

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (this **Agreement**) is entered into by and between Scalr, Inc. a Delaware corporation (**Scalr**), and the **Customer**.

WHEREAS, Scalr has developed a datacenter management software system that enables customers to establish access controls, enforce policies, understand costs, and automate workflows in conjunction with infrastructure-as-code software for the deployment and subsequent management of datacenter infrastructure (as updated from time to time, the **Software**); and

WHEREAS, Customer desires to obtain a license to use the Software for its internal business purposes and inside its physical or cloud datacenter, subject to the terms and conditions of this Agreement.

1. **GRANT OF LICENSE.** Subject to the terms and conditions set forth in this Agreement, Scalr hereby grants Customer a non-exclusive, non-transferable, non-sublicensable, license to use the Software for the term set forth herein, solely for Customer's own internal business purposes and inside its physical or cloud data center as permitted by this Agreement up to a number of workspaces equal to the Workspaces Cap set in Exhibit A. Unless otherwise agreed to in writing by the parties, the non-transferability of the Software applies to any third party, including, without limitation, any parent, subsidiary, or affiliated entity of the Customer. Scalr will provide the Customer a link to download the Software and a license key to provide access thereto, enforce the Workspace Cap, and facilitate remote deactivation of the Software as set forth in Section 5(d).
2. **SCOPE OF LICENSE.** Customer may:
 - a. Use the Software only in the Customer's internal business operations and inside its physical or cloud data center;
 - b. Make two copies of the Software, one copy for development and testing purposes only and one other copy for archival and backup purposes only, provided that the Customer reproduces all copyright and other proprietary and restriction notices on both copies.
 - c. In the event that the number of Customer's workspaces exceeds the number of Authorized Workspaces, the Customer will immediately notify Scalr of the excess number of workspaces. Customer shall be charged for workspaces used in excess of Authorized Workspaces based on the per-unit cost of Authorized Workspaces hereunder less any applicable discount hereunder and agrees to pay any invoice thereafter issued by Scalr related to such excess workspaces in accordance with Section 5(a).
 - d. Customer is responsible and liable for all uses of the Software, directly or indirectly, whether authorized by it or not and whether such access or use is

permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of any of its employee, agent, contractor, or other Customer workspace users of the Software. Customer shall ensure that all Authorized Workspace users are aware of this Agreement's provisions and shall cause Authorized Workspace users to comply with such provisions.

3. **RESTRICTIONS.** Customer may not:

- a. Except as permitted by this Agreement or by law, copy the Software;
- b. Transfer, assign, sublicense, rent, lend, grant any rights in or create derivative works of the Software, or use it in any type of service provider environment without the prior written consent of Scalr (any prohibited assignment or sublicense shall be null and void);
- c. Distribute, publish, decode, modify, adapt, translate, reverse engineer, decompile, disassemble, create derivative works based on, print any part of, or otherwise attempt to discover the source code, compiled executables, intermediate files, or underlying structure, ideas, know-how or algorithms relating in any way to the Software, in whole or in part, except to the extent permitted by law;
- d. remove any proprietary notices from the Software;
- e. use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or another right of any person, or that violates any applicable law;
- f. use or provide the Software other than for Customer's benefit, including without limitation for the benefit of any third party, commercial timesharing or service bureau or other rental or sharing arrangements, data processing or management information or similar services; or
- g. use the Software in any fashion which would exceed or attempt to exceed the scope or term of the license rights granted to Customer in this Agreement.

4. **RESERVATION OF RIGHTS.** Scalr reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted hereunder, nothing in this Agreement grants to Customer or any third party, by implication, waiver, estoppel, or otherwise, any intellectual property rights or another right, title, or interest in or to the Software.

5. **FEES AND PAYMENT**

- a. **License Fees.** Customer will pay all license fees set forth in Exhibit A. Scalr reserves the right to change the license fees or applicable charges and to institute new charges and fees at the end of the then-current term, to be effective upon commencement of the immediately following term, upon at least 60 days prior notice to Customer.

