

TRADEMARK LICENSE AGREEMENT

This TRADEMARK LICENSE AGREEMENT (this “Agreement”) is made and entered into as of [_____] [], 2018 (the “Effective Date”), by ECLIPSE FOUNDATION, INC. , a Delaware not-for-profit corporation located at 102 CentrepoinTE Drive, Ottawa, Ontario, Canada (“Eclipse”) and _____, a _____ [corporation/limited liability company] located at _____ (the “Licensee” and together with Eclipse, each a “Party” and collectively, the “Parties”).

1. DEFINITIONS.

1.1 “Affiliate” shall mean, with respect to a Party, any other person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Party. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by contract or through the ownership beneficially or of record, of greater than fifty percent (50%) of the voting securities of such entity.

1.2 “Eclipse Name Space” shall mean the public class or interface declarations whose names begin with “jakarta”, “ee.jakarta”, “org.jakarta” or their equivalents in any subsequent naming convention adopted by Eclipse.

1.3 “Eclipse TCK License” shall mean the Eclipse Technology Compatibility Kit License, as amended [LINK].

1.4 ~~1.2~~ **“Licensable Implementation”** shall mean: (i) an implementation that is a Profile-Compatible Implementation; and (ii) with respect to a Ratified Specification that is not part of a Profile, an implementation thereof which is a Specification-Compatible Implementation.

1.5 ~~1.3~~ **“Licensed Materials”** shall mean a Licensable Implementation and directly-related documentation and other materials (e.g., web sites, marketing literature, training materials, etc.) ~~[?]~~.

1.6 ~~1.4~~ **“Profile”** shall mean a Specification that includes by explicit reference a collection of other Specifications and possibly additional requirements, and refers to the set of Specifications as a “profile” or “platform.”

1.7 ~~1.5~~ **“Profile-Compatible Implementation”** shall mean an implementation that is: (i) a Specification-Compatible Implementation of all Ratified Specifications referenced in a Profile; and (ii) satisfies all other requirements of such Profile.

1.8 ~~1.6~~ **“Qualified Eclipse Member”** shall mean a Solutions, Enterprise or Strategic Member of Eclipse in good standing, as those terms are defined in the Eclipse Bylaws.[LINK]

1.9 ~~1.7~~ “**Qualified Working Group Member**” shall mean a Participant, Enterprise or Strategic Member of a Working Group, in good standing, as those terms are defined in the charter for such Working Group and the Eclipse Bylaws.

1.10 ~~1.8~~ “**Ratified Specification**” shall mean a Specification that has been made available under the Eclipse Foundation Specification License [LINK] to enable the creation and certification of compatible implementations.

1.11 ~~1.9~~ “**Specification**” shall mean a collection of application programming interface (API) definitions, descriptions of semantic behavior, data formats, protocols, and/or other referenced specifications, along with its TCK, intended to enable the development and testing of implementations.

1.12 ~~1.10~~ “**Specification-Compatible Implementation**” shall mean an implementation that: (i) fulfills all requirements of a Ratified Specification as demonstrated by satisfying all requirements of the TCK associated with the Ratified Specification; and (ii) does not modify, subset, superset or otherwise extend the Eclipse Name Space, or include any public or protected packages, classes, interfaces, fields, methods or constructors within the Eclipse Name Space other than those required or authorized by the Ratified Specification. An implementation that is partially but not completely in satisfaction of the requirements of a Specification shall not be deemed to be a Specification-Compatible Implementation.

1.13 ~~1.11~~ “**TCK**” shall mean a technology compatibility kit composed of software and documented requirements that are licensed under the Eclipse TCK License and are used to test an implementation to determine whether that implementation is a Specification-Compatible Implementation with the Ratified Specification associated with such TCK, provided that, after the initial release of the Specification-Compatible Implementations, the term “TCK” as applied to new releases of such implementation shall mean the then-most current TCK which has been available under the Eclipse TCK License for at least one hundred and eighty (180) days.

