INTELLECTUAL PROPERTY POLICY
of
Eclipse Foundation AISBL
a Belgian incorporated international not-for-profit association
Rond Point Schuman 11, Brussels 1040 Belgium
VAT BE / Enterprise number: 0760.624.114
RLE Brussels (French-speaking Enterprise Court)
and
Eclipse.org Foundation, Inc.
a Delaware incorporated 501(c)6 not-for-profit association
collectively, the "Eclipse Foundation"

Effective as of ~~January 20, 2021~~July 29, 2022 (the "Effective Date")

0. DEFINITIONS

"Affiliate" has the meaning as defined in Section 3.1 of the Bylaws of Eclipse Foundation AISBL.

"Board" is the Eclipse Foundation ~~Board~~Boards of Directors.

"Bylaws" are the Bylaws of the Eclipse.org Foundation, Inc. and Eclipse Foundation AISBL as amended from time to time.

"Code Content" is Content which is program code and documentation related to such code.

"Committed Essential Claims" shall have the meaning set forth in Section VI herein.

"Committer" has the meaning as defined in the Eclipse Foundation Member Committer and Contributor Agreement.

"Committer Agreement" is that agreement as defined in Section IX of this Intellectual Property Policy.

"Compatible Implementation" shall have the meaning as defined in the Eclipse Foundation Specification Process.

"Compatible Patent License" with respect to a Final Specification means an irrevocable (subject to the defensive actions expressly stated herein) grant of a non-exclusive, worldwide, royalty-free, transferable patent license under all Committed Essential Claims that are owned or controlled by the granting Participant, with respect to that Final Specification to everyone to make, have made, use, sell, offer to sell, and import Compatible Implementations of the Final Specification, provided however, that this license may be terminated with respect to any person or entity that alleges in litigation that a Compatible Implementation of the Final Specification infringes an Essential Claim with respect to such Final Specification, except that this license may not be terminated with respect to such person if such allegation is made in direct response to a claim, counterclaim or cross-claim asserting infringement of an Essential Claim by a Compatible Implementation of the Final Specification.

"Content" is copyrightable material, including without limitation, software, documentation, specifications, articles, whitepapers, and presentation materials.

"Contribution Agreement" is an agreement made available by the EMO which defines the terms under which the Eclipse Foundation will accept Submissions. Examples of Contribution Agreements include without limitation the OpenVSX Publisher Agreement, Eclipse Contributor Agreement, and the Member Contributor and Committer Agreement.

"Distribute" (and "Distributed" when used in the past tense) is the act of making Content available via a Release.

"Distributed Content" is Content (other than Hosted Content) Distributed by the Eclipse Foundation in a manner consistent with this Intellectual Property Policy. Distributed Content may include Project Content and Third Party Content that is distributed with an intention for adoption by the general community independent of the actual means of distribution (e.g. content distributed via Maven Central).

~~"Distribute" (and "Distributed" when used in the past tense) is the act of making Content available via a Release.~~

~~"Release" is a collection of Project artifacts intended for distribution beyond the Project Developers.~~

~~"Project Content" is Content intended to be developed or modified by one or more Projects, regardless of the license or licenses that govern the use of that Content.~~

~~"Hosted Content" is Content that is not subject to the full due diligence and record keeping requirements as set forth in this Intellectual Property Policy.~~

~~"Third Party Content" is Content which is not Project Content.~~

~~"Code Content" is Content which is program code and documentation related to such code.~~

~~"Non-Code Content" is Content which is neither program code or documentation related to such code.~~

"~~"~~EMO" has the meaning as defined in Section 16.1 of the Bylaws~~" are the Bylaws~~ of ~~the~~ Eclipse Foundation~~, Inc. as amended from time to time~~ AISBL.

"Submit" (and "Submitted" when used in the past tense) is:

a) the act of uploading, submitting, or otherwise making available Content to the Eclipse Foundation through means including but not limited to blogs, wiki postings, mailing lists, news groups, and bugzilla and where such act is governed by the Eclipse.org Terms of Use, or

b)a) in the case of Committers, the act of placing Content in the Repository or Hosted Repository where such act is governed by their Committer Agreement.

"Submission" is Content Submitted to the Eclipse Foundation.

"Submitter" is any party which makes a Submission, regardless of the copyright owner of the Submission, the license under which such Submission is made available, or where such Submission is maintained or developed.

