

STAND-ALONE TCK LICENSE AGREEMENT

This Stand-Alone TCK License Agreement (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 City, CA 94065, and _____, an individual or a _____ corporation with a principal place of business at _____ ("Licensee").

RECITALS

WHEREAS Licensee wishes to develop and distribute as products successfully compatibility-tested implementations of one or more Java™ technology specifications for which Oracle is the "Specification Lead"; and

WHEREAS Oracle wishes to license certain of its test suites and related technologies to facilitate such compatibility testing; and

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

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

1.0 DEFINITIONS

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

1.2 "*Documentation*" means the materials which Oracle provides for use with the Test Suites and Test Tools, as may be revised by Oracle during the Term.

1.3 "*Exhibit A*" means collectively Exhibits A-1 through A-n which incorporate into the Agreement the specific terms and conditions for each TCK licensed hereunder.

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

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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", "com.oracle" or their equivalents in any subsequent naming convention adopted by Oracle 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) 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; (iii) passes the TCK (including satisfying the requirements of the applicable TCK Users Guide) for such Specification; and (iv) neither derives from nor includes any of Oracle's source code or binary code materials which implement any portion of the Java Specification, except with an appropriate and separate license from Oracle.

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

1.10 "*Specification License*" means the license offered by Oracle 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 Oracle's source code or binary code materials nor includes any of Oracle's source code or binary code materials which implement any portion of the Java Specification, except with an appropriate and separate license from Oracle.

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

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

1.13 "*Technology Compatibility Kit*" or "*TCK*" means the Test Suite and related documentation (for example, the TCK Users Guide) associated with the Java Specification identified in Exhibit

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A as made available to Licensee and as may be revised by Oracle 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 9.1.

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

1.16 "*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.

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

1.18 "*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 Products, and if and when executed will be attached hereto for reference as Exhibit B.

1.19 "*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 Oracle 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 in particular Section 2.1(b)(v) below, and except as otherwise set forth in Exhibit A, Oracle hereby grants to Licensee, to the extent of Oracle'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:

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- (i) sublicense or distribute the TCK(s) 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); 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 has been tested against the TCK and which implements a substantial portion of the Java Specification unless such code is included in a Product within the meaning of Section 1.8 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 Oracle one hundred eighty (180) 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 Oracle that is newer than that which is required under this Section 2.1(b)(v), then Licensee agrees to pass such TCK; or
- (vi) use the TCK to test a third party's product; or
- (vii) use the TCK to make claims of comparative compatibility (for example, a claim either that a Product is "90% compatible" or that the Product is "more compatible" than another implementation of the same Java Specification); 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.

Neither the limited scope of the grant set forth in Section 2.1(a) nor the additional limitations set forth in Section 2.1(b)(v) above shall 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 1.8 of this Agreement, Licensee may neither: (a) grant or otherwise pass through to its licensees any licenses under Oracle's applicable

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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. Oracle 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 Oracle one hundred eighty (180) 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 Oracle 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

(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 Oracle one hundred eighty (180) days before FCS of such Product.

For the purposes of this Section 2.1(c), "Migration Date" shall mean one hundred eighty 180 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. Upon Oracle's reasonable request, Licensee further agrees to provide to Oracle, Licensee's test results that demonstrate that the Product passes the applicable TCK. If in Oracle's reasonable judgment the test results are inadequate to determine passage, then upon thirty (30) days written notice by Oracle and no more than two (2) times per calendar year, Licensee shall permit Oracle or its authorized representative to inspect and test any Product which has been self-certified per this subsection (d) to ensure that such

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Product meets the compatibility and other requirements for a Product as set forth in Section 1.8 above. The Licensee may define the terms governing Oracle's inspection and test of the Product provided that such terms (i) grant Oracle rights to freely test the Product and such other rights that are reasonably necessary to Oracle to ensure that such Product meets the compatibility and other requirements, all on a royalty-free basis, and (ii) do not require Oracle to take or refrain from any action other than restricting access to and use of the Product to those persons performing the inspection and test. The reasonable costs of such inspection shall be at Oracle's expense; provided, however, that Licensee shall reimburse Oracle for such costs if the inspection reveals that the Product does not meet such requirements and the deficiencies are not cured within thirty (30) days.

