

COHESITY, INC. MASTER LICENSE AND SUPPORT AGREEMENT

This Master License and Support Agreement (“**Agreement**”) is made and entered into as of the date identified as the “**Effective Date**” below, by and between Cohesity, Inc., a Delaware corporation having a principal place of business at 300 Park Avenue, San Jose, CA 95110 (“**Cohesity**”), and the legal entity identified below as “**Customer**”.

This Agreement comprises this execution page plus:

Part 1: Cohesity EULA and Related Terms

- Exhibit A: Cohesity End User License Agreement
- Exhibit B: Cohesity Support and Maintenance Terms and Conditions
- Exhibit C: Cohesity Enhanced Support Terms & Conditions
- Exhibit D: Cohesity Platforms End-of-Life Terms and Conditions
- Exhibit E: Cohesity Scope of License Terms
- Exhibit F: Cohesity End-of-Subscription Terms and Conditions
- Exhibit G: Cohesity Information Security Addendum

Part 2: Cohesity Helios SaaS Terms

- Exhibit H: Helios SaaS Terms of Service
- Exhibit I: Scope of SaaS Offerings
- Exhibit J: Helios SaaS Service Level Agreement
- Exhibit K: Data Processing Addendum
- Exhibit L: Cohesity Helios SaaS Information Security Addendum

For avoidance of doubt, the Cohesity SaaS terms apply to Customer use of Helios SaaS, and the EULA and related terms apply to all other Products.

This Agreement constitutes the entire agreement between Customer and Cohesity, superseding in their entirety any and all oral or written agreements previously existing between Customer and Cohesity with respect to the subject matter hereof. This Agreement may only be amended or supplemented by a writing that refers explicitly to this Agreement and that is signed by duly authorized representatives of Customer and Cohesity.

With the exception of the links to the Enhanced Support Terms & Conditions, in Part B of the Scope of License, and in the Scope of SaaS Offerings, hyperlinks in this Agreement shall NOT apply to Customer, and hyperlinked references to documents shall instead be deemed to refer to the relevant Part of this Agreement.

Customer Name: [CUSTOMER TO INSERT FULL LEGAL NAME]	Effective Date: [INSERT DATE] <i>(If no date is specified above, the Effective Date shall be the date this Agreement is signed by both parties.)</i>
Address: [CUSTOMER TO INSERT FULL ADDRESS]	Additional Special Terms and Conditions (if any):

In witness whereof, the parties’ authorized representatives have executed this Agreement with intent to be bound. Documents executed, scanned and transmitted electronically, and electronic signatures, shall be deemed, and shall have the same legal effect as, original signatures for purposes of this Agreement and all related matters.

COHESITY:

CUSTOMER:

(signature)

(signature)

Name:

Name:

Title:

Title:

Date:

Date:

PART 1 – COHESITY EULA AND RELATED TERMS

Exhibit A: Cohesity End User License Agreement

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. Regardless of the foregoing, Confidential Information shall not include any records that are required to be disclosed to the public pursuant to the Wisconsin Public Records Law, Wis. Stat. §19.31 to §19.37;
- 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; and
- b) limit disclosure to only that which is required by law.

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 Wisconsin as applied to contracts made (and to be performed) in Wisconsin, without applying conflict of laws rules; and the Parties consent to jurisdiction and venue in the Wisconsin Circuit Court for Waukesha County.

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 Wisconsin Circuit Court for Waukesha County 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."

Exhibit B: Cohesity Support and Maintenance Terms and Conditions

These Cohesity Support and Maintenance Terms and Conditions (the “**Support Terms**”) apply to any Customer Entitled to receive Premium support and maintenance services from Cohesity for specific Cohesity Products pursuant to a written agreement or order between Customer and Cohesity (or its authorized reseller or distributor, as applicable) (an “**Agreement**”). Customer is entitled to receive only the support specified for the term that Customer has ordered and paid for pursuant to such Agreement. To the extent Cohesity has become obligated for Support (as defined below), the following will apply with respect to Products so long as they remain Cohesity’s standard terms for Support and the Customer complies with Cohesity’s end-user agreement (the “**EULA**”). Capitalized terms not defined herein shall have their meaning set forth in the EULA.

IMPORTANT: The Software Products are ONLY supported on Cohesity-certified hardware, firmware and operating system configurations. Contact support for a current list of certified configurations.

1.

SECTION 1: SOFTWARE SUPPORT

1.1. Scope of Support. Support and maintenance services consist of providing during the “**Support Hours**” (24x7x365): (a) Error Correction and Telephone Support provided to a reasonable number of consistent named technical support contacts at Customer concerning installation and use of Cohesity Platforms (if Cohesity Platform Support included in Agreement) and Supported Releases of Cohesity Software, (b) E-mail Support, (c) Web Support, (d) Software updates that Cohesity in its discretion makes generally available to its equivalent support and maintenance customers without additional charge, and (e) support for Cohesity Platforms as set forth in Section 2 below (“**Cohesity Platform Support**” and, clauses (a)-(e) collectively, “**Support**”). Cohesity shall provide Support for Supported Releases of Software. Customer is solely responsible for installing a Supported Release if Customer wishes to continue to receive Support.

1.2 Vulnerabilities. Cohesity agrees to provide, maintain, and support its Software and subsequent updates, upgrades, Fixes and bug fixes in a manner designed to ensure that the Software is, and remains, secure from vulnerabilities as set forth in these Support Terms. The foregoing (a) excludes any responsibility for Customer’s own environment and (b) applies for so long as Customer has a valid Cohesity Support contract in place.

1.3. Priority Levels. Cohesity shall correct any Error reported by Customer in the current unmodified release of a Product in accordance with the priority level assigned such Error by Cohesity (in Cohesity’s sole discretion):

Error Priority Level	Cohesity Response Obligation	Initial Response Time
Priority 1	Respond within the Initial Response Time and promptly commence the following procedures: (i) assign Cohesity engineers to correct the Error; (ii) notify Cohesity management that such Errors have been reported and of steps being taken to correct such Error(s); (iii) provide Customer with periodic reports on the status of the corrections; and (iv) in the case of Software Products, initiate work to provide Customer with a Workaround or Fix or, in the case of Cohesity Platforms, initiate Cohesity Platform Support pursuant to Section 2 below.	1 Hour
Priority 2	Respond within the relevant Initial Response Time and promptly commence the following procedures: (i) assign Cohesity engineers to correct the Error; (ii) provide Customer with periodic reports on the status of the corrections; and	2 Hours
Priority 3	(iii) in the case of Software Products, initiate work to provide Customer with a Workaround or Fix or, in the case of Cohesity Platforms, initiate Cohesity Platform Support pursuant to Section 2 below.	4 Hours

Priority 4	Acknowledge Customer's problem report and commence efforts to supply a Fix for the Error within a reasonable timeframe.	Reasonable timeframe
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1.4 Failure to Resolve Error

- If a resolution to a Priority Level 1 Error is not provided within five (5) business days of Customer's notice to Cohesity of the Error, then Cohesity shall refund to Customer a credit equal to ten percent (10%) of the annual fee charged to Customer for the services described in this Exhibit B for each day in excess of five days that a resolution is not provided.
- If a resolution to a Priority Level 2 or 3 Error is not provided within five (5) business days of Customer's notice to Cohesity of the Error, then Cohesity shall refund to Customer a credit equal to ten percent (5%) of the annual fee charged to Customer for the services described in this Exhibit B for each day in excess of five days that a resolution is not provided.

1.5 Problems not caused by Errors.

- If Cohesity believes in good faith following reasonable investigation that a problem reported by Customer may not be due to an Error, Cohesity will so inform Customer.
- Customer in its absolute discretion may then choose to (a) instruct Cohesity to proceed with problem determination at its possible expense as set forth below, or (b) instruct Cohesity that Customer does not wish the problem pursued by Cohesity.
- If (a) Customer requests that Cohesity proceed with problem determination at its possible expense; (b) the parties' pre-agree consulting rates, and (c) Cohesity determines that the problem was not due to an Error, then Customer shall pay Cohesity, at the pre-agreed consulting rates for all work performed in connection with such determination, plus reasonable related expenses which Cohesity can reasonably show were incurred therewith. Cohesity shall provide its then-current and standard consulting rates upon request.
- Notwithstanding the foregoing, Customer shall not be liable for (i) problem determination or repair to the extent problems are due to Errors; (ii) work performed under this paragraph in excess of its instructions; or (iii) work performed after Customer has notified Cohesity that it no longer wishes work on the problem determination to be continued at its possible expense (such notice deemed given when actually received by Cohesity). If Customer instructs Cohesity that it does not wish the problem pursued at its possible expense, or if such determination requires effort in excess of Customer's instructions, Cohesity may, at its sole discretion, elect not to investigate the error with no liability therefor.

SECTION 2: HARDWARE SUPPORT

2.1. Parts Delivery Times. If Customer is using Cohesity Platforms and has purchased Cohesity Platform Support in the Agreement, then Cohesity will deliver to Customer, at no charge, replacement parts that Cohesity determines are required within the Part Delivery Time:

Location	Parts Delivery Time
USA (incl. Hawaii, Alaska, Puerto Rico)	Next business day
EU Countries	Next business day
UK, Dubai, Iceland, Norway, Saudi Arabia, Turkey, Switzerland	Next business day
India, China, Hong Kong, S Korea, Japan, Malaysia, Singapore, Australia, Taiwan, Thailand	Next business day
Rest of World	Reasonable efforts
"Add-On" Services (may be added for an additional fee):	
<ul style="list-style-type: none"> • Hardware Non-Return Option 	

- Four-Hour Hardware Services (designated locations only – see S.2.4 below)

Actual delivery times may vary if Customer's location is geographically remote; if common carriers encounter delays or require special transportation arrangements for reaching Customer's site, or if customs clearances impose delays. Replacement parts may be new or refurbished at Cohesity's option (warranties and other Customer rights will apply in respect of refurbished replacement parts as though new).

2.2. RMA Process

2.2.1 A case is required for Cohesity Platform troubleshooting and product (or part) replacement. All returns must be authorized and assigned a Return Materials Authorization ("**RMA**") number in advance by Cohesity support personnel. Replacement products and components are shipped based on instructions generated by Cohesity support personnel.

2.2.2 Cohesity products and components that are (a) covered under the terms and conditions of the hardware warranties in the EULA; or (b) covered under purchased Cohesity Platform Support under the Agreement (collectively "**Covered Products**") must be pre-authorized for return by Cohesity with an RMA number marked on the outside of the package and packaged appropriately for safe shipment. Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by Cohesity's receiving department, or its designated repair partner. All other packages will be rejected. If Customer does not follow Cohesity's RMA process, Cohesity may invoice Customer the full cost of the replacement part.

2.2.3 Once Cohesity support personnel have determined a replacement part (or product) is needed, a replacement will be shipped. The Customer (or its designee) will receive a dispatch number which also acts as the RMA number. Cohesity will be responsible for all freight charges for returned Covered Products or components via a Cohesity designated carrier.

