

THIS AGREEMENT is dated [Company.ScaleFactoryMsaDate]

PARTIES

- (1) **THE SCALE FACTORY LIMITED** a company registered in England with number 06784929 and whose registered office is at 86-90 Paul Street, London, England, EC2A 4NE ("**The Scale Factory**"); and
- (2) [Company.Name] a company registered in England & Wales
with number, [Company.CompanyRegistrationNumber]
and whose registered office is at
[Company.CompanyRegisteredAddress]
- (the "**Client**").

BACKGROUND

The Client wishes to engage The Scale Factory for the provision of Services.

AGREED TERMS

1. Definitions and interpretation

- 1.1. In this Agreement, the following words and expressions have the following meanings:

"Business Day"	means any day other than a Saturday, Sunday, or a day which is Bank or public holiday in England.
"Charges"	means: (i) Consultancy Charges; (ii) Support Charges; and (iii) Licence Fees, or, as the context requires, any one or more of them, in each case as specified in an SOW.
"Client Stakeholder"	the representative of the Client who is appointed in accordance with clause 4.1(a).
"Consultancy Services"	means the systems administration, architecture, database and other technology consultancy services specified in an SOW.

“Created Works”	means all Intellectual Property Rights which subsist in the Deliverables created by The Scale Factory in the course of providing the Services, together with updates and amendments of that material, but excluding Pre-existing Material and Licensed Software.
“Data Protection Legislation”	means: (i) the UK GDPR (as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019); [NS1] [MA2] (ii) the Data Protection Act 2018; and (iii) any other data protection laws and regulations, orders and any codes of practice, guidelines and recommendations issued by the Information Commissioner’s Office or any replacement or equivalent body, as amended and in force from time to time.
"Deliverables"	means: (i) the deliverables specified in an SOW; and (ii) all other Documents, products and materials developed by The Scale Factory or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts) but excluding (for the avoidance of doubt) the Pre-existing Material and the Licensed Software.
“Document”	includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
“EULA”	the end user licence agreement (EULA) relating to the Licensed Software set out in Schedule 3.

“Intellectual Property Rights”	patents, rights in inventions, know how, show how and trade secrets, copyright and related rights, moral rights, registered designs, design rights, database rights, semiconductor topography rights, trade marks and service marks, trade names, business names, brand names, get up, logos, domain names and URLs, rights in unfair competition, goodwill and rights to sue for passing off and any other intellectual property rights (in each case, whether or not registered, and including all applications to register and rights to apply to register any of them and all rights to sue for any past or present infringement of them) and all rights or forms of protection having equivalent or similar effect in any jurisdiction.
“Licence Commencement Date”	has the meaning given to it in an SOW.
“Licensed Software”	has the meaning given to it in an SOW.
“Licensed Software Documentation”	means the specifications, user manuals and other documentation relating to the Licensed Software.
“Onboarding Document”	means The Scale Factory’s processes and requirements document relating to the onboarding of the Client, which is attached to and forms part of the SOW.
“Open Source Licence”	means a licence recognised by the Open Source Initiative (OSI), such as the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Berkeley Systems Distribution License (BSD), Massachusetts Institute of Technology License (MIT), Apache License or PHP License.
“Open Source Software”	means software, documentation, or other material distributed or otherwise made available under an Open Source Licence, as specified in an SOW.
“Pre-existing Material”	all Documents, information and materials provided by The Scale Factory relating to the Services which existed prior to the commencement of an SOW, including computer programs, data, reports and specifications.
“Scale Factory Lead Consultant”	The Scale Factory's manager for the Services appointed under clause 3.3.

“Services”	means: (i) Consultancy Services; (ii) Support & Learning Services; and (iii) Licensed Software, or, as the context requires, one or more of them.
“SOW”	a statement of work agreed by the parties in accordance with clause 2.
“SOW Start Date”	means the date on which an SOW is effective, as specified in the SOW.
“SOW Term”	means the term of an SOW, as specified in the SOW.
“Support & Learning Services”	means the support services specified in an SOW.
“The Scale Factory’s Equipment”	any equipment, including tools, systems, cabling or facilities, provided by The Scale Factory or its subcontractors and used directly or indirectly in the supply of the Services.

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1.3. In this Agreement, unless the context otherwise requires:

- (a) reference to any gender includes all genders, and references to the singular includes the plural (and vice versa);
- (b) a **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's successors and permitted assigns;
- (c) references to any legislation shall be construed as references to legislation as from time to time amended, re-enacted or consolidated;
- (d) **“including”, “includes” or “in particular”** means including, includes or in particular without limitation;
- (e) clause, schedule and paragraph headings shall not affect the interpretation of this agreement; and
- (f) A reference to **“writing”** or **“written”** includes e-mail.

1.4. The Schedules and Background form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules and the Background.

2. SOWs

2.1. The parties will agree SOWs as follows:

- (a) the Client may provide The Scale Factory with a request for a draft SOW, setting out the requirements and specifications of the services that it requires and the dates by which the services are to be started and finished, details of any specific deliverables, input material to be provided by the Client, and such additional information as The Scale Factory may require to enable it to prepare a draft SOW;
 - (b) The Scale Factory shall, as soon as reasonably practicable, following the Client's request under clause 2.1(a), provide the Client with a draft SOW; and
 - (c) When agreed, The Scale Factory and the Client shall sign a copy of the SOW, which shall then constitute a binding contract between The Scale Factory and the Client incorporating all the terms of this Agreement.
- 2.2. Nothing in this Agreement obliges The Scale Factory to provide or the Client to purchase any Services, unless and to the extent that an SOW is signed by both parties pursuant to this Agreement.
- 2.3. Any standard or pre-printed conditions contained on any quotation, order, acknowledgement of order, invoice or similar document have no effect and do not apply to this Agreement or an SOW.
- 2.4. In the event of any conflict between different parts of this Agreement and/or an SOW, the following order of precedence (in descending order of importance) applies:
 - (a) with regard only to the specific SOW to which they apply, any special conditions contained in such SOW;
 - (b) the terms and conditions set out in the main body of this Agreement; and
 - (c) the Schedules to this Agreement.
- 2.5. Once the SOW has been agreed and signed in accordance with clause 2.1(c), no amendment shall be made to it except in accordance with clause 5 or clause 16.5.

