

**SCOTFY**  
**END USER LICENSE AGREEMENT ("EULA")**

BY CHECKING THE ACCEPTANCE BOX OR INSTALLING OR USING ALL OR ANY PORTION OF THE SOFTWARE, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS THIS END USER LICENSE AGREEMENT ("LICENSE AGREEMENT") YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU AND LEGALLY BINDING BETWEEN YOU AND SCOTFY. IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT INSTALL THE SOFTWARE.

IF YOU HAVE PAID A LICENSE FEE FOR USE OF THE SOFTWARE AND DO NOT AGREE TO THESE TERMS, YOU MAY RETURN THE SOFTWARE FOR A FULL REFUND PROVIDED YOU (A) DO NOT USE THE SOFTWARE AND (B) RETURN THE SOFTWARE WITHIN THIRTY (30) DAYS OF YOUR INITIAL PURCHASE.

This End User License Agreement ("**Agreement**") is between Scotfy and the customer (individual or entity) that has downloaded or otherwise procured the licensed Software (as defined below) for use as an end user ("**you**"). This Agreement covers all Software, Support and Maintenance Services, and Professional Services.

**1. Definitions.**

Affiliate: means each legal entity that is directly or indirectly controlled by you on or after the Effective Date and for so long as such entity remains directly or indirectly controlled by you (where "controlled" means the ownership of, or the power to vote, directly or indirectly, a majority of any class of voting securities of a corporation or limited liability company, or the ownership of any general partnership interest in any general or limited partnership).

Authorized User: means those uniquely identified individuals for whom the applicable license fees have been paid, as stated on the Ordering Document, who are authorized by you to install and/or use the functionality in the Software for any purpose regardless of whether those individuals are actively using the programs at any given time. Licenses granted on an Authorized User basis may be reassigned between uniquely identified individuals over time, but may not be reassigned so frequently as to enable the sharing of a single license between multiple users.

Contractor: means those independent third parties who perform services related to this Agreement for you.

Customer Data: means data generated by you or your Authorized User and used by or imported into the Software, but excludes data generated by a Client Sublicensee unless such data is combined with your data or is relevant to your provision of services to such Client Sublicensee.

Documentation: means any supporting product help and technical specifications documentation provided by Scotfy with the Software to you.

Effective Date: means the date of your first Ordering Document or the initial Delivery date of the Software (whichever is earlier).

License Term: means the Software license term specified on the applicable Ordering Document or by an Authorized Partner. The License Term may be a fixed term, a limited term for Evaluation Versions, or perpetual.

Ordering Document: means any order on a Scotfy order form which references this Agreement. Each Ordering Document which references this Agreement shall be deemed a part of this Agreement.

Software: means the proprietary Scotfy product(s) provided in connection with this Agreement in object code form (or as otherwise specified in any related Ordering Document). "Software" shall also include any Support and maintenance Services releases provided to you under this Agreement. Unless otherwise noted, the Software and documentation are referred to collectively herein as "Software".

**2. Scotfy Products.**

2.1 Scotfy. In order to use the Software under this Agreement, you must activate your copy of the Software with the valid license key or

activation code provided to you ("**Product Key**") at the time of purchase and/or submit a uniquely identifiable user registration when prompted, in accordance with the scope of use and other terms specified for each type of Software, the Documentation, and as set forth in this Section 2 of this Agreement.

2.2 Qalyptus Desktop: If you purchased a license to Desktop Software, the total count of Authorized Users enabled to use such Desktop Software must not exceed the number of licenses purchased on the applicable Ordering Document(s). For each such license you may install, via the Product Key, one copy of the Desktop Software on a computer for each Authorized User.

2.3 Qalyptus Server ("**Server Software**"): If you purchased a license to Server Software, your license will be installed on one Server.

