

# KHRONOS GROUP CERTIFICATION AGREEMENT PROCESSING INSTRUCTIONS

**This agreement enables an entity to participate in a Khronos Certification Program  
in order to use certain Khronos trademarks on certified products**

**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>NAME:</b> _____
<b>EMAIL:</b> _____
<b>PHONE:</b> _____

**Guidelines for completing this agreement:**

Enter your company or institution name on the cover page, along with your name and email address.

Have an authorized person sign the signature page of this agreement. If your company requires more than one authorized signatory, duplicate the signature page for each required signature for both copies of the agreement.

Tick the Certification Program(s) that you wish to enter on the signature page. If you have previously executed this agreement but now wish to enter additional Certification Program(s) submit a fully executed agreement with just the additional Certification Program(s) ticked on the signature page together with the appropriate fees.

Email or mail this agreement to the address below. If mailed, send two signed copies and one completed copy will be returned for your records:

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

You may pay by check or wire:

**Pay by check:**

Khronos Group Inc. at the address above.

**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 Certification Program privileges will commence when Khronos has acknowledged receipt of the executed agreement and associated fees.

**If you have questions please contact:**

The Khronos Group Management

memberservices@khronos.org

Voice mail: +1 (415) 869-8627

# KHRONOS CERTIFICATION AGREEMENT

This Khronos Certification Agreement (“**Agreement**”) is entered on the **Effective Date** between The Khronos Group Inc. (“**Khronos**”) a California Corporation, and signing party on signature page (“**Certificant**”).

## 1. PURPOSE AND SCOPE

Khronos Certification Programs enable tests to be executed on Certificant’s products to generate test results that are submitted for review by Khronos. Products that meet Khronos-defined passing criteria may use identifying Marks and are publicly listed on the Khronos website as being certified.

## 2. DEFINITIONS

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

“**Certified Product**” is a Product submitted to a Program and used to generate test results for which Khronos verifies to meet the criteria to be certified as defined in the applicable Process Document.

“**Effective Date**” means the later of the last date of signature on the signature page below and the reception by Khronos of all applicable fees.

“**Marks**” means the trademarks associated with Programs as defined in the Process Document.

“**Member**” means an entity that has executed a Khronos Membership Agreement, has currently paid membership dues and has not withdrawn its membership.

“**Process Document**” means the current version of the Khronos Certification Program Process Document that defines how the Program is administered, as posted on the Khronos website.

“**Product**” means a product implemented by Certificant, whether hardware, software, or combinations thereof.

“**Program**” means a Khronos Certification Program selected on the signature page of this agreement.

“**Subsidiary**” means any entity that is directly or indirectly controlled by Certificant. 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.

## 3. CERTIFICATION FEES

### 3.1 Payment of Fees

Access to a Program shall be granted to Certificant upon execution of this Agreement and receipt of fees as defined in the applicable Process Document. No refunds shall be provided for fees received under this Agreement under any circumstances.

### 3.2 Khronos Membership Not Required

It is not necessary for a Certificant to be a Member to participate in a Program. If Certificant is a Member as of the date applicable fees are due in accordance with the applicable Process Document then Certificant is entitled to any reduced Member fee rates described in the Process Document. No refunds shall be provided for fees received before Certificant becomes a Member.

## 4. CERTIFICATION PROCESS

### 4.1 Compliance with Process Document

Certificant agrees to comply with the Process Document and await Khronos’ confirmation that the Products have successfully passed certification before claiming or otherwise indicating or implying certification. Certificant warrants that all information supplied by Certificant and its Affiliates under the process defined in the Process Document shall be accurate to the Certificant’s best knowledge.

#### **4.2 Process Updates**

Certificant acknowledges that the Process Document may be amended and updated at any time by Khronos in its sole discretion. Process Document updates will not invalidate status of Certified Products certified under an earlier version of the Process Document.

#### **4.3 Notices for Process Updates**

Khronos will distribute notices of any updates to the Process Document to an electronic mailing list to which the Certificant shall be added. It is, however, incumbent on the Certificant to provide Khronos with the Certificant's correct email address and, should this address change, provide notice to Khronos of any new email address.

#### **4.4 Non-Confidential Information**

Certificant agrees that the execution of this Agreement by Certificant and the listing of Certified Products on the Khronos website is not confidential information.

### **5. TRADEMARK LICENSE**

#### **5.1 Conditional Trademark License**

Subject to the terms and conditions set forth herein and in the Process Document, Khronos grants to Certificant and its Subsidiaries the non-exclusive right to use the applicable Mark(s) defined in the relevant Program's Process Document(s), world-wide, solely in connection with the corresponding Certified Products, for the term defined in the Process Document. Khronos warrants that it has all necessary rights to grant to Certificant this license to use the Marks.

#### **5.2 Trademark Indemnification**

Certificant agrees to indemnify and hold Khronos, and each of its 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 Certificant of the Mark in violation of the terms and conditions of this Agreement, 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.

#### **5.3 Certificant Covenants**

(i) Certificant acknowledges that Khronos is the owner of all rights, title and interest in and to the Marks and that the Khronos is the owner of its goodwill attached or which shall become attached to the Marks. All uses of the Marks, for trademark ownership purposes, shall inure to the benefit of Khronos. Certificant shall not do any act or thing to knowingly adversely affect any rights of Khronos in and to the Marks or any registrations thereof or which, directly or indirectly, will reduce the value of the Marks or detract from its reputation. In the event Certificant's employees participating in Khronos activities become aware of what they believe to be unauthorized use of the Marks by a third person, Certificant shall use reasonable efforts to notify Khronos of such use.