3. Services

- 3.1. The Scale Factory shall:
 - (a) provide the Consultancy Services and deliver the Deliverables to the Client; and/or
 - (b) provide the Support to the Client; and/or
 - (c) supply the Licensed Software,to the Client in accordance with the SOW and, in the case of the Support and the Software, in accordance with, respectively, the terms of the SLA and the EULA.
- 3.2. The Scale Factory shall use commercially reasonable endeavours to meet any performance dates specified in the SOW, but any such dates shall be estimates only and time for performance by The Scale Factory shall not be of the essence.
- 3.3. The Scale Factory shall appoint a Scale Factory Lead Consultant in respect of the Services who shall have authority contractually to bind The Scale Factory on all matters relating to the Services. The Scale Factory shall ensure that the same person acts as Scale Factory Lead Consultant throughout the SOW Term, unless The Scale Factory replace the Scale Factory Lead Consultant from time to time where reasonably necessary in the interests of The Scale Factory's business or at such times when Scale Factory Lead Consultant is on leave (whether on account of holiday, sickness, parental leave, bereavement or otherwise) or is no longer employed by The Scale Factory. In the event that the Scale Factory Lead Consultant is replaced, The Scale Factory will replace such Scale Factory Lead Consultant with a lead consultant with skills and experience which are in all material respects equivalent to the skills

and experience of the replaced Lead Consultant. The Client acknowledges that only the Scale Factory Lead Consultant has authority to bind The Scale Factory in relation to matters relating to the Services (including agreeing the times for completion of specific tasks), and that any statements, promises, assurances or other representations made by any consultant or employee of The Scale Factory must be confirmed in writing by the Scale Factory Lead Consultant in order to be binding on The Scale Factory.

- 3.4. The Scale Factory shall observe all health and safety rules and regulations and any reasonable security requirements that apply at the Client's premises and that have been communicated to it under clause 4.1(e).
- 3.5. All materials, equipment and tools, drawings, specifications and data supplied by The Scale Factory to the Client (including Pre-existing Materials and The Scale Factory's Equipment) and all copies of each of them (together "**Scale Factory Materials**") shall, at all times, be and remain as between The Scale Factory and the Client the exclusive property of The Scale Factory, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to The Scale Factory, and shall not be disposed of or used other than in accordance with The Scale Factory's written instructions or authorisation. The Client undertakes to return all Scale Factory Materials to The Scale Factory within five (5) Business Days of the termination of the SOW to which such Scale Factory Materials relates or, if earlier, within five (5) Business Days of The Scale Factory's request.

4. Client's obligations

- 4.1. The Client shall:
 - (a) co-operate with The Scale Factory in all matters relating to the Services and appoint the Client Stakeholder in relation to the Services, who shall have the authority contractually to bind the Client on matters relating to the Services;
 - (b) provide for The Scale Factory, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's systems, documentation, networks and personnel as reasonably required by The Scale Factory in order to provide the Services. Where remote access to the Client's systems or networks has been provided to a member of The Scale Factory's personnel, it is the Client's sole responsibility to promptly revoke or otherwise remove such access following notification from The Scale Factory that such member of its personnel is no longer employed or engaged by The Scale Factory;
 - (c) provide such information as The Scale Factory may reasonably require in a timely manner or, if applicable, by such date(s) as are specified in the SOW, and ensure that such information is complete, accurate and not misleading in all material respects;
 - (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises;
 - (e) inform The Scale Factory of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises;
 - (f) prior to the SOW Start Date, obtain and maintain all necessary licences and consents as reasonably necessary in connection with the Services (if any), and comply with all

relevant legislation in relation to the Services and the use of any equipment in relation to the Services; and

(g) comply with any additional obligations set out in the SOW.

- 4.2. If The Scale Factory's performance of its obligations under the SOW is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, The Scale Factory shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.
- 4.3. The Client shall not, without the prior written consent of The Scale Factory, at any time from the date of this Agreement to the expiry of six (6) months after the last date of supply of the Services, solicit or entice away from The Scale Factory or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or individual subcontractor of The Scale Factory in the provision of the Services.
- 4.4. Any consent given by The Scale Factory in accordance with clause 4.3 shall be subject to the Client paying to The Scale Factory a sum equivalent to 50% of the then-current annual remuneration of The Scale Factory's employee, consultant or subcontractor.

5. Change control

- 5.1. The Client Stakeholder and Scale Factory Lead Consultant shall meet with such frequency as is specified in the SOW to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 5.2. If either party requests a change to the scope or execution of the Services, The Scale Factory shall, within a reasonable time (and in any event within ten (10) Business Days), provide a written estimate to the Client of:
- (a) the likely time required to implement the change;
 - (b) any necessary variations to The Scale Factory's charges arising from the change;
 - (c) the likely effect of the change on the SOW; and
 - (d) any other impact of the change on this Agreement.
- 5.3. If the Client wants to proceed with the change based on the estimate provided by The Scale Factory under clause 5.2, it shall confirm its agreement to The Scale Factory in writing whereupon the SOW is deemed to be varied without the need for further formality.
- 5.4. Notwithstanding clause 5.3, The Scale Factory may, from time to time and with notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If The Scale Factory requests a change to the scope of the Services for any other reason, the Client shall not unreasonably withhold or delay consent to it.

