

**KHRONOS GROUP  
MEMBERSHIP AGREEMENT  
PROCESSING INSTRUCTIONS**

**This agreement enables a company, academic institution, or  
government institution to join the Khronos Group**

**PLEASE TYPE OR PRINT CLEARLY: THIS IS A LEGAL DOCUMENT  
ILLEGIBLE AGREEMENTS CANNOT BE PROCESSED**

**Contact for processing this agreement and arranging payment:**

|                                 |
|---------------------------------|
| <b>COMPANY:</b> _____           |
| <b>BUSINESS CONTACT:</b> _____  |
| <b>EMAIL:</b> _____             |
| <b>PHONE:</b> _____             |
| <b>TECHNICAL CONTACT:</b> _____ |
| <b>EMAIL:</b> _____             |
| <b>MARKETING CONTACT:</b> _____ |
| <b>EMAIL:</b> _____             |

## **Guidelines for completing this agreement:**

Enter your company or institution name on this cover page, along with the signer's name, email and address on page 8. Have an authorized person sign the signature page. If your company requires more than one authorized signatory, duplicate the signature page for each required signature for both copies of the agreement.

- Select the membership level you wish to apply for. A list of membership benefits for each membership level is available online: <https://www.khronos.org/members/>
- If you wish to decline the Conformance Test Source License then please tick and sign the "Decline the Conformance Test Source License" box on the signature page. If you decline this license your company will not be granted access to the Khronos Conformance Test repository used to develop conformance tests for Khronos APIs.

- Mail or email signed copies of this agreement to the address below. A countersigned copy will be returned for your records:

**Khronos Group Inc, 9450 SW Gemini Drive #45043, Beaverton, OR 97008, USA**

[memberservices@khronos.org](mailto:memberservices@khronos.org)

- You may pay by check or wire:

### **Pay by check:**

Khronos Group Inc, 9450 SW Gemini Drive #45043, Beaverton, OR 97008, USA

### **Pay by wire:**

ABA# 121000248, Account Number 7731821745

Wells Fargo Bank, 150 North Santa Cruz Avenue, Los Gatos CA 95030 USA

Tel: +1 (408) 354-6512

Your **Khronos Membership Privileges** will commence when Khronos has received the executed agreement and full Membership Dues.

### **If you have questions please contact:**

Khronos Group Management

[memberservices@khronos.org](mailto:memberservices@khronos.org)

Voice mail: +1 (415) 869-8627

Fax: +1 (707) 202-0030

# KHRONOS GROUP MEMBERSHIP AGREEMENT

This Khronos Group Membership Agreement ("**Agreement**") is entered on the last of the dates on the signature page(s) below ("**Effective Date**") between the Khronos Group Inc. ("**Khronos**") a California Corporation, and signing party on signature page ("**Signatory**").

## 1. DEFINITIONS

"**Board**" means the Board of Directors of Khronos.

"**Confidential Information**" means information that is confidential to Khronos.

"**Contribution**" means information submitted to Khronos for the purpose of consideration and adoption by Khronos for inclusion in a specification.

"**Managing Director**" means the Managing Director of Khronos.

"**Member**" means any member of Khronos as defined by the Bylaws in Attachment B.

"**Promoter Member**" means a Promoter of Khronos as defined by the Bylaws in Attachment B.

"**Ratified Specification**" means a specification ratified by Khronos for public release as defined by the Bylaws in Attachment B.

## 2. PURPOSE AND SCOPE

Signatory hereby agrees to become a Member of Khronos, and agrees to conform to all of the applicable terms and conditions set forth in this Agreement and Attachment A (Khronos Group Intellectual Property Rights Policy), Attachment B (Khronos Group Bylaws), and optionally Attachment C (Khronos Conformance Test Source License Agreement) each of which is incorporated herein and made a part hereof. If Signatory signs the "Decline Conformance Test Source Agreement" box on the signature page then the rights and obligations of Attachment C shall not apply.

## 3. KHRONOS MEMBERSHIP

### 3.1 Membership and Dues

Signatory's membership rights and responsibilities as defined herein shall commence on the Effective Date and upon receipt by Khronos of Signatory's membership dues. Dues payable shall be according to the current dues schedule for each membership class as determined and published by Khronos. Khronos may change the dues schedule at any time in its sole discretion. Dues shall cover a twelve (12) month period from the Effective Date and dues for renewal shall be payable each successive year on that same anniversary date to maintain membership by Signatory. If Signatory is delinquent in the payment of dues, membership rights, including all voting rights (if any), shall be deemed revoked upon written notice from Khronos and shall remain revoked until all delinquent dues are paid. No refund of dues shall apply in the event of termination, suspension or withdrawal of membership.

The Board and Signatory may mutually agree to bring forward the date that dues are payable by Signatory together with a one-time, pro-rated reduction in payable dues based on the number of months the due date is brought forward.

### **3.2 Promoter Membership**

Signatory may apply to become a Promoter Member by checking and signing in the appropriate box on signature page below or by sending a written request to the Managing Director at any time during Signatory's membership. If the Board approves the application then the Signatory shall be notified in writing that they are accepted as a Promoter Member and ensuing rights shall commence upon the receipt of the appropriate dues. If Signatory's Promoter Member status is approved on a date different from the Effective Date or its anniversary date, then the increased dues payable is the difference between Member and Promoter Membership dues multiplied by the number of whole or partial months until the Signatory's membership renewal date divided by twelve (12). If the Signatory's application to become a Promoter Member is declined, then Signatory's membership remains unaffected.

### **3.3 Term of Membership**

Signatory's membership in Khronos may, at Signatory's discretion, continue for as long as Khronos remains active, unless terminated pursuant to section 3.4 or 3.5 below; upon termination of membership of any particular Member pursuant to section 3.4 or 3.5 below, this Agreement, together with Attachments A, B and C, shall be considered terminated with respect to that Member save as provided below in section 3.6.

### **3.4 Termination through Insolvency**

This Agreement shall terminate immediately if Licensee: becomes insolvent; has a receiver is appointed for it or its property; or commences voluntary or involuntary bankruptcy proceedings (in the event of an involuntary filing, provided such proceeding has not been vacated or set aside within sixty (60) days of commencement).

### **3.5 Non-Voluntary Termination of Membership**

In the event of a material default or breach of this Agreement by Signatory, if Signatory does not cure such default or breach within thirty (30) days after its receipt of written notice thereof from the Managing Director, such Signatory's membership in Khronos may be terminated at any time thereafter as defined in the Bylaws.

### **3.6 Voluntary Termination of Membership**

Signatory may resign from Khronos and terminate its membership in Khronos at any time by providing written notice thereof to the Managing Director. Such resignation and termination is effective on the date such notice is received by the Managing Director.

### **3.7 Obligations on Termination**

After Signatory's membership in Khronos has terminated, Signatory shall have no further obligations under this Agreement; provided that a) any obligation to pay unpaid dues shall survive and; b) all rights and licenses granted by Signatory under Attachments hereto and all confidentiality and non-disclosure obligations of Signatory hereunder shall survive. All rights and licenses granted to Signatory, in its capacity as a Member of Khronos, shall survive Signatory's departure from Khronos.

### **3.8 Costs and Expenses**

Signatory will be responsible only for its own costs and expenses incurred in matters and activities arising out of this Agreement.

## 4. CONFIDENTIAL INFORMATION

### 4.1 Confidential Information

Confidential Information shall include all materials generated by Khronos and by Members on behalf of Khronos, and not specifically designated as non-Confidential by the Board, including any draft specifications, working group mailing lists and minutes, and all passwords and source code provided under this agreement. Notwithstanding the above, Confidential Information will not include any information that is (a) rightfully in the public domain other than by a breach of a duty to the disclosing party; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party; (d) independently developed by employees of the receiving party; (e) generally made available to third parties by the disclosing party without restriction on disclosure; or (f) disclosed in furtherance of an order to disclose issued by a court of proper jurisdiction; provided, however, in such instance, the Signatory having received the Confidential Information will provide prompt notice to Khronos in order to facilitate Khronos' legal intercession. Each Member waives confidentiality interests that the Member may have with respect to any Contribution submitted by that Member to Khronos, upon incorporation of that Contribution into a Ratified Specification.

### 4.2 Use of Confidential Information

Signatory may use Confidential Information in any Khronos-related activities and disclose such Confidential Information to any other Member in connection with activities related to this Agreement. With respect to any Contribution made by Signatory, prior to that Contribution being incorporated into a Ratified Specification, Signatory grants to Khronos and to other Members a license under that Member's trade secrets and copyrights contained in that Contribution, to use that Contribution to develop draft specifications for which Signatory made the Contribution.

### 4.3 Confidentiality Obligation

Signatory will maintain all Confidential Information in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances and will not use, disclose or copy the Confidential Information (other than Signatory's own Contributions) except as necessary for its employees with a need to know. Signatory will mark any copies it makes of such Confidential Information as "Khronos Confidential," "Khronos Proprietary" or with a similar legend and shall reproduce all copyright notices and disclaimers contained in the Confidential Information. Unless the parties agree otherwise, this obligation of confidentiality will expire two (2) years from the date of disclosure to Signatory.

