



Packaged/Clickwrap Software License Agreement

READ THE TERMS OF THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE INSTALLING THE SOFTWARE CONTAINED IN THE PROGRAM DISKETTES, TAPES AND/OR COMPACT DISCS OR ACCESSED VIA THE IONA WEBSITE (COLLECTIVELY, THE "SOFTWARE"). BY INSTALLING THE SOFTWARE OR USING THE DOCUMENTATION PROVIDED WITH THE SOFTWARE ("DOCUMENTATION", TOGETHER WITH THE SOFTWARE, "PRODUCT"), YOU ("CUSTOMER") ARE ACCEPTING AND AGREEING TO THE TERMS OF THIS AGREEMENT. IF YOU ARE NOT WILLING TO BE BOUND BY THE TERMS OF THIS AGREEMENT, YOU SHOULD, TO THE EXTENT FEASIBLE, PROMPTLY RETURN THE PRODUCT (IN ITS ORIGINAL PACKAGE) OR DESTROY THE PRODUCT.

THIS AGREEMENT is made by and between the IONA licensor described in Section 16 below ("IONA") and the Customer. This Agreement governs Customer's use of the Product. **The license grants in this Agreement are expressly contingent upon Customer's actual purchase of, and payment for, Licenses to the Products described in this Agreement, if applicable.**

1. DEFINITIONS

- | | |
|---|--|
| <p>1.1. "Adapter License(s)" if used in this Agreement means a License for Customer to make Permitted Use of an adapter listed on the First Schedule (an "Adapter") to connect one or more Customer Applications to a single third party application.</p> <p>1.2. "Client" if used in this Agreement means any computer, machine or device that is not a Server.</p> <p>1.3. "Client License" if used in this Agreement means a Runtime License for use on a Client. Each Client shall require a separate Client License. Customer shall not at any time permit the number of Clients with installed Software to exceed the number of Client Licenses for which fees are paid to IONA.</p> <p>1.4. "Connection License" if used in this Agreement means a License to connect a CORBA-based software application (other than IONA's "Naming", "Locator" and "Configuration" CORBA-based software applications) with, by or through a Customer Application. Each connection shall require a separate Connection License. Customer shall not at any time permit the number of connections to exceed the number of Connection Licenses for which fees are paid to IONA.</p> | <p>1.5. "CPU" means central processing unit.</p> <p>1.6. "Customer Application(s)" means with respect to Products purchased from IONA, any product(s), application(s), program(s) or component(s) developed by Customer using Product or embedding or accessing Software.</p> <p>1.7. "Developer" means a specific individual employee or consultant of Customer using Development Software and Documentation for the development of Customer Applications. If a Developer ceases (i) to be an employee or consultant of Customer, or (ii) ceases to use the Development Software, and such cessation is reasonably expected to be permanent, a different individual may be substituted for such Developer at no extra fee. Customer shall not permit the number of Developers to exceed the number of Development Licenses for which fees, if any, are paid to IONA.</p> <p>1.8. "Development License(s)" means a non-exclusive, non-transferable, perpetual, limited, License for a Developer to make Permitted Use of Development Software and Documentation for the development of Customer Applications and shall be limited to the particular Customer Applications, projects and operating system platforms identified on the First Schedule. A</p> |
|---|--|

Development License is not a concurrent-use license. Individuals who have been removed or replaced as a Developer shall have no further right to use Development Software that is the subject of the Development License.

- 1.9. “Development Software” means Software that is used in the construction of Customer Applications.
- 1.10. “Documentation” means all documentation accompanying the Software and all documentation separately provided under this Agreement.
- 1.11. “First Schedule” means a description setting forth the relevant license types, quantities, and/or other business terms pertaining to the Products and/or support acquired under this Agreement. Terms set forth on the First Schedule may include Product description (version, operating system, quantity) license fees, support fees, support level, and name of Customer Application. The First Schedule may be packaged with this Agreement or may be derived through the electronic/web based installation process. If Customer has not received a First Schedule or is unsure of the content contained on a First Schedule, contact IONA immediately at shipping@iona.com; Customer is responsible for complying with the terms of the First Schedule.
- 1.12. “License(s)” means individually, and collectively, each, and every type of license granted to Customer under this Agreement. Licenses shall be limited to the particular operating system platforms, machine types, number of CPUs, number of MSUs, and/or other use restriction identified with the Product through the First Schedule, and the Documentation, on the media containing the associated Software and/or through the download process corresponding to the Software. All Licenses are subject in all respects to the terms and conditions of this Agreement, its Schedules and Exhibits.
- 1.13. “LPAR” means a logical partition of a machine.
- 1.14. “Machine License(s)” means a non-exclusive, non-transferable, limited, License for Customer to make Permitted Use of

Runtime Components in Customer’s internal business operations on a specific machine or LPAR (such machine or LPAR to be designated by Customer and IONA through reference to the applicable MSU Rating for such machine or LPAR), as part of a proprietary Customer Application that is developed by Customer for use in Customer’s internal business operations. A Machine License is not a concurrent-use license. Each machine or LPAR shall require a separate Machine License and once Software is installed on a machine or LPAR it may not be installed on any other machine or LPAR. Customer shall not at any time permit the number of machines or LPARs with installed Software to exceed the number of Machine Licenses for which fees are paid to IONA. A Machine License shall include any production-based license granted hereunder that is based upon the MSU capacity of an LPAR. As a result, Customer may have more than one Machine Licenses per machine if the Product is licensed on a per-LPAR basis. Customer shall not at any time, permit the number of MSUs per LPAR to which a Machine License pertains to exceed the applicable MSU Rating for such LPAR.

