

# STAND-ALONE TCK LICENSE AGREEMENT FOR Java Binding for the OpenGL® API (JSR 231)

This Stand-Alone TCK License Agreement (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 or a \_\_\_\_\_ corporation with a principal place of business at \_\_\_\_\_ ("Licensee").

## RECITALS

WHEREAS Sun wishes to license its Java™ technology, while maintaining compatibility among Java language based products; and

WHEREAS Sun wishes to protect and promote certain trademarks used in connection with Java technology; and

WHEREAS Licensee wishes to develop and distribute products based upon Sun's Java technology;

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

## 1.0 DEFINITIONS

1.1 "*Application Programming Interfaces*" or "*APIs*" means the names of class library calls and the number and types of arguments they take in invoking the functionality of such class libraries.

1.2 "*Confidential Information*" means any information or materials marked or designated as confidential or proprietary by Sun or Licensee. If disclosed in intangible form (such as orally or visually), information will not be deemed Confidential Information unless the disclosing party identifies same as confidential or proprietary at the time of disclosure and provides a written summary of such information within thirty (30) days of disclosure.

1.3 "*Documentation*" means the materials which Sun provides for use with the Test Suites and Test Tools, as more particularly identified in Exhibit A, as may be revised by Sun during the Term.

1.4 "*FCS*" means first commercial shipment of a production version of a software or hardware product or technology.

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

1.6 "*Java Specification*" means the written specification for some aspect of the Java technology

which is identified in Exhibit A and to which the TCKs licensed hereunder correspond.

1.7 "*Licensor 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.

1.8 "*Product(s)*" means a Licensee product which: (i) fully implements the Java Specification(s) identified in Exhibit A 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.

1.9 "*Reference Implementation*" or "*RI*" means the prototype or "proof of concept" implementation of the Specification developed and made available for license by or on behalf of Sun.

1.10 "*Specification License*" means the license offered by Sun under certain of its Intellectual Property Rights to create an implementation of the Java Specification under certain restrictions and limitations where such implementation neither derives from any of Sun's source code or binary code materials nor includes any of Sun's source code or binary code materials which implement any portion of the Java Specification, except with an appropriate and separate license from Sun, and excluding code contributed by Sun to an open source project (e.g. Apache's "Tomcat" project) that is rightfully included in the product to be tested.

1.11 "*Sun License*" means a license agreement for the TCKs from Sun, whether denominated as a Technology License and Distribution Agreement (TLDA), a Master Support Agreement entered into in conjunction with either a Sun Community Source License or a TLDA, or a Stand-Alone TCK License Agreement.

1.12 "*Sun Licensee*" means a third party who is a party in good standing to a Sun License.

1.13 "*Technology Compatibility Kit*" or "*TCK*" means the Documentation, Test Tools and Test Suite associated with the Java Specification identified in Exhibit A, as may be revised by Sun (including any Upgrades thereto as provided by Sun in its discretion) during the Term, that is provided so that an implementer of the Java Specification may determine if its implementation is compliant with the Specification.

1.14 "*Term*" means the term of the Agreement as specified in Section 10.1.

1.15 "*Test Reports*" means those reports generated by the TCK with respect to a particular Product which identify only configuration information and the successful status of individual or aggregate test executions.

1.16 "*Test Suite*" means the test suites associated with the Java Specification identified in Exhibit A, as they may be revised by Sun during the Term.

1.17 "*Test Tools*" means the test harness and other testing or measurement tools, in source or binary code form, specified in Exhibit A, as may be revised by Sun during the Term.

1.18 "Upgrades" means bug fixes, modifications, variations, and enhancements, to the extent included in a patch or release of the TCK unless otherwise specified in Exhibit A, which Sun generally licenses as part of the TCK.

## 2.0 LICENSE GRANTS

### 2.1 License Grant for the TCK.

**(a) Limited Grant.** Subject to and conditioned upon Licensee's having accepted and being bound by the Specification License and Licensee's compliance with the restrictions and obligations contained in this Agreement, including but not limited to item (v) of the Additional Limitations set forth in subsection (b) below, and except as otherwise set forth in Exhibit A, Sun hereby grants to Licensee, to the extent of Sun's Intellectual Property Rights in the TCK(s), a worldwide, non-exclusive, non-transferable, limited license to use the TCK(s) internally and solely for the purpose of developing and testing Products. No license is granted for any other purpose, including any of the activities described in Section 2.1(b).

