

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”)¹, which is described on the World Wide Web at ~~{url http://developer.java.sun.com/developer/aboutJava/jep4-communityprocess/}~~¹ and which may be revised by Sun from time to time in accordance with terms set forth in the Process document,² 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 employees³) on the development of any ~~Specification~~³ Specification and corresponding Reference Implementation (“RI”) and Technology Compatibility Kits (“TCK”).⁴ 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.³ 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.

¹ Proper url cross-reference

² Reflects JCP 2.0 change that Process is revised per the Process

³ Makes clear that employees of Subsidiaries may participate in the Process, and provides a definition of same.

⁴ “Badge” to participate includes possibility of RI and TCK work

B. It is the intent of the Process that all ~~Participants~~⁵ Members⁵ 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)~~,⁶ because these provisions affect the rights and obligations of the community of ~~Participants~~⁵ 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 ~~Participants~~⁵ Members may elect to execute a newer version of the JSPA at any time, but are not obligated to do so until their current JSPA expires or is otherwise terminated.

⁵ JCP 2.0 uses term “Member” rather than “Participant”

⁶ Old Section 7 re Audit/Funding has been deleted

~~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.⁷

~~Participant~~ Member Category:

Applicable 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	_____

⁷ Payment clock starts with payment of invoice. Also, some modest language clean-up.

3. Intellectual Property.

A. Contributions. ~~Except~~ Subject to your underlying rights in your own Contributions (as defined below),⁸ 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~~⁹ provided by You hereunder; (ii) copy, disclose and distribute the Specification (including Contributions) for Participant Community¹⁰ 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.

⁸ Clarifies that 3.A is about a license of Contributions and not a transfer of them

⁹ Clarifies that “Contributions” only mean ideas, etc. that make there way into Output.

¹⁰ JCP 2.0 uses the term “Community Review” rather than “Participant Review.”

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~~ completion¹¹ as a copy-righted work. A pointer to each final Specification will be posted at <http://developer.java.sun.com/developer/aboutJava/jepcommunityprocess/>. In addition, ~~Sun will require, or You if you are the Specification Lead to for an Expert Group, shall~~¹² grant a perpetual, non-exclusive, worldwide, fully paid-up, royalty free, irrevocable license under ~~it~~ the grantor's¹² 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~~ compatible implementation can be implemented without use of ~~its~~ the corresponding¹³ Reference Implementation (“Independent Implementations”). Such license will authorize the ~~development creation~~¹⁴ 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~~¹⁵ the Specification; (iv) pass the Technology Compatibility Test Suites Kit¹⁶ 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.

¹¹ The Ad Hoc Committee concluded that the phrase “without restriction” was confusing and inaccurate

¹² Clearer wording

¹³ Improved grammar

¹⁴ Wording choice. Not intended to have a substantive impact

¹⁵ Clearer wording

¹⁶ JCP 2.0 uses the term “Technology Compatibility Kit” rather than “Compatibiility Test Suite”

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.~~¹⁷ 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~~.

¹⁷ Clearer wording

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,~~¹⁸ 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.

¹⁸ Clearer wording

D. No Obligations. Except as ~~expressly~~¹⁹ 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 ~~ParticipantMember~~; 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.

¹⁹ Addresses a concern raised by some in the Ad Hoc Committee with the possibility of an implied patent license

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.~~ 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.sun.com/javapolicies/business/trademark-guidelines.html>trademarks.²⁰

²⁰ The changes to this section have the effect of binding the Member only to same legal standard that would exist in the absence of its having signed the JSPA.

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"~~).²¹ 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.

²¹ The defined term "Information" should include information exchanged that relates to developed of RI and TCK (as well as the Specification)

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 Members²² 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.

²² Makes clear a party's obligation to protect the Information of other Members (and not just of Sun)

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.²³

²³ The Executive Committee concluded that that this provision was no longer appropriate given that under JCP 2.0 the role previously contemplated for an outside auditor will be performed by the Executive Committee.

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:

JAVA SPECIFICATION PARTICIPATION AGREEMENT

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, Palo 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 408-863-3228 3164

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: _____