

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 _____ of _____ (“Effective Date”). The parties agree as follows:

1. Participation.

A. Sun has established a formal Java specification development process (“Process”), which is described on the World Wide Web at ~~url~~<http://developer.java.sun.com/developer/aboutJava/jepA-communityprocess/> and which may be revised by Sun from time to time in accordance with terms set forth in the Process document, provided that no such revisions shall apply to any Specification then underway. Upon execution of this Agreement by the parties, You are authorized to participate in accordance with the Process (as an individual or through one of your employees, including Your Subsidiary’s employees) on the development of any Specification and corresponding Reference Implementation (“RI”) and Technology Compatibility Kits (“TCK”). For the purposes of this Agreement, “Subsidiary” shall mean any company established now or in the future of which more than fifty percent (50%) of the ordinary stock or voting stock is owned or controlled, directly or indirectly, by the respective receiving party. This Agreement shall control in the event of any conflict between it and the Process. Terms defined in the Process document (for example, “Expert”) have the same meaning when used in this Agreement.

B. It is the intent of the Process that all ~~Participants~~ Members execute a JSPA with substantially similar terms and conditions with respect to Sections 3 (Intellectual Property), Section 4 (Confidentiality) and Section 6 (Publicity) and ~~Section 7 (Expert Group Additional Terms and Conditions)~~, because these provisions affect the rights and obligations of the community of ~~Participants~~ Members at large. However, the JSPA is an evolving document and is updated and re-posted on the JCP website on a periodic basis. ~~Participants~~ Members may elect to execute a newer version of the JSPA at any time, but are not obligated to do so until their current JSPA expires or is otherwise terminated.

~~2. **Process Cost Sharing.** You agree to pay the following applicable participation fee within thirty (30) days after the Effective Date and annually thereafter during the term of your participation. Initial the category that applies to you:~~

2. **Process Cost Sharing.** You agree to pay to Sun the following applicable, annual fee for each term (per Section 5) 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.

<u>Participant Member Category:</u>	<u>Applicable Annual Fee</u>	<u>Initial:</u>
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	_____

3. Intellectual Property.

A. Contributions. ~~Except Subject to your underlying rights in your own Contributions (as defined below), and except as otherwise provided in Section 3.C below, You hereby grant to Sun and the Specification Lead under Your applicable intellectual property rights which you currently have or may acquire in the future, a perpetual, non-exclusive, worldwide, royalty-free, fully paid-up, irrevocable license to: (i) incorporate into current and future versions of the Specifications and associated Reference Implementations and Technology Compatibility Test Suites Kits (collectively “Output”) any and all of the comments, specifications, materials or ideas (“Contributions”) to the extent incorporated into any form of Output) provided by You hereunder; (ii) copy, disclose and distribute the Specification (including Contributions) for Participant Community Review and Public Review; and (iii) make, or have made, use, copy, modify, develop, license (with rights to sublicense), offer to sell, sell, transfer, import, and otherwise distribute the Contributions as part of the Output, on terms consistent with those specified in Section 3 B below. Sun and the Specification Lead may sublicense or assign any or all of the foregoing rights to a subcontractor for the development of the Output.~~

B. Ownership and Licensing of Output.

I. Sun and the Specification Lead shall jointly own the copyright to the final Specification under United States copyright law. Sun will require that the final Specification be published promptly after ~~completion, without restriction~~ completion as a copy-righted work. A pointer to each final Specification will be posted at <http://developer.java.sun.com/developer/aboutJava/jepcommuni-typrocess/>. In addition, ~~Sun~~ Sun will require, or You if you are the Specification Lead ~~to for an Expert Group~~, shall grant a perpetual, non-exclusive, worldwide, fully paid-up, royalty free, irrevocable license under ~~the grantor's~~ applicable intellectual property rights, ~~for~~ to allow anyone to implement each Specification for which it is determined in accordance with the Process that a fully ~~compatible-com-~~patible implementation can be implemented without use of ~~its-the~~ corresponding Reference Implementation ("Independent Implementations"). Such license will authorize the ~~development-creation~~ development and distribution of, ~~Independent Implementations, of Independent Implementations~~ provided that ~~they-they~~: (i) fully implement the Specification without modifying, subsetting or extending the public class or interface declarations whose names begin with "java" or "javax" or their equivalents in any subsequent naming convention; (ii) implement all required interfaces and functionality of the Specification; (iii) ~~do not only~~ include ~~additional-as part of such Independent Implementation~~ the packages, classes or methods ~~as part of specified by~~ the Specification; (iv) pass the Technology Compatibility Test Suites Kit for such Specification; and (v) are designed to operate on a Java platform which is certified to pass the complete Java™ Compatibility Kit for such Java platform. Specifications for a required component of a Java platform or profile may only be implemented as part of a complete Independent Implementation of such Java platform or profile, unless such Specification was previously available separately. The foregoing requirements will also apply to Independent Implementations created by Sun and the Specification Lead.

II. The ~~Reference Implementation-RI~~ and ~~Compatibility Test Suites-TCK~~ together, or the Compatibility Test Suites-TCK separately, will be licensed by Sun or the Specification Lead as appropriate, on terms that are non-discriminatory, fair and reasonable ~~terms and conditions~~ reasonable. Such license will include the right to develop and distribute complete binary implementations of the Specification incorporating any or all of the ~~Reference Implementation-RI~~.

