

COVERITY PRODUCT LICENSE AGREEMENT

Version 2010.1

IMPORTANT INFORMATION - READ CAREFULLY

UNLESS YOU HAVE OBTAINED PERMISSION TO USE THE SOFTWARE UNDER A SEPARATE, DULY SIGNED LICENSE AGREEMENT OR AN EVALUATION LICENSE WITH COVERITY OR AN AUTHORIZED DISTRIBUTOR, THE ACCOMPANYING SOFTWARE IS PROVIDED UNDER THE FOLLOWING TERMS AND CONDITIONS AND ANY SUPPLEMENTAL TERMS REFERENCED BELOW AND YOUR RIGHT TO USE THE SOFTWARE IS CONDITIONED UPON YOUR ACCEPTANCE OF THIS AGREEMENT.

IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS AND YOU DO NOT HAVE A SEPARATE LICENSE AGREEMENT AS REFERENCED ABOVE, YOU MAY NOT USE OR COPY THE SOFTWARE AND YOU MUST DELETE ANY COPIES OF IT FROM YOUR SYSTEMS. IF YOU HAVE PAID A LICENSE FEE FOR USE OF THE SOFTWARE AND DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY, WITHIN TEN (10) DAYS OF YOUR INITIAL PURCHASE, REQUEST A REFUND FOR THE SOFTWARE, PROVIDED THAT YOU CERTIFY THAT YOU HAVE NOT AND WILL NOT USE THE SOFTWARE AND THAT YOU HAVE DESTROYED ALL COPIES OF THE SOFTWARE FROM YOUR SYSTEMS.

1. SCOPE AND KEY TERMS.

This is a legal agreement concerning your use of the Software described below. The rights granted to the Software are expressly conditioned upon acceptance of these Terms and Conditions by the legal entity or person acquiring the license and, if applicable, responsible for payment. If you are using the Software as an employee, the legal entity that employs you is the "licensee." Your employer may have already accepted a version of these Terms and Conditions by signing an Order Schedule referencing them. In all other circumstances, you are binding your employer, and yourself personally as an employee, to these Terms and Conditions by using the Software. References below to "you" or "your" refer to the licensee of the Software. Coverity is the "licensor," regardless of whether you received the Software from Coverity directly or an authorized distributor.

The Software is the proprietary information of Coverity or its suppliers who retain exclusive title to their intellectual property rights in the Software. Your rights to the Software are limited to those expressly granted below and Coverity reserves all rights not expressly granted in this Agreement.

1.1 **Order Schedules.** The Terms and Conditions set forth in this Coverity Product License Agreement and the Order Schedule(s) accepted by both you and Coverity contain all terms and conditions applicable to your use of the Software (collectively, the "**Agreement**"). An "**Order Schedule**" is a document from Coverity or its authorized distributor which references the applicable Coverity Product License Agreement and identifies the specific Software and rights being licensed to you under those terms, including the License Type, quantity, license term, territory and the Code Base. The Order Schedule also sets forth the fees and payment terms for the Software licenses (the "license transaction"). You must refer to a copy of the applicable Order Schedule to determine these conditions of the Agreement. If you do not receive any other document executed by Coverity referencing the license transaction, a Coverity invoice referencing this Agreement and issued in response to your correct purchase order shall be Coverity's acceptance of the license transaction. Additional or different terms on your purchase order shall not apply.

1.2 "**Authorized User**" means a party's, and its wholly-owned subsidiaries', employee or authorized contractor: (a) whose duties require access to or use of the Software or Confidential Information for the benefit of that party; and (b) whose legal obligations to protect confidential and proprietary information require protection of the Software and Confidential Information to at least the same extent as set out in this Agreement.

1.3 "**Code Base**" means those portions of your software identified in an applicable Order Schedule by reference to the name of the product, project or package and a number of lines of code, if applicable.

1.4 "**Documentation**" means the user documentation, in written, electronic or other format, which describes the Software and its operation and which Coverity makes generally available to its licensed customers for use with the Software.

1.5 "**License Type**" means the usage rights purchased under the applicable Order Schedule. License Types offered by Coverity from time to time can be found at www.coverity.com/licensetype.html.

