

**BYLAWS**  
**of**  
**ECLIPSE FOUNDATION AISBL**

**a Belgian incorporated international not-for-profit association**  
**Rond Point Schuman 11, Brussels 1040, Belgium**  
**Enterprise number: 0760.624.114**  
**RLE Brussels (French-speaking Enterprise Court)**

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## I. NAME – LEGAL FORM – REGISTERED OFFICE – DEFINITIONS

### Article 1. - Name – Legal form

- 1.1 An international not-for-profit association is formed, under the name "Eclipse Foundation" (hereinafter the "Association").
- 1.2 The Eclipse Foundation has legal personality and is governed by the Belgian Code on Companies and Associations of 23 March 2019 (hereinafter the "**BCCA**") as modified and amended by subsequent laws.

### Article 2. - Registered office

- 2.1 The registered office of the Eclipse Foundation is situated in the Brussels Region, Belgium.
- 2.2 Without prejudice to the application of the Belgian linguistic legislation, the registered office of the Eclipse Foundation can be transferred anywhere in Belgium, upon a decision taken by the Board.

If the transfer of the registered office requires that the language of these Bylaws must be modified, only the General Assembly is empowered to take such decisions subject to the rules on the amendments of these Bylaws.

### Article 3. - Definitions

- 3.1 For the purpose of these Bylaws the following definitions shall apply:
  - a) "**Affiliate**" means any legal entity that is directly or indirectly Controlled by, under common Control with or that Controls the subject party.
  - b) "**Affiliate Group**" has the meaning as defined in article 6.5. of these Bylaws.
  - c) "**Annual Community Report**" is a report prepared by the Board including information about the activities, achievements, and financial situation of the Eclipse Foundation over the past financial year to be submitted to the General Assembly for approval, but to be distinguished from the Annual Management Report.
  - d) "**Annual Management Report**" refers to the report that must mandatorily be prepared by the Board in accordance with Belgian law if Eclipse Foundation does not qualify as a small international not-for-profit association.
  - e) "**Annual Membership Fee**" has the meaning as defined in article 13.1 of these Bylaws.

- f) **"Association"** refers to the Eclipse Foundation AISBL as defined in article 1.1 of these Bylaws.
- g) **"Committer"** refers to an individual who, based upon frequent and valuable contributions to an Eclipse Technology Project, has been granted committer status on such Projects. 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.
- h) **"Control"** means direct or indirect ownership of or the right to exercise (i) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject legal entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject legal entity.
- i) **"Developer"** is a professional who by virtue of his or her skills and participation has a reasonable expectation of qualifying as a Committer as defined in article 3.1. d) of these Bylaws on the primary Project to which he or she is assigned, or in the case of a Project Lead or PMC Lead has the appropriate leadership skills to lead the particular Project or PMC respectively. A Developer shall be a natural person with at least one (1) of the following qualifications: (1) technical management experience; (2) software development skills; (3) systems integration skills; (4) testing skills; or (5) documentation skills.
- j) **"Eclipse Foundation Development Process"** (also referred to as the **"Eclipse Development Process"** or **"EDP"**) means the document that describes how the Committers, Members, the Board of Directors, other participants in the community, and the Eclipse Management Organization (the **"EMO"**) lead, influence, and collaborate with Eclipse Projects to achieve the Purposes.
- k) **"Eclipse Foundation Membership Agreement"** means the agreement by which the Eclipse Foundation agrees to admit a Member to the Eclipse Foundation on the terms and conditions contained therein and the said Member agrees to abide by these terms and conditions for the selected membership class.
- l) **"EPL"** means the latest version of the Eclipse Public License as approved by the Board.
- m) **"IP Policy"** means the Intellectual Property Policy of the Eclipse Foundation.
- n) **"Internal Rules"** means a set of rules that supplements these Bylaws.
- o) **"Other Dues"** refers to fees paid by a Member in association with their role in the initiation and/or their ongoing participation in Working

Groups, as well as any other fees to be paid by a Member that are directly related to the achievement of the Purpose of the Eclipse Foundation but that are distinct from the Annual Membership Fee.

- p) **"Project Management Committee"** (also referred to as **"PMC"**) means the primary leadership of a Top-Level Project with responsibility to ensure that the Projects within its purview are active and in compliance with the EDP and IP Policy.
- q) **"PMC lead"** means one (1) individual assigned to act as the leader for a PMC.
- r) **"Project"** means the collection of Committers, development artifacts, and development activities intended to organize an activity consistent with the Purposes.
- s) **"Project Lead"** means a Developer who shall act as a leader for an Eclipse Technology Project.
- t) **"Specification"** means a collection of application programming interface (API) definitions, descriptions of semantic behaviour, data formats, and/or protocols, intended to enable the development of independent implementations.
- u) **"Top-Level Project"** means an organizational unit that defines an overall mission and scope for a collection of Projects.
- v) **"U.S. Code"** means the Internal Revenue Code of the United States.
- w) **"Working Group"** means a collection of Eclipse Foundation Members organized to pursue a common goal consistent with the Purposes.
- x) **"Working Group Participation Agreement"** means the agreement concluded between a Member and Eclipse Foundation setting forth the terms and conditions subject to which a Member may participate in one (1) or more Working Groups.

## II. PURPOSE – OBJECT – DURATION

### Article 4. - Purpose - Object

- 4.1 The Eclipse Foundation is an international not-for-profit association that provides vendor-neutral, open development of open source technologies, specifications, platforms, runtimes, frameworks and tools (collectively the **"Eclipse Technology"**). The disinterested purpose of international utility of Eclipse Foundation is to:

- a) advance the worldwide creation, evolution, promotion, and support of the Eclipse Technology;
- b) cultivate throughout the world both an open source community and an ecosystem of complementary products, capabilities, and services; and
- c) operate as a business league to advance best practices in the adoption of open technologies and promote the common business interests of its Members for the benefit of the international industry as a whole.

(collectively the "**Purpose**" or the "**Purposes**").

For this Purpose, the Eclipse Foundation provides various services to its Members. The Eclipse Foundation shall not directly or indirectly carry on any activities not permitted to be carried on by an association exempt from U.S. federal income tax under Section 501(c)(6) of the U.S. Code.

Except as stipulated in article 4.5. of these Bylaws, the Eclipse Foundation is not organized for pecuniary profit or to engage in an activity normally carried on for profit; no part of its net profits, properties, assets or capital shall inure to the benefit of any Member, director or officer of the Eclipse Foundation, or any other natural person. The reimbursement of expenditures or the payment of reasonable compensation for services rendered shall not be deemed to be a distribution of profits, properties, assets or capital.

4.2 The Eclipse Foundation carries out the following activities to achieve and sustain its Purposes:

- a) implement initiatives that are likely to further any achievement of its Purpose, in particular by fostering collaborative development to support the evolution of the Eclipse Technology;
- b) manage the intellectual property associated with its Projects and Working Groups
- c) host Projects, including managing the participation to such Projects, and providing worldwide royalty-free availability of the outputs produced by such Projects;
- d) host the development of vendor-neutral software Specifications;
- e) conduct marketing for Eclipse Technology Projects, including developer advocacy, promotion, public relations, industry events, and academic and research community outreach;
- f) ensure the availability of enablement services, including education and training programs;

- g) implement branding programs for some specifications;
- h) support Member funded initiatives consistent with the Purposes;
- i) participate in government-funded research programs;
- j) establish and maintain a global network to support the achievement of its Purposes;
- k) operate websites for the discovery and download of third-party software extensions to Eclipse Technology Projects;
- l) provide computing, network, and storage resources to any Eclipse Technology Project which has a bona fide requirement for such resources;
- m) provide resources to all Eclipse Technology Projects to compile, build, integrate, sign and make available downloads;
- n) manage marketing projects and Working Groups in a vendor-neutral way;
- o) manage advertisement on web properties owned or operated by the Eclipse Foundation;
- p) manage the trademarks of Projects and Working Groups of the Eclipse Foundation;
- q) create and manage Working Groups by gathering member companies who share a common interest in a particular technology domain;
- r) organize conferences and events around the world, and manage sponsorship of these conferences and events;
- s) in close cooperation with Eclipse.org Foundation, Inc., Eclipse Foundation Europe GmbH and Eclipse Foundation Canada, manage the brand "Eclipse Foundation" and the Eclipse Technology worldwide in a consistent manner in terms of membership, projects, working groups, IP Policies, Antitrust Policies, terms of use, open source development processes and specification processes.

4.3 The Eclipse Foundation may become a member of any other not-for-profit association/not-for-profit organization provided that said not-for-profit association/not-for-profit organization is legal and its purposes are consistent with the Purposes of the Eclipse Foundation.

4.4 The Eclipse Foundation may undertake any other activity, procedure or initiative or take any other actions that are directly or indirectly related to the Purposes of the Eclipse Foundation as set out in article 4.1 of these Bylaws or necessary or useful to the realization of said Purposes. Among

other things, and provided that such activity is either expressly contained in the approved budget of the Eclipse Foundation or is otherwise approved by the General Assembly, the Eclipse Foundation may grant loans to, invest in the capital of, or, in any other manner, directly or indirectly, take participations in other legal entities, associations and companies of private or public nature, governed by Belgian law or foreign laws.

- 4.5 In addition, the Eclipse Foundation may carry out any activity that contributes directly or indirectly to the realization of the Purposes, including the exercise of economic and profit-making activities on an ancillary and/or isolated and/or exceptional basis which proceeds shall at all times be allocated exclusively to the realization of its Purposes.
- 4.6 The Eclipse Foundation is authorized to collect any resources that are necessary to the realization of its Purposes.

#### **Article 5. - Duration**

- 5.1 The Eclipse Foundation shall be formed for an unlimited period and can be dissolved at any time by decision of the Board, as defined herein.

### **III. MEMBERSHIP**

#### **Article 6. - General provisions**

- 6.1 The Eclipse Foundation has four (4) classes of membership: (i) Strategic Members; (ii) Contributing Members; (iii) Committer Members and (iv) Associate Members. As used in these Bylaws, the term "**Member**" shall be used to refer generically to a "Strategic Member", "Contributing Member", "Committer Member" or an "Associate Member". All four (4) classes of membership shall be collectively referred to as the "**Members**".
- 6.2 The Eclipse Foundation is composed of at least three (3) Members other than Associate Members.
- 6.3 Committer Membership shall solely be open to natural persons. Legal entities, whether for profit or for not-for-profit, legally constituted in accordance with the laws or customs of their country of origin are eligible to join the Eclipse Foundation in any membership class other than Committer Member.
- 6.4 Each Member other than a Committer Member shall designate a natural person who is an employee, officer, director, or consultant of the Member, or of an Affiliate to this Member, to act as its permanent representative within the Eclipse Foundation (the "**Member Representative**").

A Member may change its Member Representative at any time by giving written notice by e-mail to the Secretary of the Eclipse Foundation.

6.5 Each Member is expected to adhere to the following criteria:

- a) sign the Eclipse Foundation Membership Agreement and abide by its terms and conditions for the selected membership class; and
- b) upon joining, express public support for the Eclipse Foundation and its Purposes, examples of such expression of public support include without limitation a press release, a corporate blog post, or similar

((a) and (b) collectively, the "**Membership Criteria**"). A Member that has fulfilled the Membership Criteria shall be referred to herein as an "**Executing Member**".

A group of legal entities which are Affiliates of each other shall be collectively referred to herein as an "**Affiliate Group**", and to the extent one (1) legal entity within the Affiliate Group is an Executing Member, all legal entities within that Affiliate Group shall constitute one (1) Member, or as the case may be one (1) Voting Member, under the name, the class and the level of membership of the Executing Member designated by them.

