

### **5.1.3 DVB MHP JAVATEST LICENSE AGREEMENT**

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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, 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) Licensee has entered into, or expects to enter into, a DVB MHP Test Suite License and Non-Disclosure Agreement with the Custodian ("Test Suite Agreement"); and
- v) Licensor, with Custodian acting as Licensor's agent, is willing to license a test harness and certain related software to Licensee for use in conjunction with Licensee's testing and self-certifying Implementations of the DVB MHP Specification pursuant to the Test Suite Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

#### **Article 1 - DEFINITIONS**

Terms defined in the Test Suite Agreement shall have the same meaning when used in this Agreement. In addition, for the purposes of this Agreement "*JavaTest Software*" means Licensor's JavaTest TM and JavaTest Harness software, and related documentation as provided by Licensor to Custodian in binary code form, including any updates or revisions to such software and documentation as provided by Licensor in its sole discretion.

#### **Article 2 - LICENSE GRANT**

##### 2.1 License Grant.

Conditioned upon Licensee's full compliance with the obligations set forth in this Article 2, 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 JavaTest Software in conjunction with and to the same extent to which Licensee is licensed under to use the Test Suites pursuant to the Test Suite Agreement. Except as otherwise provided by law, Licensee may not modify or create derivative works of the JavaTest Software, or disassemble, decompile or otherwise attempt to derive the source code of the JavaTest Software.

##### 2.2 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.

##### 2.3 Ownership.

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

##### 2.4 Support.

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

#### 2.5 Use of Contractors.

Licensee may provide the JavaTest Software to a contractor when, and to the same extent to which, Licensee provides the Test Suites to such 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.

#### 2.6 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 JavaTest SOFTWARE 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 - 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.

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) termination of Licensee's Test Suite Agreement.

#### 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 JavaTest Software 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 JavaTest Software.

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.

6.6 Irreparable Harm.

The parties acknowledge that a material breach of Article 2 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 - MISCELLANEOUS1**

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 JavaTest Software 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 any terms or provisions of the Test Suite Agreement expressly referenced by this Agreement, 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 JavaTest Software 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 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: \_\_\_\_\_