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If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

#### Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

#### Program Transfer

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

#### 2. Charges

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

#### 3. No Warranty

**SUBJECT TO ANY STATUTORY WARRANTIES WHICH CAN NOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM OR TECHNICAL SUPPORT, IF ANY.**

The exclusion also applies to any of IBM's Program developers and suppliers.

Manufacturers, suppliers, or publishers of non-IBM Programs may provide their own warranties.

IBM does not provide technical support, unless IBM specifies otherwise.

#### **4. Limitation of Liability**

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

**UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:**

- 1. LOSS OF, OR DAMAGE TO, DATA;**
- 2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- 3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

**SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

#### **5. General**

- 1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.**
- 2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.**
- 3. You agree to comply with all applicable export and import laws and regulations.**
- 4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).**
- 5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.**
- 6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.**
- 7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.**

#### **6. Governing Law, Jurisdiction, and Arbitration**

##### **Governing Law**

**Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.**

**The United Nations Convention on Contracts for the International Sale of Goods does not apply.**

#### **Jurisdiction**

**All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.**

#### **Part 2 - Country-unique Terms**

##### **AMERICAS**

**ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6): The following exception is added to this section:**

**Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.**

**BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6): The following exception is added to this section:**

**Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.**

**CANADA: General (Section 5): The following replaces item 7:**

**7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable."**

**Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:**

**the laws in the Province of Ontario"**

**PERU: Limitation of Liability (Section 4): The following is added at the end of this section:**

**In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").**

**UNITED STATES OF AMERICA: General (Section 5): The following is added to this section:**

**U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.**

**Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:**

**the laws of the State of New York, United States of America**

##### **ASIA PACIFIC**

**AUSTRALIA: No Warranty (Section 3): The following is added:**

**Although IBM specifies that there are no warranties, You may have certain rights under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.**

**Limitation of Liability (Section 4):** The following is added:

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State or Territory in which You acquired the Program license

**CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America

The following is added to this section:

#### **Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of Hong Kong Special Administrative Region of China

**INDIA: Limitation of Liability (Section 4):** The following replaces the terms of items 1 and 2 of the first paragraph:

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

**General (Section 5):** The following replaces the terms of item 5:

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim



that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** The following is added to this section:

**Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**JAPAN: General (Section 5):** The following is inserted after item 5:

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

**MALAYSIA: Limitation of Liability (Section 4):** The word "SPECIAL" in item 2 of the third paragraph is deleted:

**NEW ZEALAND: No Warranty (Section 3):** The following is added:

Although IBM specifies that there are no warranties, You may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if You require the goods for the purposes of a business as defined in that Act.

**Limitation of Liability (Section 4):** The following is added:

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

**PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2):** The following is added:

All banking charges incurred in the People's Republic of China will be borne by You and those incurred outside the People's Republic of China will be borne by IBM.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America (except when local law requires otherwise)

**PHILIPPINES: Limitation of Liability (Section 4):** The following replaces the terms of item 2 of the third paragraph:

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

**Governing Law, Jurisdiction, and Arbitration (Section 6):** The following is added to this section:

**Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**SINGAPORE: Limitation of Liability (Section 4):** The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.

**General (Section 5):** The following replaces the terms of item 7:

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

**EUROPE, MIDDLE EAST, AFRICA (EMEA)**

**No Warranty (Section 3):** In the European Union, the following is added at the beginning of this section:

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions of this Section 3.

**Limitation of Liability (Section 4):** In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Limitation of Liability (Section 4): In France and Belgium, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Governing Law, Jurisdiction, and Arbitration (Section 6)

Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by:

- 1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia;
- 2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna;
- 3) "the laws of Finland" in Estonia, Latvia, and Lithuania;
- 4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and
- 5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

Jurisdiction

The following exceptions are added to this section:

- 1) In Austria the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City);
- 2) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts;
- 3) in Belgium and Luxembourg, for all disputes arising out of this Agreement or related to its interpretation or its execution, only the law and the courts of the capital of the country in which Your registered office and/or commercial office is located are competent;
- 4) in France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris;
- 5) in Russia, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow;
- 6) in South Africa, Namibia, Lesotho and Swaziland, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg;
- 7) in Turkey all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey;
- 8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for Greece, b) Tel Aviv-Jaffa for Israel, c) Milan for Italy, d) Lisbon for Portugal, and e) Madrid for Spain; and
- 9) in the United Kingdom, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

#### Arbitration

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules.

The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In Estonia, Latvia and Lithuania all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

**AUSTRIA: No Warranty (Section 3):** The terms of this section are completely replaced by the following:

The following limited warranty applies if You have paid a charge to obtain the Program:

The warranty period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for an IBM Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

The warranty applies only to the unmodified portion of the Program.

If the Program does not function as warranted during the warranty period and the problem cannot be resolved with information available. You may return the Program to the party from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it to obtain the refund.

This is our sole obligation to You, except as otherwise required by applicable statutory law.

General (Section 5): The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

GERMANY: No Warranty (Section 3): The same changes apply as those in No Warranty (Section 3) under Austria above.

Limitation of Liability (Section 4): The following paragraph is added to this Section:

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

General (Section 5): The following replaces the terms of item 5:

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3 (No Warranty) of this Agreement.

HUNGARY: Limitation of Liability (Section 4): The following is added at the end of this section:

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: No Warranty (Section 3): The following is added to this section:

Except as expressly provided in these terms and conditions, or section 12 of the Sale of Goods Act 1893 (as amended by the Sale of Goods and Supply of Services Act 1980 ("the 1980 Act")), all conditions and warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, section 39 of the 1980 Act).

Limitation of Liability (Section 4): The following replaces the terms of this section in its entirety:

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same

loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the Items for Which IBM is Not Liable below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) EUR 125,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

#### Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

**ITALY: General (Section 5):** The following is added to this section:

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

**SLOVAKIA: Limitation of Liability (Section 4):** The following is added to the end of the last paragraph:

The limitations apply to the extent they are not prohibited under 373-386 of the Slovak Commercial Code.

**General (Section 5):** The terms of item 5 are replaced with the following:

**THE PARTIES AGREE THAT, AS DEFINED BY APPLICABLE LOCAL LAW, ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER THAN FOUR YEARS FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.**

**SWITZERLAND: General (Section 5):** The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

**UNITED KINGDOM: No Warranty (Section 3):** The following replaces the first sentence in the first paragraph of this section:

**SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, IBM MAKES NO WARRANTY OR CONDITION EITHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM.**

**Limitation of Liability (Section 4):** The following replaces the terms of this section in its entirety:

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for:

a. death or personal injury caused by the negligence of IBM;

b. any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section; and

c. subject always to the Items for Which IBM is Not Liable below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) 75,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

**Items for Which IBM is Not Liable**

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;

2. special, indirect, or consequential loss; or

3. loss of profits, business, revenue, goodwill, or anticipated savings.

