

<b>END USER LICENSE AGREEMENT SCALEDYNAMICS</b>
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V3 as of January 15, 2021

THIS END USER LICENSE AGREEMENT (“**EULA**” or the “**AGREEMENT**”) IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN YOU (THE “**END USER**”) AND SCALEDYNAMICS (“**SCALEDYNAMICS**”).

UPON THE CONDITION THAT THE END USER LAWFULLY OBTAINED THE LICENSED SOFTWARE FROM AN APPROVED SOURCE, BY CLICKING THE “ACCEPT” BUTTON, CLICKING A BOX INDICATING THE END USER’S ACCEPTANCE OR INSTALLING, DOWNLOADING, LOADING OR USING THE SOFTWARE THAT IS PROVIDED WITH THIS AGREEMENT, THE END USER AGREES WITH THE TERMS AND CONDITIONS OF THIS EULA.

IF THE END USER IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THE END USER REPRESENTS THAT IT HAS THE AUTHORITY TO BIND SUCH ENTITY TO THIS EULA.

IF THE END USER DOES NOT AGREE TO THESE TERMS, THE END USER SHALL NOT DOWNLOAD, INSTALL, COPY, ACCESS OR USE THE TRIAL VERSION SOFTWARE.

**1. DEFINITIONS**

“**Cloud Services**” means the licensed third-party cloud services selected by SCALEDYNAMICS used in conjunction with the Service.

“**Commercial License**” means the then-current commercial license available for the SCALEDYNAMICS Product, which may be use for commercial purpose or in a production environment.

“**Confidential Information**” means any and all information that a Party may communicate to the other Party pursuant to this EULA, in written or other tangible form and marked “Confidential”, “Proprietary” or collected by a Party pursuant to this EULA or that appears to a reasonable person to be confidential. Confidential Information shall include but shall not be limited to any business, commercial, technical or other information related to a Party or to the subject matter of this EULA (e.g. without limitation, know-how, trade secrets, inventions, development, present or future products, work-in-progress, future development, algorithms, schematics, graphical interface, designs, business information).

“**Documentation**” means the SCALEDYNAMICS-provided user manuals, training materials, descriptions and technical specifications, technical manuals, supporting materials and other information relating to the Software.

“**Effective Date**” means the date the applicable Order Form is executed or the date this Agreement is referenced by the applicable purchase order or by any applicable SCALEDYNAMICS’ document (e.g. POC) or the date of creation of the User Account when the Trial Version Software is automatically obtained by the End User from SCALEDYNAMICS’ website.

“**End User Project**” means the website, application, API, or microservices developed by the End-User with the Module installed on its Terminal and accessible via an URL.

**“End User Content”** means any content including but not limited to software program, website, application or source code for such programs, all data, files, databases, libraries, documents, audio and visual information, graphics, scripts, programs, website static assets (JavaScript files, style sheets, images *etc.*), server code, that the End User creates, installs, uploads to or transfers in or through the Service or provides in the course of using the Service. The End User is responsible for all End User Content that is uploaded, posted, transmitted, or otherwise made available through the Service.

**“Fees”** means the fees applicable to the use of the Commercial License, stated in the Order Form (or, if no such price is specified, the price set out in SCALEDYNAMICS’ then-current standard published price list).

**“Login Credentials”** means collectively the End User ID, valid email and the password set or changed by the End User.

**“Module”** means the SCALEDYNAMICS program to be installed, deployed or run by the End User on the Terminal in order to access to and operate the Service.

**“Open Source Software”**: any software or work, including where appropriate, any and all modifications, derivative work, enhancements, upgrades, improvements, and/or fixed bugs, made to the source code of such software or work, released under an open-source software license or a free software license (e.g. but not limited to (A) GNU General Public License (GPL), (B) GNU Lesser/Library GPL (LGPL), (C) the Artistic License, (D) the Mozilla Public License, (E) the Common Public License, (F) the Sun Community Source License (SCSL), (G) the Sun Industry Standards Source License (SISSL), (H) BSD License, (I) MIT License, (J) Apache Software License, (K) Open SSL License, (L) IBM Public License, (M) Open Software License).

**“Order Form”** means any order form, sales quotation, proposal, purchase order or other ordering document issued or accepted by SCALEDYNAMICS that references this Agreement. Each Order Form will form part of this Agreement.

**“Party(ies)”** means individually or collectively the End User and/or SCALEDYNAMICS.

**“SCALEDYNAMICS Product(s) or Product(s)”**: means individually and/or collectively any product or service, released by SCALEDYNAMICS to be generally available for purchase.

**“Service”**: means the service and infrastructure in a hosted environment provided and maintained by SCALEDYNAMICS, for which a temporary access is granted to the End User through the use of the Software in PaaS mode (including but not limited to deployment from a setup command line), in accordance with the terms of this EULA.

**“Software”** means both the Commercial version and the Trial Version Software. For the avoidance of doubt, specific provisions of the EULA may only apply to the Trial Version Software.

**“Terminal”** means the hardware lawfully owned or controlled by the End User or by a corporation or legal entity when the End User acts on behalf of such corporation or legal entity (personal computer or on-premise server or public and/or private cloud-server), device or system running nodejs, a browser and/or a docker with a storage system capable of running the Trial Version Software and accessing the Service.

