

**Software End User Licensing Agreements:
A Survey of Industry Practices in the Summer of 2003**

James F. Rodriguez

Univeristy of Arizona, James E. Rogers College of Law

Class of 2005

I. Objective

This study was intended to document software licensing practices and catalogue terms used in End User Licensing Agreements (EULAs) as of summer 2003. One goal was to determine how easily consumers could access EULAs through company web sites prior to purchasing software. Easy access to EULAs prior to purchase is important to enable consumer shopping based on license terms. A second goal was cataloging commonly used terms to provide an overview of real industry licensing practices, to highlight any potentially unfair terms, and to aid in the proposal of a model software licensing law.

II. Methodology

Due to the repetitive nature of many software licenses, we felt a small sample of licenses from popular software developers would suffice to provide a general picture of the state of software licensing.¹ Business 2.0 magazine published a list it called the “Top 40 Major Software Industry Players.” This list provided candidate companies whose web sites were searched for EULAs. We added Cisco, IBM, and Red Hat to the Top 40 list (appendix 1).

Cisco was added due to anecdotal evidence that terms included in the license for embedded router software would be a burden to companies attempting to transfer routers to another company through a merger or acquisition. IBM was added due to their name recognition in technology industries. Red Hat was added to get a sample license for a commercial distribution of the open source Linux operating system.

¹ *E-mail Correspondence*, Lee Hollar, May 29, 2003.

First each company's site was searched for links to software product EULAs as a consumer might do when shopping on-line. Links associated with specific products and any link purporting to have terms or legal information were followed. If a EULA could not be located from obvious links, the website was searched for the term "End User Licensing Agreement" or "Licensing Agreement" using the sites own search feature. Lastly, the same search was performed on the company's domain by using the Google search engine.

Once EULAs were obtained, each was read and the terms were catalogued in a terms database. Appendix 2 lists the terms included for each EULA analyzed.

III. Finding EULAs

A. Access was Limited

Of the companies reviewed, none seemed interested in making licensing terms readily available to consumers prior to software purchase. Only 12 of 43 companies (28%) provided EULAs on their web sites at all. No company had an easily identifiable link to product licensing agreements prior to software purchase. Only two companies own website search tool provided links to EULAs, Adobe and Microsoft. Finding EULAs from the remaining 10 companies that made them available at all required using the Google search engine to search the company's web domain. To summarize, in the great majority of instances, using the third-party Google search tool proved more useful for finding a company's EULAs than using the search feature on the company's own web site.

B. Distribution via Adobe PDF

Where EULAs were found, they were often distributed in adobe PDF format. Two

features that make PDF an attractive distribution format are security and portability. From a security standpoint, PDF files can be digitally signed and restricted such that they are read-only. It allows the EULA author to ensure a copy of the EULA is not edited, at least not easily and without it being apparent to the author. The PDF format is also portable. The Adobe Reader is available free for many operating systems or as a web browser plug-in, so no software need be purchased to read a PDF file.

From a contract perspective, the PDF format prevents the purchaser/licensee from negotiating over terms, at least via the EULA text itself. One cannot strike out an undesirable term and return the license. Companies use these documents for mass distribution and not as a means of entering into negotiations over terms. Use of the PDF format makes the license agreement a “take it or leave it” proposition.

IV. Observations Concerning Terms

Of the 12 companies from whom I found licenses, I analyzed approximately 25 EULAs or other terms documents. I have condensed those 25 documents down to observations on 15 EULAs primarily due to duplication of terms across products by the same company.

A. Disclaimers of Warranty Nearly Universal

Most warranties were disclaimed including express, implied, warranties of merchantability, fitness for a particular purpose, title, and for non-infringement of 3rd party intellectual property rights. Warranties of software quality, accuracy of result, lack of viruses, and quiet enjoyment were also usually disclaimed. Finally, many licenses stated the software was offered “as/is.”

1. Substantially Comply with Documentation

Six of fifteen EULAs did have terms stating the software product would substantially conform to its written documentation. Some limited that by adding “on recommended hardware and operating system.” ISS added one must have installed all product updates, and notified ISS of a non-conformity, before the non-conformity would constitute a warranty violation.

This standard may be justified because it allows the developer leeway for not knowing the precise configuration of user computers. In a complex program with many functions, it seems unlikely a substantial number of features would not comply. The term does provide the consumer who purchased a product for a specific feature an argument if that feature does not work properly, although the producer may be able to escape liability if most features work. It also provides a guarantee against truly egregious puffery in software marketing. This term references the documentation, arguably meaning the operating handbook, which is usually sealed inside the shrinkwrap, or more and more frequently only available electronically on the installation disk. Delayed disclosure means that the documentation is not a meaningful basis for shopping for product performance warranties.

2. Other Affirmative Warranties

Lastly, there was usually a warranty that the actual media (typically a CD) upon which the software was distributed would be free from defect, at least for 90 days. And Borland noted it would defend the licensee against suit by 3rd parties claiming copyright infringement based on Borland’s product.

3. Damages

Damages were almost universally limited to replacement of software or refund of the purchase price, usually at the licensor's discretion. Disclaimers of liability for indirect, consequential, incidental, and special damages were essentially universal. Almost as frequent were disclaimers for damages due to lost profits, lost good will, and lost data. This was usually accompanied by terms stating the disclaimer applied even were the loss was foreseeable or the software vendor had knowledge of foreseeability. Many EULAs also disclaimed damages in Tort or Contract, though a few excepted liability for death or personal injury due to their own negligence.

B. Reverse Engineering

Reverse engineering, in a simple software context, is an attempt to recreate or understand the functions of a software program by observing its methods for receiving data, manipulating the data, and outputting data and products. This could be used to write a competing product, or to write a program for one's own use, obviating the need to purchase additional copies of the licensed program. Reverse engineering is also sometimes required for interoperability. Limitations on reverse engineering were some of the most frequently used terms; they were found in 11 of 15 EULAs discussed. Terms for prohibiting decompiling, disassembling, decrypting, or otherwise determining the source code of a program followed the same patterns as reverse engineering and are treated as the same category here.

