Java Card API Version 2.0 Pre-Release Binary Code Evaluation License

SUN MICROSYSTEMS, INC., THROUGH ITS JAVASOFT BUSINESS ("SUN") IS WILLING TO LICENSE THE JAVA CARD API VERSION 2.0 BINARY PRE-RELEASE SOFTWARE AND THE ACCOMPANYING DOCUMENTATION INCLUDING AUTHORIZED COPIES OF EACH (THE "SOFTWARE") TO LICENSEE ONLY ON THE CONDITION THAT LICENSEE ACCEPTS ALL OF THE TERMS IN THIS AGREEMENT.

PLEASE READ THE TERMS CAREFULLY BEFORE CLICKING ON THE "ACCEPT" BUTTON. BY CLICKING ON THE "ACCEPT" BUTTON, LICENSEE ACKNOWLEDGES THAT LICENSEE HAS READ AND UNDERSTANDS THIS AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IF LICENSEE DOES NOT ACCEPT THESE LICENSE TERMS, SUN DOES NOT GRANT ANY LICENSE TO THE SOFTWARE, AND LICENSEE SHOULD CLICK ON THE "REJECT" BUTTON TO EXIT THIS PAGE.

1. EVALUATION LICENSE PERIOD

Licensee may use the binary Software from the date of download until June 30, 1998 (the "Term"). At the end of the Term, Licensee must immediately cease use of and destroy the Software or, upon request from Sun, return the Software to Sun. The Software may contain a mechanism which (i) disables the Software at the end of the Term or (ii) advises the end user that the license has expired.

2. LICENSE GRANT

(A) License Rights

Licensee is granted a non-exclusive and non-transferable license to download, install and internally use the binary Software for beta testing and evaluation purposes only. Licensee may make one copy of the Software only for archival purposes in support of Licensee's use of the Software, provided that Licensee reproduce all copyright and other proprietary notices that are on the original copy of the Software.

(B) License Restrictions

The Software is licensed to Licensee only under the terms of this Agreement, and Sun reserves all rights not expressly granted to Licensee. Licensee may not use, copy, modify, or transfer the Software, or any copy thereof, except as expressly provided for in this Agreement. Licensee may not reverse engineer, disassemble, decompile, or translate the Software, or otherwise attempt to derive the source code of the Software. Licensee may not rent, lease, loan, sell, or distribute the Software, or any part of the Software. No right, title, or interest in or to any trademarks, service marks, or trade names of Sun or Sun's licensors is granted hereunder.

(C) Acknowledgment that Software is Experimental

Licensee acknowledges that Software furnished hereunder is experimental and may have defects or deficiencies which cannot or will not be corrected by Sun and that Sun is under no obligation to release the Software as a product. Licensee will release and discharge Sun from any liability from any claims that any product released by Sun is incompatible with the Software. Further, Licensee will defend and indemnify Sun from any claims made by Licensee's customers that are based on incompatibility between the Software and any products released by Licensee. Licensee will have sole responsibility for the adequate protection and backup of Licensee's data and/or equipment used with the Software.

(D) Aircraft Product and Nuclear Applications Restriction

SOFTWARE IS NOT DESIGNED OR INTENDED FOR USE IN ON-LINE CONTROL OF AIRCRAFT, AIR TRAFFIC, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICA-

TIONS; OR IN THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF ANY NUCLEAR FACILITY. SUN DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH USES. LICENSEE REPRESENTS AND WARRANTS THAT IT WILL NOT USE THE SOFTWARE FOR SUCH PURPOSES.

3. CONFIDENTIALITY

The Software is the confidential and proprietary information of Sun and/or its licensors. The Software is protected by United States copyright law and international treaty. Unauthorized reproduction or distribution is subject to civil and criminal penalties. Licensee agrees to take adequate steps to protect the Software from unauthorized disclosure or use.

4. TERM. TERMINATION AND SURVIVAL

- (A) The Agreement is effective until expiration of the Term, unless sooner terminated as provided for herein.
- (B) Licensee may terminate this Agreement at any time by destroying all copies of the Software.
- (C) This Agreement will immediately terminate without notice if Licensee fails to comply with any obligation of this Agreement.
- (D) Upon termination, Licensee must immediately cease use of and destroy the Software or, upon request from Sun, return the Software to Sun.
- (E) The provisions set forth in paragraphs 2(B), 3, 7, 8, 9, and 10 will survive termination or expiration of this Agreement.

