

# USAGE CONDITIONS - LICENSES

## RECITALS

ScalAgent DT commercializes a performance measurement and diagnosis service called MQPerf. This service operates according to the following procedure:

- ScalAgent DT makes a software called Probe available to the Client;
- the Client executes the Probe and produces a data file called Analysis;
- ScalAgent DT makes a Web service called Service available to the Client;
- The Client connects to the Service, provides the Analysis, and gets an analysis report called Report in return.

This License defines the usage conditions by the Client for all items involved in the MQPerf service. It notably grants very extensive rights on the Report, including for an industrial or a commercial usage.

It also defines the exhaustive list of data collected in the Analysis, which exclude any personal data of the Client or enabling to identify it.

## Article 1. Definitions

In this License, the following terms have the following meaning:

- The License: this License.
- The Probe: the software distributed by ScalAgent DT as the first step of MQPerf operation procedure.
- The Analysis: the data resulting from the Client executing the Probe. The Analysis contains no direct or indirect reference to the Client. The exhaustive list of collected data is:
  - description of the hardware (processor, memory, disk, network) and system (operating system, Java virtual machine) architecture supporting the Probe execution;
  - description of the tests scenarios executed by the Probe;
  - performance and quality of service metrics with various indicators all over the tests.
- The Service: the Web service provided by ScalAgent DT as the third step of MQPerf operation procedure, and used by the Client to provide the Analysis.
- The Report: the document produced by ScalAgent DT for the Client from the Analysis.
- The Procedure: the sequence of the four operations making the MQPerf service, i.e. Probe distribution, Probe execution and Analysis production, Service availability, Analysis provision and Report production.
- The Client or You: any natural or legal person who makes any usage of the Probe, the Service, or the Report under the terms of the License.

## Article 2. Scope of the rights granted on the Probe

ScalAgent DT hereby grants You a world-wide, non-transferable, non-exclusive license to do the following:

- execute the Probe to get an Analysis and eventually a Report under the Procedure;
- copy the Probe for back-up purposes, or to make its usage easier.

Any other usage not otherwise expressly authorized by the law or by the License is strictly forbidden, notably:

- modify the Probe;
- redistribute the Probe to any third party;

- decompile the Probe.

Those rights are granted for the duration of the MQPerf service being commercialized by ScalAgent DT.

### **Article 3. Scope of the rights granted on the Service**

ScalAgent DT hereby grants You a world-wide, non-transferable, non-exclusive license to do the following:

- connect to the Service, provide an Analysis, and get a Report in return under the Procedure.

Any other usage not otherwise expressly authorized by the law or by the License is strictly forbidden, notably:

- attempt to use the Service through other means that those expressly made available from its Web interface;
- sub-license rights hereby granted.

Those rights are granted for the duration of the MQPerf service being commercialized by ScalAgent DT.

ScalAgent DT may update the Service, possibly resulting in the Analysis no longer matching the format expected by the Service. Should this case occur, the Client shall restart the whole Procedure, and get the new version of the Probe published by ScalAgent DT.

### **Article 4. Scope of the rights granted on the Report**

ScalAgent DT hereby grants You a world-wide, transferable, non-exclusive license to do the following:

- modify the Report, and make derivative works based upon the Report, as long as the here under clause concerning references to ScalAgent DT is fulfilled;
- use the Report or derivative works in any circumstance and for all usage;
- reproduce the Report or derivative works;
- communicate to the public, including the right to make available or display the Report or derivative works or copies thereof to the public and perform publicly, as the case may be, the Report or derivative works;
- distribute the Report or derivative works or copies thereof;
- lend and rent the Report or derivative works or copies thereof;
- sub-license rights on the Report or derivative works or copies thereof.

In addition ScalAgent DT hereby grants You the right to use ScalAgent DT name and logo in association with the original Report, or with clearly identified and unmodified parts of it provided that those parts do not significantly change the meaning of the original Report. This right is granted under the same conditions as above. Such reference, if any, shall be made using the formula: "Results provided by ScalAgent DT, main contributor to JORAM, through its MQPerf service."

Those rights concern the Report obtained under the Procedure. They are granted by ScalAgent DT for the duration of his copyright.

### **Article 5. Third party intellectual property**

Additional copyright notices and license terms applicable to third party software used by the MQPerf service are set forth in the Web page <http://www.scalagent.com/en/mqperf-69/produits-70/license#3pSoft>.

### **Article 6. Warranty**

ScalAgent DT guarantees that performance figures provided in the Report derive from an actual execution of tests involving the standard version of JORAM as described in the service.

Results may vary depending on events unrelated to the Probe that occurred during its execution. Such an event with a potentially strong impact is the execution of any other process on the same computer. The Client shall thus minimize the eventuality of such events to occur, and to interpret the Report with those events in mind.

In case of failure during the Probe execution or the Report production, one month after the Client obtained the Probe under the Procedure at the latest, ScalAgent DT commits:

- to fix the issue as soon as possible,
- or to make the Client have its effective payment refunded.

## **Article 7. Liability**

Except in the cases of willful misconduct or damages directly caused to natural persons, ScalAgent DT will in no event be liable for any direct or indirect, material or moral, damages of any kind, arising out of the License or of the use of the elements of the MQPerf service (Probe, Service, or Report), including without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, loss of data or any commercial damage, even if ScalAgent DT has been advised of the possibility of such damage. However, ScalAgent DT will be liable under statutory product liability laws as far as such laws apply to the MQPerf Service or any of its elements.

ScalAgent DT notably informs the Client that the executing Probe aims at finding the maximum of performance that may be obtained on the target computer. It bears thus a strong impact on the computer, which should be dedicated to this usage for the duration of the Probe execution.

## **Article 8. Acceptance of the License**

The provisions of this License can be accepted by clicking on the dedicated check box in the Web access interface to the MQPerf service or by affirming consent in any other similar way, in accordance with the rules of applicable law. Two explicit consents are demanded during the Procedure, when the Client downloads the Probe, and when the Client provides the Analysis. Clicking on any of those two boxes indicates your clear and irrevocable acceptance of this License and all of its terms and conditions.

Similarly, you irrevocably accept this License and all of its terms and conditions by exercising any rights granted to You by articles Article 2. to Article 4. of this License, such as the communication by You of elements of the Report to third parties.

## **Article 9. Termination of the License**

The License and the rights granted hereunder will terminate automatically upon any breach by the Client of the terms of the License.

Such a termination will not terminate the licenses of any person who has received the Report or derivative works from the Client under the License, provided such persons remain in full compliance with the License.

## **Article 10. Miscellaneous**

The License represents the complete agreement between the Parties as to the elements of the MQPerf service involved by the License.

If any provision of the License is invalid or unenforceable under applicable law, this will not affect the validity or enforceability of the License as a whole. Such provision will be construed and/or reformed so as necessary to make it valid and enforceable.

## **Article 11. Jurisdiction**

This License shall be governed by the french law.

Any litigation resulting from the interpretation of this License will be subject to the exclusive jurisdiction of the Grenoble commercial court.