6. Invoicing and payment

- 6.1. The Scale Factory shall issue invoices for the Charges as set out in this clause 6 or, if applicable, as specified in the SOW.
- 6.2. Where Consultancy Services are provided on a time and materials basis:
- (a) The Scale Factory calculates Consultancy Charges in accordance with its daily or hourly standard fee rates set out in the associated pricing document or, if applicable, in accordance with the fee rates specified in the SOW ("**Applicable Fee Rates**");

- (b) The Scale Factory's daily Applicable Fee Rate is calculated on the basis of an eight-hour day, worked between 09:00 and 18:00 (UK time) (or within such other hours as the parties may agree) on Business Days;
 - (c) pre-scheduled work (being work requested with more than one Business Days' notice) is charged using the daily Applicable Fee Rate in units of a half, a three-quarters or a full day, with periods of up to half a day charged at the hourly Applicable Fee Rate in increments of 15 minutes;
 - (d) unscheduled work (being all work other than scheduled work) is charged at the hourly Applicable Fee Rate in increments of 15 minutes, and subject to a minimum of two (2) hours;
 - (e) subject to obtaining the Client's prior agreement, The Scale Factory shall be entitled to charge an overtime rate equivalent to one and half times the Applicable Fee Rates for any time worked by individuals outside the hours specified in clause 6.2(b);
 - (f) all work carried out by The Scale Factory for the Client's direct benefit is chargeable at the Applicable Fee Rates, whether or not specifically identified to in the SOW. For the avoidance of doubt, this includes orientation and discovery, establishing access to the Client's systems, monitoring, research and development on-site and remote consultations, composing emails, reports and writing documentation;
 - (g) unless specified otherwise in the SOW, The Scale Factory shall invoice the Client monthly in arrears for Consultancy Charges. Each invoice shall set out the time spent by each individual engaged to provide the Consultancy; and
 - (h) The Scale Factory may review and increase its daily standard fee rates used for calculating Consultancy Charges, provided that (i) such rates cannot be increased more than once in any 12-month period (ii) each increase, expressed as a percentage, is not greater than the percentage increase in the Consumer Price Index All Items (as published by the Office for National Statistics) during the equivalent period and (iii) Client is notified in advance of the increase in Consultancy Charges before they are incurred.
- 6.3. Where Consultancy Services are provided on a fixed price basis:
- (a) the Consultancy Charges shall be the amount set out in the SOW. Unless different invoicing terms are set out in the SOW, The Scale Factory shall invoice the Consultancy Charges monthly in arrears; and
 - (b) the Consultancy Charges exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom The Scale Factory engages in connection with the Consultancy Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by The Scale Factory for the supply of the Services. Such expenses, materials and third party services shall be invoiced by The Scale Factory at cost. Such expenses, materials and third party services shall be pre-agreed by the Client prior to such costs being incurred.
- 6.4. Unless other invoicing terms are specified in the SOW, The Scale Factory shall invoice the Client:
- (a) in respect of Support Charges, monthly in advance; and
 - (b) in respect of Licence Fees, following the Licence Commencement Date.

- 6.5. The Charges are exclusive of Value Added Tax (VAT), which shall be payable by the Client in addition to the Charges.
- 6.6. Unless other payment terms are specified in the SOW, the Client shall pay each correct invoice issued by The Scale Factory (without deduction or set-off) within 30 days of receipt to the bank account specified on the invoice.
- 6.7. If the Client cancels or postpones any pre-scheduled Consultancy Services with less than five (5) Business Days' prior notice, The Scale Factory is entitled to invoice the Client a cancellation fee equal to:
- (a) in case of cancellation or postponement less than two (2) Business Days prior to the scheduled start time of the Consultancy Services, an amount equal to 100%; or
 - (b) in case of cancellation or postponement at least (2) Business Days but less than five (5) Business Days prior to the scheduled start time of the Consultancy Services, an amount equal to 50%,
- of the Consultancy Charges that would have been payable in respect of the cancelled or postponed Consultancy Services.
- 6.8. Without prejudice to any other right or remedy that it may have, if the Client fails to pay The Scale Factory on the due date, The Scale Factory may:
- (a) claim interest on such sum from the due date for payment under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend all Services until payment has been made in full.
- 6.9. All sums payable to The Scale Factory under this Agreement shall become due immediately on its termination, despite any other provision. This clause 6.9 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 6.10. On termination of an SOW by either party:
- (a) the parties shall, promptly and in good faith, agree what Services have been provided under that SOW by The Scale Factory in accordance with the terms of this Agreement up to the date of termination ("**Accepted Services**");
 - (b) The Scale Factory shall issue an invoice for the Accepted Services;
 - (c) Client shall pay the invoice for the Accepted Services either in accordance with clause 6.6 or, if the SOW has been terminated by The Scale Factory under clause 12.3, immediately; and
 - (d) Client shall within 14 days return to The Scale Factory all Deliverables resulting from or otherwise related to any Services that do not constitute Accepted Services.

7. Warranties

- 7.1. Each party warrants that it has the right, power and authority to enter into this Agreement and each SOW.
- 7.2. The Scale Factory warrants that:
- (a) it shall provide the Consultancy Services and the Support & Learning Services with the degree of skill and care that may reasonably be expected of professionals in the industry;
 - (b) for a period of 90 days commencing on the Licence Commencement Date, the Licensed Software, shall perform in all material respects in accordance with the

