

5.1 Sun Microsystems, Inc

5.1.1 DVB MHP Test Suite License and Non-Disclosure Agreement

BETWEEN:

- (1) European Telecommunications Standards Institute, as Custodian (the "Custodian") named by Sun Microsystems, Inc., ("Licensor")
- and
- (2) the company whose name appears on the signature page hereof (the "Licensee");

WHEREAS:

- i) The Custodian has entered into the DVB Conformance Testing Custodian Agreement with the DVB Project, a not for profit association with legal personality governed by Swiss law, and Licensor;
- ii) By a decision of its Steering Board the DVB Project has adopted a specification for the Mul-timedia Home Platform ("DVB MHP Specification" as further defined below), and the Steering Board has issued its Declaration with respect to certain DVB MHP Rules, the arrangements for a custodian and an experts group, testing and certain other matters;
- iii) The Custodian has been appointed by the DVB Project to undertake a variety of activities related to the administration of the DVB MHP Conformance Testing Requirements (as defined below) as specified and approved by an experts group named by the DVB Project; and
- iv) Licensor, with Custodian acting as Licensor's agent, is willing to license certain Test Suites (as defined below) to Licensee for the limited purpose of testing and self-certifying of Implementations of the DVB MHP Specification.

IT IS HEREBY AGREED AS FOLLOWS:

Article 1 - DEFINITIONS

- 1.1 "*Affiliate*" means any subsidiary or parent company of the Licensee, as well as any entity that owns or controls Licensee or that is owned or controlled by Licensee.
- 1.2 "*DVB MHP Conformance Testing Requirements*" means the test programs, rules, guides, documentation and other materials determined by DVB to be used for establishing whether an implementation of the DVB MHP Specification may be certified as an Implementation.
- 1.3 "*DVB MHP Specification*" (further referred to as the "Specification") means the DVB Multimedia Home Platform as adopted by the Steering Board of the DVB Project on the date of its first adoption, and as such Specification may be amended from time to time.
- 1.4 "*DVB MHP Full Implementer*" means a legal entity that has:
 - (i) entered into a DVB MHP Test Suite License and Non-Disclosure Agreement identical (except for the identity of Licensee) to this Agreement;
 - (ii) confirmed in writing to Licensee both that such entity has entered into such agreement and that it acknowledges that any license granted by Licensee with respect to a less-than-complete implementation of the Licensor Portion is expressly limited in its scope to integration into and distribution as part of an Implementation; and
 - (iii) has provided to Custodian a Certificate of Assurance in the form attached hereto as Exhibit A.
- 1.5 "*Implementation*" means an implementation of the DVB MHP Specification that:

- (i) implements all required interfaces and functionality of the Licensor Portion;
 - (ii) does not modify or subset any file or class name or interface declaration which begins with the names "java. * " or "javax. * " (or their equivalents in any subsequent naming convention promulgated by Licensor);
 - (iii) fully satisfies the DVB MHP Conformance Testing Requirements, including but not limited to any self-certification requirement. Limitations on the supersetting and/or extending of the Licensor Name Space, and on the use of the Test Suites thereon, are set forth in Sections 2.7 and 2.1(a), respectively.
- 1.6 *"Incomplete Implementation"* means an implementation of the DVB MHP Specification that implements less than all the required interfaces and functionality of the Licensor Portion.
- 1.7 *"Licensor Portion"* means those Java TM technology specifications listed in Exhibit B hereto, as amended by DVB and Licensor from time to time, which are published by Licensor and to which the Licensee is referred by the DVB MHP Specification.
- 1.8 *"Test Suites"* means the test suites licensed hereunder, as may be revised by Licensor during the Term, that are licensed by Licensor to the Custodian and included by the Custodian as part of the DVB MHP Conformance Testing Requirements.
- 1.9 *"Term"* means the term of the Agreement as specified in Article 6.1.

Article 2 - LICENSE GRANTS

2.1 Test Suite License.

a. Limited Grant.

Conditioned upon Licensee's full compliance with the obligations set forth in this Agreement, including this Article 2 and Article 4, the Custodian, on behalf of Licensor as licensor, hereby grants, as of the Effective Date, to the Licensee under Licensor's applicable intellectual property rights (excluding trademarks) a limited, non-exclusive, non-transferable, worldwide, royalty-free right and license to use the Test Suites solely for the purpose of testing and self-certifying Implementations in accordance with the DVB MHP Conformance Testing Requirements, which shall include the right to test Incomplete Implementations that are delivered to a DVB MHP Full Implementer for subsequent integration and distribution as part of an Implementation distributed by such Full Implementer. Licensee need not require such Full Implementer to integrate and distribute an Incomplete Implementation as part of an Implementation, but Licensee may not authorize the Full Implementer to distribute Licensee's Incomplete Implementation unless it is integrated into and distributed as part of Implementation.