Z125-5589-03 (06/2006)

**LICENSE INFORMATION**

The Programs listed below are licensed under the following terms and conditions in addition to those of the International License Agreement for Non-Warranted Programs.

**Program Name:** IBM WebSphere Application Server V1.1

**Program Number:** COMMUNITY

**Authorization for Use on Home/Portable Computer:** The Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

**Limited Use Rights for Other IBM Programs**

If You acquired this Program as part of another IBM Program ("Principal Program") that lists this Program under "Other IBM Programs", You received this Program only in support of the Principal Program, and Your rights to use this Program will be limited by the license of the Principal Program. Please contact Your IBM Sales Representative if You wish to acquire a separate license to this Program not limited by the Principal Program's license terms.

## Other IBM Programs

The Program is licensed as a multi-product package and includes other products distributed with the Program ("Other IBM Programs"). You are authorized to install and use such Other IBM Programs only in association with Your licensed use of the Program under this Agreement. The Other IBM Programs may not be used for any other purpose. You are not authorized to transfer or remarket the Other IBM Programs. The terms of the Program's Agreement may replace or modify the license terms for the Other IBM Programs. In the event of conflict, the Program's terms supersede the terms of the license agreement which accompanies the Other IBM Programs. When Your right to use the Program expires or terminates, You must discontinue use, destroy or promptly return all copies of the Other IBM Programs to the party from whom You acquired it; if You downloaded the Other IBM Programs contact the party from whom You acquired it. If You wish to license the Other IBM Programs for any use beyond the limits set forth above, please contact an IBM Sales Representative or the party from whom You acquired it to obtain the appropriate licenses.

The following are Other IBM Programs licensed with the Programs:  
IBM Cloudscape

## Excluded Components

The provisions of this paragraph do not apply to the extent they are held to be invalid or unenforceable under the law that governs this license. The components listed below are "Excluded Components." Notwithstanding any of the terms in the Agreement or any other agreement You may have with IBM:

(a) the third party suppliers of such Excluded Components ("Suppliers") provide the components WITHOUT WARRANTIES OF ANY KIND and, such Suppliers DISCLAIM ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AND CONDITIONS INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF TITLE, NON-INFRINGEMENT OR INTERFERENCE AND THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EXCLUDED COMPONENTS;

(b) in no event are the Suppliers liable for any direct, indirect, incidental, special, exemplary, punitive or consequential damages, including but not limited to lost data, lost savings, and lost profits, with respect to the Excluded Components; and,

(c) IBM and the Suppliers are not liable to You, and will not defend, indemnify, or hold You harmless for any claims arising from or related to the Excluded Components.

Notwithstanding these exclusions, in Germany and Austria, IBM's warranty and liability for the Excluded Components is governed only by the respective terms applicable for Germany and Austria in the IBM license agreements.

Notices and important information that IBM is required to provide to You with respect to the Excluded Components, including instructions for obtaining source code for certain Excluded Components, may be found in the NOTICES file(s) that accompanies the Program.

Your use of the Excluded Components is governed by the terms of the Agreement and not by any terms that may be contained in the NOTICES file(s). The terms contained in the Agreement are offered by IBM and not by any other party. Future Program updates or fixpacks may contain additional Excluded Components. Such additional Excluded Components, and related notices and information, if any, will be listed in another NOTICES file that accompanies the Program update or fixpack.

The following are Excluded Components:

- \* Active IO 1.1, 2.0-r118
- \* ActiveMQ 3.2.4
- \* Ant 1.5.4
- \* Ant 1.6.5
- \* Antlr 2.7.5
- \* ASM 1.5.3



- \* AXIS 1.4
- \* BrowserLauncher V1.4b1
- \* Castor 0.9.5.3.ibm
- \* CGLIB 2.1\_3
- \* Commons-beanutils 1.7.0
- \* Commons-cli 1.0
- \* Commons-collections 3.1
- \* Commons-digester 1.7
- \* Commons-discovery 0.2
- \* Commons-el 1.0
- \* Commons-fileupload 1.1.1
- \* Commons-i18n 1.0-G1M5
- \* Commons-io 1.2
- \* Commons-logging 1.0.4
- \* Commons-modeler 1.1-20060524
- \* Commons-Primitives 1.0-20041207
- \* Concurrent 1.3.4
- \* Derby 10.1.3
- \* DWR 1.1.1
- \* Geronimo 1.1
- \* Geronimo Devtools 1.1
- \* Geronimo Specs 1.1
- \* Howl 1.0.1-1
- \* HSQLDB 1.7.1
- \* JDOM 1.0
- \* JSTL 1.1.1
- \* JUDDI 0.9rc4.ibm
- \* JUnit 3.8.1
- \* Log4J 1.2.11
- \* MX4J 3.0.1
- \* OpenEJB 2.1
- \* Oro 2.0.8
- \* Pluto 1.0.1
- \* Quick 1.0.1
- \* RegExp 1.3
- \* Scout 0.5
- \* StAX API 1.0.1
- \* Tomcat 5.5.15
- \* TranQL 1.3
- \* TranQL Connector 1.2
- \* TranQL Vendors 1.1
- \* Velocity 1.4
- \* WSDL4J 1.5.2
- \* Xalan V2.5.2
- \* XML4J V4.3.7
- \* XMLBeans 2.0.0
- \* XPP3 1.1.3.4.M
- \* XStream 1.1.3

#### Specified Operating Environment

The Program's specifications and specified operating environment information may be found in documentation accompanying the Program, if available, such as a read-me file, or other information published by IBM, such as an announcement letter.

