

# WALZ SCALE

## SOFTWARE-AS-A-SERVICE (SAAS) TERMS OF USE

(version March 20, 2018)

**PLEASE READ CAREFULLY:** IF YOU ARE ACCEPTING THIS SOFTWARE-AS-A-SERVICE TERMS OF USE (“**AGREEMENT**”) ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (“**CUSTOMER**”), YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THE CUSTOMER TO THIS AGREEMENT. UNLESS THE CUSTOMER HAS ANOTHER VALID AGREEMENT FOR THE PURCHASE AND USE OF COVERED SOFTWARE, THIS AGREEMENT GOVERNS YOUR RIGHTS TO THE WALZ SCALE SOFTWARE PRODUCTS OUTLINED IN THESE TERMS. BY SIGNING OR AGREEING, THE CUSTOMER ACCEPTS THIS AGREEMENT AND THE AGREEMENT WILL BE DEEMED A BINDING CONTRACT BETWEEN WALZ SCALE AND CUSTOMER. IF CUSTOMER DOES NOT AGREE TO OR CANNOT COMPLY WITH ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT OR IF YOU DO NOT HAVE AUTHORITY TO BIND THE CUSTOMER, THEN YOU FORFEIT THE RIGHT TO USE THE SOFTWARE DEFINED IN THESE TERMS.

This Agreement is entered into as of the earliest of the date that Customer accepts the terms and conditions herein, the date set forth on an Order, or the date on which Customer downloads, installs, activates or uses the Software..

### 1. Definitions.

- a. “Acceptable Use Policy” means the acceptable use of the “software” covered by these terms, in accordance with the operating procedures set for each software product. Any software activity or use outside the designated intended use is not covered by these terms or supported by Walz Scale.
- b. “Documentation” means the written and/or electronic release notes, implementation guides, or other published technical documentation about the applicable SaaS Product that is provided by Walz Scale to Customer together with access to the SaaS Product.
- c. “License Term” means the term of the access rights granted for the software, as identified in the relevant service contract, starting when Walz Scale ships a software product to Customer including relevant hardware to access and use the software. The initial term is valid for 1 year upon purchase and shipment of the software, and must be renewed on annual basis at nominal subscription costs to retain rights to use the software.

d. "Software" means proprietary computer programs made available by Walz Scale, hereby known as the "SaaS Product". These terms cover the following software packages provided by Walz Scale:

- Payload Pro – V
- Payload Pro – V (API)
- Payload Pro – M
- Payload Pro – T
- Yield Pro.

e. "Updates" means any correction, update, upgrade, patch, or other modification or addition made by Walz Scale to specific Software.

## 2. **Rights of Access and Use.**

a. Access and Use. Subject to the terms and conditions of this Agreement, during the applicable License Term, Walz Scale hereby grants to Customer (i) a non-exclusive, non-transferable and non-sublicensable license for Customer to access and use the software, in each case, solely for Customer's internal use with Customer's ordinary business operations and in accordance with the applicable documentation and acceptable use policy. Customer may provide access to the SaaS Product to its and its Affiliates' employees, contractors, and other individual users to access and use the SaaS Products on its behalf and for its internal business purposes in compliance with this Agreement, provided Customer is responsible for all such users' actions that violate the terms of this Agreement, any breach by any such user is a breach by Customer, and no such user is an employee or contractor of a Walz Scale Competitor (defined below). Customer agrees that its purchase of the Software is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Walz Scale with respect to future functionality or features.

b. Trial License. This Agreement applies to trial (demo) copies of the SaaS Product ("Trial Product"), except for the following different or additional terms:

- The License Term for Trial Product is variable and is defined on a per contract basis.
- The trial period shall commence on the date that Walz Scale first provides Customer access to the SaaS product.
- Trial Products are provided "AS IS" without warranty of any kind, and Walz Scale disclaims all warranties, indemnities, and all other liabilities for Trial Products.

