

**HIGH-AVAILABILITY.COM LIMITED
LICENCE AGREEMENT**

NOTICE TO USER: PLEASE READ THIS AGREEMENT CAREFULLY. BY USING ALL OR ANY PORTION OF THE SOFTWARE YOU ACCEPT THE FOLLOWING TERMS FROM HIGH-AVAILABILITY.COM LIMITED A COMPANY REGISTERED IN ENGLAND AND WALES WHOSE ADDRESS IS #1 HAIG COURT, HAIG RD, KNUTSFORD, CHESHIRE, WA16 8XZ, UNITED KINGDOM (“HIGH-AVAILABILITY”). YOU AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT IT IS ENFORCEABLE AS IF IT WERE A WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT YOU MUST NOT USE THE LICENCE KEYS CONTAINED WITHIN THIS EMAIL AND/OR MAKE ANY USE OF THE SOFTWARE.

1. DEFINITIONS

- “Documentation”** means the electronic user manual supplied on the media on which the Software is supplied;
- “Effective Date”** means the date hereof;
- “Licence Agreement”** means this Licence Agreement;
- “Permitted Number”** means the number of servers and/or users in respect of which the Licensee has been provided with a licence key by High-Availability;
- “Software”** means the object code form of the software in respect of which the Licensee has been provided with a licence key by High-Availability together with any bug fixes, enhancements, or other modifications of the Software provided to Licensee under a separate support and maintenance agreement between the parties.

2. GRANT OF RIGHTS; RESTRICTIONS

- 2.1 Subject to all the terms and conditions of this Licence Agreement, High-Availability hereby grants Licensee a perpetual (terminable only as provided in clause 6), nonexclusive, nontransferable, paid-up licence to install the Software and use it, within the Territory, in accordance with the Permitted Number for its own internal use only. This licence is in respect of use of the Software by the Licensee only and no subsidiaries or holding company of the Licensee may use the Software.
- 2.2 Except as expressly permitted in this Licence Agreement, Licensee shall not, and shall not permit others to:
- 2.2.1 modify, translate, create derivative copies of or copy the Software (other than one backup copy which reproduces all proprietary notices), in whole or in part;
 - 2.2.2 reverse engineer, decompile, disassemble or otherwise reduce the object code of the Software to source code form;
 - 2.2.3 distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes, or otherwise transfer the Software or Licensee’s right to use the Software;

- 2.2.4 remove or modify any copyright, trademark, or other proprietary notices of High-Availability affixed to the media containing the Software or contained within the Software; or
 - 2.2.5 use the Software in any manner not expressly authorised by this Licence Agreement.
- 2.3 Licensee agrees, subject to reasonable prior notice, to give High-Availability such access and assistance to Licensee's systems as may be necessary to confirm that the number of servers and/or users does not exceed the Permitted Number.

3. PROPRIETARY RIGHTS

- 3.1 High-Availability has sole and exclusive ownership of all right, title, and interest in and to the Software, including all copyright and any other intellectual property rights therein. This Licence Agreement conveys a limited licence to use the Software and shall not be construed to convey title to or ownership of the Software to Licensee. All rights in and to the Software not expressly granted to Licensee are reserved by High-Availability.

4. REPRESENTATIONS AND WARRANTIES

- 4.1 High-Availability hereby excludes all warranties, express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose, and any warranties arising by statute or otherwise in law or from course of dealing, course of performance, or use of trade, all of which are hereby excluded and disclaimed.
- 4.2 The Licensee hereby represents that it shall:
- 4.2.1 comply with all applicable local and foreign laws and regulations which may govern the use of the Software; and
 - 4.2.2 use the Software only for lawful purposes and in accordance with the terms of this Licence Agreement.

5. LIMITATION OF LIABILITY

- 5.1 Subject to clause 5.3 below, Licensee's sole remedy with respect to any claims arising out of this Licence Agreement shall be limited in the aggregate to the monies paid by Licensee to High-Availability under this Licence Agreement during the 12 month period prior to the date of the claim.
- 5.2 In no event shall High-Availability be liable for any special, indirect, incidental, or consequential damages, including loss of profits and goodwill, business or business benefit, or the cost of procurement of substitute products by Licensee even if advised of the possibility of such damages. In no circumstances shall High-Availability be liable for any failure of the Software to perform in accordance with the Documentation. Additionally, Licensee acknowledges that whilst the Software may be used in combination with third party software, High-Availability bears no liability, howsoever arising, for any loss, damage or cost that arises from a failure of the software to integrate with Licensee or third party software.
- 5.3 High-Availability does not seek to limit or exclude liability for death or for personal injury arising from High-Availability's negligence.
- 5.4 High-Availability shall not be liable to the Licensee for any loss arising out of a failure by the Licensee to keep full and up to date security copies of the Software and data it uses in accordance with best computing practice.

