JAVA SPECIFICATION PARTICIPATION AGREEMENT

This Java Specification Participation Agreement ("Agreement") is entered into by and between

_____, your successors and assigns ("You") and Sun Microsystems, Inc. ("Sun") as of

_____ ("Effective Date") with respect to any JSR commenced thereafter. The parties

agree as follows:

1.   Definitions

1.1   *Affiliate:* an entity established now or in the future which controls You, which You control or which is under common control with You, where "control" means either exercising fifty percent (50%) or more of the voting stock in such entity or the ability to direct its affairs and/or to control the composition of its board of directors or equivalent body.

1.2   *Community Review*: a 30 to 90 day period when Members review and comment on the draft Specification.

1.3   ~~*Confidential Information*: information exchanged between You and Sun, or among You, Sun and~~ other Members, during the term of thi⁮hLSun

1.86 *Expert*: a Member representative (or an individual who has signed the IEPA) who has expert knowledge and is an active practitioner in the technology covered by the JSR.

1.97 *Expert Group*: the group of Experts who develop or make significant revisions to a Specification.

1.10 *Hybrid JSR*: a JSR designated as "Hybrid" at the time of its submission to the JCP which expressly authorizes the creation and distribution of both Java Implementations and Non-Java Implementations of the same Specification because of an anticipated market need for interoperability between such implementations.

1.119 *Independent Implementation*: an implementation of a Specification that does not, except for Shared Ceode licensed pursuant to Section 5.GF, incorporate or otherwise make any use of the corresponding RI.

1.120 *Java Community Process (JCP) Member* (*Member*): a company, organization, or individual that has signed the JSPA and is abiding by its terms.

1.13 *Java Implementation*: an implementation of JCP Specification (which may be the Java technology subset of a larger Specification) where the implementation establishes part of or is dependent upon a compliant Java platform for its use, execution or implementation.

1.142 *Java Specification (Specification or Spec):* a written specification for some aspect of the Java technology. This includes the language, virtual machine, Platform Editions, Profiles, and application programming interfaces.

1.153 *Java Specification Request (JSR):* the document submitted to the PMO by one or more Members to propose the development of a new Specification or significant revision to an existing Specification.

1.164 *JCP Web Site*: the web site where anyone with an Internet connection can stay informed about JCP activities, download draft and final Specifications, and follow the progress of Specifications through the JCP.

1.175 *Licensor Name Space*: the public class or interface declarations whose names begin with "java", "javax", "com.sun" (or *com.Your name* if You are the Specification Lead) or their equivalents in any subsequent naming convention adopted by Sun through the Java Community Process, or any recognized successors or replacements thereof.

1.186 *Maintenance Lead* (*ML*): the Expert responsible for maintaining the Specification.

1.197 *Non Java Implementation*: an implementation of a JCP Specification (which may be a Non-Java technology subset of a larger Specification) where the implementation does not establishes part of and is not dependent upon a compliant Java platform for its use, execution or implementation.

1.20<s>18</s> *Output*: the Specification and associated Reference Implementation and Technology Compatibility Kit generated by an Expert Group, in any pre-final as well as final forms, with respect to the JSR for which that Expert Group is formed.

1.21<s>19</s> *Program Management Office* (PMO): the group within Sun Microsystems that is responsible for administering the JCP and chairing the EC.

1.22<s>0</s> *Public Review*: a 30 to 90 day period when the public can review and comment on the draft Specification.

1.23<s>1</s> *Qualified Not-for-Profit:* a legally organized not-for-profit entity (such as, but not limited to, a "501[c][3]" corporation) that is not effectively controlled by a commercial interest and that uses the TCK for the purpose of developing and distributing a compatible implementation of a Spec.

1.24<s>2</s> *Qualified Individual:* an individual not acting for or on behalf of a legally organized entity that uses the TCK for the purpose of developing and distributing a compatible implementation of a Spec, and that has established to the satisfaction of the Spec Lead, in its reasonable discretion, that such individual is ready to begin testing its credible implementation of the Spec in question.

1.25<s>3</s> *Reference Implementation* (*RI*): the prototype or "proof of concept" implementation of a Specification in the form of a Java Implementation.

1.26<s>4</s> *Shared Code*: that portion of the RI which must be included in an implementation of the corresponding Specification to create a fully compatible implementation of the Specification.