**(b) Additional Limitations.** Except as otherwise set forth in Exhibit A, Licensee may not:

- (i) sublicense or distribute the TCK(s) to any third party; or
- (ii) create derivative works of the TCK(s); or
- (iii) disassemble or decompile binary portions of the Test Suite(s) or Test Tools or otherwise attempt to derive the source code from such portions; or
- (iv) develop other test suites intended to validate compatibility with the Java Specification(s) to which the TCK(s) licensed hereunder corresponds; or
- (v) distribute code which implements any portion of the Java Specification unless such code is included in a Product within the meaning of Section 1.12 and unless, for each new release of a Product by Licensee, such Product passes, in accordance with the Documentation (including the TCK Users Guide), the most current TCK applicable to the latest version of the Java Specification and available from Sun one hundred twenty (120) days before FCS of such version of the Product; provided, however, that if Licensee elects to use a version of the TCK also provided by Sun that is newer than that which is required under this Section 2.1(b)(v), then Licensee agrees to pass such TCK; or
- (vi) test a third party's product; or
- (vii) make claims of comparative compatibility or disclose information obtained from testing the Product against the TCK; provided, however, that with respect to a Product which Licensee has certified in accordance with Section 2.1(d) below, Licensee may disclose Test Reports.

For the avoidance of doubt, neither the affirmative statement "*<name of Licensee's/ implementation of the Specification>* passed the TCK for the Java™ Binding for the OpenGL® API specification", nor the corresponding negative statement, i.e. "...did not pass...", shall be understood to violate the limitation set forth in Section 2.1(b)(vii) above.

Subparagraph 2.1(b)(v) above shall not be understood to require Licensee to include any particular "pass through" requirements in any license it grants concerning the redistribution of a Product with which the TCK licensed hereunder has been used. However, except with respect to downstream products developed and distributed by Licensee's licensees and sublicensees which incorporate, in whole or in part, Licensee's Product and themselves satisfy all the other requirements for a Product set forth in Section 1.12 of this Agreement, Licensee may neither: (a) grant or otherwise pass through to its licensees any licenses under Sun's applicable intellectual property rights; nor (b) authorize its licensees to make any claims concerning their implementation's compliance with the Specification in question.

**(c) Superseded Releases.** Sun agrees that under the following circumstances the provisions of Section 2.1(b)(v) above shall not be understood to preclude Licensee from distributing maintenance releases (a new release of a preexisting Product that implements substantially the same core technologies) of a Product that implemented a prior version of the Java Specification ("Initial Product") where such maintenance release implements the same version of the Java Specification implemented by the Initial Product:

1. If released before the "Migration Date", such maintenance release passes (in accordance with the Documentation, including the TCK Users Guide) the most current TCK applicable to the version of the Java Specification implemented by the Initial Product and available from Sun 120 days before FCS of such Product.

2. If released after the "Migration Date":

- (i) either Licensee has already released (and continues to make available) a compatible successor Product (per Section 2.1[a],[b] and [d]) that implements the latest available version of the Java Specification implemented by the Initial Product, or Sun has released and continues to make generally available for license an RI for the latest available version of the Java Specification implemented by the Initial Product and Licensee provides accurate information along with its maintenance release (and included prominently on the packaging, if any) for how to obtain the latest available version of the Java Specification and corresponding RI from Sun, and indicating that such RI and Specification are the latest available versions; and

- (ii) such maintenance releases pass (in accordance with the Documentation, including the TCK Users Guide) the most current TCK applicable to the version of the Java Specification implemented by the Initial Product and available from Sun 120 days before FCS of such Product.

For the purposes of this Section 2.1(c), "Migration Date" shall mean 120 days after the final release of the latest available version of the Java Specification as described above.