2.3 Hardware Non-Return Option. Defective parts must be returned following Cohesity's standard RMA process set forth in Section 2.2 of these Support Terms, unless Customer has purchased the Hardware Non-Return Option as an Add-On to its Agreement. If Customer has purchased this Add-On, Customer will not be required to return Non-Return Parts per Cohesity's RMA policy.

2.4. Four-Hour Hardware Services. For more information and applicable terms & conditions, please refer to the Enhanced Support Services Terms and Conditions available at www.cohesity.com/agreements.

2.5. Third Party Hardware. Cohesity does NOT support hardware other than Cohesity's own Cohesity Platforms. Customers using Cohesity-certified third-party hardware must obtain any required support for that hardware independently. However, Cohesity shall provide reasonable assistance to Customer to help determine if a hardware support issue exists requiring support/maintenance from the third-party (and if so, attending calls on the issue between the Customer and the third party if Customer so requests).

SECTION 3: EXCLUSIONS FROM SUPPORT

Cohesity shall have no obligation to support: (i) Products altered or damaged other than by Cohesity; (ii) any portion of a Product incorporated with or into other software and/or hardware, as applicable, by a party other than Cohesity; (iii) any Software Product that is not a Supported Release; (iv) Product problems to the extent caused by Customer's negligence, abuse, misapplication, use of Products other than as specified in Cohesity's user documentation, or other causes beyond the control of Cohesity; (v) Software Products installed on any hardware, Virtual/Cloud Environment, or other configuration not certified by Cohesity, or (vi) third party products sold separately (which may be subject to separate support paths). Cohesity shall have no liability for any changes in Customer's hardware which may be necessary to use Software Products due to a Workaround or maintenance release. Any enhanced support services (e.g installation, TAM) are subject to our Enhanced Support Services Terms and Conditions available at www.cohesity.com/agreements, which are incorporated by reference herein. Certain Enhanced Support Services are available only in specific Cohesity-approved locations. Support is available in the English language only. All Support is provided using Industry Measures.

SECTION 4: DEFINITIONS

- a) **“E-mail support”** means the ability to make requests for Support by e-mail, including automated reply and/or ticketing generation, at any time;
- b) **“Error”** means an error in a Cohesity Product which significantly degrades such Product as compared to Cohesity’s published performance specifications;
- c) **“Error Correction”** means correcting Errors in accordance with these Support Terms;
- d) **“Fix”** means repair or replacement of object or executable code versions of a Software Product or documentation to correct Errors;
- e) **“Hardware Non-Return Option”** means an optional Add-On Service that, if purchased, entitles Customer to retain defective persistent data storage hardware parts that could retain sensitive data, such as flash memory, solid state disks and hard disk drives, that have been replaced by Cohesity (**“Non-Return Parts”**) pursuant to Cohesity Platform Support;
- f) **“Industry Measures”** means reasonable efforts using measures and practices generally accepted in the industry and designed to provide effective Support;
- g) **“Initial Response Time”** means the amount of time between Cohesity receiving a support request from Customer and responding to such request;
- h) **“Part Delivery Time”** means the number of days after Cohesity has diagnosed a problem and determined that hardware replacement parts are required for such problem;
- i) **“Previous Sequential Release”** means the immediately previous release of a Software Product which has been replaced by a subsequent release of the same or upgraded Software Product;
- j) **“Priority 1 Error”** means an Error which causes Customer’s production use of a Product to be stopped, or so severely impacted that Customer cannot reasonably continue use of the Product;
- k) **“Priority 2 Error”** means an Error which causes important Product features to be unavailable (and, in the case of Software Products, with no acceptable Workaround), but Customer’s production use is capable of continuing;
- l) **“Priority 3 Error”** means an Error which causes important Product features to be unavailable (but, in the case of Software Products, a Workaround is available), or less significant Software Product features to be unavailable, but Customer’s production use is capable of continuing;
- m) **“Priority 4 Error”** means any Error which is not a Priority 1 Error, Priority 2 Error, or Priority 3 Error;
- n) **“Supported Release”** means the current release of a Software Product and the two (2) prior Previous Sequential Releases;
- o) **“Telephone Support”** means technical support telephone assistance concerning the installation and use of Products;
- p) **“Web Support”** means information available on the World Wide Web, including access to product and support forums, frequently asked questions, and product documentation, and
- q) **“Workaround”** means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing intended use of a Software Product.

THESE SUPPORT TERMS (A) CONSTITUTE A SERVICE CONTRACT, NOT A PRODUCT WARRANTY, AND (B) ARE AN ADDITIONAL PART OF THE EULA AND DO NOT CHANGE OR SUPERSEDE ANY TERM OF THE EULA EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO. ALL PRODUCTS AND MATERIALS RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SEPARATELY SUPPLIED.

Cohesity Support Addendum for U.S. Government Customers

The terms of this Cohesity Support Addendum for U.S. Government Customers (this “**Addendum**”) apply exclusively to Support made available to a customer that is part of the United States Government (“**U.S. Government Customer**”). Support made available to U.S. Government Customers may include additional enhancements, in Cohesity’s discretion.

Cohesity's ability to provide Support to a U.S. Government Customer is sometimes dependent on the U.S. Government Customer providing Cohesity with relevant information or access to the Products at the U.S. Government Customer’s site and/or on the U.S. Government Customer’s network. If a U.S. Government Customer purchases Support for Products that are or will be deployed in a classified environment, such U.S. Government Customer shall (i) issue a classified contract, via a Cohesity-authorized reseller or distributor if applicable, which includes applicable security requirements and classification guidance associated therewith (DD254), and (ii) provide the necessary means for Cohesity support personnel to secure any required clearances. Cohesity is not responsible for any failure or delay to deliver Support, to the extent caused by a U.S. Government Customer’s failure to issue a classified contract for Support or failure to provide the means for Cohesity personnel to secure any such required clearances.

Exhibit C: Enhanced Support Services Terms & Conditions

IMPORTANT: These T&Cs only apply to Enhanced Support Services a Customer actually buys. For example, if you are a Customer buying an Installation Service, only the Terms and Conditions and “Installation Service” description at www.cohesity.com/agreements apply to you. If you are a Cohesity Customer who does NOT use any Enhanced Support Services, this document does NOT apply to you.

TERMS AND CONDITIONS

These Terms apply to any Customer Entitled to receive any enhanced support and/or implementation services described in this document (“**Enhanced Support Services**”, including Customized Services defined below) from Cohesity, Inc. (“**Cohesity**”) pursuant to an Order.

Customer is Entitled to receive only the Enhanced Support Services paid for (including via Cohesity Partner), subject to any applicable restrictions or limitations set forth in the Order. Unless otherwise stated, pricing in an Order does not include travel and living expenses which may be charged incrementally provided they are reasonable and pre-approved by Customer. These Terms apply so long as (i) Cohesity is providing Enhanced Support Services under an Order, and (ii) they remain Cohesity’s terms for Enhanced Support Services. In these Terms, an Order could include a ‘Statement of Work’ or similar document if signed between the parties (“**SOW**”).

These Terms incorporate and supplement Cohesity’s Support and Maintenance Terms and Conditions (“**Support Terms**”) and End User License Agreement (the “**EULA**”), both of which are available at www.cohesity.com/agreements. Capitalized terms used but not defined herein shall have their meaning as defined in the EULA. Part B supplements Part A below and in event of conflict between them with respect to Customized Services, Part B prevails.

Part A – Terms Applicable to all Enhanced Support Services

1. Cohesity Obligations and Scope. Cohesity shall use commercially reasonable efforts to deliver the Enhanced Support Services using, as appropriate or agreed, visits to Customer premises, telephone, email, or internet (in each case with consistent named technical support contact(s) at Customer). Cohesity shall comply with all reasonable health, safety, security and related policies provided by the Customer in writing in advance when using Customer equipment or visiting Customer premises, and to maintain during the performance of the Enhanced Support Services insurance reasonably appropriate to the nature thereof. The Cohesity-supplied description of the Enhanced Support Services (and Order to which it relates) exclusively defines the scope of the Enhanced Support Services, and Cohesity is not responsible for any further services unless the Parties execute a change order or written amendment (a “**Change Order**”). Unless specified otherwise in writing by Cohesity, all Enhanced Support Services engagements are (a) time and materials based; (b) to be reviewed, agreed and prioritized at project kickoff, and (c) delivered remotely over the number of days purchased.

2. Exclusions. Cohesity software product(s) (the “**Software Product**”) are only supported on, and Cohesity is only obliged to provide the Enhanced Support Services in respect of, Cohesity hardware product(s) (the “**Hardware Product**”) and together with the Software Product, “**Products**”) or Cohesity-certified hardware, firmware and operating system configurations. Contact Cohesity support for a current list of certified configurations. Enhanced Support Services are provided only for (a) Supported Releases (as defined in the Support Terms) of a Software Product; (b) Hardware Products which are supported (including with respect to Cohesity’s Hardware End-of-Life Terms and Conditions at www.cohesity.com/agreements), and (c) Products which are in all respects otherwise eligible for Cohesity support in accordance with the Support Terms.

3. Customer Obligations. Customer shall meet any agreed time commitments, and – if reasonably necessary – shall provide Cohesity with (a) information and data (b) access to networks, systems and premises, (c) access to senior Customer personnel with knowledge of the subject matter of the Enhanced Support Services and decision-making authority, and (d) periodic sign-offs or other approvals. Customer is responsible for the accuracy and completeness of information and data provided to Cohesity. Customer acknowledges that failure to comply with these obligations may result in delays to Enhanced Support Services. Cohesity may terminate the Customer’s right to Enhanced Support Services for material breach of these Terms by written notice effective in 10 days unless Customer first cures such breach. Cohesity’s pricing and its ability to meet its obligations are dependent on Customer meeting its obligations hereunder. Please note that the installation process requires that certain parts of the infrastructure (e.g. data and management networks) are already in place and configured so that implementation can be completed in the agreed number of visits by the installing engineer. Not having this infrastructure ready before Cohesity arrives on site is typically the most significant cause of schedule delays in deployment projects.

4. Personnel & Subcontracting. Cohesity reserves the right to (a) select and assign personnel for Enhanced Support based on skill levels required and available resources, and (b) subcontract all or any part of the Enhanced Support Services to independent contractors selected by Cohesity. Cohesity shall be responsible to Customer for the performance of (and any breach by) such subcontractors, and subcontracting shall not relieve Cohesity of its obligations hereunder.

5. Ownership. Cohesity owns exclusively all right, title and interest (including all intellectual property rights) in the Enhanced Support Services, including without limitation all methodologies, documents and processes, and all results, deliverables and work product ("**Work Product**") resulting therefrom, including product extensions and other Customized Services. Effective in each case upon its creation, each other party hereby assigns all rights it may have in the results of any Enhanced Support Services (including any Work Product) to Cohesity. Cohesity does not intend that any other party (or third party) be a joint author of Work Product or other intellectual property arising out of or relating to Enhanced Support Services and in no event shall same be deemed to have been developed jointly. The parties further agree and acknowledge that product extensions are components of Cohesity's proprietary software, which is licensed by Cohesity for use by Customer and, if applicable, its end users strictly in accordance with the terms and conditions of the applicable software license.