## **Program-unique Terms**

**You are responsible for complying with all licenses, agreements and copyright laws for third-party software that you use in conjunction with the Program. The Program contains certain components that may be available to you under a separate license agreement and such license agreement may allow you to make derivative works of the components. To the extent you make authorized derivative works of such components, you may use such modified components with the Program. This Agreement does not authorize you to make any derivative works of the Program or any components thereof. Nothing herein grants you any greater right than you may otherwise have to use third-party software not distributed with the Program.**

**UNLIMITED COPY COMPONENTS: You are authorized to install and use an unlimited number of copies of the Program provided you include all IBM copyright and other proprietary statements with such copies.**

**CLOUDSCAPE COMPONENTS: You may use the IBM Cloudscape components solely for development, testing and evaluation of applications and for production use only as a data repository for data generated and managed by the Program.**

**REDISTRIBUTION RIGHTS: Notwithstanding anything to the contrary in the Agreement, redistribution rights with or without support for the Program may be provided under a separate agreement for the binary code versions of the Program. Please contact an IBM Sales Representative or revisit the location from which you obtained the Program to obtain information for the appropriate royalty-free distribution license.**

**D/N: L-WGSD-6S5RCJ**

**P/N: L-WGSD-6S5RCJ**

## **java-1\_6\_0-ibm**

### **International License Agreement for Non-Warranted Programs**

#### **Part 1 - General Terms**

**BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,**

**- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND**

**- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.**

**"IBM" is International Business Machines Corporation or one of its subsidiaries.**

**"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/> . The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.**

**"Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.**

**A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of Your eligibility for future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide You with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.**

**"You" and "Your" refer either to an individual person or to a single legal entity.**

**This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of the IBM International Passport Advantage Agreement, the terms of the latter agreement prevail.**

#### **1. Entitlement**

##### **License**

**The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.**

**IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.**

**You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.**

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

#### Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

#### Program Transfer

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

#### 2. Charges

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

#### 3. No Warranty

**SUBJECT TO ANY STATUTORY WARRANTIES WHICH CAN NOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM OR TECHNICAL SUPPORT, IF ANY.**

The exclusion also applies to any of IBM's Program developers and suppliers.

Manufacturers, suppliers, or publishers of non-IBM Programs may provide their own warranties.

IBM does not provide technical support, unless IBM specifies otherwise.

#### 4. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

**UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:**

1. LOSS OF, OR DAMAGE TO, DATA;
2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

**SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

#### **5. General**

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
3. You agree to comply with all applicable export and import laws and regulations.
4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).
5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

#### **6. Governing Law, Jurisdiction, and Arbitration**

##### **Governing Law**

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

## **Jurisdiction**

All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

### **Part 2 - Country-unique Terms**

#### **AMERICAS**

**ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6):** The following exception is added to this section:

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

**BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6):** The following exception is added to this section:

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

**CANADA: General (Section 5):** The following replaces item 7:

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable."

**Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws in the Province of Ontario"

**PERU: Limitation of Liability (Section 4):** The following is added at the end of this section:

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

**UNITED STATES OF AMERICA: General (Section 5):** The following is added to this section:

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America

#### **ASIA PACIFIC**

**AUSTRALIA: No Warranty (Section 3):** The following is added:

Although IBM specifies that there are no warranties, You may have certain rights under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

**Limitation of Liability (Section 4):** The following is added:

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State or Territory in which You acquired the Program license

**CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America

The following is added to this section:

#### **Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of Hong Kong Special Administrative Region of China

**INDIA: Limitation of Liability (Section 4):** The following replaces the terms of items 1 and 2 of the first paragraph:

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

**General (Section 5):** The following replaces the terms of item 5:

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** The following is added to this section:

**Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**JAPAN: General (Section 5):** The following is inserted after item 5:

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

**MALAYSIA: Limitation of Liability (Section 4):** The word "SPECIAL" in item 2 of the third paragraph is deleted:

**NEW ZEALAND: No Warranty (Section 3):** The following is added:

Although IBM specifies that there are no warranties, You may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if You require the goods for the purposes of a business as defined in that Act.

**Limitation of Liability (Section 4):** The following is added:

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

**PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2):** The following is added:

All banking charges incurred in the People's Republic of China will be borne by You and those incurred outside the People's Republic of China will be borne by IBM.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America (except when local law requires otherwise)

**PHILIPPINES: Limitation of Liability (Section 4):** The following replaces the terms of item 2 of the third paragraph:

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic



consequential damages; or

**Governing Law, Jurisdiction, and Arbitration (Section 6):** The following is added to this section:

**Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**SINGAPORE: Limitation of Liability (Section 4):** The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.

**General (Section 5):** The following replaces the terms of item 7:

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

**EUROPE, MIDDLE EAST, AFRICA (EMEA)**

**No Warranty (Section 3):** In the European Union, the following is added at the beginning of this section:

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions of this Section 3.

**Limitation of Liability (Section 4):** In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO,

DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Limitation of Liability (Section 4): In France and Belgium, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Governing Law, Jurisdiction, and Arbitration (Section 6)

Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by:

- 1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia;
- 2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna;
- 3) "the laws of Finland" in Estonia, Latvia, and Lithuania;
- 4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and
- 5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

Jurisdiction

The following exceptions are added to this section:

- 1) In Austria the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City);
- 2) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts;
- 3) in Belgium and Luxembourg, for all disputes arising out of this Agreement or related to its interpretation or its execution, only the law and the courts of the capital of the country in which Your registered office and/or commercial office is located are competent;
- 4) in France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris;
- 5) in Russia, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow;
- 6) in South Africa, Namibia, Lesotho and Swaziland, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg;
- 7) in Turkey all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey;
- 8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for Greece, b) Tel Aviv-Jaffa for Israel, c) Milan for Italy, d) Lisbon for Portugal, and e) Madrid for Spain; and
- 9) in the United Kingdom, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

#### **Arbitration**

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules.

The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In Estonia, Latvia and Lithuania all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

**AUSTRIA: No Warranty (Section 3):** The terms of this section are completely replaced by the following:

The following limited warranty applies if You have paid a charge to obtain the Program:

The warranty period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for an IBM Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

The warranty applies only to the unmodified portion of the Program.

If the Program does not function as warranted during the warranty period and the problem cannot be resolved with information available. You may return the Program to the party from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it to obtain the refund.

This is our sole obligation to You, except as otherwise required by applicable statutory law.

General (Section 5): The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

GERMANY: No Warranty (Section 3): The same changes apply as those in No Warranty (Section 3) under Austria above.

Limitation of Liability (Section 4): The following paragraph is added to this Section:

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

General (Section 5): The following replaces the terms of item 5:

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3 (No Warranty) of this Agreement.

HUNGARY: Limitation of Liability (Section 4): The following is added at the end of this section:

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: No Warranty (Section 3): The following is added to this section:

Except as expressly provided in these terms and conditions, or section 12 of the Sale of Goods Act 1893 (as amended by the Sale of Goods and Supply of Services Act 1980 ("the 1980 Act")), all conditions and warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, section 39 of the 1980 Act).