**“Trial Version Software”** means the SCALEDYNAMICS software made available to the End User in object code form by SCALEDYNAMICS with certain function, parameters or values preset by SCALEDYNAMICS for testing and trial use of the Module only and only during the Trial Period.

“URL” means the Service-generated-URL which identifies the End-User Project and makes it accessible to any third-party who are provided with the URL.

“User Account” means the account created by the End User on the SCALEDYNAMICS platform in order to access the Software and/or the Service and use their functionality and features. The End User must provide accurate and complete registration information and is responsible for the security of its password and for any use of its User account.

## **2. PURPOSES**

### **2.1. Ordering and use of the Software**

This Agreement shall govern each Order Form issued by the End User and the access and/or use of the Software and the Service by the End User during the term set forth in **Section 13**.

This EULA, together with the Order Form constitutes the entire Agreement between SCALEDYNAMICS and the End User, and supersedes (i) all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and (ii) the End User’s terms and conditions of purchase.

### **2.2. Evaluation Purpose**

If the End User chooses the Trial Version Software, the End User may use certain functionalities of the Software and Service made available by SCALEDYNAMICS at its discretion, but only to test and evaluate the Trial Version Software for its intended purpose during the amount of time set out in **Section 13.1** (the “**Trial Period**”).

The End User acknowledges and accepts that SCALEDYNAMICS may, at any time during the Trial Period, change, adapt or amend the parameters, values and functionalities either in whole or in part of the Trial Version Software.

THE END USER AGREES THAT THE SOFTWARE IS A TRIAL VERSION OF SCALEDYNAMICS SOFTWARE FOR THE END USER’S UNDERSTANDING OF THE CONTENT OF SUCH PRODUCT BEFORE PURCHASING IT.

THE TRIAL VERSION SOFTWARE LICENSED HEREUNDER IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND MAY CONTAIN DEFECTS.

In no event will SCALEDYNAMICS be obliged to provide the End User with a copy of the commercial release version of the Trial Version Software in connection with the End User’s use of the Trial Version.

If the End User desires to acquire SCALEDYNAMICS Product(s), then the End User must obtain the then-current Commercial License(s) and pay the applicable Fees.

During the Trial Period, the End User agrees to provide free of charge feedback (e.g. suggestions, comments, bug reports, etc.) related to the Trial Version Software, as reasonably requested by SCALEDYNAMICS. The End User grants to SCALEDYNAMICS, without charge, the perpetual, sublicensable right to exploit such feedback for any purpose.

The Trial Version Software is subject to the terms and condition of the EULA to the same extent as the commercial release of the Software, unless otherwise expressly stated hereinafter.

### 3. INTELLECTUAL PROPERTY RIGHTS

SCALEDYNAMICS retains all right, title, and interest, including all copyrights, patents, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights, and all applications and registrations with respect thereto applying to the Software (and any future version(s) of SCALEDYNAMICS Software), anywhere in the world ("**Intellectual Property Rights**").

All Intellectual Property Rights in the Software are and will remain with SCALEDYNAMICS. SCALEDYNAMICS reserves any rights not expressly granted to the End User in this EULA.

The End User undertakes to use materials, personal data, corporate data and/or digital content contained in or related to the End User Content or the End User Project, for which it has full rights of use, permits and/or licenses.

The End User retains all its ownership rights in the End User Content and/or in the End-User Project.

### 4. LICENSE GRANT - RESTRICTIONS

#### 4.1. Licensed rights

Subject to the terms and conditions of this EULA, SCALEDYNAMICS hereby grants to the End User a worldwide, non-exclusive, non-transferable license (without the right to sublicense) to use the Software and the Service for the duration set forth in **Section 13**. With exception of the foregoing, the rights to use the Trial Version are provided free of charge during the Trial Period.

The End User is allowed to install the Module on any of Terminals.

When the End User is a corporation or another legal entity, the Trial Version Software and the Service can be used by an unlimited number of users (the "**Authorized Users**") within such corporation or legal entity as long as they are granted Login Credentials.

#### 4.2. Restrictions

Except as otherwise specifically permitted in this EULA, the End User shall not:

- use the Software or the Service for any purposes other than the development of the End User Project;
- modify, translate or create any derivative works of the Software or Documentation;
- work around any technical limitations in the Software;
- copy the Module or the Software except as provided in this EULA;
- reverse engineer, decompile, or disassemble or otherwise attempt to derive the source code of the Module and/or the Software;
- hack the Software, the Service or the Cloud Services or otherwise attempt to unlawfully access and use other end users' URLs and End User Projects, SCALEDYNAMICS' PaaS cloud resources, the Cloud Services providers' cloud resources and/or any other cloud resources made accessible via other end user projects;
- market, redistribute, encumber, sell, rent, lease, share, sublicense the Software or the Service, or otherwise transfer rights to the Software for any reason whatsoever;
- remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or Documentation;
- make any representations to the End User's prospective customers which are not made by SCALEDYNAMICS in the EULA; or
- use the Software or the Service in any way that is against the law;

- access the Software or the Service in order to (i) build a competitive product or service; or (ii) copy any ideas, features, functions or graphics of the Service;
- file applications or make declarations in order to be granted Intellectual Property Rights for works or creations before any authority or office in the world, which derive, in whole or in part, from the Software, the Service and/or the Confidential Information.

