

## Specific Program Document (“License SPD”)

CA Europe s.a.r.l. (“CA”) licenses to Customer the CA software program(s), and any fixes, patches, updates, upgrades, or other software provided to Customer as part of Maintenance) (“CA Software”) listed below under the following terms and conditions. By using the CA Software, Customer confirms that Customer has read and agreed to these terms.

**Program Name:** CA Wily Introscope®

### **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).

### **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.

## Licensing terms

**License Grant.** The license granted to Customer is a limited, non-exclusive, non-transferable and territory wide license. “Territory” is specified in the Order Form, in the section entitled “Territory”. Customer’s use of the license shall extend to use by Customer and Customer’s Authorized End Users. “Authorized End Users” means Customer and Customer 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 Customer’s responsibility and liability. Customer may use the CA Software for the operation of Customer Affiliate’s internal data processing where an “Affiliate” shall mean any entity for which Customer holds greater than a fifty percent (50%) interest by force of law or contract, but only for so long as Customer maintains that interest. The type of license Customer receives 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, Customer, all Affiliates and Authorized End Users must stop using the CA Software if Customer has not obtained a new license.

Transfers outside of the Territory shall require prior written consent of CA and payment of additional fees.

**Use Prohibitions.** Except as expressly authorized by the agreement, Customer may not: (a) copy, reproduce, distribute or disclose the CA Software, provided that Customer 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 Customer of the applicable fees; (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 Customer from CA or an authorized CA reseller or distributor; 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.

**Authorized Use Limitation.** The specific scope or number or type of licenses that Customer has purchased for the CA Software is set forth in the relevant Order Form. Customer’s use of the CA Software must not exceed the specified Authorized Use Limitation. Prior to installation or use by Customer of the CA Software in excess of the Authorized Use Limitation, Customer agrees to pay the CA entity through which Customer obtained the license for such incremental excess use.

## General Terms.

**Export Control.** Customer agrees that 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. Customer agrees to export, re-export or import CA Software only in compliance with such laws and controls.

**Applicable Law.** Both Customer and CA consent to the application of the same laws as are applicable to the agreement through which Customer 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.

**Limitation of Liability.** Regardless of the basis which Customer may be entitled to claim damages from CA or its suppliers (including but not limited to breach of contract, negligence, misrepresentation, or other contract or tort claim), the Customer agrees that CA is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property in the amount of four hundred and fifty



thousand CHF Swiss Francs (CHF450'000) and 2) the amount of any other actual direct damages up to the amount that the Customer actually paid for the CA Software or Maintenance that are the subject of the claim. This limitation of liability also applies to CA's employees, contractors, resellers and suppliers. It is the maximum amount which they, and CA, are collectively responsible.

EXCEPT AS SET FORTH ABOVE, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL CA OR ITS SUPPLIERS BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY CLAIM FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOST SAVINGS, OR LOST DATA, EVEN IF CA OR ITS SUPPLIERS HAVE BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT THE ABOVE LIABILITY LIMITATION IS FOUND TO BE INVALID UNDER APPLICABLE LAW, THEN CA AND ITS SUPPLIER'S LIABILITY FOR SUCH CLAIM SHALL BE LIMITED TO THE AMOUNT OF THE FEES CUSTOMER HAS ACTUALLY PAID FOR THE CA SOFTWARE, OR MAINTENANCE GIVING RISE TO THE CLAIM.

**Limited Warranty.** CA warrants to the Customer that: (a) it has the authority to license Customer the rights and licenses mentioned herein and (b) for the duration of the warranty period set forth in the SPD for the CA Software, or, if no warranty period is set forth in the SPD and the CA Software are not provided under terms expressly identifying the CA Software as provided on an "as is" basis, a period of thirty (30) days following the date on the Order Form; (i) when the CA Software is 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; and (ii) Maintenance shall be performed in accordance with industry standards using reasonable care and skill, and provided in accordance with CA's then-prevailing policies. If it is established that CA has breached either of the warranties in subsection (b) above, CA's only obligation and Customer's 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 provide a pro rata refund of the fees that the Customer has already paid, which for license and Maintenance fees paid with respect to CA Software licensed under a subscription license, shall be calculated against the remainder of the Term from the date it is established that CA has breached the foregoing warranties or, if the CA Software was licensed under a perpetual license, a term of three years shall be used for the purposes of the calculation; Any refund of fees paid in accordance with the warranty provisions herein will terminate the license for the affected CA Software.

