

Specific Program Document (“License SPD”)

1. CA Europe s.a.r.l. (“CA”) licenses to You (meaning the customer legal person being licensed the right to use of the CA Software under the present License SPD, also referred to as “Client”, “Customer” or “Licensee”) the CA software program(s), and any fixes, patches, updates, upgrades, or other software provided to You as part of Maintenance (meaning the maintenance and support services provided to You by the entity to whom You have purchased the CA Software) listed below (“CA Software”) under the following terms and conditions. By using the CA Software, You confirm that You have read and agreed to these terms.

2. **Program Name: CA Wily Introscope® v.9**

3. **Specified Operating Environment**

The CA Software's specifications and specified operating environment information may be found in Documentation accompanying the CA Software, if available (e.g., a user manual, user guide, or readme.txt or notice.txt file).

4. **Licensing Model**

The CA Software is licensed by (1) the number of CPUs when used as a distributed product or by (2)(a) millions of service units (“MSUs”) and number of System z Application Assist Processors (“zAAPs”) and number of System z Integrated Information Processors (“zIIPs”) or (b) number of integrated facilities for Linux (“IFLs”), when used in the mainframe environment, as set forth on the Order Form (the “Authorized Use Limitation”).

“CPU” means a central processing unit which is the specialized integrated circuit that executes binary programs and performs most logical functions or calculations. A dual-core central processing unit is considered a single CPU. Note that because of the use of multi-core CPUs and virtual server environments, the calculation of CPUs for licensing purposes described below will not always equate to the number of physical CPUs in the environment. A virtual server environment is created where virtual machine technology (which applies to both client and server hardware) is used to enable multiple instances of an operating system(s) to run on a single computer simultaneously (“Virtual Machine Technology”).

When the Authorized Use Limitation is “CPU” or “Processor”, the calculation with respect to the number of CPUs on an individual server is determined as follows:

1. For non-virtual server environments, for any server with applications monitored by the CA Software with single CPUs (including, for the avoidance of doubt, dual-core CPUs), count the number of CPUs. For any server with applications monitored by the CA Software with greater than dual-core CPUs, count all cores of the CPUs. Divide the number of cores by two (2) and round up to the next whole number.
2. For virtual server environments, for any server with single CPUs (including, for the avoidance of doubt, dual-core CPUs), count the number of CPUs. For any server with greater than dual-core CPUs, count all cores of the CPUs. Divide the number of cores by two (2) and round up to the next whole number. Determine the maximum percentage of the server CPU capacity that is allocated by the Virtual Machine Technology to any operating system instance containing application(s) monitored by the CA Software, and multiply this percentage by the number of CPUs. Multiply the resulting number by one and a half (1.5X) and round up to the next whole number.
3. For mixed server environments, for each server perform the calculations for CPUs as set forth above in subparagraphs (1) and (2) and add these amounts together to determine the aggregate number of CPUs.



When the Authorized Use Limitation is “MSUs”, “zAAPs”, or “zIIPs” (i) the MSUs shall be calculated by totaling the MSU capacity for all logical partitions, or LPARs, that run an application monitored by the CA Software, (ii) the zAAPs shall be calculated by totaling the number of zAAP engines attached to such LPARs, and (iii) the zIIPs shall be calculated by totaling the number of zIIP engines attached to such LPARs. An “LPAR” means the division of a computer’s processors, memory, and storage into multiple sets of resources so that each set of resources is operated independently with its own physical or virtual operating system instance and applications.

When the Authorized Use Limitation is “IFLs”, the IFLs shall be calculated by totaling the number of IFL engines that run an application monitored by the CA Software.

5. Licensing terms

5.1. License grant. The license granted to you is a limited, non-exclusive, non-transferable and territory wide license. The “Territory” is specified in the Order Form, in the section entitled “Territory”. Your use of the license shall extend to use by You and Your Authorized End Users. “Authorized End Users” means You and Your Affiliate’s employees and independent contractors (but excluding any outsourcer, facilities management providers or application service provider). Use of the CA Software by Authorized End Users shall at all times remain Your responsibility and liability. You may use the CA Software for the operation of Your Affiliate’s internal data processing where an “Affiliate” shall mean any entity for which You hold greater than a fifty percent (50%) interest or, by force of law or contract but only for so long as you maintain that interest. You may transfer such CA Software to new hardware, site or location within the Territory upon prior written notice to CA and such transfer might be subject to the payment of additional fees to the local CA entity to which You have purchased the CA Software.

5.2. Type of license. The type of license You receive is designated in the Order Form for the CA Software and may include:

Perpetual License: A perpetual license to use the CA Software.