1.14 ~~1.12~~ “**Territory**” shall mean worldwide, unless modified by Eclipse.

1.15 ~~1.13~~ “**Trademark**” shall mean the trademark listed in Schedule A and any common law trademarks associated with the trademark in Schedule A.

1.16 ~~1.14~~ “**Working Group**” shall mean the Eclipse-chartered working group as set forth on Schedule B hereto.

2. LICENSE GRANT.

2.1 Grant of License. Subject to Licensee’s continued compliance with the terms, conditions, restrictions and conditions set forth in this Agreement throughout the Term, including without limitation, the provisions of Section 2.2, 2.3, ~~2.53.1~~ and ~~2.63.2~~ herein, Eclipse grants Licensee and Licensee hereby accepts a non-transferable, non-exclusive, perpetual, royalty-free, fully-paid up, world-wide, ~~[sub-licensable],?~~ and non-assignable license and right to use the Trademark in the Territory in connection with the marketing, sale, advertising,

documentation and distribution of Licensed Materials. Licensee shall have the right to permit Affiliates to exercise all rights granted to Licensee hereunder, provided however that: (i) all such Affiliates comply with all obligations set forth herein; and (ii) Licensee agrees to be jointly and severally liable for all actions or inactions of such Affiliates with respect to the rights and obligations set forth herein. Except as expressly set forth in this Section, Licensee is granted no other right, title or interest in or license to the Trademark for any purpose.

2.2 Conditions to Grant. As a condition to the foregoing grant of rights, Licensee must, at the time Licensee enters into this Agreement: (i) be a Qualified Eclipse Member (ii) be a Qualified Working Group Member; (ii) be a party to, and in full compliance with, the Eclipse Specification License; (iii) be a party to, and in full compliance with, the Eclipse TCK License; (iv) use the TCK to successfully test and demonstrate that the implementation at issue is a Licensable Implementation; and (v) publish the results of the applicable TCK test results in accordance with the terms of the Eclipse TCK License and TCK. For purposes of clarity, it is understood that the testing of an implementation using a version of the TCK available under a license other than the Eclipse TCK License shall not satisfy the conditions of this Agreement and any implementation tested solely in that way shall not be deemed to be a Licensable Implementation.

2.3 Ongoing Requirements. In the event that during the Term: (i) Licensee's status as a Qualified Eclipse Member in good standing terminates; (ii) Licensee's status as a Qualified Working Group Member in good standing terminates; or (iii) Licensee is no longer in full compliance with the Eclipse Specification License and the Eclipse TCK License in all respects, all licenses granted by Eclipse hereunder shall terminate and, subject to the terms of Section 5, Licensee shall no longer make any use of the Trademark.

2.4 Reservation of Rights. Licensee acknowledges and agrees that except as specifically set forth in this Agreement, Eclipse retains all rights, title and interest in the Trademark, and Licensee does not acquire any rights in and to such Trademark except as set forth herein. Nothing in this Agreement shall limit in any way Eclipse's right to develop, use, license, create derivative works of, or exploit Eclipse's Trademark.

3. **QUALITY CONTROL AND STANDARDS.**

3.1 ~~2.5~~ Quality Standards. Licensee shall: (i) maintain and control the quality of the Licensed Materials at a quality at least equivalent to the quality associated with Licensee's other products and services; and (ii) cause all Licensed Materials to comply in all respects with all relevant or applicable laws, rules and regulations and the Eclipse Trademark Usage Guidelines [LINK] as they may be amended in the future from time to time. All Licensed Materials shall be of such high standards and of such quality as will, in Eclipse's sole judgment, protect and enhance the Trademark and the substantial goodwill pertaining thereto. Without limiting the foregoing, Licensee acknowledges and agrees that the Trademark shall not be used in association with any goods, services, materials or content that will have an adverse effect on the image or reputation of Eclipse or Eclipse's right, title or interest in and to, the Trademark. Licensee shall cooperate fully in all reasonable ways with Eclipse in enabling Eclipse to ascertain that all Licensed Materials meet appropriate standards. In the event that Eclipse, in its sole discretion, determines that Licensee's use of the Trademark fails to comply in any material

respect with the foregoing quality standard requirements, Eclipse may notify Licensee in writing of any such failure or deficiency, whereupon Licensee shall rectify such failure or deficiency in quality promptly and no later than within the time limit reasonably demanded by Eclipse.