- b. **Taxes.** In addition to the fees payable hereunder, Customer shall be responsible for any withholding, sales, or use taxes or other taxes or government fees, assessments, or charges payable in connection with the license of the Software hereunder.
- c. **Late Payment.** All late payments shall bear interest at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly, and Customer shall also bear any expenses of collection. Late payments may result in a loss of future license fee discounts, access to support, and access to Software updates.
- d. **Remote Deactivation.** In the event Customer fails to pay any fees when due in accordance with the terms of this Agreement, Customer understands that an automatic disabling mechanism may be triggered without any prior notice, in which case payment of a reactivation fee to regain access to the Software, at a cost to the Customer of 10% of the annual contract license fee will be assessed, and such deactivation may result in a loss of future license fee discounts, in addition to a loss of access to support, and access to Software updates until the foregoing reactivation fee is paid. In addition, Scalr reserves the right to pursue all available legal remedies in connection with Customer's failure to timely pay fees when due hereunder.

6. PROPRIETARY RIGHTS AND MUTUAL CONFIDENTIALITY

- a. **Proprietary Rights.** The Software, workflow processes, user interface, designs, and other technologies provided by Scalr as part of the Software are the proprietary property of Scalr and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Scalr and its licensors and no title to the Software, or any patent, copyright, trade names, trade secrets, trademarks, or other intellectual property rights of Scalr, is transferred to Customer under this Agreement. The Software is protected by applicable copyright and other intellectual property laws. Customer may not remove any product identification, copyright, trademark, or other notice from the Software. Scalr reserves all rights not expressly granted to Customer in this Agreement. Scalr shall own and may commercially exploit any feedback, comments, or suggestions provided by Customer with respect to the Software.
- b. **Mutual Confidentiality.** The recipient of Confidential Information (Recipient) disclosed by a party hereunder (Discloser) must strictly hold in confidence and use at least reasonable efforts to protect such Confidential Information from unauthorized disclosure and may not disclose such information to any third party or use the Confidential Information except as expressly permitted by this Agreement. Confidential Information means all information that is disclosed to the Recipient by the Discloser and its representatives, and includes, among other things:
 - i. Any and all information relating to products or services provided by a Discloser, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts;

ii. The Software and the terms of this Agreement, including without limitation, all pricing information; provided, however, that Confidential Information excludes information that: (w) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (x) is or becomes a matter of public knowledge through no fault of Recipient; (y) is rightfully received by Recipient from a third party without violation of a duty of confidentiality, or (z) is independently developed by or for Recipient without use or access to the Confidential Information. Notwithstanding anything to the contrary set forth herein, Recipient may disclose Confidential Information if required by law, but, to the extent permitted by law, will provide advance notice to the Discloser so that the Discloser may seek a protective order. Each party acknowledges that any misuse of the other party's Confidential Information may cause irreparable harm for which there is no adequate remedy at law. Either party is entitled to seek immediate injunctive or other equitable relief in such event without proof of actual damages or the posting of any bond. This Section 5(a) shall survive any termination or expiration of this Agreement.

c. **Telemetry Data.** The Software will on regular intervals report the following telemetry data to Scalr: (i) Software usage information and (ii) basic system environment (software and hardware information upon which the Software is installed). This information is collected to verify Customer's license capacity compliance and to improve product features and customer's experience with the Software. If Software cannot collect this information from Customer, then upon Scalr's request, Customer shall promptly run a license usage report provided by Scalr and send it to Scalr. More information regarding this telemetry data is located at <https://scalr.com/support-policy/>.