- Licensed Software Documentation, provided that The Scale Factory does not warrant that operation of the Licensed Software will be uninterrupted or error free; and
- (c) it has taken all steps reasonably expected of a prudent supplier of software to ensure that the Licensed Software does not contain any disabling programs or devices or viruses, trojan horses, worms or other computer programming routines that may damage or detrimentally interfere with the Licensed Software.
- 7.3. The Client's sole and exclusive remedy, and The Scale Factory's sole obligation and entire liability, for Consultancy Services or Support & Learning Services which do not conform to the warranty set out in clause 7.2(a) shall be limited to the re-performance of the Consultancy Services within a timescale to be agreed by The Scale Factory and the Client (or, in the absence of such agreement, within a reasonable period of time having regard to the nature of the non-conformance). In the event that the re-performed Consultancy Services or Support & Learning Services do not conform with the warranty set out in clause 7.2(a), then, as its sole and exclusive remedy, the Client shall be entitled to terminate the SOW and receive a refund of such parts of the Consultancy Charges or Support Charges (as applicable) that the Client has previously paid to The Scale Factory in respect of the non-conforming Consultancy Services or Support & Learning Services. On request, the Client shall supply The Scale Factory with detailed description of the allegedly non-conforming Services.
- 7.4. The Client's sole and exclusive remedy, and The Scale Factory's sole obligation and entire liability, for Licensed Software which does not conform to the warranty set out in clause 7.2(b) shall be limited to the repair or replacement of the nonconforming Licensed Software within a timescale to be agreed by The Scale Factory and the Client (or, in the absence of such agreement, within a reasonable period of time having regard to the nature of the non-conformance). In the event that The Scale Factory is unable to repair or replace the Software in accordance with the provisions of this clause 7.4, then, as its sole and exclusive remedy, the Client shall be entitled to terminate the SOW relating to the supply of the Licensed Software and receive a refund of such parts of the Licence Fees and that the Client has previously paid to The Scale Factory pursuant to the SOW. On request, the Client shall supply The Scale Factory with documented examples of any non-conformance of the Licensed Software.
- 7.5. The Scale Factory shall not be liable under the warranty set out in paragraph 7.1(a) if the Licensed Software fails to operate in accordance with such warranty as a result of any modifications, variations or additions to the Software not performed or approved in writing by The Scale Factory, or caused by any abuse, corruption or use of the Software inconsistent with the Licensed Software Documentation, including the Client's failure to use the Licensed Software in accordance with the Licensed Software Documentation or with hardware, equipment or other software which has not been previously been approved by The Scale Factory in writing.
- 7.6. Other than as expressly set out in this Agreement or in an SOW, and to the greatest extent permitted by law, The Scale Factory makes no representations or warranties with respect to the Services, or the performance of its obligations hereunder, and expressly excludes such representations and warranties, whether implied, statutory or otherwise.
- 8. Intellectual Property Rights**
- 8.1. As between the Client and The Scale Factory, all Intellectual Property Rights and all other rights in the Licensed Software and the Pre-existing Materials shall be owned by The Scale Factory.

Subject to clause 8.3, The Scale Factory licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services. If The Scale Factory terminates an SOW under clause 12.3, this licence will automatically terminate.

- 8.2. As between the Client and The Scale Factory, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Client. The Client licenses all such rights to The Scale Factory free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable The Scale Factory to provide the Services and the Deliverables.
- 8.3. The Client acknowledges that:
- (a) in the case of Open Source Software; and
 - (b) in any other case where The Scale Factory does not own the Intellectual Property Rights in Licensed Software or Pre-existing Materials,

the Client's use of the Open Source Software, the Licensed Software and the Pre-existing Material is subject to, in the case of Open Source Software, the terms of the relevant Open Source Licence and, in the case of Licensed Software and Pre-existing Material, the terms of the licence between The Scale Factory and the licensor of the Licensed Software and the Pre-existing Material.

9. Intellectual Property Rights Indemnity

- 9.1. The Scale Factory shall at its own expense defend the Client or, at its option, settle any claim or action brought against the Client alleging that the possession, use, development, modification or maintenance of Deliverables (or any part thereof) in accordance with the terms of an SOW infringes the Intellectual Property Rights of a third party ("**Infringement Claim**"). The Scale Factory shall be responsible for any losses, damages, costs (including legal fees) and expenses incurred by or finally awarded against the Client as a result of or in connection with any such Infringement Claim provided always that the Client takes all reasonable steps to mitigate the losses, damages, costs and expenses for which it may seek recover by way of indemnity. For the avoidance of doubt, this clause shall not apply where the Infringement Claim in question is attributable to (i) possession, use, development, modification or maintenance of the Deliverables (or any part thereof) by the Client other than in accordance with the terms of a Contract (ii) use of a non-current release of the Deliverables (iii) use of the Deliverables in combination with hardware or other equipment not previously approved by The Scale Factory, where the Deliverables would not otherwise infringe the third party intellectual property rights; or (iv) use of the Deliverables by the Client for a purpose or in an environment for which it was not designed or permitted. The Scale Factory shall not agree to any settlement of any Infringement Claim without the Client's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).
- 9.2. The Scale Factory's indemnification obligations under clause 9.1 are subject to:
- (a) the Client notifying The Scale Factory in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;
 - (b) the Client not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of The Scale Factory; and
 - (c) The Scale Factory having, at its own expense, the conduct of and the right to settle all negotiations and litigation arising from any Infringement Claim and the Client giving

The Scale Factory all reasonable assistance in connection with those negotiations and such litigation at the Indemnifying Party request and expense.

- 9.3. In the event of a relevant infringement or alleged infringement of Deliverables, and by way of the Client's sole and exclusive remedy, The Scale Factory shall at its discretion and at its sole cost and expense:
- (a) procure for the Client the right to continue to use the Deliverables; or
 - (b) modify or replace the allegedly infringing Deliverables in a manner which renders it non-infringing whilst giving reasonably equivalent functionality and performance; or
 - (c) discontinue the Client's licence to use the Deliverables and refund to Client such parts of the Charges that the Client has previously paid to The Scale Factory for its use of the Deliverables, less 20% for each complete year of use by the Client up to the date that the licence is discontinued.

10. Limitation of liability

- 10.1. This clause 10 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the other party in respect of:
- (a) any breach of this Agreement or an SOW by a party, or its employees, agents or subcontractors;
 - (b) any use made by the Client of the Services, the Deliverables, the Licensed Software or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 10.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement and an SOW.
- 10.3. Nothing in this Agreement limits or excludes:
- (a) liability for death or personal injury resulting from negligence; or
 - (b) liability for any damage or loss incurred as a result of fraud or fraudulent misrepresentation; or
 - (c) liability for any damage or loss incurred as a result of wilful misconduct; or
 - (d) liability incurred by the Client as a result of any breach by The Scale Factory of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982; or
 - (e) liability resulting from breach of a payment obligation.
- 10.4. Subject to clause 10.2 and clause 10.3:
- (a) neither party shall be liable for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss or corruption of data or information; or

- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- (b) each party's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to the price paid for the Services.

