

## Terms and Conditions for Software and Services

*These Terms and Conditions for Software and Services, together with its appendices, (the "Terms") were last updated on June 6, 2019 and apply to all Order Forms executed by You from June 6, 2019 onwards and all free trial periods commenced from June 6, 2019 onwards.*

THESE TERMS, TOGETHER WITH ITS APPENDICES AND THE ORDER FORM(S) CONSTITUTE THE "AGREEMENT" AND GOVERN YOUR ACCESS TO AND USE OF OUR SOFTWARE, SERVICES AND DOCUMENTATION. BY EXECUTING AN ORDER FORM (MANUALLY OR SUBMITTING ELECTRONICALLY THE ORDER FORM ON OUR WEBSITE) WHICH REFERENCES THESE TERMS, YOU AGREE

TO BE BOUND BY THE TERMS OF THE AGREEMENT. IF YOU ARE ENTERING INTO THE AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT

THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY TO THE AGREEMENT, IN WHICH CASE THE TERMS "YOU" AND "YOUR" SHALL REFER TO THAT ENTITY. IF YOU DO NOT HAVE THE AUTHORITY OR DO NOT AGREE TO ALL THE TERMS OF THE AGREEMENT, YOU MAY NOT ACCESS OR

USE OUR SOFTWARE, SERVICES AND DOCUMENTATION.

The Agreement is valid on the Effective Date and governs Your use of Our Software and Services and comprises the following sections:

1. Free Test Period
2. Terms for Services
3. Terms for Software
4. Generally Applicable Terms
5. Representations, Warranties and Disclaimers
6. Indemnification
7. Limitation of Liability
8. Definitions

Moreover, the Agreement comprises the Order Form and three appendices, all of which shall form an integral part of the Agreement.

If You have not ordered any Services, Section 2 does not apply to You.

If You have not ordered any Software, Section 3 does not apply to You.

If You have ordered both Software and one or more Services, the entire Agreement applies to You.

If You have signed up for a free test period: (i) only Sections 1, 4.1, 4.8, 4.9, 4.16, 4.19 - 4.26, 6.2, 7 and 8 apply to such free test period, and (ii) only those terms which by their nature are intended to survive termination or expiration of the Agreement in respect of such free test period, shall survive any such termination or expiration, including, without limitations, Sections 6.2, 7 and 8.

In the event of any inconsistencies or conflict among the following documents, the order of precedence is: 1. these Terms, 2. the Order Form, except where (i) any terms of these Terms are varied by the parties in such Order Form, where such varied terms will take precedence over these Terms, or (ii) any terms contained in an Order Form expressly state that such terms are to take precedence over these Terms, and 3. the Appendices.

### 1. Free Test Period

**1.1 Term:** If You register on Our website or via Our mobile application for a free test period, We will give You access to one or more of Our Services or Software free of charge in accordance with paragraphs 1.2 a-c, for 30 days or as otherwise defined by Us, so You can try out the Software or Service(s) until the earlier of (a) the end of the free test period for which You registered, (b) the placement by You of a paid order for such Software or Service, or (c) a termination by You or Us in accordance with the Agreement. Additional terms and conditions may apply and will appear on the webpage where You register for Your test period. Any such additional terms and conditions are incorporated into the Agreement and are legally binding.

### 1.2 Additional Terms and Conditions

(a) **Free Test Period, Services:** Subject to the terms of the Agreement, We grant You a limited, non-exclusive, non-transferable right and license to use Our Services during the free test period for testing and evaluation purposes only and subject to any usage limits defined by Us.

(b) **Free Test Period, Software:** Subject to the terms of the Agreement, We grant You a limited, non-exclusive, non-transferable, non-sub-licensable license during the free test period, and solely for the purposes of testing and evaluation, to integrate use, copy, store and transmit the Software as part of Your App to (when testing a Software Component) or, when testing a Software Application, to use, copy, store and test the Software Application, on a maximum of 20 devices or as otherwise defined by Us.

(c) **License to Host Your Applications and Your Data:** You grant Us a non-exclusive, worldwide license to store, copy, transmit and display Your Data and program code created and made available to a Service by or for You or when using Our Software, as necessary for Us to enable You to test Our Software or Services in accordance with the Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under the Agreement in or to Your Data or program code.

**1.3 DURING THE FREE TEST PERIOD, THE SOFTWARE AND SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND AND THE WARRANTY PROVIDED IN SECTION 5.2 AND OUR INDEMNIFICATION OBLIGATIONS UNDER**

**SECTION 6.1 SHALL NOT APPLY. DURING THE FREE TEST PERIOD WE DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY AND ALL LIABILITY FOR THE**

SOFTWARE AND SERVICES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

## 2. Terms for Services

This section applies only if You and We have executed an Order Form which includes a product provided as a Service, see Appendix 2 to these Terms.

**2.1 Provision of Services.** Pursuant to the Agreement and the applicable Order Form, We will (a) make Our Services available to You for the applicable Order Form Term, including Support for the Services at the level defined in the Order Form, and (b) use commercially reasonable efforts to provide You the Services 24 hours a day, 7 days a week, except for (i) emergency down-time or planned down-time (which will be notified to You electronically at least 24 hours in advance), or (ii) Force Majeure Event(s) affecting Us.

**2.2 Right of Use.** Subject to the terms of the Agreement, We grant You a limited, non-exclusive, non-transferable right and license to use Our Services for the Order Form Term and in accordance with the Scope and the terms of the Agreement.