1.27<s>5</s> *Specification Lead* (*Spec Lead*): the Expert responsible for leading the effort to develop or make significant revisions to a Specification and for completing the associated Reference Implementation and Technology Compatibility Kit. A Spec Lead (or their host company or organization) must be a Java Community Process Member. In addition, for those provisions of this Agreement in which the Spec Lead is acting as a licensor or licensee, particularly in Sections 4 and 5, the reference to the term "Spec Lead" shall be understood to mean, with respect to a particular JSR, the JCP Member that employs the Spec Lead for that JSR.

1.28<s>6</s> *Technology Compatibility Kit* (*TCK*): the suite of tests, tools, and documentation that allows an implementor of a Specification to determine if their Java I<s>i</s>mplementation is compliant with that Specification.

1.29 *Transplant JSR*: a JSR designated as "Transplant" at the time of its submission to the JCP and which expressly authorizes the creation and distribution of Early Commercial Implementations prior to the JSR being finalized.

2. Participation.

A. The Process. Sun and other JCP members have established a formal process ("Process") for the development of high quality Java Specifications and promoting the development and distribution of

compatible implementations of those specifications. The Process is described on the JCP Web Site (at http://jcp.org), and may be revised from time to time in accordance with terms set forth in the Process document, provided that no such revisions shall apply to any JSR that has already been approved for development. Upon execution of this Agreement by the parties, You are authorized to participate in accordance with the Process (including through an employee or other agent designated by and authorized to act on Your behalf) with respect to any JSR commenced once this version of the JSPA is available. Should you wish to participate in the Process with respect to a JSR commenced before this version of the JSPA was available for execution, you must execute the version of the JSPA applicable to that JSR (contact the PMO to obtain a copy). This Agreement shall control in the event of any conflict between it and the Process. Any capitalized terms used herein and not defined in Section 1 above are as defined in the Process document.

B.   Evolution of Agreement. It is the intent of the Process that all Members execute a JSPA with substantially similar terms and conditions, especially with respect to the Members represented on the Expert Group for a particular JSR. However, the JSPA is an evolving document and may, as set forth in the Process, be updated and re-posted on the JCP website from time-to-time. Subject to Section 10, Members may elect to execute a newer version of the JSPA at any time, but are not obligated to do so until their current JSPA expires or is otherwise terminated.

3.   Process Cost Sharing. You agree to pay the following applicable, annual fee for each term (per Section 10) in which you participate in the Process. Initial the category that applies to you. For each term, Your fee shall be due net thirty (30) days from the date of invoice.

Participant Category	Annual Fee	Initial:
Commercial Entity:	$5,000.00/year	_____
Education, Government, non-profit organization:	$2,000.00/year	_____
Fee Bearing Java Technology Source Code Licensees of Sun:	No Fee	_____
Individual representing self only	No Fee	_____

Only one annual fee shall be due even if You are a party to more than one JSPA at the same time (i.e. different versions may be applicable to different JSRs).

4.   Intellectual Property; In-Bound.

A.   Contributions to the Spec Lead. ~~You hereby grant to each Spec Lead (and, if different, Maintenance Lead) for each Expert Group for which You are not the Spec Lead, with respect to the Output of the JSR led by the Spec. Lead, a perpetual, non-exclusive, worldwide, royalty-free, fully paid-up and, subject to Section 4.D, irrevocable, license, with the right to sublicense:~~

I.   Copyrights and Trade Secrets. You hereby grant to each Spec Lead (and, if different, Maintenance Lead) for each Expert Group for which You are not the Spec Lead, with respect to the Output of

the JSR led by the Spec. Lead, a perpetual, non-exclusive, worldwide, royalty-free, fully paid-up and, subject to Section 4.D, irrevocable, license, with the right to sublicense Uunder Your (including, to the extent to which You have the power to do so, Your Affiliates') applicable copyrights and trade secret rights which You currently have or may acquire in the future, to:

       (a) incorporate any and all Contributions provided by You hereunder into current and future versions of the Output (including, for Contributions incorporated into the Final Specification use in other future JSRs);

       (b) copy, disclose and distribute the Contributions provided by You as part of the Spec for Early DraftCommunity Review, and Public Review and any other public draft and as part of the early access versions of the RI and TCK; and

       (c) copy, modify, develop (including the right to authorize others to implement your Contributions when such Contributions are incorporated into the Spec), disclose and distribute the Contributions provided by You, all as part of the Output, on terms consistent with those specified in Section 5 below.