7. **LIMITED WARRANTY.** Scalr warrants that the Software as provided will (i) be free from all viruses and (ii) perform materially in accordance with the performance standards set forth in its accompanying product documentation for a period of ninety (90) calendar days from the commencement of the initial term of this Agreement. Customer must report any warranty claims under clause (ii) above within 30 days after the end of the applicable warranty period. Customer will cooperate with Scalr in resolving any warranty claim. Scalr does not warrant (a) that the Software is or will be error-free, (b) any results arising from the use of the Software, (c) that the Software will meet Customer's requirements, (d) that the functions contained in the Software will be uninterrupted, or (e) that any Software defects or conflicts will be corrected. Except as expressly set forth in this Section 7, the Software is provided "as is" and the entire risk as to the performance of the Software is with Customer.

a. **Exclusive Remedy and Sole Liability.** If the Software fails to comply with the limited warranty set forth herein, Scalr will use reasonable efforts to remedy such noncompliance within a reasonable period of time or replace the Software, or if

Scalr cannot do so, it will refund to Customer the applicable license fee paid for such non-conforming Software, prorated for the then-current term of the Agreement. THIS REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY AND SCALR'S SOLE LIABILITY FOR WITH RESPECT TO WARRANTY CLAIMS.

- b. **Disclaimer of Warranties.** TO THE EXTENT PERMITTED BY LAW AND OTHER THAN AS SET FORTH IN THIS SECTION 7, SCALR EXCLUDES AND DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, RELATING TO THE SOFTWARE AND THE OTHER SUBJECT MATTER OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IN ENTERING INTO THIS AGREEMENT IT HAS NOT RELIED ON ANY REPRESENTATIONS, WARRANTIES, PROMISES, OR UNDERTAKINGS, BUT HAS RELIED ON ITS OWN KNOWLEDGE AND/OR INDEPENDENT ADVICE.

8. TERM; TERMINATION.

- a. **Term.** The initial term of this Agreement shall commence as of the Effective Date and shall continue for a period of one year. After this initial term, this Agreement shall automatically renew on the same terms for successive one-year periods unless either party provides written notice of non-renewal to the other party no less than 30 days prior to the end of the then-current term. Scalr may update the license fees charged hereunder upon notice delivered no less than 60 days prior to the end of the then-current term.
 - b. **Termination.** Either party may terminate this Agreement immediately for a material breach by the other party that remains uncured after 30 days' advance written notice thereof. Upon termination of this Agreement, for any reason, Customer shall discontinue using the Software, de-install the Software, pay all outstanding fees and destroy or return the Software and all copies, within 10 business days. Upon Scalr' request, Customer will promptly provide written certification of such compliance.
 - c. **Termination by Scalr.** Scalr may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after Scalr's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3 or Section 6. Scalr may remotely deactivate the Software as described in Section 5(d) until Customer cures any material breach and satisfies any outstanding amounts due hereunder in full. In the event of termination, Customer will not be entitled to any refund of Fees.
9. **ANNUAL SUPPORT.** Scalr's technical support and maintenance services (**Support**) are included with license purchases for the term of the Agreement. Subject to this Section 9, Scalr will use commercially reasonable efforts through its Support services to assist Customer to resolve problems that arise in Customer's use of the Software. Support is available only for versions of the Software released no more than twelve (12) months prior to the then-current release. Scalr may change its Support terms at any time but will

not materially reduce its Support obligations during the term of this Agreement. More details on Support are located at <https://scalr.com/support-policy/>. Support is subject to the following.