"Committer" has the meaning as defined in the Eclipse Foundation Member Committer and Contributor Agreement.

"Committer Agreement" is that agreement as defined in Section IX of this Intellectual Property Policy.

"Contribution Agreement" is the then-current agreement made available by the EMO which defines the terms under which the Eclipse Foundation will accept Submissions.

"Affiliate" has the meaning as defined in the Bylaws.

"EMO" has the meaning as defined in the Bylaws.

"EPL" means the Eclipse Public License version 2.0 or later version as adopted by the Eclipse Foundation Board of Directors.

"PMC" has the meaning as defined in the Bylaws.

"PMC Leader" has the meaning as referenced in Section 7.1 the Bylaws.

"Project Lead" has the meaning as defined in the Eclipse Development Process.

"Project" has the meaning as defined in the Eclipse Development Process.

"Member" is any party which has executed an Eclipse Foundation Membership Agreement, and all Affiliates thereof.

"Project License(s)" is the primary license(s) applicable to that Project(s)'s Project Content. The Project License will be the Eclipse Public License ("EPL"), except where otherwise stated in this IP Policy or as otherwise approved by the Board pursuant to Section 3.9 of the Bylaws.

"Repository" ("Source Code Repository" or "Version Control System") is a repository managed by the Eclipse Foundation for the purpose of developing and modifying Project Content. Only Committers may add, update or modify Content in a Repository.

"Hosted Repository" is a repository managed by the Eclipse Foundation for the purpose of making available Hosted Content. To the extent the Hosted Repository shall include Code Content, the availability of the Hosted Repository shall be approved by the Board.

"Specification Process" means the process for developing and ratifying Specifications as approved by the Board or its delegate, or the Executive Director, as applicable, which for avoidance of doubt shall be consistent with this Intellectual Property Policy.

"Specification" means a collection of application programming interface (API) definitions, user interfaces, descriptions of structure and semantic behavior, data formats, and/or protocols intended to enable the development of independent implementations of software systems. A Specification includes all of the artifacts necessary, including without limitation descriptions of APIs and behavior, documentation, and data formats, necessary to provide sufficient precision to enable such independent implementations. Each Specification must stipulate whether it implements an Implementation Patent License or a Compatible Patent License.

"Specification Project" means a Project operating under the Specification Process which is constituted to deliver versions of a Specification.

"Compatible Implementation" shall have the meaning as defined in the Eclipse Foundation Specification Process.

"Final Specification" shall have the meaning as defined in the Eclipse Foundation Specification Process.

"Scope" means the defined scope of activities for a Specification, as defined by the Specification Project.

"Participant" means any Member of the Eclipse Foundation who have or are a Committer on a Specification Project and have executed the working group participation agreements necessary to participate in the Specification Projects to which they contribute.

"Committed Essential Claims" shall have the meaning set forth in Section VI herein.

"Essential Claims" with respect to a particular Specification are those claims from Patents (excluding design patents and design registrations), that would necessarily be infringed by implementation of a particular Specification created within the Scope of its Specification Project. A claim would necessarily be infringed only when it is not possible to avoid infringing the claim because there is no non-infringing alternative for implementing the Normative Portions (as defined below) of the Specification. Existence of a non-infringing alternative shall be judged based on the state of the art at the time the relevant Final Specification was approved. For purposes of clarity, it is understood Essential Claims shall not include Patent claims that would necessarily be infringed by: (i) any implementation of materials which fall outside the Scope of the Specification Project; (ii) technology developed elsewhere and merely incorporated by

reference in a Specification; or (iii) enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Specification, but that are not themselves expressly set forth in the Specification (e.g., compiler technology, object-oriented technology, basic operating system technology, and the like).

"Final Specification" shall have the meaning as defined in the Eclipse Foundation Specification Process.

"Hosted Content" is Content that is not subject to the full due diligence and record keeping requirements as set forth in this Intellectual Property Policy.

"Hosted Repository" is a repository managed by the Eclipse Foundation for the purpose of making available Hosted Content. To the extent the Hosted Repository shall include Code Content, the availability of the Hosted Repository shall be approved by the Board.