Notwithstanding the foregoing, the parties acknowledge that works created by employees of the Federal Government are not subject to copyright protection within the United States and may be copied or used by interested parties.

       II.   Patents.

       (a)   You irrevocably covenant that, subject solely to the condition described below, You will not assert any of Your Essential Patents, including patents which you subsequently acquire, with respect to the making, having made, using, offering to sell, selling, or importing your Contributions as part of the Output if such Contribution is made by You in a recorded form (e.g. as a written document or as an email). *This covenant does not apply to the use of any source code contributed by You unless the supplemental license terms, if any, for use of that code are met.* The foregoing covenant shall not apply and You are not obligated to make any assurance, covenant or commitment not to assert or enforce any or all patent rights against any individual, corporation or other entity that asserts, threatens or seeks at any time to enforce its own or another party's Essential Patents against a product which satisfies the requirements of Section 5.B.1(a)-(c). This non-assertion covenant will survive, even if You subsequently withdraw from the Expert Group. This statement is not an assurance either (i) that any of Your issued patents cover a Java or Non-Java Implementation or are enforceable, or (ii) that a Java or Non-Java Implementation would not infringe patent rights of any third party.

       (a) Under any applicable patent claims which You (including, to the extent to which you have the power to do so, Your Affiliates) now have or acquire in the future with respect to Contributions which are made by You in a recorded form (e.g. as a written document or as an email), to make, have made, use, offer to sell, sell, or import Your Contributions as part of the Output, with the right to sublicense, on terms consistent with those specified in Section 5 below. If Your Contribution is included in the Specification, then the above license to use such Contribution as part of the Output includes the right to implement such Contribution as part of a compatible implementation of the Specification, per Section 5.B or 5.F respectively, under all of Your

~~patent claims whose infringement cannot be avoided in a technically feasible manner when implementing the Specification. Notwithstanding the foregoing, any sublicense granted by the Spec Lead pursuant to Sections 5.B or 5.F concerning Your patent claims whose infringement cannot be avoided in a technically feasible manner when implementing the Specification shall terminate if (i) the sublicensee initiates a claim against You that Your making, having made, using, offering to sell, selling or importing an implementation of the Spec that satisfies requirements (a) - (c) above infringes such sublicensee's patent rights, and (ii) there is no technically feasible, non-infringing alternative implementation of the Spec that also satisfies requirements (a) - (c) of Section 5.B.~~

(b) For Contributions which You make but not in a recorded form, the provisions of Section 6, and not this Section 4.A.II, shall apply, subject to any additional obligations You may have as the Spec Lead pursuant to Section 5.

The Spec. Lead may sublicense or assign any or all of the rights granted to it in this Section 4.A to a subcontractor for the development of the Output.

B. _Covenant to Implementers._ You irrevocably covenant that, subject solely to the condition described below, You will not assert any of Your Essential Patents against that portion of a product that implements any of Your Contributions to the Specification which were made in recorded form, provided that such product satisfies the requirements of Section 5.B.1(a)-(c). The foregoing covenant shall not apply and You are not obligated to make any assurance, covenant or commitment not to assert or enforce any or all patent rights against any individual, corporation or other entity that asserts, threatens or seeks at any time to enforce its own or another party's Essential Patents against a product which satisfies the requirements of Section 5.B.1(a)-(c). This non-assertion covenant will survive, even if You subsequently withdraw from the Expert Group. This statement is not an assurance either (i) that any of Your issued patents cover a Java or Non-Java Implementation or are enforceable, or (ii) that a Java or Non-Java Implementation would not infringe patent rights of any third party.

C~~B~~. _Grants to Other Expert Group Members_. You hereby grant to Member represented on any Expert Group on which You are also represented under Your applicable patents, copyrights and trade secret rights which You currently have or may acquire in the future a perpetual, non-exclusive, worldwide, royalty-free, fully paid-up, irrevocable license to use Your Contributions for research and development purposes related to the activities of such Expert Group. Similarly, Sun makes the same grant to You with respect to its Contributions concerning Expert Groups on which You are represented. These grants, from You to other Members and from Sun to You, shall not include distribution to third parties of early access implementations of the Spec under development by Your Expert Group until the draft Spec has been released for Public Review.

