

ECLIPSE FOUNDATION, Inc.
INTELLECTUAL PROPERTY POLICY
Effective as of January 17, 2007 (the “Effective Date”)

I. OVERVIEW

The purpose of the Eclipse Foundation Intellectual Property Policy (“IP Policy”) is to set forth the general principles under which the Eclipse Foundation shall accept contributions, license contributions, license materials owned by the Eclipse Foundation, and manage other intellectual property matters. This IP policy applies only to Content (as defined herein) contributed to Eclipse Foundation, Inc. on or after the Effective Date, provided however, that to the extent Content is contributed which includes elements which were contributed before the Effective Date, this Policy only applies to the elements of that Content contributed for the first time on or after the Effective Date. 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 Eclipse Foundation Bylaws. By signing the Membership Agreement or Committer Agreement, as applicable, all Members and Committers agree to comply with this IP Policy. In addition, this IP Policy shall serve as the basis for how non-Members and non-Committers interact with the Eclipse Foundation through participation in a Project, web-sites owned, controlled, published and/or managed under the auspices of the Eclipse Foundation, or otherwise.

II. ACCEPTING CONTRIBUTIONS (IN-BOUND LICENSING)

The foundation of this IP Policy is the Eclipse Public License (“EPL”) which is incorporated herein by reference, a copy of which can be found at www.eclipse.org. The EPL shall serve as the primary license under which the Eclipse Foundation shall accept software, documentation, information (including, but not limited to, ideas, concepts, know-how and techniques) and/or other materials (collectively “Content”) from contributors including, but not limited to, Members and Committers. The Eclipse Foundation will only accept Content under terms and conditions other than the EPL when the potential Contributor (as that term is defined in the EPL) of such Content does not have the right to, or is unwilling to, license the Content under the terms of the EPL and the following conditions have been satisfied: (1) a determination has in fact been made by the EMO and/or Committer (as those terms are defined in the Bylaws) that the potential Contributor will not license the Content under the terms of the EPL, (2) when the potential Contributor is not the copyright holder of the Content, a determination has in fact been made by the EMO and/or the Committer that that the owner of the copyright of the potential Contribution (as that term is defined in the EPL) will not license the Content under the terms of the EPL; (3) the EMO, the PMC Lead and the Committer have determined that the Content is important to achieving the Project Plan (as that term is defined in the Development Process) and Purposes (as the term is defined in the Bylaws) of the Eclipse Foundation; and (4) both the Eclipse Foundation 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. This policy should be read to discourage, but not prohibit, the licensing of any Content under terms and conditions that would require the object code, source code and derivative works of any Content to be distributed by the Eclipse Foundation under terms and conditions other than the EPL.

The above policy applies to all Content whether contributed through the Eclipse Foundation website, directly by Members or Committers, or otherwise. It shall be the overall responsibility of the EMO to ensure that all Content contributed to the Eclipse Foundation complies with this policy. It shall also be the responsibility of the applicable Committer(s) to ensure that all Content that the individual Committer uploads to the repository, or otherwise makes available for distribution, complies with this policy. The Board shall have the ability to modify the in-bound licensing requirements for items such as articles and white papers, however, the EMO shall have no such authority with respect to code and related technical documentation.

III. LICENSING CONTRIBUTIONS (OUT-BOUND LICENSING)

The EPL shall serve as the primary license under which all Content shall be distributed by the Eclipse Foundation. Content shall only be distributed by the Eclipse Foundation under terms and conditions other than the EPL when, in the reasonable judgment of the Eclipse Foundation, the terms and conditions of the license under which the Content was contributed requires such alternative licensing terms and conditions. It shall be the overall responsibility of the EMO to ensure that all Content licensed to subsequent users complies with this policy. Before any Content is uploaded to the Eclipse Foundation repository and made available for download, or other method of distribution to potential users, the applicable Committer(s) must ensure that the terms and conditions governing the subsequent use of the Content are clearly communicated to potential recipients of the Content.

IV. DUE DILIGENCE AND RECORD KEEPING

The EMO, working with the Committer(s), shall be responsible for scrutinizing all Content contributed to the Eclipse Foundation to help ensure that the IP Policy licensing requirements set forth above are met. Except as set forth below, the applicable Committer, with the assistance of the EMO, shall conduct the following activities prior to uploading any Content into the repository or otherwise making the Content available for distribution:

For Incubation Phase Projects (as that term is defined in the Development Process):

- (1) Contact the potential Contributor of the Content through an appropriate channel of communication and collect/confirm the following:
 - Contributor's name, current address, phone number and e-mail address;
 - Name and contact information of the contributor's current employer, if any;

- If the contributor is not self-employed, the Committer or EMO must request and receive a signed consent form (to be provided by the Eclipse Foundation) from the contributor's employer confirming that the employer does not object to the employee contributing the Content.
 - Determine if the Content can be contributed under the terms of the EPL or the alternative terms and conditions supplied by the Contributor. This can be done by asking the contributor questions such as;
 - i. Did you develop all of the Content from scratch;
 - ii. If not, what materials did you use to develop the Content?
 - iii. Did you reference any confidential information of any third party?
 - iv. If you referenced third party materials, under what terms did you receive such materials?
 - If it is determined by the Committer that the Content is not the original work of the Contributor, collect the contact information of the copyright holder of the original or underlying work. The copyright holder of the Content or the underlying work may then need to be contacted to collect additional information.
- (2) The Committer(s) shall document all information gathered pursuant to (1) above in a form to be provided by the Eclipse Foundation and provide such completed form to the EMO.
- (3) The EMO shall review the Content to determine whether the code is being contributed under the EPL or under terms and conditions that are compatible with the EPL.

