



**ECLIPSE FOUNDATION, INC.
MEMBERSHIP AGREEMENT**

THIS MEMBERSHIP AGREEMENT (the “Agreement”) is effective as of this _____ day of _____, 20____ (the “Effective Date”) by and between Eclipse.org Foundation, Inc. (the “Eclipse Foundation”), a Delaware non-profit corporation, and _____ (“Member”).

WHEREAS, the Eclipse projects provide vendor-neutral, open development of open source technologies, specifications, platforms, runtimes, frameworks, and tools (the “Eclipse Technology”);

WHEREAS, the Eclipse Foundation has adopted bylaws calling for the creation of Membership Classes, as defined below, and setting forth a governance structure (the “Bylaws”), which can be found at <https://www.eclipse.org/org/documents/eclipse-foundation-inc-bylaws.pdf>;

WHEREAS, Member would like to remain or become a member of the Eclipse Foundation in the Membership Class selected by Member on Exhibit C hereto;

NOW THEREFORE, the Eclipse Foundation agrees to retain or admit Member on the terms and consideration contained herein, and Member agrees to abide by the terms and conditions contained herein:

1. MEMBERSHIP CLASSES. There shall be multiple classes of membership (“Membership Classes”) specified in the Bylaws including but not limited to, Strategic Members, the Strategic Foundation Member, Contributing Members, Committer Members, and Associate Members.

2. MEMBERSHIP RIGHTS AND OBLIGATIONS

2.1 Generally. Member agrees to abide by the obligations set forth in this agreement, including without limitation the requirements to pay the annual fees established for its Membership Class, if any, as set forth in Exhibit C hereto, as may be amended from time to time in accordance with the Bylaws. In addition to the foregoing, (i) Committer Members shall be individuals who are “Committers” in accordance with the Committer Member process set forth in Exhibit A, and (ii) Strategic Members shall be entities who abide by the additional requirements set forth in Exhibit B.

2.2 Compliance with Policies. As it pertains to their activities with the Eclipse Foundation, Member agrees to abide by, and shall have all applicable rights and obligations as set forth in, the Bylaws, the Eclipse Foundation Antitrust Policy, the Eclipse

Foundation Intellectual Property Policy (the “IP Policy”), and any and all additional policies and procedures adopted by the Eclipse Foundation, as may be amended from time to time in accordance with the Bylaws.

2.3 Use of Member Name and Logo. Unless otherwise agreed, the Eclipse Foundation may use Member’s company logo anywhere where, and in a consistent manner as, similar Members’ names and logos are displayed. Any use of Member's logo shall be subject to the then current logo and trademark usage guidelines of Member. The Eclipse Foundation may decline to display Member’s company logo if it, in its sole discretion, determines that it cannot reasonably meet the requirements of Member’s logo and trademark usage guidelines.

2.4 Use of Eclipse Foundation Names, Logos, and Trademarks. Member agrees to comply with the then current Eclipse Foundation Trademark Usage Guidelines in its use of any Eclipse Foundation names, logos, or trademarks.

3. TERM AND TERMINATION

3.1 Term. The term of this Agreement shall begin on the Effective Date and, except as provided below, shall continue indefinitely subject to the rights of termination set forth in Section 3.2.

3.2 Termination. Member may terminate its membership or be removed there from in accordance with Sections 6.16 and 6.17 of the Bylaws. Upon termination of Member’s membership, this Membership Agreement shall terminate.

3.3 Survival. In the event of termination under Section 3.2, the following shall survive and remain in effect: Sections 2.3, 3 and 4. In addition, Member shall be obligated to pay all costs, expenses and dues that accrued prior to the effective date of termination.

4. GENERAL

4.1 Authority to Execute Agreement. Member hereby represents, warrants and covenants to the Eclipse Foundation that (a) it has the authority to enter into this Agreement and to perform its obligations hereunder; (b) the execution and performance of this Agreement does not and will not violate any agreement to which Member is a party or by which it is otherwise bound; and (c) when executed and delivered, this Agreement will constitute a legal, valid and binding obligation of Member, enforceable in accordance with its terms.