D~~C~~. _Contributions from Sun and Ex-Spec Leads_. For Contributions from Sun under JSRs for which You are the Spec Lead, Sun hereby grants to You the same license with respect to Sun's Contributions as does any other member with respect to its Contributions pursuant to Section 4.A. Similarly, if with respect to a particular JSR You cease to be the Spec Lead before that JSR is completed, then any and all of the comments, specifications, materials or ideas provided by You hereunder, to the extent incorporated into any form of Output, shall be considered Contributions licensed pursuant to Sections 4.A and 4.B.

E~~D~~.   Withdrawal of Contributions due to Change in Announced License Terms. If the Spec Lead for an Expert Group in which You are participating makes significant changes to the terms and conditions of any license granted pursuant to Sections 5.B or 5.F below after those terms and conditions are first disclosed pursuant to the Process, then You may, upon giving notice to the Specification Lead and the PMO, withdraw any copyright or patent licenses concerning Your Contributions granted pursuant to Section 4.A.I or 4.A.II above (but not patent licenses granted by You pursuant to Section 6 below).

5.   Intellectual Property; Out-Bound.

A.   Ownership; Obligation to Publish Spec. Subject to each contributor's underlying rights in its own Contributions, the Spec Lead(s) for a particular JSR at the time of the final release of the Specification shall own the copyright to the final Spec generated pursuant to that JSR under United States copyright law. Promptly after its completion (i.e. passes Final Approval Ballot), such Spec will be published by the PMO at the JCP Web Site.

B.   License to Create Independent Implementations. For any Specification produced under a new JSR, the Spec Lead for such JSR shall make the following commitments ~~offer to grant a perpetual, non-exclusive, worldwide, fully paid-up, royalty free, irrevocable license under its licensable copyrights in and patent claims covering the Specification (including rights licensed to the Spec Lead pursuant to Section 4.A and 4.C)~~ to anyone who wishes to create and/or distribute an Independent Implementation of the Spec:

1.   offer to grant a perpetual, non-exclusive, worldwide, fully paid-up, royalty-free, irrevocable license under such Spec Lead's licensable copyrights, where~~.~~ ~~S~~such license ~~will~~ authorizes the creation and distribution of Independent Implementations provided such Independent Implementations:

(a)   fully implement the Spec(s) including all its required interfaces and functionality;

(b)   do not modify, subset, superset or otherwise extend the Licensor Name Space, or include any public or protected packages, classes, Java interfaces, fields or methods within the Licensor Name Space other than those required/authorized by the Spec or Specs being implemented; and

(c)   pass the TCK for such Spec.

2.   covenant not to assert any essential patent rights against anyone who creates and/or distributes an Independent Implementation of the Spec provided that conditions (a) - (c) under section 5.B.1 above are met.

With respect to Specifications which explicitly authorize Non-Java Implementation, (i) condition 5.B.1(b) above does not apply to such implementations, and condition (c) is waived for the Non-Java Implementation unless the Specification expressly states that passing the TCK is necessary for Non-Java Implementations.

3.   the commitments described under Section 5.B.1 and 2 above with respect to Independent Implementations for which the development process includes public disclosure of source code (and optionally binaries) before such implementation is complete, but only where such implementation is of the most recent draft of the Specification and provided that any distribution of such implementation must be clearly and

prominently marked with the word "UNTESTED" or "EARLY ACCESS" or "INCOMPATIBLE" or "UN-STABLE" or "BETA" in any list of available builds and in proximity to every link initiating its download, where the list or link is under Licensee's control. Any such distribution must also include a clear notice that states that the implementation is of a draft Specification developed under the Java Community Process (JCP) or, if based on a Final Specification, that the implementation is under development and not complete. The notice must state the implementation is not compatible with any JCP Specification.

4.   the commitments described under Section 5.B.1 and 2 above with respect to Early Commercial Implementations generated under Transplant JSRs, provided that such Early Commercial Implementation is of the most recent draft of the Specification and provided further that such implementation does not make any use of the Licensor Namespace. In the interest of supporting backwards compatibility, provided that an Early Commercial Implementation authorized by this paragraph that corresponds to the most recently available version of the Specification continues to be available, the commitments made hereunder by the Specification Lead shall continue to apply to Early Commercial Implementations of earlier versions of the Specification.   No obligations are created for the Specification Lead under this Section 5.B.4 with respect to implementations which make use of the Licensor Namespace.

