ECLIPSE FOUNDATION AISBL
MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT (the "Agreement") is effective as of this _____ of _____, 20___ (the "Effective Date") by and between Eclipse Foundation AISBL (the "Eclipse Foundation"), a Belgian international not-for-profit association (*AISBL*/*IVZW*), and _____ ("Member"), hereinafter individually and collectively referred to as the "Party/Parties". Members of the Eclipse Foundation shall be referred to collectively as the "Members".

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

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

WHEREAS, Member would like to become a member of the Eclipse Foundation in the Membership Class of (select one):

☐ Strategic Member
☐ Contributing Member
☐ Associate Member
☐ Committer Member

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

1. MEMBERSHIP CLASSES. There shall be multiple classes of membership ("Membership Classes") as specified in the Bylaws and under Exhibit C, including Strategic Members, Contributing Members, Committer Members, and Associate Members.

2. MEMBERSHIP RIGHTS AND OBLIGATIONS

2.1 Generally. Member agrees to abide by the obligations set forth in the Bylaws and in this Agreement, including without limitation the requirements to pay the Annual Membership Fee established for its Membership Class, if any, and other dues as set forth in Exhibit C hereto, as may be amended from time to time in accordance with the Bylaws. In addition to the foregoing, (i) Committer Members shall be individuals who have been granted "Committer" status in accordance with the Committer Member process set forth in Exhibit A, and (ii) Strategic Members shall be legal entities who abide by the additional requirements set forth in Exhibit B.

2.2 Compliance with Policies. As it pertains to their activities with the Eclipse Foundation, Member agrees to abide by, and shall have all applicable rights and obligations as set forth in, the Bylaws, the Internal Rules, the Eclipse Foundation Antitrust Policy, the Eclipse Foundation Intellectual Property Policy (the "IP Policy"), and any and all additional policies, procedures and other governance rules adopted by the Eclipse Foundation, as may be amended from time to time in accordance with the Bylaws.

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

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

3. TERM AND TERMINATION

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

3.2 Termination. Member may terminate its membership or be removed there from in accordance with Article 12 of the Bylaws. Upon termination of Member's membership, this Membership Agreement shall terminate.

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

4. GENERAL

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

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

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

4.4 **No Warranty**. The Eclipse Foundation and Member each acknowledges that, except as otherwise agreed in writing and to the extent permissible by law, all information provided to or by the Eclipse Foundation under this Agreement is provided "as is" with no warranties or conditions whatsoever, whether express, implied statutory or otherwise , and the Eclipse Foundation and Member each expressly disclaim any warranty of merchantability, non-infringement, and fitness for any particular purpose with respect to such information.

4.5 **Limitation of Liability**. To the extent permissible by law, in no event will either the Eclipse Foundation or Member be liable to each other under this Agreement for the cost of procuring substitute goods or services, lost profits, lost revenue, lost sales, loss of use, loss of data, or any incidental, consequential, direct, indirect, punitive or special damages, whether or not such Party had advance notice of the possibility of such losses or damages.

4.6 **Governing Law**. 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.

4.7 **Dispute resolution.** Both the Eclipse Foundation and Member 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 4.6). Notwithstanding the foregoing, if the dispute involves a Member 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, 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 4.6) 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.

4.8 **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 will be served by electronic mail with acknowledgment of receipt. In the absence of reaction from the other Party within three (3) days or if no acknowledgement of receipt is served within this period, the notifying Party will serve this notice by written mail, or in case of termination of this Agreement, by registered letter or by international courier. In any case, the notice will be deemed served validly when sent by electronic mail in accordance with this Section 4.8. Either Party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such Party at such changed address.

4.9 **Complete Agreement; No Waiver**. Except with respect to the Eclipse Foundation's Bylaws, IP Policy, the Eclipse Foundation Antitrust Policy, the Eclipse Public License, and any and all additional policies, procedures and other governance rules that may be adopted by the Eclipse Foundation from time to time in accordance with the Bylaws, and, for the avoidance of doubt, without prejudice to any statute (e.g. convention) governing a Member which is an Intergovernmental Organization, this Agreement, including all attachments, sets forth the entire understanding of the Eclipse Foundation and Member and supersedes all prior agreements and understandings relating hereto, unless otherwise stated in this

Agreement. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

4.10 Amendment. Member shall be given at least thirty (30) days prior written notice of the effective date of an amendment to this Agreement in accordance with the Bylaws. If Member does not agree, such disagreement to be confirmed in writing, to an amendment to this Agreement that was approved in accordance with the Bylaws, Member may terminate this Agreement and Member's membership in the Eclipse Foundation upon written notice by Member in accordance with Section 3 herein.

4.11 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.

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

4.13 Independent Contractors. The relationship of the Eclipse Foundation and Member established by this Agreement is that of independent contractors. This Agreement does not give either Party the power to direct and control the day to day activities of the other, constitute the Parties as partners, joint 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.

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

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

Done as per the Effective Date, in two originals. Each Party acknowledges receipt of its own original.