- 1.15. “MSU” means a million service units, as such term is used by the IBM Corporation in its published ratings of machine capability (the “MSU Rating”).
- 1.16. Other Terms. All other capitalized or defined terms shall have the meanings assigned in this Agreement.
- 1.17. “Permitted Use(s)” means: the lawful use of Product (i) within the Territory, (ii) as part of, or in connection with a Customer Application, and (iii) within Customers internal business operations. Customer must be in full compliance with this Agreement, its Schedules and Exhibits and any contractual or legal obligations Customer may have to third parties. Permitted Use further excludes and prohibits (a) the use of webservices included in any Product independent of the other Software included in such Product, and (b) use that infringes a third party’s intellectual property.

- 1.18. "Plug-In License(s)" if used in this Agreement means a License for Customer to make Permitted Use of a plug-in listed on the First Schedule (a "Plug-In") to connect one or more Products to a single communication or middleware transport.
- 1.19. "Product(s)" means the Software and Documentation provided to Customer under this Agreement. "Runtime Component(s)" means any portion of the Software that is (i) embedded or incorporated in any Customer Application or (ii) is used or accessed (or can be used or accessed) in the execution of a Customer Application.
- 1.20. "Runtime License(s)" means a non-exclusive, non-transferable, limited, License for Customer to make Permitted Use of Runtime Components as part of a proprietary Customer Application that is developed by Customer for use in Customer's internal business operations. A Runtime License shall include the right to use, copy and deploy Runtime Components within Customer's internal business operations. A Runtime License shall not include the right to use by any third party or the distribution or deployment of any Customer Application to, or by, any third party. A Runtime License specifically excludes, and does not include the right to develop, modify or extend the Customer Application or Runtime Components.
- 1.21. "Server" means a specific machine that:
- (a) has other computing devices dependent on it for services or functionality; or
 - (b) is running a CORBA application capable of receiving incoming requests or with respect to which a portable object adapter is in use.
- 1.22. "Software" means Development Software, Runtime Components and other software, adapters, modules and components licensed to Customer under this Agreement.
- 1.23. "Territory" means worldwide

2. LICENSE

- 2.1 Subject to this Agreement, and payment of any appropriate fees and royalties, if any, set forth in the applicable Schedules, IONA

grants Customer the nonexclusive, nontransferable, limited Licenses described in the First Schedule. The Products are licensed, and may be used for, lawful purposes only. The Licenses are subject to the additional terms, if any, set forth on the Second Schedule.

- 2.2 Customer shall not use any Product other than pursuant to the terms of a valid License and Customer shall pay IONA all License and other fees, if any, when due. Unless otherwise specified in this Agreement, payment of all License and other fees shall be net 30 days and nonrefundable. All Licenses are F.O.B. IONA and all Product and support shall be deemed accepted upon delivery.
- 2.3 With respect to Development Licenses, a temporary license key may be provided to Customer with the Development Software. IONA will notify Customer if a temporary license key is provided to Customer with the Development Software. If a temporary license key is provided to Customer with the Development Software, the temporary license key shall expire ninety (90) days after receipt of the Development Software. Within this ninety (90) day period, Customer shall be required to provide to IONA, details of the name(s) of the Developer(s) host machine(s). Upon receipt of these details IONA shall provide a permanent license keys for the Development Software to Customer. The terms and conditions governing the use of the Development Software as set out in the license agreement accompanying the Development Software shall continue to apply following the provision to Customer of the permanent license key.
- 2.4 Customer shall ensure that Customer obtains all necessary Product licenses and that all applicable fees are properly tracked and paid. Use of Product other than pursuant to the terms of a valid License and failure to pay fees, if any, when due are each a material breach of this Agreement. In addition to any other remedies to which IONA may be entitled, Customer shall pay IONA the greater of (i) the fees payable under this Agreement, or (ii) IONA's then current service and license fees, for Customer's use of Product other than pursuant to the terms of a valid License. Improper use of Product for which additional fees shall be assessed shall include, without

limitation, use on unlicensed operating system platforms, servers or machines, unaccounted for, or improperly substituted, Developers, and improper or unaccounted for Runtime Component deployments.

- 2.5 If Customer has license(s) to previous versions of the Software and the Software licensed under this Agreement is provided as an upgrade, this Agreement shall not correct or excuse violations of previous licenses. If an earlier license is terminable or terminated by IONA for breach by Customer, this license may also be terminated simultaneously in IONA's sole discretion

3. AUDIT

Upon request, Customer shall certify in writing its uses of IONA software and that it has obtained all licenses and has paid all fees, if any, required by this Agreement. IONA shall have the right, upon reasonable notice, to audit Customer's compliance with its obligations under this Agreement. Any audit shall be conducted during normal business hours, with as little disruption of Customer's business as is reasonably possible. Audits shall be at IONA's sole expense, unless an audit shows that fees paid by Customer prior to the audit are less than ninety percent (90%) of the amount actually due and payable, in which case the Customer shall reimburse IONA for all costs incurred in connection with the audit and collection of amounts due. Customer shall pay all fees, if any, the audit shows to be due not later than thirty (30) days after the auditors' report is made available to Customer. IONA may use the audit report solely to enforce its rights under this Agreement and shall otherwise treat the audit report as Confidential Information (defined below).

4. OWNERSHIP

Customer acquires no right, title, or interest in the Product other than the License granted by IONA under this Agreement and the title to the media by which the Software is delivered.

5. PROPRIETARY NOTICES

Customer shall not remove any trademark, tradename, copyright, or other proprietary notice from the Product, and shall not delete such notices from any copies or back-up copies of the Software or Documentation. Customer may not

delete any embedded proprietary notices of IONA on any portion of the Software that is incorporated in Customer Application. Customer, however, shall have no obligation to include any IONA copyright or proprietary notices on the media label, notice screen display or boot up screen of the Customer Application, provided that Customer marks the Customer Application with its own copyright notice.

