

ATOS License Supplement for Power Enterprise Pools

This ATOS License Supplement for Power Enterprise Pools (“License Supplement”) between ATOS and Customer provides terms and conditions governing Customer’s use of certain Machine Code on the Authorized Machines that are used in an Enterprise Pool (as such terms are defined below). In exchange for Customer’s acquisition of Mobile Resources (as such term is defined below), ATOS grants Customer the licenses herein.

1. Definitions

When used in this License Supplement in capitalized form, the terms listed below have the following meanings:

Addendum – a ATOS License Supplement for Power Enterprise Pools Addendum.

Authorized Machine – a ATOS Escala server, qualified as specified in Section 2.1 below. Each Authorized Machine and its associated Enterprise Pool is specified in an Addendum. An Authorized Machine may only be assigned to one Enterprise Pool at any time.

Eligible Program – each ATOS Program specified in Exhibit 1, or a generally available ATOS Program which replaces a ATOS Program specified in Exhibit 1, including replacements of replacements.

Enterprise – a legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent.

Enterprise Pool – two or more interconnected Authorized Machines, qualified as specified in Section 2.2 below. Each Enterprise Pool is specified in an Addendum.

Hardware Management Console (or HMC) -- the ATOS hardware management console available for use with ATOS Escala servers.

Mobile Memory – a feature of a ATOS Escala server specified by ATOS as “Mobile Memory”; the entitlement for such feature is eligible for use by any Authorized Machine within an Enterprise Pool in accordance with the terms of this License Supplement.

Mobile Processor -- a feature of an ATOS Power Systems Machine specified by ATOS as a “Mobile Processor”; the entitlement for such feature is eligible for use by any Authorized Machine within an Enterprise Pool in accordance with the terms of this License Supplement.

Mobile Resource – either a Mobile Processor or Mobile Memory. For purpose of clarity, Mobile Resources can be Mobile Processors, Mobile Memory, or both.

Other capitalized terms have the meaning ascribed to them in the terms incorporated herein.

2. Qualifying Machines and Enterprise Pools

2.1 Qualifying Machines

To qualify for use as an Authorized Machine, a Machine must be any of the following:

- a. a ATOS Escala M6-715 with at least four (4) cores permanently activated (that is, not Mobil Processors and not activated on a temporary basis through a separate offering),
- b. a ATOS Escala M7-715 with at least four (4) cores permanently activated,
- c. a ATOS Escala H9-700, with the greater of (i) 24 cores and (ii) 25% of all cores, permanently activated, or
- d. a ATOS Escala M6-800, M7-800 or M8-800 with at least eight (8) cores permanently activated,
- e. a ATOS Escala M6-800C, M7-800C or M8-800C with at least eight (8) cores permanently activated,
- f. another ATOS Escala server as generally announced by ATOS to qualify for use as an Authorized Machine.

In addition to the above, to qualify as an Authorized Machine, at least 25 percent of the Machine's installed memory must be permanently activated.

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2.2 Qualifying Enterprise Pools

To qualify for use as an Enterprise Pool, each Machine in the pool must:

- ◆ be a qualified Authorized Machine, as specified in Section 2.1 above,
- ◆ be interconnected through a common HMC,
- ◆ be located in the same country as all other Machines in the pool,
- ◆ be in Customer's possession,
- ◆ be at a level of Machine Code designated by ATOS as release level 780 or more current for Power7 and Power7+, and a level of Machine Code designated by ATOS as release level 820 for Power8, and
- ◆ have the same warranty or post-warranty service status as the rest of the Machines in such Enterprise Pool such that all Machines in the Enterprise Pool are either (i) serviced by ATOS either under warranty or post-warranty maintenance Service agreement, or (ii) not serviced by ATOS under warranty or post-warranty maintenance Service agreement.

In addition to the above, to qualify as an Enterprise Pool, the HMC(s) for the Enterprise Pool must be at Machine Code release level 780 or more current for Power7 or Power7+, or be at Machine Code release level 820 or more current for Power8, and must be configured with at least two (2) gigabytes of memory.

A qualifying Enterprise Pool may consist either (i) entirely of Authorized Machines that are ATOS Escala M6-715 or M6-800, (ii) of any quantity of Authorized Machines that are ATOS Escala M7-715, M7-800 or ATOS Escala H9-700 type, or (iii) of another blend of qualifying Authorized Machines as generally announced by ATOS.

