

## COMPATIBILITY TRADEMARK LICENSE AGREEMENT

This **COMPATIBILITY TRADEMARK LICENSE AGREEMENT** (this “**Agreement**”) is made and entered into as of this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), by Eclipse Foundation AISBL, a Belgian international not-for-profit association (AISBL/IVZW) located at Rond Point Schuman 11, Brussels, 1040 Belgium (“**Eclipse**” or the “**Eclipse Foundation**”) and \_\_\_\_\_, a \_\_\_\_\_ [corporation/limited liability company] located at \_\_\_\_\_ (the “**Licensee**” and together with Eclipse, each a “**Party**” and collectively, the “**Parties**”).

### 1. DEFINITIONS.

**1.1 “Affiliate”** shall mean, with respect to a Party, any other person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Party. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by contract or through the ownership beneficially or of record, of greater than fifty percent (50%) of the voting securities of such entity.

**1.2 “Brandable Implementation”** shall mean a Specification-Compatible Implementation of a Ratified Specification.

**1.3 “Branded Materials”** shall mean a Brandable Implementation and directly-related documentation and other materials (e.g., web sites, marketing literature, training materials, etc.) bearing the Trademark.

**1.4 “Eclipse Spec License”** shall mean the Eclipse Foundation Specification License agreement attached hereto as Schedule D.

**1.5 “Eclipse TCK License”** shall mean the Eclipse Foundation Technology Compatibility Kit Agreement attached hereto as Schedule E.

**1.6 “Qualified Eclipse Member”** shall mean a Strategic or Contributing Member of Eclipse as those terms are defined in the [Eclipse Bylaws](#).

**1.7 “Qualified Working Group Member”** shall mean a Participant, Enterprise or Strategic Member of a Working Group.

**1.8 “Ratified Specification”** shall mean a Specification that has been made available under the Eclipse Specification License to enable the creation of compatible

implementations and which is included on Schedule C hereto, which may be amended from time to time by Eclipse.

**1.9 “Specification”** shall mean a collection of application programming interface (API) definitions, descriptions of semantic behavior, data formats, protocols, and/or other referenced specifications, along with its TCK, both published by Eclipse, intended to enable the development and testing of implementations.

**1.10 “Specification-Compatible Implementation”** shall mean an implementation that: (i) fulfills all requirements of a Ratified Specification as demonstrated by satisfying all requirements (other than documented exclusions, exceptions, and the subjects of a good faith appeal related to the TCK) of the TCK associated with the Ratified Specification. An implementation that does not completely satisfy all requirements (other than documented exclusions, exceptions and the subjects of a good faith appeal) of the TCK shall not be deemed to be a Specification-Compatible Implementation.

**1.11 “TCK”** shall mean a technology compatibility kit composed of software and documented requirements that are licensed under the Eclipse TCK License and are used to test an implementation to determine whether that implementation is a Specification-Compatible Implementation with the Ratified Specification associated with such TCK, provided that, after the initial release of the Specification-Compatible Implementations, the term “TCK” as applied to new releases of such implementation shall mean the then-most current TCK which has been available under the Eclipse TCK License for at least one hundred and eighty (180) days.

**1.12 “Territory”** shall mean worldwide, unless modified by Eclipse.

**1.13 “Trademark”** shall mean the trademark listed in Schedule A and any common law trademarks associated with the trademark in Schedule A.

**1.14 “Working Group”** shall mean the Eclipse-chartered working group as set forth on Schedule B hereto.

## **2. LICENSE GRANT.**

**2.1 Grant of License.** Subject to Licensee’s continued compliance with the terms, conditions, restrictions and conditions set forth in this Agreement throughout the Term, including without limitation, the provisions of Section 2.2, 2.3, 3.1 and 3.2 herein, Eclipse grants Licensee and Licensee hereby accepts a non-transferable, non-exclusive, perpetual, royalty-free, fully-paid up, world-wide, and non-assignable license and right to use the Trademark in the Territory in connection with the marketing, sale, advertising, documentation and distribution of Branded Materials. Licensee shall have the right to permit Affiliates to exercise all rights granted to Licensee hereunder, provided however that: (i) all such Affiliates comply with all

obligations set forth herein; and (ii) Licensee agrees to be jointly and severally liable for all actions or inactions of such Affiliates with respect to the rights and obligations set forth herein. Except as expressly set forth in this Section, Licensee is granted no other right, title or interest in or license to the Trademark for any purpose.