- a. **Customer Responsibilities:** Customer is responsible for (i) all hardware, operating systems, network setup, network maintenance, and setup and use of any file access control systems required to support the Software; (ii) ensuring that Customer's personnel have sufficient training to attain and maintain competence in the operation of the Software; (iii) if requested, providing Scalr with reproducible test case(s); and (iv) if requested, granting Scalr certain limited access rights (e.g. screen sharing) to Customer's proprietary computer systems in order that Scalr may provide support.
 - b. **Support Credits:** Customer shall receive ten (10) support credit hours per calendar quarter. Each request for support shall result in at least one (1) credit hours being debited from Customer's account. Customer requests for Support made via synchronous media such as Zoom or telephone shall result in at least two support credit hours being debited from Customer's account. If Scalr determines, in its sole discretion, that the solution to a support request is provided in available media (including, but not limited to, the documentation, tutorials and examples, websites or support forums), Scalr may direct Customer's personnel to the appropriate media for the solution to the problem. A support request resolved in this manner shall result in one (1) credit hour being debited from Customer's account. Unused credits shall expire at the end of the applicable quarter and shall not roll over to the next quarter. Customer may purchase additional support credit hours upon contacting Scalr. Scalr may elect to enforce this support credits policy at any time and its failure or delay in enforcing this section shall not operate as a waiver of Scalr's rights hereunder.
10. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, SCALR SHALL NOT BE RESPONSIBLE OR LIABLE UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE, OR OTHER THEORY: (A) FOR ERRORS OR INTERRUPTION OR DELAY OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, SUPPORT OR TECHNOLOGY, LOSS OF GOODWILL OR REPUTATION, OR LOSS OF BUSINESS; (B) FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, ENHANCED OR PUNITIVE DAMAGES; (C) FOR ANY MATTER BEYOND SCALR'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE LICENSE FEES PAID BY CUSTOMER TO SCALR FOR THE SIX (6) MONTH PERIOD PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT SCALR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE OTHERWISE FORESEEABLE.
11. **INDEMNIFICATION.**

- a. **By Scalr.** Scalr shall indemnify, defend and hold Customer harmless from any third party claims of infringement by the Software (when used in compliance with and for the purposes of this Agreement) of any copyright or misappropriation of any trade secret, provided Scalr is promptly notified of any and all threats, claims, and proceedings related thereto and given reasonable assistance from Customer and the opportunity to assume sole control over defense and settlement. Scalr will not be responsible for any settlement it does not approve in writing. If due to a claim of infringement, the Software is held by a court of competent jurisdiction to be infringing or Scalr reasonably believes that a court may so hold, Scalr may, at its option and expense (a) replace or modify the Software to be non-infringing, provided that such modification or replacement software maintains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Software, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid fees for the Software. The foregoing indemnification obligations do not apply with respect to portions or components of the Software (i) not supplied or performed by Scalr, (ii) made or performed, in whole or in part, in accordance with Customer's specifications, (iii) that are modified by persons other than Scalr, (iv) combined with other products, data, software, hardware, equipment or technology not provided by Scalr or authorized by Scalr in writing, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues infringing activity (whether alleged or actual) after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (vi) use of any version other than the most current version of the Software provided to Customer, or (vii) where Customer's use of the Software is not strictly in accordance with this Agreement. The foregoing sets forth Customer's sole remedies and Scalr's sole liability and obligation for any actual, threatened, or alleged claims that the Software infringes, misappropriates, or otherwise violates any intellectual property rights of any third party.
- b. **By Customer.** Customer shall indemnify, defend and hold harmless Scalr and its officers, agents, subsidiaries, affiliates, and partners, if any, against any third party claim arising out of Customer's (i) use of the Software in a manner that violates, breaches, or otherwise circumvents this Agreement, Scalr's intellectual property rights or other rights in and to the Software; (ii) use of the Software in a manner not authorized or contemplated by this Agreement; (iii) use of the Software in combination with other products, data, software, hardware, equipment, technology, processes or materials not provided by Scalr or authorized by Scalr in writing; (iv) modifications to the Software not made by Scalr; (v) use of any version other than the most current version of the Software provided to Customer; or (vi) breach of its confidentiality obligations hereunder. Customer may not settle any third party claim against Scalr unless such settlement completely and forever releases Scalr from all liability with respect to such third party claim and unless Scalr consents to such settlement, and further

provided that Scalr will have the right, at its option, to defend itself against any such third party claim or to participate in the defense thereof by counsel of its own choice.

