

## ソフトウェア使用許諾契約書

株式会社 日立製作所 情報・通信システム社  
IT プラットフォーム事業本部

株式会社日立製作所（以下「当社」といいます。）は、ダウンロード又はその他の手段により提供され、インストールされた別紙 1「対象製品一覧」記載のソフトウェア（以下「本ソフトウェア」といいます。）について、後記「ソフトウェアのご使用条件」により使用を許諾します。

なお、本ソフトウェアの一部には、別紙 1 に記載のとおり、第三者ソフトウェアが含まれています。お客様は、本ソフトウェア使用許諾契約書記載のソフトウェアのご使用条件に加え、第三者ソフトウェアに適用される使用許諾条件（別紙に記載）のうち、お客様が使用する本ソフトウェアに適用される使用許諾条件をすべて必ずお読みの上、当該ご使用条件をご承諾ください。

### ソフトウェアのご使用条件

#### （使用許諾）

第 1 条 当社はお客様に対し、本ソフトウェアを第 2 条に定める使用条件の範囲において当社サーバ製品と組み合わせて使用する非独占的な権利を許諾します。

2. 本ソフトウェアに添付される電子マニュアルの取り扱いの本ご使用条件の取扱いを準用するものとします。

#### （使用条件）

第 2 条 お客様は、本ソフトウェアを日本国内でのみ使用するものとします。

2. お客様は、本ソフトウェアを、必要な数の範囲で複製して使用することができるものとします。

3. お客様は、本ソフトウェアの全部又は一部を逆アセンブル又は逆コンパイルすることはできません。

4. お客様は、本ソフトウェアの全部若しくは一部を改変し、又は他のプログラムと結合してはならないものとします。

#### （責任の制限）

第 3 条 当社及び本ソフトウェアの著作権者は、本ソフトウェアの品質又は性能に関する瑕疵等を含め、本ソフトウェアに関し損害賠償その他一切の責任を負わないものとします。

(権利の譲渡)

第4条 お客様は、本ソフトウェアを第三者に対し、有償であると無償であることを問わず、譲渡、使用許諾、その他の方法で使用させてはならないものとします。ただし、お客様は、お客様の責任で第三者に本ご使用条件を遵守させること、お客様が本ソフトウェアを使用する権利を放棄すること、及びお客様が複製した本ソフトウェアをすべて廃棄することを条件として、本ソフトウェアを関連資料とともに第三者に譲渡することができるものとします。

(輸出管理)

第5条 お客様は、本ソフトウェアの全部若しくは一部を単独で、又は他の製品と組み合わせ、若しくは他の製品の一部として、直接又は間接に次の各号に該当する取扱いをする場合は、日本国の「外国為替及び外国貿易法」の規制、米国輸出管理規則その他適用される日本国又は外国の輸出関連法規を確認の上、必要な手続をとるものとします。

(1) 輸出するとき。

(2) 海外へ持ち出すとき。

(3) 非居住者へ提供し、又は使用させるとき。

(4) 前3号に規定するもののほか、「外国為替及び外国貿易法」又は外国の輸出関連法規に定めがあるとき。

(使用の終了)

第6条 お客様が本ご使用条件に違反した場合、当社は、お客様の本ソフトウェアの使用を終了させることができます。

(使用終了時の措置)

第7条 お客様は、本ソフトウェアの使用を終了する場合、本ソフトウェアを消滅することとします。

(管轄裁判所及び準拠法)

第8条 本契約に関する一切の紛争については、東京地方裁判所のみを管轄裁判所として処理するものとします。

2. 本契約の成立、効力、解釈及び履行については、日本国法に準拠するものとします。

別紙 1 対象製品一覧

対象製品		第三者ソフトウェア		
名称	バージョン	名称	ライセンス名称	使用許諾内容
Hitachi Gigabit Fibre Channel Adapter 対応ユーティリティ (VMware vSphere® ESXi™ 5.0/5.1 用 CIM クライアント)	1.29.18-80a	SBLIM CIM Client for Java	Eclipse Public License 1.0	別紙 2

## Eclipse Public License – v 1.0

THE ACCOMPANYING PROGRAM IS PROVIDED UNDER THE TERMS OF THIS ECLIPSE PUBLIC LICENSE ("AGREEMENT"). ANY USE, REPRODUCTION OR DISTRIBUTION OF THE PROGRAM CONSTITUTES RECIPIENT'S ACCEPTANCE OF THIS AGREEMENT.