3. Machine Code License

3.1 General

Customer acknowledges that each Authorized Machine contains Machine Code. Customer recognizes that although it may acquire Authorized Machines from ATOS's authorized reseller, (i) such ATOS's authorized reseller does not own and does not have the right to sell, license, sublicense or otherwise transfer rights to the Machine Code provided with the Authorized Machine, and (ii) absent a license from ATOS to use such Machine Code, Customer has no right to use the Machine Code. ATOS is the only party who has the right to license such Programs and Machine Code.

By executing this License Supplement, ATOS grants Customer a license to the Machine Code of each Authorized Machine within an Enterprise Pool under the terms of the applicable ATOS License Agreement for Machine Code for only such Authorized Machine, as provided at <http://support.Atos.com/ols/product/platforms/escala/warranty/license-use> ("Machine Code License"), which is hereby incorporated by reference into this License Supplement, and as modified herein.

3.2 Additional Machine Code License Terms

The terms of this License Supplement specify rights and obligations associated with use of Machine Code which are in addition to or modify the Machine Code License ("Additional Machine Code License Terms"), which apply solely to each Authorized Machine used by Customer within an Enterprise Pool. In the event of a conflict between the terms of this License Supplement and the Machine Code License, the terms of this License Supplement shall prevail with respect to such conflict.

4. Capacity Entitlement Pooling

Customer is authorized by ATOS, at Customer's discretion, to assign Customer's entitlement for a Mobile Resource for use on any Authorized Machine within the same Enterprise Pool as the Authorized Machine for which such Mobile Resource is configured. Customer will execute such assignment for use using only the HMC of the Enterprise Pool. Only Mobile Resources can be assigned between Authorized Machines.

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When Customer assigns a Mobile Resource from one Authorized Machine to another Authorized Machine, Customer must, within 24 hours of such assignment, (i) release such Mobile Resource from use by all associated workloads, and (ii) return such Mobile Resource to an inactive state, in the Authorized Machine from which such Mobile Resource was assigned.

5. Conversion of Resources to Mobile Resources

Customer may, at Customer's discretion, order directly from ATOS or from ATOS's authorized reseller, the conversion of existing processors, memory, or both to the corresponding Mobile Resource. Following each such order, ATOS will make available to Customer certain key codes which Customer must apply to the associated Authorized Machine, and execute an Addendum with ATOS if such Authorized Machine is not already assigned to an Enterprise Pool.

6. Capacity Entitlement Restoration and Transfer

Upon removal of an Authorized Machine from an Enterprise Pool, all Mobile Processors and Mobile Memory configured for such Authorized Machine will be removed from use by other Authorized Machines within the Enterprise Pool.

Upon transfer of a Machine that includes a Mobile Resource to another party (including return to a leasing company), such Mobile Resource(s) will transfer with the Machine, but will only be available for use following the other party's execution of an agreement with ATOS equivalent to this License Supplement. The Additional Machine Code License Terms are not transferable, and can only be granted to a party by ATOS.

7. Program Licensing and Software Maintenance

Customer is authorized by ATOS to execute an Eligible Program on an Authorized Machine without regard for Mobile Processor entitlements assigned to such Authorized Machine from another Authorized Machine. However, for each Eligible Program that is licensed on one Authorized Machine in an Enterprise Pool, Customer must have a license of at least one core's authorization for the Eligible Program on every other Authorized Machine in the Enterprise Pool. Customer is otherwise responsible at all times to ensure sufficient license authorizations have been obtained for all Programs executing on an Authorized Machine.

Each Eligible Program that is entitled for ATOS software maintenance on an Authorized Machine in an Enterprise Pool must also have a valid ATOS software maintenance agreement on every Authorized Machine in the same Enterprise Pool.

8. ATOS Maintenance Service Charges

For each Authorized Machine that is under contract with ATOS for maintenance Service, the charges for such maintenance Service will be based on the purchased configuration of the Authorized Machine, including all Mobile Processors and Mobile Memory configured for such Authorized Machine.

9. Modification to an Enterprise Pool

Customer will notify ATOS of each Machine Customer requests to add to or remove from an Enterprise Pool; Customer and ATOS will then enter into an Addendum for each such addition to or removal from an Enterprise Pool.