6. COPY AND OTHER RESTRICTIONS AND CONFIDENTIALITY

- 6.1. Without having to pay a fee, Customer may make copies of the Development Software in machine-readable, object code form, solely for backup, disaster recovery or archival purposes. IONA shall provide one set of Documentation for each Developer. Customer may not copy or distribute the Documentation or any portion thereof without permission from IONA.
- 6.2. Customer shall not display, disclose or sublicense the Software to third parties other than Customer's consultants that Customer has made IONA aware of, and shall cause to comply with, the terms of this Agreement and each of whom for the purposes of this Agreement shall be a Developer. Customer shall not publish or disclose the results or any benchmark tests of the Products. Customer shall not rent, lease, loan, modify, adapt, translate, reverse engineer, disassemble or decompile the Product or any portion thereof, or create derivative works of the Product, even for purposes of interoperability or error correction. If Customer wishes information relating to the Software for purposes of achieving interoperability with independently created computer software, it may make a written request to IONA. Customer shall promptly report to IONA any actual or suspected violation of this section and shall take all further steps that may reasonably be requested by IONA to prevent or remedy any such violation.
- 6.3. "Confidential Information" shall mean: (i) any materials or information marked as confidential at the time of disclosure (or described as confidential at the time of oral disclosure and summarized in writing and sent to the receiving party within thirty (30) days of disclosure); and (ii) the commercial

terms of this Agreement. "Confidential Information" shall not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (ii) is known by the receiving party at the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the receiving party; (iv) is lawfully obtained from a third party that has the right to make such disclosure; or (v) the receiving party is obliged to disclose under law or any court order, provided reasonable prior notice is given to the owner of the information.

- 6.4. Each party shall protect the other's Confidential Information from unauthorized disclosure using the degree of care that such party uses to protect its own like information, but no lesser degree of care than is commercially reasonable. Neither party shall use the other's Confidential Information for purposes other than those necessary to further the purposes of this Agreement. Neither party shall disclose to third parties the other's Confidential Information without the prior written consent of the other party. Except as expressly provided in this Agreement, no ownership or license rights are granted in any Confidential Information.

7. GOVERNMENT END-USERS

With respect to any Product that is acquired by or for the U.S. federal government (the "Government") or by any prime or subcontractor (at any tier) under any contract, grant, cooperative agreement or other arrangement with the Government, by accepting delivery of Products the Government agrees that such Product qualifies as "commercial computer software" or "commercial computer software documentation" within the meaning of the Government acquisition regulation(s) and that the terms and conditions of this Agreement shall govern the Government's use and disclosure of Product(s) and supercedes all other terms and conditions. With respect to acquisitions of Product governed by DFARS Subpart 227.4 (October 1988): Restricted Rights, use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT. 1988).

8. SUPPORT

Customer shall purchase from IONA the support services for the set forth on the First Schedule, at the appropriate fees. Support purchased under this Agreement shall be subject to the terms and conditions set forth on the Third Schedule. Customer shall ensure that Customer's use of such support services, if any, are tracked and all fees are paid. In the event that Customer is using IONA's support services and has not paid for such support services, in addition to any other remedies to which IONA may be entitled, Customer shall pay IONA the greater of (i) the fees payable under this Agreement for such support services, or (ii) IONA's then current support service fees, for Customer's use of IONA's support services. In the event of a material breach of this Agreement, in addition to any other remedies it may have, IONA may suspend or terminate support to Customer.

9. MARKETING

- 9.1 IONA may identify Customer as an IONA customer in public statements and publications.
- 9.2 During the term of this Agreement Customer agrees to host two reference visits per year from prospective IONA customers. IONA agrees to give Customer reasonable notice of such visits.
- 9.3 If requested by IONA, within thirty (30) days of delivery of the Product, the parties shall issue a joint press release that announces Customer's licensing of the IONA Products, describes the reasons Customer chose IONA Products and includes statements and executive-level quotations acceptable to both parties. Customer shall have the right to approve the press release, but shall not unreasonably withhold or delay its approval. If Customer does not respond within five (5) days following a request for approval, Customer shall be deemed to have approved the press release as of the end of the fifth day.
- 9.4 Customer shall co-operate with IONA in the development of a case study describing Customer's use of the IONA Products. Such case study shall be as reasonably agreed between the parties and may be published by IONA for marketing purposes.

10. WARRANTY

- 10.1 IONA warrants that it has all the rights necessary to enter into this Agreement and to grant to Customer the Licenses granted under this Agreement.
- 10.2 IONA warrants that the Software shall function in all material respects in accordance with the specifications in the Documentation for the Product licensed in effect as of the date of this Agreement under normal use and service for a period of 180 days from the earlier of: (i) Customer's initial installation of the corresponding Software, (ii) the date the package containing the corresponding Software is opened, or (iii) the use of the corresponding Documentation.
- 10.3 IONA warrants that, to the extent the Software records, stores, processes, manages and presents calendar dates (and data or functions involving or based on calendar dates) falling on or after January 1, 2000, it shall do so in the same manner and with the same functionality, accuracy, data integrity and performance as the Software records, stores, processes, manages and presents calendar dates (and data involving or based on calendar dates) falling on or before December 31, 1999. IONA does not warrant that the Software shall correct date errors embedded in data streams which pass through but are not processed by the Software, nor does IONA warrant that the Software shall operate without error when the underlying hardware or operating system environment produces date related errors not connected with the Software.
- 10.4 IONA warrants that it has taken reasonable precautions to prevent the introduction into the Software of any "viruses," "time bombs," "Trojan horses," or other intentionally destructive or disabling devices. Certain copies of the Software may contain license keys, which are designed to automatically expire after a defined period.
- 10.5 The above warranties do not apply to any non-proprietary software included in the Product, as described more fully in the Second Schedule. Such non-proprietary software is deemed to be provided by IONA

solely on an "AS IS" basis, without any warranty from IONA, and is warranted by to the extent that the applicable packaging, or accompanying license agreement, if any, expressly states a warranty.

