



Eclipse Foundation

Open VSX Publisher Agreement

Thank you for your interest in publishing in the Eclipse Open VSX Registry ("Open VSX"). As used in this Eclipse Open VSX Publisher Agreement ("Agreement"), the term "you", "your" or "publisher" refers to you as an individual, and, to the extent you are the agent or employee of another person or entity (such person or entity, a "Principal") "you" and "publisher" also includes that Principal.

This Agreement describes the relationship between you and the Eclipse Foundation AISBL, a Belgian international not-for-profit association (AISBL/IVZW) incorporated under the laws of Belgium as well as its Affiliates (as defined herein) (collectively, "Eclipse," "us" or "we") and governs your publication of any Offering (as defined below) within the Registry (as defined below).

By clicking where indicated to accept this Agreement, the individual entering into this Agreement represents and warrants to Eclipse that such individual has the authority to enter into this Agreement (including the right to bind his or her Principal), and you (including such individual and any such Principal) agree to be bound by its terms.

SECTION 1 Definitions.

- a. **"Affiliate"** means any legal entity that owns, is owned by, or is commonly owned with a party. "Own" means more than 50% ownership or voting rights, or the right to direct the management of the entity.
- b. **"Content"** shall have the meaning set forth in the Eclipse Intellectual Property Policy which can be found at https://www.eclipse.org/org/documents/Eclipse_IP_Policy.pdf
- c. **"Listing Information"** means: (i) the information and images that identifies the original source of your Offering, as well as the nature and other features of the Offering, as specified by you in connection with your request to publish the Offering; (ii) the license agreement, if you specify one, associated with your Offering; (iii) support, if any, that you are providing with the Offering; (iv) your contact information at which licensees or end-users can reach you; and (v) to the extent applicable, Data Information (as defined in Section 6 herein).

- d. **“Offering”** means the Offering Content as well as any other software, data, media, documentation, etc. published or proposed to be published in the Registry under this Agreement, as well as the Listing Information.
- e. **“Offering Contents”** means all data and software included within, installable by, or otherwise associated with an Offering. Offering Contents include, without limitation, all operating system and application software made available with an Offering.
- f. **“Publisher Account”** means a publisher account for Open VSX, which includes a username and password.
- g. **“Registry”** means an Eclipse hosted repository of Offerings published to Open VSX (<https://open-vsx.org/>), including any successors (however branded, including any third-party branding) to such repository.
- h. 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.

Your Publisher Account is only for your use, and you are responsible for all activity that takes place within your Publisher Account. If you fail to keep your Publisher Account in good standing (for example by providing incorrect or outdated information, by engaging in dishonest or fraudulent activity, or by repeatedly submitting Offerings that violate this Agreement, abuse the Registry or interfere with any other party’s use of the Registry), we may take whatever actions we deem appropriate with immediate effect and without notice, including terminating this Agreement, revoking your Publisher Account, removing your Offerings from the Registry, deleting Offering Reviews (as defined in Section 3(c) herein), and pursuing any other remedies available to us.

SECTION 3 Submission, Approval, and Publication of Offerings.

- a. **Submission Process.** You must submit a request for each Offering that you wish to publish in the Registry, and you must include the Listing Information and Offering Contents associated with such Offering. We may approve or reject any proposed Offering in our sole discretion, and may condition our approval on your making modifications to the submitted materials. You are responsible for ensuring that the Listing Information associated with your Offering is accurate and not misleading and does not violate third parties’ intellectual property rights, including third-party trademarks or icons. Following our approval of an Offering, you may publish the Offering in the Registry, subject to the terms and conditions of this Agreement and in accordance with the Listing Information provided with your request. Publication of any Offering in the Registry is subject to this agreement being executed and being in effect at the time of publication.

