

High Availability (HA)

EVENT STORE HA PERPETUAL SOFTWARE LICENCE: This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and Event Store LLP of Event Store LLP, Wansdyke Business Centre, Midsomer Enterprise Park, Midsomer Norton, BA3 2BB (**Licensor, us or we**) for:

- The Event Store current version computer software (**Software**); and
- printed materials and online electronic documentation (**Documentation**).

This licence also refers to the following defined terms:

"Cluster" a number of Nodes configured to work together.

"Major Version" a major version of the Software, denoted by the number to the left of the decimal point in the version numbering system, for example, 3.00.

"New Major Version" a new major version of the Software, denoted by a change to the number to the left of the decimal point in the version numbering system, for example, a change from version 3.12 to 4.00.

"Node(s)" each node being a single copy of EventStore.HA.ClusterNode.Net.exe or EventStore.HA.ClusterNode.Mono.exe running on a machine, physical, virtual or otherwise.

"Support Agreement" a support agreement with the Licensor, covering support of the Software (whether Software only or Software on an Event Store appliance).

"Update" an update, patch or bug fix issued for the Software and denoted by a change to the number to the right of the decimal point in the version numbering system, for example, a change from version 3.11 to 3.12.

We license use of the Software and Document to you on the basis of this Licence. We do not sell the Software or Documentation to you. We remain the owners of the Software and Documentation at all times.

IMPORTANT NOTICE TO ALL USERS:

- BY INSTALLING AND/OR USING THE SOFTWARE YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR EMPLOYEES.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE WILL NOT LICENSE THE SOFTWARE AND DOCUMENTATION TO YOU AND YOU MUST DISCONTINUE INSTALLATION AND/OR USE.

You should print a copy of this Licence for future reference.

1. Grant and scope of licence

- 1.1 In consideration of you agreeing to abide by the terms of this Licence, the Licensor hereby grants to you a perpetual (subject to clause 6), non-exclusive, non-transferable licence to use the Software and the Documentation on the terms of this Licence.
- 1.2 You may:
 - (a) install and use the Software on as many Nodes within a single Cluster as you choose for your internal business purposes;
 - (b) make copies of the Software for back-up purposes;
 - (c) use any Documentation in support of the use permitted under condition 1.2.
- 1.3 If you have a valid Support Agreement, the Licensor may, from time to time, provide you with a New Major Version of and Updates for the Software, and these may be used in accordance with the licence terms in clauses 1.1 and 1.2.
- 1.4 If you do not have a valid Support Agreement, the Licensor will not provide you with any New Major Versions of the Software, you will remain on the Major Version that you were on at the time your Support Agreement expired or terminated. However, the Licensor may provide Updates from time to time for that Major Version. The Licensor reserves the right to discontinue, on 12 months' notice, all forms of support for previous Major Versions that have been in circulation for 3 years or more. The Licensor also reserves the right to require renewal by you, either annually, or on any other basis stipulated by the Licensor, of the Licence, if at any time you do not have a valid Support Agreement.
- 1.5 This Licence is for a single Cluster. You must notify us if you wish to have additional Clusters and you must have a Support Agreement for each Cluster. If we discover that you are running the Software on Clusters/Nodes for which you have not purchased a Support Agreement, we reserve the right to invoice you for immediate payment of all fees owing in respect of such Support Agreements that have not been purchased, any interest owing on such fees (from the time Cluster was added) and an administration fee in relation to each Cluster added.