### 1. DEFINITIONS

"Contribution" means:

a) in the case of the initial Contributor, the initial code and documentation distributed under this Agreement, and

b) in the case of each subsequent Contributor:

i) changes to the Program, and

ii) additions to the Program;

where such changes and/or additions to the Program originate from and are distributed by that particular Contributor. A Contribution 'originates' from a Contributor if it was added to the Program by such Contributor itself or anyone acting on such Contributor's behalf. Contributions do not include additions to the Program which: (i) are

separate modules of software distributed in conjunction with the Program under their own license agreement, and (ii) are not derivative works of the Program.

"Contributor" means any person or entity that distributes the Program.

"Licensed Patents" mean patent claims licensable by a Contributor which are necessarily infringed by the use or sale of its Contribution alone or when combined with the Program.

"Program" means the Contributions distributed in accordance with this Agreement.

"Recipient" means anyone who receives the Program under this Agreement, including all Contributors.

## 2. GRANT OF RIGHTS

- a) Subject to the terms of this Agreement, each Contributor hereby grants Recipient a non-exclusive, worldwide, royalty-free copyright license to reproduce, prepare derivative works of, publicly display, publicly perform, distribute and sublicense the Contribution of such Contributor, if any, and such derivative works, in source code and object code form.
- b) Subject to the terms of this Agreement, each Contributor hereby grants Recipient a non-exclusive, worldwide, royalty-free patent license under Licensed Patents to make, use, sell, offer to sell, import and otherwise transfer the Contribution of such Contributor, if any, in source code and object code form. This patent license shall apply to the combination of the Contribution and the Program if, at the time the Contribution is added by the Contributor, such addition of the Contribution causes such combination to be covered by the Licensed Patents. The patent license shall not apply to any other combinations which include the Contribution. No hardware per se is licensed hereunder.
- c) Recipient understands that although each Contributor grants the licenses to its Contributions set forth herein, no assurances are provided by any Contributor that the Program does not infringe the patent or other intellectual property rights of any other entity. Each Contributor disclaims any liability to Recipient for claims brought by any other entity based on infringement of intellectual property rights or otherwise. As a condition to exercising the rights and licenses granted hereunder, each Recipient hereby assumes sole responsibility to secure any other intellectual property rights needed, if any. For example, if a third party patent license is required to allow Recipient to distribute the Program, it is Recipient's responsibility to acquire that license before distributing the Program.
- d) Each Contributor represents that to its knowledge it has sufficient copyright rights in its Contribution, if any, to grant the copyright license set forth in this Agreement.

### **3. REQUIREMENTS**

A Contributor may choose to distribute the Program in object code form under its own license agreement, provided that:

- a) it complies with the terms and conditions of this Agreement; and
- b) its license agreement:
  - i) effectively disclaims on behalf of all Contributors all warranties and conditions, express and implied, including warranties or conditions of title and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose;
  - ii) effectively excludes on behalf of all Contributors all liability for damages, including direct, indirect, special, incidental and consequential damages, such as lost profits;
  - iii) states that any provisions which differ from this Agreement are offered by that Contributor alone and not by any other party; and
  - iv) states that source code for the Program is available from such Contributor, and informs licensees how to obtain it in a reasonable manner on or through a medium customarily used for software exchange.

When the Program is made available in source code form:

- a) it must be made available under this Agreement; and
- b) a copy of this Agreement must be included with each copy of the Program.

Contributors may not remove or alter any copyright notices contained within the Program.

Each Contributor must identify itself as the originator of its Contribution, if any, in a manner that reasonably allows subsequent Recipients to identify the originator of the Contribution.

