



# Quantum Tape Drive LTO 6, Model C Open Source Software Licenses

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- Quantum LTO 6 tape drive, model C

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## Section 1:

### Tape Drive Generation

#### LTO 6

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Version 3, 29 June 2007

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PCRE is a library of functions to support regular expressions whose syntax and semantics are as close as possible to those of the Perl 5 language.

Written by: Philip Hazel <ph10@cam.ac.uk>

University of Cambridge Computing Service, Cambridge, England. Phone: +44 1223 334714.

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\*/

```
$Id: ansi2knr.c,v 1.1 2000/01/21 00:54:15 alainm Exp $*/  
Convert ANSI C function definitions to K&R ("traditional C") syntax */
```

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DRM framebuffer helper functions

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Written by: Philip Hazel <ph10@cam.ac.uk>

University of Cambridge Computing Service, Cambridge, England. Phone: +44 1223 334714.

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Java\_raw\_api.c author: Hans-J. Boehm <hboehm@hpl.hp.com>

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Definitions for Kerberos administration server & client These should be considered private; among other reasons, it leaks all over the namespace

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INTERNET DRAFT

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November 2000

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Bluetooth sniffing API implementation for Linux platform  
By Paolo Abeni <paolo.abeni@email.it>

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Modifications:       Added PACKET\_MMAP support  
                      Paolo Abeni <paolo.abeni@email.it>

                      based on previous works of:  
                      Simon Patarin <patarin@cs.unibo.it>  
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USB sniffing API implementation for Linux platform  
By Paolo Abeni <paolo.abeni@email.it>

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By Paolo Abeni <paolo.abeni@email.it>

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## **PACKAGE: openldap2**

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## ***14. Geographic Scope and Governing Law***

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### **14.2 Jurisdiction**

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- Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction);
- Americas country amendments to other Agreement terms;
- Asia Pacific country amendments to other Agreement terms; and
- Europe, Middle East, and Africa country amendments to other Agreement terms.

Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction)

### 14.1 Governing Law

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- (3) in the United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines: the laws of the State of New York, United States;
- (4) in Venezuela: the laws of the Bolivarian Republic of Venezuela;

#### **ASIA PACIFIC**

- (5) in Cambodia and Laos: the laws of the State of New York, United States;
- (6) in Australia: the laws of the State or Territory in which the transaction is performed;
- (7) in Hong Kong SAR and Macau SAR: the laws of Hong Kong Special Administrative Region ("SAR");
- (8) in Taiwan: the laws of Taiwan;

#### **EUROPE, MIDDLE EAST, AND AFRICA**

(9) in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: the laws of Austria;

(10) in Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: the laws of France;

(11) in Estonia, Latvia, and Lithuania: the laws of Finland;

(12) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: the laws of England; and

(13) in South Africa, Namibia, Lesotho, and Swaziland: the laws of the Republic of South Africa.

#### **14.2 Jurisdiction**

The following paragraph pertains to jurisdiction and replaces Subsection 14.2 (Jurisdiction) as it applies for those countries identified below:

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license except that in the countries identified below all disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

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(1) In Argentina: the Ordinary Commercial Court of the city of Buenos Aires,

(2) in Brazil: the court of Rio de Janeiro, RJ;

(3) in Chile: the Civil Courts of Justice of Santiago;

(4) in Ecuador: the civil judges of Quito for executory or summary proceedings (as applicable);

(5) in Mexico: the courts located in Mexico City, Federal District;

(6) in Peru: the judges and tribunals of the judicial district of Lima, Cercado;

(7) in Uruguay: the courts of the city of Montevideo;

(8) in Venezuela: the courts of the metropolitan area of the city of Caracas;

**EUROPE, MIDDLE EAST, AND AFRICA**

(9) in Austria: the court of law in Vienna, Austria (Inner-City);

(10) in Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: the Commercial Court of Paris;

(11) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: the English courts;

(12) in South Africa, Namibia, Lesotho, and Swaziland: the High Court in Johannesburg;

(13) in Greece: the competent court of Athens;

(14) in Israel: the courts of Tel Aviv-Jaffa;

(15) in Italy: the courts of Milan;

(16) in Portugal: the courts of Lisbon;

(17) in Spain: the courts of Madrid; and

(18) in Turkey: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.