Licensee shall self-certify that its Product passes the applicable TCK as set forth above. Upon Oracle's reasonable request, Licensee further agrees to provide to Oracle, Licensee's test results that demonstrate that the Product passes the applicable TCK.

2.2 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 shall incorporate such notices in all copies of any 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.

2.3 Branding. Except as otherwise specified in Exhibit A, Licensee shall include Oracle's compatibility logo trademark(s) specified in Exhibit A on FCS and subsequent versions of Products it distributes, subject to the Trademark License in Exhibit B, to indicate that such Products meet the applicable compatibility requirements specified herein.

2.4 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

3.1 Licensee Support and Upgrades. Unless otherwise specified in a separate master support agreement executed by Oracle and Licensee, nothing in this Agreement shall obligate Oracle 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 CONSIDERATION

4.1 Consideration for the License. As a condition of the grant to use the TCK above, Licensee shall provide the consideration set forth in Exhibit A. Any fee or royalty payments required shall

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be sent to: Oracle America, 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 Oracle's net income). To the extent Licensee is required by local law to withhold taxes based upon Oracle's income, Licensee may deduct from any payments to Oracle 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 Oracle, 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 Oracle, Licensee shall furnish Oracle with an official tax receipt or other evidence issued by the taxing authority suitable for Oracle to obtain a tax credit in the United States.

5.0 LIMITED WARRANTY AND DISCLAIMER

5.1 ORACLE LICENSES THE TCK 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.

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

5.3 *Limitation*. The limited warranty set forth in this Section 5.0 is expressly subject to Section 8.0 (Limitation of Liability).

6.0 CONFIDENTIAL INFORMATION

6.1 *Duty of Confidentiality*. Licensee will protect the TCK as Oracle Confidential Information protected under this Section 6.0. 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 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 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

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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.

6.2 Exceptions. The obligations set forth in this Section 6.0 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.

6.3 Residual Rights. Licensee may, subject to Oracle's copyrights or patent rights, use any information retained in the unaided memory of its employees and other agents after accessing the TCK.

7.0 LIMITED INDEMNITY

7.1 Pre-Release. The parties acknowledge that the TCK may be in pre-release form and that Oracle 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 Oracle, Oracle will provide to Licensee a limited indemnity as described in Sections 7.2-7.3 below.

7.2 By Oracle. Oracle 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 Oracle, attributable to such claim, provided that Licensee: (a) provides written notice of the claim and any such threatened claim promptly to Oracle; (b) gives Oracle sole control of the defense and settlement of the claim; (c) provides to Oracle, at Oracle's expense, all available information, assistance and authority to defend; and (d) has not compromised or settled such proceeding without Oracle's prior written consent.

7.3 Exclusive Remedies. Should any FCS TCK or any portion thereof become, or in Oracle's opinion be likely to become, the subject of a claim of infringement for which indemnity is provided under Section 7.2, Oracle shall, in addition to the obligations specified in Section 7.2, 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 Oracle's sole discretion, (c) accept the return of the FCS

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TCK and grant Licensee a refund of any Access Fee, as set for in Exhibit A, as depreciated on a five year straight-line basis.

7.4 Disclaimer. THIS SECTION 7.0 STATES THE ENTIRE LIABILITY OF ORACLE WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE TCK. ORACLE SHALL HAVE NO OTHER LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

7.5 By Licensee. Except for claims for which Oracle is obligated to indemnify Licensee under Section 7.2, Licensee shall defend, at Licensee's expense, any and all claims brought against Oracle, 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 reproduction, development or distribution of product(s) developed using the TCK. Licensee's obligation to provide a defense under this Section 7.5 shall arise provided that Oracle: (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.

8.0 LIMITATION OF LIABILITY

Except for express undertakings to indemnify under this Agreement, violation of Oracle's Intellectual Property Rights, or breach of Section 2.0, 4.0 or 6.0: (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 8.0 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.