### 4.4 Return of Confidential Information

Upon termination of membership, Signatory shall promptly either return to Khronos or destroy all tangible copies of any Confidential Information in its possession.

## 5. TRADEMARKS

### 5.1 Non-assertion of Rights in Marks

Signatory agrees not to assert against Khronos or any Member any trademark, trade name, or similar rights it may have now or may obtain in the future in the names Khronos, Khronos Group, OpenVG, OpenMAX, OpenSL ES, OpenKODE, gLFX and any other marks obtained by Khronos in the future, provided that Khronos applies for such future marks in good faith and not to the detriment of Signatory and only after approval by the Board ("**Marks**"). Member will not use or adopt any trademarks for any product, service or specification that violates Khronos' rights in the Marks.

## **5.2 Use of Trademarks**

Member agrees that it will only use the Marks to promote its membership and label and promote products in which all included features and functions of Ratified Specification reasonably capable of being implemented have been so implemented. Signatory agrees to comply with any trademark usage guidelines that Khronos may issue from time to time, including restrictions of use of Marks for products to be tested for compliance with Ratified Specifications with conformance tests defined by Khronos.

## **5.3 No Obligation to Use Marks**

Member is not obligated to use any of the Marks on any product, advertising, or on any other material.

## **5.4 SGI Marks**

Silicon Graphics, Inc. ("**SGI**") owns all right, title, and interest to the marks "OpenML", "OpenGL," and "OpenGL ES" and has registered or has filed an application to register "OpenGL" in numerous countries worldwide including the United States, and has registered "OpenML" with the U.S. Patent and Trademark Office. Members may use the marks "OpenML", "OpenGL" and "OpenGL ES" in reference to its products compliant with the Ratified Specification subject to the terms of a collateral trademark license agreement to such effect, by and between SGI and the related Member, the form of which trademark license agreement is available on the Khronos web-site and is made a part hereof by this reference. This Agreement shall not alter any rights that a Member may otherwise have to use such SGI marks under law, including pursuant to a separate agreement with or from SGI.

# **6. GENERAL**

## **6.1 Assignment**

Neither this Agreement nor any rights or obligations under this Agreement, in whole or in part, are assignable or otherwise transferable by the Signatory without the prior written approval of Khronos, provided however, that this Agreement may be assigned by the Signatory to a purchaser of all, or substantially all, of that Signatory's business or assets, whether by merger, sale of assets, sale of stock, or otherwise without such approval.

## **6.2 No Other Rights**

No license, rights or title in or to any software or any intellectual property are provided hereunder, either expressly or by implication, estoppel or otherwise, except as expressly provided in this Agreement including in Attachment A and in Attachment C, as applicable.

## **6.3 No Agency**

The parties hereto are independent parties, and nothing herein shall be construed to create an agency, joint venture, partnership or other form of business association between the parties hereto.

## **6.4 Notices**

Any notices under this Agreement shall be sent by: a) registered mail; b) tracked overnight carrier or c) email transmission where the recipient specifically replies to acknowledge receipt.

## **6.5 Governing Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding its choice of laws rules. The parties hereby agree that any dispute regarding the interpretation or validity of, or otherwise arising out of, this Agreement shall be subject to the exclusive jurisdiction of the California state courts of Santa Clara County, California (or, if there is federal jurisdiction, the United States District Court for the Northern District of California, San Jose), and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts.

## **6.6 Complete Agreement**

This Agreement and its Attachments constitute the complete and exclusive statement of the agreement between the parties, and supersedes all previous agreements, proposals, oral or written, and all other communications or understandings between the parties relating to the subject matter of this Agreement. Each party acknowledges that it has not relied upon any representation or statement not contained herein. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by the Signatory and Khronos hereto. Notwithstanding the preceding sentence, changes to the Attachments A, B and C adopted in accordance with the voting policies of Khronos are effective as to all Members upon such adoption.

## **6.7 No Warranty**

All parties acknowledge that all information provided under this Agreement, including any Specifications and Contributions, are provided "AS IS" WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OR CONDITION OF MERCHANTABILITY, SECURITY, SATISFACTORY QUALITY, NONINFRINGEMENT INCLUDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, FITNESS FOR ANY PARTICULAR PURPOSE, ERROR-FREE OPERATION, OR ANY WARRANTY OR CONDITION OTHERWISE ARISING OUT OF ANY PROPOSAL, CONTRIBUTION, SPECIFICATION, OR SAMPLE.

## **6.8 Limitation of Liability**

IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY, CONDITION OR OTHERWISE, ARISING IN ANY WAY IN RELATION TO THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

## **6.9 Employees and Contractors**

Signatory shall ensure that its employees, and its contractors while conducting Khronos business on behalf of the Member, shall conform to all terms, conditions and obligations in this Agreement.

## **6.10 Authority to Sign**

The person signing on behalf of Signatory hereby represents and warrants that he/she has the appropriate authorization to bind the Signatory in this Agreement.

**KHRONOS MEMBERSHIP AGREEMENT SIGNATURE PAGE**

**Khronos Group Inc.**  
9450 SW Gemini Drive #45043,  
Beaverton, OR 97008, USA

\_\_\_\_\_ **Signatory**

\_\_\_\_\_  
Street address of Signatory

\_\_\_\_\_  
City, State, ZIP, of Signatory

\_\_\_\_\_  
Email of Signatory signer

\_\_\_\_\_  
Authorized signature on behalf of Khronos

\_\_\_\_\_  
Authorized signature on behalf of Signatory

\_\_\_\_\_  
Printed name of Khronos signer

\_\_\_\_\_  
Printed name of Signatory signer

\_\_\_\_\_  
Title of Khronos signer

\_\_\_\_\_  
Title of Signatory signer

\_\_\_\_\_  
Date of signature

\_\_\_\_\_  
Date of signature

**Signatory wishes to apply for:**

**Promoter Membership**

**Contributor Membership**

**Associate Membership**

Number of Employees: \_\_\_\_\_

**Academic Membership**

(Signatory must be an accredited academic institution)

**Non-Profit Membership**

(Signatory must be a non-profit organization)

\_\_\_\_\_  
Authorized signature on behalf of Signatory

**Signatory Declines the Conformance Test Source License**

\_\_\_\_\_  
Authorized signature on behalf of Signatory

# ATTACHMENT A

## KHRONOS GROUP

### INTELLECTUAL PROPERTY (“IP”) RIGHTS POLICY

#### 1. DEFINITIONS

“**Affiliate**” means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party to this agreement, so long as such Control exists. For purposes of this definition, Control means direct or indirect ownership of or the right to exercise (a) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of an entity; or (b) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for such entity.

“**Compliant Portion**” means a portion of a product, where such portion is fully compliant with all relevant portions of a Ratified Specification. Any portion of a product that is not fully compliant with all relevant portions of a Ratified Specification shall not constitute a Compliant Portion

“**Contribution**” means information submitted to Khronos for the purpose of consideration and adoption by Khronos for inclusion in a Draft Specification.

“**Draft Specification**” means a draft of a Specification produced by a Khronos working group.

“**Encumbered Technology**” means technology with respect to which a patent holder is unwilling to grant the Reciprocal License.

“**Final Draft Specification**” means a final Draft Specification produced by a Khronos working group that will be forwarded to the Board for Ratification and subsequent public release.

“**IP Disclosure Certificate**” means a written Notice delivered to the Managing Director and the chair of any affected working groups that identifies specific Necessary Patent Claims together with a statement as to whether or not those Necessary Patent Claims will be made available under the Reciprocal License with respect to a Draft Specification, Final Draft Specification or Ratified Specification. An IP Disclosure Certificate must identify in writing: a) the patent holder(s); b) for each issued patent and published patent application containing a Necessary Patent Claim the patent number or publication number, respectively; c) for a pending unpublished patent application containing a Necessary Patent Claim, the technology covered by the application; d) reasonable identification of the specific parts of Draft Specifications whose implementation may be covered by the Necessary Patent Claims if applicable. If the identified Necessary Patent Claims are not to be made available under the Reciprocal License then the IP Disclosure Certificate must contain reasonably sufficient detail so as to enable Khronos and Members either to exclude the subject inventions from a Draft Specification or to develop a commercially reasonable non-infringing implementation. An IP Disclosure Certificate may be accompanied by submitting any of the following, in the Member’s sole discretion: (i) Specific License Terms for any Necessary Patent Claims not to be made available under the Reciprocal License; (ii) any relevant entire patent applications including amended and newly added claims, as well as the effective filing date.

“**Khronos**” means the Khronos Group Inc.

“**Khronos Representative**” means any employee or contractor of a Member who attends at least one Khronos working group meeting or is otherwise substantially involved in the development of any Draft Specification within that Khronos working group.

“**Managing Director**” means the Managing Director of Khronos.

“**Member**” means any Member of Khronos.

**"Membership Agreement"** means the agreement signed by a Member to join Khronos and to which this Attachment A is attached.

