



## MASTER AGREEMENT – HAPROXY EDGE CONTENT DELIVERY NETWORK (CDN) SERVICE

PLEASE READ THIS ENTIRE DOCUMENT CAREFULLY AS IT AFFECTS YOUR RIGHTS, RESPONSIBILITIES AND SERVICES RENDERED PURSUANT HERETO:

THIS MASTER AGREEMENT for content delivery service (“**Agreement**”) is made and entered into by and between HAProxy Technologies, LLC, a Delaware limited liability company (“**COMPANY**”), and the entity set forth on the signature page or on the Order Form in Appendix A of this Agreement (“**Customer**”). This Agreement is effective as of the date of Customer’s signature (“**Effective Date**”). COMPANY and Customer are sometimes referred to as the “parties” and individually as a “party”. Customer’s use of and access to COMPANY’s HAProxy Edge HAProxy Edge CDN Service (defined, *infra*) is governed by this Agreement, including COMPANY’s Acceptable Use Policy, Privacy Policy, DMCA Notice and Takedown Policy and the terms and conditions contained in any other Supplemental Terms and Conditions/Appendix (including terms related to Service Level) and/or one or more applicable Order Forms, attached hereto and incorporated by reference herein (all of which are collectively referred to as the “**Agreement**”). By using the HAProxy Edge CDN Service, Customer agrees to comply with this Agreement and to be and remain liable for the actions and omissions of its Customer End Users including, without limitation, the breach of terms and conditions set forth in this Agreement by Customer End Users (whether or not Customer is acting as a reseller of HAProxy services).

### Definitions.

“**Acceptable Use Policy**” or “**AUP**” - COMPANY’s guidelines for acceptable uses of COMPANY’s HAProxy Edge CDN Service, set forth on the COMPANY Website and updated from time to time.

“**Anti-SPAM Policy**” - COMPANY’s policy on SPAM generated through the use of COMPANY’s HAProxy Edge CDN Service, set forth on the COMPANY Website in COMPANY’s AUP and updated from time to time.

“**Appendix/Appendices**” – a set of terms and conditions specific to HAProxy Edge CDN Service rendered by COMPANY which govern Customer’s and/or Customer End Users’ use of HAProxy Edge CDN Service. Any Appendix, when executed by the parties, shall be governed by, and automatically incorporated by reference into this Agreement and shall be subject to its terms and conditions.

“**Bandwidth**” - the measured rate of bits per second transferred from COMPANY from and to Customer’s equipment.

“**Burst Bandwidth**” - the amount of Bandwidth in excess of Customer’s committed level as further defined below.

“**CDN**” – the content delivery network utilized by COMPANY which is comprised of the physical hardware and software used to provide HAProxy Edge CDN Service.

“**HAProxy Edge CDN Service**” - COMPANY’s content delivery service which provides hosting for Customer Content (such as digital audio, video, or computer software over the Internet) at one or more selected Point of Presence (“**POP**”) using proprietary routing technology either directly through COMPANY or indirectly through a third-party service provider as more specifically set forth on an Order Form.

“**Commencement Date**” - the date upon which COMPANY provisions an ordered HAProxy Edge CDN Service as more fully described in the relevant Order Form.

“**Customer Content**” - all data, software and information, including, without limitation, data text, software, scripts, video, sound, music, graphics and images that are created, uploaded or transferred in connection with the HAProxy Edge CDN Service by Customer or any Customer End User. Customer Content is owned by Customer, with a limited license to COMPANY only to the extent required for Customer to use COMPANY’s HAProxy Edge CDN Service.

“**Customer End User**” - a third party which is an end user of any website and/or product and/or service of Customer. The term “Customer End User” may also, in the event that Customer is permitted to resell COMPANY HAProxy Edge CDN Service (as set forth on an applicable Order Form), be used to refer to a third-party resale customer of Customer and/or an end user of any website and/or product and/or service of such resale customer.

“**DMCA Notice and Takedown Policy**” – COMPANY’s guidelines and policy for DMCA notices and takedown procedures arising out of COMPANY’s HAProxy Edge CDN Service, as set forth on the COMPANY Website and updated from time to time.

“**Downtime**” – a period of time that the CDN is not available to deliver Customer Content for 2 or more consecutive 5-minute periods based on COMPANY’s measurements and subject to COMPANY’s ability to independently verify.

“**COMPANY Website**” - COMPANY’s company website, published at <http://www.haproxy.com>.

“**IP**” – Internet Protocol, the basic rules and encoding specifications for sending data on the Internet.

“**IP Addresses**” – one or more IP address numbers.

“**Law(s)**” – all foreign (including European Union and similar associations) and United States federal, state and local laws, statutes, ordinances, enactments, orders, rules, regulations and judicial decisions, including those of any governmental agency (including export control laws and privacy regulations), and all interpretations of and changes, supplements or replacements to any of the foregoing.



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“**Order Form**” - any mutually executed sales order or other statement of work to this Agreement containing terms and conditions and other details relating to the HAProxy Edge CDN Service, including without limitation, the Term, Customer charges, estimated Commencement Date and any other relevant terms and conditions agreed upon by the parties. Any Order Form, when executed by the parties, shall be governed by, and automatically incorporated by reference into this Agreement and shall be subject to its terms and conditions. References to “Order Form” herein shall automatically be deemed to include and incorporate the plural, as applicable.

“**Overage**” - the amount of Bandwidth in excess of Customer’s allocated amount as specified on an applicable Order Form.

“**Privacy Policy**” – the terms governing the use of information pertaining to Customer which policy is set forth on the COMPANY Website and updated from time to time.

“**Service Level**” – a set of terms and performance guarantees which apply to Downtime and/or specific HAProxy Edge CDN Service provided by COMPANY as set forth on an Order Form or Supplemental Terms and Conditions.

“**Supplemental Terms and Conditions**” – any mutually executed addendum containing additional terms and conditions detailing the HAProxy Edge CDN Service (including, without limitation restrictions on use, support and/or service levels).

“**Term**” - the period of time in which COMPANY provides HAProxy Edge CDN Service to Customer pursuant to this Agreement including an applicable Order Form. Notwithstanding anything to the contrary contained herein, the Term of this Agreement shall continue for so long as any Order Form shall remain valid and in effect.

1. HAProxy Edge CDN Services. During the Term, provided Customer is not in breach of this Agreement or any applicable Order Form, and further provided that COMPANY has accepted an Order Form and Customer has made all payments required pursuant to this Agreement, COMPANY shall, on a non-exclusive basis, use reasonable commercial efforts to provide HAProxy Edge CDN Service to Customer as may be set forth from time to time on one or more Order Forms. At a minimum, any Order Form must include (i) a reasonably detailed description of the HAProxy Edge CDN Service to be performed; (ii) a schedule and (if applicable) completion date; and (iii) a compensation and payment schedule. Each Order Form shall reference and incorporate this Agreement, and the terms and conditions set forth in this Agreement shall automatically govern COMPANY’s provision of HAProxy Edge CDN Service under the Order Form. If a term in any Order Form conflicts with a term in this Agreement, the provisions of this Agreement will prevail unless the respective Order Form specifically states that the term in the Order Form will prevail. COMPANY’s inability or failure to fulfill any ordered HAProxy Edge CDN Service by the estimated availability date or Commencement Date shall not constitute a breach of this Agreement, and COMPANY shall not be liable to Customer or any third party for any damages as a result of COMPANY’s inability or failure to deliver the HAProxy Edge CDN Service. COMPANY agrees that in performance of its HAProxy Edge CDN Service hereunder, Customer shall have complete autonomy and control over the Customer Content and other intellectual property content of Customer’s web sites, software and hardware, and any materials transmitted by Customer (including any Customer’s End User) to COMPANY (individually and collectively, “**Customer Works.**”) The parties further agree that the fact that this Agreement and any applicable Order Form may contain guidelines and restrictions on the actions of Customer and Customer Works, COMPANY shall not have any obligation to enforce or otherwise police such guidelines and restrictions, except as required by Law. COMPANY shall begin and complete the HAProxy Edge CDN Service in accordance with the date(s) and time(s) specified in any applicable Order Form. Customer shall timely make all payments set forth in the Order Form. COMPANY has the right to reject the request for HAProxy Edge CDN Service in its sole discretion. COMPANY may change, discontinue, add, modify, re-price or remove features or functionality from the HAProxy Edge CDN Service upon notice to Customer as set forth herein. If Customer continues to use the HAProxy Edge CDN Service following any such modification, such use will be deemed acceptance of such modification by Customer.