C. Special Patent Considerations.

I. To the extent You desire to offer a Contribution for incorporation into the Specification which Contribution contains patented technology of Yours that is technically essential to implement the Specification, and You are not willing to make such Contribution available on the terms set forth in Section 3 A above with respect to such patented technology, You may propose such Contribution to be incorporated in the Specification subject to Your prior written agreement with Sun or the Specification lead as appropriate, to generally license the patented technology to all interested parties on non-discriminatory, fair and reasonable terms, conditions and fees, granting patent rights otherwise consistent with the intellectual property rights specified in Section 3A above.

II. If the Contribution is incorporated into the Specification under this Section 3 C, the Contribution may only be included as an optional portion of the Specification, and You must agree not to assert any intellectual property rights in any interface to such Contribution defined in the Specification.

III. Each individual who represents a Participant shall disclose to the Expert Group the existence of any issued patents ~~which the individual has which, to the individual's~~ actual ~~knowledge-knowledge~~, are technically essential to implement such Specification. 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.

D. 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; (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 ~~Participant~~ 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.

E. Use of Trademarks. ~~In addition-Subject~~ to any other license rights and obligations You may have pursuant to other agreements with Sun with respect to the use of trademarks owned or otherwise licensable by 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-confusion~~. The Sun Trademark and is in accordance with the JAVA Trademark Guidelines, currently available on the World Wide Web-Logo Usage Requirements are currently available on the web at http://java.www.sun.com/nav/policies/business/trademark_guidelines.html trademarks.

4. CONFIDENTIALITY.

A. Definition. The information to be exchanged by Sun and You under this Agreement (“~~Information~~”) relates to development of the Specification and corresponding ~~Reference Implementations, RIs and Compatibility Test Suites, TCKs~~ (“~~Information~~”). In particular, ~~Information~~ is likely to take the form of draft specifications promulgated by the Specification Lead and the Expert Group, and comments relating thereto from ~~Participants, Members~~, which will be shared among ~~Participants, Members~~ pursuant to terms and conditions consistent with those of this Agreement. This Agreement applies only to such ~~Information~~, and not to any other comments, materials or ideas exchanged between You and Sun.

B. Duty of Confidentiality. The confidentiality obligations in this Agreement relate only to ~~Information~~ which is disclosed during the term of this Agreement. A receiving party’s obligations to protect ~~Information~~ shall expire upon release of the pertinent Specification for Public Review, except for ~~Information~~ exchanged within the Expert Group and not incorporated into the Specification, which shall be maintained as confidential for a period of three (3) years after disclosure. Prior to Public Review, ~~Information~~ shall not be disclosed to a third party other than another ~~Participant, Member~~ who has agreed to be bound by terms substantially similar to those of this Agreement and is involved in the effort to define the Specification. Each party shall protect ~~Information~~ of the other party and other Members using the same degree of care, but no less than a reasonable degree of care, as the receiving party uses to protect its own information of a like nature.

C. Form of Disclosure. The receiving party shall be obligated to protect only ~~Information~~: (i) disclosed in tangible form, which shall include ~~Information~~ made available over the Internet, clearly labeled as confidential or proprietary at the time of disclosure; or (ii) disclosed in non-tangible form and identified as confidential or proprietary at the time of disclosure and confirmed in a writing delivered to such receiving party within thirty (30) days after disclosure.

D. 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 4.

E. 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.

5. Term and Termination. This Agreement shall commence on the Effective Date and 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.

6. 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 Specification may be made by You without the concurrence of the Expert Group for such Specification, until the Specification has been released for public review.

~~**7. Expert Group Additional Terms and Conditions.** You agree to pay a pro rata share of the actual cost of auditing the Process for developing the Specification for which you are a member of the Expert Group. Such costs are estimated not to exceed U.S.\$50,000 for the entire Expert Group.~~

87. Disclaimer of Warranties and Special Damages. ~~Information~~ and any Contributions are delivered “AS IS”, and all representations and warranties, express or implied, including fitness for a particular purpose and merchantability, 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.

98. Survival. The rights and obligations of Sections 3, 4, ~~87~~, ~~9-8~~ and ~~10-9~~ shall survive any termination of this Agreement:

109. Miscellaneous. This Agreement, including Exhibit ~~A-A~~, constitutes the entire agreement between the parties concerning its subject matter, except for any Technology License and Distribution Agreement or Sun Community Source Code License Agreement between You and Sun, which shall take precedence to the extent of any conflict between their 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. 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.

PARTICIPANTMEMBER

SUN MICROSYSTEMS, INC.

By: _____ By:

Name: _____ Name
: _____

Title: _____ Title:

Date: _____ Date:

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Exhibit A

Participant Member Contact Information

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

~~Susan Roach~~ Onno Kluyt
Process Management Office
Java Community Process
Sun Microsystems, Inc. ~~901 San Antonio Road, MS CUP02-, Alto, CA 94303-4900~~
901 San Antonio Road,
Palo Alto, CA 94303-4900
MS CUP02-209
Phone 408-863-3388
~~Phone 408-517-5382~~ Facsimile 408-863-32283164

Please identify a primary employee who can be contacted by Sun regarding matters relating to this JSPA, and your contact for billing information:

1. Primary Contact Person:

Name: _____

Title: _____

Email Address: _____

Telephone Number: _____

Fax Number: _____

2. Accounts Payable Contact Person:

Corporate Name:

Corporate Billing Address:

Email Address: _____

Telephone Number: _____

Fax Number: _____