1. Interoperability

Interoperability is the process of ensuring a program works in conjunction with other programs, or works in a particular environment, such as a network, while minimizing the

routine maintenance requirements placed on network administrators. While 6 EULAs flatly prohibited reverse engineering, many recognized reverse engineering of a licensed product for interoperability to be a reasonable use of a program. This was typically mentioned through terms prohibiting reverse engineering “except for interoperability,” or prohibiting reverse engineering “except to the extent permitted by applicable law.”

This interoperability exception is consistent with reverse engineering provisions of the Digital Millennium Copyright Act (DCMA) of 1998.² The DCMA criminalizes the circumvention of electronic copy-protection measures.³ But it specifically allows reverse engineering “for the *sole* purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability ... with other programs.”⁴

2. Copying or Adaptation as an Essential Step in Utilization

Another limitation on the copyright owner’s rights is provided by 17 U.S.C. § 117, which allows for copying and adaptation of computer programs in some instances. Specifically, it is not copyright infringement when a “copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine” or when it is “for archival purposes only.”⁵ One example of this is copying to Random Access Memory (RAM) in order to run a program. As long as one is a rightful *owner* of the program, this kind of copying to RAM has been held essential.⁶ Also under this

² Digital Millennium Copyright Act, Pub. Law 105-304 (1998); 17 U.S.C.A. § 1201(f) (West 2003) (emphasis added).

³ 17 U.S.C.A. § 1204 (West 2003).

⁴ 17 U.S.C.A. § 1201(f) (West 2003).

⁵ 17 U.S.C.A. § 117(a) (West 2003).

⁶ *Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc.*, 922 F.Supp 299, 315-16 (C.D.Cal. 1996).

exception, the owner of a copy of a program could temporarily copy the program in conjunction with efforts to modify it for use in the owner's own business. This would allow owners to make "bug fixes", at least to the extent the fixes are necessary for using the program. As the 2nd Circuit held, there was not infringement where "adaptations were essential to allow use of the program for the very purpose for which it was purchased."⁷

These accommodations of 17 U.S.C. § 117 are not a panacea for software licensees. It has been held by some courts that they only apply to "owners of a copy" of the program not "licensees."⁸ Other courts have applied § 117 to licensees, though often without explicit rationale.⁹ The EULAs studied universally characterize themselves as licenses, not sales. This would at least make it harder for licensees to seek the protection of 17 U.S.C. § 117.

3. Adobe's Stricter Limitations

Adobe went further in its restriction on reverse engineering and required the licensee to first request information from Adobe. Adobe reserved the right to "impose reasonable conditions and request a reasonable fee for the information." Only after Adobe had failed to supply the information was reverse engineering for interoperability authorized. Adobe's restrictions seems to place quite a burden of wasted time or delay on the licensee in order to meet its pre-requisites for reverse engineering. This is especially true given the program, Photoshop, retails for approximately \$600.00.¹⁰

⁷ *Aymes v Bonelli*, 47 F3d 23, (2nd Cir. 1995).

⁸ *See Applied Information Management, Inc. v. Icart*, 976 F.Supp. 149, 153 (E.D.N.Y. 1997).

⁹ *Id.*

¹⁰ <http://www.adobe.com/store/>

C. Copying

Most EULAs, 11 of 15 discussed, allow copying for backup purposes. The remaining were silent on copying, so didn't specifically prohibit it. Some stated one copy for backup, while others allowed a "reasonable number" for backup or "backup for lawful use." A few licenses allow installation of one copy on a desktop machine and another copy on a laptop under the assumption only one copy will be used at a time. This is not intended to allow one to place a copy on one's desktop computer, then place a copy on another person's laptop so that person does not have to purchase the software.

D. Auditing

Three licenses contained terms granting the licensor the right to audit the licensee's use of the product. Cisco's auditing term provides the "[c]ustomer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, Customer shall promptly pay to Cisco the appropriate licensee fees." Borland's auditing term states Borland may conduct an audit at Borland's expense, during the licensee's normal business hours. If Borland finds more than a five percent of its product are unlicensed, it may charge the licensee for the licenses *and* for Borland's expense in conducting the audit. Micromuse term states it may audit once every twelve months, and upon discovery of underpayment, presumably even for one license, the licensee must pay the underpayment and Micromuse's auditing costs.

Several items make these auditing terms troublesome to the licensee. It is unclear

what a reasonable audit frequency is under the Cisco and Borland licenses. The Borland and Micromuse audit terms incentivise the auditors to find an unlicensed product or an “underpayment” in order to make the licensee pay for the auditing cost. The scope of the audit is also not clearly defined, though Cisco includes the licensees, “books, records, and accounts.” At the very least, businesses would be concerned with auditors snooping through their records and disrupting their employees.

E. Performance Analysis

Three EULAs prohibited licensees from releasing performance data or benchmarking data. These were the EULAs from Internet Security Systems, Micromuse, and Oracle. Oracle required the licensee to get their consent. Also, since Oracle was licensing a development tool, it required the licensee/developer to include a similar term in its end user license.

These terms prohibit what has traditionally been a fair use under copyright law. The fair use doctrine provides for some use of a copyrighted work for criticism, commentary, news reporting, or scholarship.¹¹ Reporting of benchmark data is very common in technology trade magazines. Courts might hold these restrictions to be preempted by copyright law.¹² It seems a fine line to draw to prevent an actual user of a product from relaying his experience with it to others.

F. Choice of Law

Companies usually included a choice of law clause indicating the laws of the company’s home state would govern, without regard to conflict of law principles. Some

¹¹ 17 U.S.C.A. § 107 (West 2003).

companies included additional terms to govern overseas licensees. For instance, Adobe's license stated California law would govern for North American sales, Japanese law would govern for Asian countries, and Ireland would govern otherwise.