5. NO WARRANTY

THE SOFTWARE IS PROVIDED TO LICENSEE "AS IS". ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ARE DISCLAIMED, EXCEPT TO THE EXTENT THAT SUCH DISCLAIMERS ARE HELD TO BE LEGALLY INVALID.

6. MAINTENANCE AND SUPPORT

Sun has no obligation to provide maintenance, support, updates or error corrections for the Software under this Agreement. In the event Sun, in its sole discretion, provides updates to Licensee, Licensee agrees to install and update the Software with such updates within fifteen (15) days from notification by Sun of the updates availability. Updates will be deemed Software hereunder and unless subject to terms of a specific update license, will be furnished to Licensee under the terms of this Agreement.

7. LIMITATION OF DAMAGES

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, SUN'S AGGREGATE LIABILITY TO LICENSEE OR TO ANY THIRD PARTY FOR CLAIMS RELATING TO THIS AGREEMENT, WHETHER FOR BREACH OR IN TORT, WILL BE LIMITED TO THE FEES PAID BY LICENSEE FOR SOFTWARE WHICH IS THE SUBJECT MATTER OF THE CLAIMS. IN NO EVENT WILL SUN BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE), HOWEVER IT ARISES, WHETHER FOR BREACH OR IN TORT, EVEN IF SUN HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. LIABILITY FOR DAMAGES WILL BE LIMITED AND EXCLUDED, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

8. GOVERNMENT USER

Rights in Data: If procured by, or provided to, the U.S. Government, use, duplication, or disclosure of technical data is subject to restrictions as set forth in FAR 52.227-14(g)(2), Rights in Data-General (June 1987); and for computer software and computer software documentation, FAR 52-227-19, Com-

mercial Computer Software-Restricted Rights (June 1987). However, if under DOD, use, duplication, or disclosure of technical data is subject to DFARS 252.227-7015(b), Technical Data-Commercial Items (June 1995); and for computer software and computer software documentation, as specified in the license under which the computer software was procured pursuant to DFARS 227.7202-3(a). Licensee shall not provide Software nor technical data to any third party, including the U.S. Government, unless such third party accepts the same restrictions. Licensee is responsible for ensuring that proper notice is given to all such third parties and that the Software and technical data are properly marked.

9. EXPORT LAW

Licensee acknowledges and agrees that this Software and/or technology is subject to the U.S. Export Administration Laws and Regulations. Diversion of such Software and/or technology contrary to U.S. law is prohibited. Licensee agrees that none of this Software and/or technology, nor any direct product therefrom, is being or will be acquired for, shipped, transferred, or reexported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear activities, chemical biological weapons, or missile projects unless authorized by the U.S. Government. Proscribed countries are set forth in the U.S. Export Administration Regulations. Countries subject to U.S. embargo are: Cuba, Iran, Iraq, Libya, North Korea, Syria, and the Sudan. This list is subject to change without further notice from Sun, and Licensee must comply with the list as it exists in fact. Licensee certifies that it is not on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. Licensee agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or reexport as may be required.

Licensee is responsible for complying with any applicable local laws and regulations, including but not limited to, the export and import laws and regulations of other countries.

10. GOVERNING LAW, JURISDICTION AND VENUE

Any action related to this Agreement shall be governed by California law and controlling U.S. federal law, and choice of law rules of any jurisdiction shall not apply. The parties agree that any action shall be brought in the United States District Court for the Northern District of California or the California superior Court for the County of Santa Clara, as applicable, and the parties hereby submit exclusively to the personal jurisdiction and venue of the United States District Court for the Northern District of California and the California Superior Court of the county of Santa Clara.

11. NO ASSIGNMENT

Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement, without the prior written consent of the other party, except that Sun may assign its right to payment and may assign this Agreement to an affiliated company.

12. OFFICIAL LANGUAGE

The official text of this Agreement is in the English language and any interpretation or construction of this Agreement will be based thereon. In the event that this Agreement or any documents or notices related to it are translated into any other language, the English language version will control.

13. ENTIRE AGREEMENT

This Agreement is the parties' entire agreement relating to the Software. It supersedes all prior or contemporaneous oral or written communications, proposals, warranties, and representations with respect to its subject matter, and following Licensee's acceptance of this license by clicking on the "Accept" Button, will prevail over any conflicting or additional terms of any quote, order, acknowledgment, or any other communications by or between the parties. No modification to this Agreement will be binding, unless in writing and signed by an authorized representative of each party.