**2.3 Your Responsibilities relating to Services.** You shall (a) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (b) use commercially reasonable efforts to prevent unauthorized access to or use of Services and notify Us promptly of any such unauthorized access or use, (c) not allow Users of the Services to share their identification, password, or other authentication token with any other person, (d) use the Services only in accordance with the Documentation and applicable laws and government regulations; (e) not use the Services for any unlawful purposes; and (f) comply with terms of service or other agreements of other third-party applications (web-based, mobile-based or offline) that interoperate with a Service.

**2.4 License to Host Your Data.** You grant Us a non-exclusive, worldwide license to store, copy, transmit and display Your Data and program code created and made available to a Service by or for You, as necessary for Us to provide the Services in accordance with the Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under the Agreement in or to Your Data or program code.

## 3. Terms for Software

We have two types of Software: Software Components and Software Applications. The license applicable to You depends on the type of product You have ordered as defined in Appendix 2 to these Terms.

### 3.1 Software Component

**3.1.1 License for the Software Component.** Subject to the terms of the Agreement, We grant You a limited, non-exclusive, non-sublicensable, non-transferable (except, where applicable, to Your Affiliate(s) pursuant to Section 4.1) license for the Territory during the applicable Order Form Term and in accordance with the Scope to integrate, use, copy, store and transmit the Software Component in order to integrate the Software Component into Your App and distribute the Software Component as part of Your App as set out in the applicable Order Form(s).

### 3.1.2 Your Responsibilities relating to the Software

**Component.** You shall (a) use the Software Component only in accordance with the Documentation and applicable laws and government regulations, (b) be responsible and liable for the legality, design, functionality, look-and-feel, support, upgrade and maintenance of any and all aspects of Your App, including without limitation the integration of the Software Component, according to any Scope or other usage or integration requirements provided by Us, (c) You shall not share the License Key(s), the Software Component, or any of its parts with any third party for any reason except to Service Providers and/or Affiliates, where applicable, in accordance with Section 4.1, (d) use a separate License Key for each of Your Apps, (e) include Our most recent scan screen as provided by Us in all versions of Your App and on all supported Platforms at all times in accordance with Our logo usage guidelines and (f) integrate the latest version of the Software Component into Your App with its next major release, unless there are reproducible speed, accuracy or stability issues with the latest version of the Software Component. If there are such issues, You will make Us aware of this promptly via email to support@scandit.com.

### 3.2 Software Application

**3.2.1 License for Software Application** Subject to the terms of the Agreement, We grant You a limited, non-exclusive, non-sublicensable, non-transferable (except, where applicable, to Your Affiliate(s) pursuant to Section 4.1) license for the Territory during the applicable Order Form Term and in accordance with the Scope to configure, use, copy, store and distribute the Software Application as set out in the applicable Order Form(s).

**3.2.2 Your Responsibilities relating to the Software Application.** You shall (a) use the Software Application only in accordance with the Documentation and applicable laws and government regulations, (b) be responsible and liable for the legality, design, functionality, look-and-feel, support, upgrade and maintenance of any and all aspects of Your App, including without limitation the configuration of the Software Application to work with Your App, according to any Scope or other usage or configuration requirements provided by Us, (c) You shall not share the License Key(s), Software Application, or any of its parts with any third party for any reason except to Service Providers and/or Affiliates, where applicable, in accordance with Section 4.1.

**3.3 Reporting Requirements.** In the event there is an absence of reliable information to verify Your compliance with the Scope You shall upon Our request and no more than 2 times per year, provide Us within 30 working days of Our request an original report (and in Our reasonable opinion, verifiable report, for example from a mobile device management system), listing the number of Active Devices per Platform for each of Your App(s) used in combination with Our Software, covering at least the 12 (twelve) month period prior to such request, including a description and screenshots of the scan screen of Your App.

## 4. Generally Applicable Terms

### 4.1 Your Responsibilities.

(a) You shall be responsible and liable for compliance with the Agreement and any breach thereof by anyone to whom You give access to the Software or Services, including, for example, Your employees, directors, contractors, consultants and/or any consumer end Users. You will not use the Software or Services in any manner that could damage, disable, overburden or impair the Services, Our website or the services or websites provided by a third party.

(b) **Affiliates.** Only if and to the extent it is mutually agreed by the parties in the applicable Order Form to permit those of Your Affiliates as set forth in such Order Form to access and use the Software and/or Services in accordance with the Agreement and such Order Form, You shall (i) ensure such Affiliates are made aware of and comply with the terms of the Agreement, and the Order Form, and (ii) shall be responsible and liable for any breach of the Agreement and/or the Order Form by any such Affiliates.

(c) **Service Providers.** To the extent You use Service Providers, You shall: (i) ensure that such Service Providers are made aware of and shall comply with the terms of the Agreement and the applicable Order Form and (ii) be responsible and liable for any breach of the terms of the Agreement and/or the applicable Order Form by such Service Providers.

**4.2 Support.** We will provide Support for the Software or Services in accordance with the applicable level of Support purchased by You as set out in the applicable Order Form.

**4.3 Future Functionality.** You agree that Your order is not dependent on the availability of any new features or future functionality, or dependent on any comments made by Us (written or oral) regarding Our plans for future enhancements to the Software and/or Services.

**4.4 Term of Agreement.** The Agreement commences on the Effective Date and continues until all Order Form Terms hereunder have been terminated, unless earlier terminated in accordance with Section 4.5 or 4.6.