G. Uniform Computer Information Transaction Act (UCITA)

The only mention of UCITA in a license was by Oracle, which specifically said it would not apply. It is interesting because UCITA is considered by many to be consumer *unfriendly*. Perhaps the fact that UCITA is only law in two states and it is fairly new has moderated its use in standard contracts to date.¹³

V. Variations with Type of Product:

A. Application vs. Development Tool

Development tools tend to have much more lenient licensing terms. They often allow copying of at least parts of the program. This can be explained by the business model for many development tools. In one instance the development tools are sold to programmers to write applications for other users. Sometimes the end programs will require some portions of the development tool to be distributed along with the program. Developers would not likely buy a program that was licensed such that it prevented or made it difficult for them to license their end product. In another example, the underlying program, Oracle's database application for instance, must be purchased by the developer's end user as well. The licensing terms for the developer attempt to encourage the development of a larger market for the underlying program.

¹² See e.g. *Green v. Hendrickson Publishers, Inc.*, 770 N.E.2d 784, 789-790 (Ind. 2002); *Computer Associates Intern., Inc. v. Altai, Inc.*, 982 F.2d 693, 716 (2nd Cir. 1992).

¹³ MD UCITA § 22-100, et. Seq. (West 2003); VA UCITA §§ 59.1-501.1 to 59.1-509.2 (West 2003)

B. Professional vs. Home Versions

EULAs for “Professional” and “Home” versions of a program were virtually, if not actually, identical. It was only the features that differentiated the products. This might cause a licensing term such as a warranty to “substantially comply with documentation” to cover more features in the “Professional” version. UCITA could be interpreted to exclude some “professional” software versions from its “mass market” designation, which could have adverse licensing implications for a consumer.

VI. Summary

Given this review of software licensing terms, it seems a fair statement that software producers prefer to shield themselves from all liability while keeping consumers ignorant about licensing terms until after the licensing fee has been paid. The common use of click-wrap licensing means consumers are likely to skip reading the terms even when they are finally presented. These largely hidden agreements often contain terms that are arguably unenforceable. Since many sites had EULAs that were discoverable via Google, providing consumers easy pre-purchase access seems an almost trivial technical exercise.

Limitations on reverse engineering to prevent copying of one’s product seems acceptable, but a exception for interoperability is likely to be included by courts even if not explicitly in the license. Copying for backup purposes seems to be recognized as an appropriate use by a majority of companies. Auditing provisions and limitations on releasing performance data seem more questionable, at least in standard form EULAs.

Appendix 1: Companies Searched for End User Licensing Agreements

Business 2.0 Computer Software Industry “Major Players” June 2003

Actuate
Adobe Systems
Akamai Technologies
Amdocs
ANSYS
Ariba, Inc.
Art Technology Group (ATG)
Autodesk
BEA Systems
Blue Martini Software
Borland
Broadbase Software, Inc.
BroadVision, Inc.
Business Objects
Commerce One, Inc.
Computer Associates
Compuware
DST Systems
EXE Technologies, Inc.
i2 Technologies
Informix
Ingram Micro Inc.
Inktomi Corporation
Internet Security Systems
Interwoven, Inc.
Intuit
J.D. Edwards
JDA Software
Kana Software, Inc.
Micromuse
Microsoft Corporation
Oracle Corporation
PeopleSoft
SAP
SeeBeyond Technology Corporation
SERENA Software
Siebel Systems
Sybase
TIBCO
VERITAS
Vignette
WebMethods

Additional Companies

IBM
Cisco
Red Hat

Appendix 2: Summary of Terms for the Final 15 EULAs

Company: Adobe Systems

Product: Photoshop 7

Type of Product: App

License: nonexclusive license, limited warranty

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

Only for interoperability; must have requested information from Adobe, and Adobe must have not supplied the information. Adobe has right to impose reasonable conditions and request a reasonable fee for the information. Information cannot be used to create software similar in function to Adobe's software.

Decompile: N/A Disassemble: N/A Decrypt: N/A Mod: X Adapt: X Derivative Work: N/A Translate: X

Other: N/A Transfer: may transfer all rights to another person or legal entity provided you transfer: EULA, S/W serial numbers, any bundled S/W, font S/W, retain no copies, receiving party agrees to EULA.

Transferee: N/A Give Away: N/A Assign: N/A Loan: N/A Sublicense: X Rent: X Lease: X Distribute: X

Resale: X Performance Testing: N/A Other: Specific terms for font software.

Returns: By using any or all software, user agrees to be bound. Refund if returned within 30 days Copying: Install one for each license, plus one copy on a laptop. May make an unused backup copy.

Other Clauses

Choice of Law: CA for S/W purchased in U.S., Canada, or Mexico; Japan if purchased in Japan, China, Korea, or other Southeast Asian country (language is ideographic); Ireland if purchased in any other jurisdiction.

UN Convention: N/A Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: retained by Adobe

Jury Trial: N/A Other Specific section for Germany & Austria - warrants performance as documented for 6 months - limitations on damages does not apply for willful or grossly negligent acts of Adobe or its agents - only liable for typically foreseeable damages - limitations do not apply to mandatory liability under the German or Austrian Product Liability Act.

Warranty Disclaimers

As Is: N/A Express: X Implied: X Statutory: X Custom: X Common Law: X Merchantability: N/A Fitness: X Title: N/A Non-infringing: X

Quality: X Results: X Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: Replacement or refund, at Adobe's option, within 90 days for not function substantially as documented. For any damages, remedy limited to price paid.