2.4 Evaluation Version ("**Evaluation Version**"): If you ordered a license to an Evaluation Version, you may install and use one copy of the Evaluation Version Software solely for the purpose of evaluating the Software to determine whether to purchase a non-Evaluation Version copy of the Software. You may not use the Evaluation Version for any other purposes, including but not limited to competitive analysis, commercial, professional, or for-profit purposes. You may only use the Evaluation Version for thirty (90) days from the date you activate and/or register via the Product Key or otherwise, unless otherwise specified by Scotfy in the Documentation or a separate writing from Scotfy ("**Evaluation Period**"). Unless you pay the applicable license fee for the Software (and Scotfy issues you a Product Key in exchange), the Evaluation Version Software may become inoperable and, in any event, your right to use the Evaluation Version Software automatically expires at the end of the Evaluation Period. Notwithstanding any other provision of this Agreement, the Evaluation Version Software is provided "AS IS" without warranty or support of any kind, express or implied. Scotfy may terminate your license to the Evaluation Version Software upon written notice at any time for any reason and without liability of any kind.

### 3. License.

3.1 Grant of License. Subject to all of the terms and conditions of this Agreement, and except as set forth in Section 6 (Term and

Termination), during the applicable License Term, Scotfy grants you a limited, worldwide, non-transferable, non-sublicensable, non-exclusive license to use the Software for which you have been issued a Product Key by Scotfy or an Authorized Partner, but only in accordance with: (a) the Documentation; (b) the restrictions in Section 2 (Scotfy Products), Section 3.7 (License Restrictions) and any restrictions on the applicable Ordering Document; and (c) the number of Authorized Users and/or permitted number of Cores (as applicable), on the platforms and configurations or any other restrictions mutually agreed upon by you and an Authorized Partner. You may allow your Contractors and Affiliates to use the Software in accordance with this Agreement, provided you shall remain liable for all acts and omissions of your Affiliates and Contractors as if their acts or omissions were your own.

3.2 Sample Code. Subject to the terms and conditions of this Agreement, during the applicable License Term, Scotfy grants you a limited, worldwide, non-transferable, non-sublicensable, non-exclusive license to modify any sample source code from the Software provided by Scotfy to you ("**Sample Code**") solely for internal use for the purposes of designing, developing, testing and otherwise facilitating your use of the Software under this Agreement.

### 3.3 Production and Non-Production Environments:

3.3.1 Non-Production Environments: You may use the Server Software in a technical environment and on the platforms and configurations specified in the Documentation, solely for internal development and testing in connection with your licensed Software, or for disaster recovery purposes ("**Non-Production Environment**"). Your installation, activation or use of a copy of the Software in a Non-Production Environment is limited to the same number of Authorized Users and/or permitted number of Cores and/or computers as provided under Section 3.1 above. Your use of the Server Software in a Non-Production Environment may be concurrent with your use of the licensed Software in a Production Environment and such use is conditioned on you having an authorized license for the Software. You are only entitled to two (2) Non-Production Environments under this Agreement. Any additional licenses for Non-Production Environments other than what is

described in this Section 3.3 can be purchased by you and shall be subject to the additional terms and conditions contained in the applicable Ordering Document.

**3.3.2 Production Environments.** As it relates to the Server Software, you are entitled to one (1) Production Environment for each Server Software license you purchase under this Agreement. Your use of the Server Software in a Production Environment allows for a single Production Environment regardless of the fact that single Production Environment may consume all the Cores identified on your Ordering Document.

**3.4 Archive Copies.** You are entitled to make a reasonable number of copies of the Software for archival purposes.

**3.5 Third-Party Code.** The Software may contain or be provided with components which are licensed from third parties ("**Third Party Code**"), including components subject to the terms and conditions of "open source" software licenses ("**Open Source Software**"). Open Source Software may be identified in the Documentation, or in a list of the Open Source Software provided to you upon your written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

**3.6 Electronic Delivery.** All Software and Documentation shall be delivered by electronic means unless otherwise specified on the applicable Ordering Document. Software shall be deemed delivered when it is made available for download by you ("**Delivery**").