"Normative Portions" of a Specification are those portions that describe what must be implemented in order to comply with the Specification, as contrasted with portions that are merely informative, such as background material, use cases, and examples. If a Specification includes components that are optional, to the extent an implementation incorporates such optional components, those portions of the Specification that must be implemented in order to comply with the Specification for such optional components shall be included as Normative Portions of the Specification.

"Patent" means all patent rights, including, but not limited to, all provisional and nonprovisional applications for patents, and any patents that are or may be granted therefrom or based thereon, whether in the United States or any other country or jurisdiction, including, without limitation, any continuations, continuations-in-part, divisions, reissues, reexaminations, renewals, provisionals, nonprovisionals, revisions, substitutes and extensions thereof.

"Patent License" means an Implementation Patent License or a Compatible Patent License, as selected by each Specification Project.

"Implementation Patent License" with respect to a Final Specification means an irrevocable (subject to the defensive actions expressly stated herein) grant of a non-exclusive, worldwide, royalty-free, transferable patent license under all Committed Essential Claims that are owned or controlled by the granting Participant, with respect to that Final Specification to everyone to make, have made, use, sell, offer to sell, and import implementations of the Final Specification, provided however, that this license may be terminated with respect to any person or entity that alleges in litigation that an implementation of the Final Specification infringes an Essential Claim with respect to such Final Specification, except that this license may not be terminated with respect to such person if such allegation is made in direct response to a claim, counterclaim or cross-claim asserting infringement of an Essential Claim by an implementation of the Final Specification.

"Member" is any party which has executed an Eclipse Foundation Membership Agreement, and all Affiliates thereof.

"Non-Code Content" is Content which is neither program code or documentation related to such code.

"Normative Portions" of a Specification are those portions that describe what must be implemented in order to comply with the Specification, as contrasted with portions that are merely informative, such as background material, use cases, and examples. If a Specification includes components that are optional, to the extent an implementation incorporates such optional components, those portions of the Specification that must be implemented in order to comply with the Specification for such optional components shall be included as Normative Portions of the Specification.

"Participant" means any Member of the Eclipse Foundation who have or are a Committer on a Specification Project and have executed the working group participation agreements necessary to participate in the Specification Projects to which they contribute.

"Patent" means all patent rights, including, but not limited to, all provisional and nonprovisional applications for patents, and any patents that are or may be granted therefrom or based thereon, whether in the United States or any other country or jurisdiction, including, without limitation, any continuations, continuations-in-part, divisions, reissues, reexaminations, renewals, provisionals, nonprovisionals, revisions, substitutes and extensions thereof.

"Patent License" means an Implementation Patent License or a Compatible Patent License, as selected by each Specification Project.

"PMC" has the meaning as defined in Section 3.1 the Bylaws of Eclipse Foundation AISBL.

"PMC Lead" has the meaning as defined in Section 3.1 of the Bylaws of Eclipse Foundation AISBL.

"Project" has the meaning as defined in the Eclipse Foundation Development Process.

"Project Content" is Content intended to be developed or modified by one or more Projects, regardless of the license or licenses that govern the use of that Content.

"Project Lead" has the meaning as defined in the Eclipse Foundation Development Process.

"Project Licenses" are the primary licenses applicable to a Project's Project Content.

"Release" is a collection of Project artifacts intended for distribution beyond the Project Developers.

"Repository" ("Source Code Repository" or "Version Control System") is a repository managed by the Eclipse Foundation for the purpose of developing and modifying Project Content. Only Committers may add, update or modify Content in a Repository.

"Scope" means the defined scope of activities for a Specification, as defined by the Specification Project.

"Specification" means a collection of application programming interface (API) definitions, user interfaces, descriptions of structure and semantic behavior, data formats, and/or protocols intended to enable the development of independent implementations of software systems. A Specification includes all of the artifacts necessary, including without limitation descriptions of APIs and behavior, documentation, and data formats, necessary to provide sufficient precision to enable such independent implementations. Each Specification must stipulate whether it implements an Implementation Patent License or a Compatible Patent License.

"Specification Process" means the process for developing and ratifying Specifications as approved by the Board or its delegate, or the Executive Director, as applicable, which for avoidance of doubt shall be consistent with this Intellectual Property Policy.

"Specification Project" means a Project operating under the Specification Process which is constituted to deliver versions of a Specification.

"Submission" is Content Submitted to the Eclipse Foundation.

