

OPENJDK~~Not-For-Profit Open Source~~ COMMUNITY TCK LICENSE AGREEMENT V 1.1

This ~~OpenJDK~~~~Not-For-Profit Open Source~~ Community TCK License Agreement v 1.1 (the "Agreement") is entered into this

_____ day of _____, 200_ (the "Effective Date"), by and between Sun Microsystems, Inc. ("Sun") with its principal place of business at 4150 Network Circle, Santa Clara, CA 95054, and _____, an individual, corporation or organization with a principal place of business at _____ ("Licensee").

RECITALS

WHEREAS Licensee ~~is a Not-For-Profit entity~~~~participates in Sun's OpenJDK Community~~ and either:

(i) has developed

and seeks to distribute under ~~an OSI Approved Open Source License~~~~the GPL License~~ a compatibility-tested implementation of the Java

SE 6 ~~or Java SE 5~~ Specification that is ~~not~~ derived from ~~Java SE~~ code made available to the OpenJDK Community ~~under the GPL License~~; or (ii)

wishes to verify that changes made by Licensee to ~~the OpenJDK~~ code base ~~distributed under an OSI Approved Open Source License~~ would not break

compatibility; and

WHEREAS Sun wishes to license certain of its Java™ technology compatibility kits (TCKs) to Licensee to facilitate either of the two sets of activities described above;

NOW THEREFORE, Sun and Licensee enter into this Agreement on the following terms.

1.0 DEFINITIONS

1.1 *"Compatible Licensee Implementation"* means a Licensee Implementation that (i) fully implements the Java Specification, including all its required interfaces and functionality; (ii) does not modify, subset, superset or otherwise extend the Licensor Name Space, or include any public or protected packages, classes, Java interfaces, fields, methods or constructors within the Licensor Name Space other than those required/authorized by the Specification or Specifications being implemented; and (iii) passes the TCK (including satisfying the requirements of the applicable TCK Users Guide) for such Specification.

1.2 *"Confidential Information"* means any information or materials marked or designated as confidential or proprietary by Sun or Licensee.

1.3 *"GPL License"* means the version of the GNU General Public License under which Sun has released the applicable OpenJDK Code, which, to the extent permitted by Sun's release of the OpenJDK Code, may be subject to any exceptions published by Sun (e.g. the Assembly exception) in association with its release of the OpenJDK Code.

1.4 *"Intellectual Property Rights"* means worldwide rights arising under contract, statute or common law, whether or not perfected, and associated with: (a) patents and patent applications; (b) works of authorship, including copyrights, mask works, and moral rights; (c) the protection of trade and industrial secrets and confidential information; (d) any rights analogous to those set forth herein and any other proprietary rights relating to intangible or intellectual property now existing or later recognized in any jurisdiction (excluding trademarks, service marks, trade names, and trade dress); and (e) divisions, continuations, renewals, reissuances, reexaminations,

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applications, registrations, and any extensions of the foregoing (as applicable), now existing or hereafter filed, issued or acquired.

1.5 "**Java Specification**" means the written specification for Java SE 5 or Java SE 6 technology.

1.6 "**Licenser Name Space**" means the public class or interface declarations whose names begin with "java", "javax", "com.sun" or their equivalents in any subsequent naming convention adopted by Sun through the Java Community Process, or any recognized successors or replacements thereof.

1.7 "**Licensee Implementation(s)**" means Licensee's implementation, in whole or in part ~~and which may include significant modifications to the OpenJDK Code~~, of the Java Specification, that is tested by the TCK, where such implementation is notsubstantially derived from and would not be considered a derivative work of the OpenJDK Code ~~and, if distributed to a third party, is distributed only under the GPL License~~.

1.8 "**OpenJDK Code**" means the Java SE 6 or SE 7 source code as made available to participants in Sun's OpenJDK program, which is described at <http://openjdk.java.net> or such successor location as Sun may determine.