As an exception to the foregoing, legal entities which are Affiliates may each become a separate Executing Member, including the right to participate and vote as a separate Member in all Eclipse Foundation-managed activities, excluding only votes of the General Assembly pursuant to article 20.1 of these Bylaws, and on the understanding, however, that any participation in the Board shall be pursuant to the terms of article 23 herein.

It is the responsibility of the Executing Member constituting one (1) Member, or as the case may be one (1) Voting Member in an Affiliate Group as defined in article 6.5., Para. 2 of these Bylaws, to ensure that all necessary inter-company agreements have been executed with those of its Affiliates that are participating in Eclipse Foundation-managed activities under the name, the class and the level of membership of that Executing Member, and that Executing Member shall be responsible for all actions or inactions taken by any legal entity in the applicable Affiliate Group.

At any time that a legal entity is no longer part of an Affiliate Group having one (1) Member, or as the case may be one (1) Voting Member, as defined in article 6.5., Para. 2 of these Bylaws, combined or not with separate Executing Member(s) pursuant article 6.5., Para. 3 of these Bylaws, the rights and obligations of such legal entity towards Eclipse Foundation shall terminate immediately without further action by the Eclipse Foundation, unless such legal entity independently becomes a separate Executing Member pursuant to article 6.5., Para. 3 of these Bylaws or part of a different Affiliate Group.



At any time that a legal entity of an Affiliate Group that became a separate Executing Member pursuant article 6.5., Para. 3 of these Bylaws is no longer part of the Affiliate Group, the membership rights and obligations of such legal entity shall terminate immediately without further action by the Eclipse Foundation, unless such legal entity (i) becomes part of a different Affiliate Group or (ii) decides to keep its separate Executive Membership under the selected membership class. In the latter case, the legal entity will be granted with full membership rights and duties of the selected membership class upon signature of the respective Eclipse Foundation Membership Agreement.

- 6.6 Members agree (i) to abide by the obligations set forth in the Eclipse Foundation Membership Agreement, including amongst other things the requirements to pay the Annual Membership Fee for its membership class in accordance with article 13 of these Bylaws and (ii) to abide by other terms relating to the payment of Other Dues, including but not limited to annual Working Group participation fees, as further specified in article 13 herein.
- 6.7 Members agree to abide by, and shall have all applicable rights and obligations as set forth in these Bylaws, the Internal Rules, the Eclipse Foundation Antitrust 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 these Bylaws, without prejudice to the Member's right to withdraw from membership in accordance with article 12.2 of these Bylaws and the Eclipse Foundation Membership Agreement.
- 6.8 Members agree to comply with the Eclipse Foundation Trademark Usage Guidelines in their use of Eclipse Foundation names, logos, or trademarks.
- 6.9 Each Member agrees to bear all of its own costs and expenses related to its membership as defined in the Eclipse Foundation Membership Agreement and in connection with the performance of its rights and duties in respect of the Eclipse Foundation, including, without limitation, compensation of its employees, travel and living expenses associated with the Members participation in any meeting or conferences called in the framework of the activities of the Eclipse Foundation. Any Developer (as defined in 3.1. f) of these Bylaws) employed by, or acting as a contractor for, a Member to work on Eclipse Technology Projects will be fully compensated by that Member and not by the Eclipse Foundation.

## **Article 7. - Strategic Members**

- 7.1 Strategic Membership is open to legal entities
  - a) that meet the Membership Criteria laid down in article 6.5, Para. 1 of these Bylaws; and
  - b) that agree (i) to commit, on an on-going basis, the full-time equivalent of a minimum of two (2) Developers assigned to work on Eclipse

Technology Projects and (ii) 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 legal entity is a Member, as defined in these Bylaws. Strategic Members are also encouraged (but not required) to lead an Eclipse Technology Project, or a PMC as defined in these Bylaws.

- 7.2 Subject to the limitations set out in article 6.5 of these Bylaws, Strategic Members have full membership rights, including the right to attend, to speak, to present motions and to vote at the General Assembly through their Member Representative appointed in compliance with article 6.4 of these Bylaws.

Besides the general membership rights set out in articles 6.7 and 6.8 of these Bylaws, Strategic Membership includes, amongst others the right:

- a) to be entitled to nominate a Board representative in accordance with article 23.2 a) of these Bylaws;
- b) to be eligible or propose a candidate for a position in the governing bodies or any other body of the Eclipse Foundation;
- c) to participate in roundtables, workshops, expert groups, or committees and any other activities and meetings of the Eclipse Foundation;
- d) to join Eclipse Working Groups as a member;
- e) to propose amendments to these Bylaws or to the Internal Rules of the Eclipse Foundation.

- 7.3 Besides the general membership obligations set out in articles 6.6, 6.7, 6.8 and 6.9 of these Bylaws, Strategic Members have the following membership obligations:

- a) to comply with these Bylaws, the Internal Rules, the policies, the procedures and other governance rules of the Eclipse Foundation as well as with the decisions of its governing bodies;
- b) to support the Purpose, the object, the policies and the activities of the Eclipse Foundation;
- c) to nominate and notify in writing the name of one (1) Member Representative to the Secretary of the Eclipse Foundation, and to ensure such position is immediately filled should the Member Representative cease to be employed by such Member or should their mandate (i.e., officer, director, or consultant) be terminated;
- d) to pay the Annual Membership Fee pursuant to article 13 of these Bylaws ;

- e) to allow the Eclipse Foundation the use and display of its name and logo on the Eclipse Foundation websites and anywhere where similar Members' names and logos are displayed, pursuant to the terms of Eclipse Foundation Membership Agreement unless otherwise agreed therein and consistent with the then current logo and trademark usage guidelines of the Strategic Member.

## **Article 8. - Contributing Members**

### **8.1 Contributing Membership is open to legal entities**

- a) that meet the Membership Criteria laid down in article 6.5, Para.1 of these Bylaws; and
- b) that are however not willing to enter in the commitments of a Strategic Member in terms of assignment, on an on-going basis, of the full-time equivalent of a minimum of two (2) Developers on Eclipse Technology Projects as set out in article 7.1. b) of these Bylaws.

### **8.2 Subject to the limitations set out in article 6.5. of these Bylaws, Contributing Members have full membership rights, including the right to attend, to speak, to present motions and to vote at the General Assembly through their Member Representative appointed in compliance with article 6.4 of these Bylaws.**

Besides the general membership rights set out in articles 6.7 and 6.8 of these Bylaws, Contributing Membership includes, amongst others the right:

- a) to be entitled to have one representative serve as an elected Board representative in accordance with article 23.2. b) of these Bylaws;
- b) to be eligible or propose a candidate for an elected Board position, a position in the governing bodies, or a position on any other body of the Eclipse Foundation;
- c) to participate in roundtables, workshops, expert groups, or committees and any other activities and meetings of the Eclipse Foundation;
- d) to join Eclipse Working Groups as a member;
- e) to propose amendments to these Bylaws or the Internal Rules of the Eclipse Foundation.

### **8.3 Besides the general membership obligations set out in articles 6.6, 6.7, 6.8 and 6.9 of these Bylaws, Contributing Members have the following membership obligations:**

- a) to comply with these Bylaws, the Internal Rules, the policies, procedures and other governing rules of the Eclipse Foundation as well as with the decisions of its governing bodies;
- b) to support the Purpose, the object, the policies and the activities of the Eclipse Foundation;
- c) to nominate and notify in writing the name of one (1) Member Representative to the Secretary of the Eclipse Foundation, and to ensure such position is immediately filled should the Member Representative cease to be employed by such Member or should their mandate (i.e., officer, director, or consultant) be terminated;
- d) to pay the Annual Membership Fee, pursuant to article 13 of these Bylaws;
- e) to allow the Eclipse Foundation the use and display of its name and logo on the Eclipse Foundation websites and anywhere where similar Members' names and logos are displayed, pursuant to the terms of Eclipse Foundation Membership Agreement unless otherwise agreed therein and consistent with the then current logo and trademark usage guidelines of the Contributing Member.

#### **Article 9. - Committer Members**

##### **9.1 Committer Membership is open to a natural person**

- a) that meets the Membership Criteria laid down in article 6.5, Para. 1 of these Bylaws, without prejudice to article 11.2. of these Bylaws; and
- b) that has been granted "Committer" status as defined in article 3.1. d) of these Bylaws.

##### **9.2 Subject to the limitations set out in article 6.5. of these Bylaws, Committer Members shall have the right to attend, to speak, but shall not have the right to vote at the General Assembly meeting. However, Committer Members shall be represented on the Board of Directors.**

Besides the general membership rights set out in articles 6.7 and 6.8 of these Bylaws, Committer Membership includes, amongst others the right:

- a) to be entitled to Board representation in accordance with article 23.2. c) of these Bylaws;
- b) to be eligible or propose a candidate for a position in the governing bodies or any other body of the Eclipse Foundation;
- c) to participate in roundtables, workshops, expert groups, or committees and any other activities and meetings of the Eclipse Foundation;

- d) to join Eclipse Working Groups as a member, provided that the Working Group's charter includes Committer Members as a class of membership.
- 9.3 Besides the general membership obligations set out in articles 6.6, 6.7, 6.8 and 6.9 of these Bylaws, Committer Members have the following membership obligations:
- a) to comply with these Bylaws, the Internal Rules, the policies, procedures and other governing rules of the Eclipse Foundation as well as with the decisions of its governing bodies;
  - b) to support the Purpose, the object, the policy and the activities of the Eclipse Foundation.

### **Article 10. - Associate Members**

- 10.1 Associate Membership is open to legal entities
- a) that meet the Membership Criteria laid down in article 6.5, Para.1 of these Bylaws; and
  - b) that are not willing to enter in the commitments of a Strategic Member or Contributing Member, but that are willing to support the Eclipse Foundation financially or otherwise, without being actively involved in the decision making process or the management of the Eclipse Foundation.
- 10.2 Associate Members shall have the right to attend, to speak, but shall not have the right to vote at the General Assembly meeting through their Member Representative appointed in compliance with article 6.4 of these Bylaws. Associate Members shall not be represented on the Board of Directors.
- Besides the general membership rights set out in articles 6.7 and 6.8 of these Bylaws, the Associate Membership includes, amongst others the right:
- a) to participate in roundtables, workshops, and meetings of the Eclipse Foundation;
  - b) to join Eclipse Working Groups as a guest only, provided that the Working Group's charter includes Associate Members as a guest class of membership and defines its respective rights and duties as a guest.
- 10.3 Besides the general membership obligations set out in articles 6.6, 6.7, 6.8 and 6.9 of these Bylaws, Associate Members have the following membership obligations:

- a) to comply with these Bylaws, the Internal Rules, the policies, the procedures and other governing rules of the Eclipse Foundation as well as with the decisions of its governing bodies;
- b) to support the Purpose, the object, the policy and the activities of the Eclipse Foundation;
- c) to nominate and notify in writing the name of one (1) Member Representative to the Secretary of the Eclipse Foundation, and to ensure such position is immediately filled should the Member Representative cease to be employed by such Member or should their mandate (i.e., officer, director, or consultant) be terminated;
- d) to pay the Annual Membership Fee pursuant to article 13 of these Bylaws;
- e) to allow the Eclipse Foundation the use and display of its name and logo on the Eclipse Foundation websites and anywhere where similar Members' names and logos are displayed, pursuant to the terms of Eclipse Foundation Membership Agreement unless otherwise agreed therein and consistent with the then current logo and trademark usage guidelines of the Associate Member.

