

5.1.2 DVB MHP CODE 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 Multimedia 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;
- iv) Licensor, with Custodian acting as Licensor's agent, is willing to license certain Licensor Code (as defined below) to Licensee for use in its development and distribution 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 Full Implementer*" means a legal entity that has:
 - (i) entered into a DVB MHP Test Suite License and Non-Disclosure Agreement in the form attached hereto as Exhibit A;
 - (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 B.
- 1.4 "*DVB MHP Licensee*" means a legal entity other than Licensee that is a party to an in-force DVB MHP Test Suite License and Non-Disclosure Agreement with Custodian.
- 1.5 "*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.
- 1.6 "*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 in the Licensor Name Space;
 - (iii) fully satisfies the DVB MHP Conformance Testing Requirements, including but not limited to any self-certification requirement.

- 1.7 *"Incomplete Implementation"* means an implementation of the DVB MHP Specification that implements less than all the required interfaces and functionality of the Licensor Portion.
- 1.8 *"Licensor Code"* means the byte code verifier and class file parser code provided by Custodian hereunder, as well as any upgrades thereto that are subsequently provided by Custodian.
- 1.9 *"Licensor Name Space"* means 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
- 1.10 *"Term"* means the term of the Agreement as specified in Article 6.1.

Article 2 – LICENSE

- 2.1 License 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 a limited, non-exclusive, non-transferable, worldwide right and license to modify the Licensor Code to the extent necessary to facilitate use of the Licensor Code as part of Licensee's Implementation which does not extend or superset in the Licensee Name Space, to compile the Licensor Code from source to binary code format, and to reproduce and distribute the Licensor Code in binary code form as part of Licensee's Implementation which does not extend or superset in the Licensee Name Space. Licensee shall not distribute the Licensor Code in source code format, and shall not distribute the Licensor Code except as part of Licensee's Implementation as set forth above; provided, however, that Licensee may sub-license the Licensor Code in binary form to a DVB MHP Full Implementer for subsequent integration and distribution as part of an Implementation (that does not extend or super-set in the Licensee Name Space) distributed by such DVB MHP Full Implementer.
- 2.2 Proprietary Rights Notices.

Licensee shall not remove any copyright notices, trade-mark notices or other proprietary legends of Licensor or its suppliers contained on or in the Licensor Code.
- 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 Licensor Code, including any upgrades thereto provided hereunder.
- 2.5 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.
- 2.6 Support.

Custodian's obligations to Licensee, if any, with respect to the provision of any support or administrative services concerning the Licensor Code, including access to any subsequent releases of the Licensor Code, shall be as set forth in a separate agreement between Custodian and Licensee. Neither Custodian nor Licensor shall incur any such obligations by virtue of this Agreement.
- 2.7 Use of Contractors.

Licensee may provide the Licensor Code 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.

Article 3 - LIMITED WARRANTY AND DISCLAIMER

The Licensor Code is licensed "AS IS" AND ALL REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ARE HEREBY DIS-CLAIMED.

Article 4 - CONFIDENTIAL INFORMATION

4.1 Confidential Information.

For the purposes of this Agreement, "Confidential Information" shall include the Licensor Code, as well as any documentation thereto that is 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, or contractors pursuant to Section 2.7 above, who:

- (i) under the terms of their employment by or contractor relationship with the Licensee are subject to an obligation not to disclose confidential information of the Licensee;
- (ii) who have a "need to know" for the purposes specified in Article 2.1; and (iii) 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 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 LICENSOR OR CUSTODIAN HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES. FURTHER, LIABILITY FOR SUCH DAMAGE ON THE PART OF LICENSOR OR CUSTODIAN 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 here-in 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 terminated pursuant to this Article 6. Termination of this Agreement shall not relieve Licensee of any of its obligations hereunder.

6.2 Basis for Termination.

This Agreement may be terminated upon 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

- b. there is a voluntary or involuntary filing of bankruptcy by, or similar event affecting, Licensee.
- 6.3 Effect of Termination.
On the occurrence of termination for any reason under this agreement, Licensee shall forthwith cease its use of the Licensor Code and return to the Custodian all Confidential Information in written, electronic or magnetic form and any copies thereof.
- 6.4 No Liability for 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 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 RE-LATIONSHIP UNLESS TERMINATION IS IN MATERIAL BREACH OF THIS AGREEMENT.
- 6.6 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 Survival.
The parties' rights and obligations under Articles 3, 4 and 5 shall survive expiration or termination of this Agreement.
- 6.8 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 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] through

the Custodian concerning the use of the Licensor Code), 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: _____

Name: _____

(Print or Type)(Print or Type)

Title: _____

Date: _____

Licensee:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A TO DVB MHP CODE LICENSE AND NON-DISCLOSURE AGREEMENT

Form of DVB MHP Test Suite License and Non-Disclosure Agreement, see item 5.1

**EXHIBIT B TO DVB MHP CODE 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 Test Harness License and Non-Disclosure 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 C TO DVB MHP CODE LICENSE AND NON-DISCLOSURE
AGREEMENT**

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

See Exhibit C to Section 5.1 "DVB MHP TEST SUITE LICENSE AND NON-DISCLOSURE AGREEMENT"