1.9 "OSI Approved Open Source License" means an open source license listed on the Open Source Initiative list of approved list. <http://www.opensource.org>

1.9 "**Technology Compatibility Kit**" or "**TCK**" means the Test Suite and related documentation, for example, the TCK Users Guide, as made available to Licensee and may be revised by Sun during the Term, associated with the Java Specification and that are provided so that Licensee may determine if its Implementation is compliant with the Specification.

1.10 "**Term**" means the term of the Agreement as specified in Section 8.1.

1.11 "**Test Suite**" means the test suites, test harness and other testing or measurement tools, as made available to Licensee and may be revised by Sun during the Term, associated with the Java Specification.

1.12 "**Trademark License**" means the separate agreement entered into by the parties that specifies the terms and conditions related to the use of trademarks, logos and branding in connection with Licensee Implementations, and when executed may be attached hereto for reference as Exhibit A.

2.0 LICENSE GRANTS

2.1 License Grant for the TCK.

(a) **Limited Grant.** Subject to and conditioned upon its Licensee Implementation

not being substantially derived from OpenJDK Code and, if such Implementation has or is to be distributed to a third party, its being distributed under any OSI Approved Open Source~~the GPL~~ License, Sun hereby grants to

Licensee, to the extent of Sun's Intellectual Property Rights in the TCK, a worldwide, personal, non-exclusive, non-transferable, limited license to use the TCK internally and solely for the purpose of developing and testing Licensee Implementation. No license is granted for any other purpose, including any of the activities described in Section 2.1(b).

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(b) Additional Limitations. Licensee may not:

(i) sublicense, distribute or otherwise make the TCK(s) available to any third party, except that Licensee may share comments, questions or particular results concerning Licensee's use of the TCK (including relevant excerpts of the TCK itself) with other licensees bound by an [OpenJDK Not-For-Profit Open Source](#) Community TCK License Agreement v1.x, and under the terms thereof, provided that any Confidential Information disclosed by Licensee to another such licensee shall still be subject to Section 5 of the recipient's [OpenJDK Not-For-Profit Open Source](#) TCK License Agreement;

(ii) create derivative works of the TCK(s);

~~(iii) distribute a Licensee Implementation under any license other than a GPL License, except that Licensee may provide a Licensee Implementation to Sun under the terms of a Sun Contributor Agreement;~~

(iv) test a third party's Licensee Implementation or other work; or

(v) make claims of comparative compatibility (for example, a claim either that the Licensee Implementation is "90% compatible" or that the Licensee Implementation is "more compatible" than another implementation).

2.2 Proprietary Rights Notices. Licensee shall not remove any copyright notices, trademark notices or other proprietary legends of Sun or its suppliers contained on or in the TCK, and shall incorporate such notices in all copies of any TCK. Licensee shall comply with all reasonable requests by Sun to include [in all copies of any TCK](#) additional copyright or other proprietary rights notices of Sun or third parties from time to time.

2.3 Branding. No right, title, or interest in or to any trademarks, service marks, or trade names of Sun or Sun's licensors is granted hereunder. Such rights, if any, concerning a Compatible Licensee Implementation may be obtained pursuant to a Trademark License with Sun. Java, and Java-related logos, marks and names are trademarks or registered trademarks of Sun Microsystems, Inc. in the U.S. and other countries.

2.4 No Other Grant. This Agreement does not grant to Licensee any right or license, under any Intellectual Property Rights of Sun or otherwise, except as expressly provided in this Section 2.0, and no other right or license is to be implied by or inferred from any provision of this Agreement or by the conduct of the parties.

3.0 SUPPORT AND UPGRADES

Nothing in this Agreement shall obligate Sun to provide any upgrades or updates, technical support or other assistance concerning the TCK to Licensee or to any distributor or customer of Licensee for its Licensee Implementations.