2. Restrictions

- 2.1 Except as expressly set out in this Licence or as permitted by any local law, you undertake:
- (a) not to install the Software outside of the licensed Cluster.
 - (b) not to copy the Software or Documentation except where such copying is required for normal use of the Software or where it is necessary for the purpose of back-up or operational security;
 - (c) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documentation or grant access to the Software or Documentation to any third party;
 - (d) not to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
 - (e) not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:
 - (i) is used only for the purpose of achieving inter-operability of the Software with another software program;
 - (ii) is not disclosed or communicated without the Licensor's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
 - (iii) is not used to create any software which is substantially similar to the Software;
 - (f) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
 - (g) to include our copyright notice on all entire and partial copies of the Software in any form; or
 - (h) not to provide, or otherwise make available, the Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person without prior written consent from us.
- 2.2 On demand, you must communicate to us the configuration of the licensed Cluster including the number of Nodes in the Cluster. Failure to communicate this information will be a material breach of this Licence for the purposes of clause 6.1 and the provisions of clause 1.5 may also apply. If your Support Agreement expires and you do not renew it, this Licence will only apply to the Cluster and number of Nodes as configured at the time the Support Agreement expired ("Expiry Configuration"). Following expiry of the Support Agreement, any attempt to use Software on Clusters and Nodes outside of the Expiry Configuration will be a material breach of the provisions of clause 6.1 and the provisions of clause 1.5 may also apply.

3. Intellectual property rights

- 3.1 You acknowledge that all intellectual property rights in the Software and the Documentation throughout the world belong to us, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of this Licence.

- 3.2 You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments.

4. Limited warranty

The Software is provided "as is" and any express or implied warranties, including, but not limited to, the implied warranties of satisfactory quality, merchantability and fitness for a particular purpose are excluded to the fullest extent permitted by law.

5. Limitation of liability

- 5.1 You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements. In addition, you acknowledge that the Software has not been developed for use in critical safety, security or health systems or in nuclear applications, mass transportation or aviation applications, it is your sole responsibility if you choose to use the Software in such applications and that the Licensor cannot accept any liability for damages or losses you incur as a result of any use in such critical applications.
- 5.2 We only supply the Software and Documentation for internal use by your business, and you agree not to use the Software or Documentation for any re-sale purposes.
- 5.3 We shall not under any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for:
- (a) loss of profits, sales, business, or revenue;
 - (b) business interruption;
 - (c) loss of anticipated savings;
 - (d) loss or corruption of data or information;
 - (e) loss of business opportunity, goodwill or reputation; or
 - (f) any indirect or consequential loss or damage.
- 5.4 Other than the losses set out in condition 5.3 (for which we are not liable), our maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to any licence fee paid or £100.00, whichever is greater. This maximum cap does not apply to condition 5.5.
- 5.5 Nothing in this Licence shall limit or exclude our liability for:
- (a) death or personal injury resulting from our negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any other liability that cannot be excluded or limited by English law.
- 5.6 This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the Software and Documentation. Except as expressly stated in this Licence, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

6. Termination

- 6.1 We may terminate this Licence immediately by written notice to you if you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.
- 6.2 Upon termination for any reason:
- (a) all rights granted to you under this Licence shall cease;
 - (b) you must cease all activities authorised by this Licence; and
 - (c) you must immediately delete or remove the Software from all computer equipment in your possession and immediately destroy or return to us (at our option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

7. Communications between us

- 7.1 If we have to contact you or give you notice in writing, we will do so by e-mail or by pre-paid post to the address you provide to us in your order for the Software.
- 7.2 Please note that any notice given by you to us, or by us to you, will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

8. Events outside our control

- 8.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in condition 8.2.
- 8.2 An **Event Outside Our Control** means any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks.
- 8.3 If an Event Outside Our Control takes place that affects the performance of our obligations under this Licence:
- (a) our obligations under this Licence will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
 - (b) we will use our reasonable endeavours to find a solution by which our obligations under this Licence may be performed despite the Event Outside Our Control.

9. Other important terms

- 9.1 We may transfer our rights and obligations under this Licence to another organisation, but this will not affect your rights or our obligations under this Licence.
- 9.2 You may only transfer your rights or your obligations under this Licence to another person if we agree in writing.

- 9.3 This Licence and any document expressly referred to in it constitutes the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of the us which is not set out in this Licence or any document expressly referred to in it.
- 9.4 If we fail to insist that you perform any of your obligations under this Licence, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 9.5 Each of the conditions of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 9.6 On reasonable notice, you will give us such access as we need to your premises and systems so that we can assess your compliance with the terms of this Licence.
- 9.7 We reserve the right to alter the terms of this licence on notice to you.
- 9.8 This Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both agree to the exclusive jurisdiction of the courts of England and Wales.