EVALUATION TERMS & CONDITIONS

These Evaluation Terms and Conditions ("**T&Cs**") apply between Cohesity, Inc., a Delaware corporation ("**Company**"), and any user ("**Evaluator**") receiving hardware ("**Hardware**"), and/or software (including beta, early access, or demo products) supplied by Company (or its partners/suppliers) for internal evaluation purposes (the "**Products**").

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

Part 1: Software Terms

1. Loan; Title. Company agrees to loan and Evaluator agrees to accept loan of Software. Title to all Software and intellectual property rights embodied therein shall remain with Company at all times. Evaluator shall not loan Software to (or allow the use or possession of Software by) any third party.

2. Evaluation Period. Evaluator may evaluate the Software for the period of time set forth on the Evaluation Quote, commencing on the date Evaluator receives the Software (the "**Evaluation Period**"). If not specified, the Evaluation Period shall be 60 days.

3. Software License; Restrictions. Subject to the terms hereof, Company grants Evaluator a personal, nonsublicensable, nonexclusive, revocable right to use any Company software made available or otherwise intended for evaluation (the "**Software**") in object code form solely for internal evaluation during the Evaluation Period and for no other purpose. Evaluator will not (nor allow any third party to) (i) modify, reverse engineer or attempt to discover source code or underlying ideas or algorithms of any Software (except to the extent that applicable law prohibits such restrictions) or (ii) use Software to directly or indirectly develop, promote, distribute, sell or support any product or service competitive with Company products. For purposes of the evaluation, it is recommended that Evaluator shall only utilize test data in a test lab environment. Evaluator may not use any Software in a production or live environment without Company written approval. Any such use shall be at Evaluator's sole risk. For software-as-a-service evaluations, additional restrictions and requirements specified in terms thereto shall also apply.

4. Demonstration/Testing & Integration. It shall not be a breach of this Evaluation Agreement for Evaluator who is also (i) a Company reseller or service provider to demonstrate Products to prospective end users with Company's prior written consent provided all other terms herein are complied with, or (ii) a Technology Partner to use Software during the Evaluation Period for testing and integration purposes. "**Technology Partner**" means a third party that has completed a Cohesity technology partner registration process (as determined by Cohesity) and is issued login credentials to access or use the Software by Cohesity for testing and integration purposes. Unless agreed otherwise in writing, the Evaluation Period for Technology Partners is ninety (90) days.

5. Software Return. Upon expiration of the Evaluation Period or termination of this Evaluation Agreement (whichever occurs earlier) Evaluator shall, at its option, either (i) immediately cease use of all Software, or (ii) purchase the Software for the price stated on a valid quote provided by Company or an authorized reseller (a "**Purchase**").

6. Information Use & Feedback. If in connection with Evaluator's evaluation of the Products, Evaluator provides Company with feedback, suggestions, and ideas concerning the Products ("**Feedback**") Evaluator hereby grants Company a perpetual and irrevocable right to use the Feedback in any way and for any purpose without restriction or compensation to Evaluator. For clarity, the Feedback shall not encompass any of Evaluator's pre-existing intellectual property.

7. Confidentiality. A party receiving Confidential Information ("**Recipient**") from a Discloser shall not use or disclose same except as expressly authorized by this Evaluation Agreement and shall protect same using the degree of care it uses with its own confidential information (but no less than reasonable care). "**Confidential Information**" means nonpublic information of a party (the "**Discloser**") in any form, that is identified as "confidential" or similar or that the Recipient knows (or a reasonable person in the technology industry would understand to be) confidential, including without limitation this Evaluation Agreement. Company's Confidential Information includes, and Evaluator shall not disclose, details about, or benchmarking results or technical specifications of, any Products, or the results or Evaluator's impressions of the performance of Products. This Section 7 supplements any existing nondisclosure agreement between the parties ("**Existing NDA**"), provided that in the event of conflict between this Section 7 and an Existing NDA, this Section 7 shall prevail.