**4.5 Renewal.** Except for Pilots (where the term of the Order Form for such Pilot shall automatically expire at the end of the Initial Order Form Term) or as otherwise specified in an Order Form, each individual Order Form will renew automatically for additional periods of 12 months (“**Renewal Term(s)**”) at the end of its respective Initial Order Form Term or relevant Renewal Term, unless either party gives the other written notice of non-renewal at least 30 days prior to the end of the Initial Order Form Term or relevant Renewal Term, as applicable. Unless We have given You written notice of a change to Our pricing at least 60 days before the end of the applicable Initial Order Form Term or relevant Renewal Term, as applicable, the pricing during any automatic Renewal Term will be the same as that of the immediately preceding Initial Order Form Term or relevant Renewal Term, as applicable. If We do notify You of a change in Our pricing, it will only come into effect upon commencement of the respective automatic Renewal Term.

**4.6 Termination.** The Agreement may be terminated by either party immediately upon notice to the other party if the other party (i) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors or analogous event or proceeding in any applicable jurisdiction, or (ii) breaches any of its obligations under the Agreement or any Order Form in any material

respect, which breach is not remedied within thirty (30) days following written notice to the breaching party.

**4.7 Refund or Payment upon Termination.** Upon Termination of the Agreement You will cease using the Software and Services immediately and delete the Software and Documentation from all Your equipment and storage media. If You terminate in accordance with Section 4.6(ii), We will refund You any prepaid fees covering the remainder of all Order Form Terms after the effective date of termination. If the Agreement is terminated by Us in accordance with Section 4.6, You will promptly pay any unpaid amounts including those covering the remainder of all Initial Order Form Terms and/or the then current Renewal Terms, as applicable. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**4.8 Implied Licenses.** There are no implied licenses under the terms set forth in the Agreement, and any rights not expressly granted hereunder are reserved by Us, Our suppliers or licensors. Without limiting the foregoing, You shall not sublicense, rent, lease, modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble, attempt to derive source code from or otherwise alter the Software or the Services or parts thereof.

**4.9 Ownership and Reservation of Rights.** All intellectual property rights, title and interest in and to (i) the Software, (ii) the Services (and all software and materials used for the provision of such Services), (iii) the Documentation, (iv) the Specifications, and (v) Our Confidential Information, and any updates or modifications thereto, are owned by Us or Our licensors and shall remain with Us or Our licensors. You shall not take any action inconsistent with the rights granted herein and no rights are granted to You except as expressly set forth in the Agreement.

**4.10 Fees.** You will pay all fees set out in the applicable Order Form(s). Except as otherwise specified herein or in an Order Form, (i) payment obligations are non-cancelable and fees paid are non-refundable (subject to Section 4.7), and (ii) quantities ordered cannot be decreased during the relevant Order Form Term.

**4.11 Usage Limits.** Software and Services are subject to the usage limitations set out in the Scope. If You use the Software or Services beyond the Scope, We may work with You to either reduce Your usage so that it is within the Scope, or to amend the Agreement to expand the Scope of Your license. If Your usage exceeds the number of Active Devices agreed in the Order Form, We will invoice You the applicable fee for such excess usage in the following order of precedence: (1) as set out in the current Order Form (2) or where no additional pricing is set out, according to the number of Active Devices of the next larger tier at the per Active Device rate of the tier applied in the current Order Form (3) unless both parties work to agree within 30 days to an amended Order Form that covers for such excess usage. In any case, the additional fee will be applied non-prorated to the full Order Form Term. You shall pay such invoice(s) in accordance with Section 4.12.

**4.12 Invoicing and Payment.** All payments shall be made upfront and via the methods offered on Our website or as specified in the Order Form, as applicable. All invoices will be issued and sent to You as specified in the Order Form and unless otherwise agreed in the Order Form, all invoices are due for payment in full and without deduction within thirty (30) days of the date of invoice.

**4.13 Suspension.** Subject to Section 4.14, We reserve the right to suspend Your access to and use of the Software and/or Services if any amount owed by You under the Agreement is thirty (30) or more days overdue. We will notify You at least 10 days prior to any suspension, in accordance with Section 4.21.

**4.14 Payment Disputes.** If You are disputing the applicable charges in good faith and are cooperating with Us to resolve the dispute swiftly, We will not exercise Our rights under Section 4.13 above whilst good faith discussions are ongoing.

**4.15 License Key.** You acknowledge and agree that the Software licensed by You requires a valid License Key for Your use of the Software. You will need to initially obtain such License Key from Us by the Start Date of the Initial Order Form Term and then, depending on the version of the Software licensed, for each Renewal Term thereafter, request a new License Key from Us prior to the start of each Renewal Term and at least 3 business days prior to the date of Your planned deployment of the Software update for Your App. You shall ensure that when requesting a new License Key, that You confirm with Us of the relevant Software version licensed by You. You will need to ensure that You update the Software with a valid License Key before or upon the date of expiry of the Initial Order Form Term and, depending on the version of the Software licensed, for each Renewal Term thereafter. We shall not have any liability to You for any delay or failure by You to update the Software in Your App with the valid License Key or for any incorrect or missing information provided to Us by You upon request of such License Key which results in an incorrect License Key being generated.

