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6.1. Term
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Licensee will have the right to terminate this Agreement if Scale breaches or fails to perform any other material term or condition of this Agreement and Scale fails to remedy any such breach within thirty (30) days of notice from Licensee.

6.4. Effect of Termination of Agreement
If either party properly terminates this Agreement, Licensee shall immediately return to Scale or (at Scale’s request) destroy all copies of the Software and will certify to Scale in writing, over the signature of the President or a Vice
President (or similar position) of Licensee, that it has done so. All obligations relating to nonuse and nondisclosure of confidential information, indemnification, and the obligations of Licensee to respect Scale’s Intellectual Property Rights shall survive termination of this Agreement for any reason. Licensee further agrees that in the event of termination, all fees or charges due for the remaining term of this Agreement shall immediately become due and payable. Upon termination of the license granted hereunder, Scale’s obligations under this Agreement shall cease.

6.5. Survival
The rights and obligations of the parties contained in this Agreement shall survive the termination of this Agreement or of any individual Software license; notwithstanding the foregoing, Licensee’s rights to use the Software shall terminate upon termination of this Agreement or as earlier stated above.

7. Miscellaneous

7.1. Restricted Rights
7.1.1. The data provided under this Agreement is “technical data” as that term is defined in 48 C.F.R. 27.401 and is a “commercial item” as that term is described in 48 C.F.R. 2.101. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial item technical data subject to the terms of this Agreement as specified in 48 C.F.R. 12.211 (Technical Data) of the Federal Acquisition Regulations (“FAR”) and its successors. If acquired by or on behalf of any agency within the Department of Defense (“DOD”), the U.S. Government acquires this commercial item technical data subject to the terms of this Agreement as specified in 48 C.F.R. 227.71021 of the DOD FAR Supplement (“DFAR”) and its successors.
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7.3. Notices
All notices and other communications required or permitted hereunder shall be in writing and be deemed given when delivered personally or sent by registered or certified mail, return receipt requested, to the official address of the other party or to such other place as the parties hereto from time to time may direct.

7.4. Relationship of Parties
The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other’s behalf without the other’s prior written consent.
7.5. **Force Majeure**
Neither party hereto will be liable to the other for any failure or delay in performance hereunder due to circumstances beyond its reasonable control including, without limitation, Acts of God, accident, death, injury or illness of key personnel, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.

7.6. **Assignment**
Licensee shall not assign or otherwise transfer its rights under this Agreement, including the Software obtained pursuant to this Agreement, without the prior written consent of Scale. Any attempt to make such an assignment without Scale’s consent shall be void. Scale may freely assign this Agreement.

7.7. **No Waiver**
No failure of either party hereto to prosecute its rights with respect to any single or continuing breach of this Agreement will act as a waiver of the right of that party to later exercise any right or enforce any remedy granted hereunder with respect to that same or any other breach of this Agreement by the other party hereto.

7.8. **Choice of Law**
This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without giving effect to principles of conflict of laws. This Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods. Any legal action or proceeding arising under this Agreement shall be brought exclusively in state courts sitting in Santa Clara County or the federal courts located in the Northern District of California and the parties hereby consent to the personal jurisdiction and venue therein. Notwithstanding the foregoing, at either party’s option, any dispute or claim arising out of or related to this Agreement shall be finally settled by binding arbitration in San Francisco, California under the American Arbitration Association International Arbitration Rules by one arbitrator appointed in accordance with said Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

7.9. **Attorneys’ Fees**
If any legal action or other legal proceedings is brought for the enforcement of this Agreement, or if a dispute arises under this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney’s fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

7.10. **Severability**
If any part of this Agreement is adjudged by any court of competent jurisdiction to be invalid, that part shall be reformed to the minimum extent required to render it valid, and that judgment shall not affect or nullify the remainder of this Agreement, and the legality and enforceability of the other provisions of this Agreement shall remain in full force and effect.

7.11. **Entire Agreement**
This Agreement (and any agreements incorporated herein by reference, and exhibits and appendices attached) sets forth the entire agreement between the parties with respect to the subject matter hereof, and all other discussions, representations, proposals, offers, purchase order and any other prior or contemporaneous oral or written communications of any nature are entirely superseded hereby and extinguished by the acceptance hereof. To the extent the terms of any Scale policies or programs for support services conflict with the terms of this Agreement, the terms of this Agreement shall control.

7.12. **Amendment**
The parties agree that this Agreement shall be modified only by a written agreement duly executed by persons authorized to execute agreement on their behalf.
7.13 **Language**

The English language shall govern the meaning and interpretation of this Agreement.