"Submit" (and "Submitted" when used in the past tense) is:

a) the act of uploading, submitting, or otherwise making available Content to the Eclipse Foundation through means including but not limited to blogs, wiki postings, mailing lists, discussion forums, messaging platforms, and issue tracking systems and where such act is governed by the Eclipse.org Terms of Use, or

b) in the case of Committers, the act of placing Content in the Repository or Hosted Repository where such act is governed by their Committer Agreement.

"Submitter" is any party which makes a Submission, regardless of the copyright owner of the Submission, the license under which such Submission is made available, or where such Submission is maintained or developed.

"Third Party Content" is Content which is not Project Content.

"Third Party License" is the license under which each Third Party Content is made available.

"Compatible Patent License" with respect to a Final Specification means an irrevocable (subject to the defensive actions expressly stated herein) grant of a non-exclusive, worldwide, royalty-free, transferable patent license under all Committed Essential Claims that are owned or controlled by the granting Participant, with respect to that Final Specification to everyone to make, have made, use, sell, offer to sell, and import Compatible Implementations of the Final Specification, provided however, that this license may be terminated with respect to any person or entity that alleges in litigation that a Compatible Implementation of the Final Specification infringes an Essential Claim with respect to such Final Specification, except that this license may not be terminated with respect to such person if such allegation is made in direct response to a

claim, counterclaim or cross-claim asserting infringement of an Essential Claim by a Compatible Implementation of the Final Specification.

I. OVERVIEW

The purpose of the Eclipse Foundation, ~~Inc. (the "Eclipse Foundation")~~ Intellectual Property Policy ("IP Policy") is to set forth the general principles under which the Eclipse Foundation shall:

    a)   accept Content,
    b)   Distribute Content,
    c)   host Content, and
    d)   manage other intellectual property matters, including the development of Specifications.

This IP Policy is intended to address intellectual property issues associated with Content. Other intellectual property issues, including patents, may be addressed in the Committer Agreements, Eclipse Foundation Terms of Use, www.eclipse.org, or in the Eclipse Public License.

This IP Policy applies only to Content Submitted to the Eclipse Foundation on or after the Effective Date of this version of the IP Policy, provided however, that to the extent Content is Submitted which includes elements which were Submitted before the Effective Date, this Policy only applies to the elements of that Content Submitted for the first time after the Effective Date. Any Content Submitted prior to the Effective Date of this version of the IP Policy will be governed by the version of the IP Policy in effect at the time of Submission.

This IP Policy should at all times be interpreted in a manner that is consistent with the Purposes of the Eclipse Foundation as set forth in the Bylaws.

By signing the Membership Agreement or Committer Agreement, as applicable, all Members and Committers agree to comply with this IP Policy, as may be amended from time to time, when participating in any Eclipse Foundation-related activities. In addition, the EMO will ensure that the Contributor Agreement, website terms of use, and other agreements which govern how non-Members and non-Committers interact with the Eclipse Foundation and its projects will conform with this IP Policy.

The EMO shall be responsible for implementing this IP Policy with respect to all Content.

In the event of a dispute between the EMO and the PMC, Project Leader, or a Committer, the responsible PMC shall have the right to appeal to the Board for resolution of such dispute.

II. ACCEPTING CONTRIBUTIONS (IN-BOUND LICENSING)

The ~~EPL~~EMO, working in conjunction with the PMCs and Committers, is responsible for ensuring that the Project Licenses and Third Party Licenses used by each Project are not inconsistent or in conflict with one another. . For clarity, the EMO shall make the final determination on all such licensing matters, subject to the right of Board appeal by the PMC. The EMO shall maintain a list of permitted Project Licenses, such list to be subject to Board approval under the license approval requirements of the Bylaws.

Each Project shall specify one or more of the permitted Project Licenses during its Creation Review (as defined in section V "Technology Reviews")). For each Project the specified Project Licenses shall serve as the primary ~~license~~licenses under which the Eclipse Foundation shall

accept Project Content ~~from contributors including, but not limited to, Members and Committers. The~~ .