Other: N/A

Liability Disclaimers

Indirect: X Consequential: X Incidental: X Special: N/A Lost Profits: X Lost Savings: X Lost Good Will: N/A Tort or Contract: Adobe does not disclaim liability for death or personal injury resulting from Adobe's negligence or deceit (fraud). Breach of Good Faith: N/A Foreseeability: X Loss of Data: N/A Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented for 90 days on recommended operating system and hardware configuration Media Free from Defects: N/A Other: N/A

Types of Licenses

Named Users: N/A Concurrent Users: N/A By Processor: N/A By Machine: N/A Machine by Processors: N/A Evaluation: May not be transferred. Provided "As/Is"; Liability limited to \$50. Enterprise: N/A Professional: N/A Personal: N/A Educational: May not be transferred. User must qualify in his or her jurisdiction as an educational user. Not for Resale: May not be transferred. Provided "As/Is"; Liability limited to \$50. Pre-release: Software liability for pre-release version limited to \$50 (U.S.) Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Autodesk

Product: ObjectARX®

Type of Product: Dev

License: nonexclusive limited license

License Fees: N/A

License Mods: By signed writing of authorized officer of Autodesk

Transfer & Use Restrictions

Reverse Engineering

X

Decompile: X Disassemble: X Decrypt: N/A Mod: X Adapt: X Derivative Work: N/A Translate: X

Other: Nor otherwise attempt to discover the source code Transfer: N/A

Transferee: N/A Give Away: N/A Assign: N/A Loan: N/A Sublicense: N/A Rent: N/A Lease: N/A Distribute: N/A

Resale: N/A Performance Testing: N/A Other: Includes upgrades & updates

Returns: N/A Copying: May Copy & Distribute for development of Autocad tools. Must include license agreement

Other Clauses

Choice of Law: CA, except its conflict of law rules.

UN Convention: X Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: N/A

Jury Trial: N/A Other: N/A

Warranty Disclaimers

As Is: X Express: X Implied: N/A Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: N/A Non-infringing: X

Quality: N/A Results: N/A Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: N/A Other: N/A

Liability Disclaimers

Indirect: N/A Consequential: X Incidental: X Special: X Lost Profits: X Lost Savings: X Lost Good Will: N/A Tort or Contract: N/A Breach of Good Faith: N/A

Foreseeability: X Loss of Data: N/A Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented: N/A Media Free from Defects: N/A Other: N/A

Types of Licenses

Named Users: N/A Concurrent Users: N/A By Processor: N/A By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal: N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: BEA Systems

Product: WebLogic Commerce Server

Type of Product: App

License: Copyright Notice

"This document may not, in whole or in part, be copied, photocopied, reproduced, translated, or reduced to any electronic medium or machine-readable form without prior consent, in writing, from BEA Systems, Inc."

Question: Did I violate this term by copying the web page?

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

N/A

Decompile: N/A Disassemble: N/A Decrypt: N/A Mod: N/A Adapt: N/A Derivative Work: N/A Translate: N/A

Other: N/A Transfer: N/A

Transferee: N/A Give Away: N/A Assign: N/A Loan: N/A Sublicense: N/A Rent: N/A Lease: N/A Distribute: N/A

Resale: N/A Performance Testing: N/A Other: N/A

Returns: N/A Copying: It is against the law to copy the software except as specifically allowed in the agreement.

Other Clauses

Choice of Law: N/A

UN Convention: N/A Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: N/A

Jury Trial: N/A Other: N/A

Warranty Disclaimers

As Is: X Express: N/A Implied: N/A Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: N/A Non-infringing: N/A

Quality: X Results: X Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: N/A Other: Also does not warrant correctness, accuracy, or reliability.

Liability Disclaimers

Indirect: N/A Consequential: N/A Incidental: N/A Special: N/A Lost Profits: N/A Lost Savings: N/A Lost Good Will: N/A Tort or Contract: N/A Breach of Good Faith: N/A

Foreseeability: N/A Loss of Data: N/A Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented: N/A Media Free from Defects: N/A Other: N/A

Types of Licenses

Named Users: N/A Concurrent Users: N/A By Processor: N/A By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal:

N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Borland

Product: appserver

Type of Product: App

License: licensed not sold, limited warranty

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

N/A

Decompile: N/A Disassemble: N/A Decrypt: N/A Mod: N/A Adapt: N/A Derivative Work: N/A Translate: N/A

Other: N/A Transfer: Must get written permission from Borland

Transferee: Must also submit info to Borland Give Away: N/A Assign: N/A Loan: X Sublicense: N/A Rent: X Lease: N/A Distribute: N/A

Resale: N/A Performance Testing: N/A Other: Intended for use in country of sale.

Returns: Original purchaser may return for full refund Copying: Licensed users for backup

Other Clauses

Choice of Law: N/A

UN Convention: N/A Audits: Borland may conduct an audit at Borland's expense, during your normal business hours. If >5% violations, Borland can charge you for it's expenses.

Arbitration: N/A Integration Clause: N/A IP Rights: N/A

Jury Trial: N/A Other N/A

Warranty Disclaimers

As Is: X Express: X Implied: 90 days Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: X Non-infringing: X

Quality: N/A Results: N/A Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: Price paid or \$25 Other: N/A

Liability Disclaimers

Indirect: X Consequential: N/A Incidental: X Special: X Lost Profits: X Lost Savings: N/A Lost Good Will: N/A Tort or Contract: N/A Breach of Good Faith: N/A

Foreseeability: X Loss of Data: N/A Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented X Media Free from Defects: X Other: Not intended for use on high risk systems. Not fault tolerant.

Types of Licenses

Named Users: 1 user Concurrent Users: Up to # of licenses By Processor: N/A By Machine: X Machine by Processors X Evaluation: 60 days, then must acquire license or remove Enterprise: N/A Professional: N/A Personal: N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Borland

Product: cbuilder

Type of Product: Dev

License: licensed not sold, limited warranty

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

N/A

Decompile: N/A Disassemble: N/A Decrypt: N/A Mod: N/A Adapt: N/A Derivative Work: N/A Translate: N/A

Other: N/A Transfer: N/A

Transferee: N/A Give Away: N/A Assign: N/A Loan: N/A Sublicense: N/A Rent: N/A Lease: N/A Distribute: N/A

Resale: N/A Performance Testing: N/A Other: Redistributables

Returns: full refund if return within 10 days Copying: Reasonable number for backups

Other Clauses

Choice of Law: CA, without respect to any laws that would apply a different states law

