

Maximum Availability Limited (“Maxava”)

End User Licence Agreement: Maxava HA Replication Software

(Maxava HA Data Stream™, Maxava HA SMB™ or Maxava HA Enterprise™)

Important: Read Carefully

This Licence Agreement constitutes a legal agreement (“Licence Agreement”) between you, the End User (either an individual or an entity) and Maximum Availability Limited, a New Zealand company (“we”, “our”, “us”) for the Software identified above (the “Software”), including any software, media, and accompanying on-line or printed documentation. By clicking on the “Accept” button, installing, copying or otherwise using the Software, you agree to be bound by the terms of this Licence Agreement as set out below. If you do not agree to the terms of this Licence Agreement, click on the “Cancel” button and/or do not install the Software and return the unused Software to the place from which you obtained it for a full refund.

1. Grant of Licence

The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property rights and treaties. Upon your acceptance of this Licence Agreement, we grant you a non-exclusive Licence to use the Software on the terms set out in this Licence. Title, ownership, rights, and intellectual property rights in and to the Software shall remain with us. This Software is intended only for use in conjunction with the IBM i Operating System (OS/400) and use of the Software is subject to any limitations imposed by that operating system. You may:

- a) install and use the Software on the computer(s) and for the duration (if any) as described in your executed Purchase Agreement for Maxava HA Software Licence and its Appendices, and
- b) copy the Software for back-up and archival purposes provided any copy must contain all of the original Software’s proprietary notices,

2. Licence Restrictions

You may not:

- a) permit other individuals to use the Software except under the terms of this Licence Agreement;
- b) modify, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law) or create derivative works based on the Software;
- c) copy the Software (except for back-up or archival purposes);
- d) resell, rent, lease, transfer, or otherwise transfer rights to the Software; or
- e) remove any proprietary notices or labels on or in the Software.

3. Form of Licence

Definitions:

For the purposes of this Agreement:

- a) A computer on which updates to be Applied by the Software are generated is a Primary Computer.
- b) A Licence for the use of the Software on a Primary Computer is a Primary Licence.
- c) A computer on which updates are Applied by the Software is a Target Computer.
- d) A Licence for the use of the Software on a Target Computer is a Target Licence.
- e) A computer may be both a Primary Computer and a Target Computer. In that situation, a Target Licence is also deemed to be a Primary Licence.
- f) An “Apply” means the application of updates and “Applied” and “Applies” shall have corresponding meanings where capitalised.

The Software enables you to Apply certain updates generated on a Primary Computer (or Primary Computers) to a Target Computer (or Target Computers).

IBM Capacity on Demand computers have processors which are permanently available for use (“Active Processors”) and standby processors which are extra processors which can be activated on a temporary or permanent basis (“Standby Processors”). For the purposes of this Agreement, a Standby Processor is considered to be an Active Processor if active for 60 days or more. All processors on computers that are not IBM Capacity on Demand computers are Active Processors.

Use of a Target Licence is limited to

- a) the number of concurrent Applies selected by you at the time of purchase, and
- b) the number of Active Processors declared by you at the time of purchase

Each Apply Group permits one concurrent update. Apply Groups are specific to the Target Computer and do not permit the Software to be utilised on any other computer. If you wish to increase the number of concurrent Applies at any time, you will need to obtain an upgraded Licence Key from us. If you wish

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to increase the number of Active Processors on a Target Computer you are required to obtain an upgraded Licence Key from us.

Use of a Primary Licence is limited to the number of Active Processors declared by you at the time of purchase.

If you wish to increase the number of Active Processors on a Primary Computer you are required to obtain an upgraded Licence Key from us.

A Primary Licence does not permit Applies.

Maxava HA Data Stream™

If this Licence Agreement applies in respect of Maxava HA Data Stream™, then the following shall apply:

- a) You require a Target Licence for each Target Computer.
- b) You do not need a Primary Licence for Primary Computers.

Maxava HA SMB™/Maxava HA Enterprise™

If this Licence Agreement applies in respect of Maxava HA SMB™ or Maxava HA Enterprise™, then the following shall apply:

- a) You require a Primary Licence for each Primary Computer
- b) You require a Target Licence for each Target Computer.

4. Maintenance

Subject to clause 1, this Licence Agreement does not grant you any right to any new versions of or upgrades or updates to the Software, nor any support services. To obtain updates to enhance the functionality and improve the performance of the Software you must enter into a separate agreement with us.

5. Breach Of Licence

This Licence Agreement shall terminate automatically if you fail to comply with the terms and conditions described in this Licence Agreement. No notice shall be required from us to effectuate such termination. Upon termination, including the expiry of any trial period, you must destroy all copies of the Software and Documentation. The Software may contain software locking or disabling features which may activate upon attempted use of the Software in breach of this Licence Agreement. You agree that incorporation of these features into the Software is commercially reasonable and you accept all risk associated with these features.

6. Limited Warranty And Limitation Of Liability

The following provisions are without prejudice to any rights you may have at law which may not be legally excluded. We warrant that the Software, as updated and when properly used, will perform substantially in accordance with its accompanying documentation, and the Software media will be free from defects in materials and workmanship, for a period of sixty (60) days from the date of receipt (the “Warranty Period”). This warranty is void if Software fails as a result of accident, abuse, or misapplication. If we breach any warranty or other provision of this Licence Agreement our entire liability and your exclusive remedy shall be, at our option, either:

- a) return of the price paid, or
- b) repair or replacement of the Software that does not meet the warranty and which is returned to us with a copy of your receipt.

We do not, unless otherwise specifically stated, warrant that the Software will comply with any statutory or regularity requirements in any particular territory that may be applicable to operation of the Software. To the maximum extent permitted by law, we disclaim all other warranties, either express or implied, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose, non-infringement or title, with regard to the Software and the accompanying documentation. Except as expressly provided above and to the maximum extent permitted by applicable law, we shall not be liable for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of the use of or inability to use the Software even if we have been advised of the possibility of such damages.

7. Information

You agree to keep all information relating to:

- a) all aspects of your commercial agreement with us

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- b) all aspects of the installation, performance and operation of the Software confidential, unless first receiving our approval in writing to disclose such information.

We reserve the right to use your name in our advertising material to publicise the fact that you are our customer, however this material will not contain any other information such as any commercially confidential information.

8. Entire Agreement

This Licence Agreement:

- a) represents the whole of the contract and understanding between the Parties; and
b) replaces all prior agreements and understandings between the Parties with respect to the subject matter of this agreement.

9. General Provisions

This Licence Agreement may only be modified in writing signed by you and one of our authorised officers. If any provision of this Licence Agreement is found void or unenforceable, the remainder will remain valid and enforceable according to its terms. This Licence Agreement shall be construed, interpreted and governed by the laws of New Zealand. You submit to the exclusive jurisdiction of the New Zealand Courts.