Subscription License: A license to use the CA Software for a specific length of time (the “Term”) as set forth in the applicable Order Form. When the license expires at the end of the Term, You, all Affiliates and Authorized End Users must stop using the CA Software if You have not obtained a new license.

5.3. Use Prohibitions. Except as expressly authorized by the Agreement, You may not: (a) copy, reproduce, distribute or disclose the CA Software, provided that You may make a reasonable number of copies of the CA Software for bona fide “cold standby” disaster recovery, backup and archival purposes and may use such copy for reasonable testing and in the event of a bona fide disaster recovery event. Maintaining copies of the CA Software in a “hot standby” environment or further or additional use of the CA Software for disaster recovery, backup or archival purposes shall be subject to payment by You of the applicable fees to CA; (b) modify, unbundle, or create derivative works of the CA Software; (c) rent, sell, lease, assign, transfer or sublicense the CA Software or use the CA Software to provide hosting, service bureau, on demand or outsourcing services for the benefit of a third party; (d) remove any proprietary notices, labels, or marks on or in any copy of the CA Software or Documentation or any CA Software or materials in which the CA Software or Documentation or portions thereof are embedded; (e) use the CA Software in any manner that exceeds or is broader than the uses licensed to You; or (f) reverse assemble, decompile, reverse engineer or otherwise translate the CA Software, except to the extent specifically permitted by applicable law without the possibility of contractual waiver. All rights not specifically granted hereunder are expressly reserved.

5.4. Authorized Use Limitation. The specific scope or number or type of licenses that You have purchased for the CA Software is set forth in the relevant Order Form. Your use of the CA Software must not exceed the specified Authorized Use Limitation. Prior to installation or use by You of the CA Software in excess of the Authorized Use Limitation, You agree to pay the CA entity through whom you have purchased the CA Software for such incremental excess use.

6. General Terms.

6.1. Export Rules. You agree that the CA Software is subject to export controls of the United States of America and import controls of any other country in which the CA Software may be used. You agree to export, re-export or import CA Software only in compliance with such laws and controls

6.2. Applicable Law. Both You and CA consent to the application of the same laws as are applicable to the contract through which you purchased the license of the CA Software to govern, interpret and enforce this License Specific Program Document without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this License SPD.

6.3. Limitation of Liability.

6.3.1. Except for death or personal injury caused by fraud or serious- or deliberate error (*persoonlijk bedrog, of grove- of opzettelijke fout*) of CA, and subject to Sections 6.3.1 and 6.3.2, CA's liability to You for direct damages, loss or liability for any cause whatsoever, except as otherwise stated in this Section 6.3, and regardless of the form of action, will be limited to the total amount of fees paid by the You for the specific CA Software or Maintenance for the then current period that caused the damage or gave rise to the cause of action.

6.3.2. CA's liability for damage to tangible personal or real property due to the fraud or serious- or deliberate error of CA shall be limited in aggregate to the sum of €300,000 per event or series of related events.

6.3.3. THE REMEDIES PROVIDED IN THE AGREEMENT ARE THE EXCLUSIVE REMEDIES OF THE PARTIES. IN NO EVENT SHALL CA BE LIABLE TO YOU OR ANY OTHER PARTY, WHETHER IN CONTRACT OR TORT, OR OTHERWISE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR UNFORESEEABLE LOSS, DAMAGE OR EXPENSE, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF OPPORTUNITY, LOSS OR CORRUPTION OF DATA, HOWEVER ARISING, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES BEING INCURRED. THIS LIMITATION SHALL NOT APPLY FOR SUCH DAMAGES CAUSED BY THE FRAUD OR SERIOUS- OR DELIBERATE ERROR OF CA, BUT SOLELY TO THE EXTENT SUCH DAMAGES CANNOT BE EXCLUDED BY LAW.

6.3.4. The parties agree the limitations and exclusions herein are fair and reasonable in all the circumstances of the Agreement.

6.4. Warranty.

6.4.1. CA warrants to You that: (a) it has the authority to grant You the rights and licenses mentioned herein and (b) for the period of 30 days after delivery of the CA Software and subject to the CA Software being used in an operating environment stated in the Documentation as supported by CA, the CA Software will materially conform to the specifications in the Documentation for such CA Software. If it is established that CA has breached the warranty in subsection (b) above, CA's only obligation and Your exclusive remedy shall be for CA to, at its option, (1) use reasonable efforts to cure the defect in the CA Software; (2) replace the CA Software with CA Software that materially conforms to the specifications in the Documentation; or (3) terminate the CA Software license and arrange a pro rata refund of the fees that You have paid. Any refund of fees paid in accordance with the warranty provisions herein will terminate the license of the affected CA Software.