The End User is responsible for keeping its Login Credentials confidential and not sharing them with unauthorized users. If the End User discloses its Login Credentials to someone, the End User shall be responsible for damages incurred by SCALE DYNAMICS, the End User or any third party resulting or in connection with any use, disclosure, additions, deletions and modifications of such Login Credentials. If the End User becomes aware of any unauthorized use of its Login Credentials or of its User Account, the End User agrees to notify SCALE DYNAMICS immediately.

### **4.3. End User Content and End User Project**

To enable SCALE DYNAMICS to provide the End-Users with the Service, the End-User grants SCALE DYNAMICS the right to use, process and transmit, in accordance with this Agreement the End-User Content and the End User Project for the duration set forth in **Section 13**.

By uploading or submitting the End User Content through the Service, the End User hereby grants SCALE DYNAMICS a worldwide, non-exclusive, fully paid-up, royalty-free license to use, reproduce (including by making mechanical reproductions), reformat, translate, modify, display, process, transmit and perform the End User Content and the End User Project only in connection with the provision of the services, features and functionalities available on or through the Service.

To the maximum extent permitted by applicable law, when the End User decides to host its End User Content or End User Project in SCALE DYNAMICS' public database via the Service, the End User displays, transfers or distribute such End User Content under the MIT license, on a worldwide basis and for the duration of copyright under applicable law, unless earlier terminated in accordance with the provisions of **Section 13.4**.

The End User warrants that its End User Content and End User Project are not subject to any license terms that would purport to SCALE DYNAMICS or the other users of the Service to comply with any additional obligations (including payment of royalty fees to third parties or open-source copyleft license) with respect to the provision of the Service.

The End User warrants and represents that it owns the rights or is granted the authorization to grant SCALE DYNAMICS and the other end users the rights set forth above. Additionally, the End User undertakes not to upload, download, host, display, develop, modify or transmit via the Software and/or the Service any End user Content or End User Project (i) that infringes, violates or otherwise interferes with any third-party copyright, patent or trademark and/or (ii) containing any virus, Trojan horse and/or malware or spyware and/or (iii) containing any material which constitutes or encourages any conduct that could be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law and/or contain any material which is defamatory, obscene or offensive.

### **4.4. URLs**

At its discretion, the End User may decide to keep the URL confidential or disclose and share the URL with any other users of the Service or any third-parties in accordance with the provisions of the EULA. A 'private' or 'public' database option is available via the Service.

The End User acknowledges that the End User Project is accessible to anyone who is provided with the URL.

If the End User intends to share the URL on a third-party website or platform, the End User undertakes to comply with applicable law and the terms and conditions of such third-party website or platform.

When the URL is kept confidential by the End User, SCALEDYNAMICS may request the End User's consent in good faith and fair dealing in order to publicly mention or display the End User Project on SCALEDYNAMICS' website or any third-party websites or social networks and/or to display and demonstrate WarpJS or any SCALEDYNAMICS product features and capabilities.

If an URL is publicly disclosed and shared by the End User (e.g. social networks, IT and computer news, threads of discussion, forums, etc.), SCALEDYNAMICS may communicate about the End User Project on any available communication means.

It is expressly agreed by the Parties that SCALEDYNAMICS, is entitled to access and use the URLs whether kept confidential or publicly disclosed (subject to the provisions of **Section 6** "Confidentiality" for such confidential URLs) in order to fulfill the following purposes: (i) assess the outcome of the Service, its compliance with the EULA and (ii) monitor the proper functioning of the Service (including maintenance purposes), for the duration of the Trial Period and/or the Commercial License.

## **5. PAYMENT TERMS**

In consideration of the license rights granted in **Section 4** under the Commercial License, the End-User shall pay the Fees. The Fees are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT) (the "**Taxes**").

All invoices are payable within thirty (30) days of the invoice date, unless specified differently in the invoice, Order Form or purchasing documentation. The End User is responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made to SCALEDYNAMICS, other than any taxes based on SCALEDYNAMICS' net income.

All amounts are payable and charged (i) at the beginning of the subscription for the Service, when the End User place its order, and, (ii) at the time of each renewal. The End user must cancel its subscription in accordance with this EULA before it renews to avoid the billing of the Fees for the next subscription period.

**Late payment:** Any invoices not paid when they reach their due date shall accrue interest based on a rate equal to three (3) times the current statutory base rate, plus five (5) percentage points, starting from the date when the invoice becomes due and without notification. Additionally, the End User will pay a flat rate recovery cost indemnity in the minimum amount of € 40 per unpaid invoice as well as all other costs related to the collection of payments.

## **6. CONFIDENTIALITY**

For the duration set out in **Section 13** and for five (5) years after the termination of the EULA for any reason whatsoever, the End User shall keep confidential and shall not disclose or otherwise make available to any third party the feedback, any user passwords and any Confidential Information. The End User will use the same efforts to prevent the unauthorized disclosure of the Confidential Information that it uses to protect its own similar confidential information in compliance with current business standards.

Each Party will use the other Party's Confidential Information only to perform its obligations or exercise its rights under this EULA.

