

End-User License Agreement ("Agreement")

Last updated: October, 2018

Please read this End-User License Agreement ("Agreement") carefully before clicking the "I Agree" button, downloading or using the software or online application ("Application"). By clicking the "I Agree" button, downloading or using the Application, you are agreeing to be bound by the terms and conditions of this Agreement.

This Agreement is a legal agreement between you (either an individual or a single entity) and Conklin & deDecker Associates, Inc. ("C&D") and it governs your use of the Application made available to you by C&D. If you do not agree to the terms of this Agreement, do not click on the "I Agree" button and do not download or use the Application.

The Application is licensed, not sold, to you by C&D for use strictly in accordance with the terms of this Agreement.

1. License

C&D grants you a revocable, non-exclusive, non-transferable, limited license to download, install and use the Application and its output (including, without limitation, reports and analytics) solely for your personal, internal business purposes strictly in accordance with the terms of this Agreement. You shall permit C&D to audit your use of the Application to confirm compliance with this Agreement. Such audit may be conducted at C&D's expense and in such a manner as not to unreasonably interfere with your normal conduct of business. If any audit reveals that you have underpaid, then without limitation on any other right or remedy available to C&D, you shall pay to C&D within 10 business days of the date of the relevant audit the applicable amount of the underpayment.

2. Restrictions

You agree not to, and you will not permit others to: (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Application in any form or media or by any means; or (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application; or (c) access all or any part of the Application in order to build a product or service that competes with the Application; or (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Application or its output (including, without limitation, reports and analytics), or otherwise make the Application or its output (including, without limitation, reports and analytics) available to any third party (e.g., as a service bureau); or (e) circumvent or disable any security or other technological features or measures of the Application.

3. Intellectual Property and Confidentiality

- a. The Application and its output (including, without limitation, reports and analytics), including without limitation all copyrights, patents, trademarks, trade secrets and other intellectual property rights are, and shall remain, the sole and exclusive property of C&D. Any feedback, comments, ideas, improvements or suggestions (collectively, "Suggestions") that you provide to C&D with respect to the Application shall remain the sole and exclusive property of C&D. To the extent you have or obtain any intellectual property rights in or to such Suggestions, you hereby assign all such rights to C&D free of all liens and encumbrances. C&D shall be free to use, copy, modify, publish, or redistribute the Suggestions for any purpose and in any way without any credit or any compensation to you.
- b. "Customer Data" means the data entered by you or your authorized users for the purpose of using the Application or facilitating your use of the Application. C&D hereby acknowledges and agrees that all rights, title and interest in and to Customer Data are and shall remain your property, and all intellectual property rights including copyright, trademark, and trade secret rights in Customer Data are and will remain your property. You hereby grant to C&D, during the term of this Agreement the necessary rights or license to use, reproduce, promote, distribute, modify, publicly display and perform, cache, and transmit Customer Data via the Application solely as necessary for the purposes of this Agreement. Without limiting the foregoing, C&D also has, and you hereby grant to C&D, a perpetual, royalty-free, fully paid-up, non-exclusive right and license to use any Customer Data in de-identified aggregated form (i) for C&D's internal business purposes, and (ii) to make any modifications or improvements to any Application and to offer such modifications or improvements on a commercial basis to any third party. For the avoidance of doubt, "Customer Data" does not include any Application output (including, without limitation, reports and analytics), all of which is C&D's property and C&D's Confidential Information.
- c. As used herein, "Confidential Information" means all confidential information disclosed by or otherwise obtained from a party ("Disclosing Party") to or by the other party ("Receiving Party"), whether orally, visually or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your "Confidential Information" includes Customer Data and the content of reports produced by the Application. C&D's "Confidential Information" includes each Application and all documentation supplied by C&D, and any information pertaining to Third Party Services (defined in Section 6). However, "Confidential Information" does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without the use of or reference to the Disclosing Party's Confidential Information. For the avoidance of doubt, any Suggestions shall be deemed C&D's Confidential Information.

- d. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party shall (i) protect the Disclosing Party's Confidential Information using the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care), (ii) not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (iii) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Notwithstanding the foregoing, C&D also is permitted to disclose your Confidential Information on a need to know basis to employees, contractors and agents of its direct and indirect parents, subsidiaries and sister entities. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

4. Modifications to Application

C&D reserves the right to modify, suspend or discontinue, temporarily or permanently, the Application or any service to which it connects, with or without notice and without liability to you.

5. Updates to Application

C&D may from time to time provide enhancements or improvements to the features/functionality of the Application, which may include patches, bug fixes, updates, upgrades and other modifications ("Updates"). Updates may modify or delete certain features and/or functionalities of the Application. You agree that C&D has no obligation to (i) provide any Updates, or (ii) continue to provide or enable any particular features and/or functionalities of the Application to you. You further agree that all Updates will be (i) deemed to constitute an integral part of the Application, and (ii) subject to the terms and conditions of this Agreement.

6. Third-Party Services

The Application may display, include or make available third-party content (including data, information, applications and other products services) or provide links to third-party websites or services ("Third-Party Services"). You acknowledge and agree that C&D shall not be responsible for any Third-Party Services, including their accuracy, completeness, timeliness, validity, copyright compliance, legality,

decency, quality or any other aspect thereof. C&D does not assume and shall not have any liability or responsibility to you or any other person or entity for any Third-Party Services. Third-Party Services and links thereto are provided solely as a convenience to you and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

7. Privacy Policy

C&D collects, stores, maintains, and shares information about you in accordance with its Privacy Policy, which is available at <https://www.conklindd.com/privacy>. By accepting this Agreement, you acknowledge that you hereby agree and consent to the terms and conditions of our Privacy Policy.

