

ATTACHMENT D: COMMERCIAL USE LICENSE
Oracle America, Inc.

1. Effect. This Attachment D is to the Oracle Community Source Licenses ("OCSL") for the following Technology:

EJB 3.2 (JSR __) Reference Implementation

You have agreed to the terms of the OCSL by selecting the "Accept" button at the end of the OCSL or executing a hardcopy OCSL with Original Contributor. You acknowledge that the OCSL is binding on You. This Attachment D is effective only if signed below by You and Original Contributor, and applies to Your Commercial Use of Original Code and Upgraded Code. All capitalized terms used herein shall have the same meaning set forth in the OCSL, unless otherwise stated.

2. Term. Upon execution of this Attachment D by You and Original Contributor, this Commercial Use license shall have an initial term of 3 years and shall automatically renew for additional one year terms unless either party provides notice to the other no less than 60 days prior to an anniversary date.

3. Commercial Use License Grant. Subject to Your compliance with Section 4 below, Section 8.10 of the Research Use license, and the TCK license; in addition to the Research Use license, the TCK license, and the Internal Deployment Use license, Original Contributor grants to You a worldwide, non-exclusive, non-transferable, royalty-bearing license, to the extent of Original Contributor's Intellectual Property Rights covering the Original Code, Upgraded Code and Specifications, to do the following within the specified field of use:

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- c) Compliance. For all Commercial Use, You agree to distribute only compliant implementations of Original Contributor's Java community Process Specifications that meet the requirements of Compliant Covered Code as set forth in the OCSL and this Attachment D.
- d) Branding. No logo or word mark is licensed hereunder in association with Compliant Covered Code..

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b) Original Contributor's Indemnity Obligation. Original Contributor will defend, at its expense, any legal proceeding brought against You, to the extent it is based on a claim that Your authorized Commercial Use of Original Code and Upgraded Code 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, costs and fees awarded by a court of competent jurisdiction, or such settlement amount negotiated by Original Contributor, attributable to such claim. The foregoing shall not apply to any claims of intellectual property infringement based upon the combination of code or documentation supplied by Original Contributor with code, technology or documentation from other sources.

c) Right of Intervention. Original Contributor will have the right, but not the obligation, to defend You, at Original Contributor's expense, in connection with a claim that Your Commercial Use of Original Code and Upgraded Code is an infringement of a third party patent and will, if Original Contributor chooses to defend You, pay all damages, costs and fees awarded by a court of competent jurisdiction, or such settlement amount negotiated by Original Contributor, attributable to such claim.

d) Prerequisites. Under Sections 5.b) and c) above, You must, and under Section 5.a) above, Original Contributor or any Licensee must: (i) provide notice of the claim promptly to the party providing an indemnity; (ii) give the indemnifying party sole control of the defense and settlement of the claim; (iii) provide the indemnifying party, at indemnifying party's expense, all available information, assistance and authority to defend; and (iv) not have compromised or settled such claim or proceeding without the indemnifying party's prior written consent.

e) Additional Remedies. Should any Original Code, Upgraded Code, TCK, Specifications, or Modifications become, or in the indemnifying party's opinion be likely to become, the subject of a claim of infringement for which indemnity is provided above, the indemnifying party may, at its sole option, attempt to procure on reasonable terms the rights necessary for the indemnified party to exercise its license rights under this License with respect to the infringing items, or to modify the infringing items so that they are no longer infringing without substantially impairing their function or performance. If the indemnifying party is unable to do the foregoing after reasonable efforts, then the indemnifying party may send a notice of such inability to the indemnified party together with a refund of any license fees received by the indemnifying party from the indemnified party for the infringing items applicable to the indemnified party's future use or distribution of such infringing items, in which case the indemnifying party will not be liable for any damages resulting from infringing activity with respect to the infringing items occurring after such notice and refund.

6. Support Programs.

Support to You. Technical support is not provided to You by Original Contributor under this License. You may contract for one or more support programs from Original Contributor relating to the Technology which are described on the OCSL Webpage.

Customer Support. You are responsible for providing technical and maintenance support services to Your customers for Your products and services.

7. Fees, Royalties and Payments.

a) Annual Fee. \$35,000 per year for access to the Technology in Source Code form (Part. No. J2E88-UPD1-A889), which can be obtained only if you have also ordered, or order concurrently, Part No. J2E88-TC4-A889 (to license the EJB 3.2 TCK).

b) Taxes. All payments required by this License shall be made in United States dollars, are exclusive of taxes, and You agree 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 License (excluding only taxes based on Original Contributor's net income). To the extent You

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are required to withhold taxes based upon Original Contributor's income in any country, You agree to provide Original Contributor with written evidence of such withholding, suitable for Original Contributor to obtain a tax credit in the United States.

c) Records. You agree to maintain account books and records consistent with Generally Accepted Accounting Principles appropriate to Your domicile, as may be in effect from time to time, sufficient to allow the correctness of the royalties required to be paid pursuant to this License to be determined.

d) Audit Rights. Original Contributor shall have the right to audit such accounts upon reasonable prior notice using an independent auditor of Original Contributor's choice (the "Auditor"). The Auditor shall be bound to keep confidential the details of Your business affairs and to limit disclosure of the results of any audit to the sufficiency of the accounts and the amount, if any, of a payment adjustment that should be made. Such audits shall not occur more than once each year (unless discrepancies are discovered in excess of the five percent (5%) threshold set forth in Section 7.f) below, in which case two consecutive quarters per year may be audited). Except as set forth in Section 7.f) below, Original Contributor shall bear all costs and expenses associated with the exercise of its rights to audit.

f) Payment Errors. In the event that any errors in payments shall be determined, such errors shall be corrected by appropriate adjustment in payment for the quarterly period during which the error is discovered. In the event of an underpayment of more than five percent (5%) of the proper amount owed, upon such underpayment being properly determined by the Auditor, You agree to reimburse Original Contributor the amount of the underpayment and all reasonable costs and expenses associated with the exercise of its rights to audit, and interest on the overdue amount at the maximum allowable interest rate from the date of accrual of such obligation.

8. 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 License, or when You become aware of any potential or actual infringement by a third party of the Technology or Original Contributor's Intellectual Property Rights therein.

9. Proprietary Rights Notices. You may not remove any copyright notices, trademark notices or other proprietary legends of Original Contributor or its suppliers contained on or in the Original Code, Upgraded Code and Specifications.

10. Notices. All written notices required by this License 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.

Original Contributor:

Oracle America, Inc.
500 Oracle Parkway
Redwood City, California, USA 94065
Attn.: VP, Software Sales
cc: Legal (Software Sales)

You:

_____ Corporation

Attn: _____

11. Disclaimer of Agency. The relationship created hereby is that of licensor and licensee and the parties hereby acknowledge and agree that nothing herein shall be deemed to constitute You as a franchisee of Original Contributor. You hereby waive the benefit of any state or federal statutes dealing with the establishment and regulation of franchises.

12. Confidentiality. You shall keep and maintain in confidence the terms and conditions of this Attachment D.

Agreed:

You:

By: _____

Original Contributor:

Oracle America, Inc.

By: _____

Oracle America, Inc.

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Agreement No. _____

Oracle Confidential/Proprietary

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Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____