This warranty and the remedies offered are applicable only if: (i) the reported error or defect is reasonably reproducible by CA; (ii) the Customer reports the alleged breach with reasonable specificity in writing within thirty (30) days from its occurrence; (iii) the Customer provides CA with reasonable assistance in the diagnosis and remedy of the applicable breach; (iv) the CA Software is within the warranty period set forth in the SPD; (v) the Customer has installed and is using all updates, patches and fixes released by CA for the affected CA Software; (vi) the Customer has complied in all material respects with the terms and conditions of the Agreement (including but not limited to payment of all fees) and has materially conformed to the Documentation for the affected CA Software or Maintenance; and (vii) the error or defect is due solely to an error or omission on the part of CA, its agents or employees.

The Customer understands and agrees that third-party hardware equipment and software, supplied by CA may be provided to Customer under warranty or pursuant to other terms and conditions offered by the manufacturer or licensor of such hardware or software. Where applicable, CA will include such warranties or other terms in Documentation accompanying the relevant software or other deliverable.

NO THIRD PARTY, INCLUDING AGENTS, DISTRIBUTORS, OR AUTHORIZED CA RESELLERS, IS AUTHORIZED TO MODIFY ANY OF THE ABOVE WARRANTIES OR MAKE ANY ADDITIONAL WARRANTIES ON BEHALF OF CA.

THESE WARRANTIES ARE EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF CONCEALED DEFECTS, SATISFACTORY QUALITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CA DOES NOT WARRANT THAT THE CA SOFTWARE OR MAINTENANCE WILL MEET THE REQUIREMENTS OF THE CUSTOMER 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 THE CUSTOMER. IF PERMITTED BY APPLICABLE LAW: (A) SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD SPECIFIED FOR THE SUBJECT CA SOFTWARE OR MAINTENANCE; AND



(B) THE REMEDY FOR BREACH OF ANY SUCH WARRANTIES IS LIMITED TO REPAIR OR REPLACEMENT OF ANY GOODS FOUND NOT TO COMPLY WITH THEM OR THE PROVISION. 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 THE CUSTOMER.

THESE WARRANTIES GIVE SPECIFIC LEGAL RIGHTS TO THE CUSTOMER AND THE CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

If Customer claims under the present warranty section, Customer is not entitled or eligible to seek for the same warranty under any another warranty provision.

**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. Customer 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 Customer's employees who are permitted access to such information, to satisfy Your obligations hereunder.

**Assignment.** Customer may not assign the License SPD, the use of any CA Software or Customer's 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 Customer.

**Termination.** CA may terminate this License SPD as well as revoke the license hereby granted in the event of a breach by Customer and/or Customer's Authorized End Users of this License SPD.

### Third Party Information and Terms

The following list 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>.

- Java Architecture for XML Binding (JAXB) 2.0
- Rhino 1.6 Release 2
- util.Concurrent.jar
- Sun JRE 1.5
- IBM(R) 32-bit Runtime Environment for AIX(TM), Java(TM) 2 Technology Edition, Version 1.5
- Oracle Technology Network Development and Distribution License Terms
- Apache Axis
- Apache Commons Bean-Utils
- Apache Commons Digester
- Apache Commons Discovery
- Apache Commons Logging
- Apache ehcache
- Apache log4j
- Apache Tomcat
- JHotDraw 5.3
- JasperReports 1.3.3
- JFreeCharts 1.0.8
- jxDBCon jdbc3
- Java Architecture for XML Binding (JAXB) 2.0
- QUT
- Isomorphic SmartClient web presentation layer
- Guiffy Java API
- NMock
- Tanuki