8. Term and Termination

This Agreement shall remain in effect until terminated by you or C&D. C&D may, in its sole discretion, at any time and for any or no reason, suspend or terminate this Agreement with or without prior notice. This Agreement will terminate immediately, without prior notice from C&D, in the event that you fail to comply with any provision of this Agreement. You may also terminate this Agreement by deleting the Application and all copies thereof from your mobile device and from your computer, as applicable. Upon termination of this Agreement, you shall cease all use of the Application and delete all copies of the Application from your mobile device and from your computer, as applicable. Termination of this Agreement will not limit any of C&D's rights or remedies at law or in equity in case of breach by you (during the term of this Agreement) of any of your obligations under the Agreement. Notwithstanding any termination of this Agreement, the terms in Sections 2, 3, 6, and 8-20 shall survive and remain binding on the parties.

9. Indemnification

- a. You agree to indemnify and hold C&D and its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (if any) harmless from any claim or demand, including reasonable attorneys' fees, due to or arising out of your: (i) use of the Application; (ii) violation of this Agreement or any law or regulation; or (iii) violation of any right of a third party.
- b. If your use of the Application in accordance with this Agreement is, or in C&D's reasonable opinion is likely to become, the subject of any claim asserting infringement or misappropriation of any third-party intellectual property rights then C&D may, at C&D's sole option: (i) procure a license to allow you to continue using the Application; (ii) replace or modify the Application in a functionally equivalent manner so that it no longer infringes; or (iii) terminate your right with respect to the Application and return to you on a pro rata basis the portion of license fees pre-paid by you with respect to the Application. Upon C&D providing you with any replacement or modified Application, you are obligated to use such replacement or modified Application and to cease using the prior Application.

10. No Warranties

- a. THE APPLICATION IS PROVIDED TO YOU "AS IS" AND "AS AVAILABLE" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, C&D, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, C&D PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.
- b. WITHOUT LIMITING THE FOREGOING, NEITHER C&D NOR ANY C&D'S PROVIDER MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED: (A) AS TO THE OPERATION OR AVAILABILITY OF THE APPLICATION, OR THE INFORMATION, CONTENT, AND MATERIALS OR PRODUCTS INCLUDED THEREON; (B) THAT THE APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE; (C) AS TO THE ACCURACY, RELIABILITY, OR CURRENCY OF ANY INFORMATION OR CONTENT PROVIDED THROUGH THE APPLICATION; OR (D) THAT THE APPLICATION, ITS SERVERS, THE CONTENT, OR E-MAILS SENT FROM OR ON BEHALF OF C&D ARE FREE OF VIRUSES, SCRIPTS, TROJAN HORSES, WORMS, MALWARE, TIMEBOMBS OR OTHER HARMFUL COMPONENTS.
- c. Some jurisdictions do not allow the exclusion of or limitations on implied warranties or the limitations on the applicable statutory rights of a consumer, so some or all of the above exclusions and limitations may not apply to you.

11. Limitation of Liability

- a. Notwithstanding ANY DAMAGES THAT YOU MIGHT INCUR, THE ENTIRE LIABILITY OF C&D AND ANY OF ITS SUPPLIERS UNDER ANY PROVISION OF THIS AGREEMENT AND YOUR EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE APPLICATION.
- b. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL C&D OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, FOR LOSS OF DATA OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE APPLICATION, THIRD-PARTY SOFTWARE AND/OR THIRD-PARTY HARDWARE USED WITH THE APPLICATION, OR OTHERWISE IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT), EVEN IF C&D OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

- c. Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

12. Severability

If any provision of this Agreement is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

13. Waiver

The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

14. Export Compliance

You may not export or re-export the Application except as authorized by United States law and the laws of the jurisdiction in which the Application was obtained. In particular, but without limitation, the Application may not be exported or re-exported (a) into or to a nation or a resident of any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By installing or using any component of the Application, you represent and warrant that you are not located in, under control of, or a national or resident of any such country or on any such list.

15. Amendments to this Agreement

C&D reserves the right, at its sole discretion, to modify or replace this Agreement at any time. If a revision is material we will provide at least 30 days' notice prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion. By continuing to access or use our Application after any revisions become effective, you agree to be bound by the revised terms. If you do not agree to the new terms, you are no longer authorized to use the Application.

16. Assignment

You may not assign or transfer (whether by operation of law, merger, change of control, or otherwise) this Agreement or any of your rights or obligations under this Agreement without the prior written consent of C&D. Any attempted assignment or transfer without C&D's consent is void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

17. Force Majeure

Except for your obligation to pay license fees to C&D, neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including but not limited to acts of God, government restrictions (including the denial or cancellation of any export of other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected (including mechanical, electronic, internet service provider or communications failure). Each party will have the right to terminate this Agreement immediately by sending a written notice to the other party upon the occurrence of a force majeure event pursuant if such force majeure event has continued for a period more than sixty (60) calendar days.

18. Governing Law and Venue

Any dispute between the parties relating to this Agreement will be construed under the laws of the State of Illinois applicable to contracts between residents of Illinois that are to be wholly performed within the State. The parties hereby irrevocably and unconditionally consent to and submit to the personal jurisdiction and venue of the courts of Cook County, Illinois, for all actions, suits or proceedings in respect of or arising out of this Agreement. Your use of the Application may also be subject to other local, state, national, or international laws. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Good.

19. Contact Information

If you have any questions about this Agreement, please contact us via email at Legal@C&D.com.

20. Entire Agreement

The Agreement constitutes the entire agreement between you and C&D regarding your use of the Application and supersedes all prior and contemporaneous written or oral agreements between you and C&D. You may be subject to additional terms and conditions that apply when you use or purchase other C&D's services, which C&D will provide to you at the time of such use or purchase.