

JAVA-IN-ADMINISTRATION
SPECIAL INTEREST GROUP
("JA-SIG")

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (this "Agreement") is entered into by and among the parties hereto (the "Participants") signing the signatory pages hereof. Such Participants agree as follows:

1. Name and Purpose.

1.1 Name. The Participants hereby create Java-in-Administration Special Interest Group ("JA-SIG").

1.2 Purpose. The JA-SIG is an independent organization designed to increase the flow of information between educational institutions and companies involved in the development of administrative applications using Java technology. The JA-SIG's goals are to:

nurture communication of best practices, new technologies, and innovative methodologies and projects related to Java

increase peer review, collaboration, and group discussion, related to institution-developed Java administrative applications

broaden Java technology cross-fertilization between firms and schools on both a functional and geographic basis

1.3 Effective Date. This Agreement is effective as of May 1, 1999.

2. Participants.

2.1 Criteria for Participation. To be eligible for participation in the JA-SIG and to execute this Agreement, a party must fall within one of the following defined classes. Class A consists of Sun Microsystems. Class B consists of secondary schools and educational institutions offering a postsecondary degree. Any bona fide institution meeting this criteria may apply to be a Class B Participant.

The Steering Committee may create and define additional or different classes, including, without limitation, classes to include vendors or other persons or entities interested in the mission of the JA-SIG, provided that a majority of each class of Participants approves the creation of such additional or different classes. An existing class may be redefined with the approval of a majority vote of the Steering Committee.

2.2 Withdrawal. Any Participant may withdraw at any time by submitting a written resignation, signed and attested to by its representative, to the Secretariat.

2.3 Termination of Participation. A Participant can be removed from the JA-SIG by a majority vote of the Steering Committee by thirty (30) days written notice in the event of a material breach of this Agreement, if such breach has not been cured within such thirty-day period. Upon termination, such former Participant shall have no further rights under this Agreement but shall be bound by the provisions of this Agreement which survive such termination.

3. Dues, Assessments, and Expenses.

3.1 The Steering Committee may set reasonable dues for and assessments on Class B Participants, as set out in Section 5.3, below.

3.2 All Participants shall bear their own out-of-pocket expenses in connection with JA-SIG activities, including, without limitation, travel and lodging for JA-SIG meetings and compensation of their own employees.

4. **Rights of Participants.** A Participant in good standing shall be entitled to share information with other Participants, receive information from the other Participants, participate in JA-SIG meetings, and exercise voting privileges. Each Participant shall have one vote in all matters submitted to the Participants for a vote, as set out in the by-laws adopted by the Steering Committee. A Participant shall designate in writing, to the Secretariat, one representative authorized to vote and otherwise act on behalf of such Participant. Such Participant representative may be changed by written notice to the Secretariat. Notwithstanding status as separate legal entities, all affiliated entities within one corporate structure shall be entitled to only one representative and one Participant vote collectively (e.g., a corporate Participant, with multiple divisions or subsidiaries, shall be entitled to only one representative and one vote).

5. Steering Committee.

5.1 Composition and Selection. The Steering Committee shall consist of the number of persons equal to the number of Participants though not less than four (4) and not more than seven (7) persons total. The Steering Committee shall include one (1) person elected by the Class A Participant and not less than three (3) persons and not more than six (6) persons elected by the Class B Participants. The persons serving on the Steering Committee shall each be employees of a different Participant and shall be elected by a majority vote of the class of Participants being represented.

5.2 Term. A person serving on the Steering Committee shall serve a two (2) year term, subject to reappointment or reelection to successive terms.

5.3 Responsibilities. The JA-SIG's activities and affairs shall be managed by, and all corporate powers shall be exercised by or under the direction of the "Steering

Committee.” Without limiting the generality of the foregoing, and except as limited by Section 3.2, above, the Steering Committee shall have the power to establish dues for Participants (including different levels of dues between classes of Participants and within a class) and to impose additional reasonable fees or assessments on Participants as appropriate to support the purposes and operations of the JA-SIG.

The responsibilities of the Steering Committee shall include the following:

- 5.3.1 Adopting by-laws governing the operation of the JA-SIG;
 - 5.3.2 Approving the release to non-participating educational institutions of Work (as defined in Section 6.1, below) generated by or contributed to the JA-SIG as it deems appropriate to further the mission of the JA-SIG;
 - 5.3.3 Establishing all Working Committees and appointing the chairperson thereto;
 - 5.3.4 Overseeing all expenditures of the JA-SIG funds;
 - 5.3.5 Establishing and managing all the JA-SIG policies and procedures, which may include the adoption of policies and procedures governing the functions of the JA-SIG and its Working Committees;
 - 5.3.6 Determining which actions (if any) are to be voted upon by the Participants; and
 - 5.3.7 Developing, registering, maintaining and licensing in the name of the JA-SIG appropriate trademarks and copyrights pertaining to the JA-SIG, if the Steering Committee deems such action in furtherance of the purposes of the JA-SIG.
- 5.4 Voting. Unless otherwise provided in this Agreement, a vote of more than fifty percent (50%) of Steering Committee members present at a meeting shall be required to adopt any resolution or proposal before the Steering Committee.

6. Intellectual Property (Patents, Trademarks, Copyrights).

- 6.1 Contribution of Work. Each Participant may contribute to the JA-SIG and other Participants ideas, information, materials, applications, white papers, presentations, proposals, charts, functional and technical specifications, data, programs, software, firmware, code, hardware and other intellectual property (collectively “Work”) as may further the mission of the JA-SIG.
- 6.2 Work Contributed by Participant. Subject to any pre-existing obligations, each Participant agrees to license, upon request, to the JA-SIG and every other Participant, upon request, any of its intellectual property rights in any Work it contributes pursuant to Section 10.1, above, including, without limitation, patents and copyrights. Such licenses shall be nonexclusive, worldwide, and royalty-free. If the JA-SIG approves such Work for release to non-participating educational institutions, pursuant to Section 5.3.2, above, the Participant agrees to offer the same license upon request to such institutions. Such

agreement to offer a license may be conditioned on a reciprocal license on the same terms from the licensee for the contributed Work.