Limitation of Liability (Section 4): The following replaces the terms of this section in its entirety:

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the Items for Which IBM is Not Liable below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) EUR 125,000, or 2) 125 percent of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

#### Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

**ITALY: General (Section 5):** The following is added to this section:

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

**SLOVAKIA: Limitation of Liability (Section 4):** The following is added to the end of the last paragraph:

The limitations apply to the extent they are not prohibited under Sections 373-386 of the Slovak Commercial Code.

**General (Section 5):** The terms of item 5 are replaced with the following:

**THE PARTIES AGREE THAT, AS DEFINED BY APPLICABLE LOCAL LAW, ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER THAN FOUR YEARS FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.**

**SWITZERLAND: General (Section 5):** The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

**UNITED KINGDOM: No Warranty (Section 3):** The following replaces the first sentence in the first paragraph of this section:

**SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, IBM MAKES NO WARRANTY OR CONDITION EITHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM.**

**Limitation of Liability (Section 4):** The following replaces the terms of this section in its entirety:

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for:

a. death or personal injury caused by the negligence of IBM;

b. any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section; and

c. subject always to the Items for Which IBM is Not Liable below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) Pounds Sterling 75,000, or 2) 125 percent of the amount You paid for the Program directly relating to the Default. These limits also apply to IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

#### Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;

2. special, indirect, or consequential loss; or

3. loss of profits, business, revenue, goodwill, or anticipated savings.

Z125-5589-03 (07/2008)

#### LICENSE INFORMATION

The Programs listed below are licensed under the following terms and conditions in addition to those of the International License Agreement for Non-Warranted Programs.

Program Name: IBM(R) 32-bit SDK for Linux(R) on Intel(R) architecture, Java(TM) Technology Edition, Version 6  
Program Number: 6207-001

Authorization for Use on Home/Portable Computer: The Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

Program Name: IBM(R) 64-bit SDK for Linux(R) on AMD64 / EM64T architecture, Java(TM) Technology Edition, Version 6

Program Number: 6207-001

Authorization for Use on Home/Portable Computer: The Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

Program Name: IBM(R) 32-bit SDK for Linux(R) on System i(TM) and System p(TM) architecture, Java(TM) Technology Edition, Version 6

Program Number: 6207-001

Authorization for Use on Home/Portable Computer: The Program may be stored on the primary machine and

another machine, provided that the Program is not in active use on both machines at the same time.

**Program Name:** IBM(R) 64-bit SDK for Linux(R) on System i(TM) and System p(TM) architecture, Java(TM) Technology Edition, Version 6

**Program Number:** 6207-001

**Authorization for Use on Home/Portable Computer:** The Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

**Program Name:** IBM(R) 31-bit SDK for Linux(R) on System z(TM) architecture, Java(TM) Technology Edition, Version 6

**Program Number:** 6207-001

**Authorization for Use on Home/Portable Computer:** The Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

**Program Name:** IBM(R) 64-bit SDK for Linux(R) on System z(TM) architecture, Java(TM) Technology Edition, Version 6

**Program Number:** 6207-001

**Authorization for Use on Home/Portable Computer:** The Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

**Program Name:** IBM(R) 32-bit Runtime Environment for Linux(R) on Intel(R) architecture, Java(TM) Technology Edition, Version 6

**Program Number:** 6207-001

**Authorization for Use on Home/Portable Computer:** The Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

**Program Name:** IBM(R) 64-bit Runtime Environment for Linux(R) on AMD64 / EM64T architecture, Java(TM) Technology Edition, Version 6

**Program Number:** 6207-001

**Authorization for Use on Home/Portable Computer:** The Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

**Program Name:** IBM(R) 32-bit Runtime Environment for Linux(R) on System i(TM) and System p(TM), Java(TM) Technology Edition, Version 6

**Program Number:** 6207-001

**Authorization for Use on Home/Portable Computer:** The Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

**Program Name:** IBM(R) 64-bit Runtime Environment for Linux(R) on System i(TM) and System p(TM), Java(TM) Technology Edition, Version 6

**Program Number:** 6207-001

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**Program Name:** IBM(R) 31-bit Runtime Environment for Linux(R) on System z(TM), Java(TM) Technology Edition, Version 6

**Program Number:** 6207-001

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**Program Number:** 6207-001

**Authorization for Use on Home/Portable Computer:** The Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

## Limited Use Rights for Other IBM Programs

If You acquired this Program as part of another IBM Program ("Principal Program") that lists this Program under "Other IBM Programs", You received this Program only in support of the Principal Program, and Your rights to use this Program will be limited by the license of the Principal Program. Please contact Your IBM Sales Representative if You wish to acquire a separate license to this Program not limited by the Principal Program's license terms.

## Excluded Components

The provisions of this paragraph do not apply to the extent they are held to be invalid or unenforceable under the law that governs this license. The components listed below are "Excluded Components." Notwithstanding any of the terms in the Agreement or any other agreement You may have with IBM:

(a) the third party suppliers of such Excluded Components ("Suppliers") provide the components WITHOUT WARRANTIES OF ANY KIND and, such Suppliers DISCLAIM ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AND CONDITIONS INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF TITLE, NON-INFRINGEMENT OR INTERFERENCE AND THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EXCLUDED COMPONENTS;

(b) in no event are the Suppliers liable for any direct, indirect, incidental, special, exemplary, punitive or consequential damages, including but not limited to lost data, lost savings, and lost profits, with respect to the Excluded Components; and,

(c) IBM and the Suppliers are not liable to You, and will not defend, indemnify, or hold You harmless for any claims arising from or related to the Excluded Components.

Notwithstanding these exclusions, in Germany and Austria, IBM's warranty and liability for the Excluded Components is governed only by the respective terms applicable for Germany and Austria in the IBM license agreements.

Notices and important information that IBM is required to provide to You with respect to the Excluded Components, including instructions for obtaining source code for certain Excluded Components, may be found in the NOTICES file(s) that accompanies the Program.

Your use of the Excluded Components is governed by the terms of the Agreement and not by any terms that may be contained in the NOTICES file(s). The terms contained in the Agreement are offered by IBM and not by any other party. Future Program updates or fixpacks may contain additional Excluded Components. Such additional Excluded Components, and related notices and information, if any, will be listed in another NOTICES file that accompanies the Program update or fixpack.