3.2 ~~2.6~~ Versioning. All uses of the Trademark shall be accompanied by any textual description provided by Eclipse to accurately reflect any change in versioning associated with a particular Ratified Specification. Licensee shall at all times accurately reflect the particular version of Ratified Specification for which the particular implementation has been deemed to be a Licensable Implementation.

4. ~~3.~~ TRADEMARK OWNERSHIP.

4.1 ~~3.1~~ Ownership. Licensee shall use the Trademark only in connection with the Licensed Materials and agrees that all of Licensee's use of the Trademark under this Agreement inures to the benefit of Eclipse. Licensee acknowledges that Eclipse is the owner of the Trademark and the goodwill associated therewith and Licensee agrees not to contest Eclipse's ownership or the validity of the Trademark during or after the Term. Apart from the right of Licensee to use the Trademark pursuant to this Agreement, Licensee shall acquire no right, title or interest of any kind or nature whatsoever in or to the Trademark and the goodwill associated therewith. Licensee agrees not to perform any act or fail to act when such act or failure would be adverse to Eclipse's rights in the Trademark. Eclipse reserves the right to amend or replace the Trademark at any time and Licensee shall cease use of the former Trademark as quickly as practicable. Eclipse may modify the license grant specified in Section 2.1 above to eliminate any jurisdiction from the scope of the license to the extent Licensee determines that use of the Trademark in such jurisdiction may give rise to legal liability. In such event, Licensee shall cease use of the former Trademark in such jurisdictions as quickly as practicable but in no event later any date as required by court or judicial order.

4.2 ~~3.2~~ Marking and Usage. Licensee shall affix trademark notices or other markings as required by Eclipse to all Licensed Materials.

4.3 ~~3.3~~ Trademark Protection and Defense. Licensee shall promptly notify Eclipse of any apparently unauthorized use or infringement by third parties of any rights granted to Licensee herein. Licensee shall cooperate with Eclipse in the defense and protection of the Trademark, at Eclipse's expense, and shall promptly advise Eclipse of any potentially infringing uses by others in addition to any suits brought, or claims made, against Licensee involving the Trademark. Decisions involving the protection and defense of the Trademark shall be solely in the discretion of Eclipse; Licensee shall take no actions in this regard without the express written permission of Eclipse.

4.4 ~~3.4~~ Equitable Remedies. Licensee acknowledges that: (i) a breach or threatened breach by Licensee of any of its obligations under this Agreement would give rise to irreparable harm to Eclipse for which monetary damages would not be an adequate remedy; and (ii) if a breach or a threatened breach by Licensee of any such obligations occurs, Eclipse will, in addition to any and all other rights and remedies that may be available to such party at law, at equity, or otherwise in respect of such breach, be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available

from a court of competent jurisdiction. This remedy is in addition to any other remedy to which Eclipse may be entitled at law or in equity. Nothing in this ~~section 3.4~~Section 4.4 will be considered an election of remedies.