**"Necessary Patent Claims"** means claims of a patent or patent application, other than design patents and design registrations, issued or filed in any country, to which a Member or its Affiliates has the right to grant licenses in accordance with the terms and conditions of this Attachment A at any time during the term of the Agreement, and which are necessarily infringed by any Compliant Portion. Necessary Patent Claims do not include any claims (i) other than those set forth above even if contained in the same patent or patent application as Necessary Patent Claims; (ii) that read solely on (1) any implementation of any portion of the Ratified Specification that is not a Compliant Portion, or (2) any Compliant Portion that is not within the bounds of the Scope; or (iii) that it is possible to avoid infringing because there is a commercially plausible non-infringing alternative for implementing such portions of the Ratified Specification.

**"Notice"** means a written notice as defined by the Khronos Group Membership Agreement.

**"Ratification"** means the Board approving a Final Draft Specification for public release.

**"Ratified Specification"** means a Final Draft Specification ratified by the Board for public release.

**"Reciprocal License"** means the perpetual, royalty-free, fully paid, worldwide, nonexclusive, non-transferable license under any Necessary Patent Claims to make, have made, use, import, offer to sell and sell Compliant Portions, together with the right without royalty or fee to sublicense to third parties (a) the right to distribute Compliant Portions through the normal tiers of distribution to end users or to resellers, distributors, dealers and authorized manufacturers and others in the distribution channel, and (b) the right to reproduce Compliant Portions solely in connection with the distribution permitted under paragraph (a) of this definition, provided, however, that the royalty-free provisions shall not apply to Necessary Patent Claims that, if licensed would require payment by licensor to unaffiliated third parties.

**"Scope"** means the application program interfaces and data structures solely to the extent disclosed with particularity in a Ratified Specification where the sole purpose of such disclosure is to enable products to interoperate, interconnect, or communicate as defined within a Ratified Specification. Notwithstanding the foregoing, the Scope does not include: (a) any enabling technologies that may be necessary to make or use any product or portion of any product that complies with the Ratified Specification, but are not themselves expressly set forth in the Ratified Specification (e.g. semiconductor manufacturing technology, hardware architecture, processor architecture or microarchitecture, compiler technology, object oriented technology, basic operating system technology, compression technology, algorithms, and so on); or (b) the implementation of other published specifications developed elsewhere but referred to in the body of the Ratified Specification; or (c) any portions or combinations of any product whose purpose is not required for compliance with the Ratified Specification. For purposes of this definition, the Ratified Specification will include only interconnection requirements and will not include any implementation examples or any information pertaining to the architecture, design or operating principles of any implementations unless such implementation examples or information are expressly identified as being included as part of the Ratified Specification, and provided that the Member or Members submitting the Contributions including such implementation examples or information provide their consent to such identification.

**“Specific License Terms”** means a minimal set of terms and conditions that a license must address in order for Khronos to consider incorporating Encumbered Technology into a Ratified Specification. The minimal set of terms shall include: price (fees and royalties), geographical scope, revocability, whether license is perpetual, definition of licensed patents, sublicense conditions (if any), term of license agreement, termination conditions, whether licensor can defensively terminate or suspend license upon suit against them by licensees, and reciprocity. Notwithstanding any of the foregoing, however, in all instances the Specific License Terms shall otherwise be under reasonable and non-discriminatory terms.

## **2. RECIPROCAL LICENSES**

### **2.1 Copyright License**

Each Member grants to Khronos a worldwide, irrevocable, non-exclusive, non-transferable, royalty free copyright license for any Ratified Specification on the date of Ratification to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Contributions of the granting Member solely for the purposes of developing, publishing and distributing Ratified Specifications and related materials, as well as products based on such documents.

### **2.2 Reciprocal License Grant**

Each Member agrees to grant a Reciprocal License under any of its Necessary Patent Claims not excluded in accordance with the following sections for any Ratified Specification on the date of Ratification in reciprocity to all other Members that also grant a Reciprocal License to Member. Such Reciprocal License is granted whether or not the licensor or licensee Member ever had any knowledge of the existence of such Necessary Patent Claims. Further, any Member shall have the right to suspend any Reciprocal License granted by that Member to any other Member (“**Plaintiff**”) in the case that the Plaintiff initiates any lawsuit or other legal proceeding against the Member alleging patent infringement within the Scope.

## **3. DISCLOSURE OF NECESSARY PATENT CLAIMS**

### **3.1 Khronos Responsibility**

Khronos shall not be responsible for identifying patent rights for which a license may be required, or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention.

### **3.2 No Member Disclosure Necessary**

A Member is not required to disclose a Necessary Patent Claim if the Member commits to license such Necessary Patent Claim according to the terms and conditions of the Reciprocal License.

### **3.3 IP Disclosure Certificates for Draft Specifications**

If any Khronos Representative of a Member organization has actual knowledge of claims that may be Necessary Patent Claims owned or controlled by that Member with respect to that Member’s Contributions or any other aspect of a Draft Specification that will not be licensed under the Reciprocal License, the Khronos Representative of such Member must submit an IP Disclosure Certificate with the submission of a Contribution or as soon as is reasonably possible. In satisfying the disclosure obligation set forth herein, Members are not required to conduct searches of their patent portfolios, nor are they required to disclose Necessary Patent Claims of other Members or other third party patents.

### **3.4 Procedure for IP Disclosure Certificates**

Khronos shall post all received IP Disclosure Certificates on a Khronos website, which is accessible only by Members, promptly after receipt and send an email notification the Board and all Members.

### **3.5 Waiver of Disclosure Obligation**

The disclosure obligation set forth in the previous sections shall not apply if confidentiality obligations in a joint development agreement between a Member and a third party prohibits disclosure of the unpublished application, provided, however, the unpublished application must be disclosed upon publication, upon issuance or to the extent that other circumstances render it non-confidential.

### **3.6 IP Disclosure Binding**

If the Member proposes Specific License Terms in the IP Disclosure Certificate that are subsequently accepted by Khronos, and are required by the Final Draft, then the Member is irrevocably required to grant a license under such Specific License Terms or under terms that are materially similar to such Specific License Terms for the Necessary Patent Claims.

### **3.7 Confidentiality of IP Disclosure Certificates**

Prior to the date on which a Ratified Specification relating to an IP Disclosure Certificate is made public, Members and Khronos shall not make public the content of any Member's IP Disclosure Certificate outside of Khronos. IP Disclosure Certificates received with respect to a particular Draft Specification shall be made public after such Specification has been ratified. Each Ratified Specification shall include suitable Khronos approved disclaimer language.

### **3.8 Termination of Disclosure Obligations**

The disclosure obligations described in this section for a Draft Specification terminate upon Ratification of the Specification by Khronos or when a working group or Khronos formally indicates in writing that work on the Draft Specification has terminated without Ratification by Khronos.

### **3.9 No Notice**

Receipt of IP Disclosure Certificates by any Member shall not be deemed to be notice of any patent listed therein for purposes of damages or willfulness.

## **4. RATIFICATION PERIODS**

### **4.1 Notice of Ratification Period**

Promptly upon a working group's issuance of a Final Draft, the working group chair shall request that the Board issue a Notice of Ratification Period to all Members notifying that an announced period of time not shorter than thirty (30) days and not to exceed sixty (60) days (the "**Ratification Period**") has commenced. The Notice of Ratification Period shall clearly indicate the location of the Final Draft on the Khronos web-site and the deadline for the receipt of any IP Disclosure Certificates from any Member. At the end of the Ratification Period the Board will vote for Ratification of the Final Draft or establish an IP Committee as defined below.

### **4.2 Failure to Submit IP Disclosure Certificate**

If a Member fails to submit an IP Disclosure Certificate prior to the expiration of an applicable Ratification Period, the Member shall be deemed to have granted the Reciprocal License for that Final Draft.

## 5. WORKING GROUP EXCLUSION CERTIFICATE

### 5.1 Working Group Exclusion Certificate

Any Member may deliver a Notice to the Managing Director notifying that the Member shall not grant a Reciprocal License for any future Ratified Specifications produced by particular working group or working groups ("**Working Group Exclusion Certificate**"). The Working Group Exclusion Certificate shall be effective on the date of the posting of the certificate if accepted by the Board as below. Any previously granted licenses for any Ratified Specifications shall not be affected. The Board shall accept said certificate if no Khronos Representative of the Member has attended any working group meetings since the formation of the working group or since the last Final Draft was produced by the Working Group. On acceptance Khronos shall notify the Member in writing and shall post the Working Group Exclusion Certificate on a Member-only accessible Khronos website.

### 5.2 Meeting Attendance

If any Khronos Representative of a Member that has submitted a Working Group Exclusion Certificate attends, in person or by teleconference, but not inadvertently, any meeting of that working group then that Working Group Exclusion Certificate shall be rescinded at the date of the first attendance and that Member shall be subject to licensing requirements for any subsequent Ratified Specifications produced by that working group and the Certificate removed from the Khronos web-site. After rescinding a Working Group Exclusion Certificate through attendance, the Member may re-submit a Working Group Exclusion Certificate after the working group has produced any subsequent Ratified Specification.

### 5.3 Ongoing Requirement for IP Disclosure

A Working Group Exclusion Certificate does not exclude a Khronos Representative of a Member that has actual knowledge of claims that may be Necessary Patent Claims of that Member with respect to any aspect of any Khronos Draft Specification that will not be licensed under the Reciprocal License from submitted an IP Disclosure Certificate as specified above.