**4.16 Confidential Information.** Each party undertakes that it shall (i) take all reasonable measures to protect the secrecy of, and avoid disclosure or use of, Confidential Information of the other party except as permitted herein, (ii) notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information of the disclosing party which may come to the receiving party's attention, (iii) not at any time disclose to any person any Confidential Information of the other party except (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement and then in each case shall ensure any such person to whom it discloses the other party's Confidential

Information complies with this clause, and (b) as may be required by law, court order or any governmental or regulatory authority. Notwithstanding the foregoing, the receiving party shall have no liability to the disclosing party with regard to any Confidential Information which the receiving party can prove: (i) was in or has entered the public domain at the time it was disclosed through no fault of the receiving party, (ii) was known to the receiving party, without restriction, at the time of disclosure, (iii) is disclosed with the prior written approval of the disclosing party, (iv) was independently developed by the receiving party without any use of the Confidential Information (v) becomes known to the receiving party, without restriction, from a source other than the disclosing party, without breach of the Agreement by the receiving party and otherwise not in violation of the disclosing party's rights, or (vi) is disclosed pursuant to an order of a court or other governmental or regulatory body; provided that the receiving party shall, to the extent permitted by law, provide the disclosing party with prompt notice of such court order to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

**4.17 Marketing.** Except as provided below, neither party may make any public announcement or press release about the terms of the Agreement without the other party's prior written approval and consent, not to be unreasonably withheld. We may, however, mention You as Our customer and include Your logo in Our marketing collateral.

**4.18 Taxes.** Our fees do not include any applicable taxes, including for example, value-added, sales and/or use taxes assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

**4.19 Usage Data and Data Protection.** (a) Usage Data. In Your use of Our Software and/or Services certain data is transmitted to Us (depending on the Software and/or Services You use), as detailed (along with the use purposes) in part A of Appendix 3 to these Terms ("Usage Data"). Unless required by law, We will not share any of the Usage Data with any third party, other than to Our Affiliates and subcontractors as necessary for the provision of the Software and/or Services hereunder. You acknowledge that Our Software will continue to transmit the Usage Data to Us for as long as the Software and/or Services is used by You or Your Users of Your App.

(b) Data Protection. To the extent the Usage Data contains any personal data (as defined in Part B of Appendix 3 to these Terms), the data protection terms and conditions set out in Part B of Appendix 3 to these Terms shall apply to the parties in respect of the provision, collection and processing of such personal data.

**4.20 No waiver.** No waiver by either party of any breach or default under the Agreement shall be deemed to be a waiver of any preceding or subsequent breach or default.

**4.21 Manner of Giving Notice.** Except as otherwise specified in the Agreement or below, all notices, permissions, and approvals hereunder shall be in writing and shall be deemed to have been

given upon the date: (i) of personal delivery, (ii) of receipt of registered mail, (iii) which is two business days after sending by e-mail (provided that e-mail shall not be sufficient for notices of termination for cause or an indemnifiable claim). E-mail notices to Us shall be directed to [finance@scandit.com](mailto:finance@scandit.com) for termination without cause notices and to [legal@scandit.com](mailto:legal@scandit.com) for indemnification claims, termination for cause notices and other notices, such as related to assignment. E-mail notices to You shall be addressed to Your nominated contact as set out in the Order Form (and You shall keep Us informed of any changes to such contact). Notices from You relating to the termination of the Agreement or Order Form for cause or to an indemnification claim under Section 6 must be sent by registered mail to Us, with email copy to [legal@scandit.com](mailto:legal@scandit.com).

**4.22 Assignment.** Except as permitted herein, neither party may assign the Agreement, in whole or in part, without the prior written consent of the other, not to be unreasonably withheld. Any attempt by either party to assign or transfer the Agreement without the prior written consent of the other will be null and void. Notwithstanding the foregoing, We may at any time upon notice to You assign or otherwise transfer Our rights and obligations under the Agreement to any of Our Affiliates or successors in business. We may further at any time involve any of Our Affiliates as subcontractors under the Agreement.

**4.23 Severability.** If any provision or part of a provision in the Agreement is held to be illegal, invalid, or unenforceable by a court or other decision-making authority or competent jurisdiction, then the remainder of the provision will be enforced so as to effect the intention of the parties, and the validity and enforceability of all other provisions in the Agreement will not be affected or impaired.

**4.24 Entire Agreement.** These Terms together with its Appendices and applicable Order Form(s) sets out the entire agreement and understanding between You and Us relating to its subject matter. Unless otherwise expressly agreed in writing the Agreement applies in place of and prevails over any terms or conditions contained in or referred to in any correspondence or elsewhere or implied by trade custom or course of dealing. Any general terms of business or other terms and conditions of any order or other document issued by You in connection with the Agreement shall not be binding on Us unless specifically agreed by Us in writing.

**4.25 Relationship between You and Us.** The relationship between You and Us is that of independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, employment or any such similar relationship between You and Us.

**4.26 Governing Law and Jurisdiction.** The applicable governing law and the jurisdiction are set out in Appendix 1 to these Terms.

**4.27 Surviving Provisions.** The terms which by their nature are intended to survive termination or expiration of the Agreement shall survive any such termination and expiration including, without limitation, the following sections:  
Sections 4, 6, 7 and 8.

## 5. Representations, Warranties and Disclaimers

**5.1 Representations.** Each party represents that it has the requisite power and authority to enter into the Agreement and to perform its obligations under it.

**5.2 Warranties.** We warrant that during the applicable Order Form Term (a) the Software and/or Services, as applicable, will operate materially in accordance with the relevant Specifications, (b) the Software and or Services will be performed with due care, skill and ability and in accordance with good industry standards, and (c) We will not materially reduce the functionality or security of the Software and Services.

**5.3 Remedy.** Should a breach of a warranty provided in Section 5.2 occur and You notify Us within the applicable Order Form Term and provide all the information that may be reasonably necessary to assist Us in resolving the defect or fault, We will, at Our sole option and expense either repair or replace the affected Software or Services; and if We cannot reasonably repair or replace the affected Software or Services, then We will refund You any prepaid fees covering the remainder of the Initial Order Form Term or then current Renewal Term, as applicable, for the affected Software or Services and terminate Your right and license to use the Software or Services for which You have received the refund.