The End User acknowledges that the End User Content is hosted and run on a Cloud Service provider storage infrastructure which has separated and dedicated segments for each user of the Service.

The Service back end architecture shall remain confidential and SCALEDYNAMICS undertakes to keep the End User's content confidential and warrants that such End User Content is not accessible to other users of the Service.

The obligations of confidentiality shall not apply to any information which (i) is or later becomes publicly known or available without breach of this EULA by the receiving Party (ii) is lawfully obtained by the receiving Party from a third party lawfully in possession of any or all Confidential Information and which is not under an obligation of confidentiality with the disclosing Party with respect to such information or (iii) is disclosed by the receiving Party pursuant to a judicial order or by operation of law but then only to the extent as ordered or requested.

Prior to any legally compelled disclosure (legal proceedings, subpoena or other similar process), the End User will, to the extent reasonably possible, give SCALEDYNAMICS notice and cooperate with SCALEDYNAMICS in protecting against such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information.

If a Party becomes aware of any unauthorized use or disclosure of any Confidential Information of the other Party, then such Party will promptly and fully notify the other Party in writing of all facts relating to such unauthorized use or disclosure.

## **7. LIMITED WARRANTY**

### **7.1. Software warranty**

SCALEDYNAMICS warrants that the Software will substantially operate according to, and substantially conform to the Documentation (except for defects or non-conformities causing minor and trivial deviations therefrom) when used in accordance with the EULA, the Documentation and/or SCALEDYNAMICS' written instructions and/or applicable law.

SCALEDYNAMICS's responsibility under said warranty shall be solely to correct at its costs and expenses any non-conformity or defect regarding the Software. Such warranty period is of thirty (30) days from the Effective Date and shall not be extended in the event of correction or workaround made.

For all warranty claims made by the End User during the warranty period, SCALEDYNAMICS will use commercially reasonable efforts to resolve, at no charge to the End User, any such non-conformities.

### **7.2. Disclaimer of warranty**

SCALEDYNAMICS DOES NOT GUARANTEE THE CONTINUING AVAILABILITY OF THE CLOUD SERVICES.

TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, THE LIMITED WARRANTY SET FORTH IN THIS **SECTION 7** IS EXCLUSIVE AND LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. SCALEDYNAMICS EXCLUDES ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

EXCEPT AS SET FORTH HEREIN, THE SOFTWARE AND THE SERVICE ARE PROVIDED TO THE END USER ON AN "AS IS" BASIS ONLY. SCALEDYNAMICS DOES NOT WARRANT AGAINST INTERFERENCE WITH THE END USER'S ENJOYMENT OF THE SOFTWARE AND/OR THE SERVICE, THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET THE END USER'S REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD-PARTY SOFTWARE, APPLICATIONS OR THIRD-PARTY SERVICES.

INSTALLATION OF THE MODULE OR USE OF THIS SOFTWARE MAY AFFECT THE AVAILABILITY AND USABILITY OF THIRD-PARTY SOFTWARE, APPLICATIONS OF THE END USER OR THIRD-PARTY SERVICES.

SCALEDYNAMICS DOES NOT ENDORSE, SUPPORT, REPRESENT OR GUARANTEE THE COMPLETENESS, TRUTHFULNESS, ACCURACY, OR RELIABILITY OF ANY CONTENT, PROJECT OR COMMUNICATIONS POSTED BY ANY END USERS VIA THE SERVICE OR ENDORSE ANY OPINIONS EXPRESSED VIA THE SERVICE.

THE END USER DECLARES AND ACKNOWLEDGES THAT THE USE OF ITS END USER CONTENT AND/OR OTHER END USERS PROJECTS AND CONTENT THROUGH THE SOFTWARE AND THE SERVICE IS AT THE END USER'S OWN DISCRETION AND RISK AND THAT THE END USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES OR LOSS OF DATA THAT RESULTS FROM THE SUBMISSION OR DOWNLOAD OF SUCH CONTENT.

### **7.3. No guarantee as to corrective updates or support**

SCALEDYNAMICS is not obliged to provide maintenance, technical support, corrective measures or updates to the End User for the Module or the Software. If available, support and maintenance conditions and/modalities shall be incorporated into a specific agreement.

The End User acknowledges that the Service may be suspended or interrupted without prior notice during any maintenance procedure performed by SCALEDYNAMICS.

However, SCALEDYNAMICS may, in its sole discretion, make available any technical support, updates and/or supplements of the Software and/or related information ("**Updates**") for downloading or use, and SCALEDYNAMICS may notify the End User of the availability of these Updates from time to time at its discretion. All Updates will be deemed to be included in the Software and therefore governed by this EULA, unless other terms of use are provided by SCALEDYNAMICS with those Updates.

## **8. LIMITED LIABILITY**

The End User acknowledges and agrees that SCALEDYNAMICS has set the scope of the license granted in **Section 4.1** and entered into this EULA upon the disclaimers of warranty and the limitation of liability set forth herein, that the same reflect an allocation of risk between the Parties, and that the same form an essential basis of the bargain between the Parties.

SCALEDYNAMICS DOES NOT MONITOR OR CONTROL THE END USER CONTENT POSTED OR DISPLAYED VIA THE SERVICE. ALL END USER CONTENT (INCLUDING ANY END USER PROJECT), WHETHER PUBLICLY POSTED OR PRIVATELY TRANSMITTED, IS THE SOLE RESPONSIBILITY OF THE END USER.

