

ECLIPSE FOUNDATION AISBL MEMBER COMMITTER AND CONTRIBUTOR AGREEMENT

THIS MEMBER COMMITTER AND CONTRIBUTOR AGREEMENT (THE “AGREEMENT”) is entered into as of the ____ day of _____, 20__ (the “Effective Date”) by and between Eclipse Foundation AISBL (the “Eclipse Foundation”), a Belgian international not-for-profit association (AISBL/IVZW), and _____ and its Affiliate Group (as that term is defined in the Eclipse Foundation Bylaws) (“Member”) with respect to Member’s employees and/or contractors listed in the Eclipse Foundation’s Database who have been approved to be committers or contributors as further described herein.

INTRODUCTION

The Eclipse Foundation manages open source projects (“Eclipse Technology Projects” and “Eclipse Technology Project” in the singular) in compliance with Eclipse Foundation policies including without limitation its Development Process, Specification Process, Intellectual Property Policy, and Antitrust Policy. Individuals may Submit Contributions (as those terms are defined below) to Eclipse Technology Projects. Member’s employees or contractors listed in the Eclipse Foundation’s Database as contributors shall hereinafter be referred to in this Agreement as “Contributors” and “Member’s Contributors” and each as a “Contributor”. The parties agree that the Eclipse Foundation’s Database will constitute the master list of the Member’s Contributors. The Eclipse Foundation will provide the Member with a list of its Contributors upon request.

Individuals who give frequent and valuable contributions to an Eclipse Technology Project, can have their status promoted to that of a “Committer” as that term is defined in the Eclipse Foundation Bylaws for that Eclipse Technology Project, in accordance with the Eclipse Technology Project’s corresponding charter. A Committer has access to, and is entitled to edit, or write in, the source code repository for the associated Eclipse Technology Project or to other content on the Eclipse Foundation website. In order for an individual to become a Committer, another Committer for the Eclipse Technology Project must nominate that individual. Once an individual is nominated, the existing Committers for the Eclipse Technology Project will vote using the process and rules determined by each Project Charter and administered by the Project Management Committee (“PMC”). When a new Eclipse Technology Project is started, the responsible Project Management Committee (“PMC”) will nominate an initial set of Committers for approval by the Executive Director (or his or her delegates). Becoming a Committer is a privilege that is earned by contributing and showing discipline and good judgment. It is a responsibility that should be neither given nor taken lightly.

After execution of this Agreement, Member will communicate by electronic mail to emo-records@eclipse.org a list of employees or contractors of Member that have been approved to be committers (“Initial Committer List”) by: (i) their PMC, or (ii) in the case of a new Eclipse Technology Project by the Executive Director (or his or her delegates). By executing this Agreement with respect to such employees or contractors, Member agrees that it has reviewed

this Agreement with such personnel, and that it shall allow them to enjoy the rights of a Committer and cause them to agree to and comply with all obligations that result from being a Committer, including without limitation those set forth in Section 2 below. Member's employees or contractors listed in the Eclipse Foundation's Database as Committers shall hereinafter be referred to in this Agreement as "Committers" and "Member's Committers" and each as a "Committer". The Committers listed in the Initial Committer List are understood to be an initial set of Committers and the list may be subject to change. Once the personnel in the Initial Committer List have been entered into the Eclipse Foundation's Database, the database will constitute the master list of the Member's Committers and may be updated as required in compliance with the New Committer Process. The Eclipse Foundation will provide the Member with a list of its Committers upon request.

Member's Committers and Member's Contributors shall hereinafter be referred to in this Agreement as "Developers" and "Member's Developers" and each as a "Developer".

As used in this Agreement: (i) "Contribution" shall mean any original work of authorship, including any modifications or additions to an existing work, that is Submitted by Member's Developers to the Eclipse Foundation for inclusion in, discussion of, or documentation of, any of the Eclipse Technology Projects; and (ii) "Submit" (or "Submitted") means any form of communication sent to and/or made available to the Eclipse Foundation (e.g. the content posted on electronic mailing lists, forums, content management systems, source code control systems, code review systems, issue tracking systems, etc. that are used by the Eclipse Foundation).

This Agreement applies to all Contributions Submitted by Member's Developers.