#### **Article 11. - Admission procedure**

11.1 The process of application for membership to the different membership classes or for change of membership classes consists of the following steps:

- a) candidate members fill in an application form for the desired membership class, which is available on the website of the Eclipse Foundation, and which shall be submitted in writing to the Secretary by e-mail. The application form will at least contain the following elements:
  - (i) a declaration concerning the desired membership class;
  - (ii) the surname(s), first name(s), domicile and mailing address if the applicant is a natural person or the full legal name, legal form and address of the registered office and mailing address if the applicant is a legal entity;
  - (iii) the applicant's commitment in principle to comply with the Bylaws, the Internal Rules (if any), the Eclipse Foundation Antitrust Policy, IP Policy, and any and all additional policies, procedures and other governing rules of the Eclipse Foundation, along with a commitment to express public support for the Eclipse Foundation and its Purpose;

- b) the Secretary shall be entitled to request additional information from an applicant;
- c) once the application is accepted by the Secretary, the Eclipse Foundation Membership Agreement, which outlines the agreed terms and conditions for the selected membership class is signed by the applicant and the Eclipse Foundation;
- d) every candidate member that abides to these Bylaws, the Internal Rules (if any), the Eclipse Foundation Antitrust Policy, IP Policy, and any and all additional policies and other governing rules of the Eclipse Foundation, is automatically admitted as a Member in the selected membership class upon completion of its respective Eclipse Foundation Membership Agreement. The membership in the selected membership class is effective as of the "Effective Date" such as defined in the candidate members respective Eclipse Foundation Membership Agreement.

11.2 A Committer (as defined in article 3.1. d) of these Bylaws) who is employed by a Member company shall be deemed a Committer Member by virtue of the Member company's signed Eclipse Foundation Membership Agreement.

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

11.3 In cases where a candidate member intends to join a Working Group in conjunction with their joining the Association, and in addition to the membership admission procedures set out in articles 11.1 and 11.2 of these Bylaws, candidate members may also become a Member of the Eclipse Foundation by simultaneously signing a Working Group Participation Agreement, provided that participation agreement includes the Eclipse Foundation Membership Agreement. In such case, the candidate member is exempted from the completion and execution of the Eclipse Foundation application form indicated in article 11.1a) of these Bylaws, and instead the application process consists of the following steps:

- a) The candidate member submits a request for membership and participation in the industry collaboration, indicating their intention to simultaneously sign the Working Group Participation Agreement and the Eclipse Foundation Membership Agreement. This request should be submitted in writing to the Secretary by e-mail or via the Foundation's website and will at least contain the following elements:
  - (i) a declaration concerning the desired membership class and the intention to collaborate within one (1) or several specific Working Groups;

- (ii) the full legal name, legal form, and address of the registered office and mailing address of the applicant;
    - (iii) the applicant's commitment in principle to comply with the Bylaws, the Internal Rules, the Eclipse Foundation Antitrust Policy, IP Policy, and any and all additional policies, procedures and other governing rules of the Eclipse Foundation, along with a commitment to express public support for the Eclipse Foundation and its Purpose;
  - b) the Secretary shall be entitled to request additional information from the candidate member;
  - c) once the application is accepted by the Secretary, the Working Group Participation Agreement including the Eclipse Foundation Membership Agreement, which outline the agreed terms and conditions for the selected membership class and collaboration, are signed by the applicant and the Eclipse Foundation;
  - d) every candidate member that abides by these Bylaws, the Internal Rules (if any), the Eclipse Foundation Antitrust Policy, IP Policy, and any and all additional policies and other governing rules of the Eclipse Foundation, is automatically admitted as a Member in the selected membership class upon completion of its respective Working Group Participation Agreement including the Eclipse Foundation Membership Agreement. The membership in the selected membership class is effective as of the "Effective Date" as defined in the candidate member's respective agreements.
- 11.4 Notwithstanding articles 11.1 through 11.3 of these Bylaws, the Secretary may refuse membership to an applicant if that applicant, or an Affiliate of the applicant, is currently subject to a national, supranational or international final decision or sanction resulting in the applicant not being allowed, according to that decision or sanction, to exercise all or part of its potential membership rights within the Association.

## **Article 12. - Termination of Membership**

- 12.1 Membership in the various membership categories ends (i) in accordance with articles 12.2 or 12.3 of these Bylaws (ii) with immediate effect, by death or loss of legal capacity if the concerned Member is a natural person, or by bankruptcy, insolvency, judicial reorganisation, liquidation or dissolution if the concerned Member is a legal entity or (iii) for Committer Members, with immediate effect if they lose their status as a Committer (as defined in article 9.1 b) and in article 3.1 d) of these Bylaws), or (iv) with immediate effect, by dissolution of the Eclipse Foundation.

The Member whose membership ended is required to fulfil its obligations according to article 12.5 of these Bylaws.



- 12.2 Any Member shall have the right to withdraw from membership, by written notice to be sent by e-mail or simple letter to the Secretary.

In the event that a Member does not pay its Annual Membership Fee, Other Dues and all compounded late fees within ninety (90) calendar days of the invoice due date ("**Dues Delinquent**") in spite of the notification of a payment reminder by the Secretary giving an additional delay of thirty (30) calendar days to execute the payment, said Member shall be deemed to have resigned, with immediate effect, from its membership.

- 12.3. Any Member can be expelled by a decision of the Board in the following cases:

a) for a material breach of the Eclipse Foundation Membership Agreement, Bylaws, Internal Rules, IP Policy, Eclipse Foundation Antitrust Policy, EPL and/or other related Eclipse Foundation agreements or policies, without curing such breach within thirty (30) days of receipt of written notice from the Eclipse Foundation.

b) if the Member, or an Affiliate of the Member, conducted or acted in a manner that is gravely injurious to the Eclipse Foundation or harms the reputation of the Eclipse Foundation.

c) if following a national, supranational or international final decision or sanction, the Member, or an Affiliate of the Member, is no longer allowed according to that decision or sanction to exercise all or part of its membership rights within the Association.

The Member being expelled shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held no fewer than five (5) days before the effective date of the proposed expulsion. The hearing shall be held by the Board. The notice to the Member of its proposed expulsion shall state (i) the rationale for the proposed expulsion, (ii) that such Member is entitled, upon request, to such hearing, (iii) that a date, time and place of the hearing will be established upon receipt of request therefore, and (iv) in the absence of such request, the effective date of the proposed expulsion and termination of Membership.

The decision of the Board requires the affirmative vote of two-thirds (2/3) of the directors present or represented at the meeting after a hearing duly held in accordance with the previous paragraph. As used in this article, two-thirds (2/3) vote means two-thirds (2/3) of the directors of the Board exclusive of such Member's director on the Board for Strategic Members, and exclusive of any Contributing Director or Committer Director if such director is also a representative of the Member facing expulsion (any such director, an "**Affected Director**").

The decision of the Board shall be final and the expulsion shall be effective as of the date of the decision. The expelled Member is required to fulfil its obligations according to article 12.5 of these Bylaws.

- 12.4 Members terminated pursuant to article 12.2 last paragraph and 12.3. may only be reinstated upon the affirmative vote of at least two-thirds (2/3) of the directors present or represented at a Board meeting.
- 12.5 The end of the Membership shall not affect the Members' obligation to pay the respective Annual Membership Fee or any other sum due on the date of the end of Membership as a result of obligations incurred or commitments made prior such date. Except as otherwise set forth in these Bylaws, a Member whose Membership ends shall not be entitled to receive any refund, pro rata or otherwise, of any Annual Membership Fee, dues or assessments previously paid.

Except as otherwise set forth in these Bylaws or allowed by applicable law, the Member whose membership ended, shall not be entitled to claim any of the Eclipse Foundation's funds or assets nor to claim any other compensation or refund.

- 12.6 Except in the case of expulsion of a Member, within ten (10) days of end of Membership within the Eclipse Foundation, a Member may appeal in writing to the Board for a pro rata refund of its Annual Membership Fee. The appeal will specifically set forth any circumstances that the Member believes justify a refund in its case. The Board shall decide by simple majority of the directors present or represented at the meeting upon the appeal in its sole discretion at its first meeting following the appeal scheduled according to article 25.2 and 25.3 of these Bylaws.
- 12.7 Any Member can, with immediate effect, be provisionally suspended by a decision of the Secretary from all or part of its membership rights in the following cases:
- a) if an expulsion procedure has been launched against such Member in accordance with article **Error! Reference source not found.** of these Bylaws;
  - b) for a minor breach of the Eclipse Foundation Membership Agreement, Bylaws, Internal Rules, IP Policy, Eclipse Foundation Antitrust Policy, EPL and/or other related Eclipse Foundation agreements or policies, without curing such breach within thirty (30) days of receipt of written notice from the Eclipse Foundation;
  - c) if following a national, supranational or international final decision or sanction, the Member is no longer allowed according to that decision or sanction to exercise all or part of its membership rights within the Eclipse Foundation.

Prior to deciding on suspension of a Member, the Member whose potential suspension has been proposed has the right to present its defence on the envisaged suspension by either oral or written statement to the Secretary. Such defence shall be heard by the Secretary before deciding on the suspension of all or part of the rights of the respective Member.

The suspension decision of a Member by the Secretary is valid until the Secretary decides otherwise or until a final decision is taken by the Board on the expulsion of the Member.

#### **IV. MEMBERSHIP FEES - DUES**

##### **Article 13. - Membership Fees – Dues**

- 13.1 In order to achieve the Purpose of the Eclipse Foundation, the Members will be required to pay an annual membership fee (the "**Annual Membership Fee**") and Other Dues as set forth in the Eclipse Foundation Membership Agreement, as amended from time-to-time by the Board. The amount of the Annual Membership Fee is determined by the Board on the basis of (i) the respective membership class of the Member, (ii) the annual revenues of the Member and (iii) the type of organisation/company the Member belongs to. For clarity, the Annual Membership Fee and the Other Dues owed by each Member will be based on the total aggregate revenue of its Affiliate Group.
- 13.2 Each Member shall have to pay the respective Annual Membership Fee and Other Dues, as determined by the deadline fixed by the Board. The Secretary will send out invoices in compliance with reasonable invoicing requirements (e.g., receipt of invoices at least forty-five (45) days prior to the due date). The Secretary will promptly send out a written notice to any Member that has not paid its Annual Membership Fee or Other Dues within thirty (30) days after the date upon which such Annual Membership Fee and Other Dues are required to be paid.

#### **V. ORGANISATIONAL STRUCTURE**

##### **Article 14. - Governing bodies**

- 14.1 The governing bodies of the Eclipse Foundation shall be
  - a) The General Assembly;
  - b) The Board;
  - c) The Finance Committee;
  - d) The Compensation Committee;

e) The Executive Director.

The General Assembly as set forth in Section V.1 of these Bylaws is the supreme body of the Eclipse Foundation. It shall supervise the Board and ensure the achievement of the Purpose of the Eclipse Foundation.

The Board as set forth in Section V.2 of these Bylaws is empowered with the management of the activities and technical affairs of the Eclipse Foundation. In addition, the Board has a supervisory role on the work of the Finance Committee, the Compensation Committee, the IP Advisory Committee, the Executive Director as well as the other officers, and the ad hoc Board Committees.

The Finance Committee as set forth in articles 29 and 30 of these Bylaws is a Standing Committee and shall have overall responsibility for the oversight of all corporate funds and shall monitor the financial affairs of the Eclipse Foundation.