UNDER NO CIRCUMSTANCES WILL SCALEDYNAMICS BE LIABLE IN ANY WAY FOR ANY CONTENT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, OR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT MADE AVAILABLE VIA THE SERVICE OR DISPLAYED ON THIRD-PARTY SERVICES, WEBSITES OR PLATFORMS.

THE END USER ACKNOWLEDGES THAT SCALEDYNAMICS DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE AND



THE CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES.

SCALEDYNAMICS IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICE (INCLUDING INTELLECTUAL PROPERTY INFRINGEMENT) THAT ARISE FROM THE END USER CONTENT OR THE CLOUD SERVICES OR THIRD-PARTY CLOUD SERVICES.

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL SCALEDYNAMICS BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, THE DELETION OF OR FAILURE TO STORE THE END USER CONTENT, FAILURE TO TRANSMIT OR RECEIVE ANY DATA OR INFORMATION, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THE END USER'S USE OR INABILITY TO USE THE SOFTWARE, THE SERVICE OR ANY THIRD-PARTY SOFTWARE OR APPLICATIONS (INCLUDING THE CLOUD SERVICES AND THIRD-PARTY CLOUD SERVICES) IN CONJUNCTION WITH THE SOFTWARE, HOWEVER CAUSED, AND EVEN IF SCALEDYNAMICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO A FINAL DECISION FROM A COURT OF COMPETENT JURISDICTION, SCALEDYNAMICS' TOTAL LIABILITY, FOR ANY REASON WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS EULA (INCLUDING THE USE OF THE SOFTWARE AND THE SERVICE) SHALL NOT EXCEED IN THE AGGREGATE THE FEES EX VAT PAID BY THE END USER TO SCALEDYNAMICS FOR THE SOFTWARE AND/OR THE SERVICE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

The End User may not bring a claim under this EULA more than twelve (12) months after the cause of action arises.

SCALEDYNAMICS makes no representation that the Software are appropriate or available for use in any particular location. The End User expressly acknowledges and agrees that any use of the Software is done entirely at its own risk and the End User is responsible for compliance with any applicable laws.

SCALEDYNAMICS disclaims all warranties and liability for any damages incurred by the End User or by any third party relating to the Software and/or the Service when caused by:

- the End User's non-compliance with the terms and provisions of the EULA; or
- the End User's non-compliance with the Documentation; or
- improper installation of the Module by the End User, misuse, mishandling or improper maintenance of the Software; or
- the upload, use or display of the End User Content and/or the End User Project;
- the disclosure and sharing of the URL by the End User;
- use of the Software in an improper or inappropriate operating environment which does not conform to the Documentation; or
- use of the Software in combination with, in connection with or as integrated into software, hardware or equipment which is not the End User's Terminal, unless such combination connection or integration has been expressly approved in writing by SCALEDYNAMICS; or
- use of the Software for a purpose other than that for which it is intended to; or

- a weakness, flaw or breach in the security of End User's architecture or system not directly and exclusively caused by the Module or the Software; or
- changes made to the Software, including mandatory changes; or
- maintenance of the Software or support intervention by a third party not previously authorized by SCALEDYNAMICS;
- delays, interruptions and disruptions of network and/or Internet transmissions;
- Any failure, delay or interruption of the Cloud Services or Third-Party Cloud Service;
- Third party components, and/or Open-Source Software;
- Force Majeure events.

The End User agrees and acknowledges that:

- SCALEDYNAMICS has no responsibility or liability for the deletion or failure to store any End User Content and other communications maintained on or transmitted through use of the Service;
- The End User is responsible for securing and backing up any End User Content or End User Project or other communication that the End User may upload or transmit to or through the Service;
- The End User is fully liable for its activities related to the use of the End User Content and/or End User Project and/or the use of content available via the Service;
- The End User is fully liable for the risks and consequences related to the disclosure, sharing and transfer of the URL to third-parties;
- The End User bears the sole responsibility for the installations and use of third-party software in the End User Project, and SCALEDYNAMICS shall not be liable for any failure of the proper operation of the End User Project resulting from such installation or use;
- The End User is fully responsible for the consequences or damages resulting from the use of the Service or the End User Content by the Authorized Users or by any third-party which is granted by the End user an access to the Software, the Service, the End User Content and/or the End User Project.

THE END USER SHALL INDEMNIFY AND SAVE HARMLESS SCALEDYNAMICS FROM AND AGAINST ANY CLAIM, DEMAND OR LEGAL ACTION ALLEGING LOSS, COSTS, EXPENSES, DAMAGES OR INJURIES ARISING FROM OR RELATED TO THE END USER'S USE OF THE SOFTWARE, THE SERVICE AND THE END USER CONTENT AND/OR END USER PROJECT.

## **9. INDEMNIFICATION**

### **9.1. By SCALEDYNAMICS**

SCALEDYNAMICS shall defend, indemnify, and hold the End User harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities awarded to a third party arising out of any non-frivolous claim by a third party that the Software as provided by SCALEDYNAMICS and when used in accordance with the provisions of this EULA and the Documentation, infringes or misappropriates, as applicable, any copyrights or trade secrets under applicable laws of any jurisdiction within France, provided that the End User gives SCALEDYNAMICS (a) prompt written notice of such claim; (b) sole authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as SCALEDYNAMICS may reasonably request, at SCALEDYNAMICS' expense, in connection with such defense and/or settlement.