**14.3 Arbitration**

The following paragraph is added as a new Subsection 14.3 (Arbitration) as it applies for those countries identified below. The provisions of this Subsection 14.3 prevail over those of Subsection 14.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of procedure:

**ASIA PACIFIC**

(1) In Cambodia, India, Indonesia, Laos, Philippines, and Vietnam:

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

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will



appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed. All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

(2) In the People's Republic of China:

In case no settlement can be reached, the disputes will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese. The arbitration award will be final and binding on both parties. During the course of arbitration, this agreement will continue to be performed except for the part which the parties are disputing and which is undergoing arbitration.

#### **EUROPE, MIDDLE EAST, AND AFRICA**

(3) In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan:

All disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

(4) In Estonia, Latvia, and Lithuania:

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

#### **AMERICAS COUNTRY AMENDMENTS**

##### **CANADA**

##### **10.1 Items for Which IBM May Be Liable**

The following replaces Item 1 in the first paragraph of this Subsection 10.1 (Items for Which IBM May Be Liable):

1) damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence; and

### **13. General**

The following replaces Item 13.d:

d. Licensee agrees to comply with all applicable export and import laws and regulations, including those of that apply to goods of United States origin and that prohibit or limit export for certain uses or to certain users.

The following replaces Item 13.i:

i. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Licensee except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.

The following is added as Item 13.n:

n. For purposes of this Item 13.n, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel or any other individual to the other in connection with this Agreement. The following provisions apply in the event that one party makes Personal Data available to the other:

#### (1) General

(a) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").

(b) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

#### (2) Security Safeguards

(a) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.

(b) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.

(c) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.

(d) Additional or different services required to comply with the Laws will be deemed a request for new services.

(3) Use

Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.

(4) Access Requests

(a) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.

(b) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.

(c) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

(5) Retention

Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.

(6) Public Bodies Who Are Subject to Public Sector Privacy Legislation

For Licensees who are public bodies subject to public sector privacy legislation, this Item 13.n applies only to Personal Data made available to Licensee in connection with this Agreement, and the obligations in this section apply only to Licensee, except that: 1) section (2) (a) applies only to IBM; 2) sections (1) (a) and (4) (a) apply to both parties; and 3) section (4) (b) and the last sentence in (1) (b) do not apply.

**PERU**

***10. Limitation of Liability***

The following is added to the end of this Section 10 (Limitation of Liability):

Except as expressly required by law without the possibility of contractual waiver, Licensee and IBM intend that the limitation of liability in this Limitation of Liability section applies to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action.

**10.1 Items for Which IBM May Be Liable**

The following is added to the end of this Subsection 10.1:

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

## **UNITED STATES OF AMERICA**

### **5. Taxes**

The following is added to the end of this Section 5 (Taxes):

For Programs delivered electronically in the United States for which Licensee claims a state sales and use tax exemption, Licensee agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

Licensee agrees to be responsible for any sales and use tax liabilities that may arise as a result of Licensee's subsequent redistribution of Programs after delivery by IBM.

### **13. General**

The following is added to Section 13 as Item 13.n:

n. U.S. Government Users Restricted Rights - Use, duplication or disclosure is restricted by the GSA IT Schedule 70 Contract with the IBM Corporation.