6.3 Work Contributed By Other Participants. Participant agrees not to assert any intellectual property rights in Work contributed by other Participants, pursuant to Section 6.1, above, insofar as such Work is used in furtherance of the mission of the JA-SIG and approved for release to the public by the Steering Committee, unless reasonable notice of the intent to assert such rights is given to the JA-SIG within ninety (90) days of the Steering Committee's notice of its intent to consider releasing the contributed Work to non-participating educational institutions.

6.4 Copyrights and Trademarks. The JA-SIG is authorized to seek and own copyright and trademark registrations as deemed appropriate by the Steering Committee.

7. **Term, Termination, and Withdrawal.**

7.1 Term. Unless otherwise terminated, this Agreement shall remain in full force and effect for five (5) years. After the initial five-year term, and at the end of each successive year, this Agreement shall automatically renew itself for a one (1) year term.

7.2 Termination. The Participants may terminate this Agreement for any reason if approved by the Class A Participant and two-thirds (2/3) of Class B Participants.

7.3 Withdrawal. A Participant may cease its participation in the JA-SIG and withdraw from this Agreement upon ninety (90) days notice to all other Participants.

7.4 Effect of Termination and/or Withdrawal. Notwithstanding any termination of or withdrawal from this Agreement, the following provisions shall survive: Section 6 (Intellectual Property); Section 8 (Disclosure of Information and Confidentiality), Section 9 (No Warranties; Limitation of Liability) and Section 10 (Miscellaneous Provisions).

7.5 Disposition of Property upon Termination. If this Agreement is terminated during the initial year after its effective date, all right, title, and interest to property of the JA-SIG shall belong to the Class A Participant. If this Agreement is terminated after the initial year, the Steering Committee shall determine the disposition of property of the JA-SIG, following the general principle that Participants should receive distributions in proportion to their total monetary contributions to the JA-SIG.

8. Disclosure of Information and Confidentiality. All Work disclosed, released or otherwise made available by a Participant to the JA-SIG, or by a Participant to other Participants, in the course of any activities or discussions of the JA-SIG shall be deemed to be nonconfidential. If it becomes necessary to disclose Work considered by the disclosing party to be confidential, a written confidentiality agreement must be executed between the disclosing party and the receiving parties. It shall be the responsibility of the disclosing party to obtain such a written agreement.

9. No Warranties; Limitation of Liability.

9.1 ALL WORK (AS DEFINED IN SECTION 6.1, ABOVE) PROVIDED OR RELEASED HEREUNDER TO THE JA-SIG BY A PARTICIPANT OR TO A PARTICIPANT BY THE JA-SIG OR FROM OR TO ANY OTHER PARTICIPANT, ARE PROVIDED AND RELEASED “AS IS” AND WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9.2 **DAMAGE LIMITATION.** IN NO EVENT SHALL ANY PARTICIPANT BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Miscellaneous Provisions.

10.1 No Transfer or Assignment. A Participant may not transfer, assign or sublicense any of its rights under this Agreement without the prior written consent of the JA-SIG.

10.2 Freedom of Action. The Participants agree that each Participant’s participation in the JA-SIG does not require any Participant to use or implement a particular programming language, software, or technical specification, preclude a Participant from developing or using any products or specifications, or limit a Participant from competing in any way. No provision of this Agreement shall be interpreted to prevent any a Participant from engaging in any activities or business ventures, independently or with others, whether or not competitive with the activities of any other Participant or with the activities of the JA-SIG.

10.3 No Joint Venture or Agency. Nothing contained in this Agreement and no action taken by Participant shall be deemed to render Participant an employee, agent or representative of the JA-SIG or any other Participant or Regular Participant, or shall be deemed to create a partnership, joint venture or syndicate among or between any of the Participants or with the JA-SIG.

10.4 Compliance with Law. The obligations of the Participants shall be subject to all laws, present and future, of any government having jurisdiction over the Participants, pertaining to participation in the JA-SIG.

- 10.5 Governing Law. This Agreement shall be governed by and construed under, and the legal relations among the Participants shall be determined in accordance with, the laws of the State of California, excluding conflict-of-law principles that would cause the application of the laws of any other jurisdiction.
- 10.6 Amendments. This Agreement may be amended by the affirmative vote of the Steering Committee representative of the Class A Participant and at least fifty percent (50%) of the Steering Committee representatives of the Class B Participants. Each Participant shall be given at least thirty (30) days prior written notice of the effective date of an amendment, and amendments shall be prospective only. Each Participant shall be bound by a duly adopted amendment, unless it elects to terminate this Agreement and its participation in the JA-SIG.
- 10.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- 10.8 Integration. This Agreement supersedes and replaces any and all prior representations, agreements and understandings relating to each Participant's participation in the JA-SIG, except insofar as such documents are specifically referenced herein.
- 10.9 Warranty of Authority. Each Participant represents and warrants that it is authorized to enter into this Agreement. The undersigned person represents and warrants that he/she is authorized to sign this Agreement on behalf of the Participant for which he/she signs.

ACCEPTED AND AGREED:

Participant: **Sun Microsystems**

Date: _____

Address: _____

By: _____

Printed Name: _____

Tel. No.: _____

Title: _____

Fax No.: _____

E-mail: _____

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