2. Customer’s Use of and Access to HAProxy Edge CDN Service. Customer shall maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure protection and confidentiality, security, integrity, availability and privacy of all data Customer creates, receives, maintains or transmits through the HAProxy Edge CDN Service. Customer shall identify and protect against reasonably anticipated threats to the security or integrity of such data and protect against reasonably anticipated, impermissible uses or disclosures. Customer may order HAProxy Edge CDN Service through an Order Form executed by both parties or submitted by Customer and accepted, in writing (including via e-mail) by COMPANY. COMPANY may accept such Order Form in its discretion and shall give notice (as specified herein) to Customer of acceptance of such Order Form. Subject to the terms and conditions of this Agreement, and provided Customer is not in breach of this Agreement or any applicable Order Form, and further provided that COMPANY has accepted an Order Form and Customer has made all payments required pursuant to this Agreement:

- A) **License.** COMPANY grants Customer a non-exclusive, non-transferable, non-sublicenseable (except to the extent required to allow Customer End Users to use Customer’s products, services and/or web sites), revocable right in the HAProxy Edge CDN Service (as more specifically set forth in an applicable Order Form) solely to use and access the HAProxy Edge CDN Service for internal purposes.
- B) **IP Addresses.** Any IP Addresses assigned to Customer by COMPANY shall at all times remain the sole and exclusive property of COMPANY and may be used only in connection with the HAProxy Edge CDN Service rendered by COMPANY and for the Term specified in any applicable Order Form. In the event, for any reason, Customer discontinues use of HAProxy Edge CDN Service or COMPANY suspends or terminates Customer’s use of HAProxy Edge CDN Service or the Agreement or relevant Order Form terminates, Customer’s right to use the IP Addresses is immediately terminated. On each and every Customer website utilizing COMPANY’s IP Addresses and/or HAProxy Edge CDN Service, Customer must post relevant Customer contact information and a means for any third party to post take-down notices and/or other reports relating to the Customer’s website, its contents, privacy policy or other terms. If COMPANY receives any third party complaint(s) relating to Customer’s website and/or Customer’s use of the HAProxy Edge CDN Service and/or COMPANY’s IP Addresses, COMPANY shall be entitled to terminate (in whole or in part, including with respect to any one or more specific internet properties) Customer’s use of COMPANY’s IP Addresses and/or COMPANY’s HAProxy Edge CDN Service.



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- C) **General Connectivity.** Subject to the terms and conditions contained herein, and provided Customer is not in breach or default of the Agreement, this Supplement or any applicable Order Form, COMPANY will provide to Customer space to upload its content to the CDN to enable Content Delivery on terms (including Commencement Date) specified in an Order Form.
- D) **95th percentile billing for Bandwidth.** If 95th percentile billing for Bandwidth usage is employed on an applicable Order Form, usage samples will be collected and sorted from highest to lowest and the top 5% discarded. The next highest sample (the 95th percentile number) will then be used as the basis in computing the charge for the month for incremental Bandwidth beyond the committed level. Overage charges for Burst Bandwidth, if not specified on an Order Form will be billed at COMPANY's prevailing rate. Charges for Burst Bandwidth will be billed after the end of the month.
- E) **Per-gigabyte billing for Bandwidth.** If per-gigabyte billing is employed on an applicable Order Form, then Customer will be billed a charge for each gigabyte of Customer Content transferred over the CDN. Overage charges for Burst Bandwidth, if not specified in an Order Form, will be billed at COMPANY's prevailing rate. Bandwidth usage for per-gigabyte billing shall be based on actual Customer Content transferred, as measured by system logs from the CDN, in one gigabyte (1,073,741,824 byte) increments. Charges for Burst Bandwidth will be billed after the end of the month.
- F) **Customer Feedback.** In the event that Customer provides COMPANY with suggestions, enhancement requests, recommendations, proposals, documents, or other feedback (collectively, "Communications"), Customer grants COMPANY a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use, modify, and distribute such Communications in any manner without compensation to Customer or attribution of any kind.
- G) **Resale Terms.** If Customer is authorized by COMPANY to resell HAProxy Edge CDN Service as set forth on an applicable Order Form, Customer will require each such Customer resale customer (each, a Customer End User) to agree to the terms and conditions contained in this Agreement, in writing as a condition precedent to the provision to such resale customer of HAProxy Edge CDN Service. Customer shall actively market, promote and sell HAProxy Edge CDN Service and shall represent the HAProxy Edge CDN Service accurately and fairly and at all times avoid misleading, illegal, or unethical business practices. Customer will not disclose or make available, directly or indirectly, all or any portion of the HAProxy Edge CDN Service to any person other than a Customer End User. Customer will not remove, erase or hide from view any copyright, trademark, confidentiality notice, mark or legend appearing in connection with the HAProxy Edge CDN Service and will at all times refer to such service as "HAProxy CDN." Customer shall not make any claim or representation relating to the performance or functionality of the HAProxy Edge CDN Service other than as expressly included in the online documentation (if any). Customer will not amend or grant any waiver under the Agreement without COMPANY's prior written consent. If Customer becomes aware of any violation of the Agreement (whether by Customer or any Customer End User), Customer will notify COMPANY immediately and assist COMPANY in its efforts to enforce the terms of the Agreement. Any act or omission of any Customer End User that would be a breach of this Agreement if committed by Customer will be deemed a breach of this Agreement by Customer. Customer may not: (a) modify the HAProxy Edge CDN Service in any manner, (b) use the HAProxy Edge CDN Service to provide services or support for anyone other than a contracted Customer End User, (c) use the HAProxy Edge CDN Service in any manner or for any purpose not permitted by this Agreement, including, without limitation, for Customer's (or its resale customer's) own internal use, or (d) create or sell services competitive with the HAProxy Edge CDN Service, directly or indirectly or for the benefit of any other person or entity or permit any third party to make such use, including creating revenue related to COMPANY's products and services without payment of fees to COMPANY.

### 3. Additional Customer Obligations. In consideration for its access to HAProxy Edge CDN Service, Customer agrees:

A) All Customer Content delivered by Customer shall be delivered in the supported encoding format specified in an Order Form. Where Customer utilizes the Adobe Flash format for streaming media ("**Adobe Streaming Media**"), Customer agrees that COMPANY may provide information to Adobe Systems Incorporated, including but not limited to: (1) Customer's name, city, state, zip code and country; (2) the total amount of Customer's Adobe Streaming Media transferred utilizing the HAProxy Edge CDN Service; (3) the total amount of charges received by COMPANY for HAProxy Edge CDN Service resulting from Customer's Adobe Streaming Media. Notwithstanding anything contained herein or in any Order Form, Customer shall be responsible for maintaining any master and/or back-up copies of Customer Content (including Customer Works) in all situations, including but not limited to, where COMPANY is rendering storage services for Customer; COMPANY shall have no liability for any claims relating to the destruction, loss or corruption of Customer Content (including Customer Works) in whole or in part. To assist in delivery of HAProxy Edge CDN Service, Customer will provide COMPANY with a non-binding forecast setting forth Customer's estimated forecasted usage of the HAProxy Edge CDN Service by geographic location, which shall be updated monthly.

B) Customer's usage may be measured using either a per gigabyte billing methodology or a 95th Percentile billing methodology. The methodology shall be selected as set forth on the applicable Order Form.

C) Customer's use of Content storage service (if used in connection with HAProxy Edge CDN Services) will be billed based on the highest capacity of storage utilized by Customer during any point in the relevant calendar month.

D) Any other Service features or functionality selected by Customer that are not described herein shall be provisioned as provided pursuant to the terms set forth in the Customer's applicable Order Form.

E) Customer is solely responsible for any equipment, facilities and/or other materials used in connection with the HAProxy Edge CDN Service which are not provided by COMPANY, including any related applications, systems and software.