The following are Excluded Components:

Apache Harmony :-

- \* Annotation (Subversion: r573440 2007-09-11 (Arena R4745))
- \* Beans (Subversion: r573440 2007-09-11 (Arena R4745))
- \* jndi (Subversion: r573440 2007-09-11 (Arena R4745))
- \* lang-management (Subversion: r573440 2007-09-11 (Arena R4745))
- \* logging (Subversion: r573440 2007-09-11 (Arena R4745))
- \* security (Subversion: r573440 2007-09-11 (Arena R4745))
- \* sql (Subversion: r573440 2007-09-11 (Arena R4745))
- \* java.util (part of luni) (Subversion: r573440 2007-09-11 (Arena R4745))

## Specified Operating Environment

The Program's specifications and specified operating environment information may be found in documentation accompanying the Program, if available, such as a read-me file, or other information published by IBM, such as an announcement letter.



## **Program-unique Terms**

### **1. GENERAL**

**To the extent of any conflict between the terms of the International License Agreement for Non-Warranted Programs and this License Information, the terms of this License Information shall prevail.**

**WHERE THE PROGRAM HAS BEEN PROVIDED TO YOU SEPARATELY BY IBM, IT IS PROVIDED AT NO CHARGE.**

**The Program consists of binary code that executes on the operating system(s) specified in Readme files that accompany the Program.**

### **3. TRADEMARKS AND COPYRIGHT: YOUR RESPONSIBILITIES**

- a) You shall not modify, delete, suppress, or obscure any copyright, trademark or other legal notice (whether from IBM or any third party) which may be displayed by or included within the Program.**
- b) Java and all Java-based Trademarks are trademarks of Sun Microsystems, Inc. in the United States, other countries, or both.**
- c) You recognize IBM's and Sun Microsystems, Inc.'s ownership and title to their respective trademarks and of any goodwill attaching thereto, including goodwill resulting from use. You will not use or attempt to register any trademark which is confusingly similar to such IBM or Sun trademarks.**

### **3. PROOF OF ENTITLEMENT**

**This License Agreement constitutes your Proof of Entitlement.**

**D/N: L-RVEK-75GKYF**

**P/N: L-RVEK-75GKYF**

## java-1\_4\_2-ibm

### International License Agreement for Non-Warranted Programs

#### Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND

- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.

"Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of Your eligibility for future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide You with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of the IBM International Passport Advantage Agreement, the terms of the latter agreement prevail.

#### 1. Entitlement

#### License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

#### Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

#### Program Transfer

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

## 2. Charges

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

### 3. No Warranty

SUBJECT TO ANY STATUTORY WARRANTIES WHICH CAN NOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM OR TECHNICAL SUPPORT, IF ANY.

The exclusion also applies to any of IBM's Program developers and suppliers.

Manufacturers, suppliers, or publishers of non-IBM Programs may provide their own warranties.

IBM does not provide technical support, unless IBM specifies otherwise.

### 4. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1. LOSS OF, OR DAMAGE TO, DATA;
2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

### 5. General

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
2. In the event that any provision of this Agreement is held to be invalid or

unenforceable, the remaining provisions of this Agreement remain in full force and effect.

3. You agree to comply with all applicable export and import laws and regulations.

4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).

5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

## 6. Governing Law, Jurisdiction, and Arbitration

### Governing Law

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

### Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

## Part 2 - Country-unique Terms

### AMERICAS

ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6): The following exception is added to this section:

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6): The following

exception is added to this section:

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

CANADA: General (Section 5): The following replaces item 7:

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable."

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws in the Province of Ontario"

PERU: Limitation of Liability (Section 4): The following is added at the end of this section:

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

UNITED STATES OF AMERICA: General (Section 5): The following is added to this section:

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America

ASIA PACIFIC

AUSTRALIA: No Warranty (Section 3): The following is added:

Although IBM specifies that there are no warranties, You may have certain rights under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability (Section 4): The following is added:

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws

of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State or Territory in which You acquired the Program license

CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America

The following is added to this section:

#### Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of Hong Kong Special Administrative Region of China

INDIA: Limitation of Liability (Section 4): The following replaces the terms of items 1 and 2 of the first paragraph:

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

General (Section 5): The following replaces the terms of item 5:

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

Governing Law, Jurisdiction, and Arbitration (Section 6): The following is added to this section:

#### Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

JAPAN: General (Section 5): The following is inserted after item 5:

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA: Limitation of Liability (Section 4): The word "SPECIAL" in item 2 of the third paragraph is deleted:

NEW ZEALAND: No Warranty (Section 3): The following is added:

Although IBM specifies that there are no warranties, You may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if You require the goods for the purposes of a business as defined in that Act.

Limitation of Liability (Section 4): The following is added:

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject



to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2): The following is added:

All banking charges incurred in the People's Republic of China will be borne by You and those incurred outside the People's Republic of China will be borne by IBM.

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America (except when local law requires otherwise)

PHILIPPINES: Limitation of Liability (Section 4): The following replaces the terms of item 2 of the third paragraph:

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

Governing Law, Jurisdiction, and Arbitration (Section 6): The following is added to this section:

#### Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

SINGAPORE: Limitation of Liability (Section 4): The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.

General (Section 5): The following replaces the terms of item 7:

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a

party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

#### EUROPE, MIDDLE EAST, AFRICA (EMEA)

No Warranty (Section 3): In the European Union, the following is added at the beginning of this section:

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions of this Section 3.

Limitation of Liability (Section 4): In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Limitation of Liability (Section 4): In France and Belgium, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

The above limitation shall not apply to damages for bodily injuries (including

death) and damages to real property and tangible personal property for which IBM is legally liable.

2. UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

#### Governing Law, Jurisdiction, and Arbitration (Section 6)

##### Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by:

- 1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia;
- 2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna;
- 3) "the laws of Finland" in Estonia, Latvia, and Lithuania;
- 4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and
- 5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

##### Jurisdiction

The following exceptions are added to this section:

- 1) In Austria the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City);
- 2) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts;
- 3) in Belgium and Luxembourg, all disputes arising out of this Agreement or related to its interpretation or its execution, the law, and the courts of the

capital city, of the country of Your registered office and/or commercial site location only are competent;

4) in France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris;

5) in Russia, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow;

6) in South Africa, Namibia, Lesotho and Swaziland, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg;

7) in Turkey all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey;

8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for Greece, b) Tel Aviv-Jaffa for Israel, c) Milan for Italy, d) Lisbon for Portugal, and e) Madrid for Spain; and

9) in the United Kingdom, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

#### Arbitration

In Albania, Armenia, Azerbaijan, Belarus, Bosnia- Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules.

The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In Estonia, Latvia and Lithuania all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

AUSTRIA: No Warranty (Section 3): The terms of this section are completely replaced by the following:

The following limited warranty applies if You have paid a charge to obtain the Program:

The warranty period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for an IBM Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

The warranty applies only to the unmodified portion of the Program.

