

TRADEMARK AND DOMAIN NAME AGREEMENT

This agreement (the “Agreement”) is by and between _____ (“Party”) and Eclipse Foundation, Inc. (“Eclipse”) and is effective as of [_____] [____], 201[___] (the “Effective Date”).

WHEREAS, Party is the owner of certain trademarks identified in Exhibit A (the “Trademarks”) and of certain domain names identified in Exhibit A (the “Domain Names”);

WHEREAS, Party is desirous of Eclipse to initiate a project or working group with a name based on the Trademark (the “Project Initiation”);

WHEREAS, to accommodate the Project Initiation, Party desires to transfer all of Party’s rights, title and interest in and to the Trademarks to Eclipse and to thereafter have certain continuing usage rights of the Trademarks;

WHEREAS, to accommodate the Project Initiation, the Parties may mutually agree to have any related Domain Names initially redirect to a URL designated by Eclipse and that the Domain Names are subsequently transferred to Eclipse;

In consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Trademark Assignment. Party irrevocably assigns, grants and transfers to Eclipse, all of Party’s right, title, and interest in and to the Trademarks, including all common law rights, and any trademark registrations and applications, along with the goodwill of the business symbolized by use of the Trademarks, and the right to sue third parties for and recover damages from future infringement of the Trademarks, the same to be held and enjoyed by Eclipse for its own use and enjoyment and the use and enjoyment of its successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Party if this assignment had not been made (the “Assignment”).

To the extent that Party is seeking to perfect the ownership of the Trademarks and Party’s ownership of the Trademarks has not been perfected by the Effective Date, Party agrees to promptly assign ownership of the Trademarks to Eclipse, in accordance with the terms of this Agreement, as soon as such ownership has been perfected. Party further agrees to take all steps necessary to promptly expedite any perfection of their ownership in and to the Trademarks. Party hereby authorizes the Commissioner of Patents and Trademarks of the United States, and any official of any other country empowered to issue trademark registrations, to record this Assignment, and to issue or transfer said Trademarks to Eclipse as owner of all right, title and interest therein, or otherwise as Eclipse may direct, in accordance with the terms of the Assignment.

2. Trademark Usage. Eclipse hereby confirms that Party shall have all applicable rights to use the Trademarks in accordance with the then current version of the Guidelines for Eclipse Logo and Trademarks currently available at:

http://www.eclipse.org/legal/logo_guidelines.php, as may be amended from time to time (the “Trademark Guidelines”).

3. Domain Names. Upon the mutual agreement of the Parties, as of the date Eclipse formally approves the Project (the “Project Effective Date”), Party shall cause any related Domain Names (including all sub-domains and related URLs) to redirect directly to the URLs designated by Eclipse with no interstitial content. Within ten (10) days of the Project Effective Date, Party shall transfer to Eclipse Party’s entire right, title and interest to the Domain Names.

4. Execution and Delivery. Upon Eclipse’s request, Party agrees that it will take such actions and execute such documents (including, without limitation, the prompt execution and delivery of documents in recordable form or testifying as to any material fact or thing and including the transfer of any domain names through appropriate communications with domain name registrars) as may be necessary to vest in and secure unto Eclipse the full right, title and interest in and to the Trademarks and Domain Names and to protect and enforce the Trademarks.

5. Representations and Warranties. Party represents and warrants that Party has the full right to convey the entire right, title and interest herein assigned, and that Party will not take any action, use any trademark or domain name, or execute any instrument or grant or transfer any rights, title or interests inconsistent with the rights, title and interests assigned herein.

6. Warranty Disclaimer. PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, TO ANY PERSON OR ENTITY WITH RESPECT TO THE TRADEMARKS OR ANY RELATED MATERIALS PROVIDED HEREUNDER, ALL OF WHICH ARE PROVIDED “AS IS,” AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

7. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THE USE OF THE TRADEMARKS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Miscellaneous.

- a. Independent Contractors. The parties hereto are independent contractors and are not partners, joint venturers or otherwise affiliated, and neither party has any right or authority to bind the other in any way.
- b. Assignment. Eclipse may not assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Party.
- c. Notices. All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given only if personally delivered, delivered by a major commercial rapid delivery courier service with tracking capabilities, costs prepaid, or mailed by certified or registered

mail, return receipt requested, postage prepaid, to a party at the address set forth below or such other address as a party last provided to the other by written notice:

If to Party:

If to Eclipse:

Eclipse Foundation, Inc.
102 CentrepoinTE Drive
Ottawa, Ontario
Canada, K2G 6B1

- d. Modification and Waiver. The failure of either party to enforce its rights or to require performance by the other party of any term or condition of this Agreement shall not be construed as a waiver of such rights or of its right to require future performance of that term or condition. Any amendment or modification of this Agreement or any waiver of any breach of any term or condition of this Agreement must be in a writing signed by both parties in order to be effective and shall not be construed as a waiver of any continuing or succeeding breach of such term or condition, a waiver of the term or condition itself or a waiver of any right under this Agreement.
- e. Governing Law. This Agreement shall be governed and interpreted under the laws of the State of New York without regard to the conflicts of law provisions thereof.
- f. Headings. Headings and captions are for convenience of reference only and shall not be deemed to interpret, supersede or modify any provisions of this Agreement.
- g. Severability. In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
- h. Entire Agreement. Upon execution by both parties, this Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all discussions, negotiations, agreements and past dealings, either oral or written, between or among the parties relating to the subject matter hereof.

- i. Non-Exclusive Remedies. The rights and remedies of a party set forth herein are not exclusive, the exercise thereof shall not constitute an election of remedies and the aggrieved party shall in all events be entitled to seek whatever additional remedies may be available in law or in equity.

Each party represents and warrants that it has full right, power and authority to enter into this Agreement and perform all of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their authorized representatives.

COMPANY NAME: _____

Dated: _____

Signature: _____

Name: _____

Title: _____

ECLIPSE FOUNDATION, INC.

Dated: _____

Signature: _____

Name: _____

Title: _____

Exhibit A

1. Trademarks:

Registered

Mark	Serial No.	Filing Date	Reg. No.	Jurisdiction of Registration	Reg. Date.

Unregistered

[List all trademarks]

2. Domain Names:

[List Domain Names to be transferred (if any)]