F) While COMPANY or its service providers may replicate Customer Content in connection with rendering HAProxy Edge CDN Service, none of the HAProxy Edge CDN Service are deemed a "vault" service and Customer understands and acknowledges that Customer should maintain one or more



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master and/or backup copies of all Customer Content (including Customer Works) and that COMPANY shall have no liability for any claims relating to such Customer Content (and/or Customer Works) including, without limitation, the destruction, loss or corruption of such Customer Content (and/or Customer Works) in whole or in part.

G) Customer expressly agrees not to resell or otherwise assign or sub-license (in whole or in part) any of the HAProxy Edge CDN Service rendered as set forth herein without prior written agreement, signed by both parties.

F) If Customer or any web property owned or controlled by Customer is hereafter purchased or otherwise acquired, merged or undergoes a change of control by any third party, Customer agrees to remain liable for all obligations pursuant to any applicable Order Form(s) and/or the Agreement and to obtain a written agreement from such third party obligating them to all such terms and conditions.

B. Customer further agrees to do each of the following: (i) pay the fees for HAProxy Edge CDN Service when due; (ii) use reasonable security precautions for providing access to the HAProxy Edge CDN Service by its employees, contractors, Customer End Users or other individuals to whom it provides access; (iii) cooperate with COMPANY's investigation of security problems, interruptions in service, and any actual, alleged or suspected breach of the Agreement; (iv) comply with all license terms or terms of use for any software, content, service or website (including Customer Content) which Customer uses or accesses when using the HAProxy Edge CDN Service; (v) comply with all Laws, including, without limitation, the Digital Millennium Copyright Act and related copyright laws; (vi) be responsible for the use of the HAProxy Edge CDN Service by Customer and Customer End Users and any other person to whom Customer has given access to Customer's HAProxy Edge CDN Service and/or web site; (vii) prevent unauthorized access or use of the HAProxy Edge CDN Service; (viii) enter into an agreement with each and every Customer End User which shall include the relevant terms of this Agreement and release COMPANY from any and all liability for damages or losses Customer or Customer End Users may incur as a result of using Customer's products, services or web site; and (ix) immediately notify COMPANY of suspected, alleged or known breach of any of the foregoing. Customer may not resell any of the HAProxy Edge CDN Service to any third party without first entering into a written reseller agreement or Order Form with COMPANY. Customer may not use the HAProxy Edge CDN Service in any situation where failure or fault of the HAProxy Edge CDN Service could lead to death or serious bodily injury of any person, or to physical or environmental damage.

**4. Term, Termination and Suspension.** This Agreement shall commence as of the Effective Date and shall continue for a period of one (1) year unless terminated by either party pursuant to this Agreement. Notwithstanding the foregoing, in the event of material breach of this Agreement (including any Order Form, either (non-breaching) party may terminate this Agreement and/or any specific Order Form at any time on thirty (30) days written notice to the breaching party which notice contains a description of the reason for termination in sufficient detail to allow the breaching party to cure such breach. No such termination shall be effective unless the breaching party has failed to remedy the aforementioned breach within thirty (30) days of its receipt of a termination notice. The foregoing time periods shall be reduced to ten (10) days if breach is Customer's payment failure. COMPANY may terminate immediately, with or without notice and/or opportunity to cure if Customer's breach is a violation of Laws, COMPANY's AUP, a breach of Customer's representations and warranties in the Agreement, or if, in COMPANY's reasonable commercial judgment, termination on shorter or contemporaneous notice is necessary to protect COMPANY or its other customers from operational, security, or other risks. Customer agrees termination of the Agreement and/or any applicable Order Form shall be Customer's sole remedy for any breach of the Agreement or any applicable Order Form. The Term for each Order Form shall begin on the Commencement Date of the related HAProxy Edge CDN Service and shall remain in effect until the expiration of the Term so specified in the Order Form. Upon the expiration of a Term set forth on a Order Form, such Order Form will renew for successive one (1) year periods unless otherwise specified on that Order Form, or, written notice of non-renewal is provided by either party not less than thirty (30) days from the expiration of the Term of the Order Form. Any Order Form with a one (1) month Term shall renew for consecutive one (1) month Terms, unless at least thirty (30) days written notice of non-renewal is provided by either party.

Either party may terminate this Agreement and/or any Order Form for cause as of the date specified in a termination notice if the other party: (a) files for bankruptcy; (b) becomes or is declared insolvent; (c) is the subject of any proceedings (not dismissed within thirty (30) days) related to its liquidation, insolvency or the appointment of a receiver or similar officer for that party; (d) makes an assignment for the benefit of all or substantially all of its creditors, (e) takes any corporate action for its winding-up, dissolution or administration; (f) enters into an agreement for the extension or other readjustment of substantially all of its obligations; or (g) recklessly or intentionally makes any material misstatement as to financial condition. COMPANY may terminate this Agreement or any applicable Order Form as to any affected Services if any portion of the facility in which the affected Services are located becomes subject to a condemnation proceeding or is condemned, COMPANY's possession is otherwise terminated or abated, or COMPANY cannot provide Customer with the access to the affected facility as contemplated in an applicable Order Form for a period exceeding thirty (30) days.

Expiration of the Agreement and/or expiration or termination of an Order Form shall not affect another Order Form in effect, unless parties specifically agree in writing. Notwithstanding the foregoing, termination of the Agreement shall result in termination of any applicable outstanding Order Form. The Agreement shall govern such remaining Order Form until they expire, are terminated or performance has been completed. After the Agreement expires, terms of the Agreement will remain in effect with respect to any Order Form entered into before termination. However, no Order Form may be entered into under the Agreement after expiration or termination without expressly extending the Term of this Agreement. After an Order Form terminates or expires, terms of the Order Form (including those of the Agreement) that expressly or by their nature contemplate performance after the Order Form terminates or expires will survive and continue in full force and effect. For avoidance of doubt, provisions protecting data and/or a party's intellectual property, privacy and Confidential Information, data security, granting perpetual licenses, representations and warranties, indemnification, and provisions setting forth limitations of liability each, by their nature, contemplate performance or observance after the Agreement or Order Form expires or terminates.

COMPANY may suspend rendering HAProxy Edge CDN Service to Customer without liability if: (a) COMPANY believes that the Services are being used (or have been or will be used) by Customer in violation of the Agreement or any Law; (b) Customer does not cooperate with COMPANY's investigation of any suspected violation of the Agreement or any Laws; (c) COMPANY believes that HAProxy Edge CDN Service provided to Customer have been accessed or manipulated by a third party without Customer's consent or in violation of the Agreement; (d) COMPANY believes that suspension of HAProxy Edge CDN Service is necessary to protect COMPANY's security, COMPANY's network or other COMPANY customers; (e) a payment for HAProxy Edge CDN





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Service is overdue; (f) the continued use of HAProxy Edge CDN Service by the Customer may adversely impact the HAProxy Edge CDN Service or the systems or content of COMPANY and/or any other COMPANY customer, (g) COMPANY believes that the use of HAProxy Edge CDN Service by Customer may subject COMPANY or any third party to liability; or (h) suspension is required by law. COMPANY will give Customer reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, unless COMPANY determines, in COMPANY's reasonable judgment, that a suspension on no notice, shorter notice or contemporaneous notice is necessary to protect COMPANY or its other customers including from operational, security, or other risk or the suspension is ordered by a governmental agency, court or other judicial body. If COMPANY suspends Customer's right to access or use any portion or all of the HAProxy Edge CDN Service: (a) Customer remains responsible for all fees and charges Customer has incurred through the date of suspension; (b) Customer remains responsible for any applicable Fees for any HAProxy Edge CDN Service to which Customer has continued to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension; (c) Customer will not be entitled to any credits or offsets for any period of suspension; and (d) at COMPANY's sole discretion, COMPANY may terminate Customer's access to Customer Works during a suspension, and COMPANY shall not be liable to Customer (or any Customer End User) for any damages or losses Customer (or any Customer End User) may incur as a result of such suspension.

The deletion of Customer Works is automatic upon termination or expiration of the Agreement or any applicable Order Form. Consequently, unless COMPANY determines otherwise, Customer will not have access to Customer Works and COMPANY may immediately erase or delete Customer Works from its computer infrastructure after the effective date of termination or expiration of this Agreement or any applicable Order Form. COMPANY has no obligation to provide any transition services or access to data except as otherwise expressly set forth in a written amendment, signed by both parties.

