

License Agreement

SCALEOUT STATESERVER(reg) SOFTWARE LICENSE AGREEMENT

YOU SHOULD CAREFULLY READ THE FOLLOWING BEFORE INSTALLING THE SCALEOUT STATESERVER SOFTWARE.

This ScaleOut StateServer Software License Agreement ("Agreement") is a legal agreement between you and ScaleOut Software, Inc. ("ScaleOut Software") for the ScaleOut StateServer product, which includes computer software and its on-line documentation (together, the "Software"). The ScaleOut GeoServer(tm) Option is a component of the ScaleOut StateServer product and is included in the Software. By installing, copying, or otherwise using the Software, you agree to be bound by the terms of this Agreement. If you do not agree with this Agreement, you are not authorized to install or use the Software, and you must remove the Software from your system.

An electronic copy of this Agreement will be provided to you upon installation of the Software as part of the on-line documentation.

1. GRANT AND TERM OF LICENSE.

1.1 Evaluation Period. Subject to your compliance with the terms of this Agreement, ScaleOut Software grants to you a non-exclusive, non-transferable and royalty-free right to install and use the Software solely for your lawful use for the 30 days after the first day you install the Software on your computers (the "Evaluation Period"). Such license grant is subject to the following conditions:

- a. you must obtain from ScaleOut Software a valid and unique alphanumeric code ("Evaluation License Key") to activate the Software. The Evaluation License Key may not be disclosed, in writing, electronically or otherwise, to any third party or to the public in general;
- b. the Software may be installed only on computers controlled by you;
- c. you may construct and operate exactly one (1) ScaleOut StateServer "Store," as defined by the ScaleOut StateServer documentation provided with the Software;
- d. you may install and operate the Remote Client Support component of the Software on up to one hundred (100) computers; and
- e. at the end of the Evaluation Period you must pay a license fee as described below or cease use of the Software and destroy all copies in your possession. The Software will stop functioning properly at the end of the Evaluation Period unless you obtain a valid License Key.

1.2 Paid License Key. After the Evaluation Period expires, you must obtain, in exchange for a fee ("License Fee") to be paid to ScaleOut Software or to its authorized reseller in the amount specified by ScaleOut Software or by its authorized reseller, a valid and unique alphanumeric code ("License Key") from ScaleOut Software prior to continuing to use the Software. Upon receipt of the License Key from ScaleOut Software, and subject to your compliance with the terms of this Agreement, ScaleOut Software grants to you a non-exclusive, non-transferable and prepaid right to install and use the Software solely for your lawful use. Such license grant is subject to the following conditions:

- a. the Software may be installed only on computers controlled by you;
- b. you may construct and operate exactly one (1) ScaleOut "Store," as defined by the ScaleOut StateServer documentation provided with the Software;

- c. you may install and operate the Remote Client Support component of the Software on up to one hundred (100) computers;
- d. you may use the Software solely in accordance with the size, user and other restrictions for the valid License Key that you receive from ScaleOut Software. ScaleOut Software may from time to time replace the License Key by notifying you that the old License Key is invalid. Upon certification from you that you have destroyed all copies of the invalid License Key, ScaleOut Software will give you a new, valid License Key; and
- e. you do not disclose, in writing, electronically or otherwise, to any third party or to the public in general, any License Key.

1.3 Term. The Software and the right to use the Software are not transferable and if you transfer the Software to any other party, your license is automatically terminated. The license granted in this Agreement shall continue until you notify ScaleOut Software of its termination, and it will terminate automatically if you fail to comply with any provision of this Agreement. Upon any termination of the license, or if you should give up your use and control of the computers on which the Software is installed, you agree to destroy all copies of the Software and any related materials in any form. The provisions of Sections 3, 5, 8 and 10 shall survive termination of the license.

2. COPYING AND COPYRIGHT.

The Software is owned by ScaleOut Software or its licensors and is protected by United States copyright laws and international treaty provisions. Therefore, you must treat the Software like any other copyrighted material (e.g. a book or musical recording) except that you may make copies of the Software which include all copyright and trademark notices for installation, backup, and archival purposes only. Solely with respect to electronic documents included with the Software, you may make an unlimited number of copies (either in hard copy or electronic form), provided that such copies include all copyright and trademark notices and are used only for internal purposes and are not republished or distributed to any third party. You may not use the Software for purposes other than as authorized in this Agreement or knowingly permit anyone else to do so.

3. OTHER CONDITIONS.

The Software and License Key are confidential information of ScaleOut Software or its licensors and shall not be disclosed by you to any third party. You may not modify, translate, reverse engineer, decompile, disassemble or create derivative works based on the Software or License Key, remove any proprietary notices or labels, or continue use of a License Key after receiving notice from ScaleOut Software that it is invalid, or knowingly permit anyone else to do so. All applicable rights to patents, copyrights, trademarks and trade secrets in the Software or any modifications to it shall be and remain the property of ScaleOut Software or its licensors. You may not redistribute any portion of the Software. You may not rent or lease the Software. ScaleOut Software reserves all rights not expressly granted to you.

4. ACCESS OBLIGATIONS.

You are responsible for obtaining and maintaining at your own expense all telephone or other communications links, computer hardware and other equipment or facilities needed for access to and use of the Software.

5. NO WARRANTIES OR LIABILITIES.

THE SOFTWARE IS PROVIDED TO YOU "AS-IS" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS WITH YOU AND SHOULD EITHER PROVE DEFECTIVE, YOU (AND NOT SCALEOUT SOFTWARE, ITS AFFILIATES, AGENTS, OTHER LICENSEES AND LICENSORS) ASSUME THE ENTIRE COSTS OF SERVICING, REPAIR OR CORRECTION OF SUCH DEFECTS. IN NO EVENT SHALL SCALEOUT SOFTWARE BE LIABLE TO YOU 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 SOFTWARE 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 POSSESSION, USE OR PERFORMANCE OF THIS SOFTWARE.

6. CONSTRUCTION.

ScaleOut Software is willing to license the Software to you only in consideration of and in reliance upon the provisions of this Agreement limiting the exposure of ScaleOut Software to liability. Such provisions constitute an essential part of the bargain underlying this Agreement and have been reflected in the License Fee and in other consideration specified in this Agreement.

7. U.S. GOVERNMENT RIGHTS.

If you are acquiring the Software on behalf of any part of the United States Government, the Software is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights clause at 48 CFR 52.227-19.

8. COMPLIANCE.

You agree to use all reasonable efforts to ensure that persons employed by you or under your direction and control abide by the terms and conditions of this Agreement.

9. SUPPORT.

ScaleOut Software will provide its then-current standard support for the Software only to users who have lawfully obtained a valid License Key from ScaleOut Software after payment of a License Fee. Users may optionally purchase a ScaleOut StateServer Maintenance Agreement to provide extended maintenance services. No other support shall be provided.

10. GENERAL.

This Agreement is governed by the laws of the State of Washington. This Agreement is the entire agreement between ScaleOut Software and you and supersedes any other communications or advertising with respect to the Software. 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. The headings used in this Agreement are for convenience only, and shall not be given any legal import. Any item or service furnished by ScaleOut Software 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 Software. You agree to comply with all U.S., foreign and local laws and regulations which apply to your use of the Software including without limitation, export control laws and regulations.

All correspondence regarding this agreement shall be directed to ScaleOut Software by U.S. Mail to the following address: ScaleOut Software, Inc., 10900

NE 8th Street, Suite 900, Bellevue, WA 98004, U.S.A.

**** END OF THE SCALEOUT STATESERVER SOFTWARE LICENSE AGREEMENT ****