If the Program does not function as warranted during the warranty period and the problem cannot be resolved with information available. You may return the Program to the party from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it to obtain the refund.

This is our sole obligation to You, except as otherwise required by applicable statutory law.

General (Section 5): The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

GERMANY: No Warranty (Section 3): The same changes apply as those in No Warranty (Section 3) under Austria above.

Limitation of Liability (Section 4): The following paragraph is added to this Section:

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

General (Section 5): The following replaces the terms of item 5:

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3 (No Warranty) of this Agreement.

HUNGARY: Limitation of Liability (Section 4): The following is added at the end of this section:

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: No Warranty (Section 3): The following is added to this section:

Except as expressly provided in these terms and conditions, or section 12 of the Sale of Goods Act 1893 (as amended by the Sale of Goods and Supply of Services Act 1980 ("the 1980 Act")), all conditions and warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, section 39 of the 1980 Act).

Limitation of Liability (Section 4): The following replaces the terms of this section in its entirety:

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the Items for Which IBM is Not Liable below, for physical damage to Your tangible property resulting from the negligence of IBM.
2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) EUR 125,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

#### Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

ITALY: General (Section 5): The following is added to this section:

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal

data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

SLOVAKIA: Limitation of Liability (Section 4): The following is added to the end of the last paragraph:

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

General (Section 5): The terms of item 5 are replaced with the following:

THE PARTIES AGREE THAT, AS DEFINED BY APPLICABLE LOCAL LAW, ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER THAN FOUR YEARS FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

SWITZERLAND: General (Section 5): The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

UNITED KINGDOM: No Warranty (Section 3): The following replaces the first sentence in the first paragraph of this section:

SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, IBM MAKES NO WARRANTY OR CONDITION EITHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON- INFRINGEMENT, REGARDING THE PROGRAM.

Limitation of Liability (Section 4): The following replaces the terms of this section in its entirety:

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for:

a. death or personal injury caused by the negligence of IBM;

b. any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re- enactment of either such Section; and

c. subject always to the Items for Which IBM is Not Liable below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) £75,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

#### Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

Z125-5589-03 (11/2002)

#### LICENSE INFORMATION

The Programs listed below are licensed under the following terms and conditions in addition to those of the International License Agreement for Non-Warranted Programs.

Program Name: IBM(R) 32-bit SDK for Linux(R) on Intel(R) architecture, Java(TM) 2 Technology Edition, Version 1.4.2  
Program Number: 5648-C98  
Authorization for Use on Home/Portable Computer: 1

#### EXPLANATIONS OF TERMS:

Authorization for Use on Home/Portable Computer:

"1" means that the Program may be stored on the primary machine and another machine, provided that the Program is not in active use on both machines at the same time.

"2" means that You may not copy and use this Program on another computer without paying additional license fees.

#### Specified Operating Environment

The Program's specifications and specified operating environment information may be found in documentation accompanying the Program, if available, such as a read-me file, or other information published by IBM, such as an announcement letter.

#### Program-unique Terms

##### 1. GENERAL

To the extent of any conflict between the terms of the International License Agreement for Non-Warranted Programs and this License Information, the terms of this License Information shall prevail.



WHERE THE PROGRAM IS PROVIDED TO YOU SEPARATELY BY IBM, IT IS PROVIDED AT NO CHARGE.

The Program consists of binary code that executes on the operating system(s) specified in Readme files that accompany the Program.

## 2. TRADEMARKS AND COPYRIGHT: YOUR RESPONSIBILITIES

- a) You shall not modify, delete, suppress, or obscure any copyright, trademark or other legal notice (whether from IBM or any third party) which may be displayed by or included within the Program.
- b) Java and all Java-based Trademarks are trademarks of Sun Microsystems, Inc. in the United States, other countries, or both.
- c) You recognize IBM's and Sun Microsystems, Inc.'s ownership and title to their respective trademarks and of any goodwill attaching thereto, including goodwill resulting from use. You will not use or attempt to register any trademark which is confusingly similar to such IBM or Sun trademarks.

## 3. PROOF OF ENTITLEMENT

This License Agreement constitutes your Proof of Entitlement.

D/N: L-ADAN-5YWEE2

P/N: L-ADAN-5YWEE2

## java-1\_5\_0-bea

BEA Systems, Inc. -- Binary License Agreement

BEA JRockit

READ THE TERMS OF THIS AGREEMENT (THE "AGREEMENT") CAREFULLY BEFORE DOWNLOADING OR INSTALLING JROCKIT. BY DOWNLOADING OR INSTALLING JROCKIT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. INDICATE YOUR ACCEPTANCE OF THESE TERMS BY SELECTING THE "YES" BUTTON AT THE END OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, SELECT THE "NO" BUTTON AT THE END OF THIS AGREEMENT AND THE DOWNLOAD AND INSTALLATION PROCESS WILL NOT CONTINUE.

1. License to Use. Subject to the terms and conditions of this Agreement, including but not limited to the restrictions set forth in Section 4 (Restrictions), below, BEA Systems, Inc. ("BEA") grants you a non-exclusive and non-transferable license for the internal use only of the accompanying software and documentation provided by BEA for JRockit ("JRockit"), including, but not limited to the right to reproduce and use JRockit internally for the purpose of designing, developing and testing Java applets and applications, and running Java applets and applications on JRockit.
2. License to Distribute. Subject to the terms and conditions of this Agreement, and subject to the express condition precedent that you first comply with the requirements of Section 3 (Reporting Requirements) prior to exercising any rights granted under this Section 2, BEA grants you a non-exclusive, non-transferable, limited license to reproduce and distribute JRockit in binary form only, provided that: (i) you distribute JRockit complete and unmodified, (ii) you do not remove or alter any proprietary legends or notices contained in or on JRockit, (iii) you only distribute JRockit pursuant to a license agreement that protects BEA's and its licensors' interests consistent with the terms contained in the Agreement, and (iv) you agree to defend and indemnify BEA and its licensors from and against any damages, costs, liabilities, settlement amounts and/or expenses (including attorneys' fees) incurred in connection with any claim, lawsuit or action by any third party that arises or results from the use or distribution of JRockit distributed by you.
3. Reporting Requirements; Verification. Your right to distribute JRockit as provided in Section 2, above, is expressly conditioned on your prior compliance with the reporting obligations set forth in this Section 3. Unless you first comply with these reporting requirements you may not distribute JRockit in any manner. Prior to distributing JRockit in accordance with Section 2, you must provide BEA (via e-mail sent to [jrockit-partner@bea.com](mailto:jrockit-partner@bea.com)) with the following information: (i) your name, (ii) place of incorporation or organization if a legal entity such as a corporation, partnership or limited liability company, (iii) the address of your residence or principal place of business if you are a legal entity, (iv) the name of a designated contact person who is authorized to receive information related to JRockit on your behalf, (v) that designated contact's telephone

number, fax number and e-mail address, and (vi) your URL if you have one. BEA may, at any time during the term of this Agreement and with seven (7) days prior written notice, request and gain access to your premises for the limited purpose of conducting an audit to determine and verify that you are in compliance with these terms and conditions. You shall promptly grant such access and cooperate with BEA in the audit. The audit will be restricted in scope, manner and duration to that reasonably necessary to achieve its purpose and not disrupt your operations. You shall be liable for promptly remedying any underpayments revealed during the audit, and if the audit reveals an underpayment of more than five per cent (5%) of the fees actually due, you will also be liable for the costs of the audit.

