

ECLIPSE FOUNDATION, INC.
MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT (the “Agreement”) is effective as of this ____ day of _____, 200__ (the “Effective Date”) by and between Eclipse Foundation, Inc. (the “Eclipse Foundation”), a Delaware nonprofit corporation, and _____ (“Member”). Members of the Eclipse Foundation shall be referred to collectively as the “Membership At-Large”.

WHEREAS, the Eclipse technology is a vendor-neutral, open development platform supplying frameworks and exemplary, extensible tools (the “Eclipse Platform”);

WHEREAS, Eclipse Platform tools are exemplary in that they verify the utility of the Eclipse frameworks, illustrate the appropriate use of those frameworks, and support the development and maintenance of the Eclipse Platform itself; Eclipse Platform tools are extensible in that their functionality is accessible via documented programmatic interfaces;

WHEREAS, the purpose of the Eclipse Foundation is to advance the creation, evolution, promotion, and support of the Eclipse Platform and to cultivate both an open source community and an ecosystem of complementary products, capabilities, and services;

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”, attached hereto as Exhibit A);

WHEREAS, Member would like to become a member of the Eclipse Foundation in the Membership Class selected by Member on Exhibit C hereto;

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 five (5) classes of membership (“Membership Classes”) in the Eclipse Foundation representing Members that publicly, but non-exclusively, support the Purposes of the Eclipse Foundation as specified in the Bylaws:

1.1 Strategic Developer Members. Strategic Developer Members shall be entities that agree to abide by the obligations set forth in this Agreement including, without limitation, the requirements set forth on Exhibit B and C hereto. Strategic Developer Members shall be entitled to Board representation and shall be permitted to vote with the Membership At-Large, as set forth in the Bylaws.

1.2 Strategic Consumer Members. Strategic Consumer Members shall be entities that agree to abide by the obligations set forth in this Agreement including, without limitation, the requirements set forth on Exhibit C hereto. Each Strategic Consumer Member

shall be entitled to Board representation and shall be permitted to vote with the Membership At-Large, as set forth in the Bylaws.

1.3 Add-In Provider Members. Add-In Provider Members shall be entities that agree to abide by the obligations set forth in this Agreement including, without limitation, the requirements set forth on Exhibit C hereto. Add-In Provider Members shall be entitled to Board representation and shall be permitted to vote with the Membership At-Large, as set forth in the Bylaws.

1.4 Committer Members. Committer Members shall be individuals that are involved in the development of the Eclipse Platform but do not fall within any other Membership Class, are selected as “Committers” in accordance with the Committer Member process set forth in Exhibit D, and agree to abide by the obligations set forth in this Agreement. Committer Members shall be entitled to Board representation and shall be permitted to vote with the Membership At-Large, as set forth in the Bylaws.

1.5 Associate Members. Associate members shall be entities such as standards organizations, research institutions, academic institutions, open source organizations, publishing organizations and other organization types as established from time to time by the Eclipse Foundation Board of Directors that agree to abide by the obligations set forth in this Agreement. Associate Members shall not be represented on the Board of Directors and shall not be permitted to vote with the Membership At-Large.

2. MEMBERSHIP RIGHTS AND OBLIGATIONS

2.1 Generally. Member agrees to pay the annual fees established for its Membership Class, if any, as set forth in Exhibit C hereto, as may be amended from time to time in accordance with the Bylaws. Member agrees to abide by other terms relating to the payment of fees, as further specified in Section 2.4 herein. Any Developers (as defined in Exhibit B) contributed by Member to work on Eclipse Platform development projects will be fully compensated by Member and not by the Eclipse Foundation.

2.2 Compliance with Policies. Member agrees to abide by, and shall have all applicable rights and obligations as set forth in, the Bylaws, the Eclipse Foundation Intellectual Property Policy (the “IP Policy”), and any and all additional policies and procedures adopted by the Eclipse Foundation, as may be amended from time to time in accordance with the Bylaws.

2.3 Compliance with Eclipse Public License. Member has reviewed, and agrees to abide by, and shall have all rights and obligations as set forth in, the Eclipse Public License (“EPL”), as may be amended from time to time in accordance with the Bylaws. Member agrees that the EPL will serve as both the general contribution license for the Eclipse Foundation as well as the distribution license unless otherwise agreed to in accordance with the Bylaws and IP Policy.

2.4 Late Fees / Costs and Expenses.

2.4.1 Late Fees. If a Member’s payment of its annual membership dues is not fully paid within sixty (60) days of its invoice due date, a late fee representing one percent

(1%) of the delinquent membership dues shall be added to such membership dues, compounding monthly, commencing on the 31st day following invoice date. Additionally, if a Member qualifies for quarterly payment of its annual membership dues (according to Exhibit C) and has not fully paid a payment within thirty (30) days of its invoice due date, a late fee representing one percent (1%) of the delinquent membership dues shall be added to such membership dues, compounding monthly, commencing on the 31st day following invoice date.