The Eclipse Foundation will only ~~redistribute~~Distribute Distributed Content as described in Section III below under terms and conditions other than the ~~EPL when:~~

  a) ~~for proposed Project Content, the copyright holder of such Content is unwilling to make it available under the EPL or the~~ applicable ~~Project~~ Project License ~~is not the EPL;~~

  b) ~~for proposed Project Content intended to serve as the initial base for a Project, such Project Content is not available under terms which allow such Project Content to be relicensed or sublicensed under the EPL;~~

  c) ~~for Third Party Content, such~~ when: (a) a Committer has determined that Third Party Content is ~~not available under terms which allow such Third Party Content to be relicensed or sublicensed under the EPL;~~

  d) ~~the EMO, the PMC Leader and the Committer have determined that the proposed Content is~~ important to achieving the goals of the Project ~~Plan (as~~and (b) the EMO has determined that ~~term~~the license of the Third Party Content is ~~defined~~not inconsistent or in ~~the Development Process) and the Purposes (as that term is defined in the Bylaws) of~~ conflict with the ~~Eclipse Foundation; and~~

~~both the Board (or the Board's designee specifically authorized for this responsibility) and the applicable PMC (as that term is defined in the Development Process) have reviewed and approved the use of the proposed alternative terms and conditions, provided that such Board consent for use of a license pursuant to this Section II above must be approved by no less than two-thirds (2/3) of the directors in Good Standing either (a) represented at a Board meeting at which a quorum is present (as such terms are defined in the Bylaws), or (b) via electronic voting of the Board as described in Section 3.12 of the Bylaws.~~Project License(s).

The mechanisms by which the Eclipse Foundation obtains rights to Submissions sufficient to distribute them as Distributed Content are:

  a) a Committer Agreement;

  b) a Contribution Agreement;

  c) explicit license grants as stipulated by Submitters with respect to each Submission;

  d) the version of the Eclipse.org Terms of Use in effect at the time of the Submission; or

  e) as otherwise mutually agreed upon by the Submitter and the EMO.

It is the responsibility of the EMO to ensure that for each Submission which is accepted for redistribution as Distributed Content ~~that~~:

a) sufficient controls are in place to ensure that for each such Submission the Content is placed in the Repository by a Committer;

b) sufficient license grants under the Project Licenses and/or Third Party Licenses are obtained as to allow the redistribution of such Content as described below in Section III; and

c) the due diligence and record keeping described in Section IV be performed.

It is the responsibility of the EMO to ensure that for each Submission which is to be made available as Hosted Content ~~that~~:

a) sufficient controls are in place to ensure that for each such Submission which is Code Content that such Code Content is placed in the Hosted Repository by a ~~Committer;~~Submitter who is a party to a Contributor Agreement;

b) sufficient license grants are obtained as to allow the hosting of such Content as described below in Section III;

c) the ~~limited~~ due diligence and record keeping described in Section IV (~~D~~C) for Hosted Content be performed; and

d) such Hosted Content will only be made available through a Hosted Repository.

III. LICENSING CONTRIBUTIONS (OUT-BOUND LICENSING)

~~Unless otherwise approved by the Board under Section 3.9 of the Bylaws and except for Project Content which was accepted under a license other than the EPL under Section II of this IP Policy:~~

~~a) the Project License shall be the EPL; and~~

~~b) the license terms for copyrightable materials other than software and documentation shall be the EPL. Final Specifications shall be licensed only under the Eclipse Foundation Specification License.~~

Except as set forth below, to the extent Content is accepted under a license other than the ~~EPL~~Project License specified for the Project under Section II of this IP Policy, the Project License for a Project developed from such Project Content shall be the license under which such Project Content was accepted.

Third Party Content shall be Distributed under the terms and conditions under which it was obtained. As an exception to the foregoing sentence, if requested by the PMC and agreed to by the EMO, Third Party Content may instead be Distributed under the terms and conditions of the Project License.

In limited circumstances, there may be instances where Project Content based on Third Party Content may be approved for distribution by the EMO under terms and conditions other than the Project License(s). In these instances, the EMO may decide that the terms and conditions of the license governing the Third Party Content will apply to such Project Content. Examples include but are not limited to:

- bug fixes of Third Party Content to be maintained as Project Content where the developer(s) of the Third Party Content is unable or unwilling to provide such bug fix;

- derivative works of Third Party Content to be maintained as Project Content where the developer(s) of the Third Party Content is unable or unwilling to maintain the derivative work.