UN Convention: X Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: N/A

Jury Trial: N/A Other: N/A

Warranty Disclaimers

As Is: X Express: N/A Implied: X Statutory: X Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: X Non-infringing: X

Quality: X Results: X Lack of Virus: N/A Quiet Enjoyment: X

Limitations on Damages

Damages or Remedy: Replacement for media defect Other: N/A

Liability Disclaimers

Indirect: X Consequential: X Incidental: X Special: N/A Lost Profits: X Lost Savings: N/A Lost Good Will: N/A Tort or Contract: X Breach of Good Faith: N/A

Foreseeability: X Loss of Data: N/A Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented: N/A Media Free from Defects: 90 days Other: Borland will defend against any suit by a 3rd party claiming copyright infringement of the product

Types of Licenses

Named Users: Must maintain records of the named users Concurrent Users: N/A By Processor: N/A By Machine: N/A Machine by Processors: N/A Evaluation: 60 days, then must acquire license or remove. Time-out feature. Enterprise: N/A Professional: N/A Personal: No commercial use Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Cisco*

Product: embedded software

Type of Product: Embed

License: license

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

X

Decompile: X Disassemble: N/A Decrypt: X Mod: N/A Adapt: N/A Derivative Work: N/A Translate: N/A

Other: decompile, decrypt, reverse engineer, disassemble or otherwise reduce the Software to human-readable form to gain access to trade secrets or confidential information in the Software Transfer: X

Transferee: N/A Give Away: N/A Assign: N/A Loan: N/A Sublicense: N/A Rent: N/A Lease: N/A Distribute: N/A

Resale: N/A Performance Testing: N/A Other: N/A

Returns: Original purchaser (only) may return S/W or Product for full refund within 30 days Copying: May make copies for lawful use, none otherwise

Other Clauses

Choice of Law: CA, without reference to conflict of laws principles ... except EU, Norway, Switzerland ... English Law applies

UN Convention: X Audits: Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement. Arbitration: N/A Integration Clause: License supercedes any terms in the purchase order IP Rights: N/A

Jury Trial: N/A Other N/A

Warranty Disclaimers

As Is: N/A Express: X Implied: X Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: Remains with Cisco Non-infringing: N/A

Quality: X Results: N/A Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: Limited to price paid Other: DISCLAIMER OF ... ANY IMPLIED WARRANTY ... ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. ...This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

Liability Disclaimers

Indirect: X Consequential: X Incidental: X Special: N/A Lost Profits: N/A Lost Savings: N/A Lost Good Will: N/A Tort or Contract: Regardless of theory of liability Breach of Good Faith: N/A Foreseeability: X Loss of Data: N/A Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented: N/A Media Free from Defects: N/A Other: N/A

Types of Licenses

Named Users: N/A Concurrent Users: N/A By Processor: N/A By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal: N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Commerce One, Inc.

Product: Conductor DocSOAP XDK

Type of Product: Dev

License: world-wide, royalty-free, non-exclusive license, subject to third party intellectual property claim

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

N/A

Decompile: N/A Disassemble: N/A Decrypt: N/A Mod: Y Adapt: Y Derivative Work: Y Translate: N/A

Other: N/A Transfer: Y

Transferee: N/A Give Away: Y Assign: Y Loan: Y Sublicense: Y Rent: N/A Lease: N/A Distribute: N/A

Resale: N/A Performance Testing: N/A Other: N Must include a file named LEGAL detailing any known potential claims of 3rd parties in any distributed work

Returns: N/A Copying: N/A

Other Clauses

Choice of Law: CA, without reference to conflict of laws provisions

UN Convention: X Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: No rights to trademarks, copyrights, patents, trade secrets or any other intellectual property of Licensor

Jury Trial: expressly waive any rights to a jury trial in any litigation concerning Licensed Product or this License (inconspicuously in license term 13, middle of the paragraph)

Other Any law or regulation that provides that the language of a contract shall be construed against the drafter shall not apply to this License.

Warranty Disclaimers

As Is: X Express: X Implied: X Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: N/A Non-infringing: X

Quality: X Results: N/A Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: N/A Other: Assertion by the Licensee of a patent infringement claim against Licensor shall terminate the license

Liability Disclaimers

Indirect: N/A Consequential: N/A Incidental: N/A Special: N/A Lost Profits: N/A Lost Savings: N/A Lost Good Will: N/A Tort or Contract: N/A Breach of Good Faith: N/A

Foreseeability: N/A Loss of Data: N/A Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented: N/A Media Free from Defects: N/A Other: N/A

Types of Licenses

Named Users: N/A Concurrent Users: N/A By Processor: N/A By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal:

N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: IBM*

Product: IBM Time Stamp Facility - Commercial

Type of Product: Dev

License: License not Sale. Proof of entitlement defines license level

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

X

Decompile: X Disassemble: X Decrypt: N/A Mod: X Adapt: N/A Derivative Work: N/A Translate: N/A

Other: N/A Transfer: Y, Must provide copy of license to Transferee

Transferee: Must agree to license Give Away: N/A Assign: N/A Loan: N/A Sublicense: X Rent: X Lease: N/A Distribute: N/A

Resale: N/A Performance Testing: N/A Other: N/A

Returns: within 30 days of purchase for any reason Copying: N/A

Other Clauses

Choice of Law: Laws of country in which obtained, without regard to conflict of laws principles. 8 pages of individual country terms

UN Convention: X Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: N/A

Jury Trial: N/A Other: N/A

Warranty Disclaimers

As Is: N/A Express: X Implied: X Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: N/A Non-infringing: X

Quality: N/A Results: N/A Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: N/A Other: N/A

Liability Disclaimers

Indirect: X Consequential: X Incidental: X Special: X Lost Profits: X Lost Savings: X Lost Good Will: X Tort or Contract: N/A Breach of Good Faith: N/A Foreseeability: N/A Loss of Data: X Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented: N/A Media Free from Defects: N/A Other: If part unenforceable, remaining parts remain enforceable

Types of Licenses

Named Users: N/A Concurrent Users: X By Processor: X By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal: N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: IBM*