6. TERM AND TERMINATION

- 6.1 This Licence Agreement shall commence on the Effective Date and continue in effect indefinitely, unless terminated in accordance with this Clause 5.1. If either party breaches this Licence Agreement in any material respect, the other party may give written notice to the breaching party of its intent to terminate, and if such breach is not cured within thirty (30) days after the breaching party's receipt of such notice, this Licence Agreement shall terminate without any further notice required (but no cure period is required for any breach that cannot be cured).
- 6.2 Upon any termination of this Licence Agreement:
- 6.2.1 the rights and licences granted to Licensee herein shall terminate;
 - 6.2.2 Licensee shall cease all use of the Software;
 - 6.2.3 Licensee shall return to High-Availability all copies of the Software and Documentation in Licensee's possession or under its control; and
 - 6.2.4 Licensee shall certify in writing to High-Availability its compliance with the foregoing.
- 6.3 Clauses 1, 2.2, 3, 4, 5 and 6 shall survive any termination of this Licence Agreement.

7. MISCELLANEOUS

- 7.1 Neither High-Availability nor the Licensee hereto shall be liable for any breach of this Agreement resulting from causes beyond its reasonable control including but not limited to fires, strikes (of its own or other employees) insurrection or riots, wrecks or delays in transportation, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an "Event of Force Majeure"). Each of High-Availability and the Licensee agree to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure. If a default due to an Event of Force Majeure shall continue for more than thirteen (13) weeks then the party not in default shall be entitled to terminate this Agreement. Neither High-Availability nor the Licensee shall have any liability to the other in respect of such termination as a result of an Event of Force Majeure.
- 7.2 The waiver by either High-Availability or the Licensee of a breach or default of any of this Agreement by the other shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either High-Availability or the Licensee to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other.
- 7.3 Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be:
- 7.3.1 delivered in person; or
 - 7.3.2 sent by registered mail return receipt requested; or
 - 7.3.3 sent by overnight air courier; or
 - 7.3.4 transmitted by facsimile, in each case forwarded to the appropriate address set forth herein.

Either party may change its address for notice by written notice to the other party. Notices will be considered to have been given at the time of actual delivery in person, or three (3) business days after posting, or one (1) day after delivery to an overnight air courier service, or the moment of

transmission by facsimile with receipt of such facsimile confirmed by telephone by the intended recipient.

- 7.4 If any provision of this Agreement is declared void, illegal, or unenforceable, the remainder of this Agreement will be valid and enforceable to the extent permitted by applicable law. In such event, the parties agree to use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.
- 7.5 This Agreement:
- 7.5.1 constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, oral and written, made with respect to the subject matter hereof; and
- 7.5.2 cannot be altered except by agreement in writing executed by an authorised representative of each party. No purchase order and/or standard terms of purchase provided by Licensee shall supersede this Agreement.
- 7.6 Licensee shall not assign this Agreement, in whole or in part, without the written consent of High-Availability.
- 7.7 Licensee consents to the use by High-Availability of Licensee's name in customer lists and other publicity, including interviews, case studies, and conference discussions, provided that such publicity accurately describes the nature of the relationship between Licensee and High-Availability.
- 7.8 This Agreement and its performance shall be governed by and construed in accordance with the English law and the parties hereby submit to the exclusive jurisdiction of the English Courts.
- 7.9 Licensee agrees that because of the unique nature of the Software and High-Availability's proprietary rights therein, a demonstrated breach of this Agreement by Licensee would irreparably harm High-Availability and monetary damages would be inadequate compensation. Therefore, Licensee agrees that High-Availability shall be entitled to preliminary and permanent injunctive relief, as determined by any court of competent jurisdiction to enforce the provisions of this Agreement.
- 7.10 Each Party agrees it shall not solicit the employment, directly, or indirectly, of any of the other Party's employees or contractors during the period of this Licence Agreement and for a period of six (6) months thereafter, without the express written approval of the other.
- 7.11 This Agreement does not create, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not party to it.