10. Verification

Customer is responsible for remaining in compliance with the terms of this License Supplement and all of ATOS's applicable Machine Code and ATOS Program licensing terms (independently or collectively the "Offering Terms"). Upon reasonable notice ATOS may verify Customer's compliance with the Offering Terms at all sites and for all environments in which Customer uses or has used an Authorized Machine. Such verification will be conducted in a

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manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during normal business hours. ATOS may use an independent auditor to assist with such verification provided ATOS has a written confidentiality agreement in place with such auditor. Customer agrees to provide to ATOS and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of an Authorized Machine and ATOS Programs licensed to an Authorized Machine is in compliance with the Offering Terms. The rights and obligations set forth in this paragraph remain in effect during the term of this License Supplement and for two (2) years thereafter. ATOS will notify Customer in writing if any such verification indicates that Customer has used an Authorized Machine or ATOS Program in excess of its use authorizations or is otherwise not in compliance with the Offering Terms. In addition to Customer's obligations to pay for any excess use, Customer agrees to promptly pay directly to ATOS the charges that ATOS specifies in an invoice for other charges and other liabilities determined as a result of such verification.

11. Term and Termination

- a. The term of this License Supplement commences upon its acceptance by both parties, and terminates as specified below.
- b. Customer may terminate all rights and obligations specified in this License Supplement for any reason by providing written notice to ATOS. The effective date for such termination will be the later of (i) ATOS's receipt of such notice, or (ii) any effective date later than item (i) specified by Customer in such notice.
- c. Either party may terminate this License Supplement if the other fails to comply with any of the terms, provided the party who is not complying is given written notice and reasonable time, not to exceed thirty (30) days, to comply.
- d. Any terms of this License Supplement which by their nature extend beyond termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

12. Incorporated Information; Relationship to Other Agreements

By signing this License Supplement, Customer represents and warrants that by acquiring an Authorized Machine, Customer has reviewed and agrees to all of the ATOS terms and conditions that are applicable to the Authorized Machine and incorporated by reference into this License Supplement, and agrees that such terms and conditions are enforceable between the parties.

As specified in Section 3.1 above, the Machine Code License is incorporated by reference into this License Supplement. In addition, if a ATOS Customer Agreement or an equivalent master agreement is in effect between Customer and ATOS, such agreement is incorporated by reference into this License Supplement; otherwise, the terms under the following headings in Part 1 and Part 2 (as applicable) of the ATOS Hardware Product Warranty (provided at the following address: **Error! Hyperlink reference not valid.**<http://support.Atos.com/ols/product/platforms/escala/warranty>) are incorporated by reference into this License Supplement: "Limitation of Liability", "Governing Law" and "Jurisdiction". In the event of a conflict between the incorporated terms and the terms of this License Supplement, the terms of this License Supplement prevail.

13. General Terms

- a. Customer may not assign, or otherwise transfer, this License Supplement or Customer's rights under this License Supplement, or delegate Customer's obligations, without ATOS's prior written consent. Any attempt to do so is void.
- b. In the event that any provision of this License Supplement is held to be invalid or unenforceable, the remaining provisions of this License Supplement will remain in full force and effect.

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This License Supplement (including all terms and conditions incorporated herein by reference), and each Addendum, are the complete agreement regarding Customer's right to assign and use Mobile Processors and Mobile Memory on each Authorized Machine, and replace all prior communications, representations, undertakings, warranties, promises, covenants, and commitments between Customer and ATOS regarding use of Mobile Processors and Mobile Memory. In entering into this License Supplement, neither party is relying on any representation that is not specified in the License Supplement, including terms incorporated by reference. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this License Supplement by signing this License Supplement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this License Supplement made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Mobile Processors and Mobile Memory configured for use on an Authorized Machine are subject to it.

Agreed to:
{Customer legal name} ("Customer")

Agreed to:
ATOS ("ATOS")

By _____
Authorized signature

By _____
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Customer identification number:

License Supplement number:

Customer address:

ATOS address:

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Exhibit 1 – List of Eligible Programs

The Programs specified below are Eligible Programs under terms of the License Supplement.

Description
AIX V6.1 Standard Edition
AIX V6.1 Enterprise Edition
AIX V7.1 Standard Edition
AIX V7.1 Enterprise Edition
AIX V7.2 Standard Edition
AIX V7.2 Enterprise Edition
PowerSC Standard
PowerVM Standard
PowerVM Enterprise
PowerHA SystemMirror
PowerVC
Cloud PowerVC Manager