TERMS & CONDITIONS

These Evaluation Terms and Conditions (“**T&Cs**”) apply between Cohesity, Inc., a Delaware corporation (“**Cohesity**”), and any user (“**Evaluator**”) receiving hardware (“**Hardware**”) and/or software supplied by Cohesity (or its partners) for internal evaluation purposes (the “**Products**”).

Typically, but not always, evaluations of Products are conducted pursuant to a written Cohesity evaluation quote or other written agreement or order (“**Evaluation Quote**”). The applicable Evaluation Quote(s) (if any) and these T&Cs comprise the entire agreement between the parties (collectively, this “**Evaluation Agreement**”).

1. Loan; Title. Cohesity agrees to loan and Evaluator agrees to accept loan of Products. Title to all Products and intellectual property rights embodied therein shall remain with Cohesity at all times.
2. Risk of Loss; Shipment. Risk of loss and damage (reasonable wear and tear excepted) to Hardware shall be with Evaluator while in Evaluator’s possession. Hardware (if applicable) shall be shipped freight pre-paid at Cohesity’s cost. Evaluator shall not loan Products to (or allow the use or possession of Products by) any third party.
3. Evaluation Period. Evaluator may evaluate the Products for the period of time set forth on the Evaluation Quote, commencing on the date Evaluator receives the Products (the “**Evaluation Period**”). If not specified, the Evaluation Period shall be 60 days.
4. Software License; Restrictions. Subject to the terms hereof, Cohesity grants Evaluator a personal, nonsublicensable, nonexclusive, revocable right to use any Cohesity software made available or otherwise intended for evaluation (the “**Software**”) in object code form solely for internal evaluation during the Evaluation Period and for no other purpose. Evaluator will not (nor allow any third party to) (i) modify, reverse engineer or attempt to discover source code or underlying ideas or algorithms of any Software (except to the extent that applicable law prohibits such restrictions) or (ii) use Software to directly or indirectly develop, promote, distribute, sell or support any product or service competitive with the Products. For purposes of the evaluation, it is recommended that Evaluator shall only utilize test data in a test lab environment. Evaluator may not use any Products in a production or live environment without Cohesity written approval. Any such use shall be at Evaluator’s sole risk. For software-as-a-service evaluations, additional restrictions and requirements specified in terms thereto shall also apply.
5. Service Provider/Demonstration. It shall not be a breach of this Evaluation Agreement for Evaluator who is also a Cohesity reseller or service provider to demonstrate Products to prospective end users with Cohesity’s prior written consent provided all other terms herein are complied with.
6. Product Return. Upon expiration of the Evaluation Period or termination of this Evaluation Agreement (whichever occurs earlier) Evaluator shall, at its option, either (i) immediately cease use of all Products and contact Cohesity to arrange return shipping of all Hardware at Cohesity’s cost, or (ii) purchase the Products for the price stated on a valid quote provided by Cohesity or an authorized reseller (a “**Purchase**”). Evaluator shall erase all Evaluator information from the Products prior to returning Products to Cohesity. Cohesity shall not be liable for any Evaluator information remaining on any Products returned to Cohesity, but shall treat the same as Evaluator Confidential Information and delete upon discovering.
7. Information Use & Feedback. If in connection with Evaluator’s evaluation of the Products, Evaluator provides Cohesity with feedback, suggestions, and ideas concerning the Products (“**Feedback**”) Evaluator hereby grants Cohesity a perpetual and irrevocable right to use the Feedback in any way and for any purpose without restriction or compensation to Evaluator. For clarity, the Feedback shall not encompass any of Evaluator’s pre-existing intellectual property.
8. Confidentiality. A party receiving Confidential Information (“**Recipient**”) from a Discloser shall not use or disclose same except as expressly authorized by this Evaluation Agreement, and shall protect same

using the degree of care it uses with its own confidential information (but no less than reasonable care). “**Confidential Information**” means nonpublic information of a party (the “**Discloser**”) in any form, that is identified as “confidential” or similar or that the Recipient knows (or a reasonable person in the technology industry would understand to be) confidential, including without limitation this Evaluation Agreement. Cohesity’s Confidential Information includes, and Evaluator shall not disclose, details about, or benchmarking results or technical specifications of, any Products, or the results or Evaluator’s impressions of the performance of Products. This Section 8 supplements any existing nondisclosure agreement between the parties (“**Existing NDA**”), provided that in the event of conflict between this Section 8 and an Existing NDA, this Section 8 shall prevail.

9. Warranty Disclaimer. ALL PRODUCTS, SOFTWARE AND SERVICES ARE PROVIDED ON AN “AS AVAILABLE” AND “AS IS” BASIS FOR EVALUATION PURPOSES WITHOUT ANY WARRANTY WHATSOEVER.

10. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES OR LEGAL THEORY SHALL COHESITY OR ITS SUPPLIERS OR LICENSORS BE LIABLE TO EVALUATOR OR ANY OTHER PERSON FOR ANY DIRECT OR INDIRECT (INCLUDING WITHOUT LIMITATION SPECIAL, INCIDENTAL, AND CONSEQUENTIAL) DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM YOUR USE OF THE PRODUCTS, BUT EXCLUDING ANY LIABILITY WHICH, UNDER APPLICABLE LAW, CANNOT BE PRECLUDED BY CONTRACT.

11. Miscellaneous. A waiver of any default hereunder or of any provision of this Evaluation Agreement shall not be deemed a continuing waiver or a waiver of any other default or provision. If any provision of this Evaluation 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 the remaining provisions shall not be affected or impaired thereby. Evaluator agrees not to export, either directly or indirectly, any Product hereunder. For international shipments, Cohesity shall be exporter of record from the United States. If the Products leave the United States, Evaluator shall (unless Cohesity agrees otherwise) be the importer of record and is responsible for fulfilling quota terms, obtaining import licenses, paying import license or permit fees, duties and customs fees, and any other governmental or import taxes or fees, and preparing and submitting all required documentation in connection with importing the Products to the country of import. This Evaluation Agreement shall be construed in accordance with, and all disputes 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 parties consent to exclusive jurisdiction and venue in the United States Federal Courts located in the Northern District of California. Each party shall comply with all applicable laws. Sections 4-10 shall survive the termination of this Evaluation Agreement. Evaluator’s unpaid use or evaluation of any Product shall constitute assent to this Evaluation Agreement to the exclusion of all other terms. Any terms that conflict with this Evaluation Agreement shall be of no force and effect.