**5. Payment Terms.** In consideration for Services, Customer shall pay COMPANY fees, costs, rates and charges as provided in the applicable Order Form (the "**Fees**"). In the event that Fees are not specified in an Order Form, Customer shall pay Fees for relevant HAProxy Edge CDN Service at COMPANY's then-current rates. Upon performing of HAProxy Edge CDN Service or at milestones as set forth in an applicable Order Form, COMPANY shall invoice Customer for the Fees then due. Fees may consist of non-recurring charges (i.e. installation or setup fees) or recurring charges (i.e. monthly, quarterly or annual fees) as specified in an Order Form. Any installation or setup fee shall be due and payable prior to the Commencement Date. Any recurring charges shall be invoiced in advance for each applicable period. Fees for partial months may be pro-rated. Any deposit or other pre-payment shall be paid prior to the Commencement Date and applied as a credit to the final recurring charges of the respective Order Form. Unless otherwise set forth on a particular Order Form, Fees for HAProxy Edge CDN Service shall remain in effect for one (1) year from the Commencement Date of each specific Order Form. Thereafter, such Fees shall be subject to change upon sixty (60) days prior written notice to Customer. Except as otherwise set forth in an Order Form, invoices shall be due and payable thirty (30) days following submission of such invoice by COMPANY. In the event of termination of this Agreement or any applicable Order Form, Customer is obligated to pay COMPANY for any HAProxy Edge CDN Service or expenses incurred prior to the effective date of such termination, or for any HAProxy Edge CDN Service pursuant to any non-terminated Order Form. Except as otherwise set forth in any applicable Order Form, Customer shall be responsible for any sales, service, value-added, use, excise, consumption and any other taxes and duties (whether international, national, state or local, however designated), now in force or enacted in the future, related to the HAProxy Edge CDN Service and/or Customer Works and web sites. Unless otherwise agreed by the parties in writing, Fees set forth on any Order Form shall be exclusive of such taxes. Notwithstanding the foregoing, Customer shall have no obligation to pay income taxes of COMPANY. If a withholding tax applies to any fees for HAProxy Edge CDN Service pursuant to this Agreement, Customer may deduct such taxes and pay such taxes to the relevant taxing authority; provided that Customer shall provide COMPANY with an official receipt for such taxes withheld and agrees to notify COMPANY prior to payment, in writing that such withholding tax is required to be paid and Customer shall pay COMPANY any additional amounts to ensure that COMPANY receives the full amount of its invoice. If COMPANY has a legal obligation to pay or collect taxes for which Customer is responsible under this clause, the relevant amount shall be charged to and paid by Customer in addition to the amounts on such invoice, unless Customer provides COMPANY with a valid tax exemption certificate authorized by the appropriate taxing authority. The parties undertake to cooperate, where possible, to minimize the amount of withholding tax due by making advance clearance applications under the relevant double taxation treaties (where applicable) to the relevant tax authority to reduce the rate of withholding tax or exempt entirely this amount if applicable. In any event, Customer shall account for any tax withheld to the tax authorities on a timely basis. Customer's equipment which is utilized by COMPANY in performance of the Services shall not be construed to be fixtures, and Customer is responsible for preparing and filing any necessary return with, and paying any and all taxes separately levied or assessed against Customer's equipment to any governmental, quasi-governmental or tax authorities by the date such payments are due.

All Fees paid to COMPANY for HAProxy Edge CDN Service shall be non-refundable. Credits shall only be available to Customer, if ever, in COMPANY's sole and exclusive discretion, and provided Customer does not owe COMPANY any outstanding Fees and is not in breach or default of this Agreement. Such credits shall only be used to offset future charges for HAProxy Edge CDN Service and may not be sold, converted to cash or transferred to any third party, and shall expire on expiration or termination of the relevant Order Form and/or this Agreement. If Customer wishes to dispute any COMPANY invoice (a "**Disputed Invoice**"), Customer must submit a good faith claim, in writing, regarding the Disputed Invoice with documentation as may reasonably be required to support the claim within sixty (60) days of COMPANY's submission of the invoice. If Customer does not timely submit such a claim, Customer waives all rights to dispute such invoice and/or claim that it does not owe disputed amounts contained in the invoice and/or seek any set-offs or reimbursements or other amounts of any kind based upon or relating to such invoice.

All payments will be in U.S. Dollars. If Customer does not timely pay any invoice(s), Customer will also pay interest on the unpaid amount, from the date due, at the rate of two percent (2%) per month or the highest amount permitted by law, and Customer shall also pay COMPANY any costs of collection (including reasonable attorney's fees). Customer's obligation to pay invoiced amounts is absolute and unconditional and not subject to offset, defense or counterclaim. A breach of payment obligations shall be considered a material breach of the Agreement. COMPANY is permitted to suspend Services and/or delivery and/or use thereof until default is cured by payment in full. If default is not cured following invoice, COMPANY may terminate the Agreement and/or any applicable Order Form by written notice to Customer. Upon termination, COMPANY has no further obligation to deliver or allow use of or render HAProxy Edge CDN Service. No action, suit or proceeding arising out of this Agreement or any Order Form or concerning any invoice or other accounting hereunder or to the period of time to which such invoice or accounting relates may be maintained against COMPANY unless commenced within one (1) year after the date such invoice or accounting is delivered to Customer.



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6. Service Level Agreement. Subject to the terms and conditions contained herein, and provided Customer is not in breach or default of the Agreement or any Order Form:

A) Availability. COMPANY provides an uptime guarantee for HAProxy Edge CDN Services of 99%. In the event of any Downtime, Customer will be entitled to a service credit equal to one day's worth of the committed monthly recurring charge paid by Customer, multiplied by each 24-hour period in which Customer experiences Downtime during a particular month. Notwithstanding anything in this Agreement or any Order Form to the contrary, total credits issued to Customer in connection with any calendar month will not exceed the monthly recurring charges paid by Customer for relevant HAProxy Edge CDN Service in such month.

B) Limitations. Customer will not be entitled to receive any otherwise applicable service credit (including a termination right) if the failure to achieve the service level results from (a) inaccessibility, erroneous measurements or non-responses of the testing agents; (b) Customer equipment or Customer act/omission; or (c) an excused outage. Service levels are not valid for customers with geographic restrictions on content delivery or in months in which a disproportionate peak occurs. Customer shall not be entitled to service credits under multiple service level agreements for a single event but not limited to, non-recurring charges, incremental bandwidth usage, and hourly support charges, are excluded in the calculation of applicable credits.

C) Suspension/Modification. COMPANY's suspension or modification of HAProxy Edge CDN Service in accordance with the terms of this Agreement and/or any applicable Order Form shall not be deemed to be a failure of COMPANY to provide adequate service levels under the Agreement. In no event shall Customer be entitled to any credit on its Bandwidth charges to the extent that the latency or Downtime is caused by Customer attempting to exceed the maximum bandwidth of Customer's connection to the COMPANY network or otherwise violating the terms of Agreement or any applicable Order Form.

D) Exclusions. Customer shall not receive any credits in connection with Downtime or any failure or deficiency caused by or associated, in whole or in part with any of the following:

- i) Force Majeure and/or circumstances beyond COMPANY's reasonable control, including but not limited to Denial of Service Attack, acts of any governmental body, war, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or hardware, failure or unavailability of Customer's hardware or software or code (or interactions of the foregoing), or inability to obtain raw materials, supplies or power used in or equipment needed for provision of this Service Level agreement.
- ii) Failure of local access circuits to the COMPANY Network, unless such failure is caused solely by COMPANY.
- iii) DNS issues beyond COMPANY's direct control.
- iv) False service level breaches reported as a result of outages or errors of any service level measurement system.
- v) Acts or omissions by Customer, Customer's agents, Customer's contractors, or Customer's vendors and/or Customer's customer(s) including but not limited to negligence, willful misconduct, breach of COMPANY's AUP or Anti-SPAM Policy or other COMPANY policy, failure to provide COMPANY's or its agents adequate access to the facilities, or otherwise causing COMPANY to be unable to meet any of the criteria set out herein.
- vi) Third-party access to the HAProxy Edge CDN Service via Customer's account or equipment.
- vii) Customer's continued use of the HAProxy Edge CDN Service after COMPANY directs Customer to cease, restrict or otherwise modify its use of the HAProxy Edge CDN Service, where Customer fails to fully and timely comply with COMPANY's direction.
- viii) Scheduled maintenance, emergency maintenance, or necessary network upgrades.
- ix) Failure of a beta service, trial service or any service that is not covered or guaranteed by this Agreement.
- x) Termination and/or disconnection or suspension by COMPANY for non-payment or other Customer default or breach under the terms of the Agreement or any applicable Order Form.

