

## SOFTWARE MAINTENANCE AGREEMENT

### 1. DEFINITIONS

Unless otherwise defined herein, each term listed below shall have the meaning set forth below:

- 1.1 “SCALABLE” means SCALABLE Network Technologies, Inc., a California corporation, with corporate offices at 600 Corporate Pointe, Suite 1200, Culver City, CA 90230, USA.
- 1.2 “Coverage Date” means the date that Software, and corresponding Maintenance, is ordered via SCALABLE’s receipt of a valid purchase order from Licensee or an authorized SCALABLE reseller.
- 1.3 “Coverage Period” means the term of a Software Maintenance Agreement. A Coverage Period is one or more blocks of twelve (12) contiguous months.
- 1.4 “Documentation” means the printed or on-line materials provided by SCALABLE that document the functions of the Software.
- 1.5 “Executable Code” means a program file stored in a format that can be executed by a Supported Computer without modification or when linked into a program.
- 1.6 “IP Address” means an Internet Protocol address.
- 1.7 “License Fee” means the then-effective fee established by the SCALABLE and set forth in a separate SCALABLE Price List for authorizing the use of Software.
- 1.8 “Licensed Computer” means a Supported Computer that has been registered with SCALABLE as that which is authorized to run the Licensed Product in the case of a “node-locked” license. In installations where there are multiple licenses for Licensed Products that are shared among multiple Supported Computers, “server-locked” licenses are managed on a central license server, and allocated to authorized users.
- 1.9 “Licensee” means any legal entity that obtained the Software and/or on whose behalf it is used.
- 1.10 “Licensee’s Network” means a local area network of one or more Supported Computers, which are solely owned or rented, operated, and administered by the Licensee, where each has in common an IP Address subnet, and on which the Software is installed and registered with SCALABLE, and which communicate with a Supported Computer that enables the execution of Executable Code and enforces the restrictions set forth in this License Agreement as to term of license, permitted IP addresses, and limits on the number of simultaneous users. A computer is no longer part of a Licensee’s Network if it is loaned, rented or sold by the Licensee to another party, or if someone other than authorized users is permitted to access the computer.
- 1.11 “Licensed Product” means the Software and the Documentation.
- 1.12 “Maintenance” means updates, including but not limited to bug fixes, patches, modifications and new functionality, to the Software, which are provided to the Licensee under this agreement for a Maintenance Fee.
- 1.13 “Maintenance Fee” means the then-effective fee established by SCALABLE and set forth in a separate SCALABLE Price List for providing Maintenance of the Software under a Software Maintenance Agreement during a designated Coverage Period.
- 1.14 “Renewal Date” means the date that a Coverage Period expires, and the corresponding Maintenance Agreement terminates.
- 1.15 “Software” means (a) all of the information with which this agreement is provided, including but not limited to: (i) all software files and other computer information, whether contained in magnetic, optical, semiconductor, hardcopy, or other storage media, including without limitation Source Code, Executable Code, and data files; (ii) any proprietary scripting logic embedded within exported file formats; and (iii) related Documentation; and (b) any modified versions and copies of, and upgrades, updates, and additions to, such information, provided to Licensee by SCALABLE at any time, to the extent not provided under separate terms (collectively, “Updates”).

- 1.16 "Software Maintenance Agreement" means an agreement between SCALABLE and the Licensee, under which SCALABLE provides Maintenance to the Licensee, upon payment of SCALABLE's then-effective Maintenance Fee.
- 1.17 "Source Code" means a program file stored in a human-readable text format and that can be translated to Executable Code by an appropriate compiler or assembler, or that can be interpreted by an appropriate interpreter program.
- 1.18 "Supported Computer" means a computer that meets the specifications (including a supported operating system, compiler, and other required software) listed in SCALABLE's current standard Supported Computer List located in the Documentation or on SCALABLE's website (currently [www.scalable-networks.com](http://www.scalable-networks.com)).

## **2. TERM AND FEES**

- 2.1 Initial Term. When Maintenance is purchased under a Software Maintenance Agreement for newly licensed Software, the Coverage Period shall be for the term as specified on a valid purchase order accepted by SCALABLE, commencing on the Coverage Date.
- 2.2 Renewal. When Maintenance is purchased under a Software Maintenance Agreement for previously licensed Software, the Coverage Period shall be for the term as specified on a valid purchase order accepted by SCALABLE, commencing on the Renewal Date for the most recent Maintenance Agreement covering that Software.
- 2.3 Maintenance fees are nonrefundable.

## **3. MAINTENANCE SERVICES**

- 3.1 Upgrades and Enhancements. A Software Maintenance Agreement entitles the Licensee to all software upgrades, enhancements and patches for Licensed Software released by SCALABLE during the Maintenance and Support Period. All such upgrades, including documentation and manuals, are normally made available through electronic downloads. If Licensee has multiple licenses of SCALABLE Software, and Software Maintenance has not been purchased for all of the licenses, Licensee may upgrade only the licenses covered under the Software Maintenance Agreement.
- 3.2 License Transfer (Rehosting). A Licensed Product may be moved from a Licensed Computer to another Supported Computer once per calendar year at no charge, subject to the terms of the SCALABLE Software License Agreement. Additional license transfers, to an annual maximum of four (4) transfers, can be performed for SCALABLE's current license transfer fee.