4. Restrictions. JRockit is confidential to BEA and protected by Copyright and other bodies of law protecting intellectual property rights. Title to JRockit and all associated intellectual property rights is retained by BEA and/or its licensors. JRockit Mission Control ("JMC"), a performance and application management suite that is included with JRockit. JMC includes a set of user interfaces along with the supporting APIs and is identified in Exhibit A attached to this Agreement. You may use JMC and the corresponding data gathered from the JRockit Java Virtual Machine through JMC solely for your internal evaluation and development purposes. If you wish to use JMC other than for internal evaluation and development purposes, including, but not limited to pre-production staging and full production, you must obtain a separate fee-bearing license to do so from BEA or one of its licensees authorized to grant such rights. Except as specifically authorized in Sections 1 and 2, above, you may not make copies of JRockit. Unless enforcement is prohibited by applicable law, you may not modify, decompile, or reverse engineer JRockit. No right, title or interest in or to any trademark, service mark, logo or trade name of BEA or its licensors is granted under this Agreement. JRockit is not designed, licensed or intended for use in the design, construction, operation or maintenance of any nuclear facility, nor may you use it for such purposes. If the version of JRockit you are licensing under this Agreement is a "pre-final," "beta," "technology preview," or similar pre-production release (collectively, "Pre-final Versions"), you must discontinue your use of the Pre-final Version and replace each copy of such Pre-Final Version with the successor general availability release as soon as it becomes available from BEA. "Pre-final Versions" do not include versions of JRockit denominated by BEA as "Limited Availability" or "Developer Releases," and use of such releases does not require that you upgrade to a subsequent general availability release.

5. Trademarks and Logos. You acknowledge and agree as between you and BEA that BEA owns JRockit trademarks and logos and other related brand designations ("BEA Marks"), and you have no right to use, or remove or efface from JRockit, any of the BEA Marks. All goodwill associated with the BEA Marks inures to BEA's benefit.

6. DISCLAIMER OF WARRANTY. THE SOFTWARE IS PROVIDED "AS IS," WITHOUT WARRANTY. ALL WARRANTIES, EXPRESS OR IMPLIED, CONDITIONS, AND REPRESENTATIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ARE DISCLAIMED.

7. Limitation of Liability. In no event will BEA or its Licensors be liable for any lost revenue, profits or data, or for special, incidental, consequential or other indirect damages, or for punitive damages, however caused, regardless of the theory of liability, arising out of or related to JRockit or this Agreement, even if BEA has been advised of the possibility of such loss. In no event will BEA's liability to you, whether in contract, tort (including negligence), or otherwise, exceed the amount paid by you for JRockit hereunder.

8. Termination; No Obligation to Support. This Agreement is effective until terminated. You may terminate this Agreement at any time by destroying all copies of JRockit. Either party may terminate this Agreement immediately should JRockit become, or in either party's opinion be likely to become, the subject of a claim of infringement of any intellectual property right. This Agreement will terminate immediately without notice from BEA if you fail to comply with any provision of this Agreement. Upon Termination, you must destroy all copies of JRockit. BEA may at any time discontinue offering JRockit or any particular version thereof, and unless you accept the terms of and pay the applicable support fees for a separate BEA JRockit Support Addendum, BEA shall have no obligation to provide support, updates, patches, bug fixes or other enhancements for JRockit or any particular version thereof.

9. Export Regulations. You may not download or otherwise export or re-export JRockit or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations. In particular, but without limitation, neither JRockit nor the underlying information or technology may be downloaded or otherwise exported or re-exported, directly or indirectly, (a) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Syria or Sudan; (b) to anyone on the US Treasury Department's list of Specially Designated Nationals or Other Blocked Persons, the US Commerce Department's Denied Parties List, the US Commerce Department's Entity List, or the US Commerce Department's Unverified List; or (c) to or for any proliferation-related (nuclear weapons, missile technology, or chemical/biological weapons) end use. By licensing JRockit, you agree to the foregoing, represent and warrant that you are not (x) located in, under the control of, or acting on behalf of, or a national or resident of, any such country; (y) on any such list; or (z) involved in any such end use.

10. U.S. Government Restricted Rights. If JRockit is being acquired by or on behalf of the U.S. Government or by a U.S. Government contractor, then the Government's rights in JRockit and accompanying documentation shall be only as set forth in this Agreement in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and with 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions).

11. Governing Law. Any action related to this Agreement will be governed by the laws of the United States and the state of California. Any legal action in any way arising out of or related to JRockit or this Agreement may be brought exclusively in the state of federal courts located in San Jose, California. By accepting this Agreement,

you are consenting to the exclusive jurisdiction of these courts.

12. Severability. If any provision of this Agreement is held to be unlawful or unenforceable, or otherwise invalid, this Agreement will remain in effect with the invalid provisions omitted, unless omission would frustrate the intent of the parties, in which case this Agreement will immediately terminate.

13. Complete Agreement. This Agreement is the entire agreement between you and BEA relating to the subject matter hereof. It supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter. No modification of this Agreement will be binding, unless in writing and signed by an authorized representative of each party.

#### EXHIBIT A

JRocket Mission Control

JRocket Mission Control identified in Section 4 (Restrictions) of the Agreement include, but is not limited to the following:

JRocket Runtime Analyzer

JRocket Management Console

JRocket Memory Leak Detector

## icom-firmware

### International License Agreement for Non-Warranted Programs

#### Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND

- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.

"Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of Your eligibility for future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide You with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of the IBM International Passport Advantage Agreement, the terms of the latter agreement prevail.