12. MISCELLANEOUS.

- a. **Authority.** Each party hereto represents and warrants that it has the authority to and has validly entered into this Agreement.
- b. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this Agreement. No representation, promise, or inducement not included in this Agreement is binding.
- c. **No Additional Terms.** No additional, conflicting or different terms and conditions of Customer referred to in purchase orders, order confirmations, or elsewhere shall be of any force or effect, unless expressly agreed to in writing by Scalr.
- d. **Governing Law And Venue; Injunctive Relief; Attorney Fees.** This Agreement is governed by the laws of the State of California (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter hereof. Any action or proceeding arising out of this Agreement shall be brought only in a competent state or federal court located in the City and County of San Francisco, California. Customer hereby consents to the jurisdiction of such court(s) and waives any objection to the laying of venue thereat. Nothing in this Agreement shall prevent either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any action or proceeding is entitled to recover its attorneys' fees and costs from the other party.
- e. **Non-Assignment.** Customer may not assign this Agreement or any rights hereunder, in whole or in part, whether voluntary or by operation of law, including without limitation by the sale of assets, equity, merger, or consolidation, without Scalr's prior written consent. Scalr may assign this Agreement or any of its rights or obligations hereunder without the consent of Customer.
- f. **Open Source Software Licenses.** The Software may contain embedded open-source software components, which are provided as part of the Software and for which additional terms may be included in the technical documentation.
- g. **Relationship Between the Parties.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Scalr in any respect whatsoever.
- h. **Enforceability.** If any provision of this Agreement is deemed by any court to be invalid, illegal or unenforceable, such provision will be enforced to the maximum extent permissible by law, and the validity, legality and enforceability of the remaining provisions shall not be affected or impaired.
- i. **Survival of Terms.** Any terms that by their nature should survive termination of this Agreement, will survive (including without limitation, the confidentiality terms). The parties specifically exclude the United Nations Convention on Contracts for

the International Sale of Goods from this Agreement, and any transaction that may be implemented in connection with this Agreement.

- j. **Compliance Audit.** No more than once in any 12-month period and upon at least 30 days advance notice, Scalr, with cooperation from Customer, may audit Customer's usage of the Software at any Customer facility. Customer agrees to pay within 15 days of written notification any shortfall in fees discovered as a result of such an audit.
- k. **Force Majeure.** In no event shall either party be liable to the other party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, (other than the obligation to make payments when due), if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, pandemic, epidemic, natural disaster, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor or supply chain stoppages or slowdowns or other industrial disturbances, or any action taken by a governmental or public authority, including imposing an embargo.
- l. **Amendments.** No amendment, modification, or waiver of any term of this Agreement is effective unless signed by both parties. Scalr specifically objects to, and rejects, any terms and conditions proposed by Customer that are inconsistent or in addition to the terms and conditions contained in this Agreement. In the event the terms of this Agreement are inconsistent with the terms in a purchase order or other documentation from Customer, the terms of this Agreement shall prevail.
- m. **Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- n. **Export Compliance.** Customer must comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations.
- o. **US Government Restricted Rights.** If Customer is a United States government agency or acquired the license to the Software hereunder pursuant to a government contract or with government funds, then as defined in FAR §2.101, DFAR §252.227-7014(a)(1) and DFAR §252.227-7014(a)(5) or otherwise, all Software provided in connection with this Agreement are "commercial items," "commercial computer software" or "commercial computer software documentation." Consistent with DFAR §227.7202 and FAR §12.212, any use, modification, reproduction, release, performance, display, disclosure or

distribution by or for the United States government is governed solely by the terms of this Agreement and is prohibited except to the extent permitted by the terms of this Agreement.

- p. **Notices.** All notices, including notices of an address change, required to be sent hereunder shall be transmitted electronically. Notices will be deemed given when receipt is electronically confirmed if transmitted by facsimile or email on a business day, and if such fax or e-mail is not transmitted on a business day it will be deemed to be received on the next business day. Notices shall be sent to the parties' respective project managers, as identified in Exhibit A with a copy to the following persons (or as otherwise directed by a party).

This Agreement is hereby executed by the duly authorized representatives of each of the parties as of the date first written above.