11. Data Protection

11.1. When used in this clause:

- (a) the terms "**controller**", "**processor**", "**processing**", "**personal data breach**" and "**personal data**" have the meanings given to them in the Data Protection Legislation; and
- (b) "**Client Personal Data**" means any personal data provided by the Client to The Scale Factory in connection with the Services.

11.2. The parties agree that, in respect of any Client Personal Data that is provided or made available by the Client to The Scale Factory then, for the purposes of the Data Protection Legislation, the Client is the controller and The Scale Factory is the processor of such Client Personal Data.

11.3. The Scale Factory will at all times:

- (a) process the Client Personal Data only to the extent, and in such a manner, as is necessary for the purposes of the SOW and in accordance with the Client's lawful written instructions from time to time, except where required to do otherwise by EU or Member State law in which case The Scale Factory shall immediately notify the Client, unless prohibited by applicable law from doing so;
- (b) ensure the reliability of all its personnel who have access to Client Personal Data and, in particular, ensure that any person authorised to process Client Personal Data in connection with the SOW is subject to a duty of confidentiality;
- (c) assist the Client in complying with the Client's obligations under the Data Protection Legislation, including with: (i) the Client's obligations to respond to requests from data subjects, (ii) the Client's obligations to notify personal data breaches to supervisory authorities and (where applicable) affected data subjects, and (iii) the Client's obligations to undertake data protection impact assessments and (where applicable) prior consultations with supervisory authorities;
- (d) implement and maintain technical and organisational measures against the unauthorised or unlawful processing to, and the accidental loss or destruction of, or damage to, Client Personal Data;
- (e) ensure that, to the extent that any personal data originating from the UK or European Economic Area ("EEA") is transferred to a country or territory outside the UK or EEA that has not received a binding adequacy decision by the European Commission or a competent national data protection authority, such transfer is subject to appropriate safeguards in accordance with the Data Protection Laws (including Article 46 of the GDPR). The Scale Factory shall notify the Client if it believes, or has reasonable cause to believe that it or a sub-processor is unable to comply with the requirements for the protections afforded to individuals pursuant to such appropriate safeguards and/or if compliance with such requirements would result in a breach of applicable law. If the

- UK ceases to be a member of the EEA, The Scale Factory shall procure a method to ensure the lawful export of personal data from the UK and from the EEA to the UK.
- (f) promptly notify the Client, and provide such co-operation, assistance and information as the Client may reasonably require, if The Scale Factory receives any complaint, notice or communication which relates to the processing of the Client Personal Data under the SOW or to either party's compliance with Data Protection Legislation.
 - (g) notify the Client without undue delay and in any event within 48 (forty-eight) hours after becoming aware of any personal data breach;
 - (h) keep a written record of all processing of Client Personal Data carried out in the course of the Services;
 - (i) with respect to The Scale Factory's own premises, facilities or equipment, provide the Client (or an independent auditor appointed by the Client and who is reasonably acceptable to The Scale Factory) with access on reasonable notice and at reasonable intervals to enable the Client to ensure that The Scale Factory is complying with its obligations under this clause 11;
 - (j) with respect to The Scale Factory's sub-processor's premises, facilities and equipment (A) at the Client's cost and expense arrange for an audit of such premises, facilities and equipment by an independent auditor appointed by The Scale Factory and approved by the Client to confirm that The Scale Factory is complying with its obligations under this clause 11, and (B) provide the Client with a copy of the audit inspection report; and
 - (k) destroy or, if required by the Client and at the Client's cost, return all Client Personal Data that it processes acting on behalf of the Client and has in its possession and delete existing copies of such data unless Applicable Laws requires storage of the Client Personal Data.
- 11.4. In connection with the engagement by The Scale Factory of sub-processors, The Scale Factory shall:
- (a) if it proposes to appoint any new or replacement sub-processors, notify the Client in writing, not less ten (10) Business Days prior to the relevant change or changes and give the Client an opportunity to object. If the Client raises any reasonable objections within the ten (10) Business Day period outlined above, The Scale Factory shall refrain from using the objected-to sub-processor for processing the Client's personal data;
 - (b) enter into a written contract with each sub-processor which provides equivalent data protection obligation as those to which The Scale Factory is subject under this clause 11; and
 - (c) remain liable for all acts or omissions of the sub-processors as if they were The Scale Factory's acts or omissions.
- 11.5. The Client agrees to comply with its obligations under Data Protection Legislation in respect of the processing of the Client's personal data in connection with the SOW and will ensure that The Scale Factory is lawfully permitted to process the Client's personal data.
- 11.6. The Scale Factory shall indemnify the Client against all claims and proceedings and all liability, loss, costs and expenses incurred by the Client as a result of any claim made or brought by a data subject or other legal person in respect of any loss, damage or distress caused to them as

a result of any breach of this clause 11 or Data Protection Legislation by The Scale Factory, its employees or agents.

- 11.7. The Client warrants that it will comply with its obligations under the Data Protection Legislation.

12. Termination

- 12.1. This Agreement shall continue with effect from the date hereof until terminated by either party giving to the other party not less than three (3) months' written notice, or otherwise terminated in accordance with the provisions of this clause 12. Termination of this Agreement shall not terminate, or otherwise affect, any SOW which remains to be performed or completed as at the date on which this Agreement is terminated.

- 12.2. A party may terminate an SOW:

- (a) in accordance with the termination provisions set out in the SOW; or
- (b) to the extent that the SOW relates to Support & Learning Services, by giving to the other party not less than ninety (90) days' prior written notice.

- 12.3. A party may (but shall not be obliged to) terminate this Agreement and/or an SOW with immediate effect if the other party:

- (a) has a liquidator (other than for the purpose of solvent amalgamation or reconstruction), administrative receiver, administrator or receiver appointed in respect of the whole or part of its assets and/or undertaking, or enters into an arrangement or composition with its creditors generally, or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or is subject to circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to make a winding up order in relation to the other party; or
- (b) commits a material breach of this Agreement or the SOW which, if capable of remedy, is not remedied within twenty (20) Business Days (or, in the case of a breach of an undisputed payment obligation, within seven (7) days) of the breach being notified to such other party in writing).