5. ~~4.~~ **TERM AND TERMINATION.** This Agreement shall begin on the Effective Date and shall continue until terminated pursuant to this Section ~~4.5~~5.1. Eclipse shall have the right to terminate this Agreement immediately upon written notice to Licensee (the effective date of such termination, the “**Termination Date**”) if: (i) Licensee fails to comply with the ongoing requirements set forth in Section 2.3 herein; (ii) Licensee fails to materially comply with the quality control provisions in Section ~~2.5~~3.1 and does not cure such failure or breach within thirty (30) days after written notice from Eclipse; (iii) Licensee fails to materially comply with Licensee’s material obligations hereunder or materially breaches any warranty or representation made by Licensee hereunder and does not cure such failure or breach within thirty (30) days after written notice from Eclipse; (iv) Licensee attacks the title of Eclipse to the Trademark; (v) Licensee becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation or consolidation for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing; or (vi) Licensee becomes insolvent or generally fails to pay, or admits in writing its inability to pay its debts as they become due. Either Party may terminate this Agreement for convenience with ninety (90) days written notice. Upon termination of this License, all rights granted Licensee hereunder shall revert to Eclipse.

6. ~~5.~~ **EFFECT OF TERMINATION.**

6.1 ~~5.1~~ Upon expiration of the Term and as of the Termination Date, Licensee shall immediately cease use, sale, distribution or offering of ~~Licensed Goods and Services and distribution of~~ the Licensed Materials. Upon expiration or termination of this Agreement, Licensee shall delete, erase or otherwise remove the Trademark from all copies of the Licensed Materials and other uses of the Trademark in Licensee’s possession or control.

6.2 ~~5.2~~ To the extent this Agreement is terminated by Eclipse pursuant to Section 4 (i)-(iv) herein (a “**For-Cause Termination**”), Licensee shall use take all necessary steps to recall any implementations that have been placed into the stream of commerce that have defects leading to the For-Cause Termination.

6.3 ~~5.3~~ In the event of a termination of this Agreement for any reason, the provisions of Sections 2.4, ~~2.5, 2.6, 3,~~63.1, 3.2, 4, this Section 6.3, 7 and ~~7~~8 shall survive and remain in full force and effect.

7. ~~6.~~ **REPRESENTATIONS AND WARRANTIES.**

7.1 ~~6.1~~ Each of the Parties hereto is a corporation, limited liability company or other entity, duly incorporated, formed, or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, formation, or organization and has all requisite power and authority to carry on its respective business as now being conducted. The execution and delivery of this Agreement have been duly authorized by the Parties and no other corporate actions are necessary to authorize the execution, delivery and performance of this Agreement.

The execution and delivery of this Agreement do not and will not (i) conflict with, constitute a default under, result in a breach or violation of, the certificate of incorporation, bylaws or similar organizational documents, as amended, of either Party, or (ii) conflict with or violate any law applicable to either Party. This Agreement constitutes a valid and legally binding obligation of each Party hereto, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and remedies.

7.2 ~~6.2~~ EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THIS LICENSE IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Each recipient is solely responsible for determining the appropriateness of using the Trademark on the Licensed Materials and assumes all risks associated with its exercise of rights under this Agreement, including but not limited to the risks of infringement.

7.3 ~~6.3~~ Licensee shall indemnify, defend and hold harmless Eclipse, and its officers, directors, shareholders, employees, and agents, against any and all third party claims, demands, damages, liabilities, actions, causes of action, prosecutions, suits and proceedings, as well as all reasonable costs and expenses and reasonable attorneys' fees incurred therein (in addition to any such costs related to enforcement of this Section ~~6.3~~ 7.3, arising from or relating to: (i) Licensee's breach of this Agreement; (ii) any actual or alleged inaccuracy in or breach of non-fulfillment of any representation, warranty, covenants, agreement, covenants or obligation of Licensee contained in the Agreement; (iii) the negligence, willful misconduct, or fraud of Licensee; (iv) any unauthorized use or misuse of the Trademark; (v) any alleged defect, adulteration, viruses, worms, date or time bombs, backdoors, booby traps, trap doors or disabling codes, or other code in the Licensed Materials; (vi) any infringement or violation of any intellectual property right of any third party in connection by Licensee other than from the Trademark to the extent used in compliance with this agreement; and (vii) the operation of Licensee's business.