Notwithstanding the foregoing, SCALEDYNAMICS shall have no obligation or liability to the extent that the alleged infringement arises from (1) the combination, operation, or use of the Software or the Service with products, services, information, materials, technologies, business methods or processes not furnished or authorized by SCALEDYNAMICS; (2) modifications to the Software, which modifications are not made by SCALEDYNAMICS; (3) failure to use Updates to the Software provided by SCALEDYNAMICS; or (4) use of the Software except in accordance with the EULA or the Documentation (circumstances under the foregoing clauses (1), (2), (3), (4), and (5), collectively, "**End User Indemnity Responsibilities**").

Upon the occurrence of any claim for which indemnity is or may be due under **Section 9.1**, or in the event that SCALEDDYNAMICS believes that such a claim is likely, SCALEDDYNAMICS may, at its option (i) appropriately modify the Software so that it becomes non-infringing, or substitute functionally equivalent software or services; (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) terminate this EULA on written notice to the End User and refund to the End User an amount equal to the Fees ex VAT paid by the End User for such Software during the six (6) month period preceding the date of the termination notification. The obligations set forth in this **Section 9.1** shall constitute SCALEDDYNAMICS's entire liability and the End User's sole remedy for any actual or alleged infringement or misappropriation.

## **9.2. by the End User**

The End User shall indemnify, hold harmless, and defend SCALEDDYNAMICS from and against all losses, expenses (including reasonable attorneys' fees), damages, and liabilities awarded to a third party resulting from a claim by a third party arising from or in connection with the End User Indemnity Responsibilities (as listed in **Section 9.1**) and/or with the End User's breach of **Section 4** and/or the End User Content. SCALEDDYNAMICS agrees to give the End User (a) prompt written notice of such claim; (b) sole authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as the End User may reasonably request, at the End User's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, the End User shall not settle any third-party claim against SCALEDDYNAMICS unless such settlement completely and forever releases SCALEDDYNAMICS with respect thereto or unless SCALEDDYNAMICS provides its prior written consent to such settlement. In any action for which the End User provides defense on behalf of SCALEDDYNAMICS, SCALEDDYNAMICS may participate in such defense at its own expense by counsel of its choice.

## **10. THIRD PARTY COMPONENTS – THIRD PARTY CLOUD SERVICES**

### **10.1. Third party component in the Software**

The Software may contain third party software or Open-Source Software which is delivered to the End User as part of the Software and may not be taken out or used separately from the Software and for which additional terms may be included in the Documentation. A list of the Open-Source Software licenses applicable to certain parts of the Trial Version Software is available in license file.

### **10.2. Third party cloud service**

The End User acknowledges that the Service runs certain functionalities in the cloud and/or host certain End User Content in the cloud.

The End User may choose its own cloud service (End User cloud server) or a third-party cloud service provider (the "**Third-Party Cloud Service**").

In the event where the End User uses its own cloud server or uses a Third-Party Cloud Service, a specific agreement may have to be executed with SCALEDDYNAMICS (proof of concept, etc.).

The End User acknowledges that it is receiving the Third-Party Cloud Service directly from the Third-Party Cloud Service provider pursuant to this Third-Party Cloud Service provider's standard terms and conditions or such other terms as agreed upon by the End User and such Third-Party Cloud Service provider.

SCALEDDYNAMICS is hereby released and shall continue to be released from all liability in connection with the loss, damage or corruption of the End User Content, data and software, and the End User assumes all risk of

loss, damage or corruption of End User Content, data and software in any way related to or resulting from the Third-Party Cloud Services.

## **11. DAILY LOG REVIEW AND CONSENT TO USE OF DATA**

### **11.1. Daily log review**

The End User agrees that SCALEDYNAMICS may operate a daily log review of the End User use of the Trial Version Software in order to detect patterns of abnormal, continuous or excessive use (e.g. uninterrupted-24 hour-use of SCALEDYNAMICS Software), or malicious activities including failed login attempts or other indicators of possible intrusions ("**Pattern of Abnormal Use**"), as long as it is in a form that does not collect and process personal data pertaining to the End User, its employees or agents.

In the event of Pattern of Abnormal Use, SCALEDYNAMICS may contact the End User by e-mail for additional information or to provide the End User with some assistance. In the absence of any response or a satisfactory response from the End User within 48 hours from SCALEDYNAMICS notification or if SCALEDYNAMICS receives a notification of invalid email address, SCALEDYNAMICS shall be entitled to suspend or terminate the Trial Period with immediate effect.

The End User understands and agrees that the daily log review may provide evidence of potential material breach of the EULA attributable to the End User and may cause termination under the provisions of **Article 13** below.

### **11.2. Consent to use of data**

The End User agrees that SCALEDYNAMICS may collect and use technical and related information about the End User's computer, system and peripherals, that is gathered periodically in order to improve its products, to facilitate the provision of the Software updates and support, as long as it is in a form that does not personally identify the End User, its employees or agents, and/or to provide services or technologies to the End User.