### **4. COMMERCIAL DISTRIBUTION**

Commercial distributors of software may accept certain responsibilities with respect to end users, business partners and the like. While this license is intended to facilitate the commercial use of the Program, the Contributor who includes the Program in a commercial product offering should do so in a manner which does not create potential

liability for other Contributors. Therefore, if a Contributor includes the Program in a commercial product offering, such Contributor ("Commercial Contributor") hereby agrees to defend and indemnify every other Contributor ("Indemnified Contributor") against any losses, damages and costs (collectively "Losses") arising from claims, lawsuits and other legal actions brought by a third party against the Indemnified Contributor to the extent caused by the acts or omissions of such Commercial Contributor in connection with its distribution of the Program in a commercial product offering. The obligations in this section do not apply to any claims or Losses relating to any actual or alleged intellectual property infringement. In order to qualify, an Indemnified Contributor must: a) promptly notify the Commercial Contributor in writing of such claim, and b) allow the Commercial Contributor to control, and cooperate with the Commercial Contributor in, the defense and any related settlement negotiations. The Indemnified Contributor may participate in any such claim at its own expense.

For example, a Contributor might include the Program in a commercial product offering, Product X. That Contributor is then a Commercial Contributor. If that Commercial Contributor then makes performance claims, or offers warranties related to Product X, those performance claims and warranties are such Commercial Contributor's responsibility alone. Under this section, the Commercial Contributor would have to defend claims against the other Contributors related to those performance claims and warranties, and if a court requires any other Contributor to pay any damages as a result, the Commercial Contributor must pay those damages.

## **5. NO WARRANTY**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROGRAM IS PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Each Recipient is solely responsible for determining the appropriateness of using and distributing the Program and assumes all risks associated with its exercise of rights under this Agreement, including but not limited to the risks and costs of program errors, compliance with applicable laws, damage to or loss of data, programs or equipment, and unavailability or interruption of operations.

## **6. DISCLAIMER OF LIABILITY**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER RECIPIENT NOR ANY CONTRIBUTORS SHALL HAVE ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OR DISTRIBUTION OF THE PROGRAM OR THE EXERCISE OF ANY RIGHTS GRANTED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **7. GENERAL**

If any provision of this Agreement is invalid or unenforceable under applicable law, it shall not affect the validity or enforceability of the remainder of the terms of this Agreement, and without further action by the parties hereto, such provision shall be reformed to the minimum extent necessary to make such provision valid and enforceable.

If Recipient institutes patent litigation against any entity (including a cross-claim or counterclaim in a lawsuit) alleging that the Program itself (excluding combinations of the Program with other software or hardware) infringes such Recipient's patent(s), then such Recipient's rights granted under Section 2(b) shall terminate as of the date such litigation is filed.

All Recipient's rights under this Agreement shall terminate if it fails to comply with any of the material terms or conditions of this Agreement and does not cure such failure in a reasonable period of time after becoming aware of such noncompliance. If all Recipient's rights under this Agreement terminate, Recipient agrees to cease use and distribution of the Program as soon as reasonably practicable. However, Recipient's obligations under this Agreement and any licenses granted by Recipient relating to the Program shall continue and survive.

Everyone is permitted to copy and distribute copies of this Agreement, but in order to avoid inconsistency the Agreement is copyrighted and may only be modified in the following manner. The Agreement Steward reserves the right to publish new versions (including revisions) of this Agreement from time to time. No one other than the Agreement Steward has the right to modify this Agreement. The Eclipse Foundation is



the initial Agreement Steward. The Eclipse Foundation may assign the responsibility to serve as the Agreement Steward to a suitable separate entity. Each new version of the Agreement will be given a distinguishing version number. The Program (including Contributions) may always be distributed subject to the version of the Agreement under which it was received. In addition, after a new version of the Agreement is published, Contributor may elect to distribute the Program (including its Contributions) under the new version. Except as expressly stated in Sections 2(a) and 2(b) above, Recipient receives no rights or licenses to the intellectual property of any Contributor under this Agreement, whether expressly, by implication, estoppel or otherwise. All rights in the Program not expressly granted under this Agreement are reserved.

This Agreement is governed by the laws of the State of New York and the intellectual property laws of the United States of America. No party to this Agreement will bring a legal action under this Agreement more than one year after the cause of action arose. Each party waives its rights to a jury trial in any resulting litigation.