**2.2 Conditions to Grant.** As a condition to the foregoing grant of rights, Licensee must, at the time Licensee enters into this Agreement, fulfill all of the following conditions: (i) be a Qualified Eclipse Member (ii) be a Qualified Working Group Member; (ii) be a party to, and in full compliance with, the Eclipse Specification License; (iii) be a party to, and in full compliance with, the Eclipse TCK License; (iv) use the TCK to successfully test and demonstrate that the implementation at issue is a Brandable Implementation; and (v) publish the results of the applicable TCK test results in accordance with the terms of the Eclipse TCK License and TCK. For purposes of clarity, it is understood that the testing of an implementation using a version of the TCK available under a license other than the Eclipse TCK License shall not satisfy the conditions of this Agreement and any implementation tested solely in that way shall not be deemed to be a Brandable Implementation.

**2.3 Ongoing Requirements.** In the event that during the Term: (i) Licensee's status as a Qualified Eclipse Member terminates; (ii) Licensee's status as a Qualified Working Group Member terminates; or (iii) Licensee is no longer in full compliance with the Eclipse Specification License and the Eclipse TCK License in any respects, all licenses granted by Eclipse hereunder shall terminate and, subject to the terms of Section 5, Licensee and/or its Affiliate(s) shall no longer make any use of the Trademark.

**2.4 Reservation of Rights.** Licensee acknowledges and agrees that except as specifically set forth in this Agreement, Eclipse retains all rights, titles and interests in the Trademark, and Licensee does not acquire any rights whatsoever in and to such Trademark except as set forth herein. Nothing in this Agreement shall limit in any way Eclipse's right to develop, use, license, create derivative works of, or exploit Eclipse's Trademark.

### **3. QUALITY CONTROL AND STANDARDS.**

**3.1 Quality Standards.** Licensee and/or its Affiliates shall: (i) maintain and control the quality of the Branded Materials at a quality at least equivalent to the quality associated with Licensees other products and services; and (ii) cause all Branded Materials to comply in all respects with all relevant or applicable laws, rules and regulations and the [Eclipse Trademark Usage Guidelines](#) as they may be amended in the future from time to time. All Branded Materials shall be of such high standards and of such quality as will, in Eclipse's sole judgment, protect and enhance the Trademark and the substantial goodwill pertaining thereto. Without limiting the foregoing, Licensee acknowledges and agrees that the Trademark shall not be used in association with any goods, services, materials or content that will have an adverse effect on the image or reputation of Eclipse or Eclipse's rights, titles or interests in and to, the Trademark. Licensee shall cooperate fully in all reasonable ways with Eclipse in enabling Eclipse

to ascertain that all Branded Materials meet appropriate standards. In the event that Eclipse determines that Licensee's and/or its Affiliate(s)'s use of the Trademark fails to comply in any material respect with the foregoing quality standard requirements, Eclipse may notify Licensee in writing of any such failure or deficiency, whereupon Licensee shall rectify such failure or deficiency in quality promptly and no later than within the time limit reasonably demanded by Eclipse.

**3.2 Versioning.** All uses of the Trademark shall be accompanied by any textual description provided by Eclipse to accurately reflect any change in versioning associated with a particular Ratified Specification. Licensee shall at all times accurately reflect the particular version of Ratified Specification for which the particular implementation has been deemed to be a Brandable Implementation.

#### **4. TRADEMARK OWNERSHIP.**

**4.1 Ownership.** Licensee shall use the Trademark only in connection with the Branded Materials and agrees that all of Licensee's use of the Trademark under this Agreement inures to the benefit of Eclipse. Licensee acknowledges that Eclipse or an affiliate of Eclipse is the owner of the Trademark and the goodwill associated therewith and Licensee agrees not to contest Eclipse's ownership or the validity of the Trademark during or after the Term. Apart from the right of Licensee to use the Trademark pursuant to this Agreement, Licensee shall acquire no right, title or interest of any kind or nature whatsoever in or to the Trademark and the goodwill associated therewith. Licensee agrees not to perform any act or fail to act when such act or failure would be adverse to Eclipse's or Eclipse's affiliate's rights in the Trademark. Eclipse reserves the right to amend or replace the Trademark at any time and Licensee shall cease use of the former Trademark as quickly as practicable. Eclipse may modify the license grant specified in Section 2.1 above to eliminate any jurisdiction from the scope of the license to the extent Eclipse determines that use of the Trademark in such jurisdiction may give rise to legal liability. In such event, Licensee shall cease use of the former Trademark in such jurisdictions as quickly as practicable but in no event later than any date as required by court or judicial order.

**4.2 Marking and Usage.** Licensee shall affix trademark notices or other markings as required by Eclipse to all Branded Materials.

**4.3 Trademark Protection and Defense.** Licensee shall promptly notify Eclipse of any apparently unauthorized use or infringement by third parties of any rights granted to Licensee herein. Licensee shall cooperate with Eclipse in the defense and protection of the Trademark, at Eclipse's expense, and shall promptly advise Eclipse of any potentially infringing uses by others in addition to any suits brought, or claims made, against Licensee involving the Trademark. Decisions involving the protection and defense of the Trademark shall be solely in the discretion of Eclipse; Licensee shall take no actions in this regard without the express written permission of Eclipse.