6. Warranties. Cohesity represents, warrants and covenants that the Enhanced Support Services will (a) be performed in a professional and workmanlike manner, using appropriately qualified personnel; (b) (at the time of their completion) materially conform to these Terms, and (c) not be performed in a manner inconsistent with any obligation Cohesity may have to others. The foregoing warranties (i) shall not apply in the event Cohesity's performance hereunder is impeded or prevented by actions outside Cohesity's control, and (ii) are subject to Customer notifying Cohesity in writing of the alleged breach of warranty within 30 days after completion of the Enhanced Support Services. Customer's sole remedy for breach of the warranty is for Cohesity to correct or re-perform the non-conforming Enhanced Support Services so as to comply with these Terms. EXCEPT AS EXPRESSLY PROVIDED ABOVE, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW ALL ENHANCED SUPPORT SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY. COHESITY AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES. COHESITY WILL HAVE NO LIABILITY FOR LOSS OR CORRUPTION OF ANY DATA FOR ANY REASON.

7. Relationship of the Parties. Notwithstanding any provision hereof, Cohesity is an independent contractor and is not an employee, agent, or joint venturer of Customer. Neither Party shall make any commitment, by contract or otherwise, binding upon the other or represent that it has authority to do so.

8. Acceptance. Acceptance of the Services shall be deemed granted within 10 calendar days after delivery unless a detailed notice of rejection is received by Cohesity within that time.

Part B – Supplemental Terms Applicable to Customized Enhanced Support Services

This Part B applies to Enhanced Support Services to the extent comprising customized professional services or engineering consulting days (and to any SOW) to be performed by Cohesity pursuant to an Order, including where such services/days are obtained from a Cohesity Partner for resale to Customer ("**Customized Services**").

1. Cohesity Obligations and Scope. Subject to payment of the applicable fees, Cohesity shall use commercially reasonable efforts to deliver the activities within the days set forth in the summary of customized services provided by Cohesity in a quote, SOW or other mechanism (the "**Customized Services Summary**"). The Customized Services Summary (and Order to which it relates) exclusively defines the scope of the Customized Services, and Cohesity is not responsible for any further Customized Services unless the Parties execute a Change Order.

2. Customer Obligations. If reasonably necessary, Customer shall (a) provide Cohesity with access to Customer resources to assist Cohesity in development and testing of Customized Services; (b) actively participate in the planning process and provide the requested planning information before Cohesity personnel are scheduled to go onsite and/or commence work.

THESE TERMS (A) CONSTITUTE A CONTRACT AND NOT A WARRANTY, AND (B) ARE AN ADDITIONAL PART OF THE EULA AND DO NOT CHANGE OR SUPERSEDE ANY TERM OF THE EULA EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

Exhibit D: Cohesity Platforms End-of-Life Terms and Conditions

These terms supplement the Cohesity Support Terms and describe the terms applicable to the end of life and end of support of Cohesity Platforms. Capitalized terms used but not defined herein shall have their meaning as defined in the Cohesity End User License Agreement.

Event	Date	Effect
End of Sale Announcement	As communicated	Cohesity will recommend alternative products and a migration strategy if needed.
End of Sales (“EOS”) Date	As of announced date	Last date to buy EOS Cohesity Platforms from all sources. Customers can renew Cohesity Platform Support contracts up to 1 year prior to the EOL date, provided the renewal does not extend beyond the EOL date. Customers cannot renew Cohesity Platform Support contracts if EOL is less than 1 year away.
End of New Feature Software Release Support	Minimum of 48 months after EOS	Last date that Cohesity Software releases containing new features may be offered for EOS Products. Due to, e.g. hardware limitations, use of such releases (or features therein) may not be feasible for EOS Cohesity Platforms. Should this occur, Cohesity will recommend Software release(s) which it will Support for use through the EOL of the EOS Cohesity Platforms.
End of Life (“EOL”)	Minimum of 60 months after EOS	Last date for: (i) help desk availability; (ii) Cohesity Platform replacement / spares; and (iii) maintenance and patch Software releases. After the EOL date, no additional support for the EOL Cohesity Platforms will be available.

Cohesity reserves the right to satisfy the Support requirement by replacing the discontinued item with functionally equivalent substitutes.

Exhibit E: Cohesity Scope of License Terms

These terms supplement the Cohesity End User License Agreement (“**EULA**”) and apply to any Customer who purchases a Software Entitlement under an Order or other written agreement. Capitalized terms herein shall have their meaning given in the EULA.

Part A: Generally Applicable Terms – these terms apply to all Cohesity Customers

Part B: Software Services Terms – these terms apply only to Cohesity Customers using Software Services

Part A: Generally Applicable Terms

Cohesity Entitlement (specified in SKU in Order)	Scope
License = perpetual	A “license” is perpetual for the life of the Hardware on which it is originally installed and is not portable to new Hardware, except when permitted in writing by Cohesity.
Subscription = term-based	A software “subscription” is limited to the number of months/years to which Customer is Entitled (as specified in the Order). A subscription is freely portable to/from Hardware certified by Cohesity for use with the applicable Software. Subscription Entitlements include a license and Support.
Capacity-limited = subject to a maximum use or capacity	A license or subscription may be limited to a certain capacity specified in a SKU (such as an aggregate number of TBs). In such a case, the capacity may be used across any number of nodes contained in a single Cohesity cluster. A capacity-limited SKU may not be utilized for another Cohesity cluster, except when expressly permitted by Cohesity Support.

Important notes:

- Cohesity’s End of Subscription policy describes Customer’s rights at the end of a subscription term.
- Customer is permitted a 30-day grace period for accidental excess use or unforeseen events leading to non-compliance with the above-stated limitations. Thereafter, Customer is obligated to (a) purchase additional licenses, subscriptions and/or capacity, as applicable, to cover its usage, or (b) cease excess use.
- For clarity, all Entitlements included in bundled offerings together with DataPlatform licenses are considered licenses and are not portable. The foregoing sentence does not apply to subscriptions.
- Certain Entitlements are subject to supplemental terms (subject to being agreed by Customer).
- This document does not modify Customer’s rights related to any third party supplied software.

Part B: Software Services Terms

Please refer to Scope of License at www.cohesity.com/agreements.

Exhibit F: Cohesity End-of-Subscription Terms and Conditions

These terms supplement Cohesity's End User License Agreement ("**EULA**") and apply to Customers using Cohesity Software. Capitalized terms used but not defined herein shall have their meaning as defined in the EULA.

1. Restores after Subscription Expiration:

For at least twelve (12) months following expiration (and non-renewal) of a Customer's Software subscriptions, Cohesity shall provide a software pathway (without cost) whereby Customer may restore/recover its data from snapshots stored on Cohesity during the applicable subscription period. For clarity, Customers may recover old snapshots (within the given retention period), but may not write new data to, nor backup new data to, Cohesity.

Notes:

- If Customer does not have Hardware Support, ability to perform a restore shall be at the Customer's risk.
- Global search for data will not be accessible under expired subscriptions/support, as this is treated as a differentiated feature with Cohesity that is available for paying customers only (but Customer will have access for recovery at file, drive, or VM level.)
- These terms do not provide access to SaaS Offerings (including Helios).

2. Grace Period for Renewals:

Cohesity's [Scope of License](#) terms provide an automatic 30-day grace period for accidental excess use or unforeseen events. This affords our Customers protection in the unlikely event of forgetting or failing to renew in time.

Exhibit G: Cohesity Information Security Addendum

This Addendum supplements Cohesity's support and maintenance terms and conditions, and sets out Cohesity's information security obligations relating to its organization, Support and Products. Capitalized terms in this Addendum shall have the meaning assigned to them in the EULA unless otherwise defined herein.

Background Recital:

- This Addendum applies to Cohesity's Products (for clarity, excluding SaaS Offerings) which comprise hardware and software which is installed and hosted in Customer's own environment(s) and is under Customer's control.
- The Customer, not Cohesity, manages user access and permissions to the Products and the data hosted on the Products.
- Cohesity does not have direct access to the data backed up by and/or stored on the Cohesity Products in Customer's environment unless the Customer chooses to enable such access (many of our customers choose never to enable such access).
- Additionally, unless disabled by the customer, the Cohesity DataPlatform Product may send metadata (information about Cohesity jobs, alerts, and data managed within DataPlatform) to Cohesity. Such metadata would not include data backed up by and/or stored on the Cohesity DataPlatform in Customer's environment. This metadata telemetry can be disabled by the Customer at any time.
- As such, this Addendum addresses Cohesity's approach to information security relating to:
 - Cohesity Products (excluding SaaS Offerings)
 - Cohesity support services
 - Cohesity's organization as a whole
- This Addendum supplements – and should be read in conjunction with – Cohesity's Support.

1. Principles. Cohesity emphasizes the following principles in the design and implementation of its security program and practices:

- 1.1 Confidentiality** – Prevention of disclosure of information to unauthorized individuals or systems.
- 1.2 Integrity** – Maintaining the accuracy and consistency of data over its life cycle.
- 1.3 Availability** – Maximizing availability of information.

2. Security Program. Cohesity shall maintain an effective security program, consisting of industry best practices, which includes having:

- 2.1** A risk management and treatment program that includes vendor risk;
- 2.2** Conducting periodic risk assessments of systems and networks that process Customer Data on at least an annual basis. "**Customer Data**" means Customer data or Confidential Information in Cohesity's possession.
- 2.3** Periodic review of security incidents and subsequent remediation;
- 2.4** A written security policy that explicitly addresses and provides guidance to its personnel in furtherance of the confidentiality, integrity and availability of Customer Data and Cohesity's systems. The policies are endorsed by Cohesity's senior management and state ramifications for noncompliance; and
- 2.5** Cohesity shall have resources (i.e. identified individual(s)) to foster and focus on information security efforts.

3. Data Centers.

3.1 Where Cohesity uses Data Centers (e.g. for metadata telemetry or support services) in connection with any activity under this Agreement, Cohesity shall maintain an effective security program in respect of such Data Centers, which includes using commercially reasonable efforts to ensure:

- a) All activity is logged, recorded and stored for no less than 90 days;
- b) Entry to each facility requires prior authorization and verification of government-issued identification and biometric confirmation;

- c) Each facility has an annual audit by industry leading firms for ISO27001 and Service Organization Control compliance; and
- d) Each facility includes controls regarding utilities such as power, air quality, temperature, humidity, lighting, fire suppression, and other environmental factors.

4. Cohesity's IT Security Controls

4.1 User Access, Controls and Policies. Cohesity supports a variety of security controls on its own internal information systems including:

- a) centrally managed unique user identifiers (user IDs) to ensure that activities can be attributed to the responsible individual;
- b) controls to revoke access upon role change or termination;
- c) access review procedures;
- d) strong authentication requirements;
- e) denial of access to new users by default.

4.2 Cohesity Employee Access, Controls and Policies. Cohesity has implemented the following controls for Cohesity employee access to Customer systems:

- a) Cohesity staff cannot access any end-user data in a Customer-controlled environment without being granted permission by the end user-owner through the native access control system;
- b) Once granted by the Customer, Cohesity employee access to a Customer environment can only be obtained by authorized individuals from known networks through the mandatory use of public key infrastructure (PKI) technology;
- c) Access (where granted by Customer) is based on the information security principles of 'need to know' and 'least privilege' with access strictly limited to a select number of skilled individuals;
- d) employees are trained on documented information security and privacy procedures;
- e) all employees are subject to employee background checks prior to employment;
- f) all employees are required to sign Customer Data confidentiality agreements; and,
- g) access is immediately revoked on termination of employment.