Third Party Content shall only be Distributed when it has been approved by the EMO after its completion of the due diligence and record keeping requirements set forth in Section IV and the ~~Board~~EMO has approved the terms and conditions of the license for such Third Party Content. ~~Third Party Content shall be Distributed under the terms and conditions under which it was obtained. As an exception to the foregoing sentence, if requested by the PMC and agreed to by the EMO, Third Party Content may instead be Distributed under the terms and conditions of the Project License.~~

Before any Content is placed in the Repository or made available for download or other method of distribution, the applicable Committer(s) must ensure that the terms and conditions governing the subsequent use of the Content are clearly communicated to potential recipients or users of the Content.

IV. DUE DILIGENCE AND RECORD KEEPING

The EMO, working in conjunction with the PMCs and Committers, is responsible for ensuring that each Project produces sufficient documentation such that downstream users and adopters are made aware of each instance of Third Party Content and all applicable Project Licenses and Third Party Licenses. For clarity, the EMO shall make the final determination on all project license documentation matters, subject to the right of Board appeal by the PMC. The EMO will provide tools and processes to assist in the creation of such documentation by each Project.

Except as otherwise described below, the EMO, working with the applicable PMC(s) and Committer(s), shall ensure compliance with this IP Policy by conducting the following activities prior to placing any Submissions into the Repository and/or otherwise making such Content available as Distributed Content.

If there are any doubts about the ability to Distribute the Content as described in Section III of this IP Policy, the Committer may not place the Content in the Repository or otherwise Distribute the Content and should contact the PMC and the EMO for assistance.

~~In the event of a dispute between the PMC and the EMO, the PMC shall have the right to appeal to the Board for resolution of such dispute.~~ The PMC or EMO shall be responsible for filing/maintaining the information collected by the Committer(s) for future reference as needed.

All necessary license obligations must be fulfilled for any Content to be made available as Distributed Content for which Required Due Diligence has not been completed. Such license obligations may include, but are not limited to, terms and conditions that must appear in notices and agreements governing the use of such Content when it is made available as Distributed Content.

The due diligence and record keeping requirements described below in this section ("Required Due Diligence") shall not apply to:

- Content which is not Distributed Content, except as specified below in Section ~~D~~ C for Hosted Content; and

- minor (as determined by the EMO) modifications to Distributed Content.

While the record keeping requirements do not apply to those items listed above, Committers must conduct reasonable due diligence to satisfy themselves that proposed Submissions can be Distributed as described above in Section III.

A. In the case of Project Content:

For Submissions of Content which are the original work of a Committer or Committer's employer Submitted under the terms of their Committer Agreement, it will be the responsibility of the EMO to ensure that automated systems are in place which can track and report on those Submissions made by each individual Committer.

For any other Submissions of Content by a Submitter, the EMO, working with the applicable PMC(s) and Committer(s), shall approve the use of such Content as Project Content by ensuring that:

(1) the Submitter has a valid and current Contribution Agreement. ~~For significant Submissions, run and analyze the results of a scan tool provided by the EMO, using parameters provided by the EMO, to help confirm the provenance of the Content.~~

(2) reasonable judgment shall be used to determine if the Content can be Distributed as described in Section III of this IP Policy.

B. In the case of Third Party Content:

Projects must verify that all Third Party Licenses conform to the then-current licensing guidelines as provided by the EMO. To do so, Projects must run and analyze the results of a tool provided by the EMO, using parameters provided by the EMO, to: (a) obtain the terms and conditions under which such Content would be Distributed by the Eclipse Foundation, and (b) ensure that such terms are ~~consistent~~not inconsistent or in conflict with the Project Licenses. ~~Projects will verify that the terms and conditions of its Third Party Content conform to the then-current licensing guidelines as~~Should the outputs provided by the tools indicate any issue or ambiguity with respect to the terms or Compatible licenses (an "IP Concern"), the Project Lead must ensure that the Project reports the IP Concern to the EMO, using an issue tracker designated by the EMO. No further approvals will be required from the EMO prior to Projects placing the Third Party Content into the Repository.

Reasonable judgment shall be used to determine if the Content can be Distributed as Third Party Content as described in Section III of this IP Policy.

