

Scaffle evaluation (trial) software agreement

The purpose of this evaluation agreement (“Agreement”) is to set out the terms of the evaluation of the Scaffle cloud software (the “Evaluation Software”). This license agreement is between Collabforge Pty Ltd of L3 673 Bourke Street, Melbourne VIC 3000 (“Scaffle”) and the individual or legal entity (“You” or “Your”) undertaking the trial of Scaffle. You represent that You understand and have the authority to enter into this agreement and be bound by its terms as yourself or on behalf of any entity for whom You make this agreement.

This Agreement does not provide a commercial license for use, nor does it compel either party to agree to a commercial license in the future. Use after the trial period is dependent on the parties entering into a separate commercial license agreement.

1 Definitions

“**Authorised User**” means all persons that You authorised to use the Evaluation Software solely for Your benefit in accordance with the terms and conditions of this Agreement.

“**Evaluation Materials**” means the Evaluation Software and documentation, including any and all (a) copies, reproductions, modifications, enhancements, adaptations, translations and other derivative works of, and (b) inventions, improvements, know-how, specifications, performance characteristics, designs, plans, methods, procedures, processes, techniques, software, technology, concepts, information or materials whatsoever (other than Your Data) comprising, relating to, based on or arising out of, the Evaluation Software or documentation, in whole or in part without limitation. This includes inventions, know-how, specifications, designs, plans, methods or procedures developed in whole or part through trial feedback processes whether originating from Scaffle, You, and Authorised user, or any other person.

“**Evaluation Period**” means the fixed evaluation period as determined by a) Schedule 2 of this agreement, or b) the period defined by the sign-up form on <https://scaffle.com.au> at the time of registration.

“**Evaluation Software**” means the pre-revenue version of Scaffle and/or any of its components or related products.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Permitted Use**” means the testing, demonstration, trial and other evaluative (but not any developmental or productive) use of the Evaluation Software, including, but not limited to, the

assessment of the Evaluation Software's compatibility with Your system, by an Authorised User for Your benefit solely for the purpose of Your evaluation of the Evaluation Software.

“Third Party Materials” means any third-party materials, software, technology, information or data, including Intellectual Property, made available to You by Scaffle or Collabforge.

“Your Data” means any and all data, content or information entered into, transmitted through, or stored on the Evaluation Software by You or Your Authorised Users or otherwise made available or accessible to Scaffle by You or Your Authorised Users.

“Feedback” means any and all bug reports, comments, feedback or ideas about the Evaluation Software, including without limitation about how to improve the Evaluation Software.

2 Evaluation License

2.1 License

Subject to Your compliance with the terms and conditions of this Agreement, Scaffle hereby grants You a nonexclusive, non-transferable, non-sublicensable license to use the Evaluation Software and such Evaluation Materials as Scaffle may deliver or make available to You solely for the Permitted Use of the Evaluation Software on Your system during the Evaluation Period (the “Evaluation License”).

2.2 Use and restrictions

You shall not

- a) permit any third party to access the Evaluation Materials except as permitted herein, for the purposes of Your evaluation;
- b) copy, distribute, display, or create derivative works based on the Evaluation Materials, except as authorised herein;
- c) disassemble, decompile or otherwise reverse engineer the Evaluation Software or Evaluation Materials;
- d) challenge Scaffle's ownership, or the validity, of the Evaluation Software, the Evaluation Materials or any other item or material created or developed by or on behalf of Scaffle under or in connection with the Agreement (including the Intellectual Property Rights in those items); and
- e) notify Scaffle in writing immediately after it becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Software or the Documentation; or
- f) access the Evaluation Software or Evaluation Materials in order to build a competitive product or service, or copy any features, functions or graphics of the Evaluation Materials.

3 Intellectual property

3.1 Ownership

Scaffle retains all rights, titles and interests including all Intellectual Property Rights in and to the Evaluation Software, Evaluation Materials and all other confidential information. This includes all modifications, improvements, upgrades or alterations including those that result from direct requests or Feedback. All copies of Scaffle provided or made available hereunder are licensed, not sold.