- 10.6 IONA's maximum liability, and Customer's sole and exclusive remedy, for a breach of warranties in this Agreement shall be for IONA, at IONA's option, to (i) repair the Product, (ii) replace the Product with a product that meets the warranty provisions of this Agreement, or (iii) refund the license fees, if any, paid for the Product. All warranty claims made under this Agreement must be made within the 180 day period described in Section 10.2 and IONA shall have no liability for claims not made within this period.
- 10.7 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IONA MAKES NO WARRANTIES, EXPRESS OR IMPLIED. ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR AGAINST INFRINGEMENT ARE DISCLAIMED. IONA SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE PRODUCTS' FUNCTIONS OR THE RESULTS OF THE PRODUCTS' USE SHALL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION SHALL BE UNINTERRUPTED OR ERROR-FREE.

11. INTELLECTUAL PROPERTY INFRINGEMENT

- 11.1. Any cause of action against Customer claiming that the Product infringes any patent, copyright, or trademark of a third party shall be defended by IONA at its expense. IONA shall pay any costs, damages and settlements finally awarded against Customer in such action; provided that Customer notifies IONA promptly in writing of each claim and permits IONA to control fully the defense and/or the settlement of such claim. Customer may participate in the proceeding at its own expense.
- 11.2. If the Product is, or in IONA's reasonable opinion is likely to become, the subject of a

third party infringement claim as described above, then IONA may, at its option, either: (i) procure for Customer the right to continue using the Product; (ii) modify the Product to be non-infringing and substantially equivalent in functionality; (iii) replace the Product with substantially equivalent non-infringing material; or (iv) remove the Product and refund to Customer all fees and sums paid by it in respect thereof prorated monthly based on a five-year product life.

- 11.3. IONA shall have no liability for or any obligation to defend any claim of infringement that (i) would have been avoided by use of a non-infringing Product release made available to Customer by IONA or (ii) results from the use or combination of a non-infringing IONA Product with non-IONA programs or data.

- 11.4 Customer shall have no rights under this Section 11 or the Agreement with respect to intellectual property infringement matters as they pertain to any non-proprietary software included in the Product, as described more fully in the Second Schedule. Such non-proprietary software is deemed to be provided by IONA solely on an "AS IS" basis, without any warranty from IONA, and is warranted solely to the extent that the applicable packaging, or accompanying license agreement, if any, expressly states a warranty.

12. LIMITED LIABILITY

NEITHER PARTY NOR ITS LICENSORS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF PROFITS, OR LOSS OF DATA ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, SUPPORT OR SERVICES PROVIDED UNDER THIS AGREEMENT) EVEN IF FORESEEABLE OR IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT FOR LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT, NEITHER PARTY'S LIABILITY SHALL EXCEED AN AMOUNT EQUAL TO THE FEES PAID (OR

WHICH SHOULD HAVE BEEN PAID) BY THE CUSTOMER IN CONNECTION WITH THE RELEVANT PRODUCT.

NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES RESULTING FROM PHYSICAL DAMAGE TO PROPERTY OR DEATH OR INJURY OF ANY PERSON EXCEPT TO THE EXTENT ARISING FROM THE PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

13. ASSIGNMENT

This Agreement and rights granted hereunder may not be assigned, sub-licensed or transferred by Customer without the prior written consent of IONA, provided, however that such consent shall not be required if Customer assigns, sub-licenses or transfers this Agreement or any rights granted herein to a wholly-owned subsidiary or to a business unit or corporate affiliate in connection with a merger or like transaction which is not an actual or effective change in control of Customer. IONA may assign or transfer its rights and obligations under this Agreement at any time with reasonable notice to Customer, provided the assignee agrees to assume all of IONA's obligations hereunder.

14. TERM AND TERMINATION

- 14.1. In addition to any remedies it may have, IONA may terminate this Agreement and the Licenses granted under this Agreement in the event of a breach by Customer of any of the provisions of this Agreement or in the event Customer becomes insolvent or is the subject of any bankruptcy or insolvency proceeding.
- 14.2. Upon termination of this Agreement in the event of a breach by Customer, Customer shall no longer have any right to use the Software and Customer shall return to IONA all tangible copies, and destroy all intangible copies of Product in Customer's possession or control.
- 14.3. The provisions of Sections 3 through 6 and 10 through 16 and the definitions of this Agreement shall survive the termination of this Agreement (for any reason).

15. EXPORT ADMINISTRATION ACT

Customer shall not import, export or re-export the Product to or from any country in contravention of any applicable import or export laws. IONA shall provide reasonable product information to assist Customer in discharging its obligations under this Section.

16. GENERAL

- 16.1. AMENDMENT; WAIVER: No modification or waiver of any provision of this Agreement shall be binding unless specifically agreed in a writing signed by both parties. Any failure or delay in exercising or enforcing any of the rights or remedies granted hereunder shall not operate as a waiver thereof. No waiver by a party of any breach of this Agreement shall operate as a waiver of any other or subsequent breach.
- 16.2. RECOVERY OF LEGAL FEES: If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs
- 16.3. FORCE MAJEURE: Neither party shall be liable for any delay in meeting or for failure to meet any of its obligations under this Agreement due to any cause outside its reasonable control, including strikes, lock-outs, acts of God, war, riot, malicious acts of damage, fire, acts of any government authority, failure of the public electricity supply, failure or delay on the part of any subcontractor beyond the subcontractor's reasonable control. This section shall not excuse any party from the payment of money when due.
- 16.4. NOTICES: All notices and requests in connection with this Agreement to be sent to IONA shall be given in writing and shall be sent by facsimile, hand delivery, overnight courier or mail which provides proof of delivery to the parties Attention: Legal Department, at the addresses for the applicable IONA Licensor set forth below, or to such other address as may be specified in writing, and shall be deemed given on the day of receipt or the date evidenced on the proof of delivery, whichever is earlier.
- 16.5. HEADINGS: Section headings are inserted for convenience of reference only and shall

not affect the interpretation of this Agreement.