### 5.4 Failure to Submit Working Group Exclusion Certificate

If a Member fails to submit a Working Group Exclusion Certificate (a) prior to the expiration of an applicable Ratification Period, or (b) within sixty (60) days of becoming a Member, the Member shall be deemed to have granted the Reciprocal License for any Ratified Specifications.

## 6. RECIPROCAL LICENSE CERTIFICATE

At any time during the creation of a Draft Specification or during the Ratification Period for a Final Draft any Member may choose to issue an IP Disclosure Certificate accompanied by a signed certificate ("**Reciprocal License Certificate**") certifying Member's grant of the Reciprocal License for disclosed Necessary Patent Claims for, or expected to be for, a Final Draft. A Reciprocal License Certificate may be accompanied by, in the Member's sole discretion, the results of any IP searches conducted by the contributor, or any prior publicly available prior art. As an example, a Member may choose to issue a Reciprocal License Certificate for a Contribution that it wishes to see incorporated into a Draft Specification to assist the working group in deciding whether to incorporate that Contribution.

## 7. EXISTING RATIFIED SPECIFICATIONS

### 7.1 New Member Reciprocal License Grant

By signing and submitting a Membership Agreement, a new Member agrees to grant a Reciprocal License for all Ratified Specifications as of the joining date of the Member, unless, within sixty (60) days of the submission of the Agreement, the Member submits IP Disclosure Certificates or Working Group Exclusion Certificates as set forth herein.

## **7.2 Member Patent Purchase**

An existing Member purchasing a patent agrees to grant the Reciprocal License for all Ratified Specifications for which the Member has not an accepted Working Group Exclusion Certificate as of the date of purchase, unless, within sixty (60) days after purchase of the patent the Member submits an IP Disclosure Certificate or Working Group Exclusion Certificate as set forth herein, that excludes the obligation to grant a Reciprocal License for the patent. After such period any non-excluded Necessary Patent Claims that shall be deemed to be licensed under the Reciprocal License.

## **8. MEMBER INITIATED DISCLOSURE REQUEST**

### **8.1 Member Request**

A Member may, in Good Faith, request in writing that the Managing Director issue a written request from the Board delivered to another Member requesting that the other Member issue an IP Disclosure Certificate for specific patent or patents owned or controlled by that Member relevant to a Draft Specification being discussed in a working group ("**Disclosure Request**"). For clarification, the Disclosure Request must specifically identify the respective patent or patents by providing the corresponding patent numbers. Further, the number of patents included in any Disclosure Request must be reasonable, and the Board shall act in good faith when issuing any particular Disclosure Request or combination of Disclosure Requests. A Disclosure Request is subject to approval by the Board. If approved, the Disclosure Request shall be sent as a Notice by the Managing Director on behalf of Khronos to the applicable Member and shall include Khronos' reasons for making the request, the Draft Specification in question, and any relevant meeting minutes and other documents.

### **8.2 IP Disclosure Certificate in Response to a Disclosure Request**

Any Khronos Representative in a Member organization who has received from the Managing Director a Disclosure Request with respect to a Draft Specification, or any person in a Member organization who has received, either directly or indirectly, a Disclosure Request from a Khronos Representative of that Member organization; and who has actual knowledge of claims included in the patent or patents specifically identified in the Disclosure Request that are Necessary Patent Claims of that Member organization must issue an IP Disclosure Certificate in accordance with this policy as soon as reasonably possible after receipt of a Disclosure Request.

### **8.3 Failure to Comply to a Disclosure Request**

A Member who does not comply with the disclosure obligations set forth in this section automatically grants the Reciprocal License for any Necessary Patent Claim(s) that the Member failed to disclose. Any attempt to exclude any such undisclosed Necessary Patent Claim(s) is ineffective and null and void.

## **9. WITHDRAWAL**

### **9.1 No Withdrawal**

Contributions, once accepted by Khronos, may not be withdrawn.

### **9.2 Survival of License**

A Member's obligations to license made prior to withdrawal from Khronos shall survive such withdrawal, and shall extend to all licensees, including Members that join Khronos after the withdrawing Member's withdrawal.

### **9.3 Exclusion upon Withdrawal**

If a Member withdraws from Khronos prior to the expiration of an applicable Ratification Period, then the Member may exclude patents the Member is not already obligated to license before the expiration of an applicable Ratification Period. Failure to exclude will result in the former Member granting the Reciprocal License. Upon withdrawal from Khronos, the Member may submit at any time any and all IP Disclosure Certificates that the Member chooses to submit pursuant to the foregoing clause of this section, without the obligation to wait until a Ratification Period is defined by Khronos with respect to any particular Draft Specification.

### **9.4 Rights after Withdrawal**

Except as explicitly described in this Attachment A, a prior Member shall have no other obligations to Khronos or to Members as to technologies or IP rights developed by the Member after its withdrawal from Khronos.

## **10. THIRD PARTY TECHNOLOGY**

Nothing in the Membership Agreement shall compel nor prevent Khronos from including in a Draft Specification or Ratified Specification a reference to, or suggestion to adopt or employ, a non-Member technology, whether or not such third party technology must be licensed on a royalty-bearing or royalty-free basis in order to avoid infringement or intellectual and/or proprietary rights.

## **11. IP COMMITTEE FOR ENCUMBERED TECHNOLOGY**

### **11.1 Formation and Purpose**

The Board shall create a committee ("**IP Committee**") to investigate any IP issue including receipt by Khronos of a notice in writing (an "**IP Statement**") in which a Member or third-party ("**IP Claimant**") asserts, claims, or otherwise references an intellectual property right relative to any Draft or Ratified Specification, or a Member's delivery of an IP Disclosure Certificate. The IP Committee shall investigate the implications of any IP issues and report any recommendations to the Board.

### **11.2 Constraints**

The IP Committee shall not investigate or discuss the validity or invalidity of any intellectual property claims or opinions as to infringement or non-infringement of the intellectual property in any Encumbered Technology.

### **11.3 Membership**

Any Member may be represented on the IP Committee by legal and/or engineering personnel. A Member with an ownership interest in the patents or patent applications under investigation may be excluded from a meeting of the Committee at the discretion of the Committee. An IP Committee Member will serve as chair of the IP Committee.

### **11.4 Reporting**

The IP Committee shall provide a report of its current status and/or results to the Board within ninety (90) days of the date of committee formation. The report may be presented to the Board orally or in writing and shall be the confidential information of Khronos and shall be treated by Members accordingly. The report may include a request for Board approval of an extension of time to provide the report.

**11.5 Term**

The IP Committee shall have an initial term of ninety (90) days from the date of committee formation. The IP Committee shall terminate automatically unless: a) The Board terminates the IP Committee prior to the expiration of the initial term; or b) the Board extends the duration of the IP Committee beyond the initial term. An extension must indicate a specific duration, not to exceed ninety (90) days from the expiration of the immediately preceding term. Further extensions may be requested by the IP Committee and approved by the Board in a similar manner.

# ATTACHMENT B

## BY-LAWS OF THE KHRONOS GROUP, INC.

### 1. DEFINITIONS

“**Corporation**” shall mean “The Khronos Group, Inc.”.

“**Promoter**” shall mean an entity that has executed the Membership Agreement to which this Attachment B is attached, and who has been accepted as a statutory member of the Corporation.

“**Member**” shall mean Promoters or any entity that has signed the Membership Agreement to which this Attachment B is attached and who has been accepted as a non-statutory Associate Member of the Corporation.

“**Membership Agreement**” means the agreement signed by a Member to join Khronos and to which this Attachment B is attached.

### 2. OFFICES

#### 2.1 PRINCIPAL OFFICE

The principal office of the Corporation is located in Lake County, State of California, USA.

#### 2.2 CHANGE OF ADDRESS

The designation of the county or state of the Corporation’s principal office may be changed by the Board of Directors.

#### 2.3 OTHER OFFICES

The Corporation may also have offices at such other places, within or without its state of incorporation, where it is qualified to do business, as its business and activities may require, and as the Board of Directors may, from time to time, designate.

### 3. NONPROFIT PURPOSES AND ANTITRUST

#### 3.1 IRC SECTION 501 (c) (6) PURPOSES

The Corporation is organized exclusively for one or more of the purposes as specified in Section 501 (c) (6) of the Internal Revenue Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501 (c) (6) of the Internal Revenue Code.

#### 3.2 GENERAL AND SPECIFIC OBJECTIVES AND PURPOSES

(a) General Purpose. The Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under law.

(b) Specific Purposes. In addition to the foregoing general purposes, the Corporation is formed to promote the creation and deployment of dynamic media, tightly integrated graphics, video, and audio, through the creation of open standard application programming interfaces; to enable the authoring and playback of dynamic media on a wide variety of platforms and devices, including, without limitation, embedded versions of the same; and to produce and promote the foregoing in cooperation and conformance with pre-existing and accepted industry standards and specifications.