1. MEMBER RIGHTS AND OBLIGATIONS

1.1 Representation of Employee or Contractor Status. Member hereby represents that all of Member's Developers listed on the Initial Committer List are employees or contractors of Member as of the Effective Date, and that any future Developers listed in the Eclipse Foundation Database shall be employees or contractors of Member as of the date of such listing. In the event that any Developer is no longer an employee or contractor of Member, Member shall use reasonable efforts to notify the Eclipse Foundation without undue delay, provided that Member's failure to do so shall not be considered a material breach of this Agreement. To the extent any new Member employees or contractors are listed in the Eclipse Foundation's Database from time to time after the Effective Date, they shall be deemed to be Developers hereunder. Upon the Eclipse Foundation's request from time to time, Member shall verify the employment or contractor status of any or all of the Committers and Contributors. Member shall notify the Eclipse Foundation in writing and without undue delay in the event that Member desires to discontinue an employee's or contractor's Developer status under this Agreement. In such event, the Eclipse Foundation shall have the right to determine, at its sole discretion, whether to continue such individual's status as a Committer or Contributor pursuant to a separate agreement between such individual and the Eclipse Foundation.

1.2 License to Member Contributions. Member agrees that Member's Developers' Contributions will be provided under the license(s) associated with the Eclipse Technology Projects they are contributing to (the "Project License(s)"), as documented in the notices and file headers for the project. This Agreement, and the Project License(s) associated with the Eclipse Technology Projects they are contributing to, provide a license to each Developer's Contributions to the Eclipse Foundation and downstream consumers, but as between Member, Eclipse Foundation and downstream consumers, Member retains all rights in its Contributions. In addition, Member grants a non-exclusive, worldwide, perpetual, royalty-free license of all necessary rights under its copyright in and to Member's Developers' Contributions: (a) for the Eclipse Foundation (and its contributors solely as a part of Eclipse Technology Projects) to create, reproduce, prepare derivative works of, publicly display, publicly perform, distribute and sublicense specifications subject to the terms of the then-current Eclipse Foundation Specification License, based on or derived from the Specification Content (as defined below) and (b) for recipients of such specifications to create, reproduce, and distribute implementations thereof based on the portion of Member's Developers' Contributions or material derived from them in the specifications, subject to the terms of the then-current Eclipse Foundation Specification License (the "Specification Grant").

1.3 Distribution License; Reservation of Rights. Except as otherwise determined by the Eclipse Foundation Board of Directors in accordance with the Bylaws and Intellectual Property Policy, Member agrees that the Project License(s) for the Eclipse Technology Project(s) Member's Developers contribute to will serve as the distribution license for their Contributions. For the avoidance of doubt, the terms "distribution" and/or "distribute" in this Agreement shall be construed as to designate any form of making available to the public, regardless of the method of conveyance. Except for the licenses provided for in or referenced by this Agreement, Member reserves all right, title and interest in and to the Contributions.

1.4 Specification Content. "Specification Content" is (a) any Contributions to a Specification Project (as that term is defined by the Eclipse Foundation Intellectual Property Policy), or (b) the collection of interface definitions for the application or user interfaces ("Interfaces") provided by the work to which a Contribution was made, descriptions of the structure and semantic behavior of those Interfaces, and data formats and protocols associated with those Interfaces, all of which as are reasonably necessary to enable the development of independent implementations of those Interfaces. For the sake of clarity, Specification Content does not include implementation detail of how the Eclipse Technology Project's code or a Contribution implements the Interfaces in the Specification and the Specification Grant referred to above would not cover such additional material.

1.5 Compliance with Bylaws, Policies and Guidelines. Member shall take all reasonable efforts to cause Member's Developers to abide by the Eclipse Foundation Bylaws, Intellectual Property Policy, Eclipse Privacy Policy, Eclipse Development Process, and Committer Guidelines (as applicable) and any and all additional policies, guidelines and procedures adopted by the Eclipse Foundation, as may be amended from time to time.

1.6 Member Representations. Member represents that all current and future Contributions to Eclipse Foundation by Member's Developers will comply with the terms of this Agreement. Member represents that with respect to each of the Contributions by Member's Developers, or Member they are legally capable and entitled to grant the licenses granted herein. Member represents that: (i) to the extent Member's Developers Submit any Contribution for which all rights are not held solely by the Developer, Developer will have obtained all prior permissions necessary to make such Submission in accordance with the terms set forth herein; and (ii) Member's Developers will not make any Contributions which are the subject of any objection by Member or any third party. To document the above, the Eclipse Foundation requires that each Contribution Submitted by a Developer must comply with the commitments documented in the Developer Certificate of Origin (DCO) shown in Exhibit A, the current version of which can be found at <https://www.eclipse.org/legal/DCO.php>.