### 5.4 Exclusions and Disclaimers.

(a) The warranties set out in Section 5.2 shall not apply to the extent the breach is caused by or as a result of (i) Your use of the Software and/or Services contrary to Our written instructions or the Documentation, (ii) Your breach of the Agreement, (iii) any modifications or alterations of the Software and/or Services by any party other than Us or Our duly authorized contractors or agents.

(b) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES PROVIDED IN THIS SECTION 5 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, TERMS AND CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR TERMS AND CONDITIONS OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE OR SATISFACTORY QUALITY AND NON-INFRINGEMENT (EXCEPT AS PROVIDED BELOW), ALL OF WHICH ARE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXPRESSLY DISCLAIMED BY US.

**5.5 Safe Usage.** IT IS YOUR RESPONSIBILITY TO TAKE WHATEVER STEPS YOU NEED TO ENSURE THAT THE USE OF YOUR APP OR YOUR USE OF ANY SOFTWARE APPLICATION IS SAFE AND DOES NOT HARM ANYONE IN ANY WAY, KNOWING THAT WE CANNOT GUARANTEE THAT 100% OF ALL BARCODE READS WILL BE ACCURATE. NOTWITHSTANDING SECTION 5.2, WE SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR THE CONTENTS OR RESULTS OBTAINED FROM YOUR USE OF THE SOFTWARE, SERVICES OR THE SOFTWARE APPLICATION OR YOUR APP.

**5.6 No Representations.** YOU AGREE THAT, IN ENTERING INTO THIS AGREEMENT, EITHER YOU DID NOT RELY ON ANY REPRESENTATIONS (WHETHER WRITTEN OR ORAL) OF ANY KIND OR

OF ANY PERSON OTHER THAN THOSE EXPRESSLY SET OUT IN THIS AGREEMENT OR IF YOU DID RELY ON ANY REPRESENTATIONS, (WHETHER WRITTEN OR ORAL), NOT EXPRESSLY SET OUT IN THIS AGREEMENT, THAT YOU SHALL HAVE NO REMEDY IN RESPECT OF SUCH REPRESENTATIONS AND (IN EITHER CASE) NEITHER PARTY SHALL HAVE ANY LIABILITY OTHERWISE THAN IN ACCORDANCE WITH THE EXPRESS TERMS OF THIS AGREEMENT.

## 6. Indemnification

### 6.1 Indemnification by Us.

6.1.1 Except during the free test period in Section 1 and subject to the conditions set out below, We undertake to defend You or, at Our option, settle any claim or action brought against You by a third party alleging that Your use of the Software or Services in compliance with the Agreement and the Order Form infringes or misappropriates such third party's copyright or patent (a "Claim Against You"), and will indemnify You for any damages finally awarded against You by a court of competent jurisdiction, or for amounts paid by You under a court-approved settlement or a settlement of a Claim Against You by Us, provided You:

- a. provide Us with prompt written notice of the Claim Against You,
- b. grant Us sole control of the defense and settlement of the Claim Against You,
- c. do not enter into any settlement or compromise of any such Claim Against You without Our prior written consent,
- d. provide Us all reasonable information and assistance for the Claim Against You, at Our expense, and
- e. use all commercially reasonable efforts to mitigate any loss, damage or costs related to the Claim Against You.

6.1.2 If You notify Us of a Claim Against You and comply with Sections 6.1 a-e above or We receive information about an infringement or misappropriation claim related to the Software or Services, We may at Our option and expense:

- a. replace or modify the Software or Services so that they no longer infringe or misappropriate, without breaching Our warranties under Section 5.2 (Warranties),
- b. procure a license allowing You to continue using the Software or Service in accordance with the Agreement, or
- c. terminate Your Order Form for that Software or Service, reimburse You any prepaid fees covering the remainder of the applicable Order Form Term(s) of the terminated Order Form, and either take back the infringing Software to the extent possible or require You to remove/delete the infringing Software.

6.1.3 Our defense and indemnification obligations set out in this Section 6.1 do not apply to the extent a Claim against You arises from:

- a. Your Data, Your App(s) or any other program code created by or for You,
- b. Your use of Software or Services otherwise than in accordance with the Agreement, Order Form and/or Specifications, or
- c. Your use of the Software or a Service after the end of the applicable Order Form Term, or Your use of a

version of the Software that is no longer current and the alleged infringement would have been avoided by using the latest version which We have made available to You.

**6.2 Indemnification by You.** If a claim or action is brought against Us by a third party alleging that Your App, Your Data, program code created by or for You or Your use of the Software or any Services in breach of the Agreement infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim against Us"), You will defend and indemnify Us from any damages finally awarded against Us by a court of competent jurisdiction or agreed upon in a court-approved settlement or a settlement of such Claim against Us by You, provided We:

- a. provide You with prompt written notice of the Claim Against Us,
- b. grant You sole control of the defense and settlement of the Claim Against Us,
- c. do not enter into any settlement or compromise of any such Claim Against Us without Your prior written consent,
- d. provide You all reasonable information and assistance for the Claim Against Us, at Your expense, and
- e. use all commercially reasonable efforts to mitigate any loss, damage or costs related to the Claim Against Us.

**6.3 EXCLUSIVE REMEDY.** THIS SECTION 6 STATES OUR AND YOUR, AS THE 'INDEMNIFIED PARTIES', EXCLUSIVE REMEDY AGAINST AND THE APPLICABLE INDEMNIFYING PARTY'S ENTIRE LIABILITY TO THE OTHER IN RESPECT OF ANY ACTUAL OR ALLEGED INDEMNITY CLAIMS AND IS SUBJECT TO THE LIMITATION OF LIABILITY IN SECTION 7 BELOW.

