From:	Andy Rubin <arubin@google.com>
Sent:	Wed Mar 29 2006 09:31:58 PST
To:	Vineet Gupta - OEM Software Sales CTO/Worldwide SE Director <vineet.gupta@sun.com>;Matt Marquis <matt.marquis@sun.com>
CC:	
Subject:	Revised agreement
Attachments:	Armstrong-CDLAv7_32906.doc

Importance:	Normal
Priority:	Normal
Sensitivity:	None

Vineet and Matt,

Enclosed is a revised agreement with comments from our attorney. Let's meet to discuss.

Overall, there were 2 instances of modifications that are different than our original conceptual agreement. I don't want these to surprise you -- I have had numerous internal conversations at the highest level and will explain our reasoning when we meet.

COLLABORATION DEVELOPMENT AND LICENSE AGREEMENT

THIS COLLABORATION DEVELOPMENT AND LICENSE AGREEMENT, including the Exhibits, either executed by the parties the same date hereof or later executed pursuant to the terms hereto (this "Agreement") is made by and between Sun Microsystems, Inc., a Delaware Corporation, having its principal place of business at 4140 Network Circle, Santa Clara, California, 95054 ("Sun"), and Google Inc, a Delaware ~~----------~~ corporation, having its principal place of business at ~~----------~~("1600 Amphitheater Parkway, Mountain View, California, 94043 ("Google") (individually a "Party" or collectively the "Parties"), and is effective as of the ~~---~~ day of ~~----------~~, 2006 (the "Effective Date").

RECITALS

WHEREAS, Sun is engaged, inter alia, in the development, sale and distribution of certain Java Platform technologies and products;

WHEREAS, Google is engaged, inter alia, in the development and distribution of a Linux-based operating system and applications related to its online services;

WHEREAS, the Parties wish to work together to facilitate the joint development of a Java/LinuxOS software stack targeted at mobile devices, which will be jointly architected and which will be delivered under an agreed Open Source Model and under a commercial model by Sun; and

WHEREAS, the Parties desire to license to one another certain rights with respect to said technologies and software programs to facilitate such development, all on the terms and conditions set forth herein and in the Project Plan to be adopted by the Parties.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, promises, and undertakings set forth herein, and for other good and valuable consideration, the Parties agree as follows:

1. DEFINITIONS

~~**1.1 "Architecture"** means the general organization and structure of the software programs, and their manner of interaction, including the general design of the Open Source Stack.~~

~~**1.2 "Google Developed Software"** means the software, to be developed by Google under this Agreement in conformance with the Specifications, and Error Corrections and Updates thereto developed during the Term.~~

~~**1.3 "Google Technology"** means the Technology (exclusive of Google Tools) owned or licensed (with the right to sublicense) by Google, and provided to Sun as identified in the Project Plan, which includes the Google Developed Software and Google Pre-Existing Software as identified in the Project Plan, and Error Corrections and Updates thereto developed during the Term.~~

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~~**1.4 "Google Tools"** means those tools owned or licensed by Google (with the right to sublicense by Google) and provided under the Project Plan.~~

1.51 "Binary Code" means machine-readable, executable code of a computer program.

1.26 "Confidential Information" means information as described in Exhibit A hereof.

1.37 "Derivative Work" means a work (including without limitation designs, ideas, inventions, works of authorship, technical information, processes, schematics, know-how, and other technology) created, conceived, developed, or derived by or for a Party which makes use of or incorporates all or any elements of the other Party's Technology, such as a revision, modification, improvement, translation, abridgement, condensation, expansion, collection, compilation, or any other form including a new work, in which such Technology or elements thereof may be recast, transformed, or adapted. Each such work or component thereof shall be considered a "Derivative Work" only to the extent that the preparation, use, copying, display, and/or distribution of such work, or components thereof, in the absence of this Agreement or other authorization from the owner of the pre-existing work, would constitute an infringement of such owner's Intellectual Property Rights.

1.48 "Developed Software" means the Google Developed Software and the Sun Developed Software and the Jointly Developed Software developed under the Project Plan by Sun and/or Google during the Development Period, including any Error Corrections and Updates developed during the Term (as defined in Section 12.1), and all related Documentation.

1.59 "Development Period" means the period beginning on the Effective Date, and ending on the earlier of the (a) completion of the initial development of the Open Source Stack as specified in the Project Plan or (b) termination in accordance with the provisions of Section 12.

1.610 "Documentation" means the documentation defined in the Project Plan, and any other documentation which the Parties agree, currently and hereafter from time to time, in writing, to treat as Documentation under this Agreement, including documentation necessary to use the Developed Software, together, in each case, with any updates, derivatives, modifications, or enhancements thereto.

1.711 "Error" means any reproducible failure of the Developed Software to conform in any material respect to the Specifications therefor, as the same may be amended and/or supplemented from time to time.

1.812 "Error Correction" means either a modification to the Developed Software that, when made or added to the Developed Software, establishes material conformity to the current Specifications and Documentation therefor, or a procedure or routine that eliminates the practical adverse effect of an Error in the regular operation of the Developed Software.

1.9 "Google Architecture" means the general organizational structure and the manner of interaction of the Google Pre-Existing Technology.

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1.10 "Google Branded Handset" means a production manufactured handset design built specifically to incorporate the Open Source Stack that prominently displays the Google logo as its only brand.

