

# COHESITY

## COHESITY SOFTWARE TERMS OF USE

### 1. SCOPE OF SOFTWARE TERMS

- 1.1 These Cohesity Software Terms of Use (“**Software Terms**”) (also sometimes referred to as “EULA”) apply to Software and Cohesity Platforms. Cohesity’s General Terms and Conditions (“**General Terms**”) also apply to all Cohesity Offerings.
- 1.2 Separate terms apply to use of Cohesity SaaS (See SaaS Terms) and Support (See General Terms), available at <https://www.cohesity.com/agreements>.

### 2. SOFTWARE LICENSE AND RESTRICTIONS

- 2.1 License. Cohesity grants Customer a personal, revocable, non-sublicensable, non-exclusive right to use Software (or portions thereof) to which Customer is Entitled, in object code form only, subject to payment of the relevant fees, the Agreement (including the Scope of License Terms and the Documentation), and all applicable capacity, or other limitations specified in writing. Customer’s Territory is limited to the country in which it is located unless otherwise required by law.
- 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 (or if no license for a particular Third-Party Software is specified, then subject to the Agreement), a list 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](mailto:support@cohesity.com).
  - 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, and warranty for, such offerings may be subject to the applicable third-party’s supplemental or substitute terms and conditions.

### 3. SOFTWARE WARRANTIES

- 3.1 Cohesity warrants that:
  - (a) the Software, as delivered by Cohesity and when used in accordance with Documentation, 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

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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 Support Fundamentals.

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. DEFINITIONS

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

5.1 "**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.

5.2 "**End-of-Life Terms**" means Cohesity's Platform End-of-Life Terms and Conditions (see Exhibit 1-B).

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- 5.3 **“Perpetual”**, unless otherwise defined in the Scope of License Terms, means a Software license that 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.
- 5.4 **“Scope of License Terms”** means the product-specific terms at <https://www.cohesity.com/agreements>, including the Scope of License Terms, or any document which provides usage rights, restrictions, and terms specific to the Software or a particular Software Offering, including e.g. a product use rights document.
- 5.5 **“Software”** means, collectively, all Cohesity proprietary software and Third-Party Software supplied by Cohesity under this Agreement for self-management by Customer, including any Software updates provided under Support, and including internet-based tools Cohesity may make available to Customer associated with use of Software.
- 5.6 **“Subscription Software”** means Software licensed on a non-perpetual (term-limited) basis.
- 5.7 **“Support Fundamentals”** means the then-current Support Fundamentals documents at <https://www.cohesity.com/agreements>.
- 5.8 **“Third-Party Hardware”** means hardware and/or firmware products supplied by a third party and certified for use by Cohesity.
- 5.9 **“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).