For the purposes of this Section 5.B, patent claims covering the Specification shall mean any claims for which there is no technically feasible way of avoiding infringement in the course of implementing the Specification.

C.   Reciprocity.

I.   The Spec Lead may condition its offer of the covenantlicense described in Section 5.B.2 upon the ibeneficiaryts licensee's commitment to offer to any party seeking a license (or equivalent covenant) from such licensbeneficiaryee, if requested, a license (or equivalent covenant) under such licenseeparty's patent rights which are or would be infringed by all technically feasible implementations of the Spec on terms consistent with the provisions of Section 6.A excluding, for non-Members, its subsections (bb) and (ee).

II.   The Spec Lead also may condition its offer of the covenantlicense described in Section 5.B2 under its own applicable patent rights (whether or not necessarily infringed, and not including rights licensed to the Spec Lead by other Contributors pursuant to Section 4.A.II) on a licensee (or equivalent covenant) not initiating a claim that the Spec Lead, has, in the course of performing its responsibilities as the Spec Lead, induced any other entity to infringe the beneficiarylicensee's patent rights.

III.   No provision of this Section 5.C shall be construed to compel, restrict or limit the terms on which the Spec Lead may grant or offer to grant patent licenses (or make non-assertion covenants) concerning its own applicable patent rights (as opposed to rights licensed to the Spec Lead by other Contributors pursuant to Section 4.A.II) whose infringement can be avoided in a technically feasible manner when implementing the Spec.

Other than as set forth above, the Spec Lead agrees not to impose any contractual condition or covenant as part of the Spec License that would limit or restrict the right of any licensee to create or distribute such Independent Implementations. The Spec License may otherwise include as additional terms and conditions only those that do not relate to the license grant but govern issues such as, without limitation, confidentiality, applicable law, dispute resolution, export control and government rights in data provisions, warranties and liabilities. In addition, the Spec Lead for each JSR hereby agrees that it will not use the rights

granted or licensed to it per Section 4.A to create or distribute an Independent Implementation of any Spec produced under a JSR for which it is the Spec Lead that does not satisfy the requirements of subparagraphs (a) through (c) above.

D. Continued Availability. If the Specification produced under a new or revised Umbrella JSR adopts by reference a Specification that previously had been available for implementation as an Independent Implementation ("Stand-Alone Component"), then the Spec Lead for the Stand-Alone Component may determine in its reasonable discretion and in accordance with the Process whether or not to make the Stand-Alone Component available for Independent Implementation in its revised form as promulgated under the Umbrella JSR. The Spec Lead for the Stand-Alone Component shall not impinge on the right of a third party to create an Independent Implementation of the most recent prior version of the Stand-Alone Component.

E. Downstream Licenses for Independent Implementations.   A Downstream Licensee need not include requirements (a)-(c) from Section 5.B or any other particular "pass through" requirements in any license the Downstream Licensee grants concerning the use of its Independent Implementation or products derived from it. However, except with respect to implementations of the Specification (and products derived from them) by the Downstream Licensee's licensee that satisfy requirements (a)-(c) from Section 5.B, the Downstream Licensee may neither: (i) grant or otherwise pass through to its licensees any licensable copy-rights orand covenants concerning patent rights of the Spec Lead; nor (ii) authorize its licensees to make any claims concerning their implementation's compliance with the Spec in question.

F. Licensing of RI and TCK.

I. The Spec Lead (including Sun) for a JSR approved by the JCP shall offer to any interested party licenses concerning the RI and TCK -- and also the TCK separately when developed under any JSR submitted hereafter -- on terms and conditions that are non-discriminatory, fair and reasonable. Except as otherwise set forth in this Section 5.F, such terms and conditions shall be determined by the Spec Lead in its reasonable discretion.

II. With respect to the RI, the terms and conditions offered by the Spec Lead shall include, at a minimum:

(a) under the Spec Lead's copyrights in the RI, the right to copy, modify the source code portions of (excluding any Shared Code, except as provided for in Section 5.G) and distribute the RI, in whole or in part, as part of a complete binary implementation of the corresponding Spec that satisfies requirements (a) – (c) of Section 5.B; and

(b) under any patent claims licensable by the Spec Lead for which there is no technically feasible way of avoiding infringement in the course of implementing the Specification or in the use of unmodified RI code, the right to make, have made, use, offer to sell, sell or import such implementation; pro-vided, however, the license offered pursuant to this Section 5.F.II may be conditioned on the licensee's grant-ing a reciprocal license to (or not initiating a claim against) the Spec Lead or its licensees concerning any patent claims licensable by such licensee for which there is no technically feasible way of avoiding infringe-ment in the course of implementing the Specification or in the use of unmodified RI code.