**4.4 Equitable Remedies.** Licensee acknowledges that: (i) a breach or threatened breach by Licensee of any of its obligations under this Agreement may give rise to irreparable harm to Eclipse for which monetary damages would not be an adequate remedy; and (ii) if a breach or a threatened breach by Licensee of any such obligations occurs, Eclipse will, in addition to any and all other rights and remedies that may be available to such party at law, at equity, or otherwise in respect of such breach, be entitled to seek equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction. This remedy is in addition to any other remedy to which Eclipse may be entitled at law or in equity.

**5. TERM AND TERMINATION.** This Agreement shall begin on the Effective Date and shall continue until terminated pursuant to this Section 5. Eclipse shall have the right to terminate this Agreement immediately upon written notice to Licensee (the effective date of such termination, the “**Termination Date**”) if: (i) Licensee fails to comply with the ongoing requirements set forth in Section 2.3 herein; (ii) Licensee fails to materially comply with the quality control provisions in Section 3.1 and does not cure such failure or breach within thirty (30) days after written notice from Eclipse; (iii) Licensee fails to materially comply with Licensee’s material obligations hereunder or materially breaches any warranty or representation made by Licensee hereunder and does not cure such failure or breach within thirty (30) days after written notice from Eclipse; (iv) Licensee attacks the title of Eclipse or an Eclipse affiliate to the Trademark; (v) Licensee becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation or consolidation for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing; or (vi) Licensee becomes insolvent or generally fails to pay, or admits in writing its inability to pay its debts as they become due. Either Party may terminate this Agreement for convenience with ninety (90) days written notice. Upon termination of this License, all rights granted Licensee hereunder shall revert to Eclipse or an Eclipse affiliate.

**6. EFFECT OF TERMINATION.**

**6.1** Within thirty (30) days from the Termination Date, Licensee shall cease any further sale, distribution or offering of any Branded Materials that have not already been released into the marketplace.

**6.2** To the extent this Agreement is terminated by Eclipse pursuant to Section 5 (i)-(iv) herein (a “**For-Cause Termination**”), Licensee shall take all necessary steps to recall any Branded Materials that have been placed into the stream of commerce that have defects relating to the For-Cause Termination, it being understood that this shall not require the recall of any Branded Materials that are not the subject of the For-Cause Termination.

**6.3** In the event of a termination of this Agreement for any reason, the provisions of Sections 2.4, 3.1, 3.2, 4, this Section 6.3, 7 and 8 shall survive and remain in full force and effect.

## **7. REPRESENTATIONS AND WARRANTIES.**

**7.1** Each of the Parties hereto is a corporation, limited liability company or other entity, duly incorporated, formed, or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, formation, or organization and has all requisite power and authority to carry on its respective business as now being conducted. The execution and delivery of this Agreement have been duly authorized by the Parties and no other corporate actions are necessary to authorize the execution, delivery and performance of this Agreement. The execution and delivery of this Agreement do not and will not (i) conflict with, constitute a default under, result in a breach or violation of, the certificate of incorporation, bylaws or similar organizational documents, as amended, of either Party, or (ii) conflict with or violate any law applicable to either Party. This Agreement constitutes a valid and legally binding obligation of each Party hereto, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and remedies.

**7.2** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THIS LICENSE IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Each recipient is solely responsible for determining the appropriateness of using the Trademark on the Branded Materials and assumes all risks associated with its exercise of rights under this Agreement, including but not limited to the risks of infringement.

**7.3** Licensee shall indemnify, defend and hold harmless Eclipse, and its officers, directors, shareholders, employees, and agents, against any and all third party claims, demands, damages, liabilities, actions, causes of action, prosecutions, suits and proceedings, as well as all reasonable costs and expenses and reasonable attorneys' fees incurred therein (in addition to any such costs related to enforcement of this Section 7.3, arising from or relating to: (i) Licensee's and/or Affiliate(s)'s breach of this Agreement; (ii) any actual or alleged inaccuracy in or breach of non-fulfillment of any representation, warranty, covenants, agreement, covenants or obligation of Licensee contained in the Agreement; (iii) the negligence, willful misconduct, or fraud of Licensee; (iv) any unauthorized use or misuse of the Trademark; (v) any alleged defect, adulteration, viruses, worms, date or time bombs, backdoors, booby traps, trap doors or disabling codes, or other code in the Branded Materials; (vi) any infringement or violation of any intellectual property right of any third party in connection by Licensee other than from the Trademark to the extent used in compliance with this agreement; and (vii) the operation of Licensee's business.