4.3 Third party service providers. Cohesity personnel take reasonable steps to select and retain only third-party service providers that will maintain and implement the security measures consistent with the measures stated in this Exhibit and in accordance with all applicable state, federal or international laws and/or regulations.

4.4 Application Controls.

- a) Each facility is protected by a "defense-in-depth" security architecture consisting of firewalls, IDS (Intrusion Detection Systems), anti-virus/anti-malware protection, monitoring capabilities, and DDoS protection monitoring and mitigation;
- b) The internal network infrastructure is securely segmented using firewalls, Virtual Networks (VLANS) and Access Control Lists (ACLs) which limits the access and communication between systems and environments. Systems and individuals are not permitted to reach other systems without proper authorization; and
- c) Every server is hardened and imaged to contain only the necessary services to operate. All hosts are subject to a regular patching and maintenance routine and are periodically scanned for vulnerabilities and security threats using industry-leading technology. All servers are controlled and managed by an automation system to ensure consistent configuration across the environment.

5. Vulnerability and Malware Management. Cohesity maintains a vulnerability management program designed to identify and remediate known. Security scans are conducted on an ongoing basis. Product vulnerabilities are remediated in accordance with their severity and exploitability.

- 6. Data Encryption.** Cohesity use industry-standard encryption products to protect Customer Data in transit and at rest. All data in transit between targets and Cohesity is encrypted. Data at rest is stored in a unique nonreadable binary format and subject to AES 256-bit full disk encryption.
- 7. Business Continuity and Disaster Recovery.** Cohesity conducts Business Continuity efforts to plan for the continuity and recovery of critical business systems. Plans for such activities are communicated and distributed to the appropriate teams. Such plans are tested at least annually.
- 8. System Maintenance.** Maintenance is carried out during scheduled maintenance hours as provided in the Cohesity Availability and Support SLA. Maintenance is most commonly used for new version releases, typically every 4-6 weeks, but may be performed for other updates or on a different frequency.
- 9. Change Management.** Cohesity manages changes through a robust set of change management procedures. All configuration changes are tracked and managed. Changes undergo a rigorous battery of tests and quality assurance. Findings are feed back into the development cycle for remediation. Promotion to release candidates and production require approvals and issuing a release is limited to a core set of individuals.
- 10. Incident Management.** Cohesity maintains incident management policies and procedure describing the roles and responsibilities of the Support, IT, Security and Engineering teams and other functional groups. Escalations between the teams are determined based on the nature of issue (infrastructure, security, application or client model), duration of issue, and/or scope of issue. A root cause analysis is performed after an issue is resolved.

Cohesity reserves the right to update this Exhibit from time to time, provided that no such update will materially and adversely diminish Cohesity's obligations hereunder.

PART 2 – COHESITY HELIOS SAAS TERMS

Exhibit H: Helios SaaS Terms of Service (“Terms”)

COHESITY, INC. (TOGETHER WITH ITS AFFILIATES, “COHESITY”) SUPPLIES A MODERN DATA MANAGEMENT PLATFORM (“HELIOS”) WITH MANAGED (SAAS) AND SELF-MANAGED DEPLOYMENT OPTIONS AND FEATURES FOR CUSTOMERS. THESE TERMS APPLY ONLY TO HELIOS SAAS.

COHESITY AGREES TO SUPPLY ACCESS TO SPECIFIED HELIOS HOSTED SERVICES (COLLECTIVELY KNOWN AS “HELIOS SAAS”) THROUGH AMAZON WEB SERVICES (“AWS”) 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 THIS AGREEMENT. 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 this Agreement, 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 this Agreement (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.
- 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 Helios services or any software used to provide or make such 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 Helios services; (iv) disclose any details about benchmarking results or technical specifications of any Helios services; or (v) make representations, warranties, or guarantees to any person or entity with respect to any Helios services that purport to be by or on behalf of Cohesity or its suppliers. Customer will use the Service only in accordance with applicable laws, including without limitation laws related to privacy (whether laws of the United States, European Union, or otherwise) and intellectual property. Notwithstanding the foregoing, Customer may with Cohesity’s prior written consent permit its Representative to use the Services on Customer’s behalf so long as such use is for Customer’s sole benefit and Customer procures the Representative’s compliance with this Agreement. For avoidance of doubt, Customer may not utilize, host, support or otherwise deploy Helios 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 Helios 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 this Agreement. 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 (“**Feedback**”).

2. CUSTOMER CONTENT & RESPONSIBILITIES

- a) **Customer Content.** Customer Content shall not be deemed part of any Helios services by virtue of being located on or processed through the Helios 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 this Agreement and applicable law, including that Customer agrees not to store or process protected health information using the Services;
 - 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 Helios services or support functions (or develop recommendations relating thereto).
- d) **Offers and Binding Orders.** If Customer accepts an offer via AWS (e.g., by clicking "create contract" or similar in AWS Marketplace) or otherwise places a binding Order for Services, Customer agrees to meet its obligations thereunder (including timely payment of any amounts 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 this Agreement.

3. EVALUATION LICENSE (POC). Cohesity may, from time to time, provide Customer with Cohesity software 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 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 this Agreement 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 Helios or any third party, or (iii) as required by law or a governmental authority.
- c) **Termination by Cohesity.** Cohesity may terminate this Agreement 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 this Agreement on written notice in the event of a material breach of this Agreement 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 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; provided that Cohesity shall not be obligated to refund any prepaid Entitlements.
- e) **Effects of Termination.** All terms of this Agreement which must survive in order to fulfil their essential purpose shall survive termination or expiration of this Agreement. For clarity, upon termination of this Agreement 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 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 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.
- b) **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):
- 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 this Agreement;
 - 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; and
 - ii. limit disclosure to only that which is required by law.
- 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 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;
 - 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.** This Agreement shall not (provided its terms 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 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.

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 claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) ("**Losses**") arising out of or relating to any third party claim with respect to breach of this Agreement 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 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 (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 (property 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 this Agreement; (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 this Agreement 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 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. Cohesity warrants that: (a) each Service will operate in substantial conformity with applicable Documentation and (b) 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 OR DATA. 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 (the “**Support Terms**”) found at www.cohesity.com/agreements.

8. LIMITATIONS 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:

- a) ANY LIABILITY WHICH, UNDER APPLICABLE PRODUCTS LIABILITY LAW, CANNOT BE PRECLUDED BY CONTRACT;
- b) BODILY INJURY OR DEATH RESULTING FROM A PARTY’S NEGLIGENCE;
- c) DAMAGES ARISING FROM A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (INCLUDING INTENTIONAL BREACH OF ENTITLEMENTS);
- d) A PARTY’S BREACH OF SECTION 5 (CONFIDENTIALITY) BUT EXCLUDING OBLIGATION/CLAIMS RELATING TO CUSTOMER CONTENT OR PERSONAL DATA; AND
- e) 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) **Compliance with Laws – Generally.** Each Party shall obey all applicable laws and regulations in its use of Services and its performance under this Agreement.
- b) **Compliance with Laws – Antibribery.** 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 (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.

11 GOVERNING LAW AND DISPUTE RESOLUTION.

- a) If Customer is incorporated in the European Economic Area or United Kingdom (“**Europe**”):
 - i. 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
 - ii. 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 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. this Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of Wisconsin as applied to contracts made (and to be performed) in Wisconsin, without applying conflict of laws rules; and the Parties consent to jurisdiction and venue in Wisconsin Circuit Court for Waukesha County.
- c) **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 this Agreement shall be English.

12. 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. 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 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.
- c) **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.
- 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 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.
- f) **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.
- g) **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.

- 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.** This Agreement (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 this Agreement 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.** This Agreement shall apply only to Helios SaaS and the Services. Customer's contractual arrangements with AWS or any Cohesity Partner (e.g., any purchase orders) are not part of this Agreement, but Helios SaaS and the Services (howsoever obtained by Customer) are subject to this Agreement. In the event of a conflict between or among this Agreement, the documents incorporated herein by reference, and any Addendum hereto, the conflict will be resolved in the following order of precedence: this Agreement; documents incorporated herein by reference; any Addendum; any Order.
- k) **Cookies.** Cohesity may use data collected by cookies to improve your browsing experience, assist with support requests, deliver advertisements, increase the performance of our site, and/or to generally improve the Helios services. For further information, please refer to Cohesity's Privacy Policy.
- 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."

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 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) **"Agreement"** means these Terms and all documents attached hereto or incorporated herein by reference, including applicable documents at www.cohesity.com/agreements.
- d) **"Cohesity Partner"** means a Cohesity channel distribution, alliance and/or resale partner that has the right to transact sales of Helios services, including AWS via its Marketplace;
- 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 this Agreement and any benchmarking or comparative studies involving the Helios services – 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. Regardless of the foregoing, Confidential Information shall not include any records that are required to be disclosed to the public pursuant to the Wisconsin Public Records Law, Wis. Stat. §19.31 to §19.37;
- f) **"Customer Content"** means Customer's content and application data received by the Helios Data Plane for management and storage;
- g) **"Discloser"** means a Party or its Affiliate that furnishes Confidential Information to the other Party or its Affiliate;
- h) **"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 Helios services;

- i) **“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);
- j) **“Helios Data Plane”** means data storage and associated services supplied by Cohesity through Helios SaaS;
- k) **“Order”** means an order which is either (i) placed by Customer with a Cohesity Partner, reflecting a valid Cohesity sales quotation or similar document or (ii) validly processed through an AWS interface (such as Marketplace) or other process;
- 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, (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;
- p) **“Services”** means those elements of Helios and related services to which Customer becomes Entitled under this Agreement;
- q) **“Service Analytics Data”** means data (including usage data and metadata) about the operation, support, and/or Customer’s use of, Helios 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.

Exhibit I: Scope of SaaS Offerings

These terms supplement the Cohesity Helios SaaS Terms of Service (the “**Terms**”) or other applicable terms and apply to any Customer who purchases a SaaS Services Entitlement under an Order or other written agreement. Capitalized terms herein shall have their meaning given in the Terms.

Cohesity Entitlement (specified in SKU in Order)	Scope
Per User = subject to a maximum number of Users	A license or subscription may be limited to a certain number of Users specified in a SKU, Order, or other written agreement. In such a case, “ Usage ” shall be deemed to include the Customer’s highest number of Users concurrently consuming an Entitled Service during a specified period of measure (or if not so separately specified in an Entitlement, the Subscription Period).
Capacity-limited = subject to a maximum use or capacity	A subscription may be limited to a certain capacity specified in a SKU, Order, or other written agreement (such as an aggregate number of TBs).
Subscription = term-based	A software “subscription” is limited to the number of months/years to which Customer is Entitled (as specified in the Order).