You have and retain all right, title and interest in and to Your Data and Your other Confidential Information. Your Data can be provided to You upon request in a format most convenient to Scaffle or as agreed based on fair compensation for time taken to provide Your Data in a specified format.

The Evaluation Software may include or operate in conjunction with plug-ins, open source components or other Third Party Materials. Ownership of all Intellectual Property Rights of Third Party Materials remains with the owners thereof.

3.2 Feedback

By submitting any Feedback, You hereby assign to Scaffle all right, title, and interest in and to the Feedback, if any. You grant Scaffle the right in perpetuity to use, distribute or display the Feedback and assign Scaffle all right title and interest in and to any and all features, modifications, improvements or new products that may result from the Feedback.

3.3 Proprietary Notices

Any copyright or other Intellectual Property Rights notices accompanying or contained in the Evaluation Materials or Evaluation Software should be displayed, included or appended as intended when distributing, sharing or otherwise making these materials available to Your Authorised Users or any other party involved in the software evaluation process.

4 No warranties

You understand and agree that all use of the Evaluation Software is provided at Your sole risk and that the use of the Evaluation Software is provided “as is” and “as available”.

To the fullest extent available under the law, Scaffle hereby disclaims any warranties, whether express, implied, statutory or other. Scaffle specially disclaims any implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and all warranties arising from course of dealing, usage or trade practice. Scaffle and its licensors do not warrant or claim that the Evaluation Software, Evaluation Materials, or any other products or results of the use of Scaffle will meet Your or any other person’s requirements, operate without

interruption, achieve any specific result, be compatible with any software, secure, be free of harmful code or error-free. You understand and acknowledge that the Evaluation Software is not designed or intended to store or secure highly sensitive information. All third-party materials are provided “as is” and any representation or warranty of or concerning any third party materials is strictly between You and the owner of those materials.

5 Limitation of Liability

Scaffle will in no event be liable under or in connection with this Agreement or its subject matter for any

- a) loss of goodwill, reputation, business, data, revenue, profit or anticipated savings, cost of procurement of substitute goods or services, or any other tangible or intangible loss (whether incurred directly or indirectly);
- b) business interruption or impairment, or any use of or inability to use the source code or the Evaluation Software or other Evaluation Materials;
- c) loss, damage, corruption or recovery of data, or breach of data or system security.

Scaffle has no obligation under this Agreement to provide any maintenance, support or other services relating to the Evaluation Software. You are solely responsible for taking appropriate measures to back up Your system and data and all other necessary measures to prevent any file or data loss.

The foregoing limitations on Scaffle’s liability shall apply whether or not Scaffle has been advised of or should have been aware of the possibility of any such losses arising.

In no event will the total aggregate liability of Scaffle arising out of or in connection with this Agreement or its subject matter (including negligence) exceed AUD\$100.

6 Confidentiality

During the evaluation and use of the Evaluation Software, both You and Scaffle may have access to information that is confidential to one another. This may include, but is not limited to information clearly identified as confidential at the time of disclosure (“Confidential Information”). Confidential Information is not considered to include information which is:

- a) part of the public domain or becomes part of the public domain through no omission or act of the other party;
- b) was in the other party’s lawful possession prior to disclosure; or
- c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or
- d) is independently developed by the other party.

Both You and Scaffle must not, unless with prior written consent, disclose the other’s Confidential Information to any third party except to a government entity or court as required under applicable law. Each party shall take all reasonable precautions to ensure any Confidential Information is disclosed only to Authorised Users or persons employed by Your organisation who have a need to know such information for the purposes of evaluating the

Evaluation Software or Evaluation Materials, and never to a third party (including any subcontractor or consultant) without prior notification in writing.

7 Governing Law

This Agreement will be interpreted in accordance with the laws in force in the State of Victoria, Australia. Both parties agree that any claim or dispute must be resolved by a court in the State of Victoria and You hereby consent to the jurisdiction of such courts.

8 Term

This License Agreement shall continue to apply for the duration of any use of the Evaluation Materials.