## **12. PERSONAL DATA**

### **12.1. Personal Data processed by SCALEDYNAMICS**

SCALEDYNAMICS collects information relating to an identified or identifiable individual ("**Personal Data**") from and relating to the End User: The End User provides some of this Personal Data directly and SCALEDYNAMICS may collect Personal Data about the End User's interactions, use, and experiences with the Software.

Such Personal Data includes the End User's name, email address and professional contacts.

SCALEDYNAMICS uses Personal Data in order to (i) provide SCALEDYNAMICS Products or Service (which includes updating, securing, and troubleshooting), as well as providing support, (ii) improve and develop SCALEDYNAMICS Products or Service, (ii) personalize SCALEDYNAMICS Products or Service and provide analysis or recommendations to the End User, (iii) advertise and market to the End User, which includes sending promotional communications, targeting advertising, and presenting the End User with relevant offers from SCALEDYNAMICS or third party companies.

SCALEDYNAMICS shall store Personal Data for the duration of the license set out in **Section 13** of the EULA. From the date of termination of this agreement, SCALEDYNAMICS may retain Personal Data for the necessary duration to comply with any legal or regulatory requirements (including but not limited to purposes of proof) which may compel SCALEDYNAMICS to (i) retain Personal Data or to (ii) respond to any requirements from competent authority (supervisory authority, law enforcement agencies, etc.). If need be, SCALEDYNAMICS may retain Personal Data in an anonymized form.

In the event where SCALEDDYNAMICS transfers Personal Data to a country for which the European Commission has not provided an adequacy decision, SCALEDDYNAMICS shall provide appropriate safeguards in order to ensure the ongoing confidentiality and integrity of Personal Data.

The End User can control the Personal Data that SCALEDDYNAMICS has obtained, and exercise its data protection rights granted by applicable law (access to and rectification or erasure of Personal Data or restriction of processing concerning the End User or to object to processing), by contacting SCALEDDYNAMICS by email: [welcome@scaledynamics.com](mailto:welcome@scaledynamics.com)

If the End User objects to the abovementioned data processing, the End User may be required to uninstall the Software or stop using the Service to stop further Personal Data collection.

The End User is hereby informed that cookies may be installed on its Terminal to improve access to and use of the Software and Service.

## **12.2. Personal Data processed by the End User**

In the event where the End User processes Personal Data (including those of the Authorized Users) in its End User Content or through the End User Project, such End User:

- acts as data controller for the processing of Personal Data processed in the End User Content or through the End User Project by the End User, since such End User determines the purposes and means of such processing of Personal Data;
- retains full liability for any administrative, technical or organizational measures that the End User may be required to undertake or implement under applicable data protection legislation.

## **13. TERM & TERMINATION**

### **13.1. Duration of the Trial Period**

The Trial Period will commence on the Effective Date for a duration of one (1) month.

On or before expiration or termination of the Trial Period, the End User agrees to either (i) enter into a Commercial License (if available) with SCALEDDYNAMICS for continued use of the Software and Service after the expiration of the Trial Period under the terms of such Commercial License, or on the contrary (ii) promptly cease all use of SCALEDDYNAMICS Software and Service by uninstalling the Module and destroying all copies of the Module in its possession or control.

The End User is informed that the Trial Version Software has an automated system that will cause it to “time-out” (cease working) after the Trial Period expires. The End User agrees not to circumvent or defeat this system and to cease all use of the Trial Version after the end of the Trial Period.

The End-User shall be informed by email of (i) the date of discontinuance or the termination of the Service seven (7) days before such date and of (ii) the date of the commercial launch of the Service or the availability of other SCALEDDYNAMICS’ Products.

### **13.2. Duration of the Commercial License**

The initial term of this Agreement commences on the Effective Date and continues for the period of time set forth in the Order Form or, if no such date is specified, for one (1) year (the “**Initial Term**”).

Except as otherwise stated in the Order Form, at the end of the Initial Term (and each renewal term thereafter, if any), subject to payment of the applicable Fees for each such renewal term, this EULA will automatically renew

for additional successive terms equal to the Initial Term, unless either Party provides the other Party with notice of nonrenewal at least thirty (30) days prior to the end of the then-current term.

### **13.3. Termination for fault**

This EULA and all rights granted by SCALEDYNAMICS hereunder may be terminated by either Party if the other Party has breached any terms of this Agreement and fails to cure such breach within thirty (30) days (or within two (2) days with respect to the Trial Version Software) of a non-breaching Party's notice thereof.

Notwithstanding the foregoing, without prejudice to SCALEDYNAMIC's other rights accorded to it by this EULA or by law, SCALEDYNAMICS may immediately terminate the EULA by written notice to the End User, in the event of (i) Pattern(s) of Abnormal Use in accordance with the provisions of **Section 11.1** or (ii) breach of the provisions of **Section 4** or (iii) breach of this EULA, and such breach is not curable or (iv) if the End User fails to pay the applicable license fees as specified in the Order Form.

### **13.4. Consequences of termination**

On or before the expiration of the Trial Period, the End User may choose to switch from the Trial License to a Commercial License subject to the then-applicable terms and conditions of such Commercial License, in order to (i) prevent the deletion of the User Account and End User Project and (ii) to resume the use of the Service.