- b. **Responsibility.** You are solely responsible and liable for your Offerings and Offering Contents including all delivery and support. Eclipse may retain copies of the Offering, Offering Contents, and any other materials you submit and will not return them. Eclipse's approval of an Offering does not constitute any representation or acknowledgment by Eclipse that the Offering complies with the terms of this Agreement and applicable laws and regulations, nor does it constitute any acceptance by Eclipse of any responsibility or liability for the Offering.
- c. **Presentation of Offerings.** We reserve the right to determine the manner in which all Offerings, whether published by you or others, are placed, presented or promoted in the Registry. We may display your Listing Information in connection with your Offering, as well as other information designed to inform that the Offering is provided by you, including what content (such as Offering Contents) is included within the Offering. Notwithstanding our approval of an Offering as described in Section 3(a) above, we, in our sole discretion, may determine not to make an Offering available in the Registry. After your Offering is available in the Registry, Eclipse may remove your Offering from the Registry for any reason without notice.
- d. **Ratings and Reviews.** You understand that as part of the Registry, we may make available a facility for third parties to post rankings, ratings or reviews on your Offering ("Reviews") for public access. You understand that while we may (but are not obligated to) exercise traditional editorial functions associated with such Reviews, we have no obligation (beyond our statutory duties under applicable laws) to, and shall not be, reviewing, vetting, or otherwise examining such Reviews and have no obligation to remove Reviews that may be unfavorable to your Offering. You shall not attempt to manipulate Reviews for your Offering or any other Offering.
- e. **IP in Offering and Offering Contents.** You do not transfer ownership of any Offering or Offering Contents to Eclipse by submitting it for publication and as between Eclipse and you, and subject to the licenses granted in this Agreement, you retain any rights that you may have in the Offering or Offering Contents. By submitting an Offering or Offering Contents under this Agreement, you grant to Eclipse the worldwide, non-exclusive right to host, install, use, reproduce, transmit, publicly perform and display, format and make available to end-users (including through multiple tiers of distribution) such Offering and Offering Contents all for purposes of exercising Eclipse's rights and responsibilities under this Agreement.
- f. **Terms for Publisher Marks.** You hereby grant us a non-exclusive, royalty-free, personal license to display the trademarks and logos associated with the Offering ("Publisher Marks"), as provided to us in connection with the marketing and promotion of your Offerings in the Registry. You represent and warrant that you are the owner and/or authorized licensor of the Publisher Marks. As between you and us, all goodwill associated with the Publisher Marks shall inure to your benefit. We may reformat or

resize Publisher Marks as necessary and without materially altering the overall appearance of the Publisher Marks.

- g. **Eclipse's Use of the Registry.** While Eclipse will not directly monetize any particular offering, including your Offering(s), without the publisher of that Offering's consent, Eclipse retains the sole right to decide how to display offerings and whether to promote some offerings above others, including your Offerings, Reviews, etc., as well to monetize the use of the Registry, including but not limited to: i) selling of advertising on the Registry, including the promotion of particular offerings, ii) offering, for a fee, enhanced performance of the Registry for specific users, and iii) soliciting financial contributions from users. Regardless of whether or how Eclipse monetizes the Registry, you expressly agree that Eclipse has no obligation to compensate you in any way for listing, hosting or distributing your Offerings.

SECTION 4 Licensing of Offerings and Support.

- a. **Licensing of Offerings.** All Registry Offerings and associated Offering Contents must be licensed to end-users. You are responsible for ensuring that you have all necessary rights to make such materials available under the license you have stipulated, if any. If you fail to specify a license in the Listing Information for an Offering, the Offering and Offering Contents will be made available under the MIT license (<https://opensource.org/licenses/MIT>), and you are responsible to ensure that you have the necessary rights to permit that. Such licenses and grants 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 Offerings.
- b. **Support.** Eclipse is not responsible for providing support for your Offerings. You are responsible for any support of your Offerings, should you choose to offer support.
- c. **Enforcement/Monitoring.** We are not responsible for monitoring the use of your Offering, for reporting to you with respect to such use, preventing the inappropriate use of your Offering or for enforcing your intellectual property rights in and to your Offering. Eclipse expressly disclaims any obligation to do any of the foregoing.

SECTION 5 User Fees, Payments and Taxes.

- a. **No Eclipse Responsibility.** You expressly acknowledge that Eclipse shall not be required to provide you with any compensation in consideration of the listing, hosting or distribution of your Offering on the Registry. To the extent you expect any compensation from any third-party licensee or end-user in connection with your Offering, you agree that you are solely responsible for providing such licensee or end-user with pricing information and for charging or invoicing, as applicable, for use of your Offering. All charges, fees, taxes and other compensation will be identified, billed

and collected directly between you and such licensee or end-user and shall not be identified, processed, executed or in any way facilitated through the Registry or by Eclipse. You acknowledge that you are the distributor of your Offerings.

- b. **Refunds and Offsets for Paid Offerings.** To the extent applicable, you are solely responsible for all taxes, costs and expenses for returns, and chargebacks of your Offering, including the full refund and chargeback amounts paid or credited to licensees or end-users.
- c. **Taxes.** You are solely responsible for your own taxes, including taxes unique to where you reside, that are related to payments from licensees or end-users for your Offerings. You are solely responsible for determining whether you have any tax obligations in any country. Eclipse is not responsible for collecting and remitting telecommunications taxes or any similar taxes in connection with the acquisition of your Offering. You acknowledge and agree to cooperate with licensees and end-users to facilitate the furnishing, exchange, transmittal or other provision of tax documentation, and such cooperation includes, but is not limited to, authorizing Eclipse to grant third parties the ability to contact you, for among other things, obtaining any required tax invoices.

