

COHESITY, INC. SOFTWARE TERMS OF USE

COHESITY, INC. (TOGETHER WITH ITS AFFILIATES, “**COHESITY**”) AGREES TO SUPPLY AND/OR LICENSE CERTAIN OF ITS PRODUCTS AND/OR SERVICES TO YOUR BUSINESS OR ORGANIZATION (“**CUSTOMER**,” “**YOU**,” OR “**YOUR**”) PROVIDED (A) YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER AND (B) YOU ACCEPT AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS IN THESE COHESITY SOFTWARE TERMS OF USE (THE “**SOFTWARE TERMS**,” INCLUDING ALL DOCUMENTS INCORPORATED HEREIN BY REFERENCE). THE FOREGOING SHALL BE DEFINITELY EVIDENCED BY: CLICKING THE “ACCEPT,” “CONTINUE,” OR A SIMILAR BUTTON; SIGNING A TANGIBLE COPY OF THIS AGREEMENT; INSTALLING OR USING COHESITY SOFTWARE AND/OR COHESITY PLATFORMS; OR BY SUCH OTHER CONTRACT FORMATION MECHANISM AS MAY BE RECOGNIZED BY LAW. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT COPY, INSTALL, ACCESS OR USE COHESITY OFFERINGS.

1. SCOPE OF SOFTWARE TERMS

- 1.1 These Software Terms apply to Software and Cohesity Platforms. Cohesity’s Global Terms also apply to all Cohesity Offerings.
- 1.2 Separate terms apply to use of Cohesity SaaS, available at <https://www.cohesity.com/agreements>.

2. SOFTWARE LICENSE AND RESTRICTIONS

- 2.1 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 Agreement (including the Scope of License Terms), payment of the relevant fees, and all applicable use, capacity, or other limitations specified in writing.
- 2.2 Software Restrictions.
 - 2.2.1 Software is not sold but is licensed (or made available via subscription) solely for Customer’s use strictly in accordance with the Agreement. Cohesity retains ownership of all copies.
 - 2.2.2 Customer acknowledges that Software 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 a Cohesity-hosted support portal made available to Cohesity Support customers, or by emailing support@cohesity.com (or if no license is specified, then subject to the Agreement).
 - 2.2.3 Customer may obtain certain third-party commercial offerings resold by Cohesity pursuant to a separately-identified SKU in an Order. Use of such offerings may require Customer to separately agree to the applicable third-party’s supplemental or substitute terms and conditions.

3. SOFTWARE WARRANTIES

- 3.1 Cohesity warrants that:
 - (a) the Software will operate substantially in accordance with the Documentation for a period of ninety (90) days from the date of availability to Customer;
 - (b) it uses generally accepted industry standard measures 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;
 - (c) it complies with all licenses applicable to Third-Party Software in Software; and
 - (d) provided it is used in compliance with the 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.
- 3.2 Remedy for Breach of Warranty.
 - 3.2.1 Cohesity’s sole obligation under the warranty in Section 3.1(a) shall be, at Cohesity’s expense, to repair or replace the applicable Software in accordance with the Support Terms.

- 3.2.2 If Customer believes Cohesity is in breach of this Section, Customer shall notify Cohesity in writing specifying the breach, following which Cohesity shall have not less than thirty (30) days to remedy same.

4. HARDWARE

4.1 Cohesity Platforms.

4.1.1 Cohesity Platforms are subject to the End-of-Life Terms.

4.1.2 Warranty. Cohesity warrants that the 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 Cohesity Platforms or otherwise supplied by Cohesity, (c) Cohesity Platforms which are returned in any manner that is not in compliance with Cohesity's then-current RMA process (set forth in the Support Terms), (d) any Cohesity Platforms from which the serial number has been removed, or (e) any Cohesity Platforms that have been damaged or rendered defective for any reason other than caused by Cohesity or a Cohesity-authorized service provider.

4.1.3 Remedy for Breach of Warranty.

4.1.3.1 Cohesity's sole obligation under the express warranty set forth in Section 4.1.2 shall be, at Cohesity's expense, to repair or replace the applicable component and/or Cohesity Platform in accordance with the Support Terms; provided that in the event of a breach of the foregoing warranty within thirty (30) days of shipment, Cohesity shall replace any non-compliant Cohesity Platform with a new Cohesity Platform within five (5) business days of notice via its then-current RMA procedure (set forth in the Support Terms).

4.1.3.2 Customer must contact Cohesity's technical support center within the applicable warranty period in accordance with the RMA process set forth in the Support Terms. If Customer believes Cohesity is in breach of this Section, Customer shall notify Cohesity in writing specifying the breach, following which Cohesity shall have not less than thirty (30) days to remedy same.

4.1.3.3 The warranties hereunder do not provide advance replacement parts.

4.2 Third-Party Hardware. All use of Third-Party Hardware is at Customer's own risk and is Customer's responsibility.

5. COMPLIANCE WITH EXPORT/IMPORT LAWS

Customer acknowledges that Software and Cohesity Platforms may contain technical data or elements, the export or re-export of which may be restricted as a result of license restrictions or Laws. Customer agrees not to engage in (and not to cause) export or re-export of Software and Cohesity Platforms or any part thereof without first satisfying all legal requirements, including without limitation all necessary U.S. 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. Software and Cohesity Platforms may not be distributed, or otherwise exported or re-exported (a) into, or to a national or resident of, any country to which the U.S. has embargoed goods or trade restrictions or (b) 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.

6. RECORDS; AUDIT RIGHTS

Customer agrees that, without additional consideration, it shall provide information reasonably requested hereunder, including providing to Cohesity (or its auditors) reasonable access during normal business hours to Customer personnel, records, and other information to the extent reasonably necessary to validate compliance with the Agreement and/or to enable Cohesity to meet applicable accounting, legal, or contractual requirements. Such access is subject to Customer receiving at least fifteen (15) days' advance written notice. If any such information reveals non-compliance with the Agreement, Customer shall promptly place such Order, pay such additional fees, and/or take such additional actions as are reasonably necessary to restore compliance. 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.

7. DEFINITIONS

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

- 7.1 “**Cohesity Platforms**” means hardware configurations which are: (a) certified by Cohesity for use with Software, (b) eligible for Support from Cohesity, and (c) are supplied (directly or indirectly) to Customer by authorized third-party contract manufacturers.
- 7.2 “**End-of-Life Terms**” means Cohesity’s Platform End-of-Life Terms and Conditions at <https://www.cohesity.com/agreements>.
- 7.3 “**EULA**” means, collectively, the Global Terms and the Software Terms.
- 7.4 “**Global Terms**” means Cohesity’s Global Terms and Conditions at <https://www.cohesity.com/agreements> or signed by the Parties.
- 7.5 “**Scope of License Terms**” means Cohesity’s Scope of License Terms at <https://www.cohesity.com/agreements>.
- 7.6 “**Software**” means, collectively, all Cohesity proprietary software and Third-Party Software supplied by Cohesity under this Agreement for self-management by Customer, including internet-based tools Cohesity may make available to Customer associated with use of Software.
- 7.7 “**Third-Party Hardware**” means hardware and/or firmware products supplied by a third party and certified for use by Cohesity.
- 7.8 “**Third-Party Software**” means any (a) 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 (b) 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 Software).