

ECLIPSE openMDM WORKING GROUP PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT (the “Participation Agreement”) is effective as of this [] day of [], 20 [] (the “Effective Date”) by and between Eclipse Foundation AISBL (“Eclipse Foundation”), a Belgian international not-for-profit association (AISBL/IVZW) incorporated under the laws of Belgium, and [] (“Participant”), hereinafter individually and collectively referred to as the “Party/Parties”.

WHEREAS, Participant has entered into a Membership Agreement with Eclipse Foundation (the “Participant’s Membership Agreement”);

WHEREAS, Participant has entered into a Member Committer and Contributor Agreement with Eclipse Foundation (the “Participant’s MCCA”); and

WHEREAS, Participant desires to participate in the Eclipse openMDM Working Group (the “Working Group” or “WG”), which is one of Eclipse Foundation’s Working Groups (the “Eclipse Working Groups”), as specified in Exhibit A to this Participation Agreement and as updated from time to time under the then-current Eclipse Foundation Working Group Process (the “WG Process”), and available at <https://www.eclipse.org/org/workinggroups/process.php>.

NOW THEREFORE, ECLIPSE FOUNDATION AND PARTICIPANT AGREE AS FOLLOWS:

1. Definitions

- (a) “Annual Membership Fee” is the Annual Membership Fee as set forth in the Eclipse Foundation Bylaws and the Participant’s Membership Agreement.
- (b) “WG Participation Fees” are those “other dues” as defined in the Eclipse Foundation Bylaws and the Participant’s Membership Agreement for participating in the Working Group, as established by the Working Group’s Steering Committee and set forth in the charter of the Working Group (the “Working Group Charter”) (a URL link to which is provided in Exhibit A), as adopted and amended from time to time pursuant to the WG Process. At its discretion, the Working Group’s Steering Committee may, pursuant to the WG Process, establish different tiers of participation and associated fees for the organizations participating in the Working Group.

2. Term

The term of this Participation Agreement shall commence as of the Effective Date and shall continue indefinitely, subject to the terms of Section 5, Termination.

3. Working Group Participation

Participant agrees to participate in, to fulfill the obligations of, if any, and to receive the benefits of participating in this Working Group commensurate with the level of Working Group participation selected by Participant in Exhibit A, and as specified in the Working Group Charter. Nothing in this Participation Agreement is intended to preclude any Affiliate of any Member (as those terms are defined in the Eclipse Foundation Bylaws) from independently entering into this Participation

Agreement on its own behalf in accordance with the procedure set forth in the Eclipse Foundation Bylaws, and exercising all of the rights herein.

4. Fees

In addition to the Annual Membership Fee as agreed to in the Participant's Membership Agreement, Participant agrees to pay the WG Participation Fees as defined in the Working Group Charter and which are included in Exhibit A for reference and any other working group participation fees by reason of Participant's participation in any other Eclipse Working Group(s). These WG Participation Fees may be amended from time to time in accordance with the Working Group Charter; however, unless otherwise stated as "To Be Determined" or "TBD" or stated to go into effect on a particular start date in the Working Group Charter, any change in WG Participation Fees will not be applied retroactively, and shall take effect on the next anniversary of the Effective Date following the change in WG Participation Fees.

Unless otherwise agreed to in writing by Member and Eclipse Foundation, Member will be billed WG Participation Fees as defined in the applicable Working Group Charter on the Effective Date of this Participation Agreement, and on the anniversary of that date each year.

Payment of all fees must be made in accordance with the Eclipse Foundation Bylaws and the Participant's Membership Agreement.

5. Termination

- (a) Subject to any terms noted in Exhibit A below, Participant may terminate its participation in the Working Group by sending email or written notice to the Secretary of the Eclipse Foundation. Participant's Membership Agreement and Participant's MCCA shall survive such termination.
- (b) A termination of the Participant's Membership Agreement shall automatically terminate this Participation Agreement and, except as expressly set forth in this Participation Agreement, the Participant's Membership Agreement, or in any license granted to software or other content while a Member, no rights or benefits shall survive hereunder.
- (c) This Participation Agreement shall terminate if the Working Group is terminated in accordance with the WG Process. Participant's Membership Agreement and Participant's MCCA shall survive such termination.
- (d) Notwithstanding any termination of this Participation Agreement under this Section 5 or otherwise, Participant shall not be entitled to receive any refund, pro rata or otherwise, of any WG Participation Fees, other fees, dues, or assessments paid under this Participation Agreement. Notwithstanding a termination under this Section 5 (other than Section 5(c)), and subject to the terms of Section 4, Participant shall remain obligated to pay the WG Participation Fees or portion thereof due and unpaid hereunder.

