

OPENJDK COMMUNITY TCK AND EA TCK LICENSE AGREEMENT V 3.0

This OpenJDK Community TCK and EA TCK License Agreement v 3.0 (the "Agreement") is entered into this _____ day of _____, 20____ (the "Effective Date"), by and between Oracle America, Inc. ("Oracle") with its principal place of business at 500 Oracle Parkway, Redwood Shores, CA 94065, and _____, an individual, corporation or organization with a principal place of business at _____ ("Licensee").

RECITALS

WHEREAS Licensee participates in Oracle's OpenJDK Community and either: (i) has developed and seeks to distribute under the GPL License a compatibility-tested implementation of the Java SE 9 Specification (or later, as indicated by Oracle in writing to you), through use of the TCK, that may be derived from code made available to the OpenJDK Community; (ii) wishes to verify that changes made by Licensee to the OpenJDK code base, through use of the TCK, would not break compatibility; or (iii) wishes to evaluate and test the EA TCK and provide Feedback, and

WHEREAS Oracle wishes to license certain of its JavaTM technology compatibility kits (TCKs) to Licensee to facilitate either activities described in (i) and (ii) above; or Oracle wishes to license EA TCKs to Licensee to facilitate activities described in (iii) above.

NOW THEREFORE, Oracle 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 Oracle.

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

1.4 "*Early Access Technology Compatibility Kit*" or "*EA TCK*" means a pre-release version of the TCK subsequent to the most current generally available version of the TCK, as designated by Oracle.

1.5 "*Feedback*" shall mean any input provided to Oracle, in any manner, regarding OpenJDK Code, the TCK, the EA TCK, Oracle products, documentation and/or services.

1.6 "*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.

1.7 "*Java Specification*" means the written specification for Java SE 9, or later, technology.

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

1.9 "*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, where such implementation is substantially derived from and would be considered a derivative work of the OpenJDK Code and, if distributed to a third party, is distributed only under the GPL License.

1.10 "*OpenJDK Code*" means the Java SE 9, or later, source code as made available to participants in Oracle's OpenJDK program, which is described at <http://openjdk.java.net> or such successor location as Oracle may determine.

1.11 "*OpenJDK Mailing Lists*" means all of the mailing lists on <http://mail.openjdk.java.net> or such successor location as Oracle may determine.

1.12 "*Technology Compatibility Kit*" or "*TCK*" means the most current generally available Test Suite and related documentation as designated by Oracle, for example, the TCK Users Guide, as made available to Licensee and may be revised by Oracle 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.

1.13 "*Term*" means the term of the Agreement as specified in Section 7.1.

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

1.15 "*Trademark License*" means a separate agreement, if any, 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.

2.0 LICENSE GRANTS

2.1 License Grant for the TCK.

(a) Limited Grant. Subject to and conditioned upon its Licensee Implementation (i) including no code licensed directly or indirectly from Oracle, or any derivatives of such code, other than OpenJDK Code made available under the GPL, and, (ii) if such Implementation has or is to be distributed to a third party, its being distributed under the GPL License, Oracle hereby grants to Licensee, to the extent of Oracle'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).

(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 or questions concerning its use or the results of using the TCK (including relevant excerpts of the TCK itself, provided such TCK excerpts are inherently part of such test results) ; (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 Oracle under the terms of a Oracle Contributor Agreement and may post portions of a Licensee Implementation on OpenJDK Mailing Lists if and as permitted under the Terms of Use applicable to such OpenJDK Mailing List; (iv) test a third party's Licensee Implementation or other work, other than as part of your own Licensee Implementation which otherwise meets the conditions of (i) – (v) of this Section (b); 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 License Grant for the EA TCK.

Limited Grant. Oracle hereby grants to Licensee, to the extent of Oracle's Intellectual Property Rights in the EA TCK, a worldwide, personal, non-exclusive, non-transferable, limited license to internally evaluate the EA TCK solely for the purpose of discovering bugs, omissions or other similar issues. No license is granted for any other purpose, including any of the activities described in Section 2.1.

In consideration of such evaluation of the EA TCK by Licensee, Licensee agrees to provide Feedback to Oracle using customary channels and methods. Licensee grants to Oracle a worldwide, royalty-free, non-exclusive, perpetual, and irrevocable right to use Feedback for any purpose, including but not limited to, incorporation of such Feedback into OpenJDK Code, the TCK, or other software products. Feedback shall be Confidential Information.

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

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

2.5 No Other Grant. This Agreement does not grant to Licensee any right or license, under any Intellectual Property Rights of Oracle 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 Oracle to provide any upgrades or updates, technical support or other assistance concerning the TCK or EA TCK to Licensee or to any distributor or customer of Licensee for its Licensee Implementations.

4.0 DISCLAIMER OF WARRANTY

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

5.0 CONFIDENTIAL INFORMATION

5.1 Duty of Confidentiality. Licensee will protect the TCK and EA TCK as Confidential Information protected under this Section 5.0. Licensee may not: (i) disclose Confidential Information to any third party, except that Licensee may exchange comments or questions concerning its use or the results of using the TCK, including relevant excerpts of the TCK, provided such TCK excerpts are inherently part of such results, but not the non-relevant portions of the TCK itself; or (ii) use Confidential Information except for the purpose of developing and testing Licensee Implementations. The Licensee 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 Oracle's copyrights or patent rights, use any information retained in your unaided memory after accessing the TCK or EA TCK.

6.0 LIMITATION OF LIABILITY

Except for violation of Oracle's Intellectual Property Rights, or breach of Sections 2.0 or 5.0: (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 ORACLE 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 Oracle 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 three (3) years 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 Oracle upon any action by Licensee alleging that use or distribution of the TCK or EA TCK or an implementation of the Java Specification by Oracle or any of Oracle's licensees of the TCK or EA 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, EA TCK, and any Confidential Information remaining in Licensee's possession or control, except as specifically permitted in writing by Oracle; and (b) upon Oracle's request, provide Oracle 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 Oracle 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 Oracle'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.

Oracle:

Oracle America, Inc.
500 Oracle Parkway
Redwood City, California 94065
Attn.: Vice President Legal, Development
cc: Oracle Development and
Engineering Legal Department

Licensee:

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

8.2 Marketing and Press Announcements. Licensee hereby authorizes Oracle 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. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in San Francisco or Santa Clara County, California. The parties agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

8.6 Compliance with Laws.

Licensee agrees to comply fully with export laws and regulations of the United States and any other applicable export laws ("Export Laws") to assure that neither the Licensed Software and Confidential Information, nor any direct product thereof are: (a) exported, directly or indirectly, in violation of this Agreement or Export Laws; or (b) used for any purposes prohibited by the Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

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. Licensee may not 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 Oracle. Any assignment or transfer in breach of this Section shall be void.

8.9. U.S. Government End Users. Licensed Software and/or documentation delivered to U.S. Government end users are “commercial computer software” pursuant to the applicable Federal Acquisition Regulation and agency-specific supplemental regulations. As such, use, duplication, disclosure, modification, and adaptation of the Licensed Software and/or documentation shall be subject to the license terms and license restrictions set forth in this agreement. No other rights are granted to the U.S.

8.10 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.

Oracle America, Inc.

By: _____

Name: _____

(Print or Type) (Print or Type)

Title: _____

Date: _____

Licensee: _____

By: _____

Name: _____

Title: _____

Date: _____

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: _____

Last Updated 15 September 2017