9.0 TERM AND TERMINATION

9.1 Term. The Term of this Agreement shall begin on the Effective Date and shall continue for the period specified in the applicable Exhibit A (Section II) unless terminated earlier as provided below. Thereafter, the Agreement shall automatically extend for five (5) additional one (1) year

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periods (each a term), 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 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 an implementation of the Java Specification by Oracle or any of Oracle's licensees of the TCK infringes a patent of Licensee.

9.2 Effect of Expiration. Upon the expiration or termination of this Agreement, Licensee shall promptly: (a) return to Oracle all copies of the TCK and other Confidential Information of Oracle (collectively "Oracle Property") in Licensee's possession or control; or (b) permanently destroy or disable all copies of the Oracle Property remaining in Licensee's possession or control, except as specifically permitted in writing by Oracle; and (c) 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; provided, however, that in the event of the expiration of this Agreement then Licensee shall be authorized to: (x) distribute Product(s) previously and 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 (y) 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.

9.3 Effect of Termination. In the event of termination of this Agreement in accordance with Section 9.1 above Licensee shall promptly: (a) return to Oracle all copies of the TCK and other Confidential Information of Oracle (collectively "Oracle Property") in Licensee's possession or control; or (b) permanently destroy or disable all copies of the Oracle Property remaining in Licensee's possession or control, except as specifically permitted in writing by Oracle; and (c) 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.

9.4 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.

9.5 Non-Exclusive Rights. The rights of Oracle under this Section 9.0 are in addition to any other rights and remedies permitted by law or equity under this Agreement.

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9.6 *Survival*. The parties' rights and obligations under Sections 4.0, 5.0, 6.0, 7.0, 8.0, 9.0, and 10.0 shall survive expiration or termination of this Agreement, and in addition Oracle's rights and Licensee's obligations under Section 2.0 shall survive.

9.7 *Irreparable Harm*. Licensee acknowledges that breach of Sections 2.0 and 6.0 would cause irreparable harm to Oracle, the extent of which would be difficult to ascertain. Accordingly, Licensee agrees that, in addition to any other available remedies, Oracle shall be entitled to obtain immediate injunctive relief in the event of a breach or threatened breach of such Sections.

10.0 MISCELLANEOUS

10.1 *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.

Oracle:	Licensee:
Oracle America, Inc.	_____
500 Oracle Parkway	_____
Redwood City, California 94065	_____
Attn.: Oracle Software VP of Sales	Attn.: _____
cc: Oracle Legal Department	

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

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

10.3 *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.

10.4 *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

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amended to the extent necessary for the Agreement to be otherwise enforceable in such jurisdiction. However, if in Oracle'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 Oracle or its licensors, Oracle reserves the right to terminate the Agreement.

10.5 *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.

10.6 *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. Licensee and Oracle agree that any action arising out of this Agreement shall be brought in the U.S. District Court for the Northern District of California or the California Superior Court, County of San Francisco, or County of Santa Clara, as applicable; and Licensee and Oracle submit exclusively to the personal jurisdiction and venue of such Courts.

10.7 *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 10.7

10.8 *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.

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10.9 *Assignment*. This Agreement may not be assigned or transferred by Licensee without the prior written consent of Oracle. Oracle may assign or transfer this Agreement to another Oracle entity or affiliate.

10.10 *Exhibits*. The following are included herein by reference as integral parts of this Agreement:

- Exhibit A -TCK Specific Terms and Conditions
- Exhibit B –TradeMark License

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.

10.11 *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.