### **3.3 ANTITRUST COMPLIANCE**

The Members are committed to fostering open competition in the development of products and services based on open standard application programming interfaces. The Members understand that in certain lines of business they are or may be direct competitors and that it is imperative that they and their representatives act in a manner which does not violate any state, federal or international laws and regulations relating to antitrust or the promotion of competition. Without limiting the generality of the foregoing, Members should not participate with each other in communications regarding costs, prices, quantity or quality of production levels, methods or channels of distribution, markets, customers, exclusion of competitors or any other topic which may be construed as a violation of antitrust laws. Accordingly, each Member will counsel its representatives who participate in any activities as part of the Corporation of the importance of limiting the scope of their discussions and communications to the topics that relate to the purposes of the Corporation, whether or not such discussions and communications take place during formal meetings, informal gatherings, or otherwise.

## **4. DIRECTORS**

### **4.1 NUMBER OF DIRECTORS**

The Board of Directors (the "**Board**") shall consist of a number of Directors equal to the number of Promoters at that time, but in any case shall be no less than 1 (one) and no more than 30 (thirty).

### **4.2 POWERS**

Subject to the provisions of the California Nonprofit Corporation Law and any limitations in the Articles of Incorporation and these By-laws relating to action required or permitted to be taken or approved by the Promoters, the activities and affairs of the Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

### **4.3 DUTIES**

It shall be the duty of the Directors to:

- (a) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation, or by these By-laws;
- (b) Appoint and remove, employ and discharge, and, except as otherwise provided in these By-laws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the Corporation;
- (c) Supervise all officers, agents and employees of the Corporation to assure that their duties are performed properly;
- (d) Meet at such times and places as required by these By-laws;
- (e) Register their addresses with the Managing Director of the Corporation, and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof;
- (f) Elect annually officers for the Corporation, including a President from the Corporation's membership or from the general public who shall be the Chief Executive Officer of the Corporation and shall perform all duties as required by these By-laws;
- (g) Establish and disband other committees and working groups as appropriate to conduct the work of the Corporation;
- (h) Establish policies relating to confidentiality, ownership rights, license grants, warranties, public relations, and other criteria which shall apply to all Members of the Corporation;
- (i) Approve the Corporation's annual budget;

(j) Establish annual dues for all Member classes, and establish privileges and benefits for all such classes;

(k) Communicate actions related to the duties specified in this Section to the membership within 60 days.

#### **4.4 APPOINTMENT OF DIRECTORS**

Each Promoter shall be entitled to designate one Director to the Board. This representative must be a full time employee of the Promoter or serve as an agent or consultant to the Promoter. If the designated representative is removed by the Promoter or resigns or dies while in office, the Promoter shall be entitled to appoint a new successor Director to the Board. A Promoter may change its designated representative at any time by sending a written notice to the Managing Director or by having a written notice sent or delivered to the Board prior to the meeting by its new designated representative.

#### **4.5 TERM OF OFFICE**

Each Director shall serve until removed by the Promoter who designated him or her or until the said Promoter ceases to be a Promoter of the Corporation, or until such Director's resignation or death, whichever is earlier.

#### **4.6 COMPENSATION**

Directors shall serve without compensation.

Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefore so long as such compensation is approved by a majority of disinterested Directors.

#### **4.7 PLACE OF MEETINGS**

Meetings of the Board shall be held at any place within or outside California or in any manner that has been designated by resolution of the Board or in the notice of the meeting or, if not so designated, at the principal office of the Corporation.

In order to encourage maximum participation, meetings may be held in person or by any combination of audio, document or video conferencing techniques, as long as all Directors participating in such meetings can hear one another.

#### **4.8 ANNUAL AND REGULAR MEETINGS**

The Directors shall meet once a year to elect the officers for the Corporation and to agree on the Corporation's budget for the next fiscal year, and also on such other occasions as scheduled by the Board.

#### **4.9 SPECIAL MEETINGS**

Special meetings of the Board may be called by the President, the Vice President, the Secretary, the Managing Director or any two Directors.

#### **4.10 NOTICE OF MEETINGS**

Unless otherwise provided by the Articles of Incorporation, these By-laws, or provisions of law, the following provisions shall govern the giving of notice for meetings of the Board of Directors:

(a) Regular Meetings. At least 21 days prior notice shall be given to each Director unless a 2/3 majority of the Directors agree to waive the notice requirement.

(b) Special Meetings. At least one week prior notice shall be given to each Director of each special meeting of the Board.

Such notices must be by mail or by electronic message, and shall state the place, date and time of the meeting and the matters proposed to be acted upon at the meeting. Any required notice may be waived by individual Directors.

#### **4.11 QUORUM FOR MEETINGS**

A quorum shall consist of a majority of the members of the Board.

In the absence of a quorum at any meeting of the Board of Directors, a majority of the Directors present may adjourn the meeting. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of enough Directors to leave less than a quorum, if any action taken is approved by at least a majority of the required quorum for such meeting.

#### **4.12 2/3 MAJORITY ACTION AS BOARD ACTION**

Every act or decision done or made by a 2/3 majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board, unless the Articles of Incorporation, these By-laws, or provisions of law require a different percentage or different voting rules for approval of a matter by the Board.

#### **4.13 CONDUCT OF MEETINGS**

Meetings of the Board shall be chaired by the President of the Corporation or, in his or her absence, by the Vice President of the Corporation or, in the absence of each of these persons, by a Chairperson chosen by a majority of the Directors present at the meeting. The Secretary of the Corporation or his or her designate shall act as recording secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall appoint another person to act as recording secretary of the Meeting.

To the extent permitted by applicable law, a Director may designate an alternate representative from the same organization to attend a Board of Directors meeting when that Director is unable to attend a meeting.

Meetings shall be governed by such procedures as may be approved from time to time by the Board, insofar as such rules are not inconsistent with or in conflict with the Articles of Incorporation, these By-laws, or with provisions of law.

#### **4.14 NON-LIABILITY OF DIRECTORS**

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

#### **4.15 INDEMNIFICATION OF DIRECTORS AND OFFICERS**

To the fullest extent permitted by law, the Corporation shall indemnify its Directors, officers, employees, and other persons described in Corporations Code section 7237(a), including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that section, and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person described in that section. "Expenses," as used in these By-laws, shall have the same meaning as in that section of the Corporations Code.

On written request to the Board by any person seeking indemnification under Corporations Code section 7237(b) or 7237(c), the Board shall promptly decide under Corporations Code section 7237(e) whether the applicable standard of conduct set forth in Corporations Code section 7237(b) or section 7237(c) has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification, because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to that proceeding, the Board shall promptly call a meeting of Promoters. At that meeting, the Promoters shall determine under Corporations Code section 7237(e) whether the applicable standard of conduct has been met and, if so, the Promoters present at the meeting in person or by proxy shall authorize indemnification.

To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under this Section of these By-laws in defending any proceeding covered by this Section shall be advanced by the Corporation before final disposition of the proceeding, on receipt by the Corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by the Corporation for those expenses.

#### **4.16 INSURANCE FOR CORPORATE AGENTS**

Except as may be otherwise provided under provisions of law, the Corporation may purchase and maintain insurance to the full extent permitted by law on behalf of its officers, Directors, employees, and other agents, to cover any liability asserted against or incurred by any officer, Director, employee, or agent in such capacity or arising from the officer's, Director's, employee's, or agent's status as such.

#### **4.17 BOARD ACTION WITHOUT A MEETING**

Any action that the Board is required or permitted to take may be taken without a meeting if all members of the Board consent in writing or by electronic message to that action. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. All consents shall be filed with the minutes of the proceedings of the Board.

To conduct such an email vote, the Promoter requesting the vote must send a proposal to the President and request that the President conduct the vote by email. Within a reasonable period of time after receiving such a request, the President or the President's designate will send an email to the Board requesting their vote on the proposal. Each Director has seven (7) days in which to vote. To cast a vote, a Director must send a reply email stating his or her vote on the proposal. After the seven-day period has expired the President or the President's designate will tally the votes and email the results to the Board.

#### **4.18 SUSPENSION OF VOTING RIGHTS**

A Promoter's right to vote is suspended if that Promoter is not in good standing. To be in good standing a Promoter must have attended two of the last three meetings of the Board of Directors in person or by phone, counting the current meeting. New Promoters may vote on their second meeting – if they are in good standing. Any Promoter with suspended voting rights shall not be counted in determination of Board quorum and Board votes.

The Managing Director will provide written notice to a Promoter whose voting rights have been suspended. The notice will include the reason for the suspension of the voting rights. Upon receipt of such notice, the Promoter will not be entitled to vote on any matter. A Promoter whose voting rights have been suspended may have its voting rights reinstated by the Board or when it returns to good standing.

## **5. OFFICERS**

### **5.1 DESIGNATION OF OFFICERS**

The officers of the Corporation shall be a President, a Secretary, a Managing Director, and a Treasurer (who shall serve as the Chief Financial Officer). The Corporation may also have one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers, and other such officers with such titles as may be determined from time to time by the Board of Directors.

### **5.2 ELECTION AND TERM OF OFFICE**

Officers shall be elected by the Board of Directors, at a meeting of the Board, no more than 12 months following the previous election and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

It shall not be required for officers to maintain any membership in the Corporation.