III.   With respect to the TCK when licensed separately from the RI, for a Qualified Not-for-Profit or Qualified Individual there shall be no charge for the license offered by the Spec Lead.

IV.   If the Spec Lead limits the scope of the licenses granted pursuant to this Section 5.F, such limitations shall not be more extensive than: (i) they authorize the distribution of only such products derived from the RI as satisfy substantially the same compatibility requirements as set forth in Section 5.B(a)-(c) and any applicable TCK Users Guide; and (ii) they include provisions concerning the licensing or non-enforcement of patent claims as stringent on licensees of the RI and TCK as the provisions of Section 6 below are on You. The Spec Lead shall not include as part of the foregoing license any additional contractual condition or covenant concerning compatibility that would limit or restrict the right of any licensee to create or distribute products derived from the RI. Notwithstanding the foregoing, neither this subparagraph IV nor Section 5.F.II (concerning reciprocal patent licensing, shall be understood to require Sun to modify license agreements for Java technology that Sun has in place, or to modify or replace in future license agreements for Java technology provisions comparable to those currently in place, where the RI and/or TCK would be covered by such license agreements. This proviso shall not be understood to exempt Sun, when it is the Spec Lead, from the obligation to license the TCK separate from the corresponding RI code when the Spec is developed under any JSR submitted hereafter.

V.   No provision of this Section 5.F shall be unders' he

A. <u>Grant</u>. With respect to the Output of JSRs for which You are not the Spec Lead, <u>but excluding any Non-Java Implementations,</u> You (on behalf of yourself and any party for which You are authorized to act with respect to this Agreement) hereby agree to grant under each patent claim that You and/or such party own, will own or have the authority to license, after adoption of the Spec, to all licensees under Section 5 and on fair, reasonable and non-discriminatory terms a perpetual, non-exclusive, non-transferable, worldwide license within the scope of the licenses granted in Sections 5.B and 5.F to:

(a) use the TCK; and

(b) where there is no technically feasible alternative that would avoid infringing the patent claim, either use the licensed RI, in whole or in part, as part of an implementation of the Spec(s) in question that satisfies requirements (a)–(c) of Section 5.B or develop, distribute, and use an Independent Implementation;

However, You shall not be required to grant a license:

(aa) to a licensee not willing to grant a reciprocal license under its patent rights to You and to any other party seeking such a license with respect to the enforcement of such licensee's patent claims where there is no technically feasible alternative that would avoid the infringement of such claims (with respect to Your exercise of the rights described in subparagraphs (a) through (c) immediately above);

(bb) if the Spec arises from a JSR for which Community Review has closed after termination of your membership in the JCP;

(cc) with respect to any portion of any product and any combinations thereof the sole purpose or function of which is not required in order to be fully compliant with the Spec;

(dd) with respect to technology that is not required for at least one of the following: using the Reference Implementation, using the TCK, or developing, distributing or using an Independent Implementation; or

(ee) if, with respect to the Spec (or RI or TCK related thereto) in question, You identify prior to Public Review the nature of the perceived infringement with specificity as set forth below. However, if the draft Spec in question is modified in response to comments received during Public Review, then You may exercise the right granted pursuant to this subparagraph (ee) not to grant a license but only with respect to those of your patents for which the perceived inability to avoid their infringement arose as a result of changes made to the Spec in response to such comments, and only if the notice and disclosure requirements of this subparagraph (ee) are met prior to Final Approval Ballot. For issued patents for which you invoke this subparagraph (ee) You must disclose in writing to the Spec Lead and the PMO the country in which the patent issued and the patent number for such patent, and for pending patent applications You must disclose, also to the Spec Lead and the PMO the country in which the patent was filed, as well as the serial number and filing date for the application. In addition, for pending applications either of the following shall be disclosed to the Spec Lead and the PMO: (1) a copy of the pending patent application; or (2) identification of the portion(s) of the Spec to which the claims in the pending application are expected to apply, and a copy of the broadest such

claim filed in the pending application. For any patent or patent application for which You elect not to grant a license pursuant to this subparagraph (ee), in addition to identifying such patent or patent application you must also identify the portion of the Spec where you think the infringement would arise and explain the nature of the infringement. For the avoidance of doubt, you may only invoke your rights under this Section (to refuse to license) with respect to the portion of the Spec identified in your disclosure document.