7.4 ~~6.4~~ **Disclaimer of Liability.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, ECLIPSE SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, TOR, INCLUDING NEGLIGENCE AND OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THE TRADEMARKS THAT ARE THE SUBJECT OF THIS TRADEMARK LICENSE OR THE EXERCISE OF ANY RIGHTS GRANTED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. ~~7.~~ MISCELLANEOUS.

8.1 ~~7.1~~ Governing Law. This Agreement shall be construed and controlled by the laws of the State of New York without reference to conflict of laws principles. The federal and state courts residing in New York shall have sole jurisdiction over any disputes arising under or related to this Agreement.

8.2 ~~7.2~~ Notices. All notices or other communications to or upon any party shall be delivered to or at the addresses set forth on the signature page(s) hereto. For purposes of this Section, notice can include notice by written mail, electronic mail or by facsimile and shall be deemed served when sent; provided, however, that notice of a breach of this Agreement and notice of termination of this Agreement shall be given by overnight courier service or certified mail, return receipt requested. Either party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party at such changed address.

8.3 ~~7.3~~ Complete Agreement; No Waiver. Except with respect to the Bylaws of Eclipse, the Intellectual Property Policy, the EPL, the Project License(s), the Eclipse.org Terms of Use, Eclipse's Antitrust Policy, the Eclipse TCK License, the Eclipse Specification License, the Eclipse Membership Agreement and any other policies, guidelines, agreements and procedures that may be adopted by Eclipse Foundation, from time to time, in accordance with the Bylaws, this Agreement, including all attachments, sets forth the entire understanding of Eclipse Foundation, and the Licensee with respect to the subject matter hereof and supersedes all prior agreements and understandings relating hereto, unless otherwise stated in this Agreement. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

8.4 ~~7.4~~ Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but collectively shall constitute one and the same instrument.

8.5 ~~7.5~~ Compliance with Laws. Anything contained in this Agreement to the contrary notwithstanding, the obligations of Eclipse and Licensee shall be subject to all laws, present and future, of any government having jurisdiction over Eclipse or Licensee including, without limitation, all export and re-export laws and regulations. It is the intention of Eclipse and Licensee that this Agreement and all referenced documents shall comply with all applicable laws and regulations.

8.6 ~~7.6~~ Independent Contractors. The relationship of Eclipse with respect to Licensee established by this Agreement is that of independent contractors. This Agreement does not give either party the power to direct and control the day to day activities of the other, constitute the parties as partners, joint venturer, co-owners, principal-agent or otherwise participants in a joint or common undertaking, or, except as expressly provided herein, allow either party to create or assume any obligation on behalf of the other for any purpose whatsoever.

8.7 ~~7.7~~ Severability; Ambiguity. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any

respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties hereto have participated jointly in the negotiation and drafting of this Agreement; accordingly, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provisions of this Agreement.

8.8 ~~7.8~~ Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of the Agreement.

8.9 ~~7.9~~ Assignment. Neither Party may assign this Agreement (including, without limitation, by operation of law), without the prior written consent of the other Party. Any assignment of this Agreement in contravention of this Section ~~7.9~~8.9 shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successor and assigns, if properly assigned.

8.10 ~~7.10~~ Amendment. This Agreement may not be amended, nor will any change, waiver, modification, consent, assignment or discharge be effected, except by written instrument executed by the Party against which enforcement is sought.

[Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed the TRADEMARK LICENSE as of the date set forth in the first paragraph hereof.

Eclipse Foundation, Inc.

Eclipse Foundation, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Notice Information

Address: c/o Eclipse Foundation, Inc.
102 CentrepoinTE Drive
Ottawa, Ontario,
Canada K2G 6B1
Attention: ~~Committer~~
~~Records~~

Telephone: +1 (613) 224-9461

Fax: +1 (212) 918-1619

e-mail: emo-records@eclipse.org

Licensee:

By: _____

Name: _____

Title: _____

Date: _____

Notice Information:

Address: _____

Schedule A

Marks: JAKARTA EE



Schedule B

Eclipse Working Group: