Adoptium Marketplace Publisher Agreement

This Adoptium Marketplace Publisher Agreement (the "Agreement") is effective as of this _____ day of _____, 20___ (the "Effective Date") by and between Eclipse Foundation AISBL, a Belgian international not-for-profit association (AISBL/IVZW) incorporated under the laws of Belgium ("Eclipse", "us", or "we"), and _____ ("Publisher", "you", or "your").

WHEREAS, Publisher is a party to the Adoptium Working Group Participation Agreement) and would like to make links available from the Marketplace (as defined herein) to a site from which Publisher makes Distributions (as defined herein) accessible; and

NOW THEREFORE, Eclipse agrees to permit Publisher to make available links to its quality Distributions from the Marketplace on the terms and consideration contained herein, and Publisher agrees to abide by the terms and conditions contained herein:

SECTION 1 Definitions.

a. **"AQAvit Test Suite"** means the quality test suite made available by Eclipse.

b. "**Distribution**" shall mean a Java SE distribution in binary form, which fully satisfies both the TCK and the Eclipse AQAvit Test Suite, as further described herein.

c. "**Listing Information**" means: the information and images (if any) describing software you make available as a Distribution (including a link to a page controlled by Publisher from which the software may be accessed), as well as a description of the nature and other features of the software.

d. "**Publisher Account**" means Publisher's account for the Adoptium Marketplace, which includes a username and password and is governed by the terms set forth herein.

e. "**Marketplace**" means a limited, Eclipse hosted digital catalog of links and other Listing Information known as the Adoptium Marketplace (https://adoptium.net/marketplace).

f. "**TCK**" means the Oracle proprietary Java SE Technology Compatibility Kit.

g. All other capitalized terms that are not defined in this Section 1 shall have the meanings assigned in the text of this Agreement.

SECTION 2 Publisher Account.

Without limiting our rights under Section 7, your Publisher Account is only for your use, and you are responsible for all activity that takes place within your Publisher Account. You are required to provide us with certain information in order to establish a Publisher Account and failure to provide required information will prevent the establishment of such an account. You agree to maintain your access credentials to your Publisher Account in a confidential and secure manner. You grant us a non-exclusive royalty-free right and license to store and process the information you provide for the creation of the Publisher Account. If you provide incorrect or outdated information, engage in dishonest or fraudulent activity, submit Listing Information that is incorrect or otherwise violates this Agreement, publish or attempt to publish Listing Information about a binary that has not fully satisfied both the TCK and AQAvit Test Suite, interfere with any other party's use of the Marketplace or otherwise fail to keep your Publisher Account in good standing, we may revoke your Publisher Account, remove your Listing Information from the Marketplace, and pursue any other remedies available to us.

SECTION 3 Conditions to use of Marketplace

As a condition to Publisher's right to publish Listing Information to the Marketplace:

a. Publisher must: (i) be a licensee in good standing of the TCK, (ii) test all binaries accessed via the Listing Information using the relevant version of the TCK, (iii) ensure all binaries accessed via the Listing Information fully satisfy the requirements of such TCK, and (iv) ensure the Listing Information shall only be used to market or promote binaries which meet the previous conditions; and

b. The Distribution made available by Publisher must be in full compliance with the Eclipse Foundation Quality Verification Suite License (https://www.eclipse.org/legal/documents/eclipse-foundation-quality-verification-suite-license.php) for the AQAvit Test Suite, and all binaries accessed via the Listing Information must be tested using the relevant version of the AQAvit Test Suite, and must be determined to fully satisfy the requirements of the AQAvit Test Suite.

SECTION 4 Submission, Approval, and Publication.

a. **Submission Process**. You may publish your Listing Information in the Marketplace, subject to the terms and conditions of this Agreement. You are responsible for ensuring that the Listing Information is accurate and not misleading and does not violate third parties' intellectual property rights, including third-party trademarks or icons. You grant us a non-exclusive royalty-free right and license to include such Listing Information in the Marketplace (which includes the right to display the trademarks and logos associated

with the Distribution ("**Publisher Marks**"), as provided to us in the Listing Information). The foregoing license shall survive perpetually until either party removes such Listing Information from the Marketplace. We may reject any Listing Information in our sole discretion, or may require you to make modifications to the Listing Information.

b. **Presentation of Listing Information**. We reserve the right to determine the manner in which all Listing Information, whether published by you or others, is presented in the Marketplace.

c. **Terms for Publisher Marks**. You represent and warrant that you are the owner and/or authorized licensor of the Publisher Marks. As between the parties, all goodwill associated with the Publisher Marks shall inure to your benefit. We may reformat or resize Publisher Marks as necessary and without altering the overall appearance of the Publisher Marks.

d. **No Compensation**. You expressly acknowledge that Eclipse shall not be required to provide you with any compensation for the inclusion of your Listing Information in the Marketplace.