Product: IBM Time Stamp Facility - Distributed

Type of Product: Dev

License: License not Sale. Proof of entitlement defines license level

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

X

Decompile: X Disassemble: X Decrypt: N/A Mod: X Adapt: N/A Derivative Work: N/A Translate: N/A

Other: N/A Transfer: Y, Must provide copy of license to Transferee

Transferee: Must agree to license Give Away: N/A Assign: N/A Loan: N/A Sublicense: X Rent: X Lease: N/A Distribute: N/A

Resale: N/A Performance Testing: N/A Other: N/A

Returns: within 30 days of purchase for any reason Copying: N/A

Other Clauses

Choice of Law: Laws of country in which obtained, without regard to conflict of laws principles. 8 pages of individual country terms

UN Convention: X Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: N/A

Jury Trial: N/A Other N/A

Warranty Disclaimers

As Is: N/A Express: X Implied: X Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: N/A Non-infringing: X

Quality: N/A Results: N/A Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: N/A Other: N/A

Liability Disclaimers

Indirect: X Consequential: X Incidental: X Special: X Lost Profits: X Lost Savings: X Lost Good Will: X Tort or Contract: N/A Breach of Good Faith: N/A Foreseeability: N/A Loss of Data: X Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented: N/A Media Free from Defects: N/A Other: If part unenforceable, remaining parts remain enforceable

Types of Licenses

Named Users: N/A Concurrent Users: X By Processor: X By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal: N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Internet Security Systems

Product: Black Ice Defender

Type of Product: App

License: License, not sale. Non-exclusive, non-transferable.

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

X

Decompile: X Disassemble: X Decrypt: N/A Mod: X Adapt: X Derivative Work: N/A Translate: N/A

Other: or otherwise attempt to discover source code Transfer: X

Transferee: N/A Give Away: N/A Assign: X Loan: X Sublicense: X Rent: N/A Lease: N/A Distribute: N/A

Resale: N/A Performance Testing: not to release performance information or analysis, including benchmark data Other: not to make available for on-line use or timesharing

Returns: within 15 days for refund Copying: Reasonable number for backup and disaster recovery

Other Clauses

Choice of Law: State of GA, except conflict of law rules.

UN Convention: X Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: licensee under duty to prevent copyright infringement

Jury Trial: N/A Other N/A

Warranty Disclaimers

As Is: except for limited wnty Express: X Implied: X Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: X Non-infringing: X

Quality: X Results: X Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: At ISS discretion, repair, replace, or refund. Other: No guarantee against intrusion. Licensee has not relied on any expressions outside the license. Not fault tolerant not intended for use in hazardous environment requiring fail-safe operation.

Liability Disclaimers

Indirect: X Consequential: X Incidental: X Special: X Lost Profits: N/A Lost Savings: N/A Lost Good Will: N/A Tort or Contract: N/A Breach of Good Faith: N/A

Foreseeability: N/A Loss of Data: N/A Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented For 90 days, assuming (i) installed according to installation instructions, (ii) licensee notifies ISS of non-conformities, (iii) licensee has installed all updates Media Free from Defects: N/A Other: Limited Warranty doesn't apply to nonconformities arising out of (i) misuse, (ii) modification, (iii) use of incompatible hardware, (iv) interaction with other software.

Types of Licenses

Named Users: N/A Concurrent Users: N/A By Processor: N/A By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal: N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Micromuse

Product: Netcool/OMNIBUS™

Type of Product: App (Service)

License: License, not sale. Perpetual subject to receipt of license fees. Realtime and historical event management. Seems to be sold as a monthly software service

License Fees: Due within 30 days. Past due charged interest at 1.5% per month, or max allowable by law. Licensee responsible for collection costs. **License Mods:** N/A

Transfer & Use Restrictions

Reverse Engineering

N, except to extent allowed by statute

Decompile: N, except to extent allowed by statute **Disassemble:** N/A **Decrypt:** N/A **Mod:** N/A **Adapt:** X **Derivative Work:** N/A **Translate:** N/A

Other: N/A **Transfer:** Requires written Permission

Transferee: N/A **Give Away:** N/A **Assign:** Requires written Permission **Loan:** N/A **Sublicense:** Requires written Permission **Rent:** X **Lease:** X **Distribute:** N/A

Resale: N/A **Performance Testing:** No benchmark results or results of functional testing may be released to any third party or used for any purpose other than facilitating the Licensee's internal use of the program. **Other:** Subject to licensee's consent, not unreasonably withheld or delayed, Micromuse may issue a press release regarding the license.

Returns: Return within 5 days **Copying:** 1 copy for backup or archive. Use of "failover" copies permitted for failover or disaster recovery until processing on primary copy restored.

Other Clauses

Choice of Law: CA, without reference to conflict of laws provisions

UN Convention: N/A **Audits:** Right to conduct audit once per 12 months. Upon discovery of underpayment, licensee must pay underpayment and audit costs. **Arbitration:** N/A **Integration Clause:** N/A **IP Rights:** All rights and Trademark remain with Micromuse

Jury Trial: N/A Other Neither party liable for failure to fulfill obligations due to events beyond its reasonable control, including acts or omissions of the gov't or military, acts of God, shortages of material, transportation delays, fires, floods, labor disturbances, riots, or war.

Warranty Disclaimers

As Is: N/A **Express:** X **Implied:** X **Statutory:** N/A **Custom:** N/A **Common Law:** N/A **Merchantability:** X **Fitness:** X **Title:** N/A **Non-infringing:** X

Quality: Does not warrant to be error free, or that detected errors are correctable. **Results:** N/A **Lack of Virus:** N/A **Quiet Enjoyment:** N/A

Limitations on Damages

Damages or Remedy: At Micromuse's discretion, Repair or replacement of software **Other:** Not licensed for use in nuclear, aviation, mass transit or medical application, or any inherently dangerous activity.