- Customer is not entitled to any support and maintenance services or any Updates for Trial Product; and either party may terminate the license for Trial Product upon five (5) days' written notice to the other party.

c. Rental License. This Agreement applies to rental copies of the SaaS Product ("Rental Product"), except for the following different or additional terms:

- The License Term for Rental Product varies and are defined in the rental contract, which Walz Scale may extend, upon written consent.
- The rental period shall commence on the date that Walz Scale first provides Customer access to the SaaS product to access.

3. **Use Restrictions; Customer Obligations**. As a condition of the license granted in Section 2, Customer shall not itself and shall not authorize or permit any third party to: **(a)** reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the SaaS Product (except and only to the extent any foregoing restriction is prohibited by applicable law); **(b)** modify, adapt, or create any derivative works based on the SaaS Product; **(c)** distribute, sell, license, lease, transfer, or otherwise provide any SaaS Product to third parties except as expressly provided in this Agreement; **(d)** provide the SaaS Product as a service to unaffiliated third parties, including but not limited to on a service bureau, SaaS, or time-sharing basis; **(e)** unbundle any component of any SaaS Product; or **(f)** use the Documentation except for supporting Customer's authorized use of the SaaS Product; or **(g)** violate the Acceptable Use Policy; or **(h)** employ or authorize a Walz Scale Competitor to use or view the SaaS Product or Documentation, or to provide management, hosting, support or similar services with regard to the SaaS Product without the prior written consent of Walz Scale. "Walz Scale Competitor" means any company or legal entity offering similar products outlined in these terms. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of any SaaS Product and notify Walz Scale promptly of any such unauthorized access or use.

4. **Payment ; Additional Licenses; Reporting**. Customer shall pay the fees for Walz Scale products and/or services as set forth in the applicable sales contract. If Customer is purchasing through a reseller, payment terms will be determined by Customer and the reseller. If Customer is purchasing directly from Walz Scale, all fees shall be paid in U.S. dollars and are due according to your sales contract. If the actual number of registered devices or users (as applicable) exceed the number of licenses purchased by Customer in the applicable Order, then Customer shall (a) immediately cease such excess usage or (b) purchase additional licenses to cover the excess usage. Fees for excess usage shall be based on Walz Scales' then-current price list or specified in

the sales contract. Customer acknowledges that Walz Scale's delivery and support infrastructure may enable Walz Scale to access the device or user count for the SaaS Product.

## 5. **Confidentiality.**

a. Definition. "Confidential Information" means non-public information provided by one party ("Discloser") to the other ("Recipient") that is designated as confidential or reasonably should be considered as such, excluding information that **(i)** is or becomes public through no fault of the Recipient, **(ii)** was known to Recipient before the disclosure, **(iii)** is disclosed to Recipient by a third party without violation of any confidentiality restrictions, or **(iv)** is independently developed by the Recipient without access to or use of the Discloser's information. Walz Scale Confidential Information includes but is not limited to all SaaS Products (and any derivatives, performance data, benchmark results, security assessments, product roadmaps and any other technical information relating to the SaaS Products), Documentation and its derivatives, and Walz Scale's pricing. The terms and conditions of this Agreement are the Confidential Information of both parties.

b. Non-disclosure and Non-Use. The Recipient shall **(i)** only use the Confidential Information of the Discloser to exercise its rights and/or to perform under this Agreement, **(ii)** use the same degree of care to prevent unauthorized use and disclosure of Discloser's Confidential Information as it does for its own confidential information, but in no event less than reasonable care, and **(iii)** with respect to employees, contractors, or agents of Recipient, limit access to the Discloser's Confidential Information only to those employees, contractors, or agents who have a need to access such Confidential Information and who are subject to confidentiality obligations at least as restrictive as those specified in this Section 5. The Recipient may disclose the Discloser's Confidential Information to the extent required by any court, governmental body, or law or regulation, provided that, if legally permissible, Recipient shall provide prompt written notice to the Discloser of such disclosure. Upon written request of the Discloser, the Recipient shall return or destroy, at Discloser's option, the Discloser's Confidential Information.