Nothing in the foregoing shall be understood to grant a license for Licensee to use the Test Suites in connection with an implementation of DVB MHP which implements features or functionality not required by the MHP Specification ("Additional Functionality") where the Additional Functionality is implemented in the Licensor Name Space, unless either of the following two conditions are met:

1. the Licensor has separately licensed the Licensee to implement the Additional Functionality in the Licensor Name Space; or
2. no license is required from Licensor to authorize Licensee to implement the Additional Functionality in the Licensor Name Space.

Licensor, as the licensor, asserts that such license is not granted hereunder and is required in all cases where Additional Functionality is implemented within the Licensor Name Space. To the extent to which Licensor offers to other licensees a license agreement authorizing the use of the Test Suites on such implementations, Licensor agrees to offer such license to Licensee on terms that are fair, reasonable and non-discriminatory.

Licensor reserves every right to take legal action against Licensee if Licensee uses the Test Suites in breach of this Agreement or outside the scope of the licenses granted herein. Similarly, Licensee reserves every right to take legal action to preserve its rights with respect to the use of the Test Suites.

For the purposes of this Agreement, "Licensor Name Space" shall mean any file or class name or interface declaration which begins with the names "java. * ", "javax. * ", or "com.sun" or their equivalents in any subsequent naming convention promulgated by Licensor ("Licensor Name Space"). To the extent to which Licensor offers to other licensees a license agreement authorizing the use of the Test Suites on such implementations, Licensor agrees to offer such license to Licensee on terms that are fair, reasonable and non-discriminatory.

b. Additional Limitations.

For the avoidance of doubt, Licensee acknowledges and agrees that is not licensed hereunder to:

1. distribute the Test Suites to any third party;
2. modify or create derivative works of the Test Suites, or, except as other provided by law, disassemble or decompile binary portions of the Test Suites, or otherwise attempt to derive the source code from such portions; or
3. develop other test programs or test suites intended to validate compatibility with the Licensor Portion.

2.2 Proprietary Rights Notices.

Licensee shall not remove any copyright notices, trademark notices or other proprietary legends of Licensor or its suppliers contained on or in the Test Suites if in source code form.

2.3 Notice of Breach or Infringement.

Licensee shall notify Custodian immediately in writing when it becomes aware of any breach or violation of the terms of this Agreement.

2.4 Ownership.

Licensor retains all right, title and interest in and to the Test Suites, including any upgrades thereto provided hereunder.

2.5 Support.

Neither Custodian nor Licensor shall incur any such obligations by virtue of this Agreement to provide any support or administrative services concerning the Test Suites, including access to any subsequent releases of the Test Suites.

2.6 Use of Contractors.

Licensee may provide the Test Suites to a contractor for the limited purpose of assisting the contractor in performing services for Licensee to develop, test and self-certify Implementations in accordance with the DVB MHP Conformance Testing Requirements. Such contractor must have executed an agreement with Licensee that is consistent with Licensee's rights and obligations under this Agreement.

2.7 License to Copy and Implement Licensor Portion.

Sun hereby grants to Licensee under Sun's copyrights and trade secrets a limited, worldwide, non-exclusive, perpetual, non-transferable, royalty-free right and license to view and download the Licensor Portion, to reproduce it for internal use in conjunction with the activities contemplated hereunder, and to implement the Licensor Portion but only in the form of an Implementation; provided, however, that nothing in the foregoing shall be understood to grant a license for Licensee to implement Additional Functionality where the Additional Functionality is implemented in the Licensor Name Space The foregoing, limited license shall include the right to implement (subject to the limitations set forth above, including with respect to Additional Functionality implemented in the Licensor Name Space) Incomplete Implementations that are delivered to a DVB MHP Full Implementer for sub-sequent integration and distribution as part of an Implementation distributed by such Full Implementer. Licensee need not require such Full Implementer to integrate and distribute an Incomplete Implementation as part of an

Implementation, but Licensee may not authorize the Full Implementer to distribute Licensee's Incomplete Implementation unless it is integrated into and distributed as part of an Implementation (subject to the limitations set forth in this Section). No license is granted hereunder with respect to Incomplete Implementations that are delivered to any third party other than a DVB MHP Full Implementer for subsequent integration and distribution as part of an Implementation distributed by such Full Implementer.