Liability Disclaimers

Indirect: X **Consequential:** X **Incidental:** X **Special:** X **Lost Profits:** X **Lost Savings:** X **Lost Good Will:** N/A **Tort or Contract:** N/A **Breach of Good Faith:** N/A **Foreseeability:** X **Loss of Data:** X **Third Party Claims:** X **Other:** N/A

Affirmative Warranty Terms

Perform Substantially as Documented For 90 days when used in accordance with license terms **Media Free from Defects:** Y, for 90 days Other: Warrants that Micromuse has used commercially reasonable efforts to prevent virus infection.

Types of Licenses

Named Users: N/A **Concurrent Users:** N/A **By Processor:** N/A **By Machine:** limited by operating system and hardware in Micromuse's records **Machine by Processors:** N/A **Evaluation:** N/A **Enterprise:** N/A **Professional:** N/A **Personal:** N/A **Educational:** N/A **Not for Resale:** N/A **Pre-release:** N/A **Development:** N/A **Trial:** N/A **Demonstration:** N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Microsoft Corporation

Product: Outlook 2000

Type of Product: App

License: licensed not sold, limited warranty

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

n, except to extent permitted by applicable law

Decompile: n, except to extent permitted by applicable law Disassemble: n, except to extent permitted by applicable law Decrypt: N/A Mod: N/A Adapt: N/A Derivative Work: N/A Translate: N/A

Other: N/A Transfer: Initial licensee may make one-time transfer to an end-user. Must include documentation and certificate of authenticity. Transferee must agree to EULA. Transferee may not further transfer.

Transferee: N/A Give Away: N/A Assign: N/A Loan: X Sublicense: N/A Rent: X Lease: X Distribute: N/A

Resale: N/A Performance Testing: N/A Other: may not separate components

Returns: Once installed, user has agreed to license. May return to place of purchase prior to installation Copying: May install one copy on desktop and another on a laptop. May keep original media as a backup copy, and make a copy of it if the original media is needed to run the program.

Other Clauses

Choice of Law: WA in US; Ontario in Canada; recognizes other law may apply in other countries.

UN Convention: N/A Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: No trademark rights transferred. All title and copyright retained by MS

Jury Trial: N/A Other Support Services may be supplied. Any code delivered as part of support services becomes part of the program.

Warranty Disclaimers

As Is: N/A Express: X Implied: X Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: X Non-infringing: X

Quality: N/A Results: N/A Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: For limited warranty violation, at Microsoft's option, return of price paid or replacement. Limited warranty void if due to accident, abuse, or misapplication.

Other: No claim for failure to provide support services

Liability Disclaimers

Indirect: X Consequential: X Incidental: X Special: X Lost Profits: X Lost Savings: X Lost Good Will: N/A Tort or Contract: N/A Breach of Good Faith: N/A Foreseeability: N/A Loss of Data: X Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented for 90 days Media Free from Defects: N/A Other: N/A

Types of Licenses

Named Users: N/A Concurrent Users: May install on a server for use on a network by concurrent users up to the number of licenses purchased (license pack) By Processor: N/A

By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal: N/A Educational: Must be a qualified educational user Not for

Resale: Only for demo, test, or eval Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Microsoft Corporation

Product: PowerToys

Type of Product: App

License: may install on single computer with a Windows XP license

License Fees: N/A

License Mods: The EULA is the entire agreement and supersedes all prior or contemporaneous oral or written communications, proposals, or representations.

Transfer & Use Restrictions

Reverse Engineering

n, except to extent permitted by applicable law

Decompile: n, except to extent permitted by applicable law Disassemble: n, except to extent permitted by applicable law Decrypt: N/A Mod: N/A Adapt: N/A Derivative Work: N/A Translate: N/A

Other: N/A Transfer: Initial licensee may make one-time transfer to an end-user. Must include documentation and certificate of authenticity. Transferee must agree to EULA.

Transferee: N/A Give Away: N/A Assign: N/A Loan: X Sublicense: N/A Rent: X Lease: X Distribute: N/A

Resale: N/A Performance Testing: N/A Other: microsoft may collect and use data about the user for support and services, but will do so in a way not personally identifying the user.

Returns: N/A Copying: N/A

Other Clauses

Choice of Law: WA in US; Ontario in Canada; recognizes other law may apply in other countries.

UN Convention: N/A Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: Microsoft owns copyright and other IP.

Jury Trial: N/A Other: N/A

Warranty Disclaimers

As Is: N/A Express: X Implied: X Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: N/A Non-infringing: N/A

Quality: accuracy or completion Results: X Lack of Virus: X Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: Limited to actual damages incurred based on reasonable reliance up to the greater of the amount paid, or \$5.00. (this is a free download) Other: all to the maximum extent permitted by applicable law.

Liability Disclaimers

Indirect: X Consequential: X Incidental: X Special: X Lost Profits: X Lost Savings: N/A Lost Good Will: N/A Tort or Contract: for personal injury, negligence, strict liability, breach of contract, breach of warranty Breach of Good Faith: X Foreseeability: X Loss of Data: x ("confidential information") Third Party Claims: N/A Other: All to maximum extent permissible by applicable law.

Affirmative Warranty Terms

Perform Substantially as Documented: N/A Media Free from Defects: N/A Other: N/A

Types of Licenses

Named Users: N/A Concurrent Users: N/A By Processor: N/A By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal: N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Oracle Corporation

Product: Oracle 9i

Type of Product: Database Dev

License: Oracle Application Specific Full Use Program Distribution Agreement - agreement between Oracle and developer governing the developers distribution of Oracle and developed database applications to end users.

Developer is an independent contractor.

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

may not cause or permit (unless required by law for interoperability)

Decompile: N/A Disassemble: N/A Decrypt: N/A Mod: X Adapt: N/A Derivative Work: N/A Translate: N/A

Other: N/A Transfer: N, developer must license to end user to prevent transfer by end user

Transferee: N/A Give Away: N/A Assign: N, developer must license to end user to prevent end user assigning program Loan: N/A Sublicense: N/A Rent: X Lease: X

Distribute: Oracle grants you a nonexclusive, nontransferable right to duplicate the programs you order from Oracle under this agreement and a nonexclusive right to distribute such programs to end users pursuant to an end user's order to you as part of the application package. Prior to distributing programs, you must obtain an order from the end user for the programs ordered, which order and programs shall be subject to a valid end user license agreement.