- 12.4. Termination of this Agreement or an SOW shall be without prejudice to the rights, remedies and liabilities of each party with respect to this Agreement or the SOW that have accrued up to and including the date on which the notice of termination is effective.

- 12.5. In addition to any clauses which are intended to continue expressly or by implication, the following provisions shall, to the extent relevant or applicable, continue to apply after termination of this Agreement or an SOW: clauses 7, 8, 9, 10, 11, 12.5, 13 and clauses 16 to 23 (inclusive).

13. Confidentiality

- 13.1. For the purposes of this clause, "**Confidential Information**" means any information disclosed or made available (whether in writing, verbally or otherwise) by a party, including:

- (a) any information that is marked, or at the time of disclosure is otherwise designated, as being confidential;
- (b) any information that would be regarded as confidential by a reasonable business person in or relating to the business, affairs operations, processes, products,

- inventions, know-how, trade secrets, designs or software (including, in the case of The Scale Factory, the Services);
- (c) the existence and terms of a Contract; and
 - (d) any information or analysis derived from any of the information referred to in (a) – (c).
- 13.2. Each party (“**Recipient**”) shall:
- (a) keep the Confidential Information of the other party (“**Discloser**”) strictly confidential;
 - (b) not disclose the Discloser’s Confidential Information to any person without the Discloser’s prior written consent, and then only under conditions of confidentiality no less onerous than those set out in this clause; and
 - (c) use the same degree of care to protect the confidentiality of the Discloser’s Confidential Information as the Recipient uses to protect its own confidential information of a similar nature, being at least a reasonable degree of care.
- 13.3. Notwithstanding clause 13.2, the Recipient may disclose the Discloser’s Confidential Information to its officers, employees, professional advisers, insurers, agents and subcontractors who are bound by a written agreement or professional obligation to protect the confidentiality of such Confidential Information.
- 13.4. This clause 13 imposes no obligations upon the Recipient with respect to the Discloser’s Confidential Information that:
- (a) is known to the Recipient before disclosure under or in connection with the Contract, and is not subject to any other obligation of confidentiality; or
 - (b) is or becomes publicly known through no act or default of the Recipient; or
 - (c) is obtained by the Recipient from a third party in circumstances where the Recipient has no reason to believe that there has been a breach of an obligation of confidentiality.
- 13.5. The restrictions in this clause 13 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Recipient on any recognised stock exchange.
- 13.6. The provisions of this clause 13 shall survive the expiry or earlier termination of this Agreement.

14. Notices

- 14.1. Any notice to be given in connection with this Agreement shall be in writing in English and shall either be delivered by hand or sent by first class post to a party’s registered office, or by email or other electronic means to:
- (a) in the case of The Scale Factory, legal@scalefactory.com; or
 - (b) in the case of the Client, such address as the Client may have notified The Scale Factory from time to time.
- 14.2. A communication sent according to this clause shall be deemed to have been received:
- (a) if delivered by hand, at the time of delivery;
 - (b) if sent by pre-paid first class post, on the second Business Day after posting; or
 - (c) if sent by email or other electronic means, at the time of completion of transmission by the sender.

15. Force majeure

- 15.1. Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - (f) collapse of buildings, fire, explosion or accident;
 - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and
 - (h) interruption or failure of utility service.
- 15.2. Provided it has complied with clause 15.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 15.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 15.4. The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than ten (10) Business Days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 15.5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than twelve (12) weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving written notice to the Affected Party.

16. Entire agreement and variation

- 16.1. This Agreement and the documents referred to or incorporated in it constitute the entire agreement between the parties relating to the subject matter of this Agreement and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties in relation to the subject matter of this Agreement.

- 16.2. Each of the parties acknowledges and agrees that it has not entered into this Agreement in reliance on any statement or representation of any person (whether a party to this Agreement or not) other than as expressly incorporated in this Agreement.
- 16.3. Without limiting the generality of the foregoing, each of the parties irrevocably and unconditionally waives any right or remedy it may have to claim damages and/or to rescind this Agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether party to this Agreement or not) and upon which it has relied in entering into this Agreement.
- 16.4. Nothing contained in this Agreement or in any other document referred to or incorporated in it shall be read or construed as excluding any liability or remedy as a result of fraud.
- 16.5. No variation of this Agreement or any of the documents in the agreed form shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Agreement.

17. Waiver

- 17.1. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. Severance

- 18.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 18.2. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

19. No partnership

- 19.1. Nothing in this Agreement is intended or shall be construed as establishing or implying any partnership of any kind between the parties.

20. Third party rights

- 20.1. A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

21. Counterparts

- 21.1. This Agreement may be executed in any number of counterparts each of which when executed by one or more of the parties hereto shall constitute an original but all of which shall constitute one and the same instrument.

22. Dispute Resolution

- 22.1. The parties shall use their best efforts to resolve any dispute arising under this Agreement by direct negotiations. If the dispute is not resolved within ten (10) Business Days through direct negotiation the parties shall attempt to resolve the matter through such alternative dispute resolution (ADR) procedure as is recommended to the parties by the Centre for Effective Dispute Resolution (<https://www.cedr.com/>). If the matter is not resolved by an ADR procedure within a period of forty (40) Business Days from the date on which the ADR procedure is recommended, either party may start legal proceedings in accordance with clause 23.1. Nothing in this clause shall prevent a party from seeking injunctive relief if the other party is in breach of this Agreement.

23. Governing law and jurisdiction

- 23.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims shall be governed by and construed in accordance with the laws of England and Wales.
- 22.2. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement.

SCHEDULE 1

STATEMENT OF WORK TEMPLATE

THIS STATEMENT OF WORK is entered into on [DATE]

(1) **THE SCALE FACTORY LIMITED** a company registered in England with number 06784929 and whose registered office is at 86-90 Paul Street, London, England, EC2A 4NE ("**The Scale Factory**"); and

(2) **[COMPANY]** a company registered in England with number [COMPANY NUMBER] and whose registered office is at [REGISTERED OFFICE ADDRESS] (the "**Client**").

pursuant to the Master Supply Agreement dated [DATE] ("**MSA**").