1.6 "**Software**" means the specific products provided by Coverity and listed in an Order Schedule and (a) all related Documentation, and (b) all updates, modifications and maintenance services provided to you.

2. LICENSE.

2.1 **License Grant and Applicable Fees and Delivery.** Subject to your compliance with the terms and conditions of this Agreement, Coverity grants you a nonexclusive, non-transferable license, solely during the license term and in the territory set out in the applicable Order Schedule, to (a) use and operate the Software to the extent permitted by your payment of applicable fees for the License Type purchased, solely for the purpose of developing, analyzing, building or testing the Code Base, and (b) copy the Software as reasonably necessary to exercise the license rights granted in subsection (a), including making a reasonable number of copies for backup and archival purposes. All applicable fees are owed upon the effective date of the applicable Order Schedule, are non-refundable upon such date, and are payable in accordance with the payment schedule set out in the applicable Order Schedule. Fees payable are net amounts, without deduction for taxes or duties. Customer will pay taxes and duties (including but not limited to sales, use and withholding taxes) associated with its purchases under this Order Schedule, except for Coverity's net income taxes. Where practical, Coverity will deliver Software electronically and delivery will be deemed to occur upon the Software being available for electronic download. Delivery of any tangible media will be made F.O.B. point of shipment.

2.2 **Conditions.** The rights granted to you above are conditional upon your compliance with the following obligations:

- a. You will not copy Coverity's software products or documentation, in whole or in part, except as expressly authorized in this Agreement.
- b. You will not transfer, assign, lease, lend or rent Coverity's software products or documentation, use them to provide service bureau, time-sharing or other services, or otherwise provide or make the functionality thereof available to third parties except as expressly authorized in this Agreement.
- c. You will not disassemble, decompile, reverse engineer, modify or create derivative works of Coverity's software products or documentation nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable mandatory local law.
- d. You will not allow access or use of the Software by, and will not display the Software's user interfaces to, anyone other than the Authorized Users, without Coverity's prior express written consent.
- e. You will not disclose to any third party any comparison of the results of operation of Coverity's software products with other products.
- f. You will not delete or in any manner alter the copyright, trademark or other proprietary rights notices appearing on the Software as delivered by Coverity. You will reproduce such notices on all copies you are authorized to make of the Software.
- g. Your use of the Software is time-limited to the licensed term set out in the applicable Order Schedule, and access may be regulated through a license management tool (a "**License Manager**"). You will not install or use the Software in a manner that circumvents or interferes with the operation of the License Manager or any other technological measure that controls access to the Software. Some configurations may require the License Manager to be installed only on designated servers. For those configurations, Coverity will support two changes to the designated servers during any twelve month period upon prior written notice.

2.3. **Offsite Contractors.** You may allow Authorized Users that are offsite contractors to access and use the Software solely for your benefit in accordance with this Agreement provided that: (a) you are responsible for the acts and omissions of its offsite contractors with respect to Software licensed under this Agreement; (b) you ensure that the Software is completely and irretrievably uninstalled from any offsite contractor's equipment and premises (except for those modules necessary to view results and other data generated from using the Software) immediately upon completion of the offsite contractor's services requiring use of the Software; and (c) you have an agreement in place with the offsite contractor substantively requiring that the offsite contractor protect Coverity's Software, Confidential Information and intellectual property at least to the same extent as set forth in this Agreement. You acknowledge that Coverity has no warranty or other obligations to your offsite contractors.

2.4. **Special Terms for Third Party Software.** The Software may contain open source or community source software ("**Open Source Software**") provided under separate license terms (the "**Open Source License Terms**"). The applicable Open Source License Terms are identified in a directory named "Licenses" provided with the delivery of the Software. Your use of the Open Source Software in conjunction with the Software in a manner consistent with the terms of this Agreement is permitted, however, you may have broader rights under the applicable Open Source License Terms and nothing in this Agreement is intended to impose further restrictions on your use of the Open Source Software.