**(d) Testing.** Licensee shall self-certify that its Product passes the applicable TCK as set forth above, if and when the Product in fact does so, provided that:

1. If Sun policy also requires verification of compatibility for the Product then Licensee shall, prior to the FCS of the Product, submit specific test documentation to Sun or an independent test facility designated by Sun. If such verification is by an independent test facility, then the reasonable costs of such activity (including any applicable fees) shall be at Licensee's expense. Sun may publish or otherwise distribute such test results; and

2. Upon thirty (30) days written notice by Sun and no more than two (2) times per calendar year, Licensee shall permit Sun or its authorized representative to inspect and test any Product which has been self-certified per this subsection (d) to ensure that such Product meets the compatibility and other requirements for a Product as set forth in Section 1.12 above. The reasonable costs of such inspection shall be at Sun's expense; provided, however, that Licensee shall reimburse Sun for such costs if the inspection reveals that the Product does not meet such requirements and the deficiencies are not cured within 30 days.

*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 additional copyright or other proprietary rights notices of Sun or third parties from time to time.

*2.4 Ownership.* Licensee acknowledges and agrees that, as between Sun and Licensee, Sun owns all right, title and interest in and to the TCK, any derivative works thereof and Intellectual Property Rights (excluding any pre-existing Intellectual Property Rights owned by Licensee) associated therewith.

*2.5 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**

*3.1 Licensee Support and Upgrades.* Except as otherwise expressly agreed to by the parties, nothing in this Agreement shall obligate Sun to provide any Upgrades, technical support or other assistance concerning the TCK to Licensee or to any distributor or customer of Licensee for its Products.

### **4.0 PAYMENT**

*4.1 License Fees.* Licensee shall pay to Sun the fees set forth in Exhibit A, if any, as set forth therein. Payments shall be sent to: Sun Microsystems, Inc., *Software Royalty Accounting Group*, PO Box 10903, Palo Alto CA 94303.

*4.2 Taxes.* All payments required by this Agreement shall be made in United States dollars, are exclusive of taxes, and Licensee agrees to bear and be responsible for the payment of all such taxes, including, but not limited to, all sales, use, rental receipt, personal property or other taxes and their equivalents which may be levied or assessed in connection with this Agreement (excluding only taxes based on Sun's net income). To the extent Licensee is required by local law to withhold taxes based upon Sun's income, Licensee may deduct from any payments to Sun any income tax or tax of a similar nature (including taxes based on net worth) imposed by any government ("Government Income Tax") and actually paid by Licensee for the account of Sun, to the extent such Government Income Tax does not exceed the appropriate withholding amount applicable under relevant tax treaties and qualifies as a creditable foreign tax by the United States government. In the event that Licensee deducts any Government Income Tax from payments owed to Sun, Licensee shall furnish Sun with an official tax receipt or other evidence issued by the taxing authority suitable for Sun to obtain a tax credit in the United States.

## **5.0 Notice of Breach or Infringement**

Each party shall notify the other immediately in writing when it becomes aware of any breach or violation of the terms of this Agreement, or when Licensee becomes aware of any potential or actual infringement by a third party of the TCK or Sun's Intellectual Property Rights therein.

## **6.0 LIMITED WARRANTY AND DISCLAIMER**

6.1 *Limited Warranty.* Sun represents and warrants that the media, if any, on which the TCK are recorded will be free from defects in materials and workmanship for a period of ninety (90) days after delivery. Sun's sole liability with respect to breach of this warranty is to replace the defective media. Except as expressly provided in this Section 6.1, Sun provides the TCK to Licensee on an "AS IS" basis.

6.2 *General Disclaimer.* EXCEPT AS SPECIFIED IN THIS AGREEMENT, ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ARE HEREBY DISCLAIMED.

6.3 *High Risk Activities.* The TCK is not designed or intended for use in the design, construction, operation or maintenance of any nuclear facility. Sun disclaims any express or implied warranty of fitness for such uses.

6.4 *Limitation.* The limited warranty set forth in this Section 6.0 is expressly subject to Section 9.0 (Limitation of Liability).

## **7.0 CONFIDENTIAL INFORMATION**

7.1 *Duty of Confidentiality.* Licensee will protect the TCK as Sun Confidential Information protected under this Section 7.0. A party receiving Confidential Information may not: (i) disclose Confidential Information to any third party, except that such party may exchange comments or questions concerning its use of the TCK, but not the TCK itself, to a Sun Licensee of the same TCK that is licensed hereunder; or (ii) use Confidential Information except for the purpose of the purpose of developing and testing Products. 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.

7.2 *Exceptions.* The obligations set forth in this Section 7.0 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.

