

NCOVER END-USER LICENSE AGREEMENT

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6. LIMITATION ON REMEDIES: Within the first thirty (30) days after your receipt of the Software, should you encounter and report to NCover within such time period a reproducible error that causes the Software not to perform in all material respects as set forth in the Software documentation, then NCover will, at its sole discretion, either: a) resolve the error or malfunction, and modify or replace the Software (if deemed necessary by NCover); or b) allow you to terminate this EULA with respect to the non-conforming Software and, upon your return of the Software to NCover, NCover shall provide you with the lesser of a) the actual damages incurred by you; or b) the amount you paid for the non-conforming Software. The remedies described in this section shall be your sole and exclusive remedies under this EULA.

7. GENERAL PROVISIONS

- A. Reservation of Rights and Ownership: NCover reserves all rights not expressly granted to you in this EULA. The Software is licensed, not sold.
- B. Consent to Use of Data: You agree that NCover and its affiliates may collect and use technical information gathered as part of the Software support services provided to you, if any, related to the Software. NCover may use this information solely to improve NCover products or to provide customized services or technologies to you and will not disclose this information in a form that personally identifies you.
- C. Links to Third Party Sites: You may link to third party sites through the use of the Software. The third party sites are not under the control of NCover, and NCover is not responsible for the contents of any third party sites, any links contained in third party sites, or any changes or updates to third party sites. NCover is not responsible for webcasting or any other form of transmission received from any third party sites. NCover is providing these links to third party sites to you only as a convenience, and the inclusion of any link does not imply an endorsement by NCover of the third party site.
- D. Additional Software/Services: This EULA applies to updates, supplements, add-on components, or Internet-based services components, of the Software that NCover may provide to you or make available to you after the date you obtain your initial copy of the Software, unless NCover provides other terms along with the update, supplement, add-on component, or Internet-based services component. NCover reserves the right to discontinue any Internet-based services provided to you or made available to you through the use of the Software.

- E. NCover may collect anonymous memory, file size and timing information regarding your usage of NCover and send it to servers owned by NCover. We use this information to help improve the product and determine potential performance issues. There are instructions on our website (<http://ncover.com>) explaining how to opt-out of this program.
- F. Upgrades: To use Software identified as an upgrade, you must first be licensed for the software identified by NCover as eligible for the upgrade. After upgrading, you may no longer use the software that formed the basis for your upgrade eligibility.
- G. Export Restrictions: You acknowledge that the Software is subject to US export jurisdiction. You agree to comply with all applicable national and international laws that apply to the Software, including the US Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by US and other governments.
- H. US Government License Rights: If you are acquiring the Software or Services on behalf of any unit or agency of the US Government, then on behalf of the Government you agree that: (i) if supplied to a unit of the Department of Defense (DOD), the Software and Services are classified as "Commercial Computer Software" and the Government is acquiring only "restricted rights" as that term is defined in Clause 252.227-7013(c)(1)/7014(a)(1) of the DFARS; and (ii) if supplied to any unit or agency of the US Government other than DOD, the Government's rights in the Software and Services will be restricted to the extent allowed by law and as stated and defined in Clause 52.227-19(c)(2) of the FAR.
- I. Applicable Law: This EULA is governed by the laws of the State of South Carolina, excluding that body of law applicable to choice of law and excluding the United Nations Convention on Contracts for the International Sale of Goods, if applicable. Any legal action or proceeding relating to this EULA shall be instituted in a state or federal court in Greenville County, South Carolina. NCover and you agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such action or proceeding. The prevailing party in any action to enforce this EULA will be entitled to recover its attorney fees and costs in connection with such action.
- J. Relationship of the Parties: Nothing in this EULA shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever.
- K. Waiver: The failure of either party to enforce any of the terms of this EULA shall not be construed as a waiver of future enforcement of that or any other term.
- L. Logo Use: The EULA grants NCover the right to publish your Company's name and/or logo on the NCover web site for promotional purposes. You may request to be excluded from such a list by sending a request in writing to the NCover team.
- M. Entire Agreement; Severability: This EULA (including any addendum or amendment to this EULA which is included with the Software) is the entire agreement between you and NCover relating to the Software and the support services (if any) and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA. To the extent the terms of any NCover policies or programs for support services conflict with the terms of this EULA, the terms of this EULA shall control. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.
- N. Assignment: You may not assign this EULA or your rights, obligations or interest under this EULA, except with the prior written consent of NCover.

- O. Termination: Without prejudice to any other rights, NCover may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the Software and all of its component parts and you will not be entitled to any refund of monies.