- 16.6. SEVERABILITY: If any provision of this Agreement is found invalid or unenforceable, that provision shall be reformed, construed and enforced to the maximum extent permissible, and the other provisions of this Agreement shall remain in full force and effect.
- 16.7. IONA LICENSOR: If the Software is installed and/or used in the United States, the IONA Licensor shall be IONA Technologies, Inc. of 200 West Street, Waltham, MA 02451; If the Software is installed and/or used primarily in Japan (and not otherwise installed and/or used in the United States), the IONA Licensor shall be IONA Technologies Japan Ltd. of SKI Akasaka Building, 3-21-16 Akasaka, Minato-ku, Tokyo Japan 107-0052; If the Software is installed and/or used outside of the United States and is not installed and/or used primarily in Japan, the IONA Licensor shall be IONA Technologies PLC of the IONA Building, Shelbourne Road, Ballsbridge, Dublin 4, Ireland.
- 16.8. LAW AND JURISDICTION: Regardless of who the IONA Licensor is, or where the Software is used, this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the exclusive venue and jurisdiction shall be the federal and state courts located in the Commonwealth of Massachusetts; provided however, that, in the event the IONA Licensor is IONA Technologies Japan Ltd., this Agreement will be governed by and construed in accordance with the laws of the Japan, and the exclusive venue and jurisdiction shall be the Tokyo District Court located in Tokyo. In all instances, the United Nations Convention for the International Purchase and Sale of Goods shall not apply.
- 16.9. DISPUTE RESOLUTION: The parties shall attempt to resolve any dispute arising under this Agreement through the informal means described in this paragraph. Each party shall appoint a senior management representative who does not devote substantially all of his or her time to performance under this Agreement. The representatives shall provide to each other all non-privileged information with respect

to the dispute that the parties believe to be appropriate and relevant. The representatives shall negotiate in good faith to resolve the dispute without the need for any formal proceeding. Formal proceedings for the resolution of the dispute may not be commenced until the earlier of (i) the designated representatives mutually conclude that resolution through negotiation does not appear likely; or (ii) thirty (30) calendar days have passed since the initial request to negotiate the dispute was made; provided, however, that a party may file for formal proceedings earlier solely to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for interim or equitable relief.

- 16.10. **THIRD PARTY SOFTWARE:** The Product may contain or be accompanied by certain non-proprietary software created by third party vendors ("Third Party Software"). Third Party Software is subject to special license terms and conditions set forth in the "notices.txt" file accompanying the Software ("Third Party Software Notices"). Third Party Software Notices include important disclaimers and warranty information. Customer shall comply with all Third Party Software Notices. The Third Party Software Notices are incorporated into this Agreement by reference. In the event of a conflict, the Third Party Software Notices will take precedence over the use restrictions and authorizations specified by Customer and the terms set forth herein (but solely with respect to the Third Party Software to which the Notice relates).
- 16.11. **EVALUATION USE:** In the event Customer has acquired the Products on an evaluation basis (as indicated in the First Schedule or otherwise, "Evaluation"), the special license terms contained in the Second Schedule shall apply to Customer's use of such Products. In the event of a conflict between the terms of this Agreement and the terms of the Second Schedule, the terms of the Second Schedule shall prevail.
- 16.12 **ENTIRE AGREEMENT:** Both parties agree to be bound by the terms of this Agreement and that this Agreement constitutes the entire agreement of the parties and

supersedes all previous licenses relating to the Software, and all communications, oral or written, relating to the subject matter hereof. No representations or statements made by either party, which are not expressly stated herein, shall be binding on such party. Notwithstanding any language on a purchase order or any other document to the contrary, the terms of this Agreement shall take precedence over any purchase order or other document issued by Customer. Purchase Orders and other documents shall be accepted by IONA for administrative convenience only and shall not modify or amend the terms of this Agreement. All terms and conditions on any Purchase Order or other document that are not expressly accepted by IONA in writing with reference to modification of this Agreement shall be null, void and of no legal effect. If any provision of a Schedule to this Agreement conflicts with the main body of this Agreement, they shall be read together so as to best effectuate the intent of the parties, but in the event of irresolvable conflict or ambiguity, the main body of this of this Agreement shall control.

First Schedule

Second Schedule Special Terms

I. Special License Terms for OrbixE2A™ XMLBus Edition:

Portions of OrbixE2A XMLBus Edition are based upon copyrighted materials of Informix Software, Inc.

II. Special License Terms for Orbacus:

The following special license terms shall apply to the Orbacus family of products (which includes without limitation ORBacus for C++, ORBacus for Java, JThreads for C++, Orbix/E for C++, Orbix/E for Java, ORBacus Notify, ORBacus Trader and ORBacus T-Log; collectively referred to in this Agreement as “Orbacus”) and shall control over any inconsistent or contrary terms elsewhere in this Agreement. Orbacus is delivered to Customer as the uncompiled human-readable version of the Software (“Source Code”). All Orbacus Licenses Runtime Licenses shall be limited to binary (i.e. machine readable compiled) versions of the Software only. Customer is expressly forbidden from copying or distributing the Source Code of the Software, except for a limited number of copies used solely for backup purposes. Customer is permitted to Modify the Orbacus Source Code, but all Modifications must include the copyright and other proprietary notices of IONA and IONA shall be the sole owner of all Modifications of the Source Code and all intellectual property rights thereto. To “Modify” means to create a translation, improvement, enhancement, alteration, extension, “bug fix” or other transformation. A “Modification” means any change to the Orbacus Source Code files (C++ class files and header files or Java class files), including but not limited to inserting or deleting lines of programming language code (or embedded comments) or editing the programming language code in any way that changes the execution of the compiled Software, but shall not include any Customer-written source code that calls (uses) the original version of Orbacus as delivered to Customer. Customer must inform IONA, in writing, about any Modifications that Customer makes. Any attempt by Customer to sell, transfer or otherwise dispose of rights in the Modifications shall be void. IONA may, but is under no obligation to, incorporate any Modifications into any subsequent commercial releases of Orbacus.