## 7. Limitation of Liability

**7.1 Limitation of Liability.** EXCEPT WHERE PROHIBITED BY LAW AND SUBJECT TO SECTION 7.3, EACH PARTY'S AGGREGATE LIABILITY FOR OR IN RESPECT OF ANY LOSS OR DAMAGE SUFFERED BY THE OTHER (WHETHER DUE TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY YOU IN THE 12 MONTHS PRECEDING THE DATE OF THE EVENT FOR WHICH THE LIABILITY ARISES. EXCEPT WHERE PROHIBITED BY LAW, THE LIMITS SET OUT ABOVE IN THIS SECTION 7.1 SHALL NOT APPLY (I) TO ANY AMOUNTS DUE OR PAYABLE BY YOU UNDER THIS AGREEMENT, (II) INFRINGEMENT OF OUR INTELLECTUAL PROPERTY RIGHTS, OR (III) IN RESPECT OF THE INTELLECTUAL PROPERTY INDEMNITIES PROVIDED IN SECTION 6. THE AGGREGATE LIABILITY IN CONNECTION WITH SUCH INDEMNITIES (INCLUDING ALL AMOUNTS PAID OR INCURRED BY OR ON BEHALF OF EITHER PARTY IN CONNECTION WITH ITS COMPLIANCE WITH SECTIONS 6.1 AND 6.2) SHALL NOT EXCEED 2 TIMES THE FEES PAID BY YOU TO US UNDER THIS AGREEMENT DURING THE 12 (TWELVE) MONTH PERIOD PRIOR TO THE DATE THAT THE LIABILITY AROSE.

### 7.2 Exclusion of Consequential and Related Damages.

SUBJECT TO SECTION 7.3, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY

KIND WHICH MAY BE SUFFERED BY THE OTHER PARTY (OR ANY PERSON CLAIMING UNDER OR THROUGH THE OTHER PARTY) IN CONNECTION WITH THIS AGREEMENT OR FOR LOSS OF PROFITS, ANTICIPATED SAVINGS, BUSINESS OPPORTUNITY, GOODWILL, OR DATA (INCLUDING CORRUPTION OF OR DAMAGE TO DATA), WHETHER OR NOT SUCH LOSSES OR DAMAGES ARE FORESEEABLE; AND WHETHER THE SAME ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

**7.3 Liabilities that are not Excluded.** THE EXCLUSIONS IN THIS CLAUSE 7 SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE AT LAW BUT NEITHER PARTY EXCLUDES LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR OF ITS OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS; FRAUD OR FRAUDULENT MISREPRESENTATION; OR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED BY LAW.

**7.4 Force Majeure.** NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT IF IT IS PREVENTED FROM, OR DELAYED IN, PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT OR FROM CARRYING ON ITS BUSINESS BY A FORCE MAJEURE EVENT.

## 8. Definitions

Any capitalized terms not otherwise defined in the Agreement shall have the meanings set forth below or in the Order Form:

**Active Device:** a unique combination of a device and one associated application (e.g. Your App or Our App) on which the Software or Service was initialized at least once in any given month during the 12-month period following the Start Date of the relevant Order Form Term or any subsequent 12-month period.

**Affiliate(s):** an entity that directly or indirectly controls, is controlled by, or is under common control with, a party to the Agreement. For the purposes of the foregoing, “control” means the ownership of (i) greater than fifty per cent of the voting power to elect directors of the entity, or (ii) greater than fifty per cent of the ownership interest in the entity.

**Agreement:** these Terms (as defined in the first paragraph above) and the respective Order Form.

**Claim Against Us:** has the meaning given in Section 6.2.

**Claim Against You:** has the meaning given in Section 6.1.

**Confidential Information:** all confidential or sensitive information or data, whether obtained before or after the Effective Date in respect of products, services, software, developments, trade secrets, customers and suppliers of either party or any other information (whether commercial, financial, technical or otherwise) which is identified as confidential or proprietary information at the time of disclosure or which may reasonably be regarded as the confidential or proprietary information of that party and shall include Your Data and Usage Data and Our Software, Services and License Keys.

**Dashboard:** Our web-based customer dashboard, or such other system, which We make available to You during the Order Form Term, where You may download the Software and any Maintenance Releases and access and view the Usage Data, receive Usage Data analytics reports and, where You are licensing the Software Application receive and/or access additional services such as, the ability to customize the Software Application, as further described in the Documentation.

**Documentation:** Our online User manuals, tutorials, documentation and help and training materials found at: <https://www.scandit.com/developers/>

**Effective Date:** the date on which You execute an Order Form (manually or submitting electronically the Order Form on Our website) and the terms of the Agreement.

**Force Majeure Event:** acts, events, omissions or accidents beyond Our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, act of terror, Internet service provider failure or delay, denial of service attack, fire, flood or storm.

**Initial Order Form Term:** the initial term of Your use of the Software and/or Services, which You have ordered, as set out in the applicable Order Form and commencing on the Initial Order Form Term start date.

**Installation Identifier:** a unique identifier for each installation of Your App or a Software Application.

**License Key:** a key We provide You to activate the Software.

**Maintenance Release:** a release of the Software (or the software for the Service, as applicable), which provides compatibility updates and maintenance and updates to special features that have been explicitly licensed in the Order Form.

**Order Form:** an order form entered into between You and Us manually or by confirming Your order on Our website, detailing the Software and/or Services You have ordered and are to be provided hereunder and the fees You will pay and any additional terms.