Additional Terms – Cohesity M365 Feature

The following additional terms apply to the Cohesity M365 DataProtect Delivered as a Service Feature in Cohesity Helios SaaS (the “**Cohesity M365 Feature**”):

- “**User**” means a unique, actively-licensed Microsoft 365 individual user/subscriber for whom Microsoft 365 Application Data is backed up using the Cohesity M365 Feature during a given billing period. “**Microsoft 365 Application Data**” means data in an Exchange Online user mailbox, OneDrive for Business account, MS Groups, MS Teams, or SharePoint Online Site.
- “**Inactive User**” means a User in any prior billing period that is not a User in the then-current billing period. For example, a User in the first billing period who is not backed up using the Cohesity M365 Feature in the second billing period is an Inactive User in the second billing period.
- “**Unlimited Retention**” means the retention period Customer configures within the Cohesity M365 Feature, but in all cases only for so long as Customer retains un-lapsed, continuous subscriptions for the appropriate capacity to the Cohesity M365 Feature (plus any applicable contractual grace/retrieval period). Customer acknowledges that retrieval/restore of information/data in the Cohesity M365 Feature will not be available after such period.
- Backup of “groups”, “sites” and “teams” requires that all users with access thereto be User(s).
- Unpaid evaluations of the Cohesity M365 Feature are subject to a maximum 200 Users.

Additional Terms – Consumption Pricing

The following additional terms apply to any subscription which is subject to “consumption pricing” or “consumption pricing with commit” as specified in a SKU, Order, or other written agreement:

- Customer agrees to pay in arrears following each applicable billing period during the Subscription Period the specified minimum commit plus any Overages. “**Overages**” means use of the applicable Service(s) above the capacity or other limitation to which the minimum commit Entitles Customer.

The above terms (i) supplement and prevail in the event of conflict with any other applicable agreement between Customer and Cohesity, and (ii) apply to Entitlements purchased while these Scope of SaaS Offerings terms are in effect (new versions are posted periodically at www.cohesity.com/agreements).

Exhibit J: Helios SaaS Service Level Agreement

This Cohesity, Inc. (“**Cohesity**”) Helios SaaS Service Level Agreement (“**SLA**”) applies to each end customer entitled to use Cohesity Helios SaaS Premium (each a “**Customer**”). In the event of a conflict between this SLA and the Helios SaaS Terms of Service (the “**Terms**”), the terms and conditions of this SLA apply, but only to the extent of such conflict. Capitalized terms used but not defined herein shall have their meaning set forth in the Terms.

1. SERVICE COMMITMENT

Cohesity has designed Helios SaaS with a goal of providing access 100% of the time. As with any SaaS service, very rare and occasional circumstances may result in temporary loss of use. Cohesity will make every effort to avoid such occurrence and to minimize their impact when they do occur. As further assurance, Cohesity makes the following commitment:

During Customer’s applicable Helios SaaS subscription, Cohesity will make the relevant Helios SaaS service “Available” during each calendar month as described below (the “**Service Commitment**”). In the event the subscribed Helios SaaS service does not meet the Service Commitment, Customer will be eligible to receive a Service Credit as described herein.

2. SERVICE CREDITS

Service Credits arise in any calendar month in which the Monthly Uptime Percentage falls within the ranges set forth in the table below.

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.9% but greater than or equal to 99.0%	10%
Less than 99.0% but greater than or equal to 95.0%	25%
Less than 95.0%	100%

Service Credits are calculated as a specified percentage of an additional equivalent capacity month for the applicable Helios SaaS service(s) affected (rounded to the nearest number of whole calendar months) (any such month, an “**Extension Month**”).

For example, if the Monthly Uptime Percentage fell to 98.9% in any two (2) particular calendar months during a one (1) year subscription, then the aggregate Service Credit would be calculated as 50% which would be rounded up to one (1) Extension Month of equivalent service and capacity added to the end of the subscription period without cost to the Customer.

3. CREDIT REQUEST AND PAYMENT PROCEDURES

In order to receive a Service Credit, Customer must submit a claim by opening a case with Cohesity technical support within thirty (30) days after the end of the calendar month during which the Service Commitment was not met, and must include: (i) the words “SLA Credit Request” in the subject line; (ii) the calendar month for which Customer is claiming Service Credits together with the dates and times of each incident of claimed non-Availability; and (iii) logs or other information evidencing the failure to meet the Service Commitment (any confidential or sensitive information should be removed or redacted). Customer’s failure to provide the request and information required above will disqualify Customer from receiving a Service Credit.

If Cohesity confirms the Service Commitment was not met, then Cohesity will issue Customer a note confirming that we will apply the applicable Service Credit towards an Extension Month.

4. MAXIMUM CREDITS; DISPUTE RESOLUTION

Service Credits will not entitle Customer to any refund or other payment from Cohesity. Service Credits may not be transferred or applied to any other account.

The aggregate maximum number of Service Credits to be issued to Customer in a single annual subscription period will not exceed three (3) Extension Months. This SLA states Customer's sole and exclusive remedy for any failure by Cohesity to meet the Service Commitment.

If a dispute arises with respect to this SLA, Cohesity will make a determination in good faith based on its system logs, monitoring reports, configuration records, and other available information, relevant portions of which Cohesity will make available for review by Customer at Customer's reasonable written request on a case-by-case basis from time to time, subject to appropriate privacy and security protections.

5. SLA EXCLUSIONS

The Service Commitment does not apply to:

- a) Beta products or other features expressly excluded from the SLA (in associated Documentation);
- b) Maintenance Downtime; or
- c) unavailability of, or other issues with, Helios SaaS caused by or resulting from:
 - i. factors outside Cohesity's reasonable control (including Helios SaaS underlying infrastructure (currently AWS));
 - ii. actions or inactions of Customer or any third party acting on Customer's behalf;
 - iii. Customer's (or third-party supplied) equipment, connectivity, software or hardware; or
 - iv. abuses or other behaviors that violate this SLA or the Terms (collectively, the "SLA Exclusions").

If Availability is impacted by other factors, we may issue a Service Credit at our discretion.

6. DEFINITIONS

- a) "**Available**" and "**Availability**" means that Customer can log in to Helios SaaS through www.helios.cohesity.com, as measured by Cohesity via testing agents that report the current state and availability of Helios SaaS's service every sixty (60) seconds. When there is a known Availability issue, Customer can view status at www.status.cohesity.com.
- b) "**Maintenance Downtime**" means Scheduled Downtime and Emergency Downtime.
- c) "**Monthly Uptime Percentage**" means the total number of minutes of Availability in a month divided by the total number of minutes in a month, in both cases excluding Maintenance Downtime.
- d) "**Scheduled Downtime**" means a scheduled period of time for maintenance and upgrade activity during which Helios SaaS is not Available and which is preceded by not less than twelve (12) to twenty-four (24) hours written warning from Cohesity (via Cohesity's normal Helios SaaS communication channels).
- e) A "**Service Credit**" is an entitlement to a percentage of an Extension Month as described in Section 2.
- f) "**Emergency Downtime**" means unannounced periods of time for emergency maintenance and upgrade activity during which Helios SaaS is not Available, not exceeding one (1) hour per calendar month in total.

Exhibit K: Cohesity, Inc. Data Processing Addendum

This Data Processing Addendum (“**DPA**”, including its Schedules and Appendices) forms part of the End User License Agreement, Terms of Service, Evaluation Agreement or other written agreement between Cohesity, Inc. (“**Cohesity**”) and Cohesity’s customer (“**Customer**”) for Cohesity’s provision of the data storage products and/or services specified in Schedule 3 (the “**Services**”) (collectively the “**Agreement**”). This DPA is effective on the same date as the Agreement unless this DPA is separately executed in which case it is effective on the date of last signature (the “**Effective Date**”).

1. DEFINITIONS

Capitalized terms used in this DPA shall have the following meanings:

1.1 “**2010 SCCs**” means the standard data protection clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, as described in Article 46 of the GDPR and approved by the European Commission decision 2010/87/EC, dated 5 February 2010.

1.2 “**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. “**Control**” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.3 “**Authorized Affiliate**” means any of Customer’s Affiliate(s) who (a) is subject to the Data Protection Laws and Regulations, and (b) is permitted to use or gain the benefit of the Services pursuant to the Agreement between Customer and Cohesity, whether or not it entered its own order for Cohesity Products or Services (“**Order**”) or is a ‘Customer’ or equivalent as defined under the Agreement.

1.4 “**Controller**” means the entity which determines the purposes and means of the Processing of Personal Data.

1.5 “**Customer Data**” means any data, files, text, images, graphics, software, or other materials and information Customer, its employees, contractors, agents or users (“**Users**”) uploads to, transfers to, or otherwise transmits or sends to Cohesity including through Cohesity’s customer support portal(s), but excludes for avoidance of doubt information stored or otherwise Processed in or through Cohesity hardware products and equipment (“**Hardware**”) or a SaaS Offering to the extent Cohesity does not access or Process same.

1.6 “**Data Protection Laws and Regulations**” means laws and regulations regarding privacy and data protection, including laws and regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, the California Consumer Privacy Act (CCPA), and the Personal Information Protection and Electronic Documents Act (Canada) in each case as and to the extent applicable to Cohesity as a matter of law with respect to the Processing of Personal Data hereunder.

1.7 “**Data Subject**” means the identified or identifiable person to whom Personal Data relates.

1.8 “**GDPR**” means Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data.

1.9 “**Personal Data**” means any information defined as “personal data”, “personal information” or “personally identifiable information” under applicable Data Protection Laws and Regulations and which (i) relates to an identified or identifiable natural person; an identifiable natural person is 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 and (ii) is Customer Data.

1.10 “**Processing**” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.11 “**Processor**” means the entity which Processes Personal Data on behalf of the Controller.

1.12 “**SCCs**” means the Standard Contractual Clauses between Cohesity and Customer and attached hereto as Schedule 2 pursuant to the European Commission’s decision (EU) 2021/914 of 4 June 2021.

1.13 “**Sub-Processor**” means any Processor engaged by Cohesity, which may include a Cohesity Affiliate.

1.14 “**Supervisory Authority**” means an independent public authority which is established by an EU

Member State pursuant to the GDPR.

Capitalized terms used but not defined herein shall have their meaning given in the Agreement.

2. PROCESSING OF PERSONAL DATA

2.1 Roles of the Parties. The parties acknowledge and agree that, with regard to the Processing of Personal Data, Customer is the Controller, Cohesity is the Processor, and if Cohesity engages Sub-Processors it will be pursuant to Section 5 below.

2.2 Customer's Processing of Personal Data and Compliance with Law. Customer shall, in its use of the Services, Process Personal Data (and information relating to identified or identifiable persons provided by Cohesity or its employees) in accordance with the requirements of Data Protection Laws and Regulations. Customer's instructions to Cohesity for the Processing of Personal Data shall also comply with Data Protection Laws and Regulations. Customer shall have sole responsibility for (i) the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data, (ii) ensuring appropriate security measures are applied to the Personal Data before and during Processing, including without limitation (a) properly implementing SSL or other encryption appropriate to the nature of content being transmitted, (b) obtaining lawful valid consent from or providing notification to Data Subjects for Processing in accordance with applicable Data Protection Laws and Regulations (including but not limited to explicit notification of and consent to Processing and storage out of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom as contemplated by the Agreement). Customer is responsible for complying with any requirements to notify Data Subjects of Processing hereunder. Customer shall inform Cohesity before Personal Data subject to specific Data Protection Laws and Regulations is submitted to Services or transmitted to Cohesity for Processing.