Services

Consultancy Services	
Support & Learning Services	
Licenced Software	Consider cross-referring to EULA.
Deliverables	

Charges

Consultancy Charges	
Support Charges	
Licence Fees	

Other

SOW Start Date	
SOW Term	

Input Material	<p>The Client shall provide The Scale Factory with the following materials (“Input Materials”):</p> <p>[TBC]</p> <p>The Client agrees that The Scale Factory shall not be liable for any failure or delay in performing its obligations under this SOW to the extent that such failure or delay results from the Client’s failure to provide the Input Materials by the date(s) specified above or otherwise in a timely manner.</p>
Fair Usage Limits	<p>Developer Support: [TBC] hours per year.</p> <p>Incident Support: [TBC] hours per [month/quarter/year].</p>
Frequency of project meetings (MSA, clause 5.1)	
Licence Commencement Date	
Open Source Software	
Additional Terms	<p>Eg:</p> <ol style="list-style-type: none"> 1. Performance dates (MSA, clause 3.2). 2. Date(s) by which Client is to provide Input Material (MSA, clause 4.1(c)). 3. Non-standard invoicing terms (MSA, clause 6.4). 4. Non-30 day payment terms (MSA, clause 6.6). 5. Form/details of time recording (MSA, clause 6.2(g)) 6. Fair Usage Limit (SLA)

The Scale Factory:	[Client]:
<p>By:</p> <p>(Authorised signatory)</p>	<p>By:</p> <p>(Authorised signatory)</p>

<p>.....</p> <p>(Typed or printed name)</p>	<p>.....</p> <p>(Typed or printed name)</p>
<p>.....</p> <p>(Title)</p>	<p>.....</p> <p>(Title)</p>

SCHEDULE 2

SLA – SUPPORT & LEARNING SERVICES

1. Overview

- 1.1. The Scale Factory will provide the Client with Developer Support, Incident Support and Training Sessions (“**Support & Learning Services**”), as described in Sections 2, 3 and 4 below.
- 1.2. The following definitions apply in this SLA:

“Business Day”	means any day other than a Saturday, Sunday, or a day which is Bank or public holiday in England.
"Business Hours"	09:00 - 17:00 on Business Days.
“Developer Support”	has the meaning given to it in paragraph 2.1.
“Fair Usage Limit”	means: <ol style="list-style-type: none"> (i) in relation to Developer Support, the Client is entitled to up to such number of hours per year (pro rated if the SOW Term is less than 12 months) as is specified in an SOW. The Client acknowledges and agrees that unused Fair Usage Limit hours for Developer Support may not be rolled over to the following year; or (ii) in relation to Incident Support, the maximum number of hours of Incident Support to which the Client is entitled per month or other period (as applicable), as specified in an SOW. The Client acknowledges and agrees that unused Fair Usage Limit hours for Incident Support may not be rolled over to the following month or other period (as applicable).
“Incident”	has the meaning given to it in paragraph 3.2.
“Incident Support”	has the meaning given to it in paragraph 3.2.
“Supported Systems”	means the IT systems and infrastructure for which The Scale Factory will provide Support & Learning Services, as specified in an SOW.

2. Developer Support

- 2.1. The Client can request remote support from The Scale Factory during Business Hours via a shared channel in Slack ("**Developer Support**").
- 2.2. The Scale Factory will use commercially reasonable endeavours to respond to requests for Developer Support within 1 Business Hour, but does not offer service credits if it fails to do so.
- 2.3. The Client acknowledges that the provision of Developer Support is subject to the Fair Usage Limit.

3. Incident Support

- 3.1. The Client can request Incident Support from The Scale Factory at any time:
 - (a) if the Client has previously notified The Scale Factory of the email domain used to send requests for Incident Support, by email at support+urgent@scalefactory.com; or
 - (b) by telephone on +44 (0)20 3322 8776.

Alternatively, if the Client has previously been onboarded by The Scale Factory, the Client can request Incident Support by submitting a support ticket at <http://support.scalefactory.com/>. The Client acknowledges that it is solely responsible for notifying The Scale Factory in writing of the name of the email domain(s) that it wishes to use for making Incident Support requests (as well as any changes to such email domain(s)), and that Support Incident request emails sent from any email domain that has not been so notified will not be received by The Scale Factory.

- 3.2. The Scale Factory will provide technical support and assistance to resolve any incidents arising in connection with the use of the Supported Systems ("**Incident**") on a remote, helpdesk basis ("**Incident Support**").
- 3.3. The Scale Factory will use commercially reasonable endeavours to respond to Incidents within 1 hour ("**Incident Response Time**").
- 3.4. If The Scale Factory fails to meet the Incident Response Time, the Client will be entitled to a service credit equal to 2% of one month's Support Charges, provided that the maximum compensation that the Client can receive for failure to meet the Incident Response Time in any calendar month is 20% of the Support Charges for that month. The Client's entitlement to service credits under this paragraph is the Client's sole and exclusive remedy with respect to The Scale Factory's failure to meet the Incident Response Time and shall be in lieu of any other remedy which the Client may have at law or otherwise.
- 3.5. The Client acknowledges that:
 - (a) the provision of Incident Support is subject to usage limits to ensure that The Scale Factory can meet the requirements of all its clients. If The Scale Factory (acting reasonably) considers that the Client's use of Incident Support is excessive or unnecessary then The Scale Factory reserves the right to charge the Client an additional, one-off fee and/or to increase the Support Charges. Examples of excessive or unnecessary use of Incident Support include:
 - (i) use of Incident Support in excess of the Fair Usage Limit;
 - (ii) requesting support for systems or infrastructure which are not included within the Supported Systems;
 - (iii) raising Incidents after advice, guidance and/or recommendations have been provided by The Scale Factory but not implemented by the Client; and

- (iv) repeatedly designating Incidents with too high a Priority Level.
- (b) The Scale Factory will have no obligation to provide support in respect of any Incident caused by:
 - (i) the improper use of the Supported Systems by the Client; or
 - (ii) any modification to the Supported Systems made without the prior agreement of The Scale Factory; or
 - (iii) the Client's failure to take remedial steps in respect of any areas identified by The Scale Factory as requiring improvement, whether in the course of providing On-Boarding Consultancy or subsequently,and that any support or other assistance provided in relation to an Incident which falls within this paragraph will be chargeable by The Scale Factory at its then-current standard consultancy rates; and
- (c) the Client remains solely responsible for achieving any service levels or other performance targets that the Client has agreed with its clients or customers, including in relation to the Supported Systems.