## **8.0 LIMITED INDEMNITY**

8.1 *Pre-Release.* The parties acknowledge that the TCK may be in pre-release form and that Sun shall not be liable for any defects or deficiencies in the TCK or in any Product, process or design created by, with or in connection with the TCK whether or not such defects and/or deficiencies are caused, in whole or in part, by defects or deficiencies in the design or implementation of the

TCK. Upon FCS of the TCK by Sun, Sun will provide to Licensee a limited indemnity as described in Sections 8.2-8.3 below.

8.2 *By Sun.* Sun will defend, at its expense, any legal proceeding brought against Licensee, to the extent it is based on a claim that authorized use of the FCS or subsequent production version(s) of the TCK is an infringement of a third party trade secret or a copyright in a country that is a signatory to the Berne Convention, and will pay all damages awarded by a court of competent jurisdiction, or such settlement amount negotiated by Sun, attributable to such claim, provided that Licensee: (a) provides written notice of the claim and any such threatened claim promptly to Sun; (b) gives Sun sole control of the defense and settlement of the claim; (c) provides to Sun, at Sun's expense, all available information, assistance and authority to defend; and (d) has not compromised or settled such proceeding without Sun's prior written consent.

8.3 *Exclusive Remedies.* Should any FCS TCK or any portion thereof become, or in Sun's opinion be likely to become, the subject of a claim of infringement for which indemnity is provided under Section 8.2, Sun shall, in addition to the obligations specified in Section 8.2, as Licensee's sole and exclusive remedy, elect to: (a) obtain for Licensee the right to use such FCS TCK; (b) replace or modify the FCS TCK to become non-infringing; or if alternatives (a) or (b) are not commercially practicable in Sun's sole discretion, (c) accept the return of the FCS TCK and grant Licensee a refund of any upfront license fee as depreciated on a five year straight-line basis.

8.4 *Disclaimer.* THIS SECTION 8.0 STATES THE ENTIRE LIABILITY OF SUN WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE TCK. SUN SHALL HAVE NO OTHER LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

8.5 *By Licensee.* Except for claims for which Sun is obligated to indemnify Licensee under Section 8.2, Licensee shall defend, at Licensee's expense, any and all claims brought against Sun, and shall pay all damages awarded by a court of competent jurisdiction, or such settlement amount negotiated by Licensee, arising out of or in connection with Licensee's use of the TCK or use, reproduction, development or distribution of Product(s). Licensee's obligation to provide a defense under this Section 8.5 shall arise provided that Sun: (a) provides notice of the claim promptly to Licensee; (b) gives Licensee sole control of the defense and settlement of the claim; (c) provides to Licensee, at Licensee's expense, all available information, assistance and authority to defend; and (d) has not compromised or settled such proceeding without Licensee's prior written consent.

## **9.0 LIMITATION OF LIABILITY**

Except for express undertakings to indemnify under this Agreement, violation of Sun's Intellectual Property Rights, or breach of Section 2.0 or 7.0: (a) each party's liability to the other for claims relating to this Agreement, whether for breach or in tort, shall be limited to the license fees paid by Licensee for the Technology related to the claims, if any (provided that this limit shall not apply to Licensee's obligation to make payments owed hereunder); (b) IN NO EVENT WILL EITHER PARTY 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 EITHER PARTY 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 9.0 allocate the risks under this Agreement between Sun and Licensee and the parties have relied upon the limitations set forth herein in determining whether to enter into this Agreement.

## **10.0 TERM AND TERMINATION**

10.1 *Term.* The Term of this Agreement shall begin on the Effective Date and shall continue for the period specified in the applicable Exhibit A unless terminated earlier as provided below. Thereafter, the Agreement shall 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.

10.2 *Effect of Expiration.* Upon expiration of this Agreement, Licensee shall be authorized to: (a) distribute Product(s) successfully self-certified against the version of the TCK licensed hereunder at the time of expiration, subject to Licensee's continued compliance with this Agreement including the payment of any applicable fees, and (b) retain one (1) copy of the TCK to support customers having copies of Product(s) distributed by Licensee prior to the expiration hereof. All other rights of Licensee shall terminate upon such expiration.

10.3 *Effect of Termination.* In the event of termination of this Agreement in accordance with Section 10.1 above, Licensee shall promptly: (a) return to Sun all copies of the TCK and other Confidential Information of Sun (collectively "Sun Property") in Licensee's possession or control; or (b) permanently destroy or disable all copies of the Sun Property remaining in Licensee's possession or control, except as specifically permitted in writing by Sun; and (c) 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.