The Compensation Committee as set forth in articles 29 and 31 of these Bylaws is a Standing Committee and shall have overall responsibility for determining the compensation of the Treasurer and the Executive Director of the Eclipse Foundation.

The Executive Director as set forth in Article 36 of these Bylaws is responsible for the day-to-day management of Eclipse Foundation.

#### **Article 15. - IP Advisory Committee – Ad hoc Board Committees – Board Interest Groups**

- 15.1 The IP Advisory Committee as set forth in Articles 29 and 32 of these Bylaws is a Standing Committee set up for advisory purposes and shall review the intellectual property and licensing policies of the Eclipse Foundation.
- 15.2 The Board may charter additional ad hoc Board Committees as set forth in Article 33 of these Bylaws to advise it on any subject as deemed necessary by the Board, to conduct the activities and to realize the Purpose of the Eclipse Foundation.
- 15.3 The Board may set up and dissolve Board Interest Groups in order to consider specific matters of the common interest within the Purpose of the Eclipse Foundation.

#### **Article 16. - Eclipse Management Organization – Eclipse Technical Advisory Council**

- 16.1 The Executive Director shall be responsible for forming the Eclipse Management Organization ("EMO") which shall establish the Eclipse

Technical Advisory Council and shall lead the development of the Eclipse Technology.

- 16.2 The Eclipse Technical Advisory Council shall be responsible for guiding and influencing the software conventions, standards and architectures used by Projects; It shall further advise the Executive Director in matters of importance to Developers, including any proposed changes to the Eclipse Foundation Development Process.

## **V. 1. - GENERAL ASSEMBLY**

### **Article 17. - Powers**

- 17.1 The General Assembly is the supreme body of the Eclipse Foundation and shall have the powers explicitly conferred to it by law or by these Bylaws.

The General Assembly shall have the following exclusive powers:

- a) to approve changes to the name of the Eclipse Foundation or of the Eclipse Technology (under the conditions set forth in article 20.9 and 26.4 (c) of these Bylaws);
- b) to approve or to amend the Eclipse Foundation Membership Agreement (under the conditions set forth in article 20.9 and 26.4 c) of these Bylaws);
- c) to amend these Bylaws of the Eclipse Foundation (under the conditions set forth in article 20.9 and 26.4 c) of these Bylaws);
- d) to appoint and revoke the directors of the Board nominated by each class of members in accordance with article 23.2. of these Bylaws and to determine the conditions, as the case may be the financial remuneration, under which the mandate of such directors is conferred, exercised and terminated;
- e) to appoint and revoke the statutory auditor(s) and to determine their remuneration for the exercise of their mandate;
- f) to approve the Annual Community Report, the budget as well as any amendment thereto, and the annual accounts of the previous financial year;
- g) as the case may be, to acknowledge the Annual Management Report;
- h) to vote on the discharge of the directors and of the statutory auditor(s) (if any);
- i) in all other cases required by law or by these Bylaws.

## **Article 18. - Composition**

- 18.1 The General Assembly shall be composed of (i) the Strategic Members and (ii) the Contributing Members (all together the **"Voting Members"**).
- 18.2 Each Member shall be represented by its Member Representative as set out in article 6.4 of these Bylaws.
- 18.3 Subject to the provisions and limitations stipulated in these Bylaws, Committer Members, Associate Members, the directors, the Executive Director, the Secretary, other officers and guests invited by the Board or the General Assembly, may attend the General Assembly meeting.

## **Article 19. - Meeting rules**

- 19.1 The General Assembly shall meet at least once a year. The ordinary meeting of the General Assembly (the **"Annual Meeting"**) shall be held in the second quarter of the calendar year.
- 19.2 Meetings of the General Assembly shall be presided over by the Executive Director, or in the absence of the Executive Director, by the chair appointed by the Executive Director. The Secretary shall act as the secretary of all meetings of the General Assembly, provided, that, in his or her absence the presiding officer shall appoint a Member to act as Acting Secretary of the meeting.
- 19.3 An extraordinary meeting (the **"Extraordinary Meeting"**) of the General Assembly shall be held upon request of (i) the Board whenever the Board judges it necessary, (ii) the Executive Director, or (iii) of a number of the Voting Members which in the aggregate represent at least twenty percent (20%) or more of the General Assembly of the Eclipse Foundation by a written demand signed, dated, and delivered to the Secretary. The convening notice of an Extraordinary Meeting shall be given within thirty (30) days following the date the written demand is delivered to the Secretary, in accordance with article 19.4 of these Bylaws.
- 19.4 The convening notice of each Annual or Extraordinary Meeting of the General Assembly shall be given to each Member, by electronic mail being sent to the email address provided by the Member's then-current designated Member Representative, at least thirty (30) calendar days before the meeting. The convening notice shall include the date, time, the preliminary agenda and, if already available, the supporting documents of the meeting and the place of the meeting. In cases as described in article 19.6 of these Bylaws, the convening notice shall contain a clear and detailed description of the procedures relating to the remote participation. The convening notice of each Annual or Extraordinary Meeting shall include a description of any matter or matters that must be approved by the General Assembly pursuant to these Bylaws or applicable law. In the case of Extraordinary Meetings, the convening notice shall specify the purpose or

purposes for which the meeting is called. With regard to the Voting Members, such convening notice shall be given in writing to every Voting Member who, on the record date for notice of the meeting, is entitled to vote.

- 19.5 No decision can be taken on an item that does not appear on the agenda circulated with the convening notice, or that is not communicated in the final agenda circulated together with the relevant supporting documents at least fourteen (14) calendar days prior to the General Assembly.
- 19.6 General Assembly meetings will be held at a physical location, either at the registered office of the Eclipse Foundation or at any other place, as determined by resolution of the Board. Unless otherwise provided for in these Bylaws and upon decision of the Board of Directors to hold a hybrid meeting of the General Assembly, Voting Members, directors, statutory auditor(s), Committer Members, Associate Members, the Executive Director, the Secretary, other officers or guests shall be permitted to attend any and all meetings of the General Assembly (including Annual or Extraordinary Meetings) (i) in person or (ii) remotely via a conference call, a video conference, a web-conference or via any other electronic means of communication made available by the Eclipse Foundation and which offers the possibility for the Eclipse Foundation to check the identity of the participants to the meeting. Such electronic means of communication must enable the participants (i) to directly, simultaneously and uninterruptedly follow the discussion during the meeting, (ii) to speak to each other and (iii), as far as the Voting Members are concerned, to participate in the deliberation, to ask questions, and to cast definitively their vote on the agenda items. With regard to the compliance with the quorum and majority requirement rules, any Member or any other person participating by such electronic means in the General Assembly meeting shall be deemed present at the place where such meeting takes place.

Breakdowns, overloads, line failure, connection failure or any other event of the same or similar nature beyond the Eclipse Foundation's will and related to the use of such electronic means shall not constitute a ground for annulment of the decision taken by the General Assembly, unless these constitute an irregularity as to the manner in which the decision is adopted pursuant to article 2:42 BCCA. Such technical problems or incidents preventing or disrupting the participation by electronic means to the General Assembly or the vote must be mentioned in the minutes of the meeting with sufficient precision.

- 19.7 Any Annual or Extraordinary General Assembly meeting, whether or not a quorum is present, may be adjourned by the simple majority of the votes cast of the Voting Members, present or represented at the meeting in compliance with article 20.1 of these Bylaws. It shall not be necessary to give any such notice of the time and place of the adjourned meeting, other than by an announcement at the meeting at which such adjournment is

taken. If after the adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each Voting Member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

#### **Article 20. - Voting**

- 20.1 Each Voting Member shall have one (1) equal voting right on each matter submitted to a vote of the General Assembly.

Without prejudice to article 6.5 of these Bylaws, legal entities in an Affiliate Group that would be qualified as Voting Members under these Bylaws shall constitute one (1) Voting Member having only one (1) collective vote with respect to any and all matters submitted to the General Assembly. The legal entities that would be qualified as Voting Members in an Affiliate Group shall decide which Member shall exercise their collective vote, and shall inform the Secretary in writing.

Committer Members, Associate Members, the Executive Director, the Secretary, other officers or guests may attend the General Assembly meeting with the right to speak, but without the right to vote.

- 20.2 A Voting Member whose Member Representative is prevented from attending a General Assembly meeting may be represented by an employee, officer, director, or consultant of their organization, or of an Affiliate to this organization, by written proxy to be presented or sent by e-mail to the Executive Director before each meeting.
- 20.3 Any Voting Member, officer, legal counsel, or third party may act on behalf of an unlimited number of Voting Members by virtue of a written proxy, if Belgian law requires that the decision of the General Assembly must be certified by notarial deed.
- 20.4 Voting can be done by show of hand, by roll-call, by secret ballot, or by electronic means in real time. Voting by secret ballot may take place on sensitive matters or on personal issues and for any other purposes upon request of the Executive Director, and approved by a simple majority of the votes cast of the Voting Members, present or represented at the meeting.
- 20.5 Without prejudice to article 20.4. of these Bylaws and, upon decision of the Board, voting can also validly be done by electronic voting or voting by correspondence prior to the General Assembly meeting.

The Voting Member voting by electronic vote or by correspondence has to cast its vote without reserves, without presenting an amendment to the proposal and without imposing any condition on its vote.



Every electronic vote or vote by correspondence validly cast at least twenty-four (24) hours before the starting time of the General Assembly meeting is taken in consideration for the calculation of the quorum of attendance.

Electronic votes or votes by correspondence cast will remain valid for all items mentioned and covered by the agenda communicated according to article 19.4 and 19.5 of these Bylaws.

If the proposal on which an electronic vote or a vote by correspondence had been cast is subsequently validly changed by the General Assembly during the meeting, the said electronic vote or vote by correspondence is considered as null and void, but the nullity of the vote will not challenge the calculation of the quorum of attendance.

- 20.6 Unless the decision of the General Assembly would result in an amendment of these Bylaws, upon proposal of the Board a written decision-making procedure may be launched in which the General Assembly may vote by unanimous written consent in a ballot without personal meeting, i.e. by e-mail.

In such case, the Voting Members shall be informed in writing about the matters on which a decision is to be made by means of a written procedure and of the reasons justifying the use of this procedure. To this end, an email, including the proposed resolutions and supporting documents, is sent to all Voting Members, with the request to cast their vote to the Secretary. The Voting Member has to cast his or her vote without reserves, without presenting any amendment to the proposed resolution(s), and without imposing any condition on his or her vote. The written resolutions shall be adopted by unanimous written consent of Voting Members of the Voting Members to be formally recorded by the Secretary.

- 20.7 Unless otherwise provided in these Bylaws, the General Assembly shall be deemed validly constituted and has the quorum to resolve when at least ten percent (10%) of the Voting Members are present or represented.

If this quorum is not reached at the first meeting, a second meeting with the same agenda than for the first meeting will be convened to decide definitively and validly on said agenda, irrespective of the number of Voting Members present or represented at the meeting. The second meeting may not be held less than fifteen (15) calendar days after the first meeting, and the date and time of the second General Assembly meeting may be determined in the first convening notice. The Board shall confirm (or not) the holding of the second General Assembly meeting at least five (5) calendar days before the scheduled date. Members who, as the case may be, have joined the Association between the first and second meeting of the General Assembly will not be convened to and, as far as Voting Members

are concerned, not be entitled to vote at the second General Assembly meeting.

- 20.8 Unless these Bylaws or the Belgian BCCA require another majority, any decision of the General Assembly shall require a simple majority of the votes cast of the Voting Members present or represented at the meeting in compliance with article 20.1 of these Bylaws.