E) Customer Credit Request. Customer must notify COMPANY as specified herein or in the applicable Order Form within five (5) business days from the time Customer becomes eligible to receive a credit under this Service Level agreement to receive such credit. Customer's request must contain descriptions of the incident, duration of the Downtime, relevant URL(s) and steps taken, if any, by Customer to address the Downtime. Failure to comply with this requirement will forfeit Customer's right to receive a credit. Credits are calculated after deduction of all discounts and other special pricing arrangements, and are not applied to governmental fees, taxes, surcharges, and similar additional charges. To be eligible for a credit, claims must be received by COMPANY during the billing month following the month in which the incident giving rise to the credit occurs. COMPANY will use reasonable good faith to evaluate claims submitted pursuant to these Service Level terms and will consider all information provided by Customer to determine eligibility for credit as specified herein.

7. **Intellectual Property Rights.** The term "COMPANY Works" means any of the following, used directly or indirectly by COMPANY in providing and/or performing HAProxy Edge CDN Service, in any form or media: (a) formulae, algorithms, processes, procedures and methods; (b) designs, ideas, concepts, research, discoveries, inventions (whether or not patentable or reduced to practice) and invention disclosures; (c) know-how, trade secrets and proprietary information and methodologies; (d) technology; (e) computer software (in both object and source code form); (f) databases; (g) expressions, works and factual and other compilations; (h) protocols and specifications; (i) visual, audio and audiovisual works (including art, illustrations, graphics, images, music, sound effects, recordings, lyrics, narration, text, animation, characters, designs and all other audio, visual, audiovisual and textual content); (j) records of each of the foregoing, including documentation, design documents and analyses, studies, programming tools, plans, models, flow charts, reports, letters, memoranda and drawings; and (k) any other tangible results of the HAProxy Edge CDN Service. The parties agree that COMPANY Works shall not include any visual, audio and audiovisual works (including art, illustrations, graphics, images, music, sound effects, recordings, lyrics, narration, text, animation, characters, designs and all other audio, visual, audiovisual and textual content) which is created by, licensed by, posted or otherwise provided by Customer, which shall be considered a part of the Customer Works as defined above.



## MASTER AGREEMENT – HAPROXY EDGE CONTENT DELIVERY NETWORK (CDN) SERVICE

COMPANY and its licensors will retain ownership of all COMPANY Works developed or acquired by COMPANY (whether prior to or after the Effective Date) or independently from the HAProxy Edge CDN Service, together with all related intellectual property rights (whether such rights are registered or unregistered, and wherever in the world those rights may exist). Except as otherwise set forth in an applicable Order Form, COMPANY shall also own exclusively all COMPANY Works developed, in whole or in part, by or on behalf of COMPANY for Customer pursuant to this Agreement or any applicable Order Form together with all related intellectual property rights throughout the world (“**COMPANY Developed Works**”). Customer will and hereby does, without further consideration, assign to COMPANY any and all right, title or interest that Customer may now or hereafter possess in or to the COMPANY Developed Works including any feedback which is received from Customer or any Customer End User. To the fullest extent permissible by applicable law, all copyrightable aspects of the COMPANY Developed Works will be considered “works made for hire” (as that term is used in Section 101 of the U.S. Copyright Act, as amended). Partial or incomplete versions of COMPANY Developed Works or COMPANY Works will be deemed COMPANY Developed Works or COMPANY Works, respectively.

Customer will execute and deliver all documents and provide all testimony requested by COMPANY to register and enforce intellectual property rights in COMPANY Developed Works solely in the name of COMPANY. Customer irrevocably designates and appoints COMPANY as its agent and attorney-in-fact to act for and on its behalf to execute, register and file any applications, and to do all other lawfully permitted acts, to further the registration, prosecution, issuance and enforcements of the intellectual property rights in COMPANY Developed Works with the same legal force and effect as if executed, registered and filed by Customer. Customer will not provide COMPANY: (a) any Customer Works other than those for which Customer has the right to grant rights and licenses, or (b) any Customer Works that would infringe upon any third party’s intellectual property or any other rights whatsoever. Customer shall remain solely and completely responsible and liable for all executory and other obligations relating to Customer Works only insofar as they are not assigned to COMPANY pursuant to written agreement.

During the applicable Term, and provided Customer is not in breach of this Agreement or any applicable Order Form, COMPANY grants to Customer a non-exclusive, revocable, non-transferable, non-assignable license (as set forth in an applicable Order Form) to such intellectual property rights in COMPANY Works and COMPANY Developed Works that COMPANY embeds in or otherwise provides with any HAProxy Edge CDN Service only to the extent required to use and enjoy such HAProxy Edge CDN Service. The parties acknowledge and agree that the foregoing right and license does not include the right for Customer to: (a) use, copy, modify, develop derivative works, sublicense, distribute, display and perform the COMPANY Works or COMPANY Developed Works other than as specifically set forth in any applicable Order Form, (b) designate third parties to exercise those rights and licenses on behalf of Customer, (c) sublicense, transfer or assign any such rights, or (d) use COMPANY’s trade names, trademarks, service marks, logos or any other trade or source indicia. Any such use is subject to COMPANY’s prior written approval in each instance. Customer agrees that it shall not register any Uniform Resource Locator (URL) or world wide web address that contains any of COMPANY’s trade names, trademarks, service marks, HAProxy Edge CDN Service names, URLs (including common or likely misspellings of same) or URLs that contain any term that is confusingly similar to the foregoing or use any of the foregoing as metatag keywords or purchase same via any other pay-per-click or similar advertising method in connection with any web site. In the event of Customer’s violation of the foregoing, Customer agrees to immediately transfer ownership and control of the offending URL to COMPANY upon COMPANY’s written request, and Customer further agrees to pay COMPANY five thousand dollars (\$5000) in stipulated liquidated damages for each URL registered in violation of this Agreement.

Customer specifically agrees to these liquidated damages. In agreeing to pay these liquidated damages, Customer acknowledges that this amount is not a penalty, and that the actual damages are uncertain and difficult to ascertain, but that this amount represents the parties’ good faith attempt to calculate an appropriate compensation based on anticipated actual damages. If COMPANY is required to engage an attorney or other person to collect any liquidated damages or other amount from Customer, or if COMPANY is seeks assistance of an attorney to pursue injunctive relief against Customer, or if COMPANY is required to file an ICANN Complaint against Customer (or any Customer End User) in order to transfer an offending URL to COMPANY from Customer (or any Customer End User), then Customer further agrees to reimburse COMPANY for all legal fees and costs in order to collect such liquidated damages, or in order to seek injunctive relief from Customer (or any Customer End User), or in order to file and prosecute an ICANN complaint. Customer understands that even a nominal amount of damages may require expenditure of extensive legal fees, costs and other amounts that may well exceed the liquidated damages themselves. Customer agrees to pay all of these fees and costs.

Customer grants to COMPANY, during the Term, a non-exclusive, worldwide, fully paid-up, royalty-free license to Customer Works and Customer’s trademarks, service marks, logos and trade names, but only to the extent required to deliver and allow use of and/or render HAProxy Edge CDN Service pursuant to this Agreement (including the right to sublicense to COMPANY’s product and service providers).

Customer shall be solely responsible for data maintenance, integrity, retention, security, and backup of Customer Works. If Customer directly or indirectly broadcasts, transmits or transfers or is otherwise involved in the broadcast, transmission or transfer of any Customer Works (whether in connection with its business or otherwise, whether using COMPANY HAProxy Edge CDN Service or not), then Customer is solely responsible for compliance with any applicable Laws in any and all applicable regions or countries regarding the security, privacy, legality and/or safe handling of such Customer Works. This Clause will survive expiration or termination of the Agreement or any Order Form.