## **4. SUPPORTED PRODUCTS**

Software Maintenance Services are available for only the currently supported Licensed Products and product versions/releases as specified on the SCALABLE website ([www.scalable-networks.com](http://www.scalable-networks.com)).

## **5. LIMITED WARRANTY**

- 5.1 SCALABLE warrants that (a) it is the owner of the Licensed Products, (b) it has the right to enter into this agreement, and (c) performance of its obligations under this agreement shall not be unlawful, or in violation of any other contract entered into by SCALABLE.
- 5.2 Except as otherwise stated in a separate agreement between SCALABLE and Licensee, SCALABLE warrants that the Software, as covered under a current Software Maintenance Agreement, and as originally delivered and unaltered, shall operate substantially as specified in the then effective Documentation, provided that the Software is used with a Supported Computer. SCALABLE does not warrant that the operation of the Software in accordance with the Documentation shall meet any particular needs or requirements imposed or created by the Licensee.
- 5.3 Licensee's exclusive remedy for breach of Section 5.2 is to have SCALABLE use commercially reasonable efforts during the term of a Software Maintenance Agreement to correct any documented non-conformity of the Software that is reported in writing to SCALABLE. The method of correction of the non-conformity shall be selected solely by SCALABLE.

## 6. DISCLAIMER

EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 5, SCALABLE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION FURNISHED UNDER THIS LICENSE AGREEMENT. Each party to this agreement acknowledges and agrees that it has not relied upon any representation or warranty, express or implied, by the other party in entering into this agreement other than those made by each party and contained in this agreement. No representation, including, but not limited to, statements regarding capability, suitability for use, accuracy or performance of the Software, whether made by SCALABLE employees or otherwise, shall be deemed to be a warranty by SCALABLE for any purpose, or give rise to any liability of SCALABLE, unless contained in this agreement, or a written addendum executed by SCALABLE and Licensee. The parties disclaim any applicability of the Uniform Commercial Code or United Nations Convention on Contracts for the International Sale of Goods.

## 7. LIMITATION OF LIABILITIES

SCALABLE SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, COLLATERAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFIT OR BUSINESS INTERRUPTION) RESULTING FROM LOSS OF USE, DATA, OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE AGREEMENT, OR THE USE, INABILITY TO USE OR PERFORMANCE OF THE SOFTWARE AND DOCUMENTATION FURNISHED UNDER THIS LICENSE AGREEMENT, WHETHER IN AN ACTION OF CONTRACT, TORT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, OR OTHER THEORY, EVEN IF SCALABLE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNLESS SUCH DAMAGE HAS BEEN CAUSED BY SCALABLE'S WILLFUL MISCONDUCT. IN NO EVENT SHALL SCALABLE'S LIABILITY TO LICENSEE EXCEED THE AMOUNT PAID TO SCALABLE BY THE LICENSEE UNDER THIS LICENSE AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE ACCRUAL OF THE CAUSE OF ACTION.

## 8. Export Rules

Licensee acknowledges that the Software is subject to United States export laws and regulations including but not limited to the U.S. Export Administration Regulations ("EAR") and the International Traffic in Arms Regulations ("ITAR") and may be subject to export and import laws of other countries. The Licensee agrees to comply with the EAR and ITAR, and all other applicable export laws and regulations. Licensee will not export or re-export the Software, directly or indirectly, to: (a) any countries that are subject to U.S. export restrictions (including, but not limited to, Cuba, Iran, Iraq, North Korea, Sudan, and Syria); (b) any end user whom Licensee knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons; or (c) any end user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government including entities or individuals found on the U.S. screening lists (see U.S. government's consolidated screening list at [http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp)). In addition, Licensee is responsible for complying with any local laws in Licensee's jurisdiction which may impact its right to import, export, or use the Software. Illegal export or misappropriation in violation of United States export laws by the Licensee will be considered a material breach of the License and SCALABLE may, at its discretion, terminate or suspend its obligations to provide maintenance and support for the Software.

## 9. Governing Law

This agreement shall be interpreted and construed under the internal substantive laws of the State of California without reference to choice of law or conflict of law principles. This agreement is deemed accepted, executed and performed in California. The state and federal courts located in Los Angeles, California shall have exclusive jurisdiction over any action at law or in equity arising out of or under or relating to this agreement. The parties waive any objection based on personal jurisdiction, venue and *forum non conveniens* or similar doctrine.

## 10. General Provisions

- 10.1 If any part of this agreement is found void and unenforceable, it will not affect the validity of the balance of this agreement, which will remain valid and enforceable according to its terms. This agreement may only be modified in writing, signed by an authorized officer of SCALABLE. The English version of this agreement will be the version used when interpreting or construing this agreement. This is the entire agreement between SCALABLE and Licensee relating to the Software and it supersedes any prior representations, discussions, undertakings, communications, or advertising relating to the Software.

10.2 Either party's failure to exercise any of its rights under this agreement shall not constitute a waiver of any past, present, or future right or remedy.