Abstentions, blank or invalid votes do not count in the calculation of the majority, neither in the numerator nor in the denominator.

- 20.9 Decisions (i) approving or changing the name of the Eclipse Foundation or the Eclipse Technology; (ii) approving or amending the Eclipse Foundation Membership Agreement, or (iii) amending these Bylaws must be approved by two-thirds (2/3) majority of the votes cast of the Voting Members present or represented at the meeting in compliance with article 20.1. of these Bylaws.

Abstentions, blank or invalid votes do not count in the calculation of the majority, neither in the numerator nor in the denominator.

#### **Article 21. - Minutes of meeting**

- 21.1 A register book, including a record of all decisions and resolutions of the General Assembly, shall be drawn up under the responsibility of and signed by the Secretary of the Eclipse Foundation or his or her delegate.

A copy of the minutes of the General Assembly shall be at the disposal or sent to all Members by electronic mail or by any other written means of communication, upon their request.

- 21.2 The original minutes of the General Assembly have to be entered into a separate physical or electronic register that must be made available to the Members for consultation. If no statutory auditor is appointed, all Members may consult the minutes and decisions of the General Assembly at the registered office of the Eclipse Foundation.

- 21.3 The Eclipse Foundation shall post on its website minutes from the General Assembly as well as Quarterly Reports to the General Assembly as set forth in article 39 of these Bylaws.

### **V. 2. - BOARD**

#### **Article 22. - Powers**

- 22.1 The Board shall act as a collegial body and is vested with the overall management and administration powers of the Eclipse Foundation, except for those reserved to the General Assembly in accordance with the applicable laws, these Bylaws and the decisions of the General Assembly.

The activities and technical affairs of the Eclipse Foundation shall be managed by or under the direction of the Board. As a general principle, no action may be taken or approved by the Board that is outside the stated Purpose of the Eclipse Foundation as set forth in article 4 of these Bylaws.

The Board of Directors has the residual powers and decides upon any other matter or activity serving the Purpose of the Eclipse Foundation that has not specifically and explicitly been allocated by these Bylaws to another body of the Eclipse Foundation.

The powers of the Board of Directors shall include, but are not limited to the following:

- a) Preparation of General Assembly meetings and implementation of the decisions of the General Assembly;
  - b) Adoption of Internal Rules, policies, procedures or governing rules other than the Bylaws and the amendments thereto;
  - c) Organisation and monitoring of accounting in accordance with the Belgian law to ensure that legal and financial requirements are met;
  - d) Preparing the annual accounts and the Annual Community Report of the previous financial year and the budget;
  - e) As the case may be, preparing the Annual Management Report;
  - f) Appointment and dismissal of the officers of the Eclipse Foundation.
- 22.2 The Board may delegate special management or representation powers of the Eclipse Foundation regarding legal actions or legal acts involving the Eclipse Foundation to one (1) or more directors, to the Executive Director, to the Secretary, to any other officer or to third parties. In this case, the scope of the delegated powers and the term of the mandate have to be specified.
- 22.3 Without prejudice to article 22.2. of these Bylaws, the Board delegates the day-to-day management powers of the Eclipse Foundation including authority to sign on behalf of the Eclipse Foundation and powers of representation relating to such day-to-day management to the Executive Director of the Eclipse Foundation.
- 22.4 The day-to-day management covers (i) all acts and decisions that do not exceed the needs of the daily life of the Eclipse Foundation or (ii) all acts and decisions that, either due to their level of minor interest or due to their urgent character, do not justify the intervention of the Board itself.

## Article 23. - Composition

- 23.1 The number of directors constituting the whole Board shall be subject to adjustment from time-to-time based upon the composition requirements set forth in article 23.2. of these Bylaws with respect to Member representation on the Board, but shall in no event be less than two (2) directors.
- 23.2 Directors of the Board are natural persons and shall be appointed by the General Assembly, among the candidates nominated by the Strategic Members, Contributing Members, and Committer Members in the following manner:
- a) Subject to the terms of article 23.2. e) of these Bylaws, each Strategic Member shall be entitled to nominate one (1) representative to the Board (a "**Strategic Member Director**") for appointment by the General Assembly, provided, that, such representative must be an employee, officer, director, or consultant of the nominating Strategic Member in order to be eligible to serve as a Strategic Member Director. Upon the termination of the membership of a Strategic Member pursuant to article 12 of these Bylaws, any Strategic Member Director nominated by such Strategic Member shall be deemed to have resigned, with immediate effect, from his or her position as a director of the Board. The provisions of this article may not be amended without the unanimous consent of the Strategic Members in addition to any and all other requirements including, but not limited to, the voting requirements laid down in article 26. 4. c) (iii), for amendment of these Bylaws set forth herein.
  - b) Contributing Members shall be entitled to at least one (1) seat on the Board (a "**Contributing Director**"). Such representative or representatives shall represent the entire class. An additional seat on the Board shall be allocated to the Contributing Members for every additional five (5) seats beyond one (1) allocated to Strategic Members in the aggregate as determined annually as of February 1 of each calendar year; provided, that, such representative must be an employee, officer, director, or consultant of a Contributing Member in order to be eligible to serve as a Contributing Director. For example, if there are a total of sixteen (16) Strategic Members in the aggregate, there will be four (4) board seats allocated for Contributing Directors. If there are fifteen (15) Strategic Members in the aggregate, there will be three (3) board seats allocated for Contributing Directors. Each Contributing Member (including Affiliates thereof as defined in article 6.5 of these Bylaws) may have at most one (1) Contributing Director on the Board. Candidates for such Contributing Director seats shall be nominated for appointment by the General Assembly via annual at-large elections by the Contributing Members using the Single Transferable Vote process. The total number of nominated candidates

who are an employee, officer, director, or consultant of the same Contributing Member, including its Affiliates, may not exceed one (1). For purposes of this article 23.2 b) and article 23.2 c) below, "**Single Transferable Vote**" means a voting process under which each Contributing Member or Committer Member, as applicable, shall be entitled to cast numbered preference votes for as many candidates as there are open seats on the Board allocated to Contributing Members and Committer Members, as applicable. Votes that are not needed to elect a candidate and votes for candidates who do not receive enough votes to be elected are transferred in accordance with the preferences of each voter. The Executive Director (as described in Article V.4 below) and the Eclipse Management Organization (as described in Article V. 5 below) shall be responsible for establishing policies and procedures to implement the Single Transferable Vote process for the Eclipse Foundation.

- c) Committer Members, as a class, shall be entitled to at least one (1) seat on the Board (a "**Committer Director**"). Such representative or representatives shall represent the entire class. An additional seat on the Board shall be allocated to the Committer Members for every additional five (5) seats beyond one (1) allocated to Strategic Members in the aggregate as determined annually as of February 1 of each calendar year; provided, that, such representative must be either an individual who is a Committer Member or an employee, officer, director, or consultant of a Member in order to be eligible to serve as a Committer Director. The total number of nominated candidates who are an employee, officer, director, or consultant of the same legal entity (including Affiliates thereof as defined in article 6.5 of these Bylaws) may not exceed one-half (1/2) of the total number of seats available for that year's annual at-large election. Candidates for such Committer Director seats shall be nominated for appointment by the General Assembly via annual at-large elections by the Committer Members using the Single Transferable Vote process as set out under article 23.2. b) of these Bylaws.
- d) Associate Members shall not be represented on the Board and shall not be permitted to vote with the General Assembly.
- e) Affiliate Board Representation
  - (i) Notwithstanding the provisions of article 23.2 a) herein, to the extent any Strategic Members are part of an Affiliate Group (as defined in article 6.5 of these Bylaws), all such Strategic Members in such Affiliate Group shall collectively be entitled to nominate for appointment by the General Assembly only one Strategic Member Director to the Board to represent them collectively (a "**Strategic Director**"). The Strategic Director must be an employee, officer, director, or consultant of one of the

Strategic Members in the Affiliate Group in order to be eligible to serve as a Strategic Director. Upon the termination of the membership of all Strategic Members of the Affiliate Group, any Strategic Director designated by such Affiliate Group shall be deemed to have resigned with immediate effect, from his or her position as a director of the Board.

- (ii) To the extent an Affiliate Group consisting of Strategic Members is represented by a Strategic Director that is an employee, officer, director, or consultant of one of those Members, each other Strategic Member in that Affiliate Group shall be entitled to appoint an observer to the Board (an “**Observer**”).

Further provisions regarding the Observer status to the Board may be detailed in the Internal Rules.

- f) The directors are appointed by the General Assembly for a term of office of one (1) year, renewable. All directors shall hold office until their respective successors are appointed by the General Assembly.

If for any reason the number of directors, falls under the minimum of two (2), the remaining directors shall call a General Assembly meeting in order to proceed to the requested appointments.

#### **Article 24. - End of mandate**

- 24.1 The mandate of a director ends (i) in accordance with articles 24.2 and 24.3 of these Bylaws, (ii) with immediate effect, by death of the director (iii) by the expiration of its term or (iv) by dissolution of the Eclipse Foundation.
- 24.2 Any director shall have the right to resign at any time by giving written notice to the Board or the Executive Director. A resignation is effective upon the date provided for in the notice. Once delivered, a notice of resignation is irrevocable unless permitted to be withdrawn by the Board prior to its effectiveness.

Without prejudice to article 23.2,e) (i) of these Bylaws, a director shall be deemed to have resigned with immediate effect from his or her position within the Board upon termination of membership of such director's Member legal entity in accordance with article 12 of these Bylaws.

A Strategic Member Director or Contributing Director shall be deemed to have resigned with immediate effect from his or her position within the Board upon termination of his or her employment, his or her position as officer, director or consultant of the respective Strategic Member or Contributing Member. The same applies to the Committer Director who is employed or holds a position as officer, director or consultant of a Member of the Eclipse Foundation.

24.3 Upon proposal of the Board, any director may be revoked by a decision of the General Assembly in the following cases:

- a) If the director is declared of unsound mind by a final order of court;
- b) If the director is convicted of a felony;
- c) If the director seriously breached these Bylaws, the Internal Rules, the policies and other governance rules of the Eclipse Foundation or any duty arising under the latter.

24.4 Upon proposal of the members of the membership class that respectively appointed them, a Contributing Director or a Committer Director, as applicable, may be revoked by a decision of the General Assembly taken in accordance with article 24.6 of these Bylaws. Such proposal of revocation requires a two-thirds (2/3) majority of the votes cast of the members of the class that appointed such director represented at a special meeting.

24.5 Strategic Member Directors and Strategic Directors may only be revoked by a decision of the General Assembly taken in accordance with article 24.6 of these Bylaws upon proposal of the respective Strategic Members that nominated such Strategic Member Directors or Strategic Directors.

With respect to Strategic Member Directors, Strategic Directors and Observers, in the event the Member nominating such director or Observer (or, in the case of Strategic Directors, all Members of the Affiliate Group represented by such Strategic Director) is in Default or Dues Delinquent implying the termination of its membership (as set forth in article 12.2 hereof), such director or Observer shall be deemed to have resigned from the Board in accordance with article 24.2., Para. 2 of these Bylaws, without further action by the General Assembly.

24.6 The revocation of the Board as a whole or of a director before the end of the term of their respective mandate shall require the simple majority of the votes cast of the Voting Member present or represented at the General Assembly meeting in compliance with article 20.1 of these Bylaws.

24.7 A vacancy or vacancies shall be deemed to exist (i) in the case of the death or the resignation or revocation of any director (ii) if the authorized number of directors is increased without appointment, as applicable, of the additional directors so provided for; or (iii) in the case of failure at any time to elect or appoint, as applicable, the full number of authorized directors.