2.5. **Feedback and Analytics.** You may choose to, but are not required to, provide suggestions, data, feedback and other information to Coverity, its subcontractors or authorized distributors regarding possible improvements in the operation, functionality or use of Coverity's software products. You hereby grant to Coverity and its subcontractors and authorized distributors, without charge, the right to use, copy, modify and create derivative works of any such suggestions, data, feedback and information solely for the purpose of (i) improving the operation, functionality or use of its existing and future product

offerings and commercializing such offerings; and (ii) publishing aggregated statistics about software quality, provided that no data in any such publication can be used to specifically identify you, your employer or your software code.

3. CONFIDENTIALITY.

3.1. **Confidential Information.** "**Confidential Information**" means: (a) each party's software products, in byte code or source code form; (b) any authorization keys and passwords delivered in order to operate such products; (c) Documentation, product road maps and development plans, and product pricing information; (d) any business, technical or training information of a party that, if disclosed in writing, is marked "confidential" or "proprietary" at the time of disclosure, or, if disclosed orally, is identified as "confidential" or "proprietary" at the time of disclosure, and is summarized in a writing sent by the disclosing party to the other party within thirty (30) days of such disclosure; and (e) the specific business terms and pricing set forth in any quotation, Order Schedule or this Agreement.

3.2. **Exclusions.** Confidential Information does not include information that: (a) is or becomes generally known or available to the public through no act or omission of the party receiving Confidential Information ("**Receiving Party**"); (b) is rightfully known by the Receiving Party prior to receiving such information from the other party ("**Disclosing Party**") and without restriction as to use or disclosure; (c) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information and without breach of this Agreement; or (d) is rightfully received by the Receiving Party from a third party without restriction on use or disclosure. The existence of this Agreement and the nature of the business relationship between the parties are not considered Confidential Information.

3.3. **Use and Disclosure Restrictions.** Receiving Party will not use the Disclosing Party's Confidential Information except as necessary to exercise the rights granted under this Agreement or to evaluate opportunities to license additional Software pursuant to this Agreement, and will not disclose such Confidential Information to any person or entity except to its Authorized Users. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to its legal or financial advisors that need to know in order to provide business advice to such party. In addition, each party may disclose the terms and conditions of this Agreement: (i) as required under applicable securities regulations; and (ii) on a confidential basis to present or future providers of venture capital and potential private investors in or acquirers of such party.

3.4. **Right of Equitable Relief.** The parties acknowledge that violations of the covenants and obligations of this Agreement may cause the non-breaching party irreparable injury for which an adequate remedy at law may not be available. Therefore, the non-breaching party shall be entitled to seek all remedies that may be available under equity, including immediate injunctive relief, in addition to whatever remedies may be available at law.

4. WARRANTY.

4.1. **Limited Software Warranty.** Subject to the remainder of this [Section 4](#), for a period of forty-five (45) days from your first receipt of the Software pursuant to an Order Schedule, Coverity represents and warrants that, (a) the media on which the Software is delivered will be free of defects in material and workmanship, (b) the Software will substantially conform to the functional specifications set forth in the applicable Documentation, and (c) to Coverity's knowledge, Coverity has not provided with the Software any virus, Trojan horse, trap door, or other code that is intended to cause harm to your Code Base or other systems.

4.2. **Sole Remedy.** If, during the warranty period set forth in [Section 4.1](#), Coverity receives written notice from you of non-conformity of the Software with the warranty set forth in [Section 4.1](#), Coverity will, as your sole and exclusive remedy and Coverity's entire liability for such non-conformity: (a) deliver a correction or workaround for the non-conformity; or (b) if Coverity is unable to deliver such a correction or workaround, provide written notice to you and, upon your return or confirmed destruction of all copies of the non-conforming Software to Coverity, refund the license fees paid by you for such non-conforming Software. THE FOREGOING STATES YOUR SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS RELATED TO THE SOFTWARE.