If the foregoing three steps are completed to the satisfaction of the EMO, such Content may be uploaded into the repository for use by those Projects that are:

1. in the Incubation Phase, and
2. which are in compliance with the EMO's policies for recognizing the Project and its software distributions as in the Incubation Phase.

Such Content may not be contained in any software distribution by any project denoted as a release candidate (e.g. "RC1") or final release (e.g. "1.0"). All code contained in release candidates and/or releases must have completed the additional due diligence as described below.

For Mature Phase Projects (as that term is defined in the Development Process):

For Projects that are in the Mature Phase, the following additional steps are required prior to the Content being uploaded into the repository:

- (4) The Committer or the EMO shall also be responsible for running a scan tool provided by the Eclipse Foundation, using parameters provided by the Eclipse Foundation, to help ensure that the Content does not include any code not identified by the contributor.
- (5) Based on the additional information collected, the Committer or the EMO shall use his/her reasonable judgment to determine if the Content can be contributed under terms and conditions that are consistent with the licensing requirements of this IP Policy.
- (6) The requirements stipulated in the preceding two paragraphs must be completed by:
 - all projects in the Incubation Phase prior to passing said project's Graduation Review and entering the Mature Phase; and
 - all projects, whether in Incubation or Mature Phase, prior to releasing code denoted as a release candidate (e.g. "RC1") or final release (e.g. "1.0")

If the EMO or the applicable Committer has any doubts about the ability to distribute the Content under terms and conditions that are consistent with the EPL or the proposed alternative terms and conditions, the Committer may not upload the code to the repository or otherwise distribute the Content and should contact the PMC leader for assistance. The PMC leader should in turn engage the Eclipse Foundation Board (or the Board's designee) for action in accordance with Section II of this Policy. The PMC or EMO shall be responsible for filing/maintaining the information collected by the Committer(s) for future reference as needed.

The above record keeping requirements shall not apply to:

- Minor modifications to Content previously contributed to and accepted by the Eclipse Foundation.
- Articles and White Papers
- Information or minor Content modifications provided through bug reports, mailing lists and news groups

While the record keeping requirements do not apply to the items listed above, Committers, must conduct reasonable due diligence to satisfy themselves that proposed Contributions can be licensed under the terms of the EPL.

V. TECHNOLOGY REVIEWS

The Eclipse Foundation Development Process identifies three important milestones in a Project's lifecycle: (i) Creation Review; (ii) Graduation Review; and (iii) Release Review [collectively, the "Check Point Review"]. One of the tasks associated with Creation Review is an initial determination, by the Project Team of new Content that may be added to the Eclipse Platform. The Graduation Review is used, among other things, to

determine whether the Project Team has acquired the necessary rights to all such additional Content to permit the distribution of such Content. The Release Review is used as a final review to ensure that all necessary rights to the new Content have, in fact, been acquired. If such rights have not been acquired, the applicable Content will not be externally distributed. The 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 Contributions, 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 Contribution if a user of such Contribution does not receive a license from that Member to that intellectual property.

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 EPL in any manner. This policy shall in no way be interpreted: (1) to require the Eclipse Foundation to agree with a Member that the Contribution that has been identified may infringe or misappropriate that Member's intellectual property; (2) to require any Member to license its intellectual property to the Eclipse Foundation, any Member or any other party; or (3) to prevent 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. CONFIDENTIALITY

The Eclipse Foundation, Member(s), Committer(s) and other parties may exchange information as a result of their participation in Eclipse 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.

VII. 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 Guidelines for Eclipse Logos & Trademarks. Such guidelines will include terms that permit Recipients (as defined in the EPL) to continue to use the Eclipse trademarks and logos under the terms of the EPL.

VIII. COMMITTER AGREEMENT

Each Committer must execute a Committer Agreement, or have its employer execute it on the Committer's behalf. Such Committer Agreement shall obligate the Committer to comply with this IP Policy and other policies of Eclipse Foundation in effect from time to time.

IX. DISCLAIMERS AND NOTICES

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.

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, CONTRIBUTOR 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 TO EACH OTHER OR TO ANY OTHER PARTY FOR FAILURE TO COMPLY WITH THIS IP POLICY.

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.

THE ECLIPSE FOUNDATION, ITS MEMBERS, COMMITTERS AND THEIR RESPECTIVE EMPLOYEES AND AGENTS SHALL NOT HAVE ANY LIABILITY INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL AND CONSEQUENTIAL DAMAGES WITH RESPECT TO THIS IP POLICY INCLUDING, BUT NOT LIMITED TO, FAILURE TO COMPLY WITH THIS IP POLICY.