6. **Ownership.** Walz Scale and its suppliers own and retain all right, title, and (except as expressly licensed in this Agreement) interest in and to the SaaS Product and its derivative works. Customer is not obligated to provide Walz Scale with any suggestions or feedback about the products or services ("Feedback"). To the extent Customer does provide Feedback to Walz Scale, Customer assigns ownership of such Feedback to Walz Scale and Walz Scale may use and modify such Feedback without any restriction or payment.

## 8. **Support and Maintenance Services, Hardware, and Resale Products**

a. Support and Maintenance Services. Support and maintenance services shall be provided in accordance with the support and maintenance terms and conditions specified in Schedule B, attached hereto.

b. Hardware. As defined by PC hardware and other physical devices necessary to the operation of the SaaS Product. Hardware shall be sold under the sales contract.

c. Resale Product Terms. As a convenience to Customer, Walz Scale resells certain products ("Resale Products") that are owned by third parties or are licensed to Walz Scale by such third parties. Resale Products are offered in the sales contract and are typically pre-configured and included as part of the SaaS Product and may or may not be required or necessary for use of the SaaS Product. Resale Products may be subject to separate terms with the applicable third party licensors, which are available upon written request or as may be separately agreed upon by such third party licensor and Customer. If support and maintenance is offered for a specific Resale Product and Customer purchases directly from Walz Scale, Walz Scale shall distribute the applicable Resale Product error correction, update, upgrade and other release provided to Walz Scale by the third party licensor.

d. Third Party Services. The Software may contain features designed to interface with applications or services provided or made available by third parties ("Third Party Services"). In order to use a feature in connection with a Third Party Service, Customer must have a license from the provider of the relevant Third Party Service. If the Third Party Services are no longer available or if the applicable third party provider no longer allows the Third Party Services to interface with the Software, then such features will no longer be available or function in the Software. Walz Scale and the provider of the applicable Third Party Service disclaim all warranties, indemnities, obligations, and other liabilities in connection with any interface or integration with the Third Party Service. Further, Walz Scale disclaims all warranties, indemnities, obligations, and other liabilities in connection with any Third Party Service.

## 9. **Warranties**

a. SaaS Product. Walz Scale represents and warrants to Customer that the SaaS Product materially conforms to the specifications specified in the relevant Documentation. Customer must notify Walz Scale of any warranty deficiencies within thirty (30) days from the provision of the deficient SaaS Product. Customer's sole and exclusive remedy and the entire liability of Walz

Scale for Walz Scale's breach of this warranty will be for Walz Scale, at its option, to repair such SaaS Product (and/or deliver new applicable Software).

b. Professional Services. Customer may order Walz Scale professional services from any authorized reseller or directly from Walz Scale. Such professional services shall be subject to the terms and conditions of this Agreement and mutually agreed-upon statement of work (if any). For ninety (90) days following the date of delivery of any professional service by Walz Scale to Customer, Walz Scale represents and warrants that such professional services shall be professional, workman-like and performed in a manner conforming to generally accepted industry standards and practices for similar services. Customer's sole and exclusive remedy and the entire liability of Walz Scale for Walz Scale's breach of this warranty will be for Walz Scale, at its option, to re-perform the non-conforming.

c. Hardware. Hardware typically consists of commercially available hardware components that have their own manufacturer warranty. Customer agrees to seek remediation for defective hardware through Walz Scale, and not contact the manufacturer directly.

d. Exclusions. The express warranties do not apply if the applicable SaaS Product or hardware (i) has been modified, except by or at the direction of Walz Scale, (ii) has not been installed, used, or maintained in accordance with this Agreement and Documentation, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, and/or (iv) is used with equipment, products or systems not specified in the Documentation. Additionally, these warranties only apply if notice of a warranty claim is provided within the applicable warranty period.

e. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 9, THE SAAS PRODUCT, HARDWARE, AND SERVICES ARE PROVIDED "AS IS," AND WALZ SCALE PROVIDES NO OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WALZ SCALE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

