

# BeOS 5 Personal Edition CD

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**3.2 Expenses.** Distributor will be responsible for and will indemnify and hold BE harmless from payment of all expenses and taxes (other than taxes based on BE’s income), fees, duties, and other governmental charges, and any related penalties and interest, arising from the delivery, license and distribution of the Licensed Software under this Agreement.

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**4.1 BE’s Disclaimer of Warranty.** THE LICENSED SOFTWARE IS PROVIDED TO DISTRIBUTOR “AS IS,” AND BE MAKES NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE LICENSED SOFTWARE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. DISTRIBUTOR ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES IN THIS AGREEMENT AND THAT NO WARRANTIES ARE MADE BY ANY OF BE’S SUPPLIERS.

**4.2 Warranties Made by Distributor.** Distributor will not make or publish any representations, warranties, or guarantees concerning the Licensed Software without BE’s specific prior written approval.

5. **LIMITATION OF LIABILITY.** IN NO EVENT WILL BE BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT.

6. **TERM AND TERMINATION**

**6.1 Term.** Unless earlier terminated pursuant to Section 6.2, the term of this Agreement will begin on the Effective Date and will conclude and expire as of May 31, 2000.

**6.2 Termination.** BE may terminate this Agreement for cause, effective upon written notice to Distributor, if Distributor breaches any provision of this Agreement and does not cure the breach within ten (10) days after receiving written notice thereof from BE. BE may terminate this Agreement for convenience upon thirty (30) days written notice to Distributor.

7. **GENERAL**

**7.1 Export and Import Laws.** Distributor will comply with all applicable export and import control laws and regulations in its use of the Licensed Software and, in particular, Distributor will not export or re-export the Licensed Software without all required United States and foreign government licenses. Distributor will defend, indemnify, and hold harmless BE from and against all fines, penalties, liabilities, damages, costs, and expenses incurred by BE as a result of any violation of such laws or regulations by Distributor or any of its agents or employees.

**7.2 Notices.** All notices, consents and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth beneath such party's signature, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party.

**7.3 Governing Law and Venue.** This Agreement will be governed by the laws of the State of California as such laws apply to contracts between California residents performed entirely within California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in a federal court in the Northern District of California or in state court in Santa Clara County, California, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**7.4 Independent Contractors.** Distributor's relationship to BE is that of an independent contractor, and neither party is an agent or partner of the other. Distributor will not have, and will not represent to any third party that it has, any authority to act on behalf of BE.

**7.5 Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. The terms on any purchase order or similar document submitted by Distributor to BE will have no effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BE INCORPORATED ("BE")

\_\_\_\_\_ ("Distributor")

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Address for Notice:  
**800 El Camino Real, Suite 400**  
**Menlo Park, California 94025, U.S.A.**  
Attn: **Be Europe**  
Fax: **+ 331 55 91 77 39**

Address for Notice:  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_