2.8 No Other Grant.

Licensee acknowledges that this Agreement does not grant any right or license, under any intellectual property rights of the other party, or otherwise, except as expressly provided in this Agreement, and no other right or license is to be implied by or inferred from any provision of this Agreement or by the conduct of the parties. For example, no right, title, or interest in or to any trademarks, service marks or trade names of Licensor or Licensor's licensors is granted under this Agreement.

Article 3 - LIMITED WARRANTY AND DISCLAIMER

THE TEST SUITES ARE LICENSED "AS IS" AND ALL REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ARE HEREBY DISCLAIMED.

Article 4 - CONFIDENTIAL INFORMATION

4.1 Confidential Information.

For the purposes of this Agreement, "Confidential Information" shall include the Test Suites if in source code form, as well as any documentation and related materials thereto that are clearly marked as "Confidential" or a similar expression.

4.2 Preservation of Confidentiality.

Licensee agrees that the Confidential Information shall be used solely for the purpose specified in Article 2.1, and agrees to keep the Confidential Information strictly confidential and shall not disclose it to any other person except to an Affiliate and to its employees (who under the terms of their employment by the Licensee are subject to an obligation not to disclose confidential information of the Licensee), who have a "need to know" for the purposes specified in Article 2.1 and are made aware of the requirements of this Article 4.

4.3 Standard of Care.

Licensee shall protect the Confidential Information with the same degree of care as it normally uses in the protection of its own confidential and proprietary information, but in no case with any less degree than reasonable care. Licensee shall, at the Custodian's reasonable request, provide written assurances concerning the steps taken by Licensee and its Affiliates to preserve the confidentiality of Confidential Information.

4.4 Residual Knowledge.

Except with respect to the development of other test suites intended to validate compatibility with the Licensor Portion, which shall not mean the development of test programs as development tools that are only for Licensee's internal use, this Agreement is not intended to prevent those employees of Licensee to whom Confidential Information is disclosed pursuant to Section 4.2 from using Residual Knowledge subject to any valid patents, copyrights, and semiconductor mask rights of the disclosing party. Residual Knowledge means ideas, concepts, know-how or techniques related to the disclosing party's technology that are retained in the unaided memories of the receiving party's employees who have had access to information. An employee's memory will be considered unaided if the employee has not intentionally memorized the information for the purpose of retaining and subsequently using or disclosing it.

4.5 Identity of Licensee.

Licensee acknowledges that Custodian is obligated not to disclose Licensee's identity to Licensor except at the instruction of the Chairman of the DVB Steering

Board or in the event that Licensor provides Custodian in good faith with reasonable grounds for believing that Licensee may be in violation of its obligations hereunder.

Article 5 - LIMITATION OF LIABILITY

IN NO EVENT SHALL LICENSOR OR CUSTODIAN BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), NO MATTER WHAT THEORY OF LIABILITY, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES. FURTHER, LIABILITY FOR SUCH DAMAGE SHALL BE EXCLUDED, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. The provisions of this Article 5 allocate the risks under this Agreement between Licensor and Custodian, on the one hand, and Licensee on the other hand, and the parties have relied upon the limitations set forth herein in determining whether to enter into this Agreement.

Article 6 - TERM AND TERMINATION

6.1 Term.

The Term of this Agreement shall begin on the Effective Date and shall continue unless and until the earlier of:

- (i) termination of this Agreement pursuant to this Article 6; or
- (ii) the Test Suites cease to be included as part of the DVB MHP Conformance Requirements.

Termination of this Agreement shall not relieve Licensee of any of its obligations hereunder.

6.2 The license granted in Section 2.1 of this Agreement may be terminated by Licensor upon written notice given by the Custodian upon the occurrence of any of the following events:

- a. the Licensee or any of its Affiliates breaches any of the terms hereof or uses the Test Suites outside the scope of the license granted in Section 2.1; or
- b. there is a voluntary or involuntary filing of bankruptcy by, or similar event affecting, Licensee.

6.3 Effect of Termination.

Upon termination of this Agreement, for any reason, Licensee shall forthwith cease its use of the Test Suites and return to the Custodian all Confidential Information in written, electronic or magnetic form and any copies thereof.

6.4 No Liability for Expiration or Lawful Termination.

Neither party shall have the right to recover damages or to indemnification of any nature, whether by way of lost profits, expenditures for promotion, payment for goodwill or otherwise made in connection with the business contemplated by this Agreement, due to the expiration or permitted or lawful termination of this Agreement. EACH PARTY WAIVES AND RELEASES THE OTHER FROM ANY CLAIM TO COMPENSATION OR INDEMNITY FOR TERMINATION OF THE BUSINESS RELATIONSHIP UNLESS TERMINATION IS IN MATERIAL BREACH OF THIS AGREEMENT.