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4.0 DISCLAIMER OF WARRANTY

SUN PROVIDES THE TCK TO LICENSEE ON AN "AS IS" BASIS. ALL REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ARE HEREBY DISCLAIMED.

5.0 CONFIDENTIAL INFORMATION

5.1 *Duty of Confidentiality.* Licensee will protect the TCK as Sun Confidential Information protected under this Section 5.0. A party receiving Confidential Information may not: (i) disclose Confidential Information to any third party other than another party bound by an [OpenJDK Not-For-Profit Open Source](#) Community TCK License Agreement v. 1.x (and provided that any Confidential

Information disclosed by Licensee to such party shall be provided under such Agreement and subject to Section 5 of the recipient's [OpenJDK Not-For-Profit Open Source](#) TCK License Agreement v. 1.x); or (ii) use

Confidential Information except for the purpose of developing and testing Licensee Implementations. For the avoidance of doubt, comments, questions or particular results concerning Licensee's use of the TCK shall not be considered Confidential Information. The receiving party will protect the confidentiality of Confidential Information to the same degree of care, but no less than reasonable care, as such party uses to protect its own Confidential Information. Obligations regarding Confidential Information will expire three (3) years from the date of receipt of the Confidential Information, except for source code, which will be protected by Licensee in perpetuity.

5.2 *Exceptions.* The obligations set forth in this Section 5.0 will not apply to any portion of Confidential Information which a receiving party can demonstrate: (a) through no act or failure to act on the part of the receiving party, is now or hereafter becomes, generally known in the software industry; (b) is hereafter rightfully furnished to the receiving party by a third party without restriction on disclosure; or (c) is independently developed by the receiving party without any use of Confidential Information.

5.3 *Residual Rights.* You may, subject to Sun's copyrights or patent rights, use any information retained in your unaided memory after accessing the TCK.

6.0 LIMITATION OF LIABILITY

Except for violation of Sun's Intellectual Property Rights, or breach of Section 2.0: (a) each party's liability to the other for claims relating to this Agreement, whether for breach or in tort, shall be limited to \$10,000.00; (b) IN NO EVENT WILL SUN BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), NO MATTER WHAT THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORSEEABLE; and (c) LIABILITY SHALL BE SO LIMITED AND EXCLUDED, EVEN IF ANY REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. The provisions of this Section 6.0 allocate the risks under this Agreement between

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Sun and Licensee and the parties have relied upon the limitations set forth herein in determining whether to enter into this Agreement.

7.0 TERM AND TERMINATION

7.1 Term. The Term of this Agreement shall begin on the Effective Date and shall continue for a period of one (1) year unless terminated earlier as provided below. If not terminated earlier, the Agreement shall thereafter automatically be extended for up to five (5) additional one (1) year terms unless either party provides written notice of its desire to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of the then-current annual term. In addition, termination is permitted: (a) by either party for the other party's breach of this Agreement, upon thirty (30) days written notice to the other party and an opportunity to cure within such thirty (30) day period; or (b) by Sun upon any action by Licensee alleging that use or distribution of the TCK or an implementation of the Java Specification by Sun or any of Sun's licensees of the TCK infringes a patent of Licensee.

7.2 Effect of Expiration or Termination. Upon expiration or termination of this Agreement, Licensee shall promptly: (a) permanently destroy or disable all copies of the TCK remaining in Licensee's possession or control, except as specifically permitted in writing by Sun; and (b) upon Sun's request, provide Sun with a written statement certifying that Licensee has complied with the foregoing obligations. All rights and licenses granted to Licensee shall terminate upon such termination.

7.3 Non-Exclusive Rights. The rights of Sun under this Section 7.0 are in addition to any other rights and remedies permitted by law or equity under this Agreement.

7.4 Survival. The parties' rights and obligations under Sections 4.0, 5.0, 6.0, 7.0 and 8.0, shall survive expiration or termination of this Agreement, and in addition Sun's rights and Licensee's obligations under Section 2.0 shall survive.