**Order Form Term:** the Initial Order Form Term and any Renewal Term(s).

**Pilot:** where the Order Form (i) specifies that the order for Software licenses and/or Services is for a pilot, evaluation or proof of concept (PoC) only and such pilot, evaluation or PoC shall automatically expire at the end of the Initial Order Form Term set out in such Order Form; and/or (ii) has an Initial Order Form for a period which is less than 12 months.

**Platform:** the applicable mobile platform(s) upon which the Software may be used as identified in Scope, such as iOS and Android.

**Renewal Term(s):** has the meaning given in Section 4.5

**Scope:** the limits, as specified in the Order Form, within which the Software and/or Services, as applicable may be accessed and used, including, without limitation, the permitted number of Active Devices, type of Users, operating Platform, use cases and applications.

**Service Provider(s):** the third-party providers You use to develop Your App for You.

**Services:** the service that You have subscribed to as described in an Order Form (depending on what product You have purchased, as described in Appendix 2 to these Terms) or that We have given You access to for a free test period, and that is made available online by Us, which includes (and may be limited to) access to and use of the Dashboard.

**Software:** the software that You have ordered in an Order Form or that We have given You access to for a free test period and that We own and license to You in consideration of the payment by You to Us according to the Agreement and the applicable Order Form(s). Software includes Maintenance Releases, if provided by Us to You through Our Support and according to the applicable Order Form. Depending on the Scandit product ordered, Software is considered either a Software Component or a Software Application as defined in Appendix 2 to these Terms.

**Specifications:** the specifications of the Software and/or Services as set out at:

<https://ssl.scandit.com/terms/specifications.pdf>

**Support:** the standard support We provide for Our Software or Services, (including the provision of any Maintenance Releases), which will be provided to You after You execute an Order Form that specifies the Support and level of Support ordered.

**Taxes:** has the meaning given in Section 4.18.

**Territory:** the geography where You may use the Software or the Services and as specified in the Order Form.

**Usage Data:** has the meaning given in Section 4.19(a).

**Users:** means the permitted Users of Your App as set out in the Scope (which may, for example, be employees or consumers).

**We, Us or Our:** the Scandit entity You are contracting with, as outlined in Appendix 1 to these Terms.

**You or Your:** the contracting person or entity.

**Your App:** each application specified in the Order Form (which may be mobile or web-based as permitted in the Scope) that is developed by You (or Your Service Provider on Your behalf) and/or licensed by You from a third party (together with the relevant bundle id, as specified in the Order Form) which is distributed as permitted in the Scope and integrates Our Software Component or is used in combination with Our Software Application or Services.

**Your Data:** any data and information submitted electronically by or for You to the Services or collected and processed by or for You using the Services and/or Software.



## Appendix 1 Legal Entity, Governing Law and Jurisdiction

This table outlines which Scandit entity You are contracting with and the relevant governing law for the Agreement and associated Order Forms.

If You are domiciled in:	You are contracting with:	The law governing the Agreement and associated Order Forms as well as the jurisdiction is:
USA	Scandit Inc. 535 Mission St. San Francisco, CA 94105 USA	Laws of the State of New York, excluding its conflicts of law rules. The parties agree that all disputes arising out of the Agreement shall be subject to the exclusive jurisdiction and venue in the federal and state courts within New York County, New York. The parties hereby consent to and waive defenses of the personal and exclusive jurisdiction and venue of these courts. The United Nations Convention on the International Sale of Goods (CISG) shall not apply.
Anywhere other than the USA	Scandit AG Förllibuckstrasse 181 8005 Zürich Switzerland	Substantive Swiss law excluding the conflict of law rules and the Laws in treaties including but not limited to the Uniform Law on Purchases (Vienna treaty). The courts of Zurich, Switzerland shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Agreement.

## Appendix 2 Applicable Software License and Service Provision by Product

The following table indicates whether the products listed on the Order Form are provided as a Software Component, Software Application and/or a Service.

<b>Product</b>	<b>Software Component</b>	<b>Software Application</b>	<b>Service</b>
Keyboard Wedge	No	Yes	Yes
Enterprise Browser	No	Yes	Yes
Barcode Scanner SDK Native	Yes	No	Yes
Barcode Scanner SDK Native without Analytics	Yes	No	No
Barcode Scanner SDK for the Web	Yes	No	Yes
Barcode Scanner SDK for the Web without Analytics	Yes	No	No
OCR SDK Native	Yes	No	Yes
OCR SDK Native without Analytics	Yes	No	No

## Appendix 3 Usage Data and Data Protection Terms and Conditions

### Part A – Usage Data and Purposes for which We collect Usage Data.

<p>If You do not use Analytics with the Software/Services:</p>	<p>The following types of data are collected on Software and/or Services up to one time per month for debugging, statistical analysis, performance monitoring and improvements, and/or license compliance purposes:</p> <ul style="list-style-type: none"> <li>• <b>Installation Identifier</b> - an identifier that identifies the individual installation of Our Software or Your App that integrates Our Software Component on a particular device</li> <li>• <b>License Key identifier</b> - an identifier that uniquely identifies the license key used by Our Software Application or Your App that integrates Our Software Component</li> <li>• <b>IP address</b> - the communication address that is used for data transmission purposes</li> <li>• <b>Device model</b> - the model name that identifies the device type on which Our Software Application or Your App that integrates Our Software Component is used</li> <li>• <b>Application identifier</b> - the identifier that is used to identify Our Software Application or Your App that integrates Our Software Component</li> <li>• <b>Operating system and version</b> - the operating system name and its version of the device on which Our Software Application or Your App that integrates Our Software Component is used</li> <li>• <b>Version of Scandit product</b> - the version of Our Software used</li> </ul>
<p>If You use Analytics with the Software/Services:</p>	<p>All of the above data and the following additional data is collected with each scan for debugging, performance monitoring and improvement, analytics and license compliance purposes:</p> <ul style="list-style-type: none"> <li>• <b>Scan engine and device status information</b> - parameters of the decoding process (for customers using OCR, the above also includes pixel data)</li> <li>• <b>Scan engine results</b> - the data decoded by Our Software (e.g. data encoded in a barcode)</li> <li>• <b>Location coordinates</b> (if collected by Your App)</li> </ul>