SECTION 5 Licensing of Distributions; Compatibility; Support.

a. **Licensing of Distributions**. You are responsible for ensuring that any binary that you intend to link to from Listing Information: (i) has fully satisfied the requirements of the TCK; (ii) has fully satisfied the requirements of the AQAvit Test Suite; and (iii) that you have all necessary rights to make such binary available under the license you have stipulated. Any licenses through which you make Distributions available will be between you and licensees and end users and will not create any obligations or responsibilities of any kind for Eclipse. You are solely responsible for implementing any technical or security features designed to prevent unauthorized access to or use of your Distributions.

b. **Support**. You are responsible for any support of your Distributions.

c. **Enforcement/Monitoring.** We are not responsible for monitoring the use of your Listing Information, for reporting to you with respect to such use, preventing the inappropriate use of your Listing Information or for enforcing your intellectual property rights in and to your Listing Information. Eclipse expressly disclaims any obligation to do any of the foregoing.

SECTION 6 Privacy and Data Protection.

You shall disclose in your Listing Information for the Distribution a full and complete description of what data you collect through the use of the Distribution, for what purposes it is used, with whom it is shared and how long it is retained ("Data Information"). Further, you agree to comply with all applicable data protection and privacy laws, regulations and ordinances relevant to the use of your Distribution.

SECTION 7 Removal of Listing Information.

We reserve the right to elect not to make Listing Information available on the Marketplace or to remove or suspend the availability of any Listing Information from the Marketplace for any reason or no reason, in our sole discretion and without any corresponding obligation of Eclipse to filter, verify, curate or otherwise influence or control the Listing Information in any manner whatsoever. Reasons may include, without limitation, (i) your breach of the terms of this Agreement; (ii) the termination of this Agreement or the Adoptium Working Group Participation Agreement; (iii) an assertion or claim that your Listing Information or Distribution infringes the intellectual property rights or contractual rights of a third party or does not satisfy the TCK or AQAvit Test Suite; or (v) complaints or concerns about the content or quality of your Listing Information or Distribution. We reserve the right to discontinue the availability of the Marketplace at any time and, to the extent reasonably practicable, with advance electronic notice to you at the address designated in your Listing Information.

SECTION 8 Warranties.

You represent, warrant, and undertake to Eclipse that:

a. At all times that you maintain Listing Information in the Marketplace, the related Distribution shall fully satisfy all requirements of the then-current TCK;

b. At all times that you maintain Listing Information in the Marketplace, the related Distribution shall fully satisfy all requirements of the then-current AQAvit Test Suite;

c. Your Listing Information and the related Distribution does not contain any malware or other malicious code, inappropriate content, or material, the creation, possession, distribution or use of is in violation of any law, regulation or ordinance;

d. Your Listing Information is not misleading and is an accurate and complete description of the performance, data collection functions and other characteristics of the related Distribution;

e. You have obtained any and all consents, approvals, or licenses (including written consents of third parties where applicable) and have all rights required for you to make your Listing Information available in the Marketplace and neither your Listing Information nor the related Distribution will violate, misappropriate or infringe of any intellectual property or other rights of any third party;

f. Eclipse's exercise of the rights granted by you under this Agreement and the inclusion of your Listing Information in the Marketplace will not subject Eclipse to any liability or obligate Eclipse to pay any amounts to you or any third party;

g. You have in effect, and shall maintain in effect during the continuance of this Agreement, professional indemnity insurance affording an effective financial coverage of no less than five million (5,000,000.00) USD or EUR, and you shall provide us, upon Eclipse's first request, with a certificate of such insurance coverage, and you shall not do or omit to do anything whereby such insurance may be vitiated in whole or in part;

h. Information that you provide to us under or in connection with this Agreement is true, accurate, current, and complete; and

i. In connection with your rights and obligations under this Agreement, you are and shall remain in compliance with all applicable laws, including privacy laws.