1.11 "Google Developed Software" means the software, to be developed by Google under this Agreement in conformance with the Specifications, and Error Corrections and Updates thereto developed during the Term.

1.12 "Google Technology" means the Technology (exclusive of Google Tools) owned or licensed (with the right to sublicense) by Google, and provided to Sun as identified in the Project Plan, which includes the Google Developed Software and Google Pre-Existing Technology as identified in the Project Plan, and Error Corrections and Updates thereto developed during the Term. Google Technology shall not include third party software and such third party software shall be governed by the applicable license agreements.

1.13 "Google Tools" means those tools owned or licensed by Google (with the right to sublicense by Google) and provided under the Project Plan.

1.14 "Go To Market Plan" means such terms as provided on a post-execution exhibit ("Exhibit C") to be agreed upon by the Parties, relating to the joint marketing efforts to be undertaken by the Parties to promote the Open Source Stack.

1.153 "Governance Model" means such terms as provided on a post-execution exhibit ("Exhibit B") to be agreed upon by the Parties, relating to the policies and procedures for partner engagement, as well as management and hosting of the Open Source Stack for a community of open source developers.

1.16 "Integration Architecture" means the general organizational structure and the manner of interaction of the Developed Software.

1.174 "Intellectual Property Rights" means all worldwide (a) patents, patent applications, and patent rights; (b) rights associated with works of authorship including copyrights, copyright applications, copyright restrictions, mask work rights, mask work applications, mask work registrations and "moral" rights; (c) rights relating to the protection of trade secrets and confidential information; (d) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; and (e) divisions, continuations, renewals, reissues, and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired, but specifically excluding trademarks, service marks, trade dress, and trade names.

1.185 "Invention" means any idea, design, concept, technique, invention, discovery or improvement, whether or not patentable, made during the term of the Agreement and in the performance of the Project Plan.

1.196 "Joint Invention" means an Invention made, jointly by one or more Sun employee(s) in substantial collaboration with one or more Google employee(s) during the term of

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the Agreement and in the development of Jointly Developed Software as provided in the Project Plan.

1.2017 "**Jointly Developed Software"** means Developed Software developed jointly by one or more Sun employee(s) with one or more Google employee(s) during the term of the Agreement and identified in the Project Plan as "Jointly Developed Software".

~~**1.18 "Go To Market Plan"** means such terms as provided on a post-execution exhibit ("Exhibit C") to be agreed upon by the Parties, relating to the joint marketing efforts to be undertaken by the Parties to promote the Open Source Stack.~~

1.2119 "Open Source Model" means (i) the Apache 2.0 License for the ~~Google~~ Technology portion of the Open Source Stack and (ii) ~~the Common Development and Distribution License for the Sun Technology portion of the Open Source Stack~~.

1.220 "Open Source Stack" means the complete and integrated implementation of the Google Architecture and Sun Architecture as defined by the Integration Architecture and relevant portions of the Google Technology and Sun Technology as detailed in the Project Plan, to be released under the Open Source Model, as governed by the Governance Model to be adopted as Exhibit B, with such code base to be supplemented over time by additional code releases the Parties under the Open Source Model, and accepted contributions from other members of the open source community.

1.231 "Pre-Existing Technology" means Technology owned or licensed (with the right to sublicense) by Sun or Google prior to the Development Period and which is provided to the other under the Project Plan.

1.242 "Project Plan" means the development program and schedules as provided on a post-execution exhibit ("Exhibit D"), which sets forth the stages of development and deliverables for the Open Source Stack (including all the technologies and features for the initial release), as agreed upon by the Parties and as it may be amended from time to time in accordance with Section 4.7.

1.253 "Source Code" means program code in high-level computer language readable by humans skilled in the language that is not executable by a computer system directly but must be converted into machine language by compilers, assemblers, and/or interpreters, as well as documentation, release notes, or other specifications which describe the content, organization, and structure of the program code and the complete build environment thereto including make files, comments thereto, listings, flow charts, logic diagrams, and support documentation suitable and sufficient to permit a reasonably skilled software technician to manufacture, maintain, and support the program code based thereon.

1.264 "Specifications" means the document or documents, agreed upon by the Parties, which characterize and define the logical, functional, performance, and operational aspects of the Developed Software, as defined by the Parties in accordance with the Project Plan.

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Comment [AER1]: Sun and Google can only "accept" changes by the community if they are made into our jointly managed source control system. Therefore, removed "accept".
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1.27 "Sun Architecture" means the general organizational structure and the manner of interaction of the Sun Pre-Existing Technology.

1.285 "Sun Developed Software" means the software to be developed by Sun under this Agreement in conformance with the Specifications, and Errors and Updates thereto developed during the Term.

1.296 "Commercial Stack" means versions of the Open Source Stack, as may be modified, optimized, subsetted and/or supersetted, and/or ported to various hardware and/or software platforms and delivered for a fee in the form of commercial products and or services. ~~**"Commercial Stack**" means versions of the Open Source Stack, as may be modified, optimized, subsetted and/or supersetted, and/or ported to various hardware and/or software platforms and delivered in the form of commercial products and or services.~~

1.3027 "Sun Technology" means the Technology (exclusive of Sun Tools) owned or licensed (with the right to sublicense) by Sun, and provided to Google as identified in the Project Plan, and shall include the Sun Developed Software and Sun's ~~-~~Pre-Existing ~~Software~~ Technology as identified in the Project Plan, and Error Corrections and Updates thereto developed during the Term.