The following is added to Item 13.f:

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

## **ASIA PACIFIC COUNTRY AMENDMENTS**

### **AUSTRALIA**

#### **5. Taxes**

The following sentences replace the first two sentences of Section 5 (Taxes):

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Program itself, that is not otherwise provided for in the amount payable, Licensee agrees to pay it when IBM invoices Licensee. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

#### **8. No Warranties**

The following is added to the first paragraph of Section 8 (No Warranties):

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

### 10.1 Items for Which IBM May Be Liable

The following is added to Subsection 10.1 (Items for Which IBM Maybe Liable):

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

#### **HONG KONG SAR, MACAU SAR, AND TAIWAN**

As applies to licenses obtained in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word "country" (for example, "the country in which the original Licensee was granted the license" and "the country in which Licensee obtained the Program license") are replaced with the following:

- (1) In Hong Kong SAR: "Hong Kong SAR"
- (2) In Macau SAR: "Macau SAR" except in the Governing Law clause (Section 14.1)
- (3) In Taiwan: "Taiwan."

#### **INDIA**

### 10.1 Items for Which IBM May Be Liable

The following replaces the terms of Items 1 and 2 of the first paragraph:

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

### **13. General**

The following replaces the terms of Item 13.g:

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

#### **INDONESIA**

### **3.3 Term and Termination**

The following is added to the last paragraph:

Both parties waive the provision of article 1266 of the Indonesian Civil Code, to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

**JAPAN*****13. General***

The following is inserted as Item 13.n:

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

**MALAYSIA****10.2 Items for Which IBM Is Not Liable**

The word "SPECIAL" in Item 10.2b is deleted.

**NEW ZEALAND*****8. No Warranties***

The following is added to the first paragraph of this Section 8 (No Warranties):

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

***10. Limitation of Liability***

The following is added:

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

**PEOPLE'S REPUBLIC OF CHINA****4. Charges**

The following is added:

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

**PHILIPPINES****10.2 Items for Which IBM Is Not Liable**

The following replaces the terms of Item 10.2b:

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

#### **SINGAPORE**

##### **10.2 Items for Which IBM Is Not Liable**

The words "SPECIAL" and "ECONOMIC" are deleted from Item 10.2b.

#### **13. General**

The following replaces the terms of Item 13.i:

i. Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 10 above (Limitation of Liability), a person who is not a party to this Agreement will have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

#### **TAIWAN**

##### **10.1 Items for Which IBM May Be Liable**

The following sentences are deleted:

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

#### **EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS**

##### **EUROPEAN UNION MEMBER STATES**

#### **8. No Warranties**

The following is added to Section 8 (No Warranties):

In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 8 (No Warranties).

##### **EU MEMBER STATES AND THE COUNTRIES IDENTIFIED BELOW**

Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.

#### **13. General**

The following replaces Item 13.e:

(1) Definitions - For the purposes of this Item 13.e, the following additional definitions apply:

(a) Business Contact Information - business-related contact information disclosed by Licensee to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Licensee's employees and contractors. For Austria, Italy and Switzerland, Business Contact Information also includes information about Licensee and its contractors as legal entities (for example, Licensee's revenue data and other transactional information)

(b) Business Contact Personnel - Licensee employees and contractors to whom the Business Contact Information relates.

(c) Data Protection Authority - the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.

(d) Data Protection & Electronic Communications Legislation - (i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or (ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.

(e) IBM Group - International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.

(2) Licensee authorizes IBM:

(a) to process and use Business Contact Information within IBM Group in support of Licensee including the provision of support services, and for the purpose of furthering the business relationship between Licensee and IBM Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing IBM Group products and services (the "Specified Purpose"); and

(b) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.

(3) IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.

(4) To the extent required by the Data Protection & Electronic Communications Legislation, Licensee represents that (a) it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable IBM Group to process and use the Business Contact Information for the Specified Purpose.



(5) Licensee authorizes IBM to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

## **AUSTRIA**

### ***8. No Warranties***

In Austria (and Germany) the following replaces Section 8 (No Warranties) in its entirety, including its title, if Licensee paid a charge to obtain the Program.

### ***8. Warranties and Exclusions***

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

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

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

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

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

This is IBM's sole obligation to Licensee, except as otherwise required by applicable statutory law.