(ii) Certificant acknowledges that the Marks may have acquired a valuable secondary meaning and goodwill with the public, and that Products bearing or associated with the Marks have acquired a reputation of highest quality. Accordingly, notwithstanding any provision in this Agreement to the contrary, Certificant undertakes and agrees not to knowingly use the Marks in any manner which, directly or indirectly, would derogate or detract from its reputation.

(iii) Certificant acknowledges and agrees that any threat or challenge to the quality or reputation of the Marks or goods or services sold under the Marks, or any misuse of the Marks under the terms of this Agreement, presents a potential for irreparable harm, and that a potential of irreparable harm could exist in such circumstances sufficient to warrant a grant of injunctive relief.

#### **5.4 Quality Control**

Khronos retains the right to disapprove of any use by Certificant of the Marks in the event that Certificant does not pass the requisite Certification testing or uses the Marks out of compliance this Agreement, including any with applicable guidelines as defined in section 5.6 or failure to pay any annual fees described in the Process Document; provided, however, Khronos shall not unreasonably disapprove of any such use. Certificant agrees to change or discontinue (at Khronos's option) use of the Marks immediately upon Khronos's request.

## **5.5 Non-assertion of Rights in Marks**

Certificant shall not represent that it has ownership in the Marks, and acknowledges that use of the Marks shall not create any right, title or interest in the Marks beyond the license rights granted herein; and Certificant shall never challenge Khronos ownership of or the validity of the Marks or any application by Khronos for registration thereof or any rights of Khronos therein. Certificant agrees not to assert against Khronos or any Member any trademark, trade name, or similar rights (a) that Certificant has now in the names Khronos, Khronos Group or the Marks, or (b) that Certificant may obtain in the names Khronos, Khronos Group or the Marks, provided that Khronos applies for such marks in good faith and not to the detriment of Certificant. Certificant will not use or adopt any trademarks for any product, service, or Program likely to cause confusion with the Marks. For avoidance of doubt, the previous sentence shall not apply to any marks contributed by the Certificant to, and intended to be licensed through, Khronos.

## **5.6 Use of Trademarks**

Certificant and its Affiliates shall use the Marks strictly in compliance with applicable legal requirements and in accordance with then-current and applicable standard trademark use guidelines issued by Khronos and currently located at [http://www.khronos.org/trademark\\_guidelines](http://www.khronos.org/trademark_guidelines) and as set forth in the applicable Process Document, as necessary to preserve and protect the validity, value, and enforceability of the Marks.

# **6. TERM AND TERMINATION**

## **6.1 Term**

The term of this Agreement will begin on the Effective Date and will continue while dues are paid as per the applicable Process Document unless terminated pursuant to this Section.

## **6.2 Certificant Termination**

Certificant may terminate this Agreement at any time by providing written notice to Khronos.

## **6.3 Khronos Termination**

Khronos may terminate this Agreement at any time if the Program is discontinued.

## **6.4 Termination through Insolvency**

This Agreement shall terminate immediately if Certificant: (i) becomes insolvent; (ii) has a receiver appointed for it or its property; or (iii) 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).

## **6.5 Termination through Breach**

This Agreement may be terminated by either party immediately upon receipt of notice in writing if the other party commits any material breach of obligations contained herein and such breach is not cured within thirty (30) days of written notice thereof.

## **6.6 Survival**

All other terms and conditions of this Agreement that, by their nature, should survive this Agreement will survive its termination or expiration, including those headed "Trademark License", "No Warranty", and "Limitation of Liability".

# **7. GENERAL**

## **7.1 Assignment**

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

## **7.2 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.

### **7.3 Notices**

Any notices under this Agreement shall be sent by a) registered mail; b) tracked overnight carrier or c) email transmission. For the purposes of notice sent under this clause; c) a notice sent by email shall be considered notice in writing. All notices shall be sent to the parties at their respective addresses listed on the signature page or at such addresses as the parties may later specify by notice.

### **7.4 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.

### **7.5 Severability**

If any provision of this Agreement will be invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining provisions of this Agreement will not be in any way impaired.

### **7.6 Non-waiver**

The failure of either party to enforce at any time any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce any such provisions, except as expressly provided herein.

### **7.7 Complete Agreement**

This Agreement and the applicable Process Document(s) 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 Certificant and Khronos hereto.

### **7.8 No Warranty**

ALL PARTIES ACKNOWLEDGE THAT ALL INFORMATION PROVIDED UNDER THIS AGREEMENT, INCLUDING ANY PROGRAMS AND PRODUCTS, 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, NON-INFRINGEMENT 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, PROGRAM, OR SAMPLE.

### **7.9 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. ADDITIONALLY, KHRONOS' AND CERTIFICANT'S TOTAL LIABILITY IN CONNECTION WITH CLAIMS RELATED TO THIS AGREEMENT SHALL NOT EXCEED \$100,000.

### **7.10 Authority to Sign**

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

# KHRONOS CERTIFICATION PROGRAM SIGNATURE PAGE

<p><b>For Khronos Group</b> 9450 SW Gemini Drive #45043, Beaverton, OR 97008, USA</p> <hr/> <p>Authorized signature.</p> <hr/> <p>Printed name</p> <hr/> <p>Title</p> <hr/> <p>Email address</p> <hr/> <p>Date of signature</p>	<p><b>For Certificant</b></p> <hr/> <p>Entity Name</p> <hr/> <p>Street address</p> <hr/> <p>City, State, ZIP, Country</p> <hr/> <p>Authorized signature</p> <hr/> <p>Printed name</p> <hr/> <p>Title</p> <hr/> <p>Email address</p> <hr/> <p>Date of signature</p>
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<p><b>Certification Programs:</b></p> <p><input type="checkbox"/> 3D Commerce Viewer</p> <p>Other: _____</p>
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