6.5 No Waiver.

The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of that provision. The rights of Licensor under this Article 6 are in addition to any other rights and remedies permitted by law or under this Agreement.

6.7 Irreparable Harm.

The parties acknowledge that a material breach of Articles 2 and/ or 4 would cause irreparable harm, the extent of which would be difficult to ascertain. Accordingly, they agree that, in addition to any other legal remedies to which a non-breaching party might be entitled, such party shall be entitled to obtain immediate injunctive relief in the event of a breach of the provisions of such Articles.

Article 7 - MISCELLANEOUS

7.1 Governing Law.

This Agreement is made under and shall be governed by and construed under the laws of the State of California, regardless of its choice of laws provisions.

7.2 Compliance with Laws.

The Licensor Code/Test Suites is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain such licenses to export, re-export or import the Technology, Documentation or Product(s) as may be required after delivery to Licensee.

7.3 Assignment.

The Custodian may upon notice to the Licensee assign this Agreement to a replacement custodian which shall have the rights and obligations as the Custodian hereunder. Licensor may assign its rights and obligations hereunder upon notice the Custodian.

7.4 Enforcement.

Licensee agrees that, in addition to the Custodian, Licensor shall have the right to enforce this Agreement.

7.5 Complete Understanding.

This Agreement, including Exhibits A, B and C (the Common Annex to the Test Suite License, Patent License, and Code License) hereto, constitutes and expresses the final, complete and exclusive agreement and understanding between Licensee and the Custodian, and between Licensee and Licensor, with respect to its subject matter (that is, the granting of licenses under Licensor's applicable intellectual property rights [which shall exclude any trademarks] to use the Test Suites with respect to testing and self-certifying Implementations and testing Incomplete Implementations that are subsequently integrated into and distributed as part of an Implementation distributed by a DVB MHP Full Implementer, and to view and down-load the Licensor Portion, to reproduce it for internal use in conjunction with the activities contemplated hereunder, and to implement the Licensor Portion but only in the form of an Implementation), and supersede all previous communications, representations or agreements, whether written or oral, with respect to the subject matter hereof.

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

Custodian:
By: _____

Licensee:
By: _____

Name: _____

Name: _____

(Print or Type)(Print or Type)

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A TO DVB MHP TEST SUITE LICENSE AND NON-DISCLOSURE AGREEMENT

Certificate of Assurance

[DATE]

To the Custodian under the DVB Conformance Testing Custodian Agreement:
European Telecommunications Standards Institute
650 Route des Lucioles
06921 Sophia Antipolis, FRANCE

Ladies and Gentlemen:

Certificate of Assurance of DVB Full Implementer

We hereby deliver this Certificate under one or more of the following Agreements, in each case between us and you, as Custodian named by Sun Microsystems, Inc: The DVB MHP Test Suite License and Non-Disclosure Agreement; The DVB MHP Code License and Non-Disclosure Agreement; the DVB MHP JavaTest License Agreement; the DVB MHP Patent License Agreement; and the DVB MHP \$1 Patent License Agreement. In this Certificate, "Agreement" means one or more of such agreements; and all capitalized terms in this Certificate, unless otherwise defined, have the same meaning as in the Agreement.

We hereby represent and warrant that

- (A) we are a DVB MHP Full Implementer;
- (B) we have entered into a DVB MHP Test Suite License and Non-Disclosure Agreement;
- (C) this is the Certificate of Assurance to be provided to the Custodian under the Agreement; and
- (D) this Certificate has been prepared and signed by a person who is properly authorised to sign it.

We further acknowledge that any license granted by Licensor in respect of a less-than-complete implementation of the Licensor Portion is expressly limited in its scope to integration into and distribution as part of an Implementation.

An entity which delivers an Incomplete Implementation to us, as a DVB MHP Full Implementer, is entitled to rely on this Certificate. If the Incomplete Implementation integrates Incomplete Implementations produced by other entities, such other entities may also rely on this Certificate.

Sincerely yours,

DVB MHP FULL IMPLEMENTER

by: _____
its

EXHIBIT B TO DVB MHP TEST SUITE LICENSE AND NON-DISCLOSURE AGREEMENT

Licensors Portion

The following API signatures constitute the Licensors Portion referenced by the DVB MHP TEST SUITE LICENSE AND NON-DISCLOSURE AGREEMENT ("Agreement", and to which this document is Exhibit B). In most cases the granularity of this list is at the level of Java packages (as specified in "The Sun Specifications for DVB" ISBN 1-892488-25-6), in which case the entire package is listed. With respect to the OEM Personal Java TM Application Environment v. 1.2a Specification, however, the description is more precise indicating specific elements in the Java package that are included within the Licensors Portion.