### **5.3 REMOVAL AND RESIGNATION**

Any officer may be removed, either with or without cause, by the Board, at any time. Any officer may resign at any time by giving written notice to the Board or to the President or Managing Director of the Corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board relating to the employment of any officer of the Corporation.

### **5.4 VACANCIES**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board. In the event of a vacancy in any office other than that of President, such vacancy may be filled temporarily by appointment by the Vice President until such time as the Board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Board may or may not be filled as the Board of Directors shall determine.

### **5.5 DUTIES OF PRESIDENT**

The President shall be the chief executive officer of the Corporation and shall, subject to the control of the Board, supervise and control the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation, or by these By-laws, or which may be prescribed from time to time by the Board, including presiding as chairperson at all meetings of the Board and at all meetings of the Promoters.

### **5.6 DUTIES OF SECRETARY**

The Secretary shall: certify and keep at the principal office of the Corporation the original, or a copy, of the Articles of Incorporation and these By-laws as amended or otherwise altered to date; shall keep at the principal office of the Corporation, or at such other place as the Board may determine, a book of minutes of all meetings of the Directors, and, if applicable, meetings of committees of Directors and of Promoters, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof, including all ballots; shall see that all notices are duly given in accordance with the provisions of these By-laws or as required by law and advise the Members in writing of all results of any election of Officers; be custodian of the records and of the seal of the Corporation and affix the seal, as authorized by law or the provisions of these By-laws, to duly executed documents of the Corporation; shall keep at the principal office of the Corporation a membership book containing the name and address of each and any Members, and, in the case where any membership has been terminated, he or she shall record such fact in the membership book together with the date on which such membership ceased; shall exhibit at all reasonable time to any Director, or to his or her agent or attorney, on request therefore, the By-laws, the membership book, and the minutes of the proceedings of the Directors of the Corporation; in general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation, or by these By-laws, or which may be assigned to him or her from time to time by the Board. The Secretary may delegate particular duties to other officers of the Corporation or to Corporation staff.

## **5.7 DUTIES OF TREASURER**

The Treasurer (who shall serve as the Chief Financial Officer of the Corporation) shall: keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Corporation's properties and transactions; shall send or cause to be given to the Promoters and Directors such financial statements and reports as are required to be given by law, by these By-laws, or by the Board; shall ensure the books of account shall be open to inspection by any Director at all reasonable times; shall (i) deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as the board may designate; (ii) disburse the Corporation's funds as the Board may order; (iii) render to the President and the Board, when requested, an account of all transactions as Chief Financial Officer and of the financial condition of the Corporation; and (iv) have such other powers and perform such other duties as the Board or the By-laws may require, including restoration to the Corporation of all of its books, papers, vouchers, money, and other property of every kind in the possession or under the control of the Chief Financial Officer on his or her death, resignation, retirement, or removal from office.

## **5.8 MANAGING DIRECTOR**

The Managing Director will administer the day-to-day affairs of the Corporation under the direction of the Board and of the President. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation, or by these By-laws, or which may be prescribed from time to time by the Board.

## **5.9 COMPENSATION**

The officers shall serve without compensation, unless compensation is authorized by the Board.

Nothing herein contained shall be construed to preclude any officer from serving the Corporation in any other capacity as an agent, employee, or otherwise and receiving compensation therefore as long as such compensation is approved by a majority of disinterested Directors.

## **6. COMMITTEES; WORKING GROUPS**

### **6.1 EXECUTIVE COMMITTEE**

The Board may designate an Executive Committee consisting of four (4) or more Directors and may delegate to such committee the powers and authority of the Board in the management of the business and affairs of the Corporation, to the extent permitted, and except as may otherwise be provided, by provisions of law.

The Board may at any time revoke or modify any or all the Executive Committee authority so delegated, increase or decrease but not below four (4) the number of the members of the Executive Committee, and fill vacancies on the Executive Committee from the Directors. The Executive Committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the Board from time to time as the Board may require.

### **6.2 OTHER COMMITTEES**

The Corporation shall have such other committees as may from time to time be designated by resolution of the Board. These committees may consist of persons who are not also members of the Board and shall act in an advisory capacity to the Board.

### **6.3 MEETINGS AND ACTION OF COMMITTEES**

Meetings and actions of the Executive Committee and other committees shall be governed by, noticed, held and taken in accordance with the provisions of these By-laws concerning meetings of the Board of Directors, with such changes in the context of such Bylaw provisions as are necessary to substitute the Executive Committee or other committees and its members for the Board. The Board of Directors or such other committees may also adopt rules and regulations pertaining to the conduct of meetings of the committees to the extent that such rules and regulations are not inconsistent with the provisions of these By-laws.

### **6.4 WORKING GROUPS**

The Promoters may form working groups to focus on particular issues related to the aims of the Corporation. Participation in working groups is limited to Promoters and Contributors (as defined below) and each working group shall operate as defined by the Corporation's Membership Agreement or under a charter that is agreed by the working group membership and approved by the Board.

## **7. EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

### **7.1 EXECUTION OF INSTRUMENTS**

The Board, except as otherwise provided in these By-laws, may authorize any officer of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

### **7.2 CHECKS AND NOTES**

Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be signed by the Managing Director and a second officer of the Corporation. In cases where the amount is equal to or less than a pre-determined threshold determined by the Board the signature of the Managing Director alone will be sufficient.

### **7.3 DEPOSITS**

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

### **7.4 GIFTS**

The Board may accept on behalf, and for the benefit, of the Corporation any contribution, gift, bequest, or devise for the non-profit purposes of this Corporation.

## **8. CORPORATE RECORDS, REPORTS, SEAL, INSPECTION RIGHTS AND FISCAL YEAR**

### **8.1 MAINTENANCE OF CORPORATE RECORDS**

The Corporation shall keep at its principal office:

(a) Minutes of all meetings of Directors, committees of the Board and of all meetings of Promoters, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;

(b) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;

(c) A record of its Members, if any, indicating their names and addresses and, if applicable, the class of membership held by each Member and the termination date of any membership;

(d) A copy of the Corporation's Articles of Incorporation and By-laws as amended to date, which shall be open to inspection by the Members of the Corporation at all reasonable times during office hours.

## **8.2 CORPORATE SEAL**

The Board may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the Corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

## **8.3 DIRECTORS' INSPECTION RIGHTS**

Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation as may be allowed under the Articles of Incorporation and under the provisions of law.

## **8.4 RIGHT TO COPY AND MAKE EXTRACTS**

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts as may be allowed under the Articles of Incorporation and under the provisions of law.

## **8.5 PERIODIC REPORT**

The Board shall cause any annual or periodic report required under law to be prepared and delivered to an office of this state or to the Promoters of this Corporation, to be so prepared and delivered within the time limits set by law.

The Board shall cause an annual report to be prepared within 120 days after the end of the corporation's fiscal year. That report shall contain the following information in appropriate detail:

(a) A balance sheet as of the end of the fiscal year, an income statement, and statement of changes in financial position for the fiscal year, accompanied by an independent accountants' report or, if none, by the certificate of an authorized officer of the corporation that they were prepared without audit from the corporation's books and records;

(b) A statement of the place where the names and addresses of current members are located.

The Managing Director shall annually notify each member of the Promoter's right to receive a copy of the financial report under this Section. The Managing Director shall promptly cause the most recent annual report to be sent to any requesting Promoter.

## **8.6 FISCAL YEAR**

The fiscal year of the Corporation shall be the calendar year.

# **9. IRC 501(C)(6) TAX EXEMPTION PROVISIONS**

## **9.1 LIMITATION ON ACTIVITIES**

Notwithstanding any other provisions of these By-laws, the Corporation shall not carry on any activities not permitted to be carried on (a) by a Corporation exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

## **9.2 PROHIBITION AGAINST PRIVATE INUREMENT**

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its Members, Directors or trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation.

## **9.3 DISTRIBUTION OF ASSETS**

Upon the dissolution of the Corporation, its assets remaining after payment, or provision for payment of all debts and liabilities of the Corporation shall be distributed for one or more exempt purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code or shall be distributed to the federal government, or to a state or local government, for a public purpose. Such distribution shall be made in accordance with all applicable provisions of the laws of this state.

## **10. AMENDMENT OF BY-LAWS**

These By-laws may be altered, amended, or repealed and new By-laws adopted by approval of the Board.

## **11. CONSTRUCTION AND TERMS**

If there is any conflict between the provisions of these By-laws and the Articles of Incorporation of the Corporation, the provisions of the Articles of Incorporation shall govern.

Should any of the provisions or portions of these By-laws be held unenforceable or invalid for any reason, the remaining provisions and portions of these By-laws shall be unaffected by such holdings.

All references in these By-laws to the Articles of Incorporation shall be to the Articles of Incorporation, Articles of Organization, Certificate of Incorporation, Organizational Charter, Corporate Charter, or other founding document of the Corporation filed with an office of this state and used to establish the legal existence of the Corporation.

All references in these By-laws to a section or sections of the Internal Revenue Code shall be to such sections of the Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of any future federal tax code.