### ***10. Limitation of Liability***

The following is added:

The following limitations and exclusions of IBM's liability do not apply for damages caused by gross negligence or willful misconduct.

#### **10.1 Items for Which IBM May Be Liable**

The following replaces the first sentence in the first paragraph:

Circumstances may arise where, because of a default by IBM in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from IBM.

In the second sentence of the first paragraph, delete entirely the parenthetical phrase:

"(including fundamental breach, negligence, misrepresentation, or other contract or tort claim)".

#### **10.2 Items for Which IBM Is Not Liable**

The following replaces Item 10.2b:

b. indirect damages or consequential damages; or

#### **BELGIUM, FRANCE, ITALY, AND LUXEMBOURG**

#### ***10. Limitation of Liability***

The following replaces the terms of Section 10 (Limitation of Liability) in its entirety:

Except as otherwise provided by mandatory law:

#### **10.1 Items for Which IBM May Be Liable**

IBM's entire liability for all claims in the aggregate for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Agreement or due to any other cause related to this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that has caused the damages.

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

#### **10.2 Items for Which IBM Is Not Liable**

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

#### **10.3 Suppliers and Program Developers**

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

#### **GERMANY**

## **8. No Warranties**

This Section 8 (No Warranties) is amended as specified for AUSTRIA.

## **10. Limitation of Liability**

The following replaces this Section 10 (Limitation of Liability) in its entirety:

- a. IBM will be liable without limit for 1) loss or damage caused by a breach of an express guarantee; 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or by gross negligence.
- b. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, IBM will be liable, regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the Program is subject to fixed term charges, up to 12 months' charges) Licensee paid for the Program that caused the loss or damage. A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.
- c. In the event of loss, damage and frustrated expenditures caused by slight negligence, IBM will not be liable for indirect or consequential damages, even if IBM was informed about the possibility of such loss or damage.
- d. In case of delay on IBM's part: 1) IBM will pay to Licensee an amount not exceeding the loss or damage caused by IBM's delay and 2) IBM will be liable only in respect of the resulting damages that Licensee suffers, subject to the provisions of Items a and b above.

## **13. General**

The following replaces the provisions of 13.g:

- g. Any claims resulting from this Agreement are subject to a limitation period of three years, except as stated in Section 8 (No Warranties) of this Agreement.

The following replaces the provisions of 13.i:

- i. No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except (to the extent permitted in Section 10 (Limitation of Liability)) for: i) bodily injury (including death); or ii) damage to real or tangible personal property for which (in either case) IBM is legally liable to that third party.

## **IRELAND**

## **8. No Warranties**

The following paragraph is added to the second paragraph of this Section 8 (No Warranties):

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

## **IRELAND AND UNITED KINGDOM**

### **2. Agreement Structure**

The following sentence is added:

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.

### **10.1 Items for Which IBM May Be Liable**

The following replaces the first paragraph of the Subsection:

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

Circumstances may arise where, because of a Default by IBM in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled to claim damages from IBM and except as expressly required by law without the possibility of contractual waiver, IBM's entire liability for any one Default will not exceed the amount of any direct damages, to the extent actually suffered by Licensee as an immediate and direct consequence of the Default, up to the greater of (1) 500,000 euro (or the equivalent in local currency) or (2) 125% of the charges (if the Program is subject to fixed term charges, up to 12 months' charges) for the Program that is the subject of the claim. Notwithstanding the foregoing, the amount of any damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable is not subject to such limitation.

### **10.2 Items for Which IBM Is Not Liable**

The following replaces Items 10.2b and 10.2c:

- b. special, incidental, exemplary, or indirect damages or consequential damages; or
- c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

Z125-5589-04 (09/2009)



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## Getting More Information

For questions or additional information, contact Quantum Global Services.

<b>North America</b>	+1 800-284-5101
<b>World Wide Web</b>	<a href="http://www.quantum.com/support">www.quantum.com/support</a>