2.3 Cohesity's Processing of Personal Data. Cohesity shall Process any Personal Data subject to the Data Protection Laws and Regulations in accordance with such Data Protection Laws and Regulations as applicable to Cohesity in its provision of the Services. Cohesity shall treat Personal Data that is Confidential Information in its possession as confidential and shall only Process Personal Data on behalf of and in accordance with Customer's documented instructions for the following purposes: (i) Processing in accordance with and as reasonably contemplated by the Agreement; (ii) Processing initiated by Users in their use of the Services; and (iii) Processing to comply with other documented reasonable instructions provided by Customer (e.g., via email or through any support portal) where such instructions are consistent with the terms of the Agreement and Data Protection Laws and Regulations. For clarity, Cohesity shall not be deemed to Process information or data Customer inputs into Products or Services except to the extent same is provided by Customer to Cohesity and accessed or Processed by Cohesity, e.g. in connection with support and maintenance services, or in certain SaaS Offerings. In addition, Cohesity shall not be responsible for, and this DPA does not cover, environments in which Cohesity Products or Services are hosted which are not under Cohesity's control. Entry into the Agreement shall be deemed Customer's express instructions to Cohesity to Process Personal Data as reasonably contemplated by the Agreement, including Processing initiated by Users in their use of the Services and Processing to comply with other reasonable documented instructions provided by Customer (e.g., via email) consistent with the Agreement.

2.4 Details of the Processing. The subject-matter of Processing of Personal Data by Cohesity is the performance of the Services pursuant to the Agreement, which may include, as applicable, the provision of support services under a support contract and Cohesity's use of Personal Data in connection with the sale to Customer of Hardware. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Schedule 1 (Details of the Processing) to this DPA. Notwithstanding anything else, Cohesity may modify the data Processing terms applicable to Services by posting an updated version of this DPA on www.cohesity.com/agreements.

3. RIGHTS OF DATA SUBJECTS

3.1 Data Subject Requests. Cohesity shall, to the extent legally permitted, promptly notify Customer if Cohesity receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, its right not to be subject to an automated individual decision making or other 'subject access' right under applicable law ("**Data Subject Request**"). Taking into account the nature of the Processing, Cohesity shall assist Customer by appropriate technical and organizational measures, insofar as this is possible and commercially

practicable, for the fulfillment of Customer's obligation to respond to a Data Subject Request under Data Protection Laws and Regulations. In addition, to the extent Customer, in its use of the Services, does not have the ability to address a Data Subject Request, Cohesity shall upon Customer's request provide commercially reasonable efforts to assist Customer in responding to such Data Subject Request, to the extent Cohesity is legally permitted to do so and the response to such Data Subject Request is required under Data Protection Laws and Regulations. To the extent legally permitted, Customer shall be responsible for any costs arising from Cohesity's provision of such assistance.

4. COHESITY PERSONNEL

4.1 **Confidentiality.** Cohesity shall use commercially reasonable efforts to ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. Cohesity shall ensure that such confidentiality obligations survive the termination of the personnel engagement to the extent permitted by law for a reasonable period.

4.2 **Reliability.** Cohesity shall take commercially reasonable steps to ensure the reliability of any Cohesity personnel engaged in the Processing of Personal Data.

4.3 **Limitation of Access.** Cohesity shall use commercially reasonable efforts to ensure that Cohesity's access to Personal Data is limited to those personnel with a need to know in rendering the Services in accordance with the Agreement.

4.4 Any questions or concerns with respect to this DPA and/or data security and privacy may be directed to privacy@cohesity.com.

5. SUB-PROCESSORS

5.1 **Appointment of Sub-Processors.** Customer acknowledges and agrees that Cohesity may engage third-party Sub-Processors in connection with the provision of the Services. Cohesity shall enter into a written agreement with each Sub-Processor containing data protection obligations not less protective than those in this DPA with respect to the protection of Personal Data to the extent applicable to the nature of the services provided by such Sub-Processor.

5.2 **List of Current Sub-Processors and Notification of New Sub-Processors.** Cohesity shall make available to Customer the then current list of Sub-Processors for the Services at www.cohesity.com/agreements/ or by other means, and such list shall be deemed the "agreed list" referred to in Clause 9 of the SCCs ("**Sub-Processor Lists**"). Customer may request email notification of updates to the Sub-Processor Lists by emailing privacy@cohesity.com and providing the email address to which such notifications should be sent, together with other reasonable information Cohesity may request. Notifications pursuant to Clause 9 of the SCCs are subject to best efforts and, where circumstances require for operational reasons, may be on shorter notice.

5.3 **Objection Right for New Sub-Processors.** Customer may object to Cohesity's use of a new Sub-Processor by notifying Cohesity promptly in writing within ten (10) business days after an updated Sub-Processor List is made available in accordance with Section 5.2. In the event Customer objects to a new Sub-Processor, Cohesity will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-Processor without unreasonably burdening the Customer. If Cohesity is unable to make available such change within a reasonable period of time (which shall not exceed thirty (30) days), Customer may terminate the applicable Order(s) with respect only to those Services which cannot be provided by Cohesity without the use of the objected-to new Sub-Processor by providing written notice to Cohesity.

5.4 **Liability.** Cohesity shall be liable for the acts and omissions of its Sub-Processors to the same extent Cohesity would be liable if performing the services of each Sub-Processor directly under the terms of this DPA, except as otherwise set forth in the Agreement.

6. SECURITY

6.1 **Controls for the Protection of Customer Data.** Cohesity shall maintain appropriate physical, technical and organizational measures for protection of the security, confidentiality, and integrity of Customer Data.

7. CUSTOMER DATA INCIDENT MANAGEMENT AND NOTIFICATION

7.1 Cohesity shall notify Customer without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data in Cohesity's or its Sub-Processors' possession of which Cohesity becomes aware (a "**Customer Data Incident**"). Cohesity shall make reasonable efforts to identify the cause of such Customer Data Incident and take those steps as Cohesity deems necessary and reasonable in order to remediate the cause of such a Customer Data Incident to the extent the remediation is within Cohesity's reasonable control. The obligations herein shall not apply to incidents that are caused by Customer or Customer's Users.

8. RETURN AND DELETION OF CUSTOMER DATA

8.1 Unless otherwise provided in the Agreement, and solely to the extent Customer Data is (i) in Cohesity's possession or (ii) cannot be deleted/retrieved by Customer, Cohesity shall on request return Customer Data to Customer and, to the extent allowed by applicable law, delete Customer Data in accordance with the procedures and timeframes specified in the Agreement or as required by Data Protection Laws and Regulations.

9. AUTHORIZED AFFILIATES

9.1 Contractual Relationship. The parties acknowledge and agree that, by executing the Agreement, the Customer enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Authorized Affiliates entitled to receive the Services, thereby establishing a separate DPA between Cohesity and each such Authorized Affiliate subject to the provisions of the Agreement and this Section 9 and Section 10. Each Authorized Affiliate agrees to be bound by the obligations under this DPA and, to the extent applicable, the Agreement. For the avoidance of doubt, an Authorized Affiliate is not and does not become a party to the Agreement, and is only a party to the DPA (though such Authorized Affiliate may have otherwise entered the Agreement or another agreement with Cohesity). All access to and use of the Services by Authorized Affiliates must comply with the terms and conditions of the Agreement and this DPA and any violation of the terms and conditions of the Agreement by an Authorized Affiliate shall be deemed a violation by Customer.

9.2 Communication. The Customer that is the contracting party to the Agreement shall remain responsible for coordinating all communication with Cohesity under this DPA and be entitled to make and receive any communication in relation to this DPA on behalf of its Authorized Affiliates.

9.3 Rights of Authorized Affiliates. Where an Authorized Affiliate becomes a party to the DPA with Cohesity, it shall to the extent required under applicable Data Protection Laws and Regulations be entitled to exercise the rights and seek remedies under this DPA, subject to the following:

9.3.1 Except where applicable Data Protection Laws and Regulations require the Authorized Affiliate to exercise a right or seek any remedy under this DPA against Cohesity directly by itself, the parties agree that (i) solely the Customer that is the contracting party to the Agreement shall exercise any such right or seek any such remedy on behalf of the Authorized Affiliate, and (ii) the Customer that is the contracting party to the Agreement shall exercise any such rights under this DPA not separately for each Authorized Affiliate individually but in a combined manner for all of its Authorized Affiliates together (as set forth, for example, in Section 9.3.2, below).

9.3.2 The parties agree that the Customer that is the contracting party to the Agreement shall, when carrying out an on-site audit of the procedures relevant to the protection of Personal Data, take all reasonable measures to limit any impact on Cohesity and its Sub-Processors by combining, to the extent reasonably possible, several audit requests carried out on behalf of different Authorized Affiliates in one single audit.

10. LIMITATION OF LIABILITY

10.1 Each party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this DPA, and all DPAs between Authorized Affiliates and Cohesity, whether in contract, tort, or under any other theory of liability, is subject to any "Limitations of Liability" or equivalent section of the Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party and all of its Affiliates under the Agreement and all DPAs together. Notwithstanding any "Limitations of Liability" or equivalent section in the Agreement, Cohesity shall not be liable for any (i) 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 Customer's or its Authorized Affiliates' use of Products, Services or Hardware, or (ii) amounts exceeding the fees paid to Cohesity, but excluding any liability which, under applicable law, cannot be precluded by contract. For the avoidance of doubt, Cohesity's and its Affiliates' total liability for all claims from the Customer and all of its Authorized Affiliates arising out of or related to the Agreement and each DPA shall apply in the aggregate for all claims under both the Agreement and all DPAs established under this Agreement, including by Customer and all Authorized Affiliates, and, in particular, shall not be understood to apply individually and severally to Customer and/or to any Authorized Affiliate that is a contractual party to any such DPA.

11. EUROPEAN SPECIFIC PROVISIONS

11.1 **GDPR.** Cohesity shall Process any Personal Data subject to the GDPR in accordance with the GDPR as applicable to Cohesity's provision of its Services.

11.2 **Transfer mechanisms for data transfers.** Any transfers of Personal Data from a country subject to the GDPR under this DPA to countries which do not ensure an adequate level of data protection within the meaning of Data Protection Laws and Regulations of the foregoing territories, to the extent such transfers are subject to such Data Protection Laws and Regulations, shall be subject to the SCCs for the transfer of personal data to processors set forth in Schedule 2 to this DPA which are incorporated by reference herein. In addition, any transfers which as a matter of law should be subject to the 2010 SCCs shall be deemed governed by the 2010 SCCs (and in the case of any inconsistency between the SCCs and the 2010 SCCs, the inconsistency shall be resolved so as to provide an adequate level of data protection for the Personal Data under applicable law).