10.4 *No Liability for Expiration or Lawful Termination.* Neither party shall have the right to recover damages or to indemnification of any nature, whether by way of lost profits, expenditures for promotion, payment for goodwill or otherwise made in connection with the business contemplated by this Agreement, due to the expiration or permitted or lawful termination of this Agreement. EACH PARTY WAIVES AND RELEASES THE OTHER FROM ANY CLAIM TO COMPENSATION OR INDEMNITY FOR TERMINATION OF THE BUSINESS RELATIONSHIP CONTEMPLATED BY THIS AGREEMENT UNLESS TERMINATION IS IN MATERIAL BREACH OF THIS AGREEMENT.

10.5 *Non-Exclusive Rights.* The rights of Sun under this Section 10.0 are in addition to any other rights and remedies permitted by law or equity under this Agreement.

10.6 *Survival.* The parties' rights and obligations under Sections 4.0, 7.0, 8.0, 9.0, 10.0, and 11.0 shall survive expiration or termination of this Agreement, and in addition Sun's rights and Licensee's obligations under Section 2.0 shall survive.

10.7 *Irreparable Harm.* Licensee acknowledges that breach of Sections 2.0, 7.0, 11.5 and 11.8 would cause irreparable harm to Sun, the extent of which would be difficult to ascertain.



Accordingly, Licensee agrees that, in addition to any other available remedies, Sun shall be entitled to obtain immediate injunctive relief in the event of a breach or threatened breach of such Sections.

## 11.0 MISCELLANEOUS

11.1 *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 by the persons 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.

11.2 *Marketing and Press Announcements.* Licensee's initial press announcement concerning execution of this Agreement must be reviewed and approved by Sun prior to its release. Licensee hereby authorizes Sun to include Licensee in a published list of licensees of the specific TCK(s) licensed hereunder. Sun shall also be authorized to use Licensee's name in advertising, marketing collateral, and customer success stories prepared by or on behalf of Sun for such TCKs subject to prior approval by Licensee, such approval not to be unreasonably withheld or delayed.

11.3 *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.

11.4 *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 Sun'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 Sun or its licensors, Sun reserves the right to terminate the Agreement.

11.5 *Language.* This Agreement is in the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall be for accommodation only and shall not be binding on the parties to this Agreement. All communications and notices made or given pursuant to this Agreement, and all documentation and support to be provided, unless otherwise noted, shall be in the English language.

11.6 *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.

11.7 *Compliance with Laws.* TCK, Documentation and Products 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 Products 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 Products 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 Products 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 11.8

11.8 *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 not 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.

11.9 *Delivery.* As soon as practicable after the Effective Date, Sun shall deliver to Licensee one (1) copy of each of the deliverables set forth in Exhibit A. Licensee acknowledges that certain of the deliverables are in various stages of completion and agrees to accept the deliverables as and to the extent completed as of the date of delivery and "AS IS." In the event any deliverable is already in the possession or custody of Licensee, such item(s) shall, to the extent used in connection with the rights granted in Section 2.0 above, be subject to the terms of this Agreement, notwithstanding any pre-existing agreement or understanding between Licensee and Sun with respect to such items.

11.10 *Assignment.* This Agreement may not be assigned or transferred by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, except that Sun may assign or transfer this Agreement to a majority-owned subsidiary.

11.11 *Construction.* This Agreement has been negotiated by Sun and Licensee and by their respective counsel. This Agreement will be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either party.

11.12 *Exhibits.* The following is included herein by reference as an integral part of this Agreement:

- Exhibit A -TCK Specific Terms and Conditions

To the extent the terms and conditions of any Exhibit are contrary to the terms and conditions of this Agreement, the terms and conditions of such Exhibit shall govern.

11.13 *Section References.* Any reference contained herein to a section of this Agreement shall be meant to refer to all subsections of the section.