4. Training Sessions

- 4.1. The Client is entitled to attend The Scale Factory's training sessions at no additional cost.

SCHEDULE 3

EULA

1. What is Covered by this EULA?

This End User Licence Agreement (EULA) applies to the following Licensed Software:

1. All programs supplied to the Client which are marked "Copyright (or ©) The Scale Factory";
2. Such additional programs that The Scale Factory identifies as being subject to this EULA (whether in an SOW or otherwise), for example, the sf-bootstrap program.

This EULA does not apply to:

1. Created Works, ownership of which vests in the Client in accordance with the main body of this Agreement; or
2. Open Source Software (as identified in an SOW), use of which is subject to the terms of the Open Source Licence applicable to such software which can be accessed in, or alongside the relevant files. The Client acknowledges its responsibilities when modifying or extending software programs covered by a so-called "Copyleft" licence eg. the GNU General Public License.

2. Licence

2.1 The Scale Factory grants to the Client with effect from the Licence Commencement Date a non-exclusive, non-transferable (whether by sub-licence, assignment or otherwise) licence for the Client to copy, use, adapt and modify the Licensed Software during the Licence Term ("**Licence**").

2.2 The Client may:

- (a) make multiple copies of the Licensed Software and install such copies on multiple servers; and
- (b) install the Licensed Software on servers owned or controlled by third parties, provided that the Client at all times retains sole right of access to the Licensed Software.

2.3 The Client shall not modify or remove any copyright, trade mark or proprietary notices on the Licensed Software or the Licensed Software Documentation and shall reproduce such notices on each copy of Licensed Software and Licensed Software Documentation in the form in which they appear on the original.

2.4 The Client shall not, and shall not allow any employee, contractor or other third party to:

- (a) where the Licensed Software is provided in machine-readable object code, reverse engineer or decompile the Licensed Software, except to the extent expressly permitted by law (in which case paragraph 2.5 shall apply); or

- (b) except as permitted under paragraph 2.2(b) above, rent, lease, sublicense, assign or otherwise transfer or distribute the Licensed Software to third parties (including, for the avoidance of doubt, by incorporating the Licensed Software in a pre-built physical or virtual appliance, virtual machine disk image, software package or other deployment of the Client's product onto its customers' servers); or
- (c) merge all or any part of the Licensed Software in another program.

2.5 Where the Licensed Software is provided to the Client in machine-readable object code, then, to the extent that local law gives the Client the right to decompile the Licensed Software in order to obtain information necessary to render the Licensed Software interoperable with other computer programs, The Scale Factory undertakes to make that information readily available to the Client on receipt of the Client's written request. The Scale Factory has the right to impose reasonable conditions and to charge a reasonable fee for doing so. In order to ensure that the Client receives the appropriate information, the Client must first give The Scale Factory sufficient details of the Client's objectives and the other software concerned.

2.6 Where the Licensed Software is provided to the Client as source code or other eye-readable format ("**Source Code**"), then the Client agrees to use all necessary steps to safeguard the Source Code, to ensure that no unauthorised person has access to the Source Code, and to secure and protect the Source Code and all copies in a manner consistent with the maintenance of The Scale Factory's rights in the Licensed Software.

2.7 The Client acknowledges and accepts that in the event of (a) its failure to pay any Licence Fees or (b) termination of an SOW under clause 13.3 of the main body of the Agreement, The Scale Factory shall be entitled to revoke the Licence granted under this EULA with immediate effect by giving written notice to the Client, without any obligation to the Client or right for the Client to claim against The Scale Factory for such discontinuance.

3. Updates to the Licensed Software

As long as you remain a customer of The Scale Factory, we'll provide you with access to updates of our software. Updates will be provided as either full distributions of our software, or as patches to the version that you currently have deployed.

If you require any support from us to deploy and/or integrate these updates to our software, this work may not be included as part of the Support & Learning Services and therefore be billed separately. If that is the case we will discuss and agree the terms on which such support will be provided and billed.

By installing, copying or using any updates to the Licensed Software, the Client agrees to be bound by any additional licence terms that accompany such updates. If the Client does not agree to such additional licence terms, the Client may not install, copy or use such updates.

We will cease to consider you to be a customer of ours if we do not provide any billable services to you for any six-month period.

4. Licence Term

4.1 The Licence granted under this EULA in respect of the Licensed Software continues until the earliest of the following:

- (a) deletion by the Client of all copies of the Licensed Software from its servers and from all backup, revision control and archival mechanisms; or.
- (b) The Scale Factory's immediate termination of the Licence as a result of the Client's material breach of any term of this EULA; or
- (c) The Scale Factory's termination of the SOW pursuant to which the Client purchased the Licensed Software under clause 13.3 of the main body of the Agreement.

4.2 Following termination of the Licence, the Client must immediately cease using the Licensed Software, and destroy all copies of the Licensed Software from all of its servers and from all backup, revision control and archival mechanisms.

5. Audit rights

The Client agrees that The Scale Factory may audit the Client's use of the Licensed Software for compliance with the terms of this EULA at any time, upon reasonable notice.

The Scale Factory:	[Company.Name] :
By: (Authorised signatory)	By: (Authorised signatory)
..... (Typed or printed name) (Typed or printed name)
..... (Title) (Title)