## **12. MEMBERSHIP PROVISIONS**

### **12.1 CLASSES AND RIGHTS OF MEMBERS**

Any individual, firm, partnership, corporation, unincorporated association, academic institution or government body with a demonstrated interest in promoting the cause(s) of the Corporation, may apply for membership in the Corporation.

The Corporation shall have five classes of Members, designated as Promoters, Contributors, Associate Contributors, Non-Profit Contributors, and Academic Contributors.

(a) Rights of Promoters – The initial Promoters shall be 3Dlabs, ARM, ATI, Discreet, Ericsson Mobile Platforms, Esmertec, Imagination Technologies, Motorola, Nokia, SGI, SK Telecom and Sun Microsystems. In addition to the other rights set out in these By-laws and under this Section, Promoters shall be the only class of Members entitled to vote on Corporation matters. Promoters shall each have the right to appoint one (1) representative to the Board of Directors as described in these By-laws. Promoters shall have the right to participate in working groups as described in these By-laws. Each Promoter shall have the right to a single vote in the working group(s) in which such Promoter is a participant. The vote of a Director appointed by a Promoter shall be deemed to be the vote of the Promoter to the extent that Member votes are required. A quorum for Member Meetings shall consist of a majority of the Members. Every act or decision done or made by a 2/3 majority of the Members present at a meeting duly held at which a quorum is present is the act of the Members, unless the Articles of Incorporation, these By-laws, or provisions of law require a different percentage or different voting rules for approval of a matter by the Members.

(b) Rights of Contributors – Contributors shall have the right to participate in working groups as described in these By-laws. Each Contributor shall have the right to a single vote in the working group(s) in which such Contributor is a participant. Contributors are not statutory Members of the Corporation and shall have no right to vote on Corporation matters.

(c) Rights of Associate Contributors, Non-Profit Contributors and Academic Contributors – Associate Contributors, Non-Profit Contributors and Academic Contributors shall have the right to participate in working groups as described in these By-laws; however Associate Contributors, Non-Profit Contributors and Academic Contributors shall not have the right to vote in the working group(s). Contributors are not statutory Members of the Corporation and shall have no right to vote on Corporation matters.

## **12.2 NUMBER OF MEMBERS**

There is no limit on the number of Members the Corporation may admit.

## **12.3 FEES AND DUES**

The annual dues payable to the Corporation by each class of Members shall be established and may be changed from time to time by resolution of the Board. Dues shall be due and payable upon confirmation of admission to Membership by the Corporation.

The Corporation shall operate on a not-for-profit basis. However, annual dues and other special fees may be levied by the Board of Directors to offset expenses. These dues and fees shall be used to support the activities of the Corporation, including administrative costs (including expenses related to managerial expenses, meetings, travel costs, legal fees, web site development and maintenance), promotional expenses and any other purposes that are approved by the Board.

## **12.4 ADMISSION TO MEMBERSHIP**

Applicants may apply to be admitted as a Member by submitting a completed and signed Membership Agreement together with payment of the first annual dues fee and any other documents as may be required by the Corporation from time to time. The Board, or a designated party, may approve or reject such application in accordance with the criteria established from time to time by the Board. In any case, Promoter membership must be approved by the Board. Members shall be admitted upon confirmation by the Corporation that its application for admission has been accepted. Khronos may publicly disclose the admission of the Member at its sole discretion.

## **12.5 MEMBERSHIP BOOK**

The Corporation shall keep a membership book containing the name and address of each Member, the date upon which the applicant became a Member, and the name of one individual from each Member organization who shall serve as a primary contact for the Corporation and vote on all issues on which such Member is entitled to vote, receive all correspondence and information, and distribute this information within his/her organization. Termination of the membership of any Member shall be recorded in the book, together with the date of termination of such membership. Such book shall be kept at the Corporation's principal office.

## **12.6 NON LIABILITY OF MEMBERS**

No Member of this Corporation is, as such, individually liable for the debts, liabilities, or obligations of the Corporation.

## **12.7 TRANSFERABILITY OF MEMBERSHIPS**

If two Members merge then the new entity may assume the membership rights of the most senior Member, provided that the new entity re-executes the appropriate Membership Agreement. If one Member acquires more than 50% of the controlling interests of another Member then the acquiring Member may assume the membership rights of the most senior member, provided that it executes the appropriate Membership Agreement if necessary and notifies the Managing Director in writing. In all other cases, no Member may transfer a membership or any right arising therefrom without the prior written consent of the Board of Directors. All rights of membership cease upon a Member's dissolution.

## **12.8 RELATED COMPANIES**

No Member shall hold more than one membership in the Corporation. It shall not be permitted for any subsidiary of a Member to hold a membership of the Corporation where the Member has ownership or control of more than 50% of the controlling interests of that subsidiary. In case of any dispute the Board shall determine the suitability of related company memberships in a manner that is consistent with the Corporation's Articles and these By-laws and the best interests of the Corporation.

## **12.9 TERMINATION OF MEMBERSHIP**

(a) Involuntary Termination of non-Promoter Members - The Board may terminate any non-Promoter Member on the good faith determination that such Member has to a material or serious degree violated these By-laws, the Articles of Incorporation, the terms of the Membership Agreement executed by such Member, any duly adopted resolutions of the Board of Directors or the rules of conduct of the Corporation as established by the Board of Directors, or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the Corporation. If no fewer than one-third (1/3) of the Promoters submit a written request to the Managing Director calling for the termination of a non-Promoter Member, then within forty-five (45) days of receiving the appropriate number of requests, the Managing Director will call a meeting of the Board. At the meeting, the non-Promoter Member that is being considered for termination must be given the opportunity to make a statement. If the non-Promoter Member does not attend the meeting after receiving proper notice, which shall be no less than 15 days, then no such opportunity needs to be given. A 2/3 vote of all of the Directors eligible to vote is necessary to terminate a non-Promoter.

(b) Termination of Promoter - The Board may terminate any Promoter on the good faith determination that such Promoter has to a material or serious degree violated these By-laws, the Articles of Incorporation, the terms of the Participation Agreement executed by such Member, any duly adopted resolutions of the Board of Directors or the rules of conduct of the Corporation as established by the Board of Directors, or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the Corporation. If no fewer than one-third (1/3) of the Promoters submit a written request to the Managing Director calling for the termination of a Promoter, then within forty-five (45) days of receiving the appropriate number of requests, the Managing Director will call a meeting of the Board. At the meeting, the Promoter that is being considered for termination must be given the opportunity to make a statement. If the Promoter does not attend the meeting after receiving proper notice, which shall be no less than 15 days, then no such opportunity needs to be given. A unanimous vote of all of the Directors eligible to vote is necessary to terminate a Promoter. The Promoter who is being considered for termination is not entitled to vote on the issue of its termination.

#### **12.10 WITHDRAWAL OF MEMBERSHIP**

A Member may withdraw from the Corporation at any time by providing written notice to the Managing Director which shall be effective upon receipt of notice by the Managing Director or upon such later date as specified in such notice or upon such other date specified in the Membership Agreement executed by the withdrawing Member, as the case may be.

#### **12.11 EFFECT OF TERMINATION, SUSPENSION OR WITHDRAWAL OF MEMBERSHIP**

A Member who is terminated by the Board or who withdraws from the Corporation shall have no further interest or participation in any of the activities of the Corporation. A terminated Member shall not be allowed to be permitted to reapply for membership in the Corporation unless the terminated Member shall receive the consent of the Board. Termination, suspension or withdrawal of membership shall not effect the termination or survival of any rights as granted under the Membership Agreements. No termination or withdrawal shall relieve a Member from full payment of any and all dues and other fees or assessments remaining unpaid on the date of termination or withdrawal. Upon termination or withdrawal, a Member shall not be entitled to a refund of any amounts paid during membership.

#### **12.12 WAIVER OF FEES FOR INVITED EXPERTS**

The Board may agree to waive the membership dues for an invited expert when the Corporation would benefit from their participation and the payment of dues is a genuine barrier to membership. An invited expert must execute the standard Membership Agreement with an amendment that states that: they may participate in any working group that invites them; they do not receive a vote in Working Group meetings; that they may represent themselves as a member; and that the terms of the waiver are confidential within Khronos. Any waiver must be reviewed and renewed annually by the Board.

# ATTACHMENT C

## KHRONOS CONFORMANCE TEST SOURCE LICENSE AGREEMENT

This Khronos Conformance Test Source License Agreement ("**Agreement**") is entered into by and between The Khronos Group Inc. ("**Khronos**"), and the signatory ("**Signatory**") of the Khronos Group Membership Agreement ("**Membership Agreement**") to which this Agreement is attached and made part of.

### 1. BACKGROUND

A) Khronos intends to develop Conformance Tests for its Specifications. Khronos intends to license the source of completed Conformance Tests to Adopters who may port the tests to their own platform and report the results using a process defined in an Adopters Agreement. Khronos wishes to use Third Party Source, Khronos Source and a variety of Signatory and contractor resources to create Conformance Tests.

B) This Agreement provides access for Members to Third Party Source and Khronos Source solely for the purposes of developing Conformance Tests. It does not provide for the use of the Conformance Tests for formally testing products, or use of Khronos trademarks on conformant products – those rights are granted in the Khronos Adopters Agreement.