6.4.2. This warranty and the remedies offered are applicable only if: (i) the reported error or defect is reasonably reproducible by CA; (ii) You report the alleged breach with reasonable specificity in writing within thirty (30) days from its occurrence; (iii) You provide CA with reasonable assistance in the diagnosis and remedy of the applicable breach; (iv) You have installed and are using all updates, patches and fixes made available by CA for the affected CA Software; (v) You have complied in all material respects with the terms and conditions of this License SPD and have materially conformed to the Documentation for the affected CA Software; and (vi) the error or defect is due solely to an error or omission on the part of CA, its agents, affiliates or employees.

6.4.3. PARTIES EXPLICITLY MUTUALLY AGREE THAT THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CA DOES NOT WARRANT THAT THE CA SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT USE OF THE CA SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IF PERMITTED BY APPLICABLE LAW: SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD SPECIFIED FOR THE SUBJECT CA SOFTWARE. NO WARRANTIES OF ANY KIND APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW SUCH LIMITATIONS SO TO THAT EXTENT THE FOREGOING LIMITATION MAY NOT APPLY TO YOU. If You claim under the present warranty section, You are not entitled or eligible to seek for the same warranty under any another warranty provision.

6.5. Ownership and Proprietary Information. Title to, ownership of, and all rights in the intellectual property, including but not limited to patents, copyrights, trademarks, and trade secrets in the CA Software and Documentation, any derivative works thereof, and any goodwill accruing from the use of such CA Software and Documentation, belong exclusively to and shall remain with CA and/or its licensors. You shall not make available or disclose such intellectual property to any third parties except as expressly permitted by this License SPD, and shall take appropriate action, including by instruction or agreement with Your employees who are permitted access to such information, to satisfy Your obligations hereunder.

6.6. Assignment. You may not assign the License SPD, the use of any CA Software or Your rights and obligations under the License SPD without the prior written consent of CA. The License SPD shall be binding on the parties and all of their respective successors and assigns. CA may assign the License SPD by written notice to You.

6.7. Termination. CA Europe SARL may terminate the present License SPD as well as revoke the license hereby granted in the event of a breach by You and/or Your Authorized End Users of the present License SPD and/or the agreement under which You have purchased the CA Software and/or applicable Maintenance.

7. **Third Party Information and Terms**

The following list hereto identifies various third-party components used with the CA Software you are licensing and sets out certain notices, attributions and/or terms that CA is required to provide to you by the third party licensors of those components, as described in greater detail therein for each such component. For more information, please see <https://support.ca.com/prodinfo/tpterms>.

- Acegi Security**
- AIX JRE**
- Ant**
- Apache log4j**
- Apache log4net**
- Apache MUSE**
- APR**
- AspectJ**
- Axis**
- Bouncy Castle**
- c3p0**
- castor**
- cglib-nodep**
- Commons Beanutils**
- Commons Cli**
- Commons Collections**
- commons configuration**
- commons dbcp**
- Commons Digester**
- commons discovery**
- commons el**
- commons email**
- Commons FileUpload**
- Commons httpclient**
- Commons IO**
- Commons Lang**
- Commons Logging**
- Commons Pool**
- Commons Validator**
- Derby**
- dom4j**
- eclipse 3.4.1 subset**
- ehcache**

Equinox Aspects
expat
GNU JavaBeans Activation Framework (JAF)
Guiffy
Harmony
Hibernate
httpClient
Isomorphic SmartClient
iText
JAF
Jakarta Taglibs
Jasper Reports
jasypt (Java Simplified Encryption)
Java Mail
JAX-RPC
JAXB
Jaxen
JDBC
JDOM
jcommon
Jetty
JFreeChart
JGoodies Looks
JHotDraw
jline
JSTL
JSW (Java Service Wrapper)
JTDS
JWSDP
jxDBCCon
Knopflerfish
libcurl
Log4cplus
Log4j
Log4NET
LsaUtility
Lucene
MIT Kerberos
NMock
not-yet-commons-ssl
NUNIT
OpenSAML
OpenSSL
Oracle 11G JDBC driver
ORO
PDFBox subset
PERWAPI
POI
Postgres Database
Postgres JDBC driver
PostgreSQL
Quartz
RegExp
Rhino
Simple Logging Facade for Java
SNMP4J
spring framework
Struts



struts_menu
Sun JDK
Sun JRE
TableSorter
tomahawk
Tomcat
WSDL4J
Xalan-J
Xerces-J
XML Security Java
xml-apis
xom