Java TV API version 1.0 specification

javax.tv.graphicsjavax.tv.locator
javax.tv.mediajavax.tv.net
javax.tv.servicejavax.tv.service.guide
javax.tv.service.navigationjavax.tv.service.selection
javax.tv.service.transportjavax.tv.util
javax.tv.xlet

Java Media Framework API version 1.0 specification

javax.mediajavax.media.protocol

Java Secure Socket Extension version 1.0.2 specification

javax.net
.....javax.net.ssl
javax.security.cert

The OEM Personal Java Application Environment version 1.2a specification

java.awtjava.awt.event
java.awt.imagejava.io
java.langjava.lang.reflect
java.mathjava.net
java.rmijava.security
java.security.certjava.security.spec
java.utiljava.util.zip

The contents of these packages are as specified in the sections of the PJAE 1.2a specification entitled "JAE 1.1.8 API Specification" and "JAE 1.1.8 API Constants", except for:

The package java.security The package java.security.spec

The package java.security.cert The class java.lang.SecurityManager

The method java.awt.Toolkit.createImage(java.lang.String)

The method java.awt.Toolkit.createImage(java.net.URL)

The method java.awt.Toolkit.getImage(java.lang.String)

The method java.awt.Toolkit.getImage(java.net.URL)

The class java.io.FilePermission The class java.io.SerializablePermission

The class java.lang.RuntimePermission..... The class
java.util.PropertyPermission

The class java.net.SocketPermission

These elements are as specified or Personal Java in the "The OEM Specification
for the Personal Java ™ Application Environment (PJAE) Version 1.2a."

The exact elements for the PJAE packages are as set forth in Appendix 1 to this
Exhibit B.*

* Appendix 1 is available at www.mhp.org/technical_essen

EXHIBIT C TO DVB MHP TEST SUITE LICENSE AND NON-DISCLOSURE AGREEMENT

Common Annex to the Test Suite License, Patent License, and Code License

In this Common Annex, capitalized terms shall have the means for such terms in the Agreement. Licensor and Licensee have agreed to the following explanatory statements relating to the Agreement and to certain other agreements.

1. DVB MHP Test Suite License and Non-Disclosure Agreement

- 1.1 Condition 2 of Article 2.1 must be interpreted to mean that if Licensor has no intellectual or industrial property that reads on supersetting in the Java name space, the Licensee is licensed to use the Test Suite to test and self-certify Implementations in accordance with DVB MHP Conformance Testing Requirements even if these Implementations include Additional Functionality in the Licensor Name Space.
- 1.2 The assertion in Article 2.1 does not contractually require Implementers who wish to rely on condition 2 to approach the Licensor before proceeding with implementation, to ascertain whether condition 2 is met.
- 1.3 With respect to the definition of "Licensor Name Space", it is agreed that for the purposes of this Agreement the term Licensor Name Space shall not include any public class or interface declaration whose names begin with com.[name of Licensee].*, org. dvb.*, or org.havi.*.

2. DVB MHP Patent License

- 2.1 Article 2.2(ii) cannot be interpreted to allow Licensor to terminate the royalty-free license solely on the ground that the Licensee brings a claim under its Essential Patent Claims against Licensor's using, making, having made, important or distributing Licensor Materials (whether in whole or in part) other than for or in Implementations.
- 2.2 With respect to the definition of "Licensor Name Space", it is agreed that for the purposes of this Agreement the term Licensor Name Space shall not include any public class or interface declaration whose names begin with com.[name of Licensee].*, org. dvb.*, or org.havi.*.

3. DVB MHP Code License and Non-Disclosure Agreement

- 3.1 The definition of Confidential Information in Article 4.1 shall not include information that the Licensee can document
 - (i) is now or later becomes generally known to the public other than through the receiving party's fault;
 - (ii) is known by the receiving party at the time of receipt;
 - (iii) is lawfully obtained by the receiving party from a third party who has lawfully obtained such information.
- 3.2 With respect to the definition of "Licensor Name Space", it is agreed that for the purposes of this Agreement the term Licensor Name Space shall not include any public class or interface declaration whose names begin with com.[name of Licensee].*, org. dvb.*, or org.havi.*.

In case of doubt or inconsistency between this Annex and the Agreement, this Annex prevails.