8.0 MISCELLANEOUS

8.1 Notices. All written notices required by this Agreement must be delivered in person or by means evidenced by a delivery receipt and will be effective upon receipt at the addresses specified below.

Sun: Licensee:

Sun Microsystems, Inc. _____

4150 Network Circle _____

Santa Clara, California 95054 _____

Attn.: Sun Software VP of Sales Attn.: _____

cc: Sun Software Legal Department

Each party shall notify the other party in writing sent to the address above of any changes to the foregoing information.

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8.2 **Marketing and Press Announcements.** Licensee hereby authorizes Sun to include Licensee in a published list of licensees of the specific TCK(s) licensed hereunder.

8.3 **Waiver.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.

8.4 **Partial Invalidity.** If any of the above provisions are held to be in violation of applicable law, void, or unenforceable in any jurisdiction, then such provisions are herewith waived or amended to the extent necessary for the Agreement to be otherwise enforceable in such jurisdiction. However, if in either party's opinion deletion or amendment of any provisions of the Agreement by operation of this paragraph unreasonably compromises the rights or increase the liabilities of such party, then such party may terminate the Agreement.

8.5 **Governing Law.** This Agreement is made under and shall be governed by and construed under the laws of the State of California and controlling U.S. law. The choice of law rules of any jurisdiction shall not apply.

8.6 **Compliance with Laws.** TCK, Documentation and Licensee Implementations are subject to United States export laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import laws or regulations in other countries.

Licensee agrees to comply strictly with all such laws and regulations including to obtain licenses to export, re-export or import the TCK, Documentation or Licensee Implementations as may be required after delivery of the TCK or Documentation to Licensee. Unless authorized by the United States government, Licensee will not directly or indirectly export or re-export the TCK, Documentation or Licensee Implementations to any embargoed or restricted country identified in the United States export laws, including but not limited to the Export Administration Regulations (15 C.F.R. Parts 730-744). Licensee represents and warrants that it is not identified on any United States Government export exclusion lists. Licensee shall not use the TCK to test Licensee Implementations for nuclear, missile, chemical, or biological weaponry or other weapons of mass destruction to the extent prohibited by United States export laws. Licensee shall make reasonable efforts to notify and inform its employees and/or agents having access to the TCK of Licensee's obligation to comply with the requirements stated in this Section 8.6

8.7 **Disclaimer of Agency.** The relationship created hereby is that of licensor and licensee. This Agreement is not intended to create a relationship such as a partnership, franchise, joint venture, agency, or employment relationship. Neither party may act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.

Licensee hereby waives the benefit of any laws dealing with the establishment and regulation of franchises.

8.8 **Assignment.** Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement (whether by operation of law, merger, change of control, or otherwise), without the prior written consent of the other party, except that Sun may assign this Agreement: (i) to an affiliated company, or (ii) in the event of a merger, acquisition or sale of all or substantially all of the assets of Sun or a Sun business unit. Any assignment or transfer in breach of this Section shall be void.

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8.9 **Complete Understanding.** This Agreement and the Exhibits hereto constitute and express the final, complete and exclusive agreement and understanding between the parties with respect to its subject matter and supersede all prior or contemporaneous communications, representations or agreements, whether written or oral, with respect to the subject matter hereof. No terms of any purchase order or similar document issued by Licensee shall be deemed to add to, delete or modify the terms and conditions of this Agreement. This Agreement may not be modified, amended, rescinded, canceled or waived, in whole or part, except by a written instrument signed by the authorized representatives of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Sun Microsystems, Inc. Licensee: _____

By: _____ By: _____

Name: _____ Name: _____

(Print or Type) (Print or Type)

Title: _____ Title: _____

Date: _____ Date: _____

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Individual Licensees Participating in a Common Project:

Licensee: _____ Licensee: _____

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

Project Name: _____ Project Name: _____

Licensee: _____ Licensee: _____

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

Project Name: _____ Project Name: _____

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