**7.4 Disclaimer of Liability.** Except as expressly set forth in this agreement, and to the extent permitted by applicable law, Eclipse shall have no liability for any direct,

indirect, incidental, special, exemplary or consequential damages (including without limitation lost profits), however caused and on any theory of liability, whether in contract, strict liability, tort, including negligence and otherwise) arising in any way out of the use of the trademarks that are the subject of this trademark license or the exercise of any rights granted hereunder, even if advised of the possibility of such damages.

## **8. MISCELLANEOUS.**

**8.1 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.

**8.2 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.

**8.3 Complete Agreement; No Waiver.** Except with respect to the Bylaws of Eclipse, the Intellectual Property Policy, the EPL, the Project License(s), the Eclipse.org Terms of Use, Eclipse's Antitrust Policy, the Eclipse TCK License, the Eclipse Specification License, the Eclipse Membership Agreement and any other policies, guidelines, agreements and procedures that may be adopted by Eclipse Foundation, from time to time, in accordance with the Bylaws, this Agreement, including all attachments, sets forth the entire understanding of Eclipse Foundation, and the Licensee with respect to the subject matter hereof 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.

**8.4 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.

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



**8.6 Independent Contractors.** The relationship of Eclipse with respect to Licensee 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 venturer, 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.

**8.7 Severability; Ambiguity.** In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties hereto have participated jointly in the negotiation and drafting of this Agreement; accordingly, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provisions of this Agreement.

**8.8 Expenses.** Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of the Agreement.

**8.9 Assignment.** Neither Party may assign this Agreement (including, without limitation, by operation of law), without the prior written consent of the other Party. Any assignment of this Agreement in contravention of this Section 8.9 shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successor and assigns, if properly assigned.

**8.10 Amendment.** This Agreement may not be amended, nor will any change, waiver, modification, consent, assignment or discharge be effected, except by written instrument executed by the Party against which enforcement is sought.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date set forth in the first paragraph hereof.

**Eclipse Foundation:**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Notice Information:**

Address: Rond Point Schuman 11  
Brussels 1040 Belgium  
Telephone: +1 (613) 224-9461  
e-mail: [emo-records@eclipse.org](mailto:emo-records@eclipse.org)

Signature:	_____	Address:	_____
Name	_____		_____
Title:	_____	Telephone:	_____
Date:	_____	e-mail:	_____

Schedule A

Marks:

Sparkplug Compatibility Logos



## Schedule B

**Eclipse Working Group:**

Sparkplug Working Group

## **Schedule C**

### **Specifications**

Note: A Specification Committee may, at its discretion, elect to label one or more Profiles as a “Platform”.

#### **1. Sparkplug Specification**

## Schedule D

### Eclipse Foundation Specification License - v 1.0

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## Schedule E

### Eclipse Foundation Technology Compatibility Kit License - v 1.0

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Redistribution and use in binary form is permitted provided that the following conditions are met:

1. Use of the Technology Compatibility Kit accompanying this license ( the “TCK”) and its documentation is permitted solely for the purpose of testing compatibility of an implementation (the “Product”) of a specification (the “Specification”) made available by the Eclipse Foundation, Inc. (“Eclipse”).
2. Only those modifications expressly permitted by the TCK and its documentation are permitted. Except in these limited circumstances, no modifications to the TCK are permitted under this license.
3. A Product will be deemed to be “compatible” with the Specification if it fully and completely meets and satisfies all requirements of the TCK.
4. Before any claim of compatibility (or any similar claim suggesting compatibility) is made based on the TCK, the testing party must:
  - a. use the TCK to demonstrate that the Product fully and completely meets and satisfies all requirements of the TCK;
  - b. make TCK test results showing full and complete satisfaction of all requirements of the TCK publicly available on the testing party’s website and send a link to such test results to Eclipse at [tck@eclipse.org](mailto:tck@eclipse.org); and
  - c. comply with any requirements stated in the Specification with regard to subsetting, supersetting, modifying or extending the Specification in any Product claimed to be compatible with the Specification.
5. The test results must be continuously available and the link must be live for at least as long as the Product is available in the marketplace.
6. The TCK may not be used as a basis for any statements of partial compatibility. The TCK may only be used as a basis for true, factual statements of full compatibility of Products that fully meet and satisfy all requirements of the TCK.
7. A determination that a Product is compatible with the TCK does not, in itself, give rise to the right to use any name, mark, logo associated with the TCK, Eclipse, or Eclipse’s contributors or licensors.
8. Upon the request of Eclipse, a tester will retract any statements of compatibility (or any similar claim suggesting compatibility) which Eclipse reasonably determines to be false or misleading or in violation of the terms of this license.
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