1.3128 "Sun Tools" means those tools owned or licensed by Sun (with the right to sublicense by Sun) and provided under the Project Plan.

1.3229 "Technology" means software and other works of authorship developed for or contributed by the Parties for the Open Source Stack as provided in the Project Plan and any technical information, knowledge, ideas, concepts, processes, procedure, designs, schematics and Inventions directly related to the Open Source Stack, and any and all Intellectual Property Rights pertaining thereto.

1.330 "Test Plan" means the written plan to be developed by the Parties, and as contained in the Project Plan, for testing the designs and pre-release specimens of the Developed Software for the substantial and material conformance with the Specifications.

1.341 "Updates" means later releases, modifications, enhancements, additions, improvements, or extensions to any Developed Software or Derivative Work thereof, excluding Error Corrections, made after the end of the Development Period and during the Term.

2. OWNERSHIP

2.1 Pre-Existing Technology. Each Party acknowledges and agrees that, as between the Parties, each Party is and shall remain the sole and exclusive owner of all right, title and interest in and to its Pre-Existing Technology and all associated Intellectual Property Rights, and that this Agreement does not affect such ownership. Each Party acknowledges that it acquires no rights under this Agreement to the other Party's Pre-Existing Technology other than the limited rights specifically granted in this Agreement.

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2.2 Separately Developed Software and Inventions. The Google Developed Software, Derivative Works thereof, and related Inventions and Google Tools shall be exclusively owned by Google. The Sun Developed Software, Derivative Works thereof and related Inventions and Sun Tools shall be exclusively owned by Sun. The Parties acknowledge and agree that, during the Term, Error Corrections and Updates which are developed by either Party shall be owned by the Party whose Technology is corrected or updated. Except as set forth below, the Parties further acknowledge and agree that the Integration Architecture and Project Plan developed during the Term shall be owned jointly and equally by the Parties with no duty to account to the other. After expiration or termination of the Agreement for any reason, each Party shall own any Error Corrections or Updates it may create, subject to each Party's ownership of its respective Developed Software and the restrictions imposed by the licenses granted hereunder.

2.3 Jointly Developed Software and Joint Inventions. Jointly Developed Software identified in the Project Plan and related Inventions reduced to practice in the pursuit of the development of the Jointly Developed Software shall be jointly-owned, all patents issued thereon shall be joint, all expenses incurred in obtaining and maintaining such patents shall be jointly shared (except as provided hereunder), and each Party shall have the right to license to third Parties without an obligation to account to the other. With respect to any Joint Inventions, if one Party elects not to seek or maintain ~~such patent protection~~ thereon in any particular country or not to share equally in the expenses thereof, the other Party shall have the right to seek or maintain such protection at its own expense and shall have full control over the prosecution and maintenance thereof even though title to any patent shall be joint. Each Party agrees to give the other Party all reasonable assistance in connection with the preparation and prosecution of any patent application filed by the other Party in order to carry out the intent of this Agreement.

2.4 No Limitations On Use. Except as provided in Section 2.5, this Agreement shall not be construed to limit or restrict, in any way or manner, any right of either Party to encumber, transfer, license, access, reference, use, or practice its Pre-Existing Technology and/or the Developed Software to be owned by it in any way for any purpose or use.

2.5 Covenants. The Parties agree to the following covenants: (1) Sun and Google shall release the Open Source Stack under the agreed Open Source Model upon its successful completion according to the Project Plan and the terms herein; (2) Google agrees that it shall not develop or distribute a Commercial Stack~~, shall use Sun's Commercial Implementation for any Google branded handsets~~ (as long as Sun delivers upon its obligations according to the Project Plan and the terms herein), and further agrees to treat Sun equally as it refers prospective commercial customers to ~~Sun to~~ license ~~a Sun's~~ Commercial Implementation~~; and (3) for additional technologies (not specified in the Project Plan) that are relevant to the Open Source Stack and which Google intends to release under the Open Source Model, Google agrees to provide Sun with a twelve (12) month roadmap, to be updated quarterly, for additional technologies Google intends to release under an open source model that are related to the Open Source Stack and further agrees, upon Google's development or acquisition of such new technologies, Google shall provide Sun with prompt delivery of such technologies under Section 3.1(a) license rights, but in no case less than six (6) months prior to any such open source release.~~; (3) Sun shall not release significant portions of Java 2 Platform, Micro Edition (J2ME) or the Connected Device Configuration (CDC) under any open source license before completion of the

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Development Period; and (4) during the term of this Agreement Sun shall not charge any third party a fee for the release of the Sun Technology under any open source license.

2.6 Further Assurances. Each Party agrees to cooperate with the other and take all reasonable actions required to vest and secure in each Party the ownership rights and appurtenant Intellectual Property Rights as provided in this Agreement. Should any such rights vest in a Party in a manner inconsistent with the Parties' intentions as expressed herein, then that Party shall upon request by the other Party promptly assign such rights to the other, and/or otherwise take all steps reasonably requested to conform the Parties' respective ownership rights with this Agreement, including but not limited to the execution of documents necessary to perfect or evidence such assignments. The Parties agree that the costs attendant to such actions shall be borne by the requesting Party.

3. ~~LICENCES~~LICENSES; LIMITATIONS AND OBLIGATIONS

3.1 Licenses. Subject to the limitations and obligations set forth in this Agreement, the following licenses are granted:

(a) License to Sun of Google Technology and Tools for Internal Use and Development Purposes. Google hereby grants to Sun a worldwide, nonexclusive, royalty-free and (except as provided in Section 15.2) nontransferable license, without the right to sublicense except as expressly provided in Section 6, under Google's Intellectual Property Rights in the Google Technology and Tools, to (i) use and reproduce Google Technology for Sun's internal purposes, solely to the extent necessary to develop, test and support the Sun Developed Software, the Open Source Stack and Sun's Commercial Stack, and to assist Google in its development efforts hereunder, in each case during the Development Period; (ii) create and have created Derivative Works of the Source Code of the Google Technology provided to Sun under the Project Plan, solely to the extent necessary to exercise the license granted in Section 3.1(a)(i); (iii) compile the Source Code of the Google Technology; and (iv) use the Google Tools for development and testing of the Google Developed Software, the Open Source Stack and the Sun Commercial Stack. To the extent Google Technology is incorporated into the Sun Developed Software as agreed in the Project Plan, Google hereby grants Sun a perpetual, ~~irrevocable~~ right to use, reproduce, modify, and prepare Derivative Works from Google Technology, and to use the Google Technology to support and maintain the Sun Developed Software, and to sublicense the use of the Sun Developed Software in Binary Code or Source Code form, subject to the limitations herein.

(b) License to Sun of Google Technology for Commercial Use and Distribution Purposes. Google hereby grants to Sun (notwithstanding any limitations provided in Section 3(a) above) a royalty-free, nonexclusive, perpetual, ~~irrevocable~~, transferable and worldwide license to (i) reproduce, prepare Derivative ~~Matter~~ Works of, compile, demonstrate, market, and distribute the Google Technology and Derivative ~~Matter~~ Works thereof in any form on any media or via any electronic or other method now known or later discovered and (ii) make, have made, use, sell, offer to sell, import and otherwise exploit the Google Technology and Derivative ~~Matter~~ Works thereof in any manner and on any media or via any electronic or other method now known or later discovered; (iii) sublicense the foregoing rights to third Parties

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through multiple tiers of sublicensees or other licensing mechanisms; and (iv) use the Google Tools internally. The rights granted under this Section 3.1(b) shall apply only to the extent the Google Technology, Derivative Works thereof, and Google Tools are used directly for the Commercial Stack. The rights under this Section 3.1(b) shall only become effective, if at all, upon the release by Sun and/or Google of the Open Source Stack as provided in the Project Plan or upon termination by Sun for material breach by Google (or Google's inability to complete its obligations due to an Insolvency Event) as provided in this Section 12.2 and 12.3 hereunder.

(c) License to Sun of Google Technology for release under agreed Open Source Model. Google hereby grants, upon the successful completion of the Project Plan, that Sun and Google may release (in accordance with the Project Plan and only as part of the Open Source Stack) the Google Technology specified in the Project Plan under ~~the Apache 2.0 License~~the appropriate Open Source Model.

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(d) License to Google of Sun Technology and Tools for Internal Use and Development Purposes. Sun hereby grants to Google a worldwide, nonexclusive, royalty-free and (except as provided in Section 15.2) nontransferable license, without the right to sublicense except as expressly provided in Section 6, under Sun's Intellectual Property Rights in the Sun Technology and Tools, to (i) use and reproduce Sun Technology for Google's internal purposes, solely to the extent necessary to develop, test and support the Google Developed Software and the Open Source Stack and to assist Sun in its development efforts hereunder, in each case during the Development Period; (ii) create and have created Derivative Works of the Source Code of the Sun Technology, provided to Google under the Project Plan, solely to the extent necessary to exercise the license granted in Section 3.1(d)(i); (iii) compile the Source Code of the Sun Technology and (iv) use the Sun Tools for development and testing of the Google Developed Software and the Open Source Stack. To the extent Sun Technology is incorporated into the Google Developed Software as agreed in the Project Plan, Sun hereby grants Google a perpetual, ~~irrevocable~~ right to use, reproduce, modify, and prepare Derivative Works from the Sun Technology, and use the Sun Technology to support and maintain the Google Developed Software, and to sublicense the use of the Google Developed Software in Binary Code or Source Code form, subject to the limitations herein.

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(e) License to Google of Sun Technology for release under agreed Open Source Model. Sun hereby grants, upon the successful completion of the Project Plan, that Google and Sun may release (in accordance with the Project Plan and only as part of the Open Source Stack) the Sun Technology specified in the Project Plan under ~~the Common Development and Distribution License~~the appropriate Open Source Model.

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3.2 No Other Rights. Other than the limited rights granted herein, neither Party acquires any right, title, or interest in or to the other Party's Technology, nor in the Intellectual Property Rights therein and appurtenant thereto.

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4. DELIVERY AND DEVELOPMENT

4.1 Delivery of Deliverables on Target Dates. Each Party shall develop the Developed Software according to the Project Plan, using diligent and good faith efforts to design,

develop, complete, test, and deliver to the other Party all deliverables by or before their associated target dates. Under the Project Plan, the Parties will work jointly to develop the Integration Architecture of the Developed Software, and (a) Google will code the Google Developed Software, and (b) Sun will code the Sun Developed Software. In accordance with the Project Plan, Sun and Google shall release the Open Source Stack under the agreed Oopen Ssource ~~licensing~~ Mmodel upon completion of the Development Period.

4.2 Detected Errors. During the Term, each Party shall promptly inform the other Party regarding any Errors it may detect in its relevant Pre-Existing Technology or Developed Software, and shall undertake diligent and good faith efforts to implement Error Corrections.

4.3 Delivery of Error Corrections, Updates, and Derivative Works. During the Term, each Party shall, promptly after their development, deliver to the other Party the Binary Code and Source Code versions of any Error Corrections, Updates and Derivative Works made by it, or on its behalf, with respect to the Developed Software. Such Error Corrections, Updates and Derivative Works shall be owned by one Party as provided in Section 2.2 and licensed to the other Party as provided in Section 3.

4.4 Development Meetings. During the Development Period, the Parties shall meet periodically, on at least a monthly basis, to review the status of the Project Plan and exchange information. Additional meetings may be held as reasonably requested by a Party. Meetings will be held in Santa Clara County, California unless otherwise agreed by the Parties.

4.5 Co-located development team. During the Development Period, Google will provide office space, equipment, network connectivity and food for up to four (4) Sun engineers and up to one (1) project manager in its Mountain View and Boston offices. Sun agrees to co-locate an appropriate number of project resources at Google's facilities to aide in defining and implementing the Integration Architecture according to the Project Plan.

4.56 Testing. The Parties will mutually develop the Test Plan for assuring the ultimate performance and interoperability of the Developed Software, and the validity of the results which are generated through operation of the Open Source Stack. The Parties shall jointly test and evaluate the Open Source Stack in accordance with the Test Plan.

4.67 Schedule Changes. In the event a Party determines that a particular target date under the Project Plan likely will be missed, it shall promptly give notice to the other Party setting forth in reasonable detail the reason for the anticipated delay, any corrective measures it intends to undertake, and the estimated revised target date.

4.~~7~~8 Project Plan. The Parties shall agree on an initial Project Plan within ~~sixty~~ thirty (360) days of the Effective Date. The Project Plan shall set forth the key deliverables and associated target dates. The Parties may, from time to time, modify the Project Plan on mutual agreement in accordance with a change control procedure to be detailed in the Project Plan. In the event of inconsistencies between the Project Plan and this Agreement, the terms of the Project Plan shall prevail. Upon completion and acceptance of the final deliverable of the Project Plan, the Parties will mutually confirm such completion in writing, at which time the Development

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Period will terminate. The Parties presently anticipate completion of all tasks under the Project Plan on or before ----------, 200_. In the event the Project Plan is not agreed and signed by both Parties within ~~sixty~~ thirty (~~3~~60) days of the Effective Date, and unless otherwise agreed by the Parties in writing, this Agreement shall terminate with immediate effect.

4.8~~9~~ Updates. From time to time during the Term, either Party may request that an Update to one or more of the Developed Software be created. Each request for an Update shall include the general reason for, or commercial validation of, the Update. The Parties shall negotiate in good faith with respect to the development of the Update.

5. PAYMENTS & COSTS

In consideration for Sun's agreement to provide Google access to the Sun Technology and Sun's agreement to release the Sun Technology as part of the Open Source Stack under the agreed Open Source Model (or in the case of Section 12.2, Google's ability to effect the release), Google agrees to pay Sun following fees:

[Under Discussion]

Such fees shall be fully earned when due and non-refundable.

Unless otherwise provided above, each Party shall be responsible for its own costs incurred in the performance of its obligations hereunder. ~~In the event a Party anticipates that it will incur extraordinary expenses in connection with its performance hereunder, it will so notify the other Party and the Parties will discuss an appropriate allocation of those costs prior to such Party's incurring the expense.~~

6. USE OF CONTRACTORS

Either Party (the "Contracting Party") may retain third parties (the "Contractors") to furnish services to it in connection with the performance of its obligations or the exercise of its licensed rights hereunder, and may permit the Contractors to have access to the other Party's Confidential Information, but only to the extent and insofar as reasonably required in connection with the performance of the Contracting Party's obligations under this Agreement and the exercise of the Contracting Party's licensed rights hereunder; provided that each of the Contractors shall be required by the Contracting Party to execute a written agreement (a) sufficient to secure compliance by the Contractor with the Contracting Party's obligations of confidentiality concerning the Confidential Information set forth in the CDA (as defined in Section 7.1); (b) acknowledging the Contractor's obligation to assign all work product in connection with performance hereunder; and (c) effecting assignments of all Intellectual Property Rights concerning any Developed Software to Sun and/or Google, as applicable, consistent with the terms of this Agreement. Either Party, upon request, may review such agreements at any time before or after signing to ensure compliance with this Agreement.

7. CONFIDENTIAL INFORMATION

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7.1 **Generally.** Confidential Information disclosed by either Party hereunder will be governed by the terms and conditions of the Confidential Disclosure Addendum, which is attached hereto as Exhibit A and incorporated herein by reference (the "CDA").

8. PROPRIETARY RIGHTS NOTICES

8.1 Reference to Other Party's Trademarks. Except as expressly provided in this Agreement, or later provided by written modification to this Agreement and/or execution of any necessary trademark licenses (which may be set forth in the Go To Market Plan), neither Party is granted any right, title, interest, or license to use the other Party's trademarks, tradenames, logos, product designs, corporate identities, or other marketing designations or brands used in connection with the Parties' products, technologies, or businesses.

9. REPRESENTATIONS AND WARRANTIES

9.1 Authorization. Each Party represents and warrants that it has the right to enter into this Agreement.

9.2 Disclaimer. Except as expressly warranted above, each of the Parties' Pre-Existing and Developed Software is provided "AS IS" and without any warranty of any kind. Unless specified in this Agreement, all express or implied conditions, representations and warranties, including any implied warranty of merchantability, fitness for a particular purpose, or non-infringement, are disclaimed, except to the extent that such disclaimers are held to be legally invalid.

10. INTELLECTUAL PROPERTY INDEMNITY

10.1 Indemnity Obligation. The contributing Party of the Technology ("Contributor") will defend, at its expense, any legal proceeding brought against the other Party, to the extent it is based on a claim that the use of its Technology is an infringement of a third party trade secret or a copyright, and will pay all damages, costs and fees awarded by a court of competent jurisdiction, or such settlement amount negotiated by the Contributing Party, attributable to such claim.

10.2 Right of Intervention. The Contributor will have the right, but not the obligation, to defend the other Party, at the Contributor's expense, in connection with a claim that the use of its Technology is an infringement of a third party patent and will, if Contributor chooses to defend, pay all net damages, costs and fees awarded by a court of competent jurisdiction, or such settlement amount negotiated by Contributor, attributable to such claim. [Need to discuss. Why patents not included in 10.1?]

10.3 Indemnity for Commercial Stack. Sun shall, at Sun's expense, indemnify, defend and hold Google and its directors, officers, employees, agents, and sublicensees harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys fees) incurred by Google in connection with any third party claim that the Commercial Stack (except the Google Technology) infringes any third party's copyrights, trademark, trade secret or patent rights provided that: (a) Google promptly notifies Sun in writing of the claim; and (b) at Sun's request and expense, Google provides Sun with all reasonable assistance, information and

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authority to perform the foregoing. Sun will not enter into a settlement agreement without Google's written consent, which consent will not be unreasonably withheld.

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10.3 Prerequisites. Under Sections 10.1 and 10.2 above, the Indemnified Party must: (i) provide notice of the claim promptly to the Contributor; (ii) give the Contributor sole control of the defense and settlement of the claim; (iii) provide the Contributor, at Contributor's expense, all available information, assistance and authority to defend; and (iv) not have compromised or settled such claim or proceeding without the Contributor's prior written consent.

10.4 **Additional Remedies.** Should any of the Contributor's Technology become, or in the Contributor's opinion be likely to become, the subject of a claim of infringement for which indemnity is provided above, the Contributor may, at its sole option, attempt to procure on reasonable terms the rights necessary for the Indemnified Party to exercise its license rights under this Agreement with respect to the infringing items, or to modify the infringing items so that they are no longer infringing without substantially impairing their function or performance. If the Contributor is unable to do the foregoing after reasonable efforts, then the Contributor may send a notice of such inability to the Indemnified Party, in which case the Contributor will not be liable for any damages resulting from infringing activity with respect to the infringing items occurring after such notice.

11. LIMITATION OF LIABILITY

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Except for breaches of Section 3 and each Party's obligations under Section 10, and to the extent not prohibited by applicable law:

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A. Neither Party will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data or other economic advantage), however arising, including under contract or tort, even if that Party has been previously advised of the possibility of such damages.

B. Liability for all other damages shall not exceed the amounts payable by Google to Sun under this Agreement, even if an exclusive remedy provided for in this Agreement fails of its essential purpose.

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12. TERM AND TERMINATION

12.1 Term of Agreement. This Agreement shall have an initial term of three (3) years, and shall automatically renew for two (2) additional annual renewals, unless either Party provides notice of its intent not to renew the Agreement at least thirty (30) days prior to an annual renewal date (the "Term").

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12.2 Termination for Cause. If either Party commits a material breach of the terms and conditions of this Agreement, the other Party may terminate this Agreement upon ninety (90) days prior written notice to the defaulting Party describing in reasonable detail such breach, unless within the ninety (90) day period after receipt of such notice all breaches specified therein shall

have been remedied, or if the breach is one which by its nature cannot be fully remedied within ninety (90) days the Party has taken substantial measures toward remedying the breach and continues to use best efforts to remedy the breach promptly, provided that such period cannot exceed a total of one hundred and twenty (120) days. In the event that this Agreement is terminated by Google for material breach by Sun (or Sun's inability to complete its obligations due to an Insolvency Event) as provided in this Sections 12.2 and 12.3 hereunder, Google shall have the right to complete the Open Source Stack pursuant to the Project Plan and under Section 3.1(d), and upon payment to Sun of the fees specified in Section 5, Google shall have the right to release the Open Source Stack under the agreed Open Source Model pursuant to Section 3.1(e), without further consent from Sun, and notwithstanding anything to the contrary therein. In the event that this Agreement is terminated by Sun for material breach by Google (or Google's inability to complete its obligations due to an Insolvency Event) as provided in ~~this~~ Sections 12.2 and 12.3 hereunder, Sun shall have the right to complete and distribute the Sun Commercial Stack pursuant to Section 3.1(b) hereof.