4.3. **Disclaimer.** Coverity does not warrant that the Software will meet your requirements, that the Software will operate in combinations with equipment, devices, software or systems provided by persons other than Coverity, that the operation of the Software will be error-free or uninterrupted, or that the Software will discover all errors and vulnerabilities that may reside in the Code Base. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COVERITY AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY OR COMPLETENESS OF RESULTS, CONFORMANCE WITH DESCRIPTION, AND NON-INFRINGEMENT. COVERITY AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

5. INDEMNIFICATION.

5.1. Infringement Indemnity. Coverity will defend or settle any action brought against you by paying all costs, damages and reasonable attorneys' fees that are finally awarded against you to the extent those amounts are based upon a claim that the Software, as provided by Coverity to you under this Agreement and used in accordance with this Agreement, directly infringes any U.S. patent or any copyright or misappropriates any trade secret. However, Coverity's obligations under this section are subject to the following conditions: (a) you must promptly notify Coverity in writing of the action; (b) you grant Coverity sole control of the defense and settlement of the action; and (c) you must provide Coverity, at Coverity's expense, with all assistance, information and authority reasonably requested for the defense and settlement of the action. Coverity will not be responsible for any compromise made or expense incurred without its consent. If use of any of the Software is, or in Coverity's reasonable opinion is likely to be, the subject of an action specified in this [Section 5.1](#), Coverity may, at its sole option and at no additional charge: (i) procure for you the right to continue using such Software; (ii) replace or modify such Software so that it is non-infringing and substantially equivalent in function to the original Software; or (iii) if options (i) and (ii) above are not accomplished despite Coverity's reasonable efforts, terminate your rights and Coverity's obligations hereunder with respect to such Software and refund the unamortized portion of the license fees paid for such Software, based upon a straight-line depreciation over the term of the license commencing as of the date you received such Software.

5.2. Exclusions. Notwithstanding the terms of [Section 5.1](#), Coverity will have no liability for any infringement or misappropriation action or claim of any kind to the extent that it results from: (a) modifications to the Software made by a party other than Coverity, if the infringement or misappropriation would not have occurred but for such modifications; (b) the combination, operation or use of the Software with equipment, devices, software, systems or data not supplied by Coverity, if the infringement or misappropriation would not have occurred but for such combination, operation or use; (c) your failure to use updated or modified Software provided by Coverity to avoid infringement or misappropriation; (d) Coverity's compliance with any designs or specifications provided by you; (e) your use of the Software other than as authorized by this Agreement.

5.3. Sole Remedy. THE PROVISIONS OF THIS [SECTION 5](#) SET FORTH COVERITY'S SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND. EXCEPT AS SET FORTH ABOVE, COVERITY AND ITS SUPPLIERS DISCLAIM ALL IMPLIED OBLIGATIONS WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION.

6. LIMITATION OF LIABILITY.

6.1 Exclusion of Damages. Notwithstanding anything to the contrary, this Agreement does not limit liability due to death or personal injury caused by gross negligence, or liability due to fraudulent misrepresentations or willful misconduct, or liability arising from breaches of confidentiality or licensing obligations hereunder. SUBJECT TO THE FOREGOING SENTENCE, IN NO EVENT WILL EITHER PARTY, OR ITS SUPPLIERS, BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS, REVENUE, GOODWILL, ANTICIPATED SAVINGS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF THIS AGREEMENT, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAILURE OF A REMEDY TO ACCOMPLISH ITS PURPOSE, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. You may have other rights under applicable mandatory local laws. This Agreement does not change your rights under applicable mandatory local laws if such laws do not permit it to do so.

6.2 Cap on Liability. IN NO EVENT WILL COVERITY OR ITS SUPPLIERS' AGGREGATE LIABILITY UNDER THIS AGREEMENT, OR RELATING TO ITS SUBJECT MATTER, EXCEED THE AMOUNT PAID BY YOU FOR THE SOFTWARE GIVING RISE TO THE CLAIM.

7. EXPIRATION AND TERMINATION.

7.1. Termination for Breach. Either party will have the right to terminate this Agreement or any Order Schedule if the other party breaches any material term of the Agreement or Order Schedule, as the case may be, and if such breach is capable of cure, the breaching party fails to cure such breach within thirty (30) days after receiving written notice thereof. Either party will have the right to terminate this Agreement if the other becomes insolvent or makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for such other party or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against such other party. Termination of this Agreement under this section terminates all Order Schedules and Software licenses granted hereunder.