III. Special License Terms for Mobile Orchestrator:

Customer is expressly prohibited under the Agreement from modifying, adapting, translating, reverse engineering, disassembling or decompiling the Mobile Orchestrator product or any portion thereof, or creating derivative works of Mobile Orchestrator. IONA has modified the thinlet.jar, which is a third party software product provided along with Mobile Orchestrator and is licensed to Customer under the Lesser General Public License (the “LGPL”). Therefore, notwithstanding the foregoing and in accordance with the terms of the LGPL, but solely as pertains to the configuration-tool.jar, field_service_application.jar and catalog-frontend.jar products, Customer shall be entitled to Modify the thinlet.jar provided with the Mobile Orchestrator product in accordance with the LGPL for Customer’s own use and to reverse engineer the configuration-tool.jar, field_service_application.jar and catalog-frontend.jar solely for the purpose of debugging any of Customer’s Modifications to the thinlet.jar; provided that Customer shall maintain in confidence any information which Customer discovers about configuration-tool.jar, field_service_application.jar and catalogfrontend.jar as the result of any such permitted Modification and/or reverse engineering. To “Modify” means to create a translation, improvement, enhancement, alteration, extension, “bug fix” or other transformation. A “Modification” means any change to the thinlet.jar provided with the Mobile Orchestrator, including but not limited to inserting or deleting lines of programming language code (or embedded comments) or editing the programming language code in any way that changes the execution of the thinlet.jar, but shall not include any Customer-written source code that calls (uses) the original version of the thinlet.jar as delivered to Customer.

IV. Special License Terms for Artix Advanced for z/OS:

Customer is expressly prohibited under the Agreement from modifying, adapting, translating, reverse engineering, disassembling or decompiling the Artix Advanced for z/OS product or any portion thereof, or creating derivative works of Artix Advanced for z/OS. IONA has modified the cobol.jjt, which is a third party software grammar provided along with Artix Advanced for z/OS and is licensed to Customer under the Lesser General Public License (the “LGPL”). The cobol.jjt, also provided along with Artix Advanced for z/OS, is derived from cobol.jjt with some modifications and renamed to conform to the requirements for usage with JJTree. Therefore, notwithstanding the foregoing and in accordance with the terms of the LGPL, Customer shall be entitled to Modify the cobol.jjt and cobol.jjt software provided with the Artix Advanced for z/OS product in accordance with the LGPL for Customer’s own use and to reverse engineer

the cobol.jj and cobol.jjt software solely for the purpose of debugging any of Customer's Modifications to the cobol.jj and cobol.jjt software; provided that Customer shall maintain in confidence any information which Customer discovers about the cobol.jj and cobol.jjt software as the result of any such permitted Modification and/or reverse engineering. To "Modify" means to create a translation, improvement, enhancement, alteration, extension, "bug fix" or other transformation. A "Modification" means any change to the cobol.jj or cobol.jjt provided with the Artix Advanced for z/OS product, including but not limited to inserting or deleting lines of programming language code (or embedded comments) or editing the programming language code in any way that changes the logic of the cobol.jj or cobol.jjt, but shall not include any Customer-written source code that calls (uses) the original version of the cobol.jjt as delivered to Customer."

V. Special License Terms for Artix Standard Edition:

The following special license terms shall apply to the Artix Standard Edition Product and shall control over any inconsistent or contrary terms elsewhere in this Agreement:

"Permitted Use" of the Product (as such term is used in Section 1.16 of the Agreement) shall mean with respect to a Runtime License, the lawful use of the Artix Standard Edition Product in the Territory in a test environment for purposes of internal evaluation, education, demonstration, prototyping, testing, and/or proof of concept purposes with respect to the Customer Applications; no commercial deployment of the Customer Application is authorized under this Agreement, whether such Customer Application is used internally or distributed for use by third parties. Unless IONA has formatted a Runtime License with respect to the Artix Standard Edition Software to expire earlier, each such Runtime License shall expire twelve-months following the earlier of: (i) Customer's initial installation of the corresponding Software, (ii) the date the package containing the corresponding Software is opened, or (iii) the use of the corresponding Documentation.

To the extent a License with respect to the Artix Standard Edition Product extends to Customer's use of Mindreef SOAPScope® software (proprietary software generally included in the Software), any rights granted under this Agreement with respect to the Mindreef SOAPScope® software used in the Artix Standard Edition Product shall expire thirty (30) days following the earlier of: (i) Customer's initial installation of the corresponding Software, (ii) the date the package containing the corresponding Software is opened, or (iii) the use of the corresponding Documentation. In the event Customer seeks to extend the term or scope of any License with respect to the Artix Standard Edition Product (e.g., obtain commercial deployment rights with respect to the Customer Application), Customer may contact IONA directly to inquire about the possibility of acquiring additional software licensing rights.

Notwithstanding the provisions of Section 8 of the Agreement, there is no support offering provided to Customer for the Artix Standard Edition Product licensed hereunder. In the event Customer desires to obtain support from IONA for such Product, Customer may contact IONA directly to inquire about the possibility of entering into a separately negotiated support agreement. For avoidance of doubt, the IONA "Artix™ Tech Zone" site located at www.iona.com/devcenter/artix that Customer may access is not a support offering of IONA and IONA has not obligations or responsibilities to Customer or any third party with respect to that site, including the content of any material contained on or accessed through that site, as well as any use of such material by Customer or a third party.

Notwithstanding the provisions of Section 10 of the Agreement, with respect to the Artix Standard Edition Product, IONA only warrants that the media, if any, on which the corresponding Software is recorded is free from defects in materials or workmanship under normal use and service for a period of sixty (60) days from the earlier of: (i) Customer's initial installation of the corresponding Software, (ii) the date the package containing the corresponding Software is opened, or (iii) the use of the corresponding Documentation. If Customer discovers any physical defects in the media, if any, on which the Software is recorded, IONA will replace such media at no charge to Customer, provided that Customer returns the item to be replaced with proof of how it was acquired to IONA during the sixty (60) day period described above. Customer shall have no rights under Section 11 of the Agreement with respect to intellectual property infringement matters as they pertain to the Artix Standard Edition Product.