SECTION 9 Disclaimer, Limitation of Liability, and Defense of Claims.

a. **DISCLAIMER OF WARRANTY**. WE PROVIDE THE MARKETPLACE "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR THE RISK OF PUBLISHING YOUR LISTING INFORMATION ON THE MARKETPLACE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE EXCLUDE ANY IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THOSE OF PRODUCT LIABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE EXPRESSLY DISCLAIM ANY WARRANTIES THAT ACCESS TO, OR USE OF, THE MARKETPLACE WILL BE UNINTERRUPTED OR ERROR FREE.

b. **Limitation of Liability**. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ECLIPSE SHALL NOT HAVE ANY LIABILITY FOR ANY 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, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OR DISTRIBUTION OF THE DISTRIBUTION OR THE EXERCISE OF ANY RIGHTS GRANTED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ECLIPSE'S LIABILITY FOR DIRECT DAMAGES

EXCEED 100 EURO.

c. **Indemnity; Duty to Defend**. You agree to defend, indemnify, and hold harmless Eclipse, its affiliates and related parties, and their members, agents, officers, directors and employees, from and against any costs, losses, damages, liabilities or expenses and attorneys' fees arising from any and all third-party claims: (1) alleging facts that if true, would constitute a breach of your covenants, representations or warranties hereunder; (2) relating to your Listing Information or any software which you make available as a Distribution ; or (3) arising from any dispute between you and a licensee or end user of your Distribution.

SECTION 10 Term and Termination.

a. **General**. This Agreement will remain in effect until terminated. Either party may terminate this Agreement at any time, for any reason or no reason, upon thirty (30) days' written notice and, in the case of your termination of this Agreement, removal of all of your Listing Information from the Marketplace.

b. **Membership.** This Agreement will terminate immediately upon the termination or expiration of Publisher's Adoptium Working Group Participation Agreement.

c. **Effect of Termination**. Sections of this Agreement that, by their terms, require performance or establish rights or protections after the termination or expiration of this Agreement will survive.

SECTION 10 Miscellaneous.

a. **Notices**. All notices that you provide to us under this Agreement must be sent to the following email alias: license@eclipse.org.

b. **No Exclusivity**. Each party acknowledges and agrees that the rights granted to and obligations due to the other party in this Agreement are intended to be non-exclusive, and therefore that nothing in this Agreement will be deemed or construed to prohibit either party from engaging in or participating itself or with one or more third parties in business arrangements similar to or competitive with those described herein.

c. **Jurisdiction and 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. Both Eclipse and Publisher irrevocably agree that the Courts of the judicial district of Brussels, Belgium, shall have exclusive jurisdiction to settle any dispute or claim.

d. **Responding to Claims**. If we receive a claim from a third party requesting that your Listing Information or Distribution be changed or removed, we may refer that claim to you. If you believe that your Listing Information or Distribution may be in violation of the terms of this Agreement, you must immediately notify us and work with us to cure the violation.

e. **Waiver**. Either party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.

f. **Severability**. If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.

g. **Assignment**. Except as provided for below in this paragraph, neither party may assign this Agreement (or any rights or duties under it) without the other party's prior written consent, provided that either party may assign this Agreement without the other party's consent in connection with a merger, acquisition, or sale or transfer of all or substantially all of its assets, excepting that Eclipse may assign this agreement to any entity that serves as a successor steward to the Marketplace. Either party who assigns this Agreement as permitted in this Section 10(g) shall provide the other party with prompt notice of such assignment. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

h. **English Language**. The parties intend for this Agreement to be written and interpreted solely in English. Any notices required or provided under this Agreement will be in English. In the event of any conflict between the English version of this Agreement or any notices and a translation of the same, the English version will prevail.

i. **Relationship of Parties**. Neither this Agreement, nor any terms and conditions contained herein, create a partnership, joint venture, employment relationship, or grant of any rights.

j. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous communications.

ADOPTIUM WORKING GROUP MEMBER

ECLIPSE FOUNDATION AISBL

Member: _____

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____