### Part B – Data Protection Terms and Conditions

These Data Protection Terms and Conditions (“**DP Terms**”) apply to each party in respect of the provision, collection and processing of any of Your personal data or the personal data of Your Users of Your App.

#### 1. DEFINITIONS

1.1 Unless otherwise defined below, defined terms used in these DP Terms shall have the meaning given to them in Section 8 of the Terms:

1.1.1 **Applicable Data Protection Laws:** all applicable statutory and regulatory requirements regarding privacy and the protection of “personal data” or “personally identifiable information” (as defined by such laws) and as amended from time to time, including without limitation, Regulation (EU) 2016/679 of the European Parliament and any applicable acts and regulations which bring it into force.

1.1.2 **Controller, personal data, processor, data subject, process and processing:** have the meaning set out in Applicable Data Protection Laws.

1.1.3 **Permitted Purposes:** has the meaning given in clause 2.1 of these DP Terms.

1.1.4 **Process Duration:** has the meaning given in clause 2.2 of these DP Terms.

1.1.5 **Sub-processor:** any third party We appoint (including any of Our group companies) to process personal data for Us or on Our behalf in connection with the Agreement.

## 2. DATA PROTECTION OBLIGATIONS

- 2.1 Permitted Purpose.** Some of the Usage Data Submitted to Us in Your use of Our Software and/or Services may be considered as personal data under Applicable Data Protection Laws. We use such Usage Data for the Permitted Purposes (as defined in this clause). To the extent such Usage Data contains any of Your or Your Users' personal data, You are the controller of such personal data and appoint Us as a processor to process any such personal data on Your behalf as necessary for Us to provide Our Services and/or license Our Software to You (including, without limitation, the use purposes set out in part A of this Appendix 3) and/or as We may otherwise agree with You in writing and in accordance with (i) these DP Terms, (ii) the Agreement, and (iii) any particular written instructions You may provide to Us ("**Permitted Purposes**"). You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer to Us of the personal data contained in the Usage Data for the Permitted Purposes and for the Process Duration. We agree not to access or use personal data You provide, except for the Permitted Purpose, or as necessary to comply with applicable laws.
- 2.2 Process Duration.** Our Software and/or Services will transmit Usage Data to Us and We will process Your personal data which is part of that Usage Data for (i) the Order Form Term and for as long as Our Software and/or Services (as applicable) are used by You and/or Users of Your App, which may be after the date of expiration or earlier termination of the Agreement, plus (ii) the period required to delete or otherwise dispose of Your personal data after You and/or Your Users cease such use in accordance with clause 2.6 of these DP Terms ("**Process Duration**"). We may retain anonymised data after expiry or termination of the Agreement for purposes of improving Our software and/or services.
- 2.3 Technical and Organisational Measures.** We will ensure that We have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, anonymising, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, and regularly assessing and evaluating the effectiveness of the technical and organisational measures We adopt).
- 2.4 Assistance with Compliance.** We will assist You, at Your cost, in responding to any request from a data subject in relation to the Agreement and these DP Terms and in ensuring compliance with Your obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.
- 2.5 Confidentiality Obligations of Scandit Personnel.** We will ensure that any person We authorise to process Your personal data protects the personal data in accordance with Our confidentiality obligations under the Agreement.
- 2.6 Deletion of Personal Data.** When You and Users of Your App cease using Our Services and/or Software (as applicable), Usage Data will no longer be transmitted to Us. Once You and Users of Your App cease to use Our Services and/or Software (as applicable), We will, within a reasonable period after such use ceases, destroy, or otherwise dispose of any or all of Your personal data in Our possession (except where We are required by law to keep a copy).
- 2.7 Security Incident Reporting.** If We become aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to personal data You have provided (a **Security Incident**), We will notify You promptly and provide You promptly with a detailed description of the Security Incident and the identity of each affected data subject, with periodic updates, and any other information You may reasonably request in relation to such Security Incident.
- 2.8 Subcontracting.** You consent to Us engaging Sub-processors to process personal data for Permitted Purposes, provided that:
- 2.8.1 We impose data protection terms on any Sub-processor We appoint that require it to protect the personal data to the standard required by Applicable Data Protection Law; and
  - 2.8.2 We remain liable for any breach of these DP Terms that is caused by an act, error or omission of Our Sub-processor; and
  - 2.8.3 We will provide You with Our then current list of any such Sub-processors upon Your request.

**2.9 Transfer of Data Outside the EEA.** We will only transfer personal data outside the EEA (including to Our group company, Scandit Inc.) where We have complied with Our obligations under Applicable Data Protection Laws in ensuring adequate safeguards in relation to such transfer.

**2.10 Audit.** We will maintain complete and accurate records and information to demonstrate Our compliance with these DP Terms and allow for You or Your designated auditors to perform an audit solely for the purpose of checking compliance with these DP Terms, provided that We are given reasonable notice of such audit, it is conducted in a manner so as not to interfere with Our day to day business operations, and it is at Your cost.