11.14 *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: \_\_\_\_\_

**EXHIBIT A**  
**TECHNOLOGY SPECIFIC TERMS AND CONDITIONS**

**I. Description of TCK, Test Tools and Documentation**

A. Java Specification: Java Binding for the OpenGL<sup>®</sup> API (JSR 231)

B. TCK: Java Binding for the OpenGL<sup>®</sup> API TCK

C. Test Tools: as applicable

D. Documentation: Java Binding for the OpenGL<sup>®</sup> API TCK User's Guide

**II. Term:** One (1) year

**III. Additional License Provisions**

A. TCK:

1. The final paragraph of Section 2(b) (which begins with “Subparagraph 2.1(b)(v) above shall not be understood...”) is replaced in its entirety by the following:

Subparagraph 2.1(b)(v) above shall not be understood to require Licensee to include any particular "pass through" requirements in any license it grants concerning the redistribution of a Product (or an Intermediate Build to the extent permitted by Section 3 below) with which the TCK licensed hereunder has been used. However, Licensee may not: (a) grant or otherwise pass through to its licensees any licenses under Sun's applicable intellectual property rights, or (b) authorize its licensees to make any claims concerning their implementation's compliance with the Specification in question; except with respect to downstream products developed and distributed by Licensee's licensees and sublicensees that satisfy all of the following conditions:

(i) such products incorporate, in whole or in part, Licensee's Product; and

(ii) such products themselves satisfy all the other requirements for a Product set forth in Section 1.12 of this Agreement.

2. If Licensee generally uses a bona fide open source software development methodology and does so to develop the Product, then, notwithstanding the additional limitations set forth in Section 2.1b(v), Licensee may make "Intermediate Builds" available subject to the following conditions:

- i. such Build is marked with the word "UNTESTED" or "INCOMPATIBLE" or "UNSTABLE" or "BETA" in any list of available builds and in every link initiating its download, where the list or link is under Licensee's control;
- ii. Licensee displays the following notice in such a manner that anyone downloading the Intermediate Build must see the notice before commencing the download:

"This is an intermediate build made available for testing purposes only. The code is untested and presumed incompatible with the Java™ 2 Platform, Standard Edition (J2SE™) specification. You should not deploy or write to this code, but instead use the tested and certified J2SE compatible version of the code that is available at <https://jogl.dev.java.net/>. Redistribution of any Intermediate Build must retain this notice."

Licensee must also include the same notice as a README.J2SE file with any source code bundle (e.g. tarball) download that corresponds to the Intermediate Build;

- iii. Moreover, Licensee shall not distribute (except as a passive download as provided above), market or promote Intermediate Builds, including without limitation in connection with providing any goods or services.
- iv. After making its initial release of a Product available, for any Intermediate Build subsequently made available by Licensee that is for the same context or environment (e.g. described by the same hardware architecture, operating system and version, and Java Virtual Machine version), Licensee must at all times also make the corresponding Product available. The link to such Product must be prominent and in close proximity to any corresponding Intermediate Build in any list of available builds or downloads.
- v. Licensee must include the following README.J2SE file in the root directory of any source code it may make available through access to a revision control system (e.g. CVS):

"This version of Java Binding for the OpenGL API source code is made available in support of the open source development process. Some numbered or tagged revisions of this source have been tested and found to pass the Java™ 2 Platform, Standard Edition (J2SE™) Compatibility Test Suite, and you can find information on which revisions or tags at [*include URL and link*]. Please note that since only binaries can be tested, source code cannot be described as a compatible implementation of the J2SE Specification. The different build environment on your machine and any changes you may make to this code could render your resulting build incompatible. Because of this, writing or deploying applications to builds based on this code can lead to lack of portability. You should instead consider deploying production applications on

the pre-built binaries of [Project Name] that are available at [include a url and a link] that have been tested and certified to meet the J2SE compatibility requirements."

- vi. For each Product released by Licensee, Licensee must: (a) prominently identify the corresponding source version and configuration, including the identifying tag or other indicator required to extract the source code from the project revision control system, if any; and (b) provide a description of the build environment that was used to create the Product.

For the purposes of this section IV.A.2:

"*Intermediate Build*" means a binary build created as a development step towards what is intended to be a compatible Product and which incorporates the most recent changes made to the source version of the Product designated as "official" (or equivalent term) by Licensee from the immediately prior "official" source version.

3. For any notice required under this Section IV.A, in addition to providing such notice in English you must also include one or more accurate translations of the notice(s) in languages appropriate for the primary intended audiences when such audiences do not have English as their primary language.

## **V. Schedule of Fees and Royalties**

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