If a Board seat of a Strategic Member Director becomes vacant, the remaining directors shall co-opt a new Strategic Member Director at the next Board meeting based on the proposal of the Strategic Member whose Board seat has been vacated.

If a Board seat of a Strategic Director becomes vacant, the remaining directors shall co-opt a new Strategic Director at the next Board meeting based on the proposal of all such Strategic Members of the Affiliate Group entitled to nominate the Strategic Director whose Board seat has been vacated.

If a Board seat held by a Contributing Director or a Committer Director becomes vacant, the remaining directors shall co-opt a new director from nominees proffered by the Members of such class until the next annual election as specified in article 23.2 b) and c) of these Bylaws.

### **Article 25. - Meeting rules**

- 25.1 The Board shall meet at least twice a year.
- 25.2 The Executive Director will schedule regular and (as applicable) special meetings of the Board. No Board meeting will be deemed to have been validly held unless the Executive Director or Secretary provided the convening notice to each director at least fifteen (15) calendar days prior to such meeting. The convening notice is to be sent by e-mail, letter courier or any other communication tool and includes the date and time of the meeting, the agenda of the meeting, and unless the meeting is a virtual meeting as provided in article 25.5 of these Bylaws, the place of the meeting.

No director will be intentionally excluded from Board meetings and all directors shall receive notice of the meeting as specified above; however, Board meetings need not be delayed or rescheduled merely because one (1) or more directors cannot attend or participate so long as at least a quorum of the Board (as defined in article 26.3 of these Bylaws) is reached at the Board meeting.

- 25.3 Special meetings of the Board for any purpose or purposes may be called at any time by the Executive Director or by fifty percent (50%) or more of the directors. Notice of such special meeting shall be given to all of the directors in accordance with article 25.2 of these Bylaws.
- 25.4 Subject to the provisions and limitations stipulated in these Bylaws or in the Internal Rules of the Eclipse Foundation or when deemed necessary by the Board, Members, the Executive Director, the Secretary, other officers and guests invited by the Executive Director may attend the Board meeting.
- 25.5 Board meetings may be held with, or to the extent legally admitted, without a physical location, at the registered office of the Eclipse Foundation or any other place as designated from time-to-time by resolution of the Board or by the written notice of the Executive Director. Directors, Members, the Executive Director, the Secretary, other officers and guests may attend any



and all meetings of the Board (including regular and special Board meetings) in person. They can also participate in the meeting via a conference call, a video conference, a web-conference or by any other electronic means made available by the Eclipse Foundation and which offers the possibility for the Eclipse Foundation to check the identity of the participants. Such electronic means of communication must enable the participants (i) to directly, simultaneously, and uninterruptedly follow the discussions during the meeting, (ii) to speak to each other and (iii), as far as the directors are concerned, to participate in the deliberation, to ask questions, and to cast definitively their vote on the agenda items. Any director, Member, the Executive Director, other officer or guest participating by such means shall be deemed present at such meeting.

Breakdowns, overloads, line failure, connection failure or any other event of the same or similar nature beyond the Eclipse Foundation's will and related to the use of such electronic means shall not constitute a ground for annulment of the decision taken by the Board, unless these constitute an irregularity as to the manner in which the decision is adopted pursuant to article 2:42 BCCA. Such technical problems or incidents preventing or disrupting the participation by electronic means to the Board or the vote must be mentioned in the minutes of the meeting with sufficient precision.

#### **Article 26. - Quorum, majority and voting**

- 26.1 Each director has one (1) vote on each matter submitted to a vote of the Board.

Members, the Secretary, other officers and guests may attend the Board meetings upon the invitation of the Executive Director without the right to vote. The Executive Director may, at his sole discretion, ask guests to leave any portion of a meeting.

- 26.2 A director who is unable to attend or participate in a Board meeting may be represented by another director by written proxy to be presented or sent by e-mail to the Secretary before each meeting.
- 26.3 Unless otherwise provided in these Bylaws, the Board will be deemed validly constituted and has the quorum to take decisions if at least a simple majority of the directors are present or represented at the meeting. If the number of directors constituting the Board is an even number, one-half (1/2) of the directors present or represented at the meeting shall constitute a quorum.
- 26.4 Except as provided herein, the Board may take a decision on an agenda item only if it was identified by the Executive Director or Secretary in a Board Meeting convening notice or otherwise identified in a notice of special meeting and approved by the requisite number of directors as described below:

- a) Decisions not specified by article 26.4 b) or c) of these Bylaws, and for which the Board has authority to take them within the stated Purpose of the Eclipse Foundation as set forth in article 4 of these Bylaws must be approved by a simple majority of the directors present or represented at the Board meeting.

Decisions requiring a simple majority vote include, but are not limited to the following:

- (i) approving an Annual Community Report for the Eclipse Foundation;
  - (ii) as the case may be, approving the Annual Management Report;
  - (iii) approving the Executive Director's compensation package;
  - (iv) approving the Board's regular meeting schedule;
  - (v) confirming Executive Director appointments to Standing Committees (as defined in article 29 of these Bylaws);
  - (vi) appointing ad hoc Board Committees (as defined in article 33 of these Bylaws); and
  - (vii) creating new Top-Level Projects and Project Management Committees (as described in article 40 of these Bylaws) that are consistent with the Purposes of the Eclipse Foundation.
- b) A decision amending the terms of the Eclipse Public License ("**EPL**") must be approved by unanimous consent by all directors present or represented at in the meeting.
- c) The following decisions must be approved by at least two-thirds (2/3) of the directors, present or represented at the Board meeting:
- (i) approving or changing the name of the Eclipse Foundation;
  - (ii) amending the Eclipse Foundation Membership Agreement, it being understood that the amendment of existing Eclipse Foundation Membership Agreements shall be subject to the procedure of amendment set out in such Eclipse Foundation Membership Agreements;
  - (iii) except for decisions specified in article 26.4 b) of these Bylaws as they relate to amending the Bylaws, amending these Bylaws;
  - (iv) terminating a Member's Eclipse Foundation Membership Agreement in accordance with its terms;
  - (v) selecting and/or terminating the Executive Director;

- (vi) approving changes to the Eclipse Foundation Development Process as described in article 40 of these Bylaws;
  - (vii) approving changes to the Eclipse Foundation Specification Process;
  - (viii) approving the appointment of a Project Management Committee lead when, at the time of approval, the appointment of that lead would result in more than fifty percent (50%) of the Project Management Committee leads being employees, consultants, officers or directors of the same organization (including Affiliates as defined in article 6.5 of these Bylaws);
  - (ix) approving changes to annual Member contribution requirements (Annual Membership Fees, Other Dues and development resources if applicable);
  - (x) selecting a general counsel;
  - (xi) approving changes to the Eclipse Foundation Antitrust Policy;
  - (xii) approving changes to the IP Policy;
  - (xiii) approving changes to the Internal Rules.
- d) Abstentions, blank or invalid votes do not count in the calculation of the majority, neither in the numerator nor in the denominator.
- e) To the extent required by article 20.9. of these Bylaws, certain decisions approved by the Board in connection with article 26.4 a), b) and c) of these Bylaws must thereafter be presented to, and approved by, the General Assembly prior to implementation by the Eclipse Foundation.
- 26.5 Voting can be done by show of hand, by secret ballot or by electronic means in real time.
- 26.6 For purposes of soliciting electronic votes in connection with a meeting of the Board at which a quorum was present, the requisite number of votes that would have been required at such meeting to pass a decision shall be required to pass a decision via this electronic voting provision. Only those directors in attendance of or duly represented by proxy in the meeting shall be permitted to vote with respect to this article 26.6 of these Bylaws. The deadline for receipt of electronic votes with respect to any such vote shall be no sooner than two (2) weeks from the date of the meeting, as announced prior to adjournment of such meeting.
- 26.7 Upon request of the Secretary or the Executive Director or his or her delegate or in cases approved by the Board, a written decision-making

procedure by unanimous consent may be launched in which the Board may vote in a ballot without personal meeting, i.e. by fax, by e-mail, or by exchange of written letter.

The convening notice for written decision-making shall be sent together with the text of the proposal and all supporting documents as described in article 25.2 of these Bylaws to all directors at least two (2) weeks before the deadline for voting. A director giving no response or comment before the expiration of the deadline of voting to the Executive Director or his or her delegate is deemed abstaining from voting.

#### **Article 27. - Remuneration and reimbursement**

- 27.1 All offices within the Board are exercised on a voluntary basis. Unless specifically decided otherwise by the General Assembly or in these Bylaws, the directors and members of ad hoc Board Committees (as defined in article 33 of these Bylaws) shall not be entitled to receive any compensation or remuneration in compensation of their duties.
- 27.2 Directors and members of ad hoc Board Committees (as defined in article 33 of these Bylaws) may receive reimbursement for expenses as may be fixed or determined by resolution of the Board; provided, that, such reimbursement for expenses shall be reasonable and shall be comparable to reimbursements paid by unaffiliated entities for a like position.

#### **Article 28. - Minutes of meeting**

- 28.1 A register book, including a record of all decisions and resolutions of the Board, shall be drawn up under the responsibility and signed by the Secretary of the Eclipse Foundation or his or her delegate.
- 28.2 A copy of the minutes of the Board shall be at the disposal or be sent to the Members and directors by electronic mail or by any other written means of communication, upon their request.
- 28.3 The original minutes of the Board have to be entered into a separate physical or electronic register that must be made available to the Members and directors for consultation. If no statutory auditor is appointed, all Members may consult the minutes and decisions of the Board meeting at the registered office of the Eclipse Foundation.
- 28.4 The Eclipse Foundation shall post on its website minutes of Board meetings.

### **V. 3. COMMITTEES OF THE BOARD**

#### **Article 29. - Standing Committees.**

- 29.1 The Board shall have three (3) standing committees: the Finance Committee, the Compensation Committee and the IP Advisory Committee

(each, a “**Standing Committee**”). The Standing Committees shall report to the Board. A Standing Committee may elect to have either the Executive Director or one (1) of the directors serving on such Standing Committee present its findings to the Board.

- 29.2 Each Standing Committee consists of two (2) or more directors and/or employees, officers, directors or consultants of Members or Affiliates designated by a Standing Committee director called to sit in the Standing Committee after nomination by the Executive Director or, as far as the Compensation Committee is concerned, after nomination by any director, subject to Board confirmation. Such confirmation requires the simple majority of the votes of the directors present or represented at the Board meeting.

Further provisions regarding the composition of each Standing Committee are respectively detailed in article 30, 31 and 32 below and may be stipulated in the Charter of the respective Standing Committee.

- 29.3 Standing Committee directors may delegate part of their committee responsibilities to any individual that is an employee, officer, director, or consultant of that Member or of an Affiliate Member.
- 29.4 Each Standing Committee may invite non-director advisors to participate in or attend certain committee meetings in order to assist the Standing Committee in the performance of its duties.
- 29.5 The Board shall retain the right to limit the powers and duties of each Standing Committee and has a supervisory role on the work of the Standing Committees.

### **Article 30. - Finance Committee**

- 30.1 The Finance Committee shall consist of two (2) or more directors, nominated by the Executive Director, including the designation of one (1) Finance Committee member as the Chairman, subject to Board confirmation according to article 29.2. of these Bylaws.

The Executive Director may, from time-to-time, nominate additional directors to this committee as he or she deems necessary or appropriate, subject to Board confirmation as set forth above.