C. ~~Enabling Parallel IP Due Diligence for Projects~~

~~Content for which Required Due Diligence has not been completed must never be made available as Distributed Content in any software distribution by any Project denoted as a release. In addition, reasonable steps should be taken to ensure that any Content which fails the Required Due Diligence is no longer made available as Distributed Content.~~

~~All necessary license obligations must be fulfilled for any Content to be made available as Distributed Content for which Required Due Diligence has not been completed. Such license obligations may include, but are not limited to, terms and conditions that must appear in notices and agreements governing the use of such Content when it is made available as Distributed Content.~~

~~D.~~ In the Case of Hosted Content:

For each Submission of Hosted Content by a ~~Committer~~Submitter it will be the responsibility of the EMO to ensure that automated systems are in place to ensure that the following information is recorded:

(1) the name (including, as applicable, the namespace) of the Code Content.

(2) the name and website URL of the organization from which the Code Content originates.

(3) the version number (as applicable) of the Code Content.

(4) the license(s) and version (as applicable) under which the Code Content is made available, including a complete copy of the same.

It will be the responsibility of the EMO to ensure that the license(s) under which Submissions of Code Content are made available as Hosted Content ~~is one of the following:~~

(1) the Eclipse Public License,

(2) alternative terms have been reviewed and conditions previously approved by the Board for Content included in the Repository, or

a license expressly approved by the BoardEMO for use by Code Content in a Hosted Repository.

For Submissions of Non-Code Content as Hosted Content, there shall be no data collection or due diligence requirements, except that it will be the responsibility of the EMO to ensure that the terms and conditions which govern the use of Non-Code Content made available in a Hosted Repository are one of the following:a license approved by the EMO for Non-Code Content.

(1) the Eclipse Public License, or

(2) a license approved by the Board for Non-Code Content.

V. TECHNOLOGY REVIEWS

The Eclipse Foundation Development Process identifies important milestones in a Project's lifecycle: (i) Creation Review; (ii) Graduation Review; (iii) Progress Review; and (iv) Release Review [collectively, the "Check Point Reviews"]. One of the tasks associated with Creation Review is an initial determination, by the Project of new Content that may be added to the Eclipse PlatformTechnology (as that term is defined by the Eclipse Bylaws). The Graduation, Progress, and Release Reviews are used, among other things, to determine whether the Project has acquired the necessary rights to all such new and additional Content to permit the distribution of such Content.   If such rights have not been acquired, the applicable Content will not be externally distributed. Each Check Point Review will also be used to provide each Member with an opportunity, but NOT an obligation, to review the technical plans and related Submissions, if any, for the Project and identify any intellectual property rights including, but not limited to, patent rights, the Member may have that they reasonably believe may be infringed/misappropriated by a Submission if a user of such Submission does not receive a license from that Member to that intellectual property right.

In the event that a Member elects to notify the Eclipse Foundation of any such intellectual property rights, the Member shall notify the EMO in writing. Upon receipt of such notice, the EMO shall review the identification of the potential infringement/misappropriation, and determine an appropriate course of action consistent with this IP Policy. The same process shall apply if the Member identifies the potential infringement/misappropriation after the Check Point Review. Nothing in this IP Policy shall in any way be interpreted to modify or supersede the terms of the EPLany Project License in any manner. This policy shall in no way be interpreted: (1) to require the Eclipse Foundation to agree with a Member that the Submission that has been identified may infringe or misappropriate that Member's intellectual property rights; (2) to require (aside from any obligation arising from Section VI below) any Member to license its intellectual property rights to the Eclipse Foundation, any Member or any other party; or (3) to prevent (aside from any obligation arising from Section VI below) a Member from enforcing its intellectual property rights against the Eclipse Foundation, a Member(s), or any other party as a result of the Member not identifying any such potential infringement/misappropriation during these review cycles or at any other time.

VI. SPECIFICATION PROCESS

At the commencement of each Specification Project, such Specification Project will: (i) have a specified and documented Scope, and (ii) explicitly select whether they will utilize an Implementation Patent License or a Compatible Patent License. The Scope may only be changed pursuant to the Eclipse Foundation Specification Process and will only be effective after the Check Point Review publication following such change in Scope in accordance with this Section VI.

A Participant may terminate participation in a specific Specification Project at any time during the course of such Specification Project. Termination of participation shall be pursuant to the process set forth in the Specification Process. A Participant that terminates its involvement in a Specification Project shall have no obligation to disclose any knowledge of any Essential Claims (but will be deemed to have granted a Patent License for any Committed Essential Claims as described further below in this Section VI).