10. **Term and Termination**. The access rights granted herein with respect to the SaaS Product shall remain effective until the License Term for the relevant SaaS Product expires or the license for the relevant SaaS Product is terminated. This Agreement shall remain effective until the earliest of termination in accordance with this Section 10, or expiration of the applicable License

Term. If Walz Scale agrees to reinstate a lapsed subscription license, then the terms of this Agreement shall apply. Either party may terminate this Agreement: (a) upon thirty (30) days' written notice of a material breach by the other party (or three (3) business days in the case of a failure to pay), unless the breach is cured within the notice period, or (b) immediately, if the other party ceases to do business, becomes insolvent, or seeks protection under any bankruptcy or comparable proceedings. In addition, the parties may terminate this Agreement by mutual written consent. All other licenses terminate upon expiration or termination of this Agreement. Upon termination this agreement, any data hosted by Walz Scale will be subject to deletion.

11. **Limitation of Liabilities.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY BREACHES OF OR FOR LIABILITY ARISING OUT OF SECTION 3 (RESTRICTIONS), 5 (CONFIDENTIALITY) OR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, OR CUSTOMER'S PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR: (a) ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE, OR (b) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAYABLE TO WALZ SCALE FOR THE RELEVANT SAAS PRODUCT, HARDWARE, OR SERVICE DURING THE TWELVE-MONTH PERIOD BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THIS AGREEMENT. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.

12. **General.**

a. Export/Import. The SaaS Product and Documentation may be subject to U.S. and foreign import and export control laws and regulations. Customer agrees to comply with all such regulations applicable to Customer, including obtaining applicable import licenses.

b. In-Licensed Materials and Open Source. The SaaS Product may contain or may operate with software services or other technology that is not owned by WALZ SCALE but has been licensed to WALZ SCALE by a third party and is necessary for the normal operation of the Software ("In-Licensed Materials") or that is available under open source or free software licenses. To the extent WALZ SCALE uses open source software in the Software, the terms and restrictions set

forth herein shall not prevent or restrict Customer from exercising additional or different rights to such open source software in accordance with the applicable open source licenses.

c. Governing Law and Jurisdiction. The rights and duties of the parties arising from this Agreement, shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois, excluding its conflicts-of-law principles. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be state and federal courts in Tazewell County, Illinois, and the parties agree to service of process in accordance with the rules of such courts. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods shall not apply.

e. Assignment. Neither party may assign this Agreement without prior written consent of the other party, provided however either party may do so to a successor-in-interest pursuant to a merger, acquisition, or sale of all or substantially all of its business and/or assets. Any assignment in violation of this Section 12.e shall be void. Subject to the foregoing, all rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns.

f. Data Communications. WALZ SCALE shall only collect, access, use, store, safeguard, disclose and transfer ("Process") Personal Information **(i)** for the purposes of this Agreement, including without limitation, to implement and deliver the SaaS Product and its features and associated services, provide Customer support, and help Customer prevent or address service or technical problems, **(ii)** as otherwise expressly permitted by Customer in writing, or **(iii)** as compelled by law. Customer shall make such disclosures, obtain such consents, and provide such access, choices and other applicable rights to individual users with regard to the Processing of Personal Information as are required under applicable law, rules or regulations. "Personal Information" means any information relating to an identified or identifiable individual user that is obtained by or communicated to WALZ SCALE by Customer in performance by WALZ SCALE of its obligations under this Agreement. WALZ SCALE collects, analyzes, and uses aggregated, de-identified technical data and related information (such as product or feature usage, device metrics/metadata and/or mobile application usage) to facilitate market research, product development/improvement and to provide support and maintenance services. WALZ SCALE may use, store, or disclose such information or material derived from such information, as long as it is in a form that does not identify or is not attributable to any individual.

g. Equitable Relief. The parties agree that a material breach of this Agreement adversely affecting WALZ SCALE's or its suppliers' intellectual property rights in the SaaS Product or either



party's Confidential Information may cause irreparable injury to such party for which monetary damages would be an inadequate remedy and the non-breaching party shall be entitled to equitable relief (without a requirement to post a bond) in addition to any remedies it may have under this Agreement or at law.

