

FISCAL SPONSORSHIP AGREEMENT

This Agreement is made by and between Software Freedom Conservancy (“Conservancy”) and Elena Zannoni, Ian Lance Taylor, Ian Kelling, Frank Ch. Eigler, Christopher Faylor, Jon Turney, Tom Tromey, Mark J. Wielaard (the Signatories) on behalf of the project known as Sourceware (the “Project”) (each, a “Party”; together, “the Parties”). 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. The purpose of the Project is Free Software hosting of projects that produce, distribute, document, and improve software and/or documentation that can be freely copied, modified and redistributed, and for which modified versions can also be redistributed (“Free Software”), and to facilitate and organize its production, improvement and ease of use.
- C. Conservancy desires to act as the fiscal sponsor of the Project beginning on the Effective Date (as defined below) to assist the Project in accomplishing its purpose, which Conservancy has determined will further Conservancy's charitable goals. The Signatories desire to manage the Project under the sponsorship of Conservancy.
- D. Conservancy's Board of Directors has approved the establishment of a fund to receive donations of cash and other property earmarked for support of the Project and to make disbursements in furtherance of the Project's mission (the “Project Fund”). Currently, the principal office of the Project is located at: REDACTED.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Term of Agreement.** As of the Effective Date, the Project joins Conservancy, which relationship will continue unless and until terminated as set forth in § 10.
2. **Project Management and Activities.**
 - a. **The Sourceware Project Leadership Committee Will Manage the Project.** Authority to manage the technical, artistic and philanthropic direction of the Project and the program activities of the Project is delegated to the Sourceware Project Leadership Committee (“Committee”) as defined in § 8, subject at all times to the direction and control of Conservancy's Board of Directors. Conservancy will only intervene in the program activities to the extent the Project is not maintaining the original technical, artistic and philanthropic direction of the Project or the Project is not in compliance with § 2(b) or § 7 of this Agreement.

- b. **The Project Will Host Free Software.** Conservancy and the Committee agree that any and all software and/or documentation distributed through the Project will be distributed solely as Free Software. Conservancy retains the sole right to determine whether the Project's hosted software and/or documentation constitutes Free Software. Additionally, any program that users of the Project interact with via a user interface will be published as free software.
 - c.
 - d. **Ultimate Responsibility of Project.** Subject to § 2(a) of this Agreement, all community programs, public information work, fundraising events, processing and acknowledgment of cash and non-cash revenue items, accounts payable and receivable, negotiation of leases and contracts, disbursement of Project funds (including grants), and other activities planned by the Project shall be the ultimate responsibility of Conservancy and shall be conducted in the name of Conservancy, beginning on the Effective Date. For the avoidance of doubt, any and all goodwill generated by the Project's activities and software and associated with the Project's trademarks shall inure to the benefit of Conservancy.
 - e. **Project Not An Agent Of Conservancy.** The Signatories hereby acknowledge that the Project and the Committee are not authorized to, shall not, and shall not appear to