Resale: N/A Performance Testing: Developer may not disclose results of any benchmark tests without Oracle's prior written consent. Developer must also license to end users such that they may not publish results of benchmark tests. Other: May not permit end users to use the program except in conjunction with the application package. May not compile or combine with open source software in such a way as to create obligations for Oracle to the open source software used.

Returns: N/A Copying: Developer and end users may make sufficient copies for use of the program plus one backup. Must get Oracle's permission for additional copies.

Other Clauses

Choice of Law: CA and agree to try in San Francisco, San Mateo, or Santa Clara county.

UN Convention: N/A Audits: Developer must license to allow auditing of end users use of the program.

Upon 45 day notice, must permit Oracle's auditing of program use and distribution. Agree to cooperate and provide information. Agree to pay underpaid fees within 30 days.

Arbitration: N/A Integration Clause: N/A IP Rights: All ownership and IP retained by Oracle. Developer may refer to Oracle trademark in accordance with Oracle trademark usage guidelines.

Jury Trial: N/A Other Developer must license to designate Oracle as a third party beneficiary.

Developer must license to end user to exclude application of UCITA.

Developer is financially responsible for damages due to failure to disclaim required elements of the Oracle license.

UCITA does not apply to the Oracle/Developer agreement

Warranty Disclaimers

As Is: N/A Express: X Implied: X Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: N/A Non-infringing: N/A

Quality: N/A Results: N/A Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: Correction of program errors, or licensee may end license and recover license fees and unused technical support.

Damages limited to license or support fees. Other: Oracle will indemnify the developer for claims that Oracle's program infringes a third parties intellectual property rights if: (1) developer notifies Oracle's general counsel within 30 days of claim; (2) give Oracle sole control of defense and settlement; and (3) give Oracle information, authority, and assistance to defend the claim.

Liability Disclaimers

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed

Company: Oracle Corporation

Product: Oracle 9i

Type of Product: Database Dev

Indirect: N, developer must license to end user to disclaim Consequential: N, developer must license to end user to disclaim Incidental: N, developer must license to end user to disclaim Special: X Lost Profits: N/A Lost Savings: N/A Lost Good Will: N/A Tort or Contract: N/A Breach of Good Faith: N/A Foreseeability: N/A Loss of Data: N/A Third Party Claims: N/A Other: N, developer must license to end user to disclaim direct damages

Affirmative Warranty Terms

Perform Substantially as Documented For 1 year after Oracle delivers product. Media Free from Defects: N/A Other: N/A

Types of Licenses

Named Users: N/A Concurrent Users: N/A By Processor: N/A By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal: N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: a nonexclusive, nontransferable license to use the programs (a) to develop or prototype the application package, and (b) to provide training for the application package to developer's employees and end users that have licensed the application package. Trial: Nonexclusive 30 day license to distribute up to 50 trial licenses at a time for end user's internal evaluation. Demonstration: Nonexclusive, nontransferable license to (a) demonstrate to potential end users, (b) prototype applications, and (c) provide application training to developer employees.

Company: Redhat*

Product: Red Hat Linux 9 Professional

Type of Product: App (OS)

License: Linux operating system licensed under GNU GPL or LGPL. Most of the Linux Programs are licensed pursuant to an open source EULA that permits you to copy, modify, and redistribute the software, in both source code and binary code forms.

Red Hat Linux itself is a collective work under U.S. copyright law. Subject to the trademark use limitations set forth in this Agreement, Red Hat grants you a license in the collective work pursuant to the GNU General Public License.

License Fees: N/A

License Mods: N/A

Transfer & Use Restrictions

Reverse Engineering

N/A

Decompile: N/A Disassemble: N/A Decrypt: N/A Mod: N/A Adapt: N/A Derivative Work: N/A Translate: N/A

Other: N/A Transfer: N/A

Transferee: N/A Give Away: N/A Assign: N/A Loan: N/A Sublicense: N/A Rent: N/A Lease: N/A Distribute: N/A

Resale: N/A Performance Testing: N/A Other: N/A

Returns: N/A Copying: N/A

Other Clauses

Choice of Law: NC

UN Convention: N/A Audits: N/A Arbitration: N/A Integration Clause: N/A IP Rights: Red Hat retains copyright in the documentation, appearance, structure, and organization of the Red Hat Linux distribution. Red Hat trademark may be used in accordance with Red Hat trademark guidelines.

Jury Trial: N/A Other: N/A

Warranty Disclaimers

As Is: X Express: N/A Implied: N/A Statutory: N/A Custom: N/A Common Law: N/A Merchantability: X Fitness: X Title: N/A Non-infringing: X

Quality: N/A Results: no guarantee of error free operation Lack of Virus: N/A Quiet Enjoyment: N/A

Limitations on Damages

Damages or Remedy: N/A Other: N/A

Liability Disclaimers

Indirect: N/A Consequential: X Incidental: X Special: N/A Lost Profits: X Lost Savings: X Lost Good Will: N/A Tort or Contract: N/A Breach of Good Faith: N/A

Foreseeability: X Loss of Data: N/A Third Party Claims: N/A Other: N/A

Affirmative Warranty Terms

Perform Substantially as Documented Not warranted to perform precisely as described Media Free from Defects: for 30 days Other: N/A

Types of Licenses

Named Users: N/A Concurrent Users: N/A By Processor: N/A By Machine: N/A Machine by Processors: N/A Evaluation: N/A Enterprise: N/A Professional: N/A Personal: N/A Educational: N/A Not for Resale: N/A Pre-release: N/A Development: N/A Trial: N/A Demonstration: N/A

Key: N/A = not addressed in the EULA

X = disclaimed or not permitted

Y = permitted or specifically not disclaimed