h. Publicity. WALZ SCALE may publicly disclose that Customer is a customer of WALZ SCALE and a licensee of the SaaS Product, including in a list of WALZ SCALE customers and other promotional materials.

i. Independent Contractor. The parties are independent contractors. This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.

j. Customer Affiliates. An Affiliate may purchase WALZ SCALE products and/or services either by executing a participation agreement with WALZ SCALE or through WALZ SCALE's acceptance of an Order issued by such Affiliate or Authorized Reseller (as applicable). Upon execution of a participation agreement by Affiliate or, if the Affiliate issues a purchase order referring to this Section 12.j, that is accepted by WALZ SCALE, such Affiliate shall be deemed to have purchased such products and/or services hereunder, and such Affiliate shall be bound by and shall comply with the terms and conditions of this Agreement as a "Customer" under the Agreement.

k. Waiver & Severability; Amendments. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of any other provision or any subsequent breach. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and effect. This Agreement may only be amended, or any term or condition set forth herein waived, by written consent of both parties.

l. Notices. Except as otherwise provided in this Agreement, all legal notices to Customer will be given in writing to any Customer address listed on the applicable Order. All legal notices to WALZ SCALE will be given in writing to: WALZ SCALE, 656 High Point Lane, East Peoria, IL 61611. Such notices will be effective **(a)** when personally delivered, **(b)** on the reported delivery date if sent by a recognized international or overnight courier or by fax, or **(c)** five business days after being sent by registered or certified mail (or ten days for international mail). For clarity, purchase orders, invoices, and other documents relating to order processing and payment are not legal

notices and may be delivered electronically in accordance with WALZ SCALE and Customer's standard ordering procedures.

m. Entire Agreement. This Agreement consists of these terms and conditions, and the attached schedule(s), which are incorporated by reference. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes and cancels all prior agreements, representations, communications, and understandings of the parties, written or oral, relating to such subject matter, and is not intended to confer upon any person other than the signatories below any rights or remedies. This Agreement prevails over any conflicting, or additional terms of any ordering document, acknowledgment, confirmation or other document issued by Customer before or after the execution of this Agreement unless such conflicting or additional terms have been introduced via an amendment and accepted in writing by both parties. The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement.

## **WALZ SCALE, INC.**

### **Schedule A: Dispute Resolution outside North America**

If Customer's principal office is located outside North America as indicated on the cover sheet, the terms and conditions of this Schedule shall apply to all disputes arising out of or relating to this Agreement (excluding disputes regarding the actual or alleged violation of WALZ SCALE's intellectual property rights or the collection of overdue invoices, which shall be governed by Illinois law).

#### **1. For ALL principal offices outside North America:**

a. Choice of Law. This Agreement, and the rights and duties of the parties arising from this Agreement, shall be governed by, construed, and enforced with the laws of the State of Illinois, excluding its conflicts-of-law principles. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods shall not apply.

b. Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the existence, breach, termination, enforcement, interpretation or validity of the Agreement, including the determination of the scope or applicability of this agreement to arbitrate, (each, a "Dispute") shall be referred to and finally resolved by arbitration under the rules and at the location identified below. The arbitral panel shall consist of three (3) arbitrators, selected as follows: each party shall appoint one (1) arbitrator; and those two (2) arbitrators shall discuss and select third arbitrator. If the two party-appointed arbitrators are unable to agree on a third arbitrator, the third arbitrator shall be selected in accordance with the applicable rules of the arbitration body. Each arbitrator shall be independent of each of the parties and shall have suitable experience and knowledge in the subject matter of the Dispute. The arbitrators shall have the authority to grant specific performance and to allocate between the parties the costs of arbitration (including service fees, arbitrator fees and all other fees related to the arbitration) in such equitable manner as the arbitrators may determine. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, either party shall have the right to institute an

action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator, provided that a permanent injunction and damages shall only be awarded by the arbitrator. The language to be used in the arbitral proceedings shall be English.