2.4.2 Costs and Expenses. Each Member shall bear all of its own costs and expenses related to membership in the Eclipse Foundation including, but not limited to, compensation payable to Member's employees and consultants (including, without limitation, Developers assigned to participate in Development Teams) that participate in the Eclipse Foundation on behalf of Members, and all travel and other expenses associated with Member's participation in Eclipse Foundation meetings, conferences, and development projects. Except as otherwise set forth in this Agreement or in the Bylaws, Member understands and agrees that Member has no rights of reimbursement from the Eclipse Foundation.

2.5 Publicity.

2.5.1 Press Releases. A new Member shall assist the Eclipse Foundation in publicly announcing such new Member's membership therein within ninety (90) days of joining the Eclipse Foundation. A Member may make public announcements or press releases concerning its own activities as a Member. Unless otherwise required by law, any press release concerning a Member made by the Eclipse Foundation or another Member shall be subject to that Member's prior written consent. Once approved, the press release statement may be used by the Eclipse Foundation and other Members for the purpose of promoting the Eclipse Foundation (or such purpose as is designated in the Member's consent) and reused for such purpose until such approval is withdrawn with reasonable prior written notice. Any use of a Member's name shall be subject to the applicable usage guidelines of that Member.

2.6 Use of Name. Members agree to comply with the then current Eclipse Foundation Trademark Usage Guidelines.

3. [RESERVED]

4. TERM AND TERMINATION

4.1 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 4.2.

4.2 Termination. Member may terminate its membership or be removed there from in accordance with Sections 6.16 and 6.17 of the Bylaws. Upon termination of Member's membership, this Membership Agreement shall terminate.

4.3 Survival. In the event of termination under Section 4.2, the following shall survive and remain in effect: Sections 2.3, 4 and 5. In addition, Member shall be obligated to pay all costs, expenses and dues that accrued prior to the effective date of termination.

5. GENERAL

5.1 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.

5.2 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.

5.3 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 Developers from Member organizations and the Eclipse Foundation.

5.4 No Warranty. THE ECLIPSE FOUNDATION AND MEMBER EACH ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE AGREED IN WRITING, 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, NONINFRINGEMENT, AND FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SUCH INFORMATION.

5.5 Limitation of Liability. IN NO EVENT WILL EITHER THE ECLIPSE FOUNDATION OR MEMBER BE LIABLE TO EACH OTHER OR ANY OTHER MEMBER OR THIRD PARTY 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.

5.6 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.

5.7 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.

5.8 Complete Agreement; No Waiver. Except with respect to the Eclipse Foundation's Bylaws, IP Policy, Antitrust Policy, the EPL, the Common Public License (if applicable), and any other policies and procedures that may be adopted by the Eclipse Foundation from time to time in accordance with the Bylaws, 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.

5.9 Amendment. Member shall be given at least thirty (30) days prior written notice of the effective date of an amendment agreed to in accordance with the Bylaws. No amendments, modifications or additions to or deletions from this Agreement shall be binding unless accepted in writing by authorized representatives of the Eclipse Foundation and Member. If Member does not agree to a modification to this Agreement that was approved in accordance with the Bylaws, this Agreement and Member's membership in the Eclipse Foundation shall be terminated. Amendments shall be prospective only unless otherwise agreed to by the Member and the Eclipse Foundation.

5.10 No Rule of Strict Construction. Regardless of which party may have drafted this Agreement, no rule of strict construction shall be applied against either party. If any provision of this Agreement is determined by a court to be unenforceable, the parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this Agreement, and the remainder of this Agreement will continue in effect.

5.11 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.

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

5.13 Headings. The Eclipse Foundation and Member acknowledge that the headings to the sections hereof are for reference purposes only and shall not be used in the interpretation of this Agreement.

5.14 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.

5.15 Force Majeure. Neither the Eclipse Foundation nor Member shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes or any other cause which is beyond the reasonable control of such party.

5.16 General Construction. As used in this Agreement, the plural form and singular form each shall be deemed to include the other in all cases where such form would apply. “Includes” and “including” are not limiting, and “or” is not exclusive.

5.17 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 venturers, 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.

5.18 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 except for the EPL, the terms of this Agreement shall control. Notwithstanding anything else to the contrary in this Agreement, in the case of the conflict between the terms of this Agreement and the terms of the EPL, the terms of the EPL shall control.

In witness of this Agreement, the Eclipse Foundation and Member have executed this Agreement below,

Eclipse Foundation, Inc.