### 2. DEFINITIONS

Throughout this Agreement the following terms when capitalized shall have the following meanings:

**"Affiliate"** means any entity that is directly or indirectly controlled by a party to this Agreement. For purposes of this definition, control means direct or indirect ownership of or the right to exercise (a) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of an entity; or (b) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for such entity.

**"Conformance Tests"** means software tests by which an implementation of a Khronos specification may be tested for conformance, which is required for authorization to use a Mark in relation to identified conformant products.

**"Effective Date"** means the Effective Date of the Membership Agreement.

**"Khronos Source"** means source code owned by Khronos.

**"Mark"** means any trademark owned or licensed by Khronos.

**"Member"** means any entity that has signed the Khronos Membership Agreement.

**"Residuals"** means the non-tangible and non-recorded ideas, concepts and know-how contained in the Source Package which are unintentionally retained in the unaided memory of the employees of the Signatory who have had rightful access to the Source Package during the Term of the Agreement without memorizing such information for the purpose of avoiding the restrictions in this Agreement and subsequently recalling without the need to refer to any material which is written, stored in magnetic, electronic or other physical form and such Residuals are of a nature that the acquisition of it by employees amounts to no more than a part of the employee's ordinary stock of skill and knowledge. However, the foregoing shall not be deemed to grant to Signatory a license under Khronos' or other third party's copyrights or patents.

**"Source Package"** means the combination of Third Party Source and Khronos Source.

**“Third Parties”** means all third parties that have licensed source to Khronos that is included in the Third Party Source. For the avoidance of doubt Third Parties shall include at least, but not be limited to Creative Technology and SGI.

**“Third Party Source”** means third party source code licensed to Khronos for the sole purpose of developing Conformance Tests.

The parties agree as follows:

### **3. SOURCE LICENSE**

#### **3.1 Purpose**

Within ten (10) business days of the Effective Date of this Agreement, Khronos shall make the Source Package, including any updates, electronically available to Signatory and its Affiliates.

#### **3.2 Test Source License**

Signatory and its Affiliates shall have a non-exclusive, nontransferable, royalty free license to internally use and modify the Source Package for the sole purpose of creating Conformance Tests for delivery to Khronos.

#### **3.3 No Redistribution Rights**

Signatory and its Affiliates have no right to sublicense the foregoing rights to any third party. This Agreement does not give Signatory and its Affiliates the right to publicly perform or publicly display the Source Package or the Conformance Tests.

#### **3.4 Indemnification**

Subject to the provisions of Clause 6.3 (Limitation of Liability) Khronos and Signatory both agree to indemnify and hold the other, and each of their respective officers, directors, affiliates, employees and agents, harmless from and against any damages, liabilities, losses and expenses, including, without limitation, reasonable attorneys' fees and amounts paid in settlement of any claim, of any kind or nature whatsoever, which may be sustained or suffered as a result of any use by Signatory and its Affiliates of the Source Package and Conformance Tests, including, without limitation, any act or omission, which causes or is alleged to cause harm or a violation of any of the rights of any third party. For the avoidance of doubt materials provided by Khronos and covered by this clause include the Source Package and Conformance Tests and any Modifications not provided by Licensee, and materials provided by the Licensee covered by this clause includes all Modifications made by the Licensee. Notwithstanding, both parties shall have no indemnification obligation to the other party if the claim arises from Modifications made by that other party.

#### **3.5 Third Parties' Ownership Rights**

Signatory and its Affiliates receives no ownership interest in or title to any intellectual property owned by Khronos or Third Parties of any kind, including but not limited to the Source Package, libraries, documentation or derivatives thereof, trademarks, or other design owned by Khronos or Third Parties, and/or as a result of Signatory's and its Affiliates (i) possession and use, or (ii) modification, enhancement, translation, compilation, derivation and the like, of any of the foregoing under any circumstances whatsoever (**“Modifications”**).

#### **3.6 Confidential Information**

The Source Package and any passwords provided under this agreement are Khronos Confidential Information as defined by the Membership Agreement and bound by the terms therein.

### **3.7 Residuals**

Signatory and its Affiliates shall be free to use the Residuals resulting from access to or work with Source Package, provided that Signatory and its Affiliates shall maintain the confidentiality of the Source Package as provided herein.

### **3.8 No Other Rights**

Except as otherwise expressly provided herein, no license or rights in the Source Package, libraries, documentation or derivatives thereof, Mark or other design owned by Khronos or Third Parties, software, specifications, trademarks or other intellectual property are provided hereunder, either expressly or by implication, estoppel or otherwise.

## **4. PROPRIETARY RIGHTS**

### **4.1 Assignment of Modifications**

Signatory and its Affiliates shall provide Khronos with all Modifications, and Signatory and its Affiliates transfers and hereby does assign to Khronos or Third Parties all rights, title and interest to the Modifications provided that Khronos grants Signatory and its Affiliates an irrevocable license to use, copy and modify such Modifications and further distribute without restriction as if Signatory owned the relevant Modifications.

### **4.2 Assignment of Deliverables**

Signatory and its Affiliates may develop work items independent of the Source Package for inclusion into the Conformance Tests. If Signatory and its Affiliates wish to contribute such independent work to Khronos, Signatory shall provide such independent work to Khronos under the provisions of this Clause 4.2 and if Khronos includes such independent work in Khronos Source then such independent work shall be referred to as "**Deliverables**". Signatory and its Affiliates expressly acknowledge and agree that the Deliverables constitute "work made for hire" under Federal copyright laws (17 U.S.C. Sec. 101) and accordingly Khronos shall own all right, title and interest in the Deliverables owned exclusively by Khronos and, alternatively, hereby irrevocably assigns to Khronos all ownership rights and irrevocably waives all other rights (including moral rights) it might have in the Deliverables. Signatory shall, at any time upon request, execute any documentation required by Khronos to vest exclusive ownership of the Deliverables in Khronos (or its designee).

### **4.3 Copies**

Notwithstanding the provisions of Clause 4.2, Signatory shall be permitted to retain one (1) operating copy and one (1) archival copy of the Source Package, Modifications and Deliverables for Signatory's internal use, including but not limited to the purpose of performing any required warranty service and support and testing of products designed by or for Licensee.

## **5. TERM AND TERMINATION**

### **5.1 Term**

The term of this Agreement shall be coincident with the term of the Membership Agreement.

### **5.2 Termination of Portions of the Agreement by Khronos**

Signatory recognizes that certain rights granted hereunder are third party rights being passed through, sub-licensed or otherwise granted by Khronos. Accordingly, it is specifically provided that Khronos may terminate any portion of this Agreement at any time as to any portion of the Source Package, upon the termination of Khronos' right with respect to that portion, or if Khronos has reasonable grounds, without any admission of liability to believe that any of the technology licensed hereunder infringes the rights of any third party.

### **5.3 Effect of Termination**

Except in respect of the license granted under Clause 4.1, in the event of termination, all rights granted hereunder shall revert to Khronos and Signatory shall cease and desist all use of the Source Package and return full or partial copies of same in Signatory's possession to Khronos, including any and all Modifications, and shall warrant to Khronos in writing by an officer of Signatory as to such return. Signatory's failure to comply with the obligations of this Section shall constitute unauthorized use of the Source Package, entitling Khronos to equitable or other relief. The forgoing provisions shall not require Signatory to purge its back up or archival tapes created automatically as part of its corporate IT policy provided that Signatory does not access or reinstall any versions of the Source Package from the back up or archival tapes.

### **5.4 Survival**

All terms and conditions of this Agreement that, by their nature, should survive this Agreement will survive its termination or expiration, including those headed "No Warranty," "Limitation of Liability," "Indemnification," "Third Parties' Ownership Rights," "Survival" "Confidential Information," and "General".

## **6. GENERAL**

### **6.1 No Other Licenses**

Except for the rights expressly provided by this Agreement and Membership Agreement, no party grants or receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.

### **6.2 No Warranty**

All parties acknowledge that all information provided as part of the Source Package are provided "AS IS" WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OR CONDITION OF MERCHANTABILITY, SECURITY, SATISFACTORY QUALIFY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, ERROR-FREE OPERATION, OR ANY WARRANTY OR CONDITION OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATIONS, OR SAMPLE.

### **6.3 Limitation of Liability**

IN NO EVENT SHALL ANY PARTY HEREUNDER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT, OR THE BREACH HEREOF, REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED, AND EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY OF THE OTHER PARTY. THE FOREGOING EXCLUSION SHALL APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF ANY AVAILABLE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. FOR PURPOSES OF THIS SECTION, "PARTY" SHALL INCLUDE THE AFFILIATES OF A PARTY. ADDITIONALLY, KHRONOS AND LICENSEE'S TOTAL LIABILITY IN CONNECTION WITH CLAIMS RELATED TO SECTION 3.4 (INDEMNIFICATION) SHALL NOT EXCEED \$100,000.

### **6.4 Export**

Signatory agrees that it and its Affiliates will not export or re-export any portion of the Conformance Tests, the Source Package and/or documentation (or any copies thereof) in violation of any applicable laws or regulations of the U.S. or the country in which they were obtained.