11.3 **Standard Contractual Clauses.**

11.3.1 Customers covered by the SCCs. The SCCs and the additional terms specified in this Section 11.3 apply to (i) the legal entity that has agreed to the SCCs as a data exporter and its Authorized Affiliates and, (ii) all Affiliates of Customer established within countries subject to the GDPR, which have entered Order(s) for or gain the benefit of the Services. For purposes of the SCCs and this Section 11.3, the aforementioned entities shall be deemed "data exporters".

11.3.2 Instructions. This DPA and the Agreement are Customer's instructions at the time of entering the Agreement to Cohesity for the Processing of Personal Data. For purposes of Clause 8.1 of the SCCs, entry into the Agreement shall be deemed Customer's express instructions to Cohesity to Process Personal Data as reasonably contemplated by the Agreement.

11.3.3 Audits and Certifications. The parties agree that the audits described in Clause 8.9 of the SCCs shall be carried out in accordance with the following specifications:

- a) Upon Customer's request, and subject to the confidentiality obligations set forth in the Agreement, Cohesity shall make available to Customer that is not a competitor of Cohesity (or Customer's independent, third-party auditor that is not a competitor of Cohesity) information regarding Cohesity's compliance with its obligations under the Agreement and this DPA.
- b) Customer may contact Cohesity in accordance with the "Notices" Section of the Agreement (or if there is no such section, by overnight courier to Cohesity's address in this DPA, marked for the attention of Cohesity's General Counsel) to request an on-site audit of the procedures relevant to the protection of Personal Data and strictly to the extent required by applicable law.
- c) To the extent permitted by law, Customer shall reimburse Cohesity for any reasonable costs expended for any such on-site audit at Cohesity's then current professional services rates, which shall be made available to Customer upon request. Before the commencement of any such on-site audit, Customer and Cohesity shall mutually agree upon the scope, timing, and methodology of the audit in addition to the reimbursement rate for which Customer shall be responsible.
- d) All reimbursement rates shall be reasonable, taking into account the resources expended by Cohesity. Customer shall promptly notify Cohesity with information regarding any non-compliance discovered during the course of an audit, and all information in relation to any audit shall be treated as confidential.

11.3.4 Certification of Deletion. The parties agree that the certification of deletion of Personal Data that is described in Clause 16(d) of the SCCs shall be provided by Cohesity to Customer only upon Customer's request.

11.3.5 Privacy Impact Assessment and Prior Consultation. To the extent required by Data Protection Laws and Regulations and taking into account the nature of the Processing and the information available to Cohesity, Cohesity will - at Customer's request and cost - provide reasonable information to Customer to assist Customer to comply with its obligations in respect of data protection impact assessments and

prior consultation under Data Protection Laws and Regulations.

11.3.6 Requests for Personal Data. If Cohesity receives a legally binding request to access Personal Data from a government body ("**Request**"), Cohesity shall to the extent permitted by applicable laws use reasonable efforts to a) promptly notify Customer and/or redirect the requesting body to make the Request directly of Customer; b) obtain confidential treatment or a protective order, and c) limit disclosure to Personal Data necessary to satisfy the Request.

11.3.7 Conflict. The terms in the Agreement and this DPA, (not including the SCCs) are, as applicable, additional clause(s) pursuant to Clause 2 of the SCCs. In the event of any conflict or inconsistency between them and the SCCs in Schedule 2, the SCCs shall prevail. In the event of any conflict or inconsistency between this DPA and the Agreement, this DPA shall prevail.

SCHEDULES

Schedule 1: SCCs

Schedule 2: Appendix to SCCs

Schedule 3: Services

SCHEDULE 1 – STANDARD CONTRACTUAL CLAUSES (MODULE 2)

To the extent applicable to the Services, the European Commission's Standard Contractual Clauses for the transfer of Personal Data to Processors established in third countries (available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021D0914&from=EN>) shall apply and are hereby incorporated by reference, provided:

- Module Two (Controller to Processor) will apply where Customer is a Controller and Cohesity is a Processor;
- Module Three (Processor to Processor) will apply where Customer is a Processor and Cohesity is a Processor;
- In Section I, Section 7 shall not be deemed to apply.
- In Section II of the SCCs:
 - In Clause 9, Option 2 shall apply (to the exclusion of the other Options) where Data Exporter will be informed 10 days in advance; and
 - In Clause 11(a), the Option shall not apply.
- In Section III of the SCCs:
 - In Clause 17, Option 1 shall apply (to the exclusion of the other Options), and the laws of Ireland are specified; and
 - In Clause 18(b), the courts of Ireland are specified.

The relevant Appendix is included below as Schedule 2.

SCHEDULE 2 – SCC APPENDIX

Annex I

A. LIST OF PARTIES

Data exporter(s):

Name: 'Customer' defined in or identified in the Agreement

Address: Customer's address

Activities relevant to the data transferred under these Clauses: Customer's usage of the Services provided for in the Agreement.

Signature and date: Customer's authorized signatory to the Agreement

Role: Controller

Data importer(s):

Name: Cohesity, Inc.

Address: 300 Park Avenue, San Jose, CA 95110, USA

Activities relevant to the data transferred under these Clauses: Cohesity's provision of the Services provided for in the Agreement.

Signature and date: Cohesity's authorized signatory to the Agreement

Role: Processor

B. DESCRIPTION OF TRANSFER

Categories of Data Subjects Whose Personal Data is Transferred

Subject to any terms in the Agreement to the contrary, Customer and Customer's Users may submit Personal Data to the Services, the extent of which is determined and controlled by Customer or Customer's User(s), as the case may be, in its and their sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Customer's Users (who are natural persons)
- Other Data Subjects whose Personal Data is provided to Cohesity by Customer hereunder

Categories of Personal Data Transferred

Subject to any terms in the Agreement to the contrary, Customer and Customer's Users may submit Personal Data to the Services, the extent of which is determined and controlled by Customer or Customer's User(s), as the case may be, in its and their sole discretion, and which may include, but is not limited to the following categories and in each case to the extent its Personal Data:

- Information such as first and last name, date of birth, employment information (like job title or prior work history or experience), contact information (work email, work phone number, work physical address or location), and pictures
- Unique identifiers such as ID data, IP address, or other internet data
- User names/passwords

Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

Subject to any terms in the Agreement to the contrary, Customer and Customer's Users may submit special categories of data to the Services, the extent of which is determined and controlled by Customer or Customer's User(s), as the case may be, in its and their sole discretion and which is for the sake of clarity Personal Data with information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the Processing of data concerning health or sex life.

The Frequency of the Transfer

Except as otherwise provided in the Agreement, Cohesity may transfer Personal Data for the duration of the Agreement on a continuous basis.

Nature of the Processing

Cohesity will Process Personal Data as reasonably contemplated by the Agreement, including Processing initiated by Users in their use of the Services and Processing to comply with other reasonable documented instructions provided by Customer (e.g., via email) consistent with the Agreement.

Purpose(s) of the data transfer and further processing

The purpose of the transfer and Processing of Personal Data by Cohesity is the performance of the Services pursuant to the Agreement, which may include, as applicable, the provision of support services under a support contract and Cohesity's use of Personal Data in connection with the sale to Customer of Hardware.

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

Cohesity is specifically instructed and authorized by Customer to retain Personal Data for such period of time following termination of this Agreement as reasonably necessary.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

C. COMPETENT SUPERVISORY AUTHORITY

Identify the competent supervisory authority/ies in accordance with Clause 13:

Ireland - Data Protection Commission, or if required by law, Data Exporter's competent supervisory authority in accordance with the GDPR.

Annex II

PART A:

This Part A addresses Cohesity's approach to information security relating to:

- Cohesity support services; and
- Cohesity's organization as a whole

1. **Principles.** Cohesity emphasizes the following principles in the design and implementation of its security program and practices:

1.1 **Confidentiality** – Prevention of disclosure of information to unauthorized individuals or systems.

1.2 **Integrity** – Maintaining the accuracy and consistency of data over its life cycle.

1.3 **Availability** – Maximizing availability of information.

2. **Security Program.** Cohesity shall maintain an effective security program, consisting of industry best practices, which includes having:

2.1 A risk management and treatment program that includes vendor risk;

2.2 Conducting periodic risk assessments of systems and networks that process Customer Data on at least an annual basis. "**Customer Data**" means Customer data or Confidential Information in Cohesity's possession.

2.3 Periodic review of security incidents and subsequent remediation;

2.4 A written security policy that explicitly addresses and provides guidance to its personnel in furtherance of the confidentiality, integrity and availability of Customer Data and Cohesity's systems. The policies are endorsed by Cohesity's senior management and state ramifications for noncompliance; and

2.5 Cohesity shall have resources (i.e. identified individual(s)) to foster and focus on information security efforts.

3. **Data Centers.**

3.1 Where Cohesity uses Data Centers (e.g. for metadata telemetry or support services) in connection with any activity under this Agreement, Cohesity shall maintain an effective security program in respect of such Data Centers, which includes using commercially reasonable efforts to ensure:

- a) All activity is logged, recorded and stored for no less than 90 days;
- b) Entry to each facility requires prior authorization and verification of government-issued identification and biometric confirmation;
- c) Each facility has an annual audit by industry leading firms for ISO27001 and Service Organization Control compliance; and
- d) Each facility includes controls regarding utilities such as power, air quality, temperature, humidity, lighting, fire suppression, and other environmental factors.

4. Cohesity's IT Security Controls

4.1 User Access, Controls and Policies. Cohesity supports a variety of security controls on its own internal information systems including:

- a) centrally managed unique user identifiers (user IDs) to ensure that activities can be attributed to the responsible individual;
- b) controls to revoke access upon role change or termination;
- c) access review procedures;
- d) strong authentication requirements;
- e) denial of access to new users by default.

4.2 Cohesity Employee Access, Controls and Policies. Cohesity has implemented the following controls for Cohesity employee access to Customer systems:

- a) Cohesity staff cannot access any end-user data in a Customer-controlled environment without being granted permission by the end user-owner through the native access control system;
- b) Once granted by the Customer, Cohesity employee access to a Customer environment can only be obtained by authorized individuals from known networks through the mandatory use of public key infrastructure (PKI) technology;
- c) Access (where granted by Customer) is based on the information security principles of 'need to know' and 'least privilege' with access strictly limited to a select number of skilled individuals;
- d) employees are trained on documented information security and privacy procedures;
- e) all employees are subject to employee background checks prior to employment;
- f) all employees are required to sign Customer Data confidentiality agreements; and,
- g) access is immediately revoked on termination of employment.

4.3 Third party service providers. Cohesity personnel take reasonable steps to select and retain only third-party service providers that will maintain and implement the security measures consistent with the measures stated in this Exhibit and in accordance with all applicable state, federal or international laws and/or regulations.

4.4 Application Controls.

- a) Each facility is protected by a "defense-in-depth" security architecture consisting of firewalls, IDS (Intrusion Detection Systems), anti-virus/anti-malware protection, monitoring capabilities, and DDoS protection monitoring and mitigation;
- b) The internal network infrastructure is securely segmented using firewalls, Virtual Networks (VLANS) and Access Control Lists (ACLs) which limits the access and communication between systems and environments. Systems and individuals are not permitted to reach other systems without proper authorization; and
- c) Every server is hardened and imaged to contain only the necessary services to operate. All hosts are subject to a regular patching and maintenance routine and are periodically scanned for

vulnerabilities and security threats using industry-leading technology. All servers are controlled and managed by an automation system to ensure consistent configuration across the environment.