1.7 Committer Contact Information. Member understands and agrees, and will be responsible for ensuring that Member's Developers understand and agree, that Eclipse Foundation is required to maintain public records of authorship related to all Contributions made by them, and that certain personally identifiable information and personal contact information, including without limitation their name and email address, mailing address, other contact information and any change in employment or independent contractor status shall be publicly displayed in conjunction with all Contributions made by them under the terms of this Agreement. Member or, at Member's direction, Developers, shall promptly inform Eclipse Foundation of any change in the information provided, as well as any change in employer or third party to whom services are being provided.

1.8 Committer's Rights. Committers working on an Eclipse Technology Project may be granted privileged access rights to services, resources, or content on one or more servers, repositories, or content management systems provided by, or managed by, the Eclipse Foundation. Committers may also be granted other rights necessary to administrate and manage Eclipse Technology Projects such as mailing list administration, Bugzilla administration, etc. The Eclipse Foundation will have complete control and discretion over which capabilities are assigned to a Committer account, and may terminate or temporarily disable Committer access for any reason at any time.

1.9 Treatment of Account. Member shall require each Developer to maintain the strict confidentiality of their passwords issued by the Eclipse Foundation ("Password") and shall not allow any other individual or entity to use a Developer's username or Password. Member shall cause any Developer becoming aware of any such use to notify the Eclipse Foundation immediately by sending an e-mail to emo@eclipse-foundation.org, or such other e-mail address as may be designated by the Eclipse Foundation from time to time. Until a Developer has provided such notice to the Eclipse Foundation, Member shall be fully responsible for all actions made through its Developer's username and Password.

2. TERM AND TERMINATION

2.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue for a duration equal to the duration of the Member's Membership Agreement. For the avoidance of doubt, this Agreement will terminate automatically when the Member's Membership Agreement is terminated or expired.

2.2 Termination of Status. The Eclipse Foundation may terminate any Developer(s) status with or without cause, by providing Member notice of such termination. In the event a Developer wants to terminate their status or the Member is requesting to terminate a Developer status, the Member will do so by providing written notice to the Eclipse Foundation. In both cases, the termination shall take effect as of the date of sending the written notice.

3. GENERAL

3.1 No Other Licenses. By executing this Agreement, neither Member, nor Developers grant or receive, by implication, estoppel, or otherwise, any rights under any copyright, patents or other intellectual property rights of the Eclipse Foundation or another member.

3.2 Limitation of Liability. It is the expectation of the Eclipse Foundation and other members that Member will monitor and be responsible for the activities of its Developers and that the Developers will meet their obligations, and not exceed the scope of their authority, as set forth in this Agreement. Notwithstanding the preceding sentence, to the extent permissible by law, in no event will either the Eclipse Foundation, Member, or Developers be liable to each other or any other member or third party under this Agreement for the cost of procuring substitute goods or services, lost profits, lost revenue, lost sales, loss of use, loss of data, or any incidental, consequential, direct, indirect, punitive or special damages, whether or not such party had advance notice of the possibility of such losses or damages.

3.3 Governing Law. Unless otherwise agreed to by the parties in writing, any dispute arising out of or in relation with the conclusion, validity, existence, enforcement and termination of this Agreement, and its interpretation, on contractual or extra-contractual grounds shall be construed and governed by the laws of Belgium without reference to conflict of laws rules and principles.

3.4 Dispute resolution. Both the Eclipse Foundation and Member irrevocably agree that the Courts of the judicial district of Brussels, Belgium, shall have exclusive jurisdiction to settle any dispute or claim (as detailed under section 3.3). Notwithstanding the foregoing, if the dispute involves a Member that is an organization established by a treaty or other instrument governed by international law possessing its own international legal personality ("Intergovernmental Organization") and enjoys immunity from legal processes of any jurisdiction, national court or other authority, then the Parties agree that (a) Nothing in this Agreement, in the Bylaws, Membership Agreement, Internal Rules, additional policies and other

governance rules adopted by the Eclipse Foundation constitutes or may be interpreted as a limitation upon or a waiver of that immunity and (b) any dispute or claim (as detailed under section 3.3) will be governed by Belgian law and finally settled by arbitration. Unless otherwise agreed by the Parties in writing, arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one (1) or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Brussels, Belgium. The language of arbitration shall be English.

