

DISCLAIMER

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MORE INFORMATION

If you are interested in working with Conservancy to enforce your copyrights relating to free and open source software, please contact us at <linux-services@sfconservancy.org>.

If you would like to join us in public discussion about this document, please join us on Conservancy's principles-discuss mailing list.

LICENSE

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COPYRIGHT ENFORCEMENT AGREEMENT

This Agreement is made by and between Software Freedom Conservancy (“Conservancy”) and _____ (the “Contributor”), a copyright holder in the kernel known as “Linux”. Conservancy is a New York nonprofit public benefit corporation located in Brooklyn, New York, which has received recognition of exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code (IRC) and classification as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi).

WHEREAS:

- A. Conservancy’s organizational mission and charitable goal is to promote, improve, develop and defend Free, Libre, and Open Source Software projects.
- B. Conservancy’s Linux GPL Enforcement Project (the “Project”) seeks to defend the rights of the public, by ensuring computer and electronics users receive all important rights and privileges provided by Linux’s license, the GNU General Public License (“GPL”).
- C. Contributor wishes Conservancy to carry out copyright registration, enforcement, and other actions on Contributor’s behalf with respect to compliance with the GPL.
- D. Conservancy’s Board of Directors has approved the establishment of a fund to receive enforcement settlement proceeds of cash and other property as result of Enforcement Activities (the “Project Fund”), and for Conservancy to make disbursements thereof in furtherance of the Conservancy’s mission, with input taken from Contributor, and Contributors who have signed similar agreements.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Enforcement Agent.** Contributor appoints Conservancy as Contributor’s copyright enforcement agent, thereby permitting Conservancy to, on Contributor’s behalf, the engage in the following “Enforcement Activities”:
 - (a) investigate and identify copyright infringements regarding Contributor’s copyrights,
 - (b) initiate enforcement actions against infringers including, but not limited to litigation (subject to the terms in ??),
 - (c) discuss and pursue discussions for settlement of any copyright infringements,
 - (d) negotiate with infringers regarding compliance with the GPL,
 - (e) reinstate the right of infringers to again copy, modify and distribute previously infringed copyrighted material under the terms of the GPL, and
 - (f) collect settlement fees and other payments from infringers.Conservancy agrees to report to Contributor about the Enforcement Activities on a regular and reasonable basis.
2. **Copyright Registration Agent.** Contributor appoints Conservancy as Contributor’s authorized agent with regard to the registration of Contributor’s copyrights in all versions of Linux with the USA Copyright Office, and with regard to the maintenance of any existing and/or future copyright registrations made on Contributor’s behalf for Contributor’s copyrights in Linux.
3. **Litigation.** Conservancy agrees not to initiate court proceedings or otherwise file lawsuits on behalf of Contributor without the Contributor’s expressed written consent for that specific court proceeding or lawsuit.
4. **Term of Agreement.** As of the Effective Date, the Conservancy will act as Contributor’s copyright enforcement agent and copyright registration agent. The relationship will continue unless and until terminated as set forth in ??.

5. **Fees.** Conservancy shall engage in Enforcement Activities on behalf of this Project, and other projects who have made similar agreements with Conservancy, who may separately have their own Project Funds.

During Enforcement Activities, funds may be recovered due to settlements or other payments received related to those Activities. For any Enforcement Activity, the "Compliance Amount" shall be the funds recovered, minus any amounts paid to outside (non-employee) legal counsel related to the Enforcement Activity, and minus any filing fees or other expenses due to third parties.

Contributor agrees that 50% of all Compliance Amounts recovered shall be available to fund Conservancy's ongoing Enforcement Activities, either for this Project or others. For any month that Conservancy makes any such expenditures, Conservancy will provide Contributor with a report showing an accounting of the expenditures.

The remaining 50% of any Compliance Amount shall be divided evenly between all member projects whose copyrights were at issue during the specific Enforcement Activity, with the share of Compliance Amount associated with the Project to be thereafter held in the Project Fund.

6. **Representation of the Project in Conservancy.** The Contributor, and all other Contributors who sign an agreement substantially similar to this Agreement hereby establish and comprise the the Linux Enforcement Council to represent the Project in its official communication with Conservancy (the "Council").

The Council shall provide guidance to Conservancy as to the use of the Project Fund. All decisions of the Council regarding said guidance shall be made by simple majority vote via e-mail submitted to Conservancy.

Contributor acknowledges that disbursement of monies and the negotiation of all contracts relating to the Project Fund shall be the ultimate responsibility of Conservancy and shall be conducted in the name of Conservancy and within the scope of Conservancy's charitable mission, beginning on the Effective Date.

7. **Project Fund/Variance Power.** Conservancy retains the unilateral right to spend the Project Fund so as to accomplish the purposes of the Project as nearly as possible within Conservancy's sole judgment. Conservancy agrees to make a good faith effort to consider any expressed Council's intent in making determinations on the expenditures from the Project Fund; however, the parties acknowledge that expressions of Council intent are not legally binding on Conservancy. The parties agree that all money, and the fair market value of all property, deposited in the Project Fund be reported as the income of Conservancy, for both tax purposes and for purposes of the Conservancy's financial statements. It is the intent of the parties that this Agreement be interpreted to provide Conservancy with variance powers necessary to enable Conservancy to treat the Project Fund as Conservancy's asset in accordance with Financial Accounting Statement No. 136 issued by the Financial Accounting Standards Board, while this Agreement is in effect.
8. **Disclosure of Contributor's Identity.** Conservancy agrees to refrain from using Contributor's name and identity in any public promotion of the Project or any compliance and enforcement efforts. Conservancy further agrees to make a good faith effort to keep Contributor's participation in the Project private. The parties acknowledge that Conservancy may be required to disclose Contributor's identity and participation in the Project in the context of litigation. Contributor hereby releases Conservancy from any liability associated with the disclosure of Contributor's identity in the context of litigation and/or any discussions related hereto.
9. **Termination.** Contributor may terminate this agreement with thirty (30) days notice to Conservancy. Contributor will no longer be a member of the Council upon Termination.
10. **Miscellaneous.** Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision. This Agreement shall be interpreted and construed in accordance with the laws of the State of New York. This Agreement

constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

11. **Amendments.** This Agreement may not be amended or modified, except in writing and signed by both Conservancy and Contributor.
12. **Counterparts / Facsimile.** This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when together, shall constitute but one and the same instrument, and shall become effective when one or more counterparts have been signed by each Party hereto and delivered to the other Party. In lieu of the original, a facsimile transmission or copy of the original shall be as effective and enforceable as the original.

IN WITNESS WHEREOF, the parties have executed this Copyright Enforcement Agreement effective on the ____ day of _____, ____ (the "Effective Date").

By: _____

Date: _____

For SOFTWARE FREEDOM CONSERVANCY, INC.

Name: _____

Title: _____

By: _____

Date: _____

PRINT NAME: _____