Any disclosure to the Spec Lead and the PMO of Your election not to grant a license pursuant to subparagraph (ee) above shall be considered to remain in effect unless and until You provide notice to the Spec Lead and the PMO that You are revoking such election.

Subject to Section 6.C below, the provisions required of and extended to You under this Section 6.A shall apply to Sun with respect to Specifications under JSRs for which Sun is not the Spec Lead.

B.   Disclosure. In addition to the disclosure requirements of Section 6.A(ee), each individual who represents a Member on an Expert Group shall disclose to that Expert Group promptly after he or she acquires such knowledge the existence of any issued patents the infringement of which, to the individual's actual knowledge, cannot be avoided in a technically feasible manner in order to implement such Spec. The individual does not represent that they have knowledge of all potentially pertinent patents or other intellectual property rights owned or claimed by a Participant.

C.   Effect on Existing Agreements. No provision of this Section 6 shall be understood to require Sun to modify license agreements for Java technology that Sun has in place, or to modify or replace in future license agreements for Java technology provisions comparable to those currently in place, with respect to Sun's granting of license for (or covenants not to assert) its patent claims where there is no technically feasible alternative that would avoid the infringement of such claims (with respect to Your exercise of the rights described in Section 6.A.[a]-[c]).

7.   No Obligations. Except as expressly set forth herein, neither this Agreement, nor any disclosure of information hereunder, in any way: (i) grants to Sun, You, or any other party any right or license under any copyright, patent, mask work, trademark or other intellectual property right now or hereafter owned or controlled by the other party; (ii) obligates You or Sun to disclose or receive any information, perform any work, or enter into any license, business engagement or other agreement; (iii) limits You or Sun from developing, manufacturing or marketing products or services which may be competitive with those of another Member or any other party; (iv) creates any joint relationship or authorizes You or Sun to act or speak on behalf of the other; or (v) limits You or Sun from entering into any business relationship with other parties.

8.   Use of Trademarks. Subject to any other rights and obligations You may have pursuant to other agreements with Sun with respect to the use of trademarks owned or otherwise licensable by the Sun, You may refer to Sun's Java technology or programming language to the same extent as the general public, provided that such reference is not misleading or likely to cause confusion. The Sun Trademark and Logo Usage Requirements are currently available on the web at http://www.sun.com/policies/trademarks.

9.   Confidentiality.   Information that is disclosed among Members as a direct consequence of their participation in the JCP, including, for example, information disclosed among participants in an Expert Group

or information disclosed among Member representatives serving on an Executive Committee, shall not be considered confidential. For the avoidance of doubt, RIs and TCKs (including early access versions thereof) and other output licensed by the Specification Lead pursuant to Section 5.F shall not be subject to this provision.

A.   Duty of Confidentiality. Prior to Public Review, or other public dissemination of the Spec by the Spec Lead (which the Spec Lead may authorize unless prohibited or otherwise limited by the Process), or the elapse of three years from the date of disclosure in the case of Information exchanged within the Expert Group and not incorporated into the Spec, Confidential Information shall neither be: (i) disclosed to third parties that are not also Members; nor (ii) used for any purpose unrelated to the goals of the JCP which include, for example, the development or review of draft Specifications and development of commercial products or services intended for use in conjunction with compliant implementations of the Spec. A receiving party's obligations to protect Confidential Information shall expire upon release of the pertinent Spec for Public Review or other public dissemination of the Spec by the Spec Lead, except for Confidential Information exchanged within the Expert Group and not incorporated into the Spec, which shall be maintained as confidential for a period of three (3) years after disclosure.

B.   Limitations. This Agreement imposes no obligation upon the receiving party with respect to Information which: (a) was in the possession of, or was known by, the receiving party prior to its receipt from disclosing party, without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by the receiving party from a third party, without an obligation to keep such information confidential; or (d) is independently developed by the receiving party without use of Information disclosed by another party. Disclosure of Information by the receiving party is not prohibited if prior notice is given to disclosing party and such disclosure is: (a) compelled pursuant to a legal proceeding or (b) otherwise required by law. Parties may disclose Information to subsidiaries and/or to third party contractors who have entered into a written confidentiality agreement at least as restrictive as the terms of this Section 9.