- 30.2 As further set forth in a Finance Committee charter issued by the Board, the Finance Committee shall have overall responsibility for the oversight of all corporate funds, and shall perform, or cause to be performed, the following:
- a) review of all financial records of the Eclipse Foundation;

- b) authorization of the deposit of all monies and other valuable effects in the name and to the credit of the Eclipse Foundation in such depositories as may be designated by the Board;
- c) authorization of disbursement of all funds when proper to do so;
- d) review and/or making of financial reports as to the financial condition of the Eclipse Foundation to the Board; and
- e) such other powers and duties as may be designated from time-to-time by the Board.

### **Article 31. - Compensation Committee**

- 31.1 The Compensation Committee shall consist of two (2) or more directors nominated by any director, including the designation of one (1) Compensation Committee member as the Chairman, subject to the Board confirmation according to article 29. 2 of these Bylaws.

The Board may, from time-to-time, appoint additional directors to this committee as they deem necessary or appropriate.

- 31.2 As further set forth in a Compensation Committee charter issued by the Board, the Compensation Committee shall have overall responsibility for determining the compensation of the Treasurer and the Executive Director of the Eclipse Foundation.

### **Article 32. - IP Advisory Committee**

- 32.1 The IP Advisory Committee shall be composed of two (2) or more directors and/or employees, officers, director or consultants of Members or Affiliate Members designated by a Standing Committee director called to sit in the Standing Committee after nomination by the Executive Director, including the designation of one (1) IP Advisory Committee member as the Chairman, subject to Board confirmation according to article 29.2 of these Bylaws.

The Executive Director may, from time-to-time, appoint additional employees, officers, directors, or consultants of any existing consultant of an existing Member to this committee as he or she deems necessary or appropriate, subject to Board confirmation as set forth above.

- 32.2 As further set forth in an IP Advisory Committee charter issued by the Board, the Intellectual Property Advisory Committee is set up for advisory purposes only and shall meet as necessary to review and advise the Board on the intellectual property and licensing policies of the Eclipse Foundation.

### **Article 33. - Ad Hoc Board Committees.**

- 33.1 The Board may appoint such committees as the Board from time-to-time deems necessary or appropriate to conduct the activities and realize the Purpose of the Eclipse Foundation (the "**ad hoc Board Committee**"). All ad hoc Board Committees shall report to the Board. An ad hoc Board Committee may elect to have either the Executive Director or one of the directors serving on such ad hoc Board Committee present its findings to the Board. Any appointment by the Board of any other ad hoc Board Committee having the authority of the Board, including the designation of one (1) ad hoc Board Committee member as the Chairman, must be taken by a decision adopted by a simple majority of the directors present or represented at a Board meeting.
- 33.2 Any ad hoc Board Committee having authority of the Board shall consist of two (2) or more directors nominated by the Executive Director. The Board shall retain the right to limit the powers and duties of any ad hoc Board Committee that it has created and to disband any such ad hoc Board Committee in its sole discretion.
- 33.3 Each ad hoc Board Committee may invite non-director advisors to participate in or attend certain committee meetings in order to assist the ad hoc Board Committee in the performance of its duties.
- 33.4 The Board may delegate to any ad hoc Board Committee having the authority of the Board, any, but not all, of the powers and authority of the Board in the management of the activities and affairs of the Eclipse Foundation; provided, however, that no ad hoc Board Committee may:
- a) approve dissolution, merger, or the sale, pledge or transfer of all or substantially all of the Eclipse Foundation's assets;
  - b) elect, appoint, or remove directors or fill vacancies on the Board or on any of its committees;
  - c) adopt or amend these Bylaws or any resolution by the Board; or
  - d) take Board decisions specified in article 26.4. b) or c) herein.

## **V. 4. OFFICERS**

### **Article 34. - General provision**

- 34.1 The officers of the Eclipse Foundation shall be an Executive Director, Treasurer, and Secretary ("**Officers**"). The Board shall have the power to create such other offices as it deems necessary in the best interest of the Eclipse Foundation.

- 34.2 One natural person may hold two (2) or more offices in the Eclipse Foundation, unless otherwise stated herein.

#### **Article 35. - Nomination and Appointment**

- 35.1 The Officers of the Eclipse Foundation shall be appointed annually by the Board in accordance with this Section V.4.
- 35.2 Each Officer shall, during his or her term in office, hold his or her office until he or she shall resign or shall be removed or his or her successor shall be appointed. Appointment of Officers shall be held in December of each year.
- 35.3 Each Officer's term of office shall be for one (1) year, and shall run from January until December of the following year. There shall be no prohibition on re-appointment of an Officer following the completion of that officer's term of office.
- 35.4 The Board may, by resolution, establish procedures governing nomination and appointment of Officers that are consistent with these Bylaws.

#### **Article 36. - Executive Director**

- 36.1 The Board may appoint an Executive Director to manage the business affairs of the Eclipse Foundation on a day-to-day basis. The Executive Director shall report to the Board and shall be subject to the oversight of the Board.

The Executive Director shall not be an employee, officer, director or consultant of any Member of the Eclipse Foundation.

The mandate of the Executive Director shall end by (i) death or legal disqualification, (ii) resignation, (iii) the dismissal by the Board or (iv) the expiration of his or her term.

If the Executive Director is prevented by circumstances beyond his or her control from fulfilling his or her position for more than thirty (30) consecutive calendar days, the Board takes back the day-to-day management powers and may appoint an Interim Executive Director to exercise the day-to-day management powers – if possible following the advice of the Executive Director – until he or she is capable of resuming his or her position.

- 36.2 The Executive Director shall be responsible for the (i) day-to-day management of the Eclipse Foundation formally delegated to him or her by the Board according to article 22.3 of these Bylaws and (ii) for any other specific management or representation powers beyond said day-to-day management powers regarding legal actions or legal acts involving the Eclipse Foundation delegated to him or her according to article 22.2 of these Bylaws.



In addition, the Executive Director shall have, without limitation, the following responsibilities:

- a) to execute on behalf of the Eclipse Foundation, and when required, upon approval and at the direction of the Board, all contracts, agreements, membership certificates and other instruments;
  - b) to report to the Board all matters within the Executive Director's knowledge affecting the Eclipse Foundation that should be brought to the attention of the Board.
  - c) to hire other employees as deemed appropriate;
  - d) to form the EMO, as explained in article 40 of these Bylaws.
- 36.3 The Executive Director shall be authorised to sub-delegate, under his or her own responsibility, one (1) or more powers delegated to him or her within the scope of the day-to-day management or within the scope of the specific management or representation powers going beyond said day-to-day management within the limitations set out in these Bylaws, the Internal Rules or the relevant delegation of powers to staff members or third parties.
- 36.4 Without prejudice to article 42 of these Bylaws, the Executive Director validly represents the Eclipse Foundation alone in the day-to-day management of the Eclipse Foundation towards third parties.

#### **Article 37. - Secretary**

- 37.1 The Secretary shall attend all meetings of the Board and all meetings of the General Assembly and record all the proceedings of the meetings of the Board and of the General Assembly in a book to be kept for that purpose and shall perform like duties for the Standing Committees when requested.
- 37.2 In the absence of the Secretary at a Board meeting, a majority of the Board may appoint a person to act as Secretary for any such meeting.
- 37.3 He or she shall give, or cause to be given, notice of all meetings of the Board and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the Executive Director. The Secretary shall be under the supervision of the Executive Director.

#### **Article 38. - Treasurer**

- 38.1 The Treasurer shall, without limitation, be responsible for the financial management of the Eclipse Foundation including the management of the financial records and accounts, the preparation of financial reports and budgets, and interacting with external advisors and auditors.

- 38.2 He or she shall give, or cause to be given, financial reports to the Board, and shall perform such other duties as may be prescribed by the Board. The Treasurer shall be under the supervision of the Board.

#### **Article 39. - Quarterly Reports**

- 39.1 The Executive Director, with the Secretary's assistance, shall issue general reports to the General Assembly on the status of the Eclipse Foundation on a quarterly basis.
- 39.2 Such quarterly reports shall include: (i) status reports on Projects and Working Groups, (ii) financial information reports, (iii) membership information reports; and (iv) any other material developments with respect to the Eclipse Foundation.

### **V.5 ECLIPSE MANAGEMENT ORGANIZATION**

#### **Article 40. - Overall Responsibilities**

- 40.1 Under the direction of the Executive Director, the EMO responsibilities shall include:
- a) organizing and selecting the chair of the Eclipse Technical Advisory Council as described in article 41 of these Bylaws;
  - b) leading the development of the Eclipse Technology, including execution and maintenance of the then current Eclipse Foundation Development Process for Top-Level Projects, and Projects.
  - c) nominating Project Management Committees ("**PMC**"), and their leaders;
  - d) leading the Eclipse Technical Advisory Council, produce an Annual Community Report, establishing Working Groups, resolving conflicts, interacting with standards organizations, ensuring the use of open source rules of engagement as defined in the Project Charters (as defined in the then current Eclipse Foundation Development Process and the IP Policy), and providing development project infrastructure;
  - e) enforcing Eclipse Foundation policies and provisions as reflected in the Bylaws, Eclipse Foundation Membership Agreement, IP Policy, Eclipse Foundation Antitrust Policy, and other policy documents approved in accordance with the Bylaws;
  - f) interacting with the General Assembly by providing Eclipse Technology Project development plans and status updates, and by soliciting requirements and feedback;

- g) hosting the Eclipse.org website and other related web properties;
- h) conducting marketing for the Eclipse Technology, including promotion, public relations, and attending and/or hosting industry events;
- i) conducting academic and research community outreach; and
- j) assuring the availability of enablement services, including education and training programs.

#### **Article 41. - Eclipse Technical Advisory Council**

41.1 The Eclipse Management Organization shall establish an Eclipse Technical Advisory Council responsible for:

- a) guiding and influencing the software conventions, standards, and architectures used by Projects,
- b) maintaining and revising the Eclipse Foundation Development Process subject to the approval of the Board under article 26.4 c) of these Bylaws;
- c) providing input to the Executive Director or his or her designate with regard to emerging issues in open source that have a direct impact on Eclipse developers and the Eclipse Technology; and
- d) any other topics brought forward by the Executive Director or his or her designate.

41.2 The Eclipse Technical Advisory Council shall be composed of one (1) representative designated by each Project Management Committee. and other individuals as described below or designated from time to time by the Executive Director, and shall be chaired by a person designated by the Executive Director. All appointments to the Eclipse Technical Advisory Council are for a period of three (3) years and may be renewed an indefinite number of times at the discretion of whoever appoints the representative; i.e., the Project Management Committee, the Strategic Member, or the Executive Director.

Any Strategic Member that is not leading a PMC is entitled to designate one (1) representative to the Eclipse Technical Advisory Council unless an employee, officer, director, or consultant of the Member has already been appointed to the Council.

### **VI. REPRESENTATION**

#### **Article 42. - Representation**

42.1 Unless otherwise stipulated in these Bylaws, the Eclipse Foundation is validly represented with respect to all legal acts towards third parties (i) by

the Board or (ii) by either the Executive Director alone or the Secretary alone, who do not have to account towards third parties for the powers conferred to them to this end.

- 42.2 The Eclipse Foundation shall be validly represented in all legal actions or arbitration, as plaintiff or defendant before Courts, tribunals, or other jurisdictions by (i) the Executive Director alone or (ii) the Secretary alone.
- 42.3 Unless special written power of attorney, the Eclipse Foundation shall neither act on behalf of any of its Members nor have the power to represent any of its Members. Nothing in these Bylaws shall imply or be construed to grant such authorization or power of attorney.

