Maxava Ltd ("Maxava")

End User Licence Agreement: Maxava HA Replication Software

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

Important: Read Carefully

This Licence Agreement constitutes a legal agreement ("Licence Agreement") between you, the End User (either an individual or an entity) and Maxava Limited ("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 or use 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 and payment of applicable fees, 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 and/or our licensors. 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)   Install or use the Software, except under the terms of this Licence Agreement;

b)   Permit or enable any other individual or entity to install, copy or use the Software without our prior written consent. Where you are permitted to allow a third party to install, copy or use the Software, you agree to ensure that such activity does not exceed your permitted use;

c)   permit or allow any other individual or entity to take possession of the Software (including any computer or device on which the Software is installed or saved, regardless of who owns the computer or device) without our prior written consent;

d)   modify, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law), merge, combine, or create derivative works of, the Software;

e)   copy the Software (except for the End User's own back-up or archival purposes);

f)   resell, rent, lease, assign, loan, or otherwise transfer the Software (or any part of the Software) or any rights to the Software (or any part of the Software);

g)   remove, erase or tamper with any copyright or otherproprietary notices or labels on or in the Software or fail to preserve all copyright and other proprietary notices in any copy of the Software; or

h)   refer to or otherwise use our Intellectual Property Rights as part of any effort to develop a program having any functional attributes, visual expressions or other features similar to the Software or to otherwise compete with our products or services; or

i)   attempt to do any of the foregoing.

You acknowledge and agree that the Software involves and includes proprietary Intellectual Property Rights, information and methodology, and that any disclosure or use of the Software not expressly authorized in Section 1 above is not permitted and will result in irreparable injury to us and our licensors not compensable by money damages. Accordingly, you agree that we and our licensors may be entitled to injunctive or other equitable relief to enforce this Licence Agreement and/or prohibit any breach thereof, threatened or actual. The foregoing shall be in addition to, and without prejudice to, or limitation on, any other rights we and our licensors may have under this Licence Agreement, at law or in equity.

3.   Form of Licence

Definitions:

For the purposes of this Agreement:

a)   "Apply" means the application of updates and "Applied" and "Applies" shall have corresponding meanings where capitalised.

b)   "Intellectual Property Rights" means all concepts, know-how, inventions, patents, trademarks, trade names, trade dress, trade secrets, ideas, copyright, moral right and any other proprietary rights, together with any modifications, enhancements, and derivative works of any of the foregoing in any media, tangible or intangible, now in existence or created in the future.

c)   "Primary Computer" means a computer on which updates to be Applied by the Software are generated.

d)   "Primary Licence" means a Licence for the use of the Software on a Primary Computer. 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.

e)   "Target Computer" means a computer on which updates are Applied by the Software.

f)   "Target Licence" means a Licence for the use of the Software on a Target Computer.

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

End User Licence Agreement: Maxava HA Replication Software

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

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 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™/Maxava HA Enterprise+™

If this Licence Agreement applies in respect of Maxava HA SMB™ or Maxava HA Enterprise™ 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 and Support

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, or to obtain support services, you must enter into a separate agreement with us.

5.   Breach and Termination

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 expressly recorded in writing, warrant that the Software will comply with any statutory or regulatory 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, fitness for a particular purpose or non-infringement of 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 (whether under contract, common law (including negligence), equity, statute law or otherwise) 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.

Mandatory statute or consumer warranty laws may apply to the Software. If such a law applies, then no provision in this Licence Agreement shall operate to exclude any consumer guarantee, warrantee or right imposed or implied, provided however that our liability is limited to (at our option):

(i) Resupplying the Software; or

(ii) Paying the cost of re-supplying the Software.

7.   Health Check

If requested, we may perform a periodic "Health Check" of your implementation of the Software. This includes a limited automated review of the installation, configuration and performance of the Software. We will provide you with a summary report following completion of the Health Check. Provision of the Health Check (including any associated report) is provided "as is" and entirely without warranty. Health Check reports are informational only and are not recommendations or professional advice. The responsibility for any investigation or action indicated by the Health Check report is entirely your responsibility. Should you request us to provide analysis or service(s) indicated as necessary by the Health Check report, that analysis or those services will be provided on agreed terms and rates under a separate statement of work.