C.   Residuals. This Agreement is not intended to prevent the receiving party from using Residual Knowledge, subject to any valid patents and copyrights of the disclosing party. Residual Knowledge means Information that is retained in the unaided memories of the receiving party's employees who have had access to Information. Further, both parties recognize that their receipt of Information under this Agreement shall not create an obligation in any way limiting or restricting the work assignments of employees within either party's organization.

10.   Term and Termination. This Agreement shall commence on the Effective Date and, unless terminated earlier by You in Your discretion (upon providing Sun with written notice), continue for a period of one (1) year, and shall automatically renew each anniversary date thereafter until either party provides notice to the other of its intent to terminate the Agreement at least sixty (60) days prior to the next anniversary date. In such event, the agreement shall terminate on such anniversary date. Notwithstanding any termination or expiration of this Agreement, however, your surviving obligations (see Section 13) shall continue to apply with respect to JSRs commenced during the term of this Agreement. In addition each version of this Agree-

ment shall continue to apply with respect to any JSR approved for development while such version was in effect.

11.   Publicity. Except for those public announcements (and other communications having a similar effect) made pursuant to the Process, no public announcements regarding the development of any Spec may be made by You without the concurrence of the Expert Group for such Spec, until the Spec has been released for public review.

12.   Disclaimer of Warranties and Special Damages.   INFORMATION AND ANY CONTRIBU-TIONS ARE DELIVERED "AS IS", AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT ARE HEREBY DISCLAIMED. NO PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES BY REASON OF ANY ALLEGED BREACH OF THIS AGREEMENT BASED ON ANY THEORY OF LIABILITY.

13.   Survival. The parties' obligations under Sections 4, 5, 6, 9, 11 and 12 shall survive any termination of this Agreement.

14.   Government Employees.   Notwithstanding any provision to the contrary in the Agreement, use and license rights to the United States Government's interest in any applicable patent rights developed in whole or part by its employees are subject to and governed by Federal law and regulation. Terms of this Agreement are applicable to Federal employees or agencies to the extent that they do not conflict with Federal law or regulation, and if You are a Federal agency You agree to exercise whatever discretion granted to You by federal law and regulation to make such patent rights available on terms consistent with the principles of this Agreement.

15.   Miscellaneous. This Agreement, including Exhibit A, constitutes the entire agreement between the parties concerning its subject matter with respect to any JSR commenced after the Effective Date, except for any license agreement between You and Sun concerning its Java technology, which shall take precedence to the extent of any conflict between its intellectual property terms and those of this Agreement. All additions or modifications to this Agreement must be made in writing and must be signed by an authorized representative of each party. The parties agree to comply strictly with all applicable export control laws and regulations. Any action related to this Agreement will be governed by California law, excluding choice of law rules, provided, however that neither party has consented to the jurisdiction of any court located in the other party´s country of incorporation. This Agreement may be signed in one or more counterparts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives.

MEMBER: SUN MICROSYSTEMS, INC:

Signature: _____   Signature:_____

Name: _____   Name: _____

DRAFT – FOR DISCUSSION PURPOSES ONLY

Title: _____   Title: _____

Date: _____   Date: _____

JAVA SPECIFICATION PARTICIPATION AGREEMENT

Exhibit A

Participant Contact Information

This JSPA must be executed by Your authorized representative and returned by mail or facsimile to the following Sun contact for execution by Sun:

> Program Management Office
> Java Community Process
> Sun Microsystems, Inc.,
> 4150 Network Circle
> Santa Clara, CA 95054
> MS: SCA15-18
> Phone: +1 408 276 7851
> Facsimile: +1 408 521 2016

Please identify a primary employee who can be contacted by Sun regarding matters relating to Your participation in the JCP, and your contact for billing information. Please print clearly:

1.   Primary Contact Person:

        Name: _____

        Title:_____

        Email Address:_____

        Telephone Number:_____

        Fax Number:_____

2.   Accounts Payable Contact Person:

        _____

        Corporate Name:

        _____

        Accounts Payable Contact Address:

        _____

        _____

        _____

        Email Address:_____

        Telephone Number:_____

        Fax Number:_____