8. Covenant Against Disclosure of Confidential Information. Each party (“**Discloser**”) may be required to exchange certain Confidential Information (as herein defined) and Trade Secrets (as herein defined) to the other party (“**Recipient**”). “**Trade Secrets**” means information (including but not limited to, confidential business information, processes, financial data, financial plans, product plans, lists of actual or potential customers or suppliers) that: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. “**Confidential Information**” of a party shall mean written information that is given by the Discloser to the Recipient in a manner from or under circumstances in which the Recipient would reasonably understand such material to be confidential, whether or not such material is marked as “proprietary” or “confidential”, as well as all other information (whether written or oral) belonging to or pertaining to the Discloser that does not constitute a Trade Secret of the Discloser and that is not generally known by or available to the Discloser’s competitors but is generally known only to the Discloser and those of its employees, independent contractors, clients or agents to whom such information must be confided for internal purposes or is otherwise treated as proprietary



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and confidential by Discloser. Customer agrees that COMPANY's HAProxy Edge CDN Service and the results and proceeds of COMPANY's HAProxy Edge CDN Service shall be deemed Trade Secrets and all other COMPANY Works and the results and proceeds of COMPANY's Services generally shall be deemed Confidential Information as are the terms and conditions of the Agreement. Confidential Information may be written, oral, recorded, or on tape, disks or other electronic media. Recipient shall protect and keep confidential all Confidential Information and Trade Secrets disclosed by Discloser using at least the same degree of care as it employs to protect its own confidential information and trade secrets of a similar nature, but not less than a reasonable standard of care, and shall only use or disclose any such Confidential Information or Trade Secrets for the purposes of performing its obligations set forth in this Agreement and/or a Order Form, except as may be authorized by Discloser in writing. If an officer, director, employee, agent or representative of Recipient has a need to know Confidential Information or Trade Secrets of Discloser ("Representative") and Recipient discloses such Confidential Information or Trade Secrets to such Representative, Representative shall be advised that such Confidential Information or Trade Secrets are subject to confidentiality obligations and the Representative shall be subject to confidentiality obligations with terms that are substantially similar to the terms of this Clause. Recipient is responsible for breach of the Agreement by any Representative. Recipient shall not copy or otherwise reproduce, in whole or in part, any Confidential Information or Trade Secrets of Discloser without the prior written authorization of Discloser, except as may be reasonably necessary to fulfill its obligations under this Agreement. Title to the Confidential Information and Trade Secrets of Discloser, and all copies thereof, shall be and remain with Discloser. No right or license is granted by Discloser to Recipient with respect to its Confidential Information or Trade Secrets, except as expressly set forth in this Agreement.

Obligations of confidentiality and limitation on use set forth herein shall survive termination or expiration of the Agreement and any relevant Order Form for three (3) years following termination or completion of the last outstanding Order Form under the Agreement, except with respect to Trade Secrets which shall be maintained in confidence for so long as such are Trade Secrets. Upon termination or expiration of the Agreement and any Order Form, or earlier if requested by Discloser, Recipient shall return all written materials containing any Confidential Information. Recipient shall confirm and destroy copies of any materials or other documents prepared by Recipient containing or reflecting Confidential Information or Trade Secrets.

Confidentiality obligations do not apply to any information which: (i) was previously known to Recipient; (ii) is or becomes publicly available, through no fault of Recipient; (iii) is disclosed to Recipient by a third party having no confidentiality obligation to Discloser; (iv) is independently developed by Recipient, provided that Recipient can demonstrate such development did not involve use of or reference to Confidential Information or Trade Secrets of Discloser; or (v) is required to be disclosed as a matter of Law, provided Recipient shall notify Discloser in advance of such disclosure and cooperate in seeking confidential treatment thereof, and Recipient shall redact Confidential Information and Trade Secrets of Discloser that Recipient is not required to disclose.

Recipient acknowledges Confidential Information and Trade Secrets of Discloser are unique property of extreme value to Discloser and Discloser will suffer substantial damages not readily ascertainable or fully compensable in terms of money in event of breach by Recipient or any Representatives of its obligations under this Clause. Recipient agrees that Discloser is entitled (without limitation of other rights or remedies) to obtain an injunction without posting any bond from any court of competent jurisdiction preventing or prohibiting the continuance or recurrence of any breach of the confidentiality provisions contained in this Clause.

**9. Representations and Warranties.** As of the Effective Date of the Agreement and upon entering into each Order Form, each party represents and warrants to the other that: (a) it is duly incorporated, validly existing and in good standing under the laws of its state of incorporation; (b) it has all necessary corporate power and authority to enter into the Agreement and any Order Form; (c) execution, delivery and consummation of transactions contemplated thereby have been authorized by all necessary corporate action and do not violate any judgment, order, or decree; (d) execution, delivery, performance and consummation of transactions contemplated by the Agreement and any Order Form do not and will not violate any Laws; and (e) this Agreement and any Order Form, when executed, are the legal, valid and binding obligations of such party.

Customer represents and warrants that: (a) Customer is now and will remain, throughout the Term of Agreement or applicable Order Form in compliance with all Laws applicable to Customer (directly, or indirectly through COMPANY), and (b) Customer will receive and utilize HAProxy Edge CDN Service and results and proceeds of HAProxy Edge CDN Service and perform all obligations to COMPANY in compliance with all Laws, and (c) Customer shall comply with all covenants and conditions of the Agreement and any applicable Order Form, and (d) no Customer Works, software, data or other information provided directly or indirectly by Customer will contain any virus, trojan horse, self-replicating or other computer instructions that may, without COMPANY's consent: (i) alter, destroy, inhibit or discontinue COMPANY's effective use of such information or any COMPANY resource; (ii) erase, destroy, corrupt or modify any data, programs, materials or information used by COMPANY; (iii) store any data, programs, materials or information on COMPANY's computers; or (iv) bypass any internal or external security measure to obtain access to COMPANY's resources or information, and (e) that none of the Customer Works or data provided to COMPANY in connection herewith, nor any part thereof, violates or will violate or infringes or will infringe any trademark, service mark, trade name, contract, agreement, copyright (whether common law or statutory), patent, literary, artistic, dramatic, personal, private, civil or property right or right of privacy or publicity or "moral rights of author" or any other right whatsoever, or slanders, defames or labels any person, firm, corporation or association whatsoever, nor does it contain any content that is obscene or otherwise illegal to distribute within the world, and (f) Customer has obtained authorization from any third party necessary to allow COMPANY to utilize any Customer Works in connection with this Agreement or any applicable Order Form.

Without limiting the generality of the foregoing, Customer warrants and represents that it shall use reasonable commercial efforts to cause its duly authorized and permitted end-users, licensees, assignees and successors to comply with the foregoing. Customer acknowledges COMPANY has no ability or responsibility to prevent unauthorized use, fraudulent use or any other use of or access to HAProxy Edge CDN Service by third parties. Customer shall be liable for all (whether by a third party or otherwise) use or misuse of HAProxy Edge CDN Service hereunder except to the extent attributable to the gross negligence or willful misconduct of COMPANY, irrespective of whether such use or misuse was unauthorized, fraudulent or otherwise. Claims of unauthorized use, fraudulent use or any other misuse shall not constitute a valid basis for dispute of an invoice. COMPANY shall not be liable for any third party misuse or unauthorized access of Customer Works and/or its web sites.





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EXCEPT AS SET FORTH ABOVE OR OTHERWISE REQUIRED BY LAW, CUSTOMER'S USE OF HAPROXY EDGE CDN SERVICE IS ENTIRELY AT CUSTOMER'S OWN DISCRETION AND RISK. THE HAPROXY EDGE CDN SERVICE ARE FURNISHED BY COMPANY "AS IS" AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. COMPANY: (A) EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE; (B) DOES NOT WARRANT THAT THE HAPROXY EDGE CDN SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THEIR OPERATION WILL BE TIMELY, UNINTERRUPTED, SECURE, OR ERROR-FREE OR THAT ANY DEFECTS WILL BE CORRECTED; AND (C) DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS OR CONDITIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE HAPROXY EDGE CDN SERVICE IN TERMS OF ACCURACY, RELIABILITY, TIMELINESS, COMPLETENESS, OR OTHERWISE. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR ITS AND CUSTOMER END USERS' USE OF THE HAPROXY EDGE CDN SERVICE. This Clause will survive expiration or termination of this Agreement or any Order Form.