4.2 No Other Licenses. By executing this Agreement, Member neither grants nor receives, by implication, estoppel, or otherwise, any rights under any copyright, patents or other intellectual property rights of the Eclipse Foundation or another Member.

4.3 No Employment Relationship. Nothing in this Agreement is intended to give rise to an employer-employee relationship, including, but not limited to the relationship between Committers and the Eclipse Foundation.

4.4 No Warranty. THE ECLIPSE FOUNDATION AND MEMBER EACH ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE AGREED IN WRITING AND TO THE EXTENT PERMISSIBLE BY LAW, ALL INFORMATION PROVIDED TO OR BY THE ECLIPSE FOUNDATION UNDER THIS AGREEMENT IS PROVIDED “AS IS” WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND THE ECLIPSE FOUNDATION AND MEMBER EACH EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SUCH INFORMATION.

4.5 Limitation of Liability. TO THE EXTENT PERMISSIBLE BY LAW, IN NO EVENT WILL EITHER THE ECLIPSE FOUNDATION OR MEMBER 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.

4.6 Governing Law. This Agreement shall be construed and controlled by the laws of the State of New York without reference to conflict of laws principles.

4.7 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 can include notice by written mail, electronic mail or by facsimile and shall be deemed served when sent. 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.

4.8 Complete Agreement; No Waiver. Except with respect to the Eclipse Foundation’s Bylaws , IP Policy, Antitrust Policy, the EPL, and, to the extent Member is a current member of the Eclipse Foundation, except with respect to any agreement (other than the current membership agreement) between the Eclipse Foundation and Member in connection with that current membership relationship, and except any other policies and procedures that may be adopted by the Eclipse Foundation from time to time in accordance with the Bylaws, this Agreement, including all attachments, sets forth the entire understanding of the Eclipse Foundation and Member 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.

4.9 Amendment. Member shall be given at least thirty (30) days prior written notice of the effective date of an amendment agreed to in accordance with the Bylaws. If Member does not agree, such disagreement to be confirmed in writing, to a modification to this Agreement that was approved in accordance with the Bylaws, this Agreement and Member’s membership in the Eclipse Foundation shall be terminated.

4.10 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.

4.11 Compliance with Laws. Anything contained in this Agreement to the contrary notwithstanding, the obligations of the Eclipse Foundation and Member shall be subject to all laws, present and future, of any government having jurisdiction over the Eclipse Foundation and 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.

4.12 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 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.

4.13 Independent Contractors. The relationship of the Eclipse Foundation and Member 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 venturers, 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.

4.14 Order of Precedence. Notwithstanding anything else to the contrary in this Agreement or in any other agreement entered into with the Eclipse Foundation, in the case of the conflict between the terms of this Agreement and any other agreement the terms of this Agreement shall control.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK
SIGNATURE PAGE TO FOLLOW

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

Eclipse Foundation Inc.:

Notice Information:

Signature: _____

Address: Eclipse Foundation Inc.
2934 Baseline Road, Suite 202
Ottawa, ON, Canada, K2H 1B2
Attention: Membership

Name: _____

Telephone: (+1) 613-224-9461

Title: _____

Fax: (+1) 212-918-1619

Date: _____

e-mail: membership@eclipse.org

Member:

Notice Information:

Company: _____

Address: _____

Signature: _____

Attention: _____

Name: _____

Telephone: _____

Title: _____

Fax: _____

Date: _____

e-mail: _____

EXHIBIT A

COMMITTER MEMBER PROCESS

Individuals who give frequent and valuable contributions to an Eclipse Technology development project, can have their status promoted to that of a "Committer" for that project, in accordance with the project's corresponding Charter. A Committer has write access to the source code repository for the associated project, and gains rights allowing them to affect the future of the project. In order for an individual to become a Committer, another Committer for the project must nominate that individual. Once an individual is nominated, the existing Committers for the project will vote using the process and rules established in the project's corresponding Charter. When a new project is started, the corresponding PMC will nominate an initial set of Committers for approval by the Executive Director (or his 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.