8. Warranty Disclaimer. ALL PRODUCTS, SOFTWARE AND SERVICES ARE PROVIDED ON AN "AS AVAILABLE" AND "AS IS" BASIS FOR EVALUATION PURPOSES WITHOUT ANY WARRANTY WHATSOEVER. EVALUATOR AGREES AND ACKNOWLEDGES THAT ANY BETA PRODUCTS ARE PROVIDED WITHOUT SUPPORT (INCLUDING FOR UPGRADES OR DATA MIGRATION).

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

10. Miscellaneous. A waiver of any default hereunder or of any provision of this Evaluation Agreement shall not be deemed a continuing waiver or a waiver of any other default or provision. If any provision of this Evaluation Agreement is found to be invalid, illegal or unenforceable, a modified provision shall be substituted which carries out as nearly as possible the original intent of the parties, and the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. This Evaluation Agreement shall be construed in accordance with, and all disputes governed by, the laws of the State of California as applied to contracts made and to be performed in California, without applying conflict of laws rules. The parties consent to exclusive jurisdiction and venue in the United States Federal Courts located in the Northern District of California. Each party shall comply with all applicable laws. Sections 4–10 in Part 1 and Sections 4–7 in Part 2 shall survive the termination of this Evaluation Agreement. Evaluator's unpaid use or evaluation of any Product shall constitute assent to this Evaluation Agreement to the exclusion of all other terms. Any terms that conflict with this Evaluation Agreement shall be of no force and effect.

Part 2: Hardware Terms

These Hardware Terms apply between Evaluator and Flextronics International USA (together with Flex Telecom Systems Ltd. and its other affiliates, "**Flex**"), and are applicable only to Evaluators receiving Hardware for internal evaluation purposes. Any such Hardware is supplied by Flex.

1. Loan; Title. Flex agrees to loan and Evaluator agrees to accept loan of Hardware. Title to all Hardware shall remain with Flex at all times until and unless the Hardware is purchased by Evaluator.

2. Risk of Loss; Shipment. Risk of loss and damage (reasonable wear and tear excepted) to Hardware shall be with Evaluator while in Evaluator's possession. Hardware shall be shipped freight pre-paid at Flex's cost. Evaluator shall not loan Hardware to (or allow the use or possession of Hardware by) any third party.

3. No Modifications. During the Evaluation Period, the Evaluator shall not modify Hardware or its configurations.

4. Hardware Purchase or Return. Upon expiration of the Evaluation Period or termination of this Evaluation Agreement (whichever occurs earlier) Evaluator shall, at its option, either (i) arrange return shipping of all Hardware at Flex's cost, or (ii) purchase the Hardware for the price stated on a valid quote provided by Flex or an authorized reseller (a "Purchase"). Evaluator shall erase all Evaluator information from the Hardware prior to returning Hardware to Flex. Flex shall not be liable for any Evaluator information remaining on any Hardware returned to Flex, but shall treat the same as confidential and delete upon discovering.

5. Warranty Disclaimer. ALL HARDWARE PRODUCTS ARE PROVIDED ON AN "AS AVAILABLE" AND "AS IS" BASIS FOR EVALUATION PURPOSES WITHOUT ANY WARRANTY WHATSOEVER.

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

7. Miscellaneous. Evaluator agrees not to export, either directly or indirectly, any Hardware hereunder. For international shipments, Flex shall be exporter of record from the United States and Evaluator shall (unless Flex specifies otherwise) be the importer of record and is responsible for fulfilling quota terms, obtaining import licenses, paying import license or permit fees, duties and customs fees, and any other governmental or import taxes or fees, and preparing and submitting all required documentation in connection with importing the Hardware to the country of import. A waiver of any default hereunder or of any provision of these Terms shall not be deemed a continuing waiver or a waiver of any other default or provision. If any provision of these Terms is found to be invalid, illegal or unenforceable, a modified provision shall be substituted which carries out as nearly as possible the original intent of the parties, and the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. These Terms shall be construed in accordance with, and all disputes governed by, the laws of the State of California as applied to contracts made and to be performed in California, without applying conflict of laws rules. The parties consent to exclusive jurisdiction and venue in the United States Federal Courts located in the Northern District of California. Each party shall comply with all applicable laws.