Eclipse Foundation:		Notice Information:	
Signature:	_____	Address:	Rond Point Schuman 11 Brussels 1040 Belgium
Name:	_____	Telephone:	(+1) 613-224-9461
Title:	_____		
Date:	_____	e-mail:	membership@eclipse.org

Member:		Notice Information:	
Company:	_____	Address:	_____
			_____
Signature:	_____	Attention:	_____
Name:	_____	Telephone:	_____
Title:	_____	Fax:	_____
Date:	_____	e-mail:	_____

Exhibit A

COMMITTER MEMBER PROCESS

Individuals who give frequent and valuable contributions to an Eclipse Technology Project, can have their status promoted to that of a "Committer" for such Project, in accordance with the Project's corresponding Charter. A Committer has write access to the source code repository for the associated Project, and gains rights allowing them to affect the future of the Project. In order for an individual to become a Committer, another Committer for the Project must nominate that individual. Once an individual is nominated, the existing Committers for the Project will vote using the process and rules established in the Project's corresponding Charter. When a new Project is started, the corresponding Project Management Committee ("**PMC**" as defined in the Bylaws and the then current Eclipse Foundation Development Process) will nominate an initial set of Committers for approval by the Executive Director (or his or her delegates). Becoming a Committer is a privilege that is earned by contributing and showing discipline and good judgment. It is a responsibility that should be neither given nor taken lightly.

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

Exhibit B

STRATEGIC MEMBERS

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

A "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 Exhibit A) 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.

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

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

Eclipse Foundation - Membership Fees - Dues

EXHIBIT C

FEE SCHEDULE AND MEMBERSHIP CLASS SELECTION

1. Annual Membership Fee and Billing Date

Your Annual Membership Fee is based on a combination of the Membership Class you chose on page 1 of this Agreement (i.e., Strategic, Contributing, Associate, or Committer – most new members choose Contributing Membership Class), as well as the type of your organization/company and your annual revenues, which you will indicate below in Table 1. As per Article 13.1 of the Eclipse Bylaws, your annual revenues are based on your revenues as well as those of your Affiliate Group, if applicable. For more information, please see our Affiliates Membership Guidelines which can be found at https://www.eclipse.org/org/documents/eclipse_affiliates_membership_guidelines.pdf.

1.1 Your Membership Fee: The Annual Membership Fee is listed in Table 2. On an annual basis, on your Annual Billing Date as defined below, we will invoice you the amount indicated by your choice of Membership Class and your selection in Table 1, in accordance with this Agreement and the Eclipse Foundation Bylaws.

1.2 Your Billing Date: Member will be billed its Annual Membership Fee on the Effective Date of this Agreement, and on the anniversary of that date each year (the "**Annual Billing Date**").

2. Other dues

In addition to your Annual Membership Fee defined herein, you may elect to join one or more Working Groups and pay Working Group Participation Fees (as that term is defined in each Working Group Participation Agreement) as agreed to by executing the appropriate Working Group Participation Agreement(s). Those Working Group Participation Fees are "other dues" as defined in the Bylaws to be paid in accordance with the Bylaws in order to achieve the Purpose of the Eclipse Foundation, it being understood that there is no requirement for any Member to participate in any Eclipse Foundation Working Group(s). Notwithstanding the foregoing, subject to Member entering into additional agreements with the Eclipse Foundation, Member may owe "other dues" other than the Working Group Participation Fees.

Member will be billed its Working Group Participation Fees as defined in the applicable Working Group Participation Agreement(s).

TABLE 1 – PLEASE CHECK THE APPROPRIATE BOX TO DESCRIBE YOUR ORGANIZATION

Details Regarding Member - PLEASE CHECK ONE **(Annual revenues include those of your Affiliate Group as described above)**	
Annual revenues: > €1 billion	
Annual revenues: €100 million - €1 billion	
Annual revenues: €50 million - €100 million	
Annual revenues: €10 million - €50 million	
Annual revenues: < €10 million	
Annual revenues: < €1 million & fewer than < 10 employees	
Govt, Govt agencies, Research Organizations, NGOs, etc.	
Academic, Publishing Organizations, User Groups, etc.	
Individual Committer	

TABLE 2 - YOUR ANNUAL MEMBERSHIP FEE

	Annual Eclipse Foundation Membership Fees		
Annual Corporate Revenues	**Strategic**	**Contributing**	**Associate**
> €1 billion	€300 000	€25 000	€25 000
€100 million - €1 billion	€180 000	€17 500	€17 500
€50 million - €100 million	€125 000	€12 500	€12 500
€10 million - €50 million	€60 000	€9 000	€9 000
< €10 million	€30 000	€6 000	€6 000
< €1 million & fewer than < 10 employees	€30 000	€1 500	€1 500
Govt, Govt agencies, Research Organizations, NGOs, etc.	€30 000	€6 000	€0
Academic, Publishing Organizations, User Groups, etc.	€30 000	€1 000	€0