A Committer who is not already employed by a Member company must sign the Eclipse Foundation Membership Agreement in order to attain the rights and obligations of a Committer Member.

EXHIBIT B

STRATEGIC MEMBERS

Strategic Members agree to commit the full-time equivalent of a minimum of two (2) Developers (as defined below) assigned to work Eclipse Technology development projects. Strategic Members are also encouraged (but not required) to lead an Eclipse Technology development project, or a Project Management Committee ("PMC" as defined in the Bylaws and the then current Eclipse Development Process. Strategic Members agree to maintain their minimum of two (2) Developers, assigned as above, in place and committed to the development of the Eclipse Technology at all times during which such entity is a Member, as defined in the Bylaws

"Developers" are professionals who by virtue of their skills and participation have a reasonable expectation of qualifying as Committers (as defined in Exhibit A) on the primary project to which they are assigned. Developers shall be defined to include persons with at least one of the following qualifications: (1) technical management experience; (2) software development skills; (3) systems integration skills; (4) testing skills; or (5) documentation skills.

The Eclipse Foundation is not authorized to issue managerial instructions to Developers, but is entitled to issue technical and organizational specifications to ensure compliance with the then current Eclipse Development Process. The Member has sole managerial authority over its employees.

Nothing in this Agreement shall be construed as creating an employment relationship by and between any Member and the Eclipse Foundation.

EXHIBIT C

FEE SCHEDULE AND MEMBERSHIP CLASS SELECTION

Please choose one of the Membership Classes as defined in the Eclipse Bylaws, and as listed in Table 1 below. Please note - most new members choose Contributing membership.

Your Membership Fees are based on a combination of the Membership Class you choose in Table 1, as well as the type of your organization and your annual revenues.

The Membership Fees are as listed in Table 3. We will invoice you on an annual basis the amount indicated by your choices in Tables 1 and 2, in accordance with this Agreement and the Eclipse Bylaws.

**PLEASE CHECK ONE BOX IN TABLE 1 AND TABLE 2 BELOW.
Your resulting Membership Fees are shown in Table 3.**

TABLE 1 - CHOOSE MEMBERSHIP CLASS

Membership Class - Please Check One (as defined in the Eclipse Bylaws)	
Strategic Member*	<input type="checkbox"/>
Strategic Foundation Member**	<input type="checkbox"/>
Contributing Member (normally chosen by most new members)	<input type="checkbox"/>
Associate Member	<input type="checkbox"/>
Committer Member**	<input type="checkbox"/>

NOTES:

* Strategic Members are expected to have two Developers engaged in Eclipse projects, as stated in Exhibit B.

** Committer Members and the Strategic Foundation Member pay no annual fees.

TABLE 2 - DESCRIBE YOUR ORGANIZATION

Details Regarding Member - PLEASE CHECK ONE	
Annual revenues: > €250 million	
Annual revenues: €100 million - €250 million	
Annual revenues: €50 million - €100 million	
Annual revenues: €10 million - €50 million	
Annual revenues: < €10 million	
Annual revenues: < €1 million & fewer than < 10 employees	
Govt, Govt agencies, Research Organizations, NGOs, etc.	
Academic, Publishing Organizations, User Groups, etc.	
Individual Committer	

TABLE 3 - YOUR MEMBERSHIP FEES

Annual Corporate Revenues	Annual Eclipse Foundation Membership Fees		
	Strategic	Contributing	Associate
> €250 million	€250 000	€20 000	€5 000
€100 million - €250 million	€150 000	€15 000	€5 000
€50 million - €100 million	€100 000	€10 000	€5 000
€10 million - €50 million	€50 000	€7 500	€5 000
< €10 million	€25 000	€5 000	€5 000
< €1 million & fewer than < 10 employees	€25 000	€1 500	N/A
Govt, Govt agencies, Research Organizations, NGOs, etc.	€25 000	€5 000	€0
Academic, Publishing Organizations, User Groups, etc.	€25 000	€1 000	€0