

SCALEOUT SOFTWARE SUPPORT AND MAINTENANCE SUBSCRIPTION AGREEMENT

ScaleOut Software agrees to provide a subscription for support and maintenance services to Subscriber under the terms of this Software Support and Maintenance Subscription Agreement ("Agreement").

1. DEFINITIONS

In this Agreement:

- a. "ScaleOut" means ScaleOut Software, Inc.
- b. "Licensed Software" means a software product obtained from ScaleOut with a valid license under the terms of the ScaleOut Software End User License Agreement.
- c. "Services" refers to a subscription for support and maintenance services provided for Licensed Software under the terms of this Agreement.
- d. "Subscriber" means the purchaser of Services under the terms of this Agreement.
- e. "Fees" means the fees for Services as described in Section 4 of this Agreement.

2. SUBSCRIPTION

The Services available under this Agreement require a fully paid subscription for each instance of the Licensed Software. The subscription term must include the period for which Services are requested.

3. DESCRIPTION OF SERVICES

During the term of this Agreement as set forth in Section 4 below, ScaleOut agrees to provide the Services for Licensed Software as described in https://static.scaleoutsoftware.com/media/PDF/ScaleOutSoftware_Support_Options.pdf, the terms of which are made a part of this Agreement.

4. FEES

Fees for Services are specified in the invoice for this Agreement.

5. NO WARRANTIES, INDEMNITIES OR LIABILITIES.

THE SERVICES ARE PROVIDED TO SUBSCRIBER WITHOUT WARRANTY OR INDEMNITY OF ANY KIND, EXPRESS, IMPLIED OR OTHERWISE. IN NO EVENT SHALL SCALEOUT BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR THE CLAIMS OF THIRD PARTIES, WHETHER OR NOT SCALEOUT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES.

6. TERM AND TERMINATION

The term of this Agreement is the period stated in the Services subscription billing invoice. The subscription term may be renewed for an additional period by mutual consent and purchase of a new prepaid subscription at the then-current rates. ScaleOut may terminate the Agreement with 60-days' notice by email to Subscriber. Upon such termination, any prorated portion of prepaid Fees minus inapplicable multi-year discounts will be returned by ScaleOut to Subscriber within 30 days of the date that it receives notice of termination.

Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, except that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Sections 3, 4, and 5.

7. GENERAL

7.1 This Agreement is governed by the laws of the State of Washington.

7.2 This Agreement is the entire agreement between ScaleOut and Subscriber and supersedes any other communications or advertising with respect to the Services, including without limitation any terms and conditions on any purchase order, all of which are expressly rejected.

7.3 If any provision of this Agreement is held unenforceable, that provision shall be enforced to the maximum extent permissible so as to give effect to the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

7.4 The headings used in this Agreement are for convenience only and shall not be given any legal import.

7.5 Any item or service furnished by ScaleOut or its or their respective affiliates, agents, licensees and licensors in furtherance of this Agreement, although not specifically identified in it, shall nevertheless be covered by this Agreement unless specifically covered by some other written or electronic agreement accepted by you and an authorized representative of ScaleOut.

7.6 Either party has the right to assign, either directly or as a result of a change of control or by operation of law or otherwise, its rights and obligations under this Agreement.

7.7 All correspondence regarding this Agreement shall be directed to ScaleOut by email to support@scaleoutsoftware.com or by U.S. Mail to the following address: ScaleOut Software, Inc., 12725 SW Millikan Way, Suite 270, Beaverton, OR 97005, U.S.A. All correspondence regarding this Agreement shall be directed to Subscriber by email using the email address provided in the purchase order for Services.