



## SCARF SYSTEMS, INC. SAAS SERVICES AGREEMENT

This SaaS Services Agreement (“Agreement”) is made between Scarf Systems, Inc. (“Scarf”) and the customer (“Customer”) who accepts this Agreement, or accesses and/or uses the Services (as defined below). This Agreement governs Customer’s subscription to the Services and constitutes a binding contract in connection with any paid or evaluation use of the Solutions and is effective as of the date an Order Form is countersigned with reference hereto (“Effective Date”). This Agreement includes any Order Forms that incorporate this Agreement by reference and the Company Privacy Policy located at <https://about.scarf.sh/privacy-policy>.

### **TERMS AND CONDITIONS**

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the services set forth in the Order Form (the “Services”) together with reasonable technical support services in accordance with the Company’s standard practices. As part of the registration process, Customer will identify an administrative username and password for Customer’s Company account. Company reserves the right to refuse registration of or cancel passwords it deems inappropriate.

1.2 Customer will not allow any person or entity (“**Person**”) other than Authorized Users to access or use the Services. Customer may authorize any employee or contractor to use the Services (each an “**Authorized User**”), provided that (i) the use, including the number of Authorized Users, does not exceed any licensed volume in the Order Form, if applicable; and (ii) Customer ensures each Authorized User complies with all applicable terms and conditions of this Agreement and Customer is responsible for acts or omissions by Authorized Users in connection with their use of the Services. Customer will, and will require all Authorized Users to, use all reasonable means to secure user names and passwords, hardware and software used to access the Services in accordance with customary security protocols, and will promptly notify Company if Customer knows or reasonably suspects that any user name and/or password has been compromised. Each account for the Services may only be accessed and used by the specific Authorized User for whom such account is created.

1.3 Certain features and functionalities within the Services may allow Customer and its Authorized Users to interface or interact with, access and/or use compatible third-party services, products, technology and content (collectively, “Third-Party Services”) through the Services. Company does not provide any aspect of the Third-Party Services and is not responsible for any compatibility issues, errors or bugs in the Services or Third-Party Services caused in whole or in part by the Third-Party Services or any update or upgrade thereto. Customer is solely responsible for maintaining the Third-Party Services and obtaining any associated licenses and consents necessary for Customer to use the Third-Party Services in connection with the Services.

### **2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 Customer will not at any time and will not permit any person (including, without limitation, authorized users) to, directly or indirectly: (i) use the Services in any manner beyond the scope of rights expressly granted in this Agreement; (ii) modify or create derivative works of the Services or published product documentation (the “**Documentation**”), in whole or in part; (iii) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any software component of the Services, in whole or in part; (iv) frame, mirror, sell, resell, rent or lease use of the Services to any Person, or otherwise allow any Person to use the Services for any purpose other than for the benefit of Customer in accordance with this Agreement; (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any Person, or that violates any applicable law; (vi) interfere with, or disrupt the integrity or performance of, the Services, or any data or content contained therein or transmitted thereby; or (vii) access or search the Services (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or Services features provided by Company for use expressly for such purposes; or (viii) use the Services, Documentation or any other Company Proprietary Information (as defined in Section 3) for benchmarking or competitive analysis with respect to competitive or related products or services, or to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Services, Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company’s standard Documentation and all applicable laws and regulations. Although Company has no obligation to monitor Customer’s use of the Services, Company may do so to account for license usage and may prohibit any use of the Services it believes may be (or alleged to be) in violation of Section 2.1.

2.2 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “**Equipment**”). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer’s knowledge or consent.

### **3. CONFIDENTIALITY; PROPRIETARY RIGHTS**

3.1 Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes the non-public data that Customer uploads into the Services (“**Customer Data**”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, Company shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

3.4 From time-to-time Customer or its employees, contractors, or representatives may provide Company with suggestions, comments, feedback or the like with regard to the Services (collectively, “**Feedback**”). Customer hereby grants Company a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with Company’s business purposes, including, without limitation, the testing, development, maintenance and improvement of the Services.

3.5 The parties agree to be bound by the terms of the Scarf Data Processing Agreement set forth at <https://www.scarf.sh/legal>.

#### **4. PAYMENT OF FEES**

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the “**Fees**”). If Customer’s use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company’s customer support department.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 2.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company’s net income.

#### **5. TERM AND TERMINATION**

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of one year (collectively, the “**Term**”), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## **6. WARRANTY AND DISCLAIMER**

6.1 Company hereby represents and warrants to Customer that: (i) Company will perform all Services in a timely, professional, and workmanlike manner in accordance with all applicable commercial standards and practices generally observed in the industry for similar services; (ii) Company will perform all Services in accordance with all applicable laws and regulations, (iii) the Services shall be free of software viruses, worms, Trojan horses or other code, files, scripts, or agents intended to harm; (iv) the Services it provides to Customer shall be free of material defects and shall operate in all material respects in conformance with all applicable Documentation and the applicable Order Form and not contain any undocumented material features of any kind; and (v) Company has all necessary right and authority to perform all Services and other obligations under this Agreement without the consent of any other person and without conflicting with any other agreement to which Company is a party or by which it may be bound. Company's sole obligation for material non-conformity under this Section 6 shall be, in Company's sole discretion, to use commercially reasonable efforts (i) to provide Customer with an error-correction or workaround to the reported non-conformity; (ii) to replace the non-conforming portions of the Services with conforming items; or (iii) if Company reasonably determines it cannot provide such remedies within a reasonable period of time, to terminate this Agreement and refund unused prepaid Fees. The above warranty will not apply: (a) if the Services are not used in compliance with the Documentation; (b) if any unauthorized modifications are made to the Services by Customer or any third party; (c) to use of releases of the Services that are not the current release or the Services released immediately preceding the current release; (d) to defects due to accident, abuse or improper use by Customer; or (e) to evaluation or pilot use of the Services.

6.2 Company warrants that any professional services set forth in a Statement of Work will be performed in a good and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of thirty (30) days from the completion of any professional services. As Customer's sole and exclusive remedy and Company's entire liability for any breach of the foregoing warranty, Company will promptly re-perform any professional services that fail to meet this limited warranty.

6.3 Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. **HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

## **7. INDEMNITY**

7.1 Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Service is not strictly in accordance with the Documentation or this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

7.2 Customer will defend Company against claims arising from (i) any Customer Data, including, without limitation, (A) any claim that the Customer Data infringes, misappropriate or otherwise violate any third party's intellectual property rights or privacy or other rights; or (B) any claim that the use, provision, transmission, display or storage of Customer Data violates any applicable law, rule or regulation; (ii) any of Customer's products or services; and (iii) use of the Services by Customer or its authorized users in a manner that is not in accordance with this Agreement or the Documentation, including, without limitation, any breach of the restrictions in Section 2.1, and in each case, will indemnify and hold harmless Company against any damages and costs awarded against Company or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such claim.

## **8. LIMITATION OF LIABILITY**



NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. 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, communications and other understandings relating to the subject matter of this Agreement. . Company may update this Agreement from time-to-time without notice to Customer. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. The parties shall work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Effective Date, and Customer otherwise agrees to reasonably cooperate with Company to serve as a reference account upon. In the event of a conflict between this Agreement and an Order Form that references this Agreement, the Order Form shall govern.