VI. Special License Terms for Evaluation Use of Products:

In the event Customer has acquired the Products for use on an Evaluation basis, the following special license terms shall apply:

“Permitted Use” of the Product (as such term is used in Section 1.16 of the Agreement) with respect to Evaluation Products shall mean the lawful use of the Product: (i) at Customer’s premises, (ii) within Customer’s internal business operations, and (iii) for evaluation, demonstration, prototyping, testing, and/or proof of concept purposes. No commercial product development work is authorized. Customer must be in full compliance with this Agreement, its Schedules and Exhibits and any contractual or legal obligations Customer may have to third parties. Permitted Use further excludes and prohibits (a) the use of webservices included in any Product independent of the other Software included in such Product, and (b) use that infringes a third party’s intellectual property.

With respect to Evaluation use, Section 2.1 of the Agreement shall be deemed replaced with the following language:

“2.1 Subject to the terms and conditions of this Agreement, and payment of the appropriate license fees, IONA hereby grants to Customer a nonexclusive, nontransferable, internal, limited license to evaluate the Products at Customer’s premises only. The Products are provided for evaluation, demonstration, prototyping, testing, and/or proof of concept purposes only; no commercial product development work is authorized under this Agreement, whether such developed software is used internally or distributed to end users. The Products are licensed, and may be used for, lawful purposes only. The Licenses are subject to the additional terms, if any, set forth on the Second Schedule.”

Notwithstanding the terms contained in Section 8 of this Agreement, Evaluation Products are not eligible for support except by special written arrangement between IONA and Customer.

Notwithstanding the provisions of Section 10 of the Agreement, with respect to the Products licensed hereunder for Evaluation use, IONA only warrants that the media, if any, on which the corresponding Software is recorded is free from defects in materials or workmanship under normal use and service for a period of sixty (60) days from the earlier of: (i) Customer’s initial installation of the corresponding Software, (ii) the date the package containing the corresponding Software is opened, or (iii) the use of the corresponding Documentation. If Customer discovers any physical defects in the media, if any, on which the Software is recorded, IONA will replace such media at no charge to Customer, provided that Customer returns the item to be replaced with proof of how it was acquired to IONA during the sixty (60) day period described above. Customer shall have no rights under Section 11 of the Agreement with respect to intellectual property infringement matters as they pertain to the Products licensed hereunder for Evaluation use.

VII. Special License Terms for Third Party Software:

See notices.txt file accompanying the Software

Third Schedule

Support

IONA Standard Support

IONA hereby undertakes and Customer hereby accepts support and maintenance arrangements for IONA computer software products held by Customer for which Customer has paid the appropriate support fee ("IONA Products") and subject to these support terms.

Definitions:

"Product Release" means a Minor Release or Service Pack release of an IONA Product.

"Minor Release" means an increase to the "y" digit in a product version number designated as x.y.z. A Minor Release normally includes minor feature and functionality changes and enhancements.

"Major Release" means an increase to the "x" digit in a product version number designated as x.y.z. A Major Release normally includes significant feature and functionality changes and enhancements.

"Service Pack Release" means a Product Release of a combination of bug fixes over a prior period of time, which may also include enhancements that preserve binary compatibility.

"Service Request" means a customer-reported issue or request for information in respect of IONA Products.

"Standard Support" means the support services provided to Customer under these support terms and conditions.

Standard Support Deliverables:

- 1.1. Technical Support Center:** Customer will have access to IONA's Technical Support Center for Internet (www.iona.com) and e-mail (support@iona.com) assistance on 8 X 5 basis, Monday to Friday, during IONA business hours (the IONA Technical Support Window). Technical Support Center effort is commensurate with the Acknowledgement and Response target times listed in paragraph 1.2. The severity levels assigned to Service Request issues are set out in paragraph 1.3. Customer's Service Request will be dealt with through standard priority queues.

1.2. Acknowledgment and Response Target Times:

| Severity | Acknowledgement | Response |
|-----------|-----------------|-----------------|
| Level I | 1 Business Day | 1 Business Day |
| Level II | 1 Business Day | 2 Business Days |
| Level III | 1 Business Day | 4 Business Days |
| Level IV | 1 Business Day | 4 Business Days |

1.3. Severity Levels Definitions:

| Severity | Definitions |
|-----------|---|
| Level I | Service Request issue represents a system down situation in which <u>no system operation/application can continue.</u> |
| Level II | Service Request issue represents a loss of service in which the <u>system operation/application continues in a restricted manner.</u> |
| Level III | Service Request issue represents limited loss of service resulting in <u>minimal impact on the system operation/application.</u> |
| Level IV | Service Request issue represents no loss of system operation/applicati |

- 1.4 On-Line Support:** The following additional services are available to Customer as part of Standard Support at www.iona.com/support/:

- 1.4.1 Knowledge Center:** Customer will have 24 x 7 access, except for scheduled down time, to On-Line Support that contains technical information, including solutions to common technical problems from the "Knowledge Base",

which is a full-text searchable repository of all published technical support bulletins and data including technical tips, FAQs and the latest product release notes.

- 1.4.2 Update Center:** The Update Center has details on Product Releases. Customers with valid support contracts may download Product Releases direct from the Update Center.