Upon expiration or termination of this EULA for any reason whatsoever, the End User's rights to use the Software cease and the End User shall:

- stop using the Software and/or the Service immediately; and
- uninstall the Module; and
- destroy (and certify such destruction) all copies of the Module in its possession or control, including any accompanying Documentation and associated materials.

Upon expiration or termination of the EULA, the End User is informed and acknowledges that:

- the User Account will be deleted;
- SCALEDYNAMICS will have no obligation to maintain the End User Content in its databases or in the Cloud Services or to forward any such information to the End User or any third party;
- SCALEDYNAMICS shall remove or overwrite all applicable End User Content from SCALEDYNAMICS' systems (if any) following the effective date of termination, in accordance with SCALEDYNAMICS' standard procedures.

If this EULA is terminated by SCALEDYNAMICS in accordance with the **Section 13.3** above, the End User shall pay any unpaid Fees covering the remainder of the Initial term or any renewed term. In no event, will termination of this Agreement relieve the End User of its obligation to pay any Fees payable to SCALEDYNAMICS for the period prior to the effective date of termination.

Upon expiration or termination of this EULA, SCALEDYNAMICS may retain information and data about SCALEDYNAMICS Software execution and performance as long as it is in a form that does not personally identify the End User, its employees or agents.

Any terms of this EULA which by their nature should survive the termination of this EULA shall survive such termination. Termination will not limit any of SCALEDYNAMICS' rights or remedies at law.

## **14. EXPORT CONTROLS**

The End User acknowledges that SCALEDYNAMICS Software may be subject to European Union and, when applicable US export regulations. The End User shall comply with applicable export and import laws and

regulations for the jurisdiction in which the Software will be imported and/or exported. The End User shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. The End User is responsible, at its own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software.

## **15. ASSIGNMENT**

SCALEDYNAMICS may assign, or transfer this EULA, or part thereof, and/or delegate, partially or totally, its rights and/or obligations hereunder, to any third party without consent from the End User.

The End User shall not rent, lease, lend, sub-license, assign, transfer, delegate, partially or totally, any of its rights and obligations under this EULA (including its User Account), to any third party without the prior written consent of SCALEDYNAMICS.

## **16. MISCELLANEOUS**

If any portion of this EULA shall be held invalid, illegal or unenforceable, the validity, legality, and enforceability of the remainder of this EULA shall not in any way be affected or impaired thereby.

Nothing in this EULA will be construed as creating a joint venture, partnership or principal/agent relationship between the Parties.

Any translation of this EULA is done for local requirements and in the event of any inconsistencies between the English and non-English versions of the EULA. The English version of this EULA shall govern, to the extent not prohibited by local law in the jurisdiction of the End User.

Any delay or nonperformance of any provision of this EULA caused by *Force Majeure* events (conditions beyond the reasonable control of the performing Party) shall not constitute a breach of this EULA, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the *Force Majeure* event preventing the performance.

SCALEDYNAMICS reserves the right to change this EULA at any time and from time to time to reflect changes in the applicable laws, technical or security requirements, or the functionality of the Software and/or the Service. If SCALEDYNAMICS decides to change this EULA in the future, SCALEDYNAMICS will post an appropriate notice on SCALEDYNAMICS website and/or give reasonable advance notice to the End User through the User Account or by other means (e.g., via email notification). Any non-material change (such as clarifications) to this EULA will become effective on the date the change is posted. Any material changes in the EULA will be notified by email to the End User or with a notice displayed in the Module and the use of the Service shall be subjected to the acceptance of the updated terms of the EULA by the End User in its User Account, within five (5) days from the date of the update notice. In the absence of such acceptance, the EULA and the Service shall be terminated in accordance with the provisions of **Section 13.4** above. The date of the last update of this EULA is set out at the top of this document. The End User acknowledges and agrees that the End User's continued use of the Software and/or the Service after the date of changes to this EULA indicates the End User's agreement to such changes.

If SCALEDYNAMICS does not exercise or enforce any legal right or remedy which is contained in the EULA (or which SCALEDYNAMICS has the benefit of under any applicable law), this will not be deemed a waiver of any such rights or remedies, and that those rights or remedies will still be available to SCALEDYNAMICS.

In the event of any conflict or inconsistency between the terms and conditions of this Agreement and any terms or conditions set forth in any purchase order or other document relating to the transactions contemplated by this Agreement, the terms and conditions set forth in this Agreement shall prevail unless otherwise expressly agreed by the Parties.

Without prejudice of the confidentiality provisions of **Section 6**, the End-User expressly consents to (i) the public release by SCALEDYNAMICS of marketing material making reference to this Agreement; the relationship between SCALEDYNAMICS and the End-User in respect of the EULA and (ii) the use of the End-User's company name, trade name and logo as commercial references (or clients list) on SCALEDYNAMICS' websites and commercial documentation.

**17. GOVERNING LAW AND JURISDICTION**

This EULA is governed by the laws of FRANCE. This EULA shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

The Parties irrevocably agree that the competent court within the jurisdiction of the Court of appeal of Paris, FRANCE shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this EULA or its subject matter, formation or termination for any reason whatsoever (including non-contractual disputes or claims).