5. **Vulnerability and Malware Management.** Cohesity maintains a vulnerability management program designed to identify and remediate known. Security scans are conducted on an ongoing basis.
6. **Data Encryption.** Cohesity use industry-standard encryption products to protect Customer Data in transit and at rest. All data in transit between targets and Cohesity is encrypted. Data at rest is stored in a unique nonreadable binary format and subject to AES 256-bit full disk encryption.
7. **Business Continuity and Disaster Recovery.** Cohesity conducts Business Continuity efforts to plan for the continuity and recovery of critical business systems. Plans for such activities are communicated and distributed to the appropriate teams. Such plans are tested at least annually.
8. **System Maintenance.** Maintenance is carried out during scheduled maintenance hours as provided in the Cohesity Availability and Support SLA. Maintenance is most commonly used for new version releases, typically every 4-6 weeks, but may be performed for other updates or on a different frequency.
9. **Change Management.** Cohesity manages changes through a robust set of change management procedures. All configuration changes are tracked and managed. Changes undergo a rigorous battery of tests and quality assurance. Findings are feed back into the development cycle for remediation. Promotion to release candidates and production require approvals and issuing a release is limited to a core set of individuals.
10. **Incident Management.** Cohesity maintains incident management policies and procedure describing the roles and responsibilities of the Support, IT, Security and Engineering teams and other functional groups. Escalations between the teams are determined based on the nature of issue (infrastructure, security, application or client model), duration of issue, and/or scope of issue. A root cause analysis is performed after an issue is resolved.

PART B:

If Customer uses Cohesity Helios SaaS, this Part B applies.

1. Architecture & Data Segregation

Helios SaaS is a data management platform that provides a single administrative interface. Helios SaaS enables a Customer to manage its global data sets stored in different environments including on-premises, edge and cloud. Cohesity Helios SaaS is designed, developed, and operated with security as a core tenet guiding our approach.

Helios SaaS is operated in a multitenant architecture that is designed to segregate and restrict Customer Content access. The architecture provides an effective logical data segregation for different customers uniquely implemented as an Organization. Each Organization's data and metadata are logically segregated and isolated from the other tenant Organizations via customer-specific "Organization IDs", which allows for role-based access privileges.

2. Information Security Controls

2.1. Information Security Management System

Cohesity implements an Information Security Management System ("ISMS") that establishes security controls to meet its objectives. The ISMS is aligned to ISO 27001 and the NIST CyberSecurity Framework. The ISMS policy and associated controls are reviewed no less than once per annum.

2.2 Data Encryption

Customer Content and Service Analytics Data is encrypted at rest using AES-256, and the encryption keys are managed in a key management system (KMS). All Customer Content and Service Analytics Data in-transit over untrusted networks use Transport Layer Security (TLS) 1.2 (or better).

2.3 Access Management

a) Cohesity Access Controls:

Helios SaaS implements identity and access management ("IAM") controls to manage access to Helios SaaS infrastructure. Access is provided on a principle of least privilege and separation of duties. A unique user ID and

multi-factor authentication are required for all Cohesity access to Helios SaaS infrastructure. The infrastructure on which Helios SaaS is hosted is accessed only by Cohesity-authorized personnel.

b) Cohesity Personnel:

Cohesity requires certain background screening on its personnel as a part of its hiring process (to the extent permitted by applicable law). In addition, all Cohesity employees are subject to confidentiality agreements protecting nonpublic information they access in the course of their employment, and attend internal security training appropriate to their role within Cohesity.

c) Access Reviews:

Cohesity reviews the access privileges of its personnel at least annually, and disables access by separated personnel on a timely basis.

d) Organization Access Controls:

Helios SaaS provides a Customer admin user with IAM controls to manage user accounts and assign appropriate access in accordance with that Customer's security standards and policies. Customers can, if they choose, integrate Helios SaaS with an authorization and identity provider to protect privacy and secure access.

2.4 Monitoring

Monitoring tools or services, including key performance indicators and metrics, are utilized by Cohesity to track certain activities and changes within Helios SaaS. Dashboards and metrics are tracked and evaluated by the appropriate Cohesity operations team.

3. Infrastructure Defenses

Cohesity shall implement reasonable measures designed:

(i) to protect against distributed denial of service (DDOS), intrusion, and malware attacks on Helios SaaS Infrastructure, including:

- a) firewalls to monitor connections;
- b) evaluation and blocking of anomalous connections into the Helios SaaS environment;
- c) monitoring servers, containers, and infrastructure for vulnerabilities;
- d) addressing discovered vulnerabilities on a regular, systematic basis, and

(ii) to ensure that Helios SaaS will not transmit to Customer any malware, viruses, worms, Trojan horses, ransomware, spyware, adware, scareware, disabling code, trap door devices or other malicious programs or instructions intended to erase, corrupt or modify any data, programs, or information, or bypass internal or external Customer security measures for the purpose of gaining unauthorized access.

4. Secure Development Life Cycle

Cohesity adheres to secure development lifecycle principles designed to eliminate security vulnerabilities and ensure delivery of securely developed products to Customers. In particular, Cohesity practices:

1. Security training
2. Security in design
3. Threat model in architecture
4. Vulnerability management
 - o Vulnerability management policy
 - o Penetration testing
 - o Static code and binary analysis
 - o Dynamic scanning
 - o Third-party component security
 - o Support for product infrastructure and tools
5. Secure product release
6. Product incident response

5. Incident Response

Cohesity maintains security incident management policies and procedures. Cohesity will notify (without undue delay) impacted Customers of any unauthorized disclosure of Customer Content of which Cohesity becomes aware.

6. Service Analytics Data

Cohesity uses reasonable measures designed to ensure that (with the exception of Customers using Helios Data Plane) Helios SaaS does not store, process or otherwise handle Customer Content. Cohesity may use, process or store Service Analytics Data in relation to Helios SaaS subject to and in accordance with the Helios SaaS Terms of Service.

7. Compliance & Certifications

Cohesity maintains certain certifications and adheres to certain standards described at <https://www.cohesity.com/security-and-trust/>. Cohesity may update this Annex II from time to time by posting updated terms on www.cohesity.com/agreements, provided that no such update will materially adversely diminish Cohesity's obligations hereunder.

SCHEDULE 3 – SERVICES

1. Helios SaaS

Exhibit L: Cohesity Helios SaaS Information Security Addendum

This addendum supplements the Helios SaaS Terms of Service. Other capitalized terms not defined here have their meaning given in the Helios SaaS Terms of Service or Cohesity-supplied documentation.

1. Architecture & Data Segregation

Helios SaaS is a data management platform that provides a single administrative interface. Helios SaaS enables a Customer to manage its global data sets stored in different environments including on-premises, edge and cloud. Cohesity Helios SaaS is designed, developed, and operated with security as a core tenet guiding our approach.

Helios SaaS is operated in a multitenant architecture that is designed to segregate and restrict Customer Content access. The architecture provides an effective logical data segregation for different customers uniquely implemented as an Organization. Each Organization's data and metadata are logically segregated and isolated from the other tenant Organizations via customer-specific "Organization IDs", which allows for role-based access privileges.

2. Information Security Controls

2.1. Information Security Management System

Cohesity implements an Information Security Management System ("ISMS") that establishes security controls to meet its objectives. The ISMS is aligned to ISO 27001 and the NIST CyberSecurity Framework. The ISMS policy and associated controls are reviewed no less than once per annum.

2.2 Data Encryption

Customer Content and Service Analytics Data is encrypted at rest using AES-256, and the encryption keys are managed in a key management system (KMS). All Customer Content and Service Analytics Data in-transit over untrusted networks use Transport Layer Security (TLS) 1.2 (or better).

2.3 Access Management

a) Cohesity Access Controls:

Helios SaaS implements identity and access management ("IAM") controls to manage access to Helios SaaS infrastructure. Access is provided on a principle of least privilege and separation of duties. A unique user ID and multi-factor authentication are required for all Cohesity access to Helios SaaS infrastructure. The infrastructure on which Helios SaaS is hosted is accessed only by Cohesity-authorized personnel.

b) Cohesity Personnel:

Cohesity requires certain background screening on its personnel as a part of its hiring process (to the extent permitted by applicable law). In addition, all Cohesity employees are subject to confidentiality agreements protecting nonpublic information they access in the course of their employment, and attend internal security training appropriate to their role within Cohesity.

c) Access Reviews:

Cohesity reviews the access privileges of its personnel at least annually, and disables access by separated personnel on a timely basis.

d) Organization Access Controls:

Helios SaaS provides a Customer admin user with IAM controls to manage user accounts and assign appropriate access in accordance with that Customer's security standards and policies. Customers can, if they choose, integrate Helios SaaS with an authorization and identity provider to protect privacy and secure access.

2.4 Monitoring

Monitoring tools or services, including key performance indicators and metrics, are utilized by Cohesity to track certain activities and changes within Helios SaaS. Dashboards and metrics are tracked and evaluated by the appropriate Cohesity operations team.

3. Infrastructure Defenses

Cohesity shall implement reasonable measures designed:

(i) to protect against distributed denial of service (DDOS), intrusion, and malware attacks on Helios SaaS Infrastructure, including:

- a) firewalls to monitor connections;
- b) evaluation and blocking of anomalous connections into the Helios SaaS environment;
- c) monitoring servers, containers, and infrastructure for vulnerabilities;
- d) addressing discovered vulnerabilities on a regular, systematic basis, and

(ii) to ensure that Helios SaaS will not transmit to Customer any malware, viruses, worms, Trojan horses, ransomware, spyware, adware, scareware, disabling code, trap door devices or other malicious programs or instructions intended to erase, corrupt or modify any data, programs, or information, or bypass internal or external Customer security measures for the purpose of gaining unauthorized access.

4. Secure Development Life Cycle

Cohesity adheres to secure development lifecycle principles designed to eliminate security vulnerabilities and ensure delivery of securely developed products to Customers. In particular, Cohesity practices:

1. Security training
2. Security in design
3. Threat model in architecture
4. Vulnerability management
 - o Vulnerability management policy
 - o Penetration testing
 - o Static code and binary analysis
 - o Dynamic scanning
 - o Third-party component security
 - o Support for product infrastructure and tools
5. Secure product release
6. Product incident response

5. Incident Response

Cohesity maintains security incident management policies and procedures. Cohesity will notify (without undue delay) impacted Customers of any unauthorized disclosure of Customer Content of which Cohesity becomes aware.

6. Service Analytics Data

Cohesity uses reasonable measures designed to ensure that (with the exception of Customers using Helios Data Plane) Helios SaaS does not store, process or otherwise handle Customer Content. Cohesity may use, process or store Service Analytics Data in relation to Helios SaaS subject to and in accordance with the Helios SaaS Terms of Service.

7. Compliance & Certifications

Cohesity maintains certain certifications and adheres to certain standards described at <https://www.cohesity.com/security-and-trust/>.

Cohesity may update this document from time to time, provided that no such update will materially and adversely diminish Cohesity's obligations hereunder.