

HAProxy Trial Agreement

This Trial Agreement (“**Agreement**”) is entered into by the entity set forth on the signature page hereto (“**Customer**”) and HAPROXY TECHNOLOGIES (SASU), a simplified joint-stock company registered with the Nanterre trade and companies register under the number 790 818 785, having its registered head office 15 avenue Raymond Aron, 92160 Antony, France (“**Company**”). This Agreement is effective as of the date of Company’s signature (“**Effective Date**”).

“**Documentation**” means the documentation made available by Company with the Software, which may be modified from time to time. “**Evaluation Period**” means the period specified on the Order Form. “**Order Form**” means the document describing the Services that references this Agreement. “**Server**” means a single (i) a physical machine; (ii) virtual machine; or (iii) software container. “**Software**” means the software licensed or provided under this Agreement and all updates that Company makes available during the Evaluation Period. “**Support**” means the technical and consultative support provided by the Company.

1. Trial Subscription License.

1.1 For Software licensed under a commercial license, Company grants to Customer a limited, non-exclusive, non-transferable license during the Evaluation Period to use and reproduce such Software on the number of Servers specified on the Order Form for evaluation, non-production, non-commercial purposes.

1.2 Customer will not and will not allow any third party to: (a) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from any encrypted or encoded portion of the Software, in whole or in part, nor will Customer use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of the Software or encourage or permit others to do so (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions), (b) sell, sublicense, rent, lease, distribute, market, or commercialize the Software for any purpose, including timesharing or service bureau purposes, (c) create, develop, license, install, use, or deploy any third party software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software, (d) remove any product identification, proprietary, copyright or other notices contained in the Software, (e) modify or create a derivative work of any encrypted or encoded portion of the Software, or any other portion of the Software, (f) publicly disseminate performance information or analysis including, without limitation benchmarking test results; (g) use the Software other than on a Server; or (h) change any proprietary rights notices which appear in the Software or Documentation.

1.3 The Software may include individual open source software components, each of which has its own copyright and its own applicable license conditions. Open source software is licensed to Customer under the terms of the applicable open source license conditions and copyright notices that can be found in the licenses file, the Documentation or other materials accompanying the Software. In the event of a conflict between the licenses and restrictions set forth in this Section 1 and the terms of the open source license governing open source software, the terms of the open source software license will prevail.

1.4 Either party may terminate this Agreement upon ten days prior written notice to the other party, which notice may be by email. Following termination of the Evaluation Period, Customer will provide written confirmation to Company that it has: (a) removed or uninstalled the Software from all of its Servers which were licensed under a commercial license or (b) is using the Software pursuant to and in accordance with an open source license without use of Company’s marks.

2. Support

Company will provide up to two incidents of Support during the Evaluation Period. These incidents will be non-critical in nature. Company will offer a commercially reasonable response time.

3. Confidentiality.

For purposes of this Agreement, the party disclosing Confidential Information is the “**Discloser**,” and the party receiving Confidential Information is the “**Recipient**.” Confidential Information means all information that is marked or identified as confidential or proprietary at the time of disclosure or that would be reasonably understood to be confidential based on the nature and circumstances surrounding disclosure. Confidential Information excludes information that is: (a) known to Recipient without restriction before receipt from Discloser; (b) publicly available through no fault of Recipient; (c) rightfully received by Recipient from a third party without a duty of confidentiality; or (d) independently developed by Recipient. If Confidential Information is required to be produced by law, court order, or governmental authority, Recipient must (subject to legal prohibition) immediately notify Discloser and only disclose the information required. Recipient will use Discloser’s Confidential Information only for the purposes provided and as directed by Discloser. Confidential Information may not be disclosed to any third party other than Recipient’s employees and contractors that need to know such information and that are subject to obligations of confidentiality to Recipient no less restrictive than the terms set forth herein. At Discloser’s request, all written, recorded, graphical, or other tangible Confidential Information, including copies, must be returned to Discloser or destroyed by Recipient. At the request of Discloser, Recipient will certify in writing that any Confidential Information not returned to Discloser has been destroyed. Recipient may use Residuals for any purpose, including use in the acquisition, development, manufacture, promotion, sale, or maintenance of products and services; provided that the foregoing does not represent a license under any intellectual property or proprietary rights of disclosing party.

4. Intellectual Property.

Company will own all intellectual property and proprietary rights in the Software and Documentation, including but not limited to any modifications and derivative works of the foregoing. 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.

5. Warranties and Disclaimers.

TO THE MAXIMUM EXTENT PROVIDED BY APPLICABLE LAWS, THE SOFTWARE AND SUPPORT, INCLUDING ALL UPDATES, BUG FIXES, WORK AROUNDS, OR ERROR CORRECTIONS, ARE PROVIDED TO CUSTOMER “AS-IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, NON-INFRINGEMENT, TITLE, PERFORMANCE, AND ACCURACY AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

6. Limitation of Liability.

IN NO EVENT WILL COMPANY OR ITS AFFILIATES BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, RELIANCE, PUNITIVE, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OF ANY KIND AND HOWEVER CAUSED EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. COMPANY AND ITS AFFILIATES’ AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON- PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO €1,000. THE PROVISIONS OF THIS SECTION 5 ALLOCATE RISKS UNDER THIS AGREEMENT BETWEEN CUSTOMER AND COMPANY.

7. General.

7.1 This Agreement will be governed by and in accordance with the laws of France, without giving effect to the conflict of laws provisions. For all disputes arising out of this Agreement, the parties consent to the exclusive jurisdiction of Paris, France.

7.2 Unless otherwise specified in this Agreement, all notices will be in writing and will be mailed (via registered or certified mail, return receipt requested), delivered by a nationally recognized express courier service with the ability to track shipments, or personally delivered to the other party at the address set forth above (or at such other address as either party may designate in writing to the other party). All notices will be effective upon receipt. Any such written notice shall be accompanied by a concurrent copy emailed to: legal@haproxy.com

7.3 This Agreement is binding on the parties to this Agreement, and nothing in this Agreement confers upon any other person or entity any right, benefit or remedy of any nature whatsoever. This Agreement is not assignable by Customer without Company's prior written consent.

7.4 This Agreement together with all Order Forms, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. All amendments to this Agreement must be in writing, executed by both parties and expressly state that they are amending this Agreement.

7.5 Failure to enforce any provision of this Agreement will not constitute a waiver thereof. No waiver will be effective unless it is in writing and signed by the waiving party. If a party waives any right, power, or remedy, the waiver will not waive any successive or other right, power, or remedy the party may have under this Agreement. If any provision is found to be unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

7.6 Neither party will be liable for failures or delays in performance due to causes beyond its reasonable control, including, but not limited to, any act of God, fire, earthquake, flood, storm, natural disaster, accident, pandemic, labor unrest, civil disobedience, act of terrorism or act of government; however, the inability to meet financial obligations is expressly excluded.