#### 1. Entitlement

##### License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

#### Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

#### Program Transfer

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

#### 2. Charges

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

#### 3. No Warranty

**SUBJECT TO ANY STATUTORY WARRANTIES WHICH CAN NOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM OR TECHNICAL SUPPORT, IF ANY.**

The exclusion also applies to any of IBM's Program developers and suppliers.

Manufacturers, suppliers, or publishers of non-IBM Programs may provide their own warranties.

IBM does not provide technical support, unless IBM specifies otherwise.

#### 4. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more

than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1. LOSS OF, OR DAMAGE TO, DATA;
2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

#### 5. General

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
3. You agree to comply with all applicable export and import laws and regulations.
4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).
5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

#### 6. Governing Law, Jurisdiction, and Arbitration

##### Governing Law

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

##### Jurisdiction



All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

## Part 2 - Country-unique Terms

### AMERICAS

ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6): The following exception is added to this section:

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6): The following exception is added to this section:

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

CANADA: General (Section 5): The following replaces item 7:

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable."

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws in the Province of Ontario"

PERU: Limitation of Liability (Section 4): The following is added at the end of this section:

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

UNITED STATES OF AMERICA: General (Section 5): The following is added to this section:

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America

### ASIA PACIFIC

AUSTRALIA: No Warranty (Section 3): The following is added:

Although IBM specifies that there are no warranties, You may have certain rights under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability (Section 4): The following is added:

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the

Program license" in the Governing Law subsection is replaced by the following:

the laws of the State or Territory in which You acquired the Program license

CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America

The following is added to this section:

#### Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of Hong Kong Special Administrative Region of China

INDIA: Limitation of Liability (Section 4): The following replaces the terms of items 1 and 2 of the first paragraph:

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

General (Section 5): The following replaces the terms of item 5:

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

Governing Law, Jurisdiction, and Arbitration (Section 6): The following is added to this section:

#### Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

JAPAN: General (Section 5): The following is inserted after item 5:

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA: Limitation of Liability (Section 4): The word "SPECIAL" in item 2 of the third paragraph is deleted:

NEW ZEALAND: No Warranty (Section 3): The following is added:

Although IBM specifies that there are no warranties, You may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if You require the goods for the purposes of a business as defined in that Act.

Limitation of Liability (Section 4): The following is added:

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2): The following is added:

All banking charges incurred in the People's Republic of China will be borne by You and those incurred outside the People's Republic of China will be borne by IBM.

Governing Law, Jurisdiction, and Arbitration (Section 6): The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:

the laws of the State of New York, United States of America (except when local law requires otherwise)

PHILIPPINES: Limitation of Liability (Section 4): The following replaces the terms of item 2 of the third paragraph:

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

Governing Law, Jurisdiction, and Arbitration (Section 6): The following is added to this section:

#### Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies

in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

SINGAPORE: Limitation of Liability (Section 4): The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.

General (Section 5): The following replaces the terms of item 7:

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

No Warranty (Section 3): In the European Union, the following is added at the beginning of this section:

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions of this Section 3.

Limitation of Liability (Section 4): In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Limitation of Liability (Section 4): In France and Belgium, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising

as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

#### Governing Law, Jurisdiction, and Arbitration (Section 6)

##### Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by:

- 1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia;
- 2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna;
- 3) "the laws of Finland" in Estonia, Latvia, and Lithuania;
- 4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and
- 5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

##### Jurisdiction

The following exceptions are added to this section:

- 1) In Austria the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City);
- 2) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts;
- 3) in Belgium and Luxembourg, for all disputes arising out of this Agreement or related to its interpretation or its execution, only the law and the courts of the capital of the country in which Your registered office and/or commercial office is located are competent;
- 4) in France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris;
- 5) in Russia, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the

execution of this Agreement shall be settled by Arbitration Court of Moscow;

6) in South Africa, Namibia, Lesotho and Swaziland, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg;

7) in Turkey all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey;

8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for Greece, b) Tel Aviv-Jaffa for Israel, c) Milan for Italy, d) Lisbon for Portugal, and e) Madrid for Spain; and

9) in the United Kingdom, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

#### Arbitration

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In Estonia, Latvia and Lithuania all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

AUSTRIA: No Warranty (Section 3): The terms of this section are completely replaced by the following:

The following limited warranty applies if You have paid a charge to obtain the Program:

The warranty period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for an IBM Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

The warranty applies only to the unmodified portion of the Program.

If the Program does not function as warranted during the warranty period and the problem cannot be resolved with information available. You may return the Program to the party from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it to obtain the refund.

This is our sole obligation to You, except as otherwise required by applicable statutory law.

General (Section 5): The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

GERMANY: No Warranty (Section 3): The same changes apply as those in No Warranty (Section 3) under Austria above.

Limitation of Liability (Section 4): The following paragraph is added to this Section:

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

General (Section 5): The following replaces the terms of item 5:

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3 (No Warranty) of this Agreement.

HUNGARY: Limitation of Liability (Section 4): The following is added at the end of this section:

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: No Warranty (Section 3): The following is added to this section:

Except as expressly provided in these terms and conditions, or section 12 of the Sale of Goods Act 1893 (as amended by the Sale of Goods and Supply of Services Act 1980 ("the 1980 Act")), all conditions and warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, section 39 of the 1980 Act).

Limitation of Liability (Section 4): The following replaces the terms of this section in its entirety:

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the Items for Which IBM is Not Liable below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) EUR 125,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

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Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or

3. loss of profits, business, revenue, goodwill, or anticipated savings.

ITALY: General (Section 5): The following is added to this section:

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

SLOVAKIA: Limitation of Liability (Section 4): The following is added to the end of the last paragraph:

The limitations apply to the extent they are not prohibited under 373-386 of the Slovak Commercial Code.

General (Section 5): The terms of item 5 are replaced with the following:

THE PARTIES AGREE THAT, AS DEFINED BY APPLICABLE LOCAL LAW, ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER THAN FOUR YEARS FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

SWITZERLAND: General (Section 5): The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

UNITED KINGDOM: No Warranty (Section 3): The following replaces the first sentence in the first paragraph of this section:

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For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

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2. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) 75,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers



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1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

Z125-5589-03 (04/2006)

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#### License Information

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#### Program-unique Terms

The name of the Program is the IBM ICOM adapter firmware files consisting of the files icom\_asc.bin, icom\_call\_setup.bin, and icom\_res\_dce.bin, (the ICOM Firmware Files).

#### Proof of Entitlement

There is no charge for the use of this Program under this Agreement, as such, there is no money back guarantee or any other guarantees or warranties for this Program. You are entitled to use a single copy of the Program under this Agreement.

## ipw-firmware

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