Notice Information

Signature: _____	Address: Eclipse Foundation, Inc. 102 CentrepoinTE Drive Ottawa, ON, Canada, K2G 6B1 Attention: Sharon Wolfe
Name: _____	Telephone: (+1) 613-224-9461
Title: _____	Fax: (+1) 212-918-1619
Date: _____	e-mail: membership@eclipse.org

and

Address: c/o Proskauer Rose LLP 1585 Broadway New York, NY 10036-8299 United States of America Attention: Jeffrey D. Neuburger, Esq.
Telephone: (+1) 212-969-3075
Fax: (+1) 212-969-2900
e-mail: jneuburger@thelen.com

Member:

Notice Information:

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

EXHIBIT A

[Bylaws]

EXHIBIT B

STRATEGIC DEVELOPER MEMBERS

Strategic Developer Members agree to lead an Eclipse Platform development project and commit, on a full time basis, a Developer (as defined below) who shall act as leader for this project (the “Project Lead”), and a minimum of seven (7) additional Developers assigned to work on this project or other Eclipse Platform development projects. Strategic Developer Members are also encouraged (but not required) to lead a Project Management Committee (“PMC” as defined in the Bylaws and the then current Eclipse Development Process), in which case one (1) of the eight (8) Developers shall be assigned to act as leader for the PMC (the “PMC Lead”). Strategic Developer Members agree to maintain their minimum of eight (8) Developers, assigned as above, in place and committed to the development of the Eclipse Platform at all times during which such entity is a Member, as defined in the Bylaws, and further agree that their assigned Project Lead shall lead the project in a manner consistent with technical plans and other policies established by the project’s corresponding PMC, and their assigned PMC Lead (if any) shall lead the PMC in a manner consistent with technical plans and other policies established by the Eclipse Management Organization.

“Developers” are professionals who by virtue of their skills and participation have a reasonable expectation of qualifying as Committers (as defined in Exhibit D) on the primary project to which they are assigned, or in the case of a Project Lead or PMC Lead have the appropriate leadership skills to lead the particular project or PMC respectively. Developers shall be defined to include persons with the following qualifications: (1) technical management experience; (2) software development skills; (3) systems integration skills; (4) testing skills; and (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 the extent necessary to execute the Roadmap (as defined in the Bylaws and the then current Eclipse 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.

EXHIBIT C

FEE SCHEDULE AND MEMBERSHIP CLASS SELECTION

All Fees are in US Dollars

<u>Member Class</u>	<u>Annual Membership Fee</u>	Check to Indicate Desired Level of <u>Membership</u>
Strategic Developer	Annual Corporate Revenues Greater or Equal to \$208,333,333 <u>Fee</u> - \$250,000, payable on an annual or quarterly basis	
	Annual Corporate Revenues Less Than \$208,333,333 <u>Fee</u> - .12% of Member's annual revenues, payable on an annual or quarterly basis not to exceed \$250,000, but not less than \$25,000.	
Strategic Consumer	Annual Corporate Revenues Greater Than \$250 million <u>Fee Options</u> - Option 1) \$500,000, payable on an annual or quarterly basis; Option 2) \$375,000, payable on an annual or quarterly basis, plus 1 Developer assigned full-time to participate on a Development Team as described in <u>Exhibit B</u> ; or Option 3) \$250,000, payable on an annual or quarterly basis, plus 2 Developers assigned full-time to participate on a Development Team as described in <u>Exhibit B</u>	
	Annual Corporate Revenues Less Than \$250 million <u>Fee</u> - .2% of Member's annual revenues (less \$125,000 for Option 2 or less \$250,000 for Option 3), payable on an annual or quarterly basis, but not less than \$50,000	
Add-In Provider	\$5,000	
Committer	No Dues	
Associate	No Dues	

The Fees may be amended from time to time in accordance with the Bylaws and shall, from the date of such amendment, replace the previously existing Fees. Any such change shall not require re-execution of this Agreement. If such amendment has been duly approved, Member agrees to payment of such Fees.

Member: _____

Signature: _____

BE SURE TO PLACE A CHECK IN THE BOX ABOVE INDICATING YOUR DESIRED LEVEL OF MEMBERSHIP.

EXHIBIT D
Committer Member Process

Individuals who give frequent and valuable contributions to an Eclipse Platform development project, or component of a project (in the case of large projects), can have their status promoted to that of a "Committer" for that project or component respectively, in accordance with the project's corresponding Charter. A Committer has write access to the source code repository for the associated project (or component), and gains rights allowing them to affect the future of the project (or component). In order for an individual to become a Committer, another Committer for the project (or component) must nominate that individual. Once an individual is nominated, the existing Committers for the project (or component) will vote using the process and rules established in the project's corresponding Charter. When a new project is started, the corresponding PMC will nominate an initial set of Committers for approval by the Executive Director (or his 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 and obligations of a Committer Member.