Licensee: _____

By: _____ By: _____

Name: _____ Name: _____

(Print or Type) (Print or Type)

Title: _____ Title: _____

Date: _____ Date: _____

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EXHIBIT A-1

TECHNOLOGY SPECIFIC TERMS AND CONDITIONS

I. Description of TCK, Test Tools and Documentation

- A. Java Specification: JFS 2.3 (JSR 372)
- B. TCK: Technology Compatibility Kit for JSR 372
- C. Test Tools: JavaTest Harness (included with TCK for JSR 372)
- D. Documentation: JSR 372 TCK User's Guide and Release Notes (README.html)

II. Term: Three (3) years

If Licensee executed this Agreement having the status of a Qualified Not-for-Profit or Qualified Individual, then if and when there is a material change in any factors relevant to determining that status -- for example, that Licensee has come under the effective control of a commercial entity as a result of a change in the membership of Licensee's Board of Directors or equivalent governing body -- Licensee shall notify Oracle of the nature of the change(s). Failure to provide such notice, or the knowing disclosure of inaccurate information to Oracle in response to its reasonable requests (whether an initial application or follow-on requests) for information concerning Licensee's Qualified Not-for-Profit or Individual status, shall be considered a breach of this Agreement.

If Licensee executed this Agreement as a commercial licensee not having the status of a Qualified Not-for-Profit or Qualified Individual, Licensee will be provided one year of basic TCK support from Oracle under the terms of Oracle's Master Support Agreement at no additional charge, provided Licensee executes Oracle's standard MSA which is attached as Exhibit B to this Agreement. Qualified Not-for-Profits and Qualified Individuals may purchase basic TCK support from Oracle at an additional charge.

III. Schedule of Fees and Royalties

A. For Commercial Licensees: fee of \$35,000 per annum (as of the Effective Date) for each Marketed Product which implements the JFS, version 2.3, specification. TCK JLE support includes access, updates and upgrades to the TCK at no additional charge. For the purposes of this Section III, "Marketed Product" means a licensee's product that has its own differentiation and marketing collateral. It may comprise one price list entry, or in some cases multiple entries

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(for example, to account for different localizations or delivery packaging). By way of example, in terms of Oracle's product line we wouldn't consider Oracle's Java Application Server to be a Marketed Product, but Oracle's Java Application Server Platform Edition, Standard Edition, and Enterprise Edition are 3 Marketed Products. Oracle's Java Studio Enterprise is a fourth Marketed Product.

All fees shall be due upon execution of this Agreement. In addition, Oracle shall have no obligation to deliver or make available the TCK until such fees are received by Oracle.

B. For Qualified Not-for-Profits and Qualified Individuals: \$0.

1. Change in Status. If Licensee entered into this Agreement as a Qualified Not-for-Profit or Qualified Individual but at any subsequent time fails to satisfy any of the conditions that give rise to that status ("Conversion Date"), then Licensee shall pay to Oracle any other fees that come due pursuant to this Exhibit A (which may be different than the fee stated above), the Trademark License and the MSA for parties that are not Qualified Not-for-Profits or Qualified Individuals. For the avoidance of doubt, no such fees shall be due if Licensee entered into this Agreement as a Qualified Individual and terminates this Agreement before the Conversion Date.

For the purposes of this Agreement, and so long as not inconsistent with any requirements established pursuant to the Java Community Process:

"Qualified Not-for-Profit" means a legally organized not-for-profit entity (such as, but not limited to, a "501[c][3]" corporation) that is not owned or effectively controlled, based on prevailing standards of law in the applicable jurisdiction, by a commercial interest, that uses the TCK for the purpose of developing and distributing a compatible, non-commercial, independent implementation of a Specification, and that has established to the satisfaction of Oracle, in its reasonable discretion, that such entity is ready to begin testing its credible implementation of the Java Specification in question.

"Qualified Individual" means an individual not acting for or on behalf of a legally organized entity that uses the TCK for the purpose of developing and distributing a compatible, non-commercial, independent implementation of a Specification, and that has established to the satisfaction of Oracle, in its reasonable discretion, that such individual is ready to begin testing its credible implementation of the Java Specification in question.

"non-commercial implementation" means an implementation by Licensee or derived from Licensee's implementation that is not used for strategic gain or advantage against Oracle and/or an implementation by Licensee that is not used for direct or indirect commercial gain.

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EXHIBIT B
MASTER SUPPORT AGREEMENT
(to be attached if applicable)

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