## **VII. LIABILITY**

### **Article 43. - Directors, persons empowered with the day-to-day management and officers**

- 43.1 The directors, the persons empowered with the day-to-day management, including the Executive Director, and the officers, including without limitation, the Secretary and the Treasurer, shall not incur a personal liability for the debts or any other commitments of the Eclipse Foundation.
- 43.2 Their liability towards the Eclipse Foundation and towards third parties is limited to the execution of their mission in accordance with ordinary law, the legal provisions and the Bylaws.

Directors and persons empowered with the day-to-day management, including the Executive Director, are only held liable towards the Eclipse Foundation for faults committed in their mission of (day-to-day) management. They are also held liable towards the Eclipse Foundation and third parties for their non-contractual faults.

The liability of the directors and the persons empowered with the day-to-day management, including the Executive Director, is limited to ceiling fixed pursuant to article 2:57 BCCA.

- 43.3 The directors and persons empowered with the day-to-day management, including the Executive Director are jointly and severally liable towards the Eclipse Foundation or third parties of the decisions and shortcomings of the Board and of any damage resulting from the violation of the BCCA or these Bylaws. However, they are released from their liability for faults in which they have not participated and if they have denounced the alleged fault to all other directors according to article 2:56 BCCA. The denunciation and the discussion that will take place must be recorded in the minutes of meeting.

### **Article 44. - Members**

- 44.1 The Eclipse Foundation shall only be liable for its debts up to the amount of the Eclipse Foundations' own assets. The Members or their respective

Member Representatives shall incur neither a personal liability for the debt or commitments of the Eclipse Foundation nor for any other liability of whatever nature.

## **VIII. FINANCIAL RESOURCES – ACCOUNTING – SUPERVISION BY STATUTORY AUDITORS**

### **Article 45. - Financial resources**

- 45.1 The financial resources of the Eclipse Foundation shall be amongst others composed of the following:
- a) Annual Membership Fees and Other Dues;
  - b) Any legally allowed financial resource that might be paid or granted to the Eclipse Foundation. The Eclipse Foundation can accept such financial resources, provided that they do not affect the independence or reputation of the Eclipse Foundation and that the latter remains free to determine its Purpose.
- 45.2 Besides this, the Eclipse Foundation is allowed to raise funds on any other manner that is not violating the law.

### **Article 46. - Accounting**

- 46.1 The financial year shall begin on the 1st of January and end on the 31st of December of each calendar year.
- 46.2 The accounting shall be drawn up pursuant to article 3:47 BCCA and the Royal Decree of 29 April 2019 as well as any other applicable sector regulations.
- 46.3 The Board must annually submit to the General Assembly for approval the annual accounts of the preceding financial year, the budget proposal, the Annual Community Report, and, as the case may be, the Annual Management Report of the Board.
- 46.4 The annual accounts of the Eclipse Foundation shall be filed according to article 2:9 §1 juncto 3:47, §7 BCCA and the Royal Decree of 29 April 2019.

### **Article 47. - Supervision by statutory auditor(s)**

- 47.1 The Eclipse Foundation is not required to appoint a statutory auditor as long as it does not fall under the scope of application of article 3:47, §6 BCCA for the last completed financial year. In that case, the General Assembly may nevertheless entrust the audit of the annual accounts to one (1) or several statutory auditor(s) ("**commissaires**") or to one (1) or several auditors ("**vérificateurs aux comptes**"), whether members or not of the Eclipse Foundation.

- 47.2 The General Assembly must appoint one (1) or several statutory auditor(s) among the members of the Belgian Institute of Company Auditors, as soon as the Eclipse Foundation falls under the scope of application of article 3:47, §6 BCCA for the last completed financial year. Such statutory auditor(s) shall be responsible for the audit of (i) the financial situation, (ii) the annual accounts and the regularity in the light of the law and the Bylaws and (iii) the operations which must be stated in the annual accounts.

## **IX. AMENDMENTS OF BYLAWS**

### **Article 48. - Amendments of Bylaws**

- 48.1 Any proposal to amend the Bylaws must emanate from the Board, or from at least one fifth (1/5) of the Voting Members.
- 48.2 The amendment of the Bylaws requires a deliberation in an Extraordinary General Meeting. The convening notice to the Extraordinary Meeting that will resolve on such proposal and the proposed amendments to the Bylaws must be brought to the attention of the Members at least forty-five (45) calendar days prior to the date of the General Assembly meeting.
- 48.3 The General Assembly shall be deemed validly constituted and has the quorum to resolve on proposals of amendments to the Bylaws in accordance with article 20. 7 of these Bylaws.
- 48.4 These Bylaws may not be amended without (i) the consent of at least two-thirds (2/3) of the votes cast by the Voting Members present or represented at the General Assembly meeting in compliance with article 20.1 of these Bylaws ; and (ii) any other consent requirements expressly set forth herein with respect to such amendment's proposed subject matter. Additionally, to the extent a proposed amendment would alter a provision that would require the unanimous consent of the General Assembly for certain decisions, then such amendment must be unanimously approved in order to amend these Bylaws.

For the calculation of the majority abstentions, blank or invalid votes will not be taken into account, neither in the numerator, nor in the denominator.

- 48.5 The provisions of any such amended Bylaws will be binding upon all of the General Assembly.
- 48.6 Amendments to these Bylaws will be effective only after approval by the competent authority according to article 2:5 §4, Par. 2, 1° and Par. 3 BCCA and after publication in the Annexes to the "Moniteur belge" according to article 2:10 §1, 2° BCCA.

## **X. DISSOLUTION**

## **Article 49. - Dissolution**

49.1 Any proposal to dissolve and liquidate the Eclipse Foundation must originate from (i) the Board, (ii) from at least one-fifth (1/5) of the Voting Members or (iii) as the case may be, from the statutory auditor(s) upon request of one-fifth (1/5) of the Voting Members. The proposed dissolution must be explicitly mentioned in the convening notice to be sent to directors at least thirty (30) calendar days prior to the date of the Board that will deliberate on said proposal.

49.2 The Board shall be validly constituted and has the quorum to resolve on the dissolution of the Eclipse Foundation if at least one-third (1/3) of the directors are present or represented at the meeting. The resolution to dissolve the Eclipse Foundation requires at least a majority of four fifths (4/5) of the votes cast by the directors present or represented at the meeting.

Abstentions, blank or invalid votes do not count in the calculation of the majority, neither in the numerator nor in the denominator.

49.3 However, if one-third (1/3) of the directors are not present or represented at the first meeting, a second Board meeting will be convened in the same conditions as those mentioned above. The Board may decide definitely on the said dissolution proposal of the Eclipse Foundation pursuant to the majority requirements laid down in article 49.2 above, regardless of the number of directors present or represented at the meeting. The second meeting may not be held less than fifteen (15) calendar days after the first meeting.

49.4 In case of deliberate dissolution, the Board shall decide in the resolution of dissolution on the modalities/methods of dissolution and liquidation, appoint one (1) or several liquidator(s), determine their powers and indicate the allocation of the net assets of the Eclipse Foundation.

In all cases of deliberate or judicial dissolutions, the net assets after liquidation of the dissolved Eclipse Foundation will only be allocated to another not-profit organisation proposed by the Executive Director, two (2) directors, or the statutory auditor(s) and which (i) pursues a similar or related Purpose as the Eclipse Foundation, (ii) pursues one (1) or more exempted purposes within the meaning of the sections 501(c)3 or 501(c)6 of the U.S. Code and (iii) will be required to use these net assets exclusively for the achievement of its disinterested purpose.

## **XI. INTERNAL RULES**

## **Article 50. - Internal Rules**

- 50.1 The Board may adopt and amend all or any part of the Internal Rules of the Eclipse Foundation to further supplement these Bylaws as permitted by the Belgian law.

The most recent version of the Internal Rules dates from 25 May 2022.

- 50.2 The Internal Rules are available to all Members and shall be communicated to all Members in accordance with article 2:32 BCCA.

## **XII. HIERARCHY OF NORMS**

### **Article 51. - Hierarchy of norms**

- 51.1 The following hierarchy of norms applies within the Eclipse Foundation:

- a) Bylaws;
- b) Eclipse Foundation Antitrust Policy;
- c) IP Policy;
- d) Internal Rules;
- e) Committee Charters;
- f) Development Process;
- g) Specification Process;
- h) Working Group Process;
- i) Any other process defined by the Board.

- 51.2 In the case of any contradiction between two (2) or more norms of the Eclipse Foundation of a different level, the norm mentioned in the higher level shall prevail over the norm mentioned in the lower level of the above-mentioned hierarchy of norms.

- 51.3 In the case of any contradiction between two (2) or more norms of the Eclipse Foundation of the same level, the most recent version of any such norm shall prevail over any previously adopted version of such norm.

## **XIII. LANGUAGE – GOVERNING LAW – JURISDICTION**

### **Article 52. - Working language**

- 52.1 The working language of the Eclipse Foundation shall be English. The language used for the official documents and relations with Belgian authorities shall be French. In case of dispute relating to the Bylaws and



Internal Rules, the official published French version shall prevail. Towards third parties the official published French version is the only relevant version.

### **Article 53. - Governing Law**

- 53.1 All matters which are not covered by these Bylaws and particularly publications to be done to the "Annexes du Moniteur Belge", shall be settled in accordance with the provision of the BCCA.

### **Article 54. - Jurisdiction**

- 54.1 Unless article 54.2 of these Bylaws applies, any dispute in connection with these Bylaws, the Internal Rules, the policies of the Eclipse Foundation and/or any decision of one of the governing bodies of the Eclipse Foundation shall be governed by Belgian law and shall be brought to the competent Brussels Court.
- 54.2 Notwithstanding article 54.1 of these Bylaws, if the dispute involves a Member which is an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality ("**Intergovernmental Organization**") and enjoys immunity from legal processes of any jurisdiction, national court or other authority the following shall apply:
- a) Nothing in these Bylaws, the Internal Rules and nothing in the additional policies, procedures and other governing rules adopted by the Eclipse Foundation constitutes or may be interpreted as a limitation upon or waiver of any privileges and immunities that may apply to the Member, including that immunity from the legal processes of any jurisdiction, national court or other authority that may apply to the Member.
  - b) Any dispute in connection with these Bylaws, the Internal Rules, the policies of the Eclipse Foundation and/or any decision of one of the governing bodies of the Eclipse Foundation that cannot be settled amicably by consultation between Eclipse Foundation and by the Member shall 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. The language of arbitration shall be English.

## **XIV. MISCELLANEOUS**

#### **Article 55. - Contributions**

- 55.1 The Board is authorized to undertake actions to ensure that all code and materials contributed to the Eclipse Technology complies with the terms of the Eclipse Foundation Antitrust Policy, IP Policy, the Eclipse Foundation Development Process, the Eclipse Foundation Specification Process, or other applicable guidelines and agreements as established or approved in accordance with these Bylaws.

#### **Article 56. - Checks, Notes and Contracts**

- 56.1 The Board is authorized to select such depositories as it shall deem proper for the funds of the Eclipse Foundation and shall determine who shall be authorized in the Eclipse Foundation's behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents.

#### **Article 57. - Investments**

- 57.1 The funds of the Eclipse Foundation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities, as the Board in its discretion may deem desirable.

#### **Article 58. - Books**

- 58.1 There shall be kept at the office of the Eclipse Foundation correct books of account of the activities and transactions of the Eclipse Foundation, including a minute book which shall contain a copy of the incorporation deed, a copy of these Bylaws, and all minutes of the meetings of the Board.