Pursuant to the Eclipse Foundation Specification Process, each Specification Project will have a series of Check Point Reviews prior to the publication of a Final Specification. As part of each Check Point Review, a milestone draft of the Specification shall be published.

A Participant that terminates participation in a Specification Development Project prior to the release of a Final Specification from that Project shall be deemed to have granted the Patent License for implementations of the Final Specification, but only to the extent of those Essential Claims in the Final Specification that would also have been Essential Claims in the last Check Point Review draft of the Specification that was published prior to the Participant's termination of participation in the Specification Project. To the extent a Participant joins a Specification Development Project after such Project has released a Check Point Review draft of the Specification, such Participant shall be deemed to have granted a Patent License for all Essential Claims in the Final Specification to the extent they were Essential Claims in the last Check Point Review draft of the Specification. All Essential Claims deemed to be granted pursuant to this paragraph shall be referred to herein as "Committed Essential Claims." By participating in the Specification Development Project for a particular Specification Version at the time of release of a Final Specification of that Specification Version, a Participant grants the Patent License with respect to all Essential Claims in the Final Specification for that Specification Version, and all such Essential Claims will be Committed Essential Claims.

VII. CONFIDENTIALITY

The Eclipse Foundation, Member(s), Committer(s) and other parties may exchange information as a result of their participation in Projects and/or generally in the furtherance of the Purposes of the Eclipse Foundation. All such information shall be considered non-confidential and provided under terms consistent with this IP Policy. In the event confidential information needs to be shared, such confidential information shall be disclosed pursuant to a confidentiality agreement entered into by the participants in such disclosure.

VIII. TRADEMARKS AND LOGOS

The use of trademarks and logos associated with the Eclipse Foundation shall be used in accordance with the then current Eclipse Foundation Trademark Usage Guidelines.

IX. COMMITTER AGREEMENT

Each Committer must execute a Committer Agreement, or have its employer execute a Committer Agreement on the Committer's behalf. Such Committer Agreement shall:

a)   provide sufficient license grants to allow the Eclipse Foundation to distribute Content Submitted by the Committer as Distributed Content; and

b)   obligate the Committer to comply with this IP Policy and other policies of Eclipse Foundation in effect from time to time.

X. CHANGES TO IP POLICY; DISCLAIMERS

When a provision in this IP Policy refers to actions to be taken by the EMO, a Committer, PMC, and/or the Board, such provisions should read to mean the EMO, a Committer, PMC and/or the Board acting on behalf of the Eclipse Foundation.

The Board is empowered to approve changes to this IP Policy. After any such Board approval, a minimum of thirty (30) days' notice shall be provided to all Members and Committers of the new version of this IP Policy before it becomes effective.

UNDER NO CIRCUMSTANCES SHOULD THIS IP POLICY BE INTERPRETED TO BE A REPRESENTATION, WARRANTY, CONDITION, OR OTHER FORM OF GUARANTEE THAT THE INTELLECTUAL PROPERTY RIGHTS OF A MEMBER, COMMITTER, SUBMITTER OR ANY OTHER PARTY, WILL NOT BE INFRINGED IF THIS IP POLICY IS COMPLIED WITH. IN ADDITION, THE ECLIPSE FOUNDATION, ITS MEMBERS, COMMITTERS, AND THEIR RESPECTIVE EMPLOYEES AND AGENTS SHALL HAVE NO LIABILITY OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL AND CONSEQUENTIAL DAMAGES) TO EACH OTHER OR TO ANY OTHER PARTY WITH RESPECT TO THIS IP POLICY INCLUDING, BUT NOT LIMITED TO, FAILURE TO COMPLY WITH THIS IP POLICY TO THE EXTENT PERMITTED UNDER APPLICABLE LAW.

THE ECLIPSE FOUNDATION, ITS MEMBERS, COMMITTERS AND THEIR RESPECTIVE EMPLOYEES AND AGENTS HEREBY DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED AND STATUTORY INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION OR WARRANTY OF NON-INFRINGEMENT RELATING TO ANY SOFTWARE OR PRODUCT MADE AVAILABLE THROUGH THE ECLIPSE FOUNDATION.