6. General

6.1 Limitation of Liability. To the extent permissible by law, in no event will either the Eclipse

Foundation or Participant be liable to each other under this Agreement for the cost of procuring substitute goods or services, lost profits, lost revenue, lost sales, loss of use, loss of date or any incidental consequential, direct, indirect, punitive or special damages, whether or not such Party had advance notice of the possibility of such losses or damages.

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

6.3 Dispute resolution. Both the Eclipse Foundation and Participant irrevocably agree that the Courts of the judicial district of Brussels, Belgium, shall have exclusive jurisdiction to settle any dispute or claim (as detailed under Section 6.2). Notwithstanding the foregoing, if the dispute involves a Participant that is an organization established by a treaty or other instrument governed by international law possessing its own international legal personality ("Intergovernmental Organization") and enjoys immunity from legal processes of any jurisdiction, national court or other authority, then the Parties agree that (a) Nothing in this Agreement and nothing in the Bylaws, Membership Agreement, Internal Rules, additional policies, procedures and other governance rules adopted by the Eclipse Foundation constitutes or may be interpreted as a limitation upon or waiver of that immunity and (b) any dispute or claim (as detailed under Section 6.2) will be governed by Belgian law and finally settled by arbitration. Unless otherwise agreed by the Parties in writing, arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one (1) or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Brussels, Belgium. The language of arbitration shall be English.

6.4 Counterparts. This Agreement may be signed in counterparts, in the number of originals stated hereinafter on the signature page. When taken together, the counterparts signed by all Parties shall constitute one and the same instrument.

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

6.6 Independent Contractors. The relationship of the Eclipse Foundation and Participant 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 ventures, 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.

6.7 Order of Precedence. Notwithstanding anything else to the contrary in this Agreement or in any other agreement entered into with the Eclipse Foundation, in the case of the conflict between the terms of this Agreement and the Participant's Membership Agreement and the Participant's MCCA, the terms of those agreements shall prevail.



Eclipse Foundation AISBL

IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement as of the Effective Date written above.

PARTICIPANT

By:

Printed Name:

Title:

Date:

ECLIPSE FOUNDATION AISBL

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

ECLIPSE openMDM WORKING GROUP

This Exhibit is made part of and subject to this Participation Agreement and entered into by the undersigned Participant.

Participant agrees to participate in the Eclipse openMDM Working Group (“WG”) and to pay the fees specified in the Eclipse openMDM Working Group Charter, which are illustrated in the tables below for convenience, and as amended from time-to-time thereafter in accordance with the WG Process, and available at:

https://www.eclipse.org/org/workinggroups/mdmwg_charter.php

Participant will participate in working group at the following level, as specified in working group charter:

PLEASE CHECK ONE

- Driver Member
- User Member
- Application Member
- Service Provider Member
- Guest Member (by invitation of the Steering Committee)

The Eclipse openMDM Steering Committee has established the following WG Participation Fees:

Corporate Revenue	Driver Member Annual Fees	User Member Annual Fees	Other Member Annual Fees
Annual Corporate Revenues greater than \$250 million	\$0	\$0	\$0
Annual Corporate Revenues greater than \$100 million but less than or equal to \$250 million	\$0	\$0	\$0
Annual Corporate Revenues greater than \$50 million but less than or equal to \$100 million	\$0	\$0	\$0
Annual Corporate Revenues greater than \$10 million but less than or equal to \$50 million	\$0	\$0	\$0
Annual Corporate Revenues less than or equal to \$10 million	\$0	\$0	\$0
Annual Corporate Revenues less than \$1 million and < 10 employees	\$0	\$0	\$0

Note: For the period August 1, 2020 to July 31, 2021, the openMDM working group fees are \$0 and no in-kind contributions are required.

IN WITNESS WHEREOF, the parties hereto have executed this Exhibit A as of the Effective Date written above.

PARTICIPANT

By:

Printed Name:

Title:

Date:

ECLIPSE FOUNDATION AISBL

By: _____

Printed Name: _____

Title: _____

Date: _____