12.3 Termination for Insolvency Event. This Agreement may be terminated at the option of the terminating Party with written notice thereof upon the occurrence of any of the following events with respect to the other Party: (i) such Party is unable to pay its debts as they mature; (ii) a receiver is appointed for such Party or its property; (iii) such Party makes a general assignment for the benefit of its creditors; (iv) such Party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (v) such Party is liquidated or dissolved ("Insolvency Event").

12.4 Termination for the Parties' Failure to Execute Exhibits. If the Parties fail to agree and execute Exhibits B, C or D (or any combination thereof) in accordance with Sections 4.~~8~~7, 13.1 or 13.2, as the case may be, this Agreement shall terminate with immediate effect.

12.5 Survival of Rights and Obligations Upon Termination. The provisions of Sections 1, 2, 5 (but only to those fees and/or costs that become due before the date the termination becomes effective), 7-12, 13 (including Exhibit B), and 15, shall survive any expiration or termination of this Agreement and any provisions (or parts thereof) which by their express terms survive. Notwithstanding the foregoing, Sections 2.5, 5, 10, 13.1 and 13.2 shall not survive if the Agreement is terminated pursuant to Section 12.4.

13. Marketing & Governance

13.1 Go To Market Plan. Within ~~sixty~~ thirty (6~~3~~0) days of the Effective Date of this Agreement, the Parties will develop a Go To Market Plan for the Open Source Stack. This Go To Market Plan shall include, inter alia, the following obligations: (1) Sun and Google shall promote the Java brand for the mobility market; (2) Google shall use commercially reasonable efforts to certify its mobile applications which are included in the Project Plan on the Sun Commercial Stack, provided that the Commercial Stack is a superset of the Open Source Stack; (3) Google shall use commercially reasonable efforts to ensure that its appropriate mobile client applications which are included in the Project Plan interoperate with Sun's backend products; (4) Sun shall be responsible for the development and implementation of programs and infrastructure related to ISVs and developers ~~and the Open Source Model hosting~~as they relate to Sun's Commercial Stack.

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In the event the Go To Market Plan is not agreed and signed by both Parties within ~~sixty~~ thirty (~~6~~30) days of the Effective Date, and unless otherwise agreed by the Parties in writing, this Agreement shall terminate with immediate effect.

13.2 Governance Model. Within ~~sixty~~ thirty (~~6~~30) days of the Effective Date of this Agreement, the Parties will develop a Governance Model for the Open Source Stack.

In the event the Governance ~~Plan~~ Model is not agreed and signed by both Parties within ~~sixty~~ thirty (~~6~~30) days of the Effective Date, and unless otherwise agreed by the Parties in writing, this Agreement shall terminate with immediate effect.

14. Support. Each Party shall provide backline and development support to the other Party for its respective Technologies as shall be further detailed in the Project Plan.

15. MISCELLANEOUS

15.1 Force Majeure. A Party is not liable under this Agreement for non-performance caused by events or conditions beyond that Party's control if the Party makes reasonable efforts to perform.

15.2 Assignment. Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, except that either Party may assign this Agreement to a division or majority-owned subsidiary.

15.3 Relationship of Parties. This Agreement is not intended to create a relationship such as a partnership, franchise, joint venture, agency, or employment relationship. Neither Party may act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other Party.

15.4 Waiver or Delay. Failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.

15.5 Severability. If any term or provision of this Agreement is found to be invalid under any applicable statute or rule of law then, that provision notwithstanding, this Agreement shall remain in full force and effect and such provision shall be deemed omitted, unless such an omission would frustrate the intent of the Parties with respect to any material aspect of this Agreement, in which case this Agreement and the licenses and rights granted hereunder shall terminate.

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15.6 Export Control. All Technology and technical data delivered under this Agreement is subject to U.S. export control laws and may be subject to export or import regulations in other countries. The Parties agree to comply strictly with all such laws and regulations.

15.7 Beneficiaries. This Agreement is made for the benefit of the Parties, and not for the benefit of any third Parties unless otherwise stated herein.

15.8 Governing Law. Any action related to this Agreement will be governed by California law and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in Santa Clara County, California. Google and Sun agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

15.9 Attorneys' Fees. ~~In addition to any other relief, the prevailing Party in any action arising out of this Agreement shall be entitled to attorneys' fees and costs~~**Publicity**. Neither Party shall issue any press releases or announcements, or any marketing, advertising or other promotional materials, related to this Agreement or referencing or implying the other party or its trade names, trademarks, or service marks without the prior written approval of the other party.

15.10 Notices. All written notices required by this Agreement must be delivered in person or by means evidenced by a delivery receipt and will be effective upon receipt.

15.11 Headings. Headings used in this Agreement are for ease of reference only and shall not be used to interpret any aspect of this Agreement.

15.12 Entire Agreement. This Agreement is the Parties' entire agreement relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter during the Term. No modification to this Agreement will be binding, unless in writing and signed by an authorized representative of each Party.