SECTION 6 Privacy and Data Protection.

To the extent that you collect any data regarding the use of your Offering, including without limitation any information regarding the licensee or end-user of the Offering, you shall disclose in your Listing Information for the Offering a full and complete description of what data you collect, for what purposes it is used, with whom it is shared and how long it is retained and any other information required by applicable law ("Data Information"). Without limitation of the foregoing, you agree to comply with all applicable data protection and privacy laws, regulations and ordinances relevant to the use of your Offering in the jurisdictions in which you make the Offering available.

SECTION 7 Removal of Offerings; Modification of Registry.

We reserve the right to elect not to make an Offering available on the Registry or to remove or suspend the availability of any Offering from the Registry for any reason or no reason. Reasons may include, without limitation: (i) your breach of the terms of this Agreement; (ii) your express termination of this Agreement; (iii) inconsistency between your Offering and its Listing Information; (iv) an assertion or claim that your Offering infringes the intellectual property rights of a third party; or (v) complaints or concerns about the content, quality or age of your Offering. We reserve the right to discontinue the availability of the Registry at any time and without notice to you or to modify the Registry in any way. You have the right to remove Offerings from the Registry through technical means that may be made available through the Registry or by email notice to us, which will be processed no later than within 30 days of receipt.

SECTION 8 Warranties.

You represent, warrant, and undertake to Eclipse that:

- a. Your Offering does not collect any information not fully disclosed in the Listing Information and 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;
- b. Your Listing Information associated with the Offering is not misleading and is a substantially accurate and complete description of the performance, data collection functions and other characteristics of the Offering;
- c. 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 Offerings available in the Registry;
- d. Our exercise of the rights granted by you under this Agreement will not obligate us to pay any third-party any amounts;
- e. Information that you provide to us under or in connection with this Agreement is true, accurate, current, and complete; and
- f. Our listing and distribution of your Offering in the Registry under the terms of this Agreement does not and will not violate any agreements to which you are a party or of which you are otherwise aware. You have obtained any and all consents, approvals, or licenses (including written consents of third parties where applicable) required for you to make your Offering or Offering Contents available on the Registry.

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

- a. **DISCLAIMER OF WARRANTY.** WE PROVIDE THE REGISTRY "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR THE RISK OF PUBLISHING YOUR OFFERINGS THROUGH THE REGISTRY FOR USE BY LICENSEES AND END USERS. 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 RELATING TO OPEN VSX WITHOUT LIMITING THE FOREGOING, WE EXPRESSLY DISCLAIM ANY WARRANTIES THAT ACCESS TO, OR USE OF, THE REGISTRY 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 DIRECT, INDIRECT,

INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) IN EXCESS OF FIVE THOUSAND EUROS (€5.000), 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 OFFERING OR THE EXERCISE OF ANY RIGHTS GRANTED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- c. **Duty to Defend.** You agree to defend, indemnify, and hold harmless Eclipse, its members, agents, officers, directors and employees as applicable, from and against any costs, losses, damages, liabilities or expenses and attorneys' fees arising from any and all third-party claims: (i) alleging that your Offering, including any Listing Information, or the Offering Contents infringes any proprietary or personal right of a third party; (ii) arising from your breach of this Agreement; (iii) relating to the functionality of, the use of, or the inability to use the Offering or Offering Contents, including any claims of product liability or misleading Listing Information or advertising; (iv) by any tax authority based on any nonpayment or underpayment of any sales, use, goods and services, value added or other similar tax, including any associated penalties and interest, which you are obligated to pay; or (v) arising from any dispute between you and a licensee or End User of your Offering.

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. The foregoing is without prejudice to any other remedies available to us under this Agreement.
- b. **Effect of Termination.** Within 30 days of notice of termination by you, Eclipse will remove all your Offerings and Offering Contents from the Repository. 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 11 Miscellaneous.

- a. **Notices.** All notices that you provide to us under this Agreement must be sent to the following email alias: license@eclipse.org. We will send you notices to the email address set forth in your Listing Information.
- 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 Offering be changed or removed, we may refer that claim to you. If you believe that your Offering 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. Eclipse may assign this agreement to any entity that is an Affiliate or that assumes responsibility from Eclipse for making the Registry available. Either party who assigns this Agreement as permitted in this Section 11(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. **Updates.** We may update this Agreement from time to time. By continuing to your Offering(s) available in the Registry after the updated Agreement has been made available on the Registry, you agree to be bound by the terms and conditions contained

in the updated Agreement.

- k. **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.