

BEA SYSTEMS, INC.

TCK LICENSE AGREEMENT

READ THE TERMS OF THIS (THE "AGREEMENT") CAREFULLY BEFORE VIEWING OR USING THE TECHNOLOGY COMPATIBILITY KIT LICENSED HEREUNDER. BY VIEWING OR USING THE TECHNOLOGY COMPATIBILITY KIT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCESSING THE TECHNOLOGY COMPATIBILITY KIT ELECTRONICALLY, INDICATE YOUR ACCEPTANCE OF THESE TERMS BY SELECTING THE "ACCEPT" BUTTON AT THE END OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL THESE TERMS, PROMPTLY RETURN THE UNUSED TECHNOLOGY COMPATIBILITY KIT TO BEA SYSTEMS, INC. ("BEA").

1.0 DEFINITIONS

1.1 "FCS" means first commercial shipment of a product.

1.2 "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.

1.3 "JCP Specification" means the written specification for _____, Java technology developed pursuant to the Java Community Process.

1.4 "Reference Implementation" means the prototype or "proof of concept" implementation of the JCP Specification developed and made available for license by or on behalf of BEA.

1.5 "Specification License" means the license offered by BEA under certain of its intellectual property rights to create an independent implementation of the JCP Specification.

1.6 "Technology Compatibility Kit" or "TCK" means the documentation, testing tools and test suites associated with the JCP Specification as may be revised by BEA from time to time, that is provided so that an implementer of the JCP Specification may determine if its implementation is compliant with the Specification.

2.0 LICENSE GRANTS

2.1 License Grant for the TCK.

(a) Limited Grant. Subject to Your compliance with the restrictions and obligations contained in this Agreement, including but not limited the Additional Limitations set forth in subsection (b)

below, BEA hereby grants You, to the extent of BEA's Intellectual Property Rights in the TCK(s), a worldwide, non-exclusive, limited license, with right to sublicense, to use the TCK(s) internally and solely for the purpose of developing and testing Your Products. No license is granted for any other purpose, including any of the activities described in Section 2.1(b).

(b) Additional Limitations. You may not: (i) create derivative works of the TCK(s) or (ii) disassemble or decompile binary portions of the test suite(s) or testing tools or otherwise attempt to derive the source code from such portions or (iii) use any marks, brands or logos associated with the JCP Specification, or otherwise promote or market any product, or code, which implements any portion of the JCP Specification, as being compatible, compliant, conformant or otherwise consistent with the JCP Specification unless such product passes, in accordance with the documentation (including the TCK Users Guide, if any), the most current TCK applicable to the latest version of the JCP Specification and available from BEA one hundred twenty (120) days before FCS of such version of the product; provided, however, that if You elect to use a version of the TCK also provided by BEA that is newer than that which is required under this Section 2.1(b)(iii), then You agree to pass such TCK.

(c) Testing. You shall self-certify that Your product implementing the JCP Specification passes the applicable TCK as set forth above, if and when such product in fact does so, provided that if BEA reasonably believes that Your product does not pass the applicable TCK, BEA may require You to submit specific test documentation to an independent third party audit facility designated by BEA, for verification of proper compatibility testing.. If the audit determines that such Product does not pass the TCK, (i) You shall be responsible for all reasonable costs of such audit including but not limited to the costs of retesting, and (ii) You shall within 90 days of receipt of notice that the Product does not pass the TCK modify the Product so that it does pass the TCK and resubmit it to the third party auditor for retesting. If you do not comply with subsection (ii) of this Section (c) you shall immediately cease use of any marks, brands or logos associated with the JCP Specification, and shall otherwise cease to promote or market any product, or code, which implements any portion of the JCP Specification, as being compatible, compliant, conformant or otherwise consistent with the JCP Specification.

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

2.3 Ownership. You acknowledge and agree that, as between BEA and You, nothing in this Agreement transfers any 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 You) associated therewith, to You.

2.4 No Other Grant. This Agreement does not grant to You any right or license, under any Intellectual Property Rights of BEA or otherwise, except as expressly provided in this Section 2, 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 BEA to provide any technical support, updates, newer versions of or other assistance concerning the TCK to You or to any of Your distributors or customers for Your products. BEA, at its sole option, may elect to make technical support for the TCK available pursuant to a separate agreement.

6.0 LIMITED WARRANTY AND DISCLAIMER

THE TCK IS PROVIDED UNDER THIS LICENSE ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT THE TCK IS FREE OF DEFECTS, MERCHANTABILITY, FIT FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE TCK IS WITH YOU. SHOULD THE TCK PROVE DEFECTIVE IN ANY RESPECT, YOU (NOT BEA OR ANY OF ITS CONTRIBUTORS OR SUPPLIERS) ASSUME THE COST OF ANY NECESSARY SERVICING, REPAIR OR CORRECTION. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS LICENSE. NO USE OF THE TCK IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER.

9.0 LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BEA, OR ANY OF ITS CONTRIBUTORS OR SUPPLIERS, BE LIABLE TO ANY PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF SUCH PARTY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM SUCH PARTY'S NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT APPLY TO YOU.

10.0 TERM AND TERMINATION

10.1 Term. The Term of this Agreement shall begin on the Effective Date and shall continue unless terminated as provided below. Termination is permitted: (a) by either party for the other party's breach of this Agreement, upon written notice to the other party providing a reasonable opportunity to cure given the nature of the breach, in no event to be less than thirty (30) days; or (b) by BEA upon any action by You alleging that use or distribution of the TCK or an implementation of the JCP Specification by BEA or any of BEA's licensees of the TCK infringes a patent owned by You.

11.0 MISCELLANEOUS

This Agreement represents the complete agreement concerning subject matter hereof. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. This Agreement shall be governed by California law provisions (except to the extent applicable law, if any, provides otherwise), excluding its conflict-of-law provisions. With respect to disputes in which at least one party is a citizen of, or an entity chartered or registered to do business in

the United States of America, any litigation relating to this Agreement shall be subject to the jurisdiction of the Federal Courts of the Northern District of California, with venue lying in Santa Clara County, California, with the losing party responsible for costs, including without limitation, court costs and reasonable attorneys' fees and expenses. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any law or regulation which provides that the language of a contract shall be construed against the drafter shall not apply to this Agreement.