**3.7 License Restrictions.** You shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer the Software or Third Party Code or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software or Third Party Code by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, or as permitted by an applicable Open Source Software license); (b) distribute, sell, sublicense, rent, lease or use the Software,

Third Party Code or Sample Code (or any portion thereof) for time sharing, hosting, service provider or like purposes; (c) remove any product identification, proprietary, copyright trademark, service mark, or other notices contained in the Software, Third Party Code or Sample Code; (d) except as permitted in Section 3.2, modify any part of the Software, Third Party Code or Sample Code, create a derivative work of any part of the Software, Third Party Code, or Sample Code, or incorporate the Software, Third Party Code or Sample Code into or with other software, except to the extent expressly authorized in writing by Scotfy or as permitted by an applicable Open Source Software license; (e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software.

**4. Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Scotfy and its licensors have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Software, Sample Code, Third Party Code, and all copies, modifications and derivative works thereof (including any changes which incorporate any of your ideas, feedback or suggestions). You acknowledge that you are obtaining only a limited license right to the Software, Sample Code, Third Party Code and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Agreement or otherwise.

**5. Payment.** You shall pay all fees associated with the Software licensed and any services purchased hereunder as set forth in the applicable Ordering Document. All payments shall be made in the currency noted on the applicable Ordering Document within thirty (30) days of the date of the applicable electronic invoice. Except as expressly set forth herein, all fees are non-refundable once paid. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, Scotfy will invoice you for all applicable taxes including, but not limited to, VAT, GST, sales tax, consumption tax and service tax. If any withholding tax is required by applicable law to be paid by you in relation to payments due to Scotfy hereunder, you will provide Scotfy with official receipts and/or certificates from the

appropriate taxing authorities to establish that any applicable taxes have been paid.

## **6. Term and Termination.**

6.1 Term of License. Unless sooner terminated as provided herein, your license to Software expires at the end of the applicable License Term. License Terms may be renewed if mutually agreed by the parties in a renewal ordering document.

6.2 Term of Agreement. This Agreement commences on the Effective Date and expires at such time as all License Terms and service subscriptions hereunder have expired in accordance with their own terms (the "**Term**"). Either party may terminate this Agreement (including all related Ordering Documents) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach including without limitation your failure to pay, provided that Scotfy may terminate this Agreement and the Software license(s) (including termination of the Software license(s) if this Agreement has already expired or has been terminated) immediately upon any breach of Section 3.7 (License Restrictions)); (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days). Unless otherwise specified herein, termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

6.3 Termination. Upon any expiration or termination of this Agreement, you shall cease any and all use of any Software, destroy all copies thereof and so certify to Scotfy in writing.

6.4 Survival. Sections 3.7 (License Restrictions), 4 (Ownership), 5 (Payment), 6 (Term and Termination), 7.3 (Disclaimer of Warranties), 10.1, 10.2, 10.3 and 13 (General) shall survive any termination or expiration of this Agreement.

## **7. Limited Warranty and Disclaimer.**

7.1 Limited Warranty. Scotfy warrants to you that for a period of thirty (30) days from Delivery (the "**Warranty Period**") the Software shall operate in substantial conformity with the

Documentation. Scotfy does not warrant that your use of the Software will be uninterrupted or error-free or that any security mechanisms implemented by the Software will not have inherent limitations. Scotfy's sole liability (and your exclusive remedy) for any breach of this warranty shall be, in Scotfy's sole discretion, to use commercially reasonable efforts to provide you with an error-correction or work-around which corrects the reported non-conformity, or if Scotfy determines such remedies to be impracticable within a reasonable period of time, to refund the license fee paid for the applicable Software. Scotfy shall have no obligation with respect to a warranty claim unless notified of such claim within the Warranty Period. For the avoidance of doubt, this warranty applies only to the initial Delivery of Software under an Ordering Document and does not renew or reset, for example, with renewal License Terms or the delivery of Software updates or maintenance releases or Product Keys.

7.2 Exclusions. The above warranty shall not apply: (a) if the Software is used with hardware or software not authorized in the Documentation; (b) if any modifications are made to the Software by you or any third party; (c) to defects in the Software due to accident, abuse or improper use by you; (d) to any Evaluation Version or other Software provided on a no charge or evaluation basis; or (e) to any maps created using the Software ("**Maps**"), such functionality is provided purely for reference purposes. Scotfy makes every effort to ensure the Maps are free of errors but does not warrant the Maps or Map features are accurate. The boundaries and names shown and the designations used in the Maps do not imply official endorsement or acceptance by Scotfy.