2. IONA Responsibilities:

- 2.1. Product Releases:** This Standard Support entitles the Customer to Product Releases free of charge.
- 2.2. Major Releases:** This Standard Support entitles the Customer to purchase Major Releases of IONA Products at 20% of IONA's then current Product List Price
- 2.3. Version Support:** Support for IONA Product versions is available as follows:
- 2.3.1. Generally Available Status.** IONA Product versions designated "Generally Available" are supported on an open-ended basis until they are designated retired.
 - 2.3.2. Retired Status.** IONA Product versions designated "Retired" are entitled to support for 18 months from their date of Retirement, after which time they are, designated End of Life.
 - 2.3.3. End of Life Status.** IONA Product versions designated "End of Life" are no longer offered for sale and are not eligible for support.
- 2.4 Exclusions:** Support does not cover:
- 2.4.1** Use of the IONA Products other than in accordance with the Programmer's Reference Guide, or the IONA Product release notes and manuals;
 - 2.4.2** Any modification to the IONA generally available Product;
 - 2.4.3** Errors caused by Licensee negligence, hardware malfunctions or other causes beyond the reasonable control of IONA;
 - 2.4.4** Software that has been designated End-of-Life;
 - 2.4.5** Any modification to the IONA Product including any unapproved changes to configuration and/or scalability;
 - 2.4.6** Software installed in a hardware or operating environment not supported by IONA;
 - 2.4.7** Third party software not licensed through IONA; or
 - 2.4.8** Trading Partners of Customer.

3 Customer Responsibilities:

- 3.1 Contacts: Contact Nominees:** Customer must register one (1) primary technical contact with IONA. All Service Requests must be submitted to IONA by this primary technical contact.
- 3.2 Deployment Testing:** Customer agrees that prior to deployment, it will comprehensively test Customer-developed applications eligible for support hereunder in an environment reasonably representative of Customer's actual deployment environment.
- 3.3 Test Code:** In order for IONA to resolve issues, Customer must provide functioning test code, which reproduces and isolates the problem within the IONA Product. The test code must have extraneous comments and code removed and to the extent possible, must be fully self-contained and automated, and must demonstrate the precise problem reported rather than other possible problems. The test code must be reproducible on IONA's test suite system. If Customer finds it necessary or expedient to include third party code or libraries in the test code submitted to IONA, Customer is responsible for obtaining permission from the third party licensor for such submission; IONA undertakes no support obligations whatsoever with respect to such third party code. If Customer cannot provide test code that reproduces the problem, IONA may be unable to start resolving the problem, but will work with Customer to assist in the development of a test case.
- 3.4 Service Request:** Customer must provide sufficient information of the issue encountered according to the formats and templates specified by IONA and must provide supporting documentation which allows the severity of the Service Requests to be determined. Customer must use all reasonable endeavors to ensure that the problems reported lie in the software supplied by IONA. Detailed instructions on Service Request submissions are provided at <http://www.iona.com/support/contact/>
- 3.5 Customer Availability:** If requested and required, Customer must make available to IONA a technical representative during IONA's Technical Support Window for all Service Requests. IONA reserves the right to suspend all work relating to any Service Request during periods for which the Customer does not provide access to a technical representative.

4 Proprietary Rights:

IONA expressly reserves ownership of all intellectual property rights with respect to IONA Products, including without limitation, rights to (i) configuration file parsers, gateways, bridges, integrations with third party code, and code generators, (ii) software programs, products, materials or methodologies, reports, studies, data, diagrams, charts, specifications, works or materials, created and developed by IONA during, prior to or independently of the provision of Standard Support and (iii) any modifications or enhancements of the IONA Products, even if the modification is as a result of a Customer suggestion (collectively "IONA Materials"). IONA may, but is under no obligation to, incorporate any modifications into any subsequent commercial releases of the IONA Products. If any IONA Product is modified, or any IONA Materials are delivered to Customer, as part of this Standard Support, IONA agrees that Customer will have a license to use such modified IONA Product or IONA Materials, that is equal in scope to Customer's license for the underlying IONA Product.

5 Other:

5.1 Non-solicitation: Customer agrees that for the duration of this Standard Support and for a period of twelve months after the termination or expiration of this Standard Support. Customer will not offer employment to any IONA personnel who are involved in the provision of services or support hereunder without the prior written consent of IONA.

5.2 Duration: This Standard Support is effective for a period of twelve months or as otherwise specified on a purchase order. Standard Support shall automatically renew for additional terms of the same length unless either of the parties gives the other party 60 days advance written notice of its intention not to renew the Standard Support. Notwithstanding the term of the Standard Support or any renewal thereof, Standard Support shall not be provided in respect of IONA Product versions that have reached End-of-Life status. IONA may terminate this Standard Support in the event of a breach by Customer of any of the provisions of this Standard Support, which breach has not been remedied within thirty (30) of notification thereof. In the event of a material breach of this Standard Support or any IONA license agreement, in addition to any other remedies it may have, IONA may suspend or terminate the Standard Support to Customer.

5.3 Fees and Payment: All fees are due upon the commencement date of the Agreement and each anniversary thereof upon renewal unless otherwise agreed between the parties. Where fees payable hereunder are fifteen (15) days or more overdue, IONA reserves the right to withhold Standard Support until such fees are received, or if not received, terminate this Agreement

- 6. Support Warranty and Limited Liability:** EXCEPT AS IS EXPRESSLY SET FORTH IN A WRITTEN AGREEMENT SIGNED BY IONA OR IN THE WRITTEN DOCUMENTATION ACCOMPANYING IONA PRODUCTS, ALL PRODUCT, PRODUCT RELEASES, PRE-RELEASES, PATCHES AND WORKAROUNDS DELIVERED HEREUNDER ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IONA SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS OR WILL OPERATE UNINTERRUPTED OR ERROR FREE. IN NO EVENT WILL IONA BE LIABLE FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR FOR DAMAGES FOR LOSS OF DATA, even if IONA has been advised of the possibility of such damages. The maximum liability of IONA will be limited to refund to Customer the price paid by Customer.

Note: Where additional IONA Product licenses are purchased by Customer after the date of execution hereof for use by the Customer for which the support services are to be provided, Customer shall inform IONA of same. Customer must pay support fees for any such additional licenses.