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

SUN MICROSYSTEMS, INC.	**GOOGLE INC.**
By_____	By_____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

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EXHIBIT A

CONFIDENTIAL DISCLOSURE ADDENDUM

Sun Microsystems, Inc., a Delaware corporation with a principal place of business at -------------------------------------(“Sun”), and Google, a ------------- corporation, having its principal place of business at -------------------------------- (“Google”), agree that:

1. “Confidential Information” means (a) the Google Technology, which shall be the Confidential Information of Google, (b) the Sun Technology, which shall be the Confidential Information of Sun, and (c) the Project Plan, Sun, Google and Integration Architectures and the terms and conditions of this Agreement, which shall be the Confidential Information of the Parties, and any trade secrets related to any of the foregoing, including but not limited to the Parties' product and marketing plans, software programs, designs, research or know-how. “Confidential Information” further shall include any and all other information which is disclosed by either Party to the other Party, in whatever form, (a) if it is clearly and conspicuously marked as “confidential” or with a similar designation; (b) if it is identified by the disclosing Party as confidential and/or proprietary before, during, or promptly after presentation or communication; or (c) if it is disclosed in a manner in which the disclosing Party reasonably communicated, or the receiving Party should reasonably have understood under the circumstances, that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used.

which is identified as confidential and/or proprietary at the time of disclosure, and if disclosed in non-tangible form, is followed up within 30 days of the disclosure with a writing identifying the confidential and/or proprietary material, and any notes, extracts, analyses, or materials prepared by either Party which are copies of the Confidential Information or from which the substance of the Confidential Information can be inferred or otherwise understood. “Confidential Information” does not include information which the receiving Party can clearly establish by written evidence (i) is or becomes known by the receiving Party without an obligation to maintain its confidentiality; (ii) is or becomes generally known to the public through no act or omission of the receiving Party; or (iii) is independently developed by the receiving Party; (a) was known to the receiving Party before receipt from the Disclosing Party; (b) is or becomes publicly available through no fault of the Receiving Party; (c) is rightfully received by the receiving Party from a third party without a duty of confidentiality; (d) is independently developed by the receiving Party without a breach of this Agreement; (e) is disclosed by the receiving Party with the Discloser's prior written approval; or (f) is required to be disclosed by operation of law, court order or other governmental demand (“Process”); provided that (i) the receiving Party shall immediately notify the disclosing Party of such Process; and (ii) the receiving Party shall not produce or disclose Confidential Information in response to the Process unless the disclosing Party has: (a) requested protection from the legal or governmental authority requiring the Process and such request has been denied, (b) consented in writing to the production or disclosure of the Confidential Information in response to the Process, or (c) taken no action to protect its interest in the Confidential Information within 14 business days after receipt of notice from the receiving Party of its obligation to produce or disclose Confidential Information in response to the Process.

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~~2.~~2. The Confidential Information disclosed under this Confidential Disclosure Addendum ("Addendum") shall be as defined in Section 1.6 of the Collaboration Development and License Agreement entered into by Sun and Google (collectively, the "Parties"), effective as of ----------, 2006 and in which this Addendum is incorporated by reference (the "Development Agreement"). Unless otherwise stated herein, all capitalized defined terms in this Addendum shall have the meaning assigned to them in the Development Agreement. 2The permitted use of Confidential Information is: for the Parties to develop, update, support and use the Developed Software and other licensed Sun Technology and Google Technology, as permitted under the Development Agreement.

~~3.~~3. This Addendum covers only Confidential Information which is disclosed ~~between the Effective Date and thirty six (36) months thereafter~~during the term of the Development Agreement. Each Party's obligations regarding Confidential Information shall expire three (3) years after the termination of the Development Agreement~~date of disclosure~~ (except for Google and Sun Source Code, which shall be protected in perpetuity). Confidential Information shall be used solely as permitted above, and shall not be disclosed to a third Party other than a subsidiary, agent, or subcontractor of the receiving Party who has agreed to be bound by terms substantially similar to those of this Addendum and as provided in Section 6 of the Development Agreement. Each Party shall protect Confidential Information of the other Party using the same degree of care, but no less than a reasonable degree of care, as such Party uses to protect its own confidential information. Upon termination of the Development Agreement or the disclosing Party's written request, the receiving Party shall cease use of the disclosing Party's Confidential Information and return or destroy such Confidential Information.

~~4.~~4. ~~Disclosure of the other Party's Confidential Information is not prohibited if prior notice is given to the other Party and such disclosure is: (a) compelled pursuant to a legal proceeding or (b) otherwise required by law.~~ Confidential Information is delivered "AS IS," and all representations and warranties, express or implied, including fitness for a particular purpose, merchantability, and noninfringement, are hereby disclaimed. Neither Party has an obligation to sell or purchase any item from the other Party. Nothing in this Addendum shall be construed as a representation that the receiving Party will not develop or acquire information that is the same as or similar to Confidential Information, provided that the receiving Party does not do so in breach of this Addendum. The receiving Party agrees that any breach of this Addendum ~~will~~ may result in irreparable harm to the disclosing Party for which damages would be an inadequate remedy and, therefore, in addition to its rights and remedies otherwise available at law, the disclosing Party shall be entitled to seek equitable relief, including injunction, in the event of such breach. The receiving Party does not acquire any rights in Confidential Information, except the limited right to use Confidential Information in the Development Agreement and this Addendum.

~~5.~~5. This Addendum is not intended to prevent the receiving Party from using Residual Knowledge, subject to any valid patents, copyrights and mask work rights of the disclosing Party. "Residual Knowledge" means ideas, concepts, know-how, or techniques related to the disclosing Party's technology that is retained in the unaided memories of the receiving Party's employees who have had access to Confidential Information. An employee's memory is considered unaided if the employee has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it.

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