7.3 Disclaimer of Warranties. THIS SECTION 7 IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, THE SOFTWARE, INCLUDING WITHOUT LIMITATION THE MAPS AND THE THIRD-PARTY CODE, AND ALL SERVICES ARE PROVIDED "AS IS". NEITHER SCOTFY NOR ITS LICENSORS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO

THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE WARRANTY PERIOD.

## **8. Limitation of Remedies; Indemnification and Damages.**

8.1 NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS OR COSTS OF COVER), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

8.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SCOTFY AND ITS SUPPLIERS' ENTIRE LIABILITY TO YOU UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY YOU TO SCOTFY UNDER THIS AGREEMENT.

8.3 The parties agree that the limitations specified in this Section 10 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## **9. General.**

9.1 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Scotfy may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Scotfy's assets or voting securities. You may not assign or transfer this Agreement, in whole or in part, without Scotfy's written consent except that you may assign your rights and obligations under this Agreement, in whole but not in part, without Scotfy's written consent in connection with any merger, consolidation, sale of all or substantially all of your assets, or any other similar transaction.

9.2 Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

9.3 Governing Law; Jurisdiction and Venue. This License Agreement shall be governed by the laws of France, and any actions or proceedings arising in connection with this License Agreement shall be tried and determined only in the courts located in Lyon.

9.4 Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

9.5 Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form, including any electronic invoicing portals and vendor registration processes, employed by you will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

9.6 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Notwithstanding the foregoing, if you have entered into a separate written license agreement signed by Scotfy for use of the Software, the terms and conditions of such other agreement shall prevail over any conflicting terms or conditions in this Agreement.

9.7 Audit Rights. Upon Scotfy's written request, you shall certify in a signed writing that your use of the Software is in full compliance with the terms of this Agreement (including any Core and user limitations) and provide a current list of Authorized Users for Desktop and User-Based Server licenses. With reasonable prior notice, Scotfy may audit your use of the Software, software monitoring system and records, provided such audit is during regular business hours. If such inspections or audits disclose that you have installed, accessed or permitted access to the Software in a manner that is not permitted under this Agreement, then Scotfy may terminate this Agreement pursuant to

Section 6 and you are liable for the reasonable costs of the audit in addition to any other fees, damages and penalties Scotfy may be entitled to under this Agreement and applicable law.

9.8 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

9.9 Authorized Partner. If you received the Software under an agreement ("**Partner Agreement**") with an authorized Scotfy reseller, partner or OEM ("**Authorized Partner**") then, notwithstanding anything to the contrary in this Agreement: (a) your use of the Software is subject to any additional terms in the Partner Agreement, including any limitations on use of the Software in conjunction with third-party applications; and (b) you agree to pay the Authorized Partner the fees agreed in the Partner Agreement and you have no direct payment obligations to Scotfy for that purchase under Section 5 above. If your warranty and

support terms stated in your Partner Agreement are different than what is stated in Section 7 herein, then Scotfy has no warranty or support obligations to you under this Agreement (although the disclaimers of warranties in Section 7.3 still apply to you). If your warranty and support terms passed on in your Partner Agreement are as stated herein, then Section 7 shall apply to you as written. Notwithstanding anything in this Agreement to the contrary, (i) the Partner Agreement may not modify any of the remaining terms of this Agreement and (ii) the Partner Agreement is between you and the Authorized Partner and is not binding on Scotfy. Scotfy may terminate this Agreement (including your right to use the Software) in the event Scotfy fails to receive payment for your use of the Software from the Authorized Partner or if you breach any term of this Agreement.

9.10 Third-Party Beneficiary. Scotfy SAS, its affiliates and its licensors may be third party beneficiaries of this Agreement. No other third party, including without limitation your Client Sublicensees, is intended to be a beneficiary of this Agreement entitled to enforce its terms directly.

9.11 Language. Regardless of any language into which this Agreement may be translated, the official, controlling and governing version of this Agreement shall be exclusively the English language version.