10. Indemnification. COMPANY will indemnify, defend and hold harmless Customer and its parents, subsidiaries, affiliates, licensors, service providers and all of its/their direct and indirect officers, directors, shareholders, managers, members, employees, contractors, agents, successors and assigns (each, a "**Customer Indemnified Person**") from any and all losses, liabilities, damages (including taxes), costs and expenses, including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties (collectively, "**Losses**"), due to, arising from or relating to third party claims, demands, actions or threat of action (whether in law, equity or in an alternative proceeding ) arising from or relating to any direct infringement, violation or misappropriation of the intellectual property rights of any third party by COMPANY's intellectual property rights in the HAProxy Edge CDN Service (which does not involve Customer Works) (individually and collectively "**Customer Indemnified Claim**").

(a) In the event of a Customer Indemnified Claim, COMPANY shall, at its expense:

(i) procure for Customer the right to continue to use such intellectual property rights in the HAProxy Edge CDN Service; or

(ii) modify or replace the materials that infringe or are alleged to infringe ("Allegedly Infringing Materials") to make the HAProxy Edge CDN Service non-infringing while providing equivalent features and functionality.

(b) If neither of the foregoing ((a)(i) or (a)(ii)) is possible notwithstanding COMPANY's reasonable efforts, then COMPANY may direct Customer to cease any and all use of the HAProxy Edge CDN Service components that have been enjoined or finally adjudicated as infringing, provided that COMPANY may:

(i) refund or credit to Customer a pro rata portion of amounts paid by Customer in respect of such Allegedly Infringing Materials proportionate with the extent to and period during which Customer's exercise of its rights respecting the Allegedly Infringing Materials have been and will be materially impaired; or

(ii) secure the right for Customer to continue using the Allegedly Infringing Materials for a transition period of up to one (1) month to allow Customer to replace the affected features of the HAProxy Edge CDN Service.

(c) If none of the remedies set forth herein is reasonably available with respect to the Allegedly Infringing Materials, COMPANY may terminate this Agreement or any applicable Order Form, in whole or in part, including the rights and licenses granted herein.

Customer will indemnify, defend and hold harmless COMPANY and its parents, subsidiaries, affiliates, licensors, service providers and all of its/their direct and indirect officers, directors, shareholders, managers, members, employees, contractors, agents, successors and assigns (each a "**COMPANY Indemnified Person**") from any and all Losses due to, arising from or relating to third party claims, demands, actions or threat of action (whether in law, equity or in an alternative proceeding) arising from or relating to: (a) any action or omission of Customer and/or Customer End Users including any actual or alleged breach of any of the terms and conditions set forth in the Agreement or any Order Form (including, without limitation, COMPANY's AUP or Privacy Policy); (b) actual or alleged infringement, violation or misappropriation of any copyright, patent, trademark, service mark, trade secret or other intellectual property right(s) and/or other right(s) of a third party by Customer; (c) Customer's or any Customer End User's failure to comply with Laws; (d) grossly negligent, willful or reckless acts or omissions of Customer; or (e) Customer Works, Customer Content, Customer's web site or other materials or information relating to or provided by Customer (or any Customer End User) which is delivered, processed or otherwise used in connection with COMPANY's HAProxy Edge CDN Service (including that which actually or allegedly violate any Laws and/or third party right(s) including any right(s) of privacy, publicity or are deemed obscene, libelous, defamatory or disparaging), (f) Customer's (or any Customer End User's) use of HAProxy Edge CDN Service (including by unauthorized access); (g) any acts or omissions of any Customer End User; (h) any act or omission occurring under Customer's user ID and password; (i) any product or service sold or advertised in connection with Customer Works and/or a Customer web site; or (j) any third party's access or use of Customer Works and/or web site; (k) any violation of COMPANY's AUP (individually and collectively, "**COMPANY Indemnified Claim**"). Customer Indemnified Claim and COMPANY Indemnified Claim may be referred to as an "**Indemnified Claim**". In event of an COMPANY Indemnified claim, COMPANY shall be permitted to select legal counsel to provide a defense to such claim. COMPANY reserves the right, at its expense to participate in defense of any matter subject to indemnification from Customer, but shall have no obligation to do so.

No settlement or compromise that imposes any liability or obligation on any Indemnified Person will be made without the Indemnified Person's prior written consent (not to be unreasonably withheld or delayed). A party entitled to indemnification pursuant to this Agreement shall, with respect to any claim made against such indemnified party for which indemnification is available, notify the other party in writing of the nature of the claim as soon as practicable but not more than ten (10) days after the indemnified party receives notice of the assertion of the claim. (The failure by an indemnified party to give notice as provided, above, shall not relieve the indemnifying party of its obligations hereunder, except to the extent that the failure results in the failure of actual notice and the indemnifying party is damaged as a result of the failure to give notice.) Upon receipt of notice of the assertion of a claim, the indemnifying party shall employ competent counsel and shall assume the defense of the claim. Each party shall cooperate in the defense of any claim for which indemnification



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is available and shall furnish such records, information, testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may reasonably be requested by the other party.

11. **Limited Liability.** EXCEPT AS REQUIRED BY LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES BE LIABLE TO CUSTOMER OR ANY CUSTOMER END USER, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES IN CONNECTION WITH, ARISING OUT OF, OR RELATING TO, THE USE, OR LOSS OF USE OF, THE HAPROXY EDGE CDN SERVICE, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF DATA OR CONTENT, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, SUBSEQUENT OR OTHER COMMERCIAL LOSS, OR FOR ANY OTHER REASON OF ANY KIND, WHETHER BASED ON CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT AS REQUIRED BY LAW, COMPANY WILL NOT BE LIABLE TO CUSTOMER FOR DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY RELATED TO THE HAPROXY EDGE CDN SERVICE. IF, NOTWITHSTANDING THE FOREGOING, COMPANY IS FOUND TO BE LIABLE TO CUSTOMER FOR ANY DAMAGE OR LOSS WHICH ARISES UNDER OR IN CONNECTION WITH THE HAPROXY EDGE CDN SERVICE, COMPANY'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY THE CUSTOMER FOR THE RELEVANT HAPROXY EDGE CDN SERVICE FOR THE SIX MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO COMPANY'S LIABILITY.

THE PARTIES ACKNOWLEDGE THAT THE DISCLAIMER OF WARRANTIES, DISCLAIMER OF CONSEQUENTIAL DAMAGES AND LIMITATIONS OF LIABILITY HEREIN AND IN THE OTHER TERMS OF THIS AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAINED FOR CONSIDERATION BETWEEN THE PARTIES, WITHOUT WHICH COMPANY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. COMPANY'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THESE LIMITATIONS.

12. **Equipment.** COMPANY is not responsible for loss or damage to Customer's equipment and property (if any) stored or installed in an COMPANY data center, an COMPANY facility or other COMPANY location. Customer agrees to maintain insurance coverage on such equipment and property stored or installed at an COMPANY datacenter, an COMPANY facility or other COMPANY location which covers any type of loss and includes a waiver of subrogation clause. COMPANY shall not be liable for damage to, or loss of any of Customer's equipment resulting from any cause, other than COMPANY's gross negligence or willful misconduct and then only in an amount not to exceed the replacement value of the damaged equipment, not to exceed the limits set forth above. Customer shall have no right or interest in any equipment supplied by COMPANY other than the right to use such equipment during the specified Term while payments are current. Customer shall be liable to COMPANY for any damage to such equipment caused by Customer or Customer's representatives, agents, employees or contractors.

13. **Remedies.** Remedies contained herein for breach of the Agreement are not exclusive, but are cumulative and pursuit of one shall not be deemed to exclude any and all other remedies which may be pursued at law or in equity. Customer acknowledges COMPANY will be irreparably harmed if Customer breaches (or attempts or threatens to breach) certain terms and conditions hereof which are not remedied or would not be fully-remedied or compensated by monetary damages. If a court of competent jurisdiction finds that Customer has breached (or attempted or threatened to breach) any such obligations, Customer agrees that, without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an appropriate order compelling performance by Customer and restraining it from any further breaches (or attempted or threatened breaches).