8. MaxView™

Clauses 8 – 10 apply where you have requested use of one of our monitoring or diagnostic software applications (including, without limitation, MaxView Monitor, MaxView Manager, Maxava Monitor Mi8, Maxava Manager, MaxAssist Remote Monitoring), all of which are referred to as "MaxView" in this Licence Agreement. Our MaxView™ applications enable you to monitor and/or manage certain aspects of the IBM i operating system. If requested, we may make the MaxView applications available to you for use, on the same terms and conditions that apply to the Software under this Licence Agreement, provided that:

a) The MaxView app is made available to you "as is" and we make no warranty as to its use or performance. We do not and cannot warrant the performance or results you may obtain by using the MaxView app. We do not, unless otherwise specifically stated, warrant that the MaxView app will comply with any statutory or regulatory requirements in any particular territory that may be applicable to operation of the MaxView app. To the maximum extent permitted by law, we disclaim all warranties (statutory, express or implied) including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose or non-infringement of title, in relation to the MaxView app;

b) 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 MaxView app even if we have been advised of the possibility of such damages; and

c) Only the End User recorded in this Licence Agreement is entitled to use the MaxView app. If the End User intends to enable a third party to receive notifications, updates or any other information from the MaxView app, or enable a third party to otherwise use the MaxView app in any way, then the End User must first arrange for the third party to sign and return to us a MaxView End User Licence Agreement (available from us on request).

9. System Information

If we perform a periodic health check of the Software implementation, or if you utilise our MaxView™ app, then we may receive and store system information relating to the performance of the Software and your environment. We may use this system information for future reference and support, for internal purposes such as auditing, data analysis, and research, and to help us develop, deliver, promote and improve our products and services. We will not disclose any system information which identifies the user environment to third parties.

10. MaxView™ Notifications

The MaxView app may use third-party communications services to transmit notifications to end users, including you. Accordingly, you acknowledge and agree that:

(a) Third-party communications services may not be reliable, confidential or continuously available.

We have no responsibility for third-party communications services;

(b) We will need to disclose your general system information and your nominated contact details to and through third-party communications service providers, to complete notifications. You consent to this information disclosure and use; and

(c) Some users can define and customize notifications by adopting or modifying rules settings when using the MaxView app. When these rules settings are utilised, information containing more than just general system information and your nominated contact details may be disclosed to and through third-party communications service providers, to complete notifications according to your rules settings. You consent to this information disclosure and use.

11. Third Parties

Except as we may agree in writing, we have no responsibility for the selection, implementation, interoperability and performance of any third party hardware, software and services used in association with the Software. If you enter into any contract(s) with a Maxava-approved partner or any other third party (whether for the supply of hardware, Software, support or otherwise) which uses or incorporates the Software (in all cases, referred to as an "End User Contract") then you acknowledge and agree that:

a) We have no liability to you for any act or default, or otherwise, in connection with any End User Contract; and

b) our obligations pursuant to this Licence Agreement shall be our sole liability, and your sole remedy against us, on account of any claim relating to the quality, performance or supply of the Software.

You are not permitted to offer services to third parties using or incorporating the Software (or any part of the Software), or otherwise permit third parties to benefit from your use of the Software, unless expressly permitted as part of a formal executed Maxava Partner Agreement.

12. Indemnification

You shall be liable for, and shall indemnify and hold us (together with our directors, officers, employees, agents and related companies) harmless from and against any and all actions, claims, costs, damages or liabilities (including our actual attorneys' fees) arising out of or relating to any breach of this Licence Agreement by you.

13. Confidential Information

You agree to keep all information relating to:

a) all aspects of your commercial agreement with us

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

Maxava Ltd ("Maxava")

End User Licence Agreement: Maxava HA Replication Software

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

information such as any commercially confidential information.

14.   Privacy

If you submit or upload personal information to us or our related companies, you consent to the collection, use, processing, transmission and disclosure of that information by us and our related companies. You warrant that you have obtained all necessary consents to disclose the personal information to us and our related companies, and for us and our related companies to retain and use that information for the supply of Software or services requested by you and any of the other purposes set out in our current privacy statement (accessible at http://maxava.com/privacy-policy/). Our privacy statement may be updated from time to time. The parties hereby agree that our privacy statement, as may be modified from time to time by us, is incorporated into this Licence Agreement.

15.   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.

16.   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. Neither party shall be liable for losses caused by natural disasters, strikes or labor disputes, disruption of communications or other acts or conditions beyond the reasonable control of such party. There is no joint venture, partnership, agency or fiduciary relationship existing between the parties, and the parties do not intend to create any such relationship by this Licence Agreement. The provisions of sections 2, 5 - 14, and 16 shall survive the expiration or termination of this Licence Agreement. A party's waiver of any breach or its failure to enforce any term of this Licence Agreement may not be deemed a waiver of any other breach or of its right to enforce the same term or others in the future.   This Licence Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, provided that this Licence Agreement may not be assigned by End User (whether by operation of law or otherwise) without our prior written consent, which consent may be withheld in our sole discretion. This Licence Agreement is intended to confer benefits on our licensors holding proprietary interests in the Software, and according the licensors may enforce this Licence Agreement.

Signed for and on behalf of the End User:

Company Name:	
Signature:	
Name:	

Title:		Date:	