3.5 Notices. All notices or other communications to or upon any party shall be delivered to or at the addresses set forth on the signature page(s) hereto. For purposes of this Section, notice will be served by electronic mail with acknowledgement of receipt. In the absence of reaction from the other party within three (3) business days or if no acknowledgement of receipt is served within this period, the notifying party will serve this notice by written mail, or in case of termination of this Agreement, by registered letter or by international courier. In any case, the notice will be deemed served validly when sent by electronic mail in accordance with this section 3.5. Either party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party at such changed address.

3.6 Complete Agreement; No Waiver. Except with respect to the Bylaws of Eclipse Foundation, the Intellectual Property Policy, the Membership Agreement, the Eclipse Public License, the Eclipse.org Terms of Use, Eclipse Foundation's Antitrust Policy, and any other policies, guidelines and procedures that may be adopted by Eclipse Foundation, from time to time, in accordance with the Bylaws, and, for the avoidance of doubt, without prejudice to any statute (e.g. convention) governing a Member which is an Intergovernmental Organization, this Agreement, including all attachments, sets forth the entire understanding of the Eclipse Foundation and Member with respect to the subject matter hereof and supersedes all prior agreements and understandings relating hereto, unless otherwise stated in this Agreement. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

3.7 Definitions. Capitalized terms in this Agreement will be defined in the body of this Agreement, in the relevant sections. Any capitalized term not defined in this Agreement will have the same meaning as the definition given to it under the Membership Agreement and/or the Bylaws.

3.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but collectively shall constitute one and the same instrument.

3.9 Assignment. Member may not assign its rights or obligations under this Agreement without the prior written consent of the Eclipse Foundation or as otherwise set forth in the Bylaws. For the purposes of this Agreement, an assignment shall be deemed to include a transfer or sale of all or substantially all of the business of Member, or a merger, consolidation or other transaction that results in a change in control of Member.

3.10 Compliance with Laws. Anything contained in this Agreement to the contrary notwithstanding, the obligations of Eclipse Foundation and Member shall be subject to all laws, present and future, of any government having jurisdiction over Eclipse Foundation or Member including, without limitation, all export and re-export laws and regulations. It is the intention of the Eclipse Foundation and Member that this Agreement and all referenced documents shall comply with all applicable laws and regulations.

3.11 Independent Contractors. The relationship of Eclipse Foundation with respect to the Member and its Developers established by this Agreement is that of independent contractors. This Agreement does not give either party the power to direct and control the day to day activities of the other, constitute the parties as partners, joint venturer, co-owners, principal-agent or otherwise participants in a joint or common undertaking, or, except as expressly provided herein, allow either party to create or assume any obligation on behalf of the other for any purpose whatsoever.

3.12 Surviving Provisions. Any provision which by its nature is intended to survive this Agreement will survive any termination of this Agreement. In particular, the following sections will survive any termination of this Agreement: 1.2 (License to Member Contributions), 1.3 (Distribution License), 1.6 (Member Representations) and 3.2 (Limitation of Liability).

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.

In witness of this Agreement, Eclipse Foundation and Member have executed this Agreement below,

Eclipse Foundation AISBL

Eclipse Foundation AISBL

By: _____

Name: _____

Title: _____

Date: _____

Notice Information

Address: Eclipse Foundation AISBL
Rond Point Schuman 11
Brussels 1040
Belgium
Attention: **Committer Records**

e-mail: emo-records@eclipse.org

Member

By: _____

Name: _____

Title: _____

Date: _____

Notice Information

Address: _____

Attention: _____

e-mail: _____

EXHIBIT A: Developer Certificate of Origin

Developer Certificate of Origin
Version 1.1

Copyright (C) 2004, 2006 The Linux Foundation and its contributors.
1 Letterman Drive
Suite D4700
San Francisco, CA, 94129

Everyone is permitted to copy and distribute verbatim copies of this license document, but changing it is not allowed.

Developer's Certificate of Origin 1.1

By making a contribution to this project, I certify that:

- (a) The contribution was created in whole or in part by me and I have the right to submit it under the open source license indicated in the file; or
- (b) The contribution is based upon previous work that, to the best of my knowledge, is covered under an appropriate open source license and I have the right under that license to submit that work with modifications, whether created in whole or in part by me, under the same open source license (unless I am permitted to submit under a different license), as indicated in the file; or
- (c) The contribution was provided directly to me by some other person who certified (a), (b) or (c) and I have not modified it.
- (d) I understand and agree that this project and the contribution are public and that a record of the contribution (including all personal information I submit with it, including my sign-off) is maintained indefinitely and may be redistributed consistent with this project or the open source license(s) involved.