14. **Publicity.** Notwithstanding anything herein to the contrary, COMPANY will be permitted to reference its relationship with Customer on its website, during discussions with analysts and reporters and in customer briefings and regulatory filings. COMPANY will comply with Customer's publicly available trademark usage policies. Except with respect to the foregoing, neither party may release a public statement announcing the Agreement without the prior written consent of the other party.

15. **Governing Law; Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of New York law relating to conflicts of laws. Notwithstanding the foregoing (and the Arbitration Clause set forth below), claims for equitable relief may be brought in any court with proper jurisdiction within the U.S. The UN Convention on International Sale of Goods does not apply to the transactions contemplated by this Agreement. Both parties agree to waive any right to have a jury participate in the resolution of the dispute or claim, whether sounding in contract, tort or otherwise, between any of the parties or any of their respective affiliates arising out of, connected with, related to or incidental to this Agreement to the fullest extent permitted by Law.

16. **Benefit and Assignment.** The Agreement is binding upon and shall inure to benefit of parties hereto and their respective successors and assigns; provided that neither party shall assign rights or delegate duties under the Agreement without prior written consent of the other party, which may be withheld in such party's sole discretion. Notwithstanding the foregoing, each party shall have the right to assign this Agreement, upon written notice to the other party, to any entity: (a) with which it merges, (b) by which all or substantially all of its equity or assets is acquired, or (c) which is a wholly owned subsidiary of Customer, or (d) which wholly owns or controls Customer, provided that the assignee entity agrees to be bound, in writing, by the terms and conditions of this Agreement. COMPANY shall have the right to assign its right to receive and pursue payments hereunder. Any assignment or transfer without the required consent will be void and will be considered a material breach of this Agreement. Upon any permitted assignment, the assigning party will remain jointly and severally liable for performance under the Agreement, unless released in writing by the other party.

17. **Notices.** Any notice, demand or request required or permitted to be given under the provisions of the Agreement shall be in writing and deemed to have been duly delivered (a) on date of personal delivery or (b) on date of receipt if mailed by registered or certified mail, postage prepaid and return receipt



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requested, or by overnight courier, to addresses first listed above or such other address as a party may request by notice to the other party. Courtesy copies of notices to COMPANY shall be sent to Weston, Garrou & Mooney, 12121 Wilshire Blvd. Suite 525, Los Angeles, CA 90025, Attn: Mark P. Binder.

18. Captions and Counterparts. The captions of sections of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement. The Agreement and any Order Form may be executed in any number of counterparts, each shall be deemed an original, all of which together are a single agreement between the parties.

19. Independent Contractor. During the term of this Agreement or any applicable Order Form, COMPANY shall be an independent contractor of Customer. This Agreement (and any applicable Order Form) will not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligation or liability upon either party. COMPANY shall not be an employee, partner or joint venturer with Customer. COMPANY shall not be entitled to participate in or receive benefits of any pension, retirement, medical insurance or other employee benefit plan of Customer. COMPANY shall be responsible for, pay and discharge any and all obligations to federal, state or local governments for income or earnings taxes and Customer shall be responsible for, pay and discharge any similar obligations arising out of its receipt of HAProxy Edge CDN Service set forth herein or pursuant to any Order Form. Neither party will have any right, power or authority to enter into any agreement for or on behalf of, or to assume or incur any obligation or liabilities, express or implied, on behalf of or in the name of, the other party.

20. Entire Agreement. This Agreement represents the complete and exclusive agreement between COMPANY and Customer regarding COMPANY's HAProxy Edge CDN Service and related matters and supersedes and replaces any understanding, communication, or agreement, whether written or oral, prior or contemporaneous regarding such HAProxy Edge CDN Services and related matters. This Agreement shall not supersede, replace or otherwise modify any other agreement (including an COMPANY master service agreement) pertaining to other COMPANY HAProxy Edge CDN Service. The Agreement cannot be amended except by a written agreement signed by the party against which enforcement is sought.

21. No Implied Waivers. The waiver or failure of either party to exercise, in any respect, any right or remedy shall not be deemed a waiver of any further right or remedy herein.

22. Severability. If any provision of the Agreement or any Order Form is held invalid, illegal or unenforceable, the validity, legality and enforceability of remaining provisions shall not be affected or impaired thereby.

23. No Drafter. Each party acknowledges the Agreement (including any Order Form) have been the subject of active and complete negotiations, and that this Agreement (and any Order Form) should not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in its preparation or drafting.

24. Force Majeure. Except for payment obligations hereunder, each party is excused from performance under the Agreement and shall have no liability to the other party for any period if it is prevented from performing any obligations, in whole or part, as a result of material delay caused by the other party or by act of God, war, terrorism, civil disturbance, court order, or natural disaster (each, "**Force Majeure Event**"), but excluding: (a) labor and union-related activities, (b) non-performance of COMPANY personnel (unless such non-performance is due to a Force Majeure Event). The obligations and rights of the party so excused shall be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

25. Arbitration. If parties are unable to resolve a dispute informally, dispute shall be submitted to final and binding arbitration. Arbitration shall be initiated and conducted according to JAMS Streamlined (for claims under \$250,000) or JAMS Comprehensive (for claims over \$250,000) Arbitration Rules and Procedures, except as modified herein, including Optional Appeal Procedure, at the New York office of JAMS, or its successor ("JAMS") in effect when request for arbitration is made. Parties waive the right to seek punitive damages and arbitrator shall have no authority to award such damages. Arbitrator will provide a detailed written statement of decision, which will be part of the arbitration award and admissible in any judicial proceeding to confirm, correct or vacate the award. If a party refuses to perform any or all obligations under the final arbitration award (following appeal, if applicable) within 30 days of such award being rendered, then the other party may enforce the final award in any court of competent jurisdiction in New York County. The party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, incurred in enforcing the award, to be paid by the party against whom enforcement is ordered. Notwithstanding the foregoing, either party shall be entitled to seek injunctive relief through arbitration and/or in any state and federal courts of the United States. Any dispute or portion, or claim for a particular form of relief (not precluded by a provision of the Agreement), that may not be arbitrated pursuant to applicable state or federal law may be heard only in a court of competent jurisdiction in New York, New York.

**NOTICE: YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF MATTERS INVOLVING THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY NEW YORK LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MAY POSSESS TO HAVE A DISPUTE LITIGATED IN COURT OR JURY TRIAL. YOU ARE ALSO GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER AUTHORITY OF NEW YORK CODE OF CIVIL PROCEDURE. NEVERTHELESS YOUR AGREEMENT TO THIS ARBITRATION IS VOLUNTARY.**

26. Attorney's Fees. In the event that any arbitration or legal action becomes necessary to enforce or interpret the terms of this Agreement or a dispute arises based thereupon, the prevailing party shall be entitled, in addition to its court costs, to such reasonable attorneys' fees, expert witness fees and legal expenses as may be fixed by an arbitrator or court of competent jurisdiction.

27. Advice of Counsel. Each party to this Agreement hereby acknowledges that it has read and understands each of the provisions set forth herein; that each party has had the opportunity to consult with counsel of their own choice in connection with the negotiation and preparation of this Agreement, and to



## MASTER AGREEMENT – HAPROXY EDGE CONTENT DELIVERY NETWORK (CDN) SERVICE

have each of the provisions set forth herein fully explained by such counsel; and that this Agreement is entered into freely, voluntarily, and without any duress or undue influence of any nature by, or on behalf of, any person or entity.

28. Survival. Terms of the Agreement and any Order Form that by their nature should survive termination or expiration will survive, including, without limitation, accrued payment right, confidentiality, representations and warranties, limited liability and indemnifications.

29. Third Parties. Unless otherwise agreed by the parties in writing, COMPANY shall render HAProxy Edge CDN Service only to Customer, not to any Customer End User or other third party (whether or not Customer provides access such HAProxy Edge CDN Service). There are no third party beneficiaries to this Agreement, meaning that third parties do not have any rights against COMPANY under the Agreement or any applicable Order Form. As between COMPANY and Customer, Customer shall be fully responsible and liable for any use of HAProxy Edge CDN Service by any third party (including any Customer End-User).