7.2. Effect of Termination or Expiration. Upon termination or expiration of this Agreement or an Order Schedule, all Software licenses and rights to use Confidential Information that are granted thereunder shall terminate. Upon termination of this Agreement or expiration of the license term in any Order Schedule, you will: (a) promptly return to Coverity or destroy the applicable Software and Confidential Information and all copies and portions thereof, in all forms and types of media; and (b) promptly pay all fees owing up to the date of termination.

7.3. Survival. [Sections 1, 2.2, 2.4, 2.5, 3, 4.3, 5.3, 6, 7.2, 7.3 and 8](#), will survive the termination or expiration of this Agreement or of any Order Schedule.

8. GENERAL.

8.1. **Promotion.** Unless otherwise provided in the Order Schedule, you agree that Coverity may use your name and logo (in a form you approve) to identify you as a customer on Coverity's website or in marketing or publicity materials.

8.2. **Export Control.** You agree to comply fully with all relevant export laws and regulations, including those of the United States and the Member States of the European Union. These laws include restrictions on destinations, end-users and end use. you will ensure that neither the Software, nor any direct product thereof are: (a) exported or re-exported directly or indirectly in violation of applicable export laws; or (b) used for any purposes prohibited by applicable export laws, including but not limited to nuclear, chemical, or biological weapons proliferation. You will, at Coverity's request, demonstrate compliance with all such applicable export laws, restrictions, and regulations.

8.3. **Assignment.** You may not assign this Agreement, in whole or in part, by operation of law or otherwise, without Coverity's express prior written consent. Notwithstanding the above, if you merge with another company or are acquired, the surviving entity may continue to use the licenses to the Software licensed to you under accepted Order Schedules, upon prior written notice to Coverity, in compliance with the terms and conditions of this Agreement and solely with regard to the applicable authorized Code Base existing as of the time of the transaction. Any attempt to assign this Agreement without such consent will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

8.4. **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California excluding that body of laws known as conflicts of law. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and you and Coverity irrevocably consent to the personal jurisdiction and venue therein.

8.5. **Verification and Audit.** At Coverity's written request, you will furnish Coverity with (a) a certification signed by an officer of your company providing user or access information that identifies whether the Software is being used in accordance with the terms of this Agreement and the applicable Order Schedules, and (b) log files from any License Manager that regulates access to the Software. Upon at least thirty (30) days prior written notice, Coverity may engage, at its expense, an independent auditor to audit your use of the Software to ensure that you are in compliance with the terms of this Agreement and the applicable Order Schedules. Any such audit will be conducted during regular business hours at your facilities and will not unreasonably interfere with your business activities. You will provide the auditor with access to the relevant records and facilities. If an audit reveals that you have underpaid fees to Coverity during the period audited, then Coverity will invoice you, and you will promptly pay Coverity for such underpaid fees based on Coverity's price list in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the license fees paid by you for the Software, then you will also pay Coverity's costs of conducting the audit.

8.6. **Nonexclusive Remedy.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

8.7. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, natural disasters or governmental action.

8.8. **Notices.** All notices required or permitted under this Agreement will be in writing. Notices will be effective upon delivery if delivered in person and upon mailing if delivered by courier service, overnight delivery services or by a form of certified or express mail. Notices affecting this Agreement as a whole will be sent to the address set forth above, if any, or to such other address of a party as such a party may identify in writing; notices related to a particular transaction will be sent to the primary corporate addresses set forth in the Order Schedule or to such other address as you or Coverity may notify the other party in writing.

8.9. **Entire Agreement; Modification; Interpretation.** This Agreement, including all accepted Order Schedules referencing this Agreement, constitutes the complete and exclusive understanding and agreement between you and Coverity regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. You agree that additional or different terms on your purchase order shall not apply. Failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of this Agreement will be effective only if in writing and signed by you and an authorized representative of Coverity. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The word "including" when used in this Agreement will mean including without limitation of the generality of any description, definition, term or phrase preceding that word.

END OF TERMS