

NITRO PDF READER

END USER LICENSE AGREEMENT

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5.6 Licensee may not remove or obscure Nitro's copyright or trademark notices, or the copyright and trademark notices of third parties that Nitro has included in the Licensed Software and/or Documentation.

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10. US GOVERNMENT USERS

For U.S. Government users, Nitro agrees to comply with all applicable equal opportunity laws including, if appropriate, the provisions of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC 4212), and Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60, 60-250, and 60-741. The affirmative action clause and regulations contained in the preceding sentence are incorporated by reference in this EULA.

11. CONFIDENTIALITY

11.1 Licensee shall, in respect of Nitro's Confidential Information (as defined in Section 20 below):

11.1.1 keep the Confidential Information strictly confidential and not disclose any part of such Confidential Information to any person or entity except as expressly permitted by or as required for the exercise of its rights, or performance of its obligations under this EULA; and

11.1.2 take all reasonable steps to prevent unauthorized access to, and use of, the Confidential Information.

11.2 Licensee may disclose Confidential Information to, and allow its use in accordance with this EULA by, the following, provided that Licensee shall procure that any party to whom it discloses Confidential Information shall observe the restrictions in this Clause 11:

11.2.1 employees of Licensee who require it for Licensee to exercise its rights, or perform its obligations under this EULA; and

11.2.2 Licensee's auditors, attorneys and other professional advisors solely for the purposes of providing professional advice.

11.3 The restrictions in this Clause 11 do not apply to any information to the extent that:

11.3.1 is or becomes within the public domain other than through a breach of this Clause 11 or violation by any third party of a confidentiality obligation owed to Nitro.;

11.3.2 is in Licensee's possession (with the full right to disclose it) before receipt from Nitro or its affiliates, agents or sub contractors;

11.3.4 is independently developed by Licensee without access to or use of the Nitro Confidential Information; or

11.3.5 is required to be disclosed by law or by a court of competent jurisdiction or by any regulatory body, provided Licensee shall give Nitro prior notice of such intended disclosure and the opportunity to seek a protective order with respect thereto.

12. WARRANTIES OF THE PARTIES

Each party warrants that it has the full power and authority to enter into this EULA.

13. LIMITED WARRANTY ON MEDIA

Nitro warrants that any media on which the Licensed Software is distributed shall be free from defects for a period of thirty (30) calendar days from the date of receipt of the License. If Licensee discovers a defect in the media during this thirty (30) day period, Licensee may return the defective media to Nitro within ten (10) calendar days of discovering the defect, and Licensee's sole remedy shall be to have the defective media replaced.

14. NO WARRANTY ON LICENSED SOFTWARE

THE LICENSED SOFTWARE IS PROVIDED TO LICENSEE "AS IS." NITRO, AND NITRO'S LICENSORS AND SUPPLIERS, MAKE NO WARRANTY AS TO ITS USE OR PERFORMANCE. NITRO, AND NITRO'S LICENSORS AND SUPPLIERS, MAKE NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR TERMS (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, COURSE OF DEALING, TRADE PRACTICE OR OTHERWISE) AS TO THE LICENSED SOFTWARE, INCLUDING WITHOUT LIMITATION TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE, EXCEPT FOR, AND ONLY TO THE EXTENT THAT, ANY SUCH REPRESENTATION, WARRANTY CONDITION OR TERM MAY NOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION.

15. WARRANTY DISCLAIMER

THE WARRANTIES EXPRESSLY SET OUT IN THIS EULA ARE THE ONLY WARRANTIES THAT EACH PARTY GIVES TO THE OTHER IN RESPECT OF THE SUBJECT MATTER OF THIS EULA. ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, OR TERMS (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, COURSE OF DEALING, TRADE PRACTICE OR OTHERWISE) AS TO ANY MATTER ARE EXCLUDED OR LIMITED, EXCEPT FOR, AND ONLY TO THE EXTENT, THAT ANY SUCH REPRESENTATION, WARRANTY, CONDITION OR TERM MAY NOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION.

16. INDEMNIFICATION

16.1 Licensee shall indemnify, defend and hold harmless Nitro, Nitro's suppliers, and their respective affiliates, officers, directors, employees, representatives, and agents from and against all losses, damages, claims, liabilities, costs or expenses of whatever form or nature, including attorney's fees and other costs, arising out of or related to Licensee's use of the Licensed Software, except to the extent caused by the gross negligence or wilful misconduct of Nitro or subject to Nitro's indemnification obligation under Section 16.2 below. Nitro shall promptly notify Licensee in writing of any such claim; and Licensee shall have the exclusive right to control the defense of such claim, provided that if Licensee does not undertake such defense, or fails to prosecute such defense with reasonable care and diligence, Nitro at its option may undertake the defense of such claim and Licensee shall be liable for all costs incurred by Nitro in connection therewith. In no event shall either party settle or compromise any such claim without the other party's prior written approval, provided that (a) no such approval shall be required from a party provided with a complete release of claims and subject to no liability under such settlement or compromise, and (b) Nitro shall not be required to obtain the prior approval of Licensee if Licensee fails to undertake the defense of such claims hereunder, or fails to prosecute such defense with reasonable care and diligence. Nitro may, at its own cost and expense, assist in the defense of any such claim and be represented by counsel of its choice, provided that if Nitro undertakes the defense because Licensee fails to do so or fails to prosecute the defense with reasonable care and diligence Licensee shall be liable for all costs incurred by Nitro in connection therewith.

17. LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY OF LICENSEE ARISING UNDER CLAUSES 5 (PROHIBITED USES), 11 (CONFIDENTIALITY), and 19.2 (GENERAL; RESTRICTIONS ON TRANSFER), IN NO EVENT SHALL EITHER PARTY (OR IN THE CASE OF NITRO, NITRO'S LICENSORS OR

SUPPLIERS), BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, OR ANY LOST REVENUE, LOST PROFITS, LOST SAVINGS, LOST BUSINESS OR LOSS OF GOODWILL, EVEN IF ITS REPRESENTATIVE (OR IN THE CASE OF NITRO, A REPRESENTATIVE OF ONE OR MORE OF NITRO'S LICENSORS OR SUPPLIERS) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. THESE LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. EXCEPT FOR LIABILITY OF LICENSEE ARISING UNDER CLAUSES 5 (PROHIBITED USES), 12 (CONFIDENTIALITY), and 19.2 (GENERAL; RESTRICTIONS ON TRANSFER) AND 16.1 (INDEMNIFICATION) INDEMNIFICATION OBLIGATIONS HEREUNDER, THE AGGREGATE LIABILITY OF NITRO, AND NITRO'S LICENSORS AND SUPPLIERS, AND LICENSEE, RESPECTIVELY, UNDER OR IN CONNECTION WITH THIS EULA, SHALL BE LIMITED TO THE ANNUAL CONTRACT VALUE (AS DEFINED IN SECTION 20 BELOW).

18. TERMINATION

18.1 Nitro shall be entitled to terminate this EULA: (i) in its discretion, effective on the date ten (10) calendar days after serving written notice on the Licensee; and (ii) effective immediately upon serving written notice on the Licensee in the following circumstances:

18.1.1 if Licensee commits a material breach of any of its obligations under this EULA which is not capable of remedy; or

18.1.2 if Licensee commits a material breach of any of its obligations under this EULA which is not remedied within fifteen (15) calendar days after receipt of a notice from Nitro.

18.1.3 Termination of this EULA shall not affect any rights, obligations or liabilities of either party which have accrued before termination or which are intended to continue to have effect beyond termination. Without limiting the generality of the foregoing, Clauses 4, 5, 9, 11, 14-17 (inclusive), 18.1.3, 18.1.4, 19 (excluding Clause 19.3) and 20 shall survive any termination of this EULA.

18.1.4 Upon termination of this EULA, Licensee shall return to Nitro all copies of the Licensed Software, or verify in writing that all copies of the Licensed Software have been destroyed.

19. GENERAL

19.1 Except for the service of process pursuant to court proceedings and except as otherwise expressly agreed by amendment of this EULA, any notices in connection with this EULA from Licensee to Nitro shall be sent to Nitro c/o 717 Market Street, Suite 600, San Francisco, CA 94103, USA, and Level 3, 370 Little Bourke Street, Melbourne, Victoria 3000, Australia, and any notices in connection with this EULA from Nitro to Licensee shall be sent to Licensee's email address as provided to Nitro upon registration. Except as otherwise agreed, notice shall be deemed to have been given if sent for overnight delivery by an internationally recognized courier requiring a signature evidencing receipt, the next business day, and if sent by registered mail, return receipt requested, five (5) days after the mail is sent. Licensee warrants that any email address provided to Nitro will be valid, and that Licensee shall notify Nitro of a new email address if the previous email address becomes invalid.

19.2 Licensee may not, in whole or part, sublicense, assign, transfer, sell or otherwise dispose of the Licensed Software, or any of its any rights or obligations under this EULA, whether by merger, operation of law, assignment, sale or otherwise, without Nitro's express prior written consent. This EULA shall be binding upon and inure to the benefit of the permitted successors and assigns of Licensee hereto.

19.3 Nitro shall be entitled to sub-contract any or all of its obligations under this EULA to a sub-contractor. Nitro shall also be entitled to assign this EULA to any of its affiliates or to any successor in interest to all or substantially all of its business or assets related to this EULA, in each case whether by merger, operation of law, assignment, purchase or otherwise. This EULA shall be binding upon and inure to the benefit of the successors and assigns of Nitro hereto.

19.4 If any provision or part of any provision of this EULA is found to be invalid or unenforceable by any court or other competent body, that provision or part shall be enforced to the maximum extent permissible and such invalidity or unenforceability shall not affect the other provisions (or parts thereof) of this EULA, and such other provisions (and parts thereof) shall remain in full force and effect.

19.5 Neither party shall be liable for any delay or failure in the performance of its obligations under this EULA if such delay or failure is due to an event of Force Majeure.

19.6 If either party fails to exercise a right or remedy that it has or which arises in relation to this EULA, such failure shall not prevent that party from exercising that right or remedy subsequently in respect of that or any other incident.

19.7 A waiver of any breach of provision of this EULA shall only be effective if it is made in writing and signed on behalf of the party who is waiving the breach of provision. Any waiver of a breach of any provision of this EULA shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other provision of this EULA.

19.8 This EULA and all matters arising out of it shall be governed by, and construed in accordance with, the laws of: (i) if Licensee's domicile is within the United States of America ("USA"), the State of California; or (ii) if Licensee's domicile is outside

the USA, the laws of the State of Victoria, Australia. The state and federal courts situated in: (i) the City and County of San Francisco, California, USA, if Licensee's domicile is within in the USA; or (ii) the City and State of Melbourne, Victoria, Australia, if Licensee's domicile is outside the USA; shall have exclusive jurisdiction over any claim or matter which may arise out of or in connection with this EULA, and each party hereby consents to such jurisdiction and waives any objection to venue in such courts.. Notwithstanding the foregoing, each party shall have the right to institute judicial proceedings against the other party or anyone acting by, through or under such other party, in any court of competent jurisdiction in order to enforce the instituting party's rights hereunder through specific performance, injunction or other equitable relief.

19.9 Modifications of or amendments to this EULA may be made by Nitro at any time by posting a modified version of this EULA reflecting such amendments on www.nitroreader.com, including without limitation where such amendment is: (i) required by law, regulation or court order (or is made in anticipation of an impending change in applicable law or regulation), or (ii) made in the ordinary course of Nitro's business, applicable to substantially all of Nitro's licensees located in the Licensee's jurisdiction that have agreed to terms similar to those set out in this EULA. Licensee may terminate this EULA by ceasing all use of the Licensed Software and returning to Nitro or destroying all copies of the Licensed Software if Licensee does not agree with the amendment. The amendment shall be deemed accepted by Licensee if Licensee does not terminate this EULA.

19.10 This EULA sets out all of the terms agreed between the parties relating to the subject matter of this EULA, and this EULA supersedes any an all prior and contemporaneous representations, discussions, undertakings, communications, arrangements advertisements and understandings relating to its subject matter. Neither of the parties shall be bound by, or liable to the other party for, any representation, undertaking or inducement (other than fraudulent misrepresentations) made by it or by any agent or person acting on its behalf which is not expressly contained in this EULA.

19.11 The parties hereby agree that nothing in this EULA shall be construed as creating a right which is enforceable by any person who is not a party to this EULA or a permitted assignee of such a party.

19.12 In this EULA:

19.12.1 any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;

19.12.2 except for the reference contained in the last sentence of Clause 10 of this EULA, references to Clauses are to the clauses of this EULA;

19.12.3 the singular includes the plural and vice versa;

19.12.4 the headings are for ease of reference only and shall not affect the construction or interpretation of this EULA;

19.12.5 where any matter is to be agreed, such agreement shall be recorded in writing; and

19.12.6 wherever the words "including", "include", "includes" or "included" are used they shall be deemed to be followed by the words "without limitation" unless the context otherwise requires.

19.13 Nitro uses DeskMetrics Analytics to collect information and improve the products and features users use most often and to help solve problems. DeskMetrics collects NON-PERSONALLY IDENTIFIABLE information about this installation and the software usage. Collection of this information ONLY occurs during the software installation and execution; in accordance with DeskMetrics' Privacy Policy, available at <http://deskmetrics.com/analytics/privacy-policy/>

20. DEFINITIONS

In this EULA the following words and expressions shall have the following meanings:

Word or Expression - Meaning

Confidential Information - The terms of this EULA, the Licensed Software, and any and all information that a reasonable person would know is confidential given the nature of the information or the circumstances governing its disclosure including, without limitation, information relating to patented or patentable subject matter, copyrighted or copyrightable subject matter, trade secrets, financial conditions, operations, processes, practices, plans (including product development plans), intentions, products, prices, know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of Nitro and its affiliates and/or their respective customers, licensors and suppliers in or on any medium or format;

Effective Date - The date Licensee's receipt of the License;

Force Majeure - Any act of government or state, civil commotion, epidemic, fire, flood, industrial action or organised protests by third parties, natural disaster, war, act of terrorism, services provided by third parties, or event beyond the reasonable control of the party claiming to be excused from performance of its obligations;

Term - The period commencing with the Effective Date and ending on the Termination Date;

Termination Date - The effective date of termination of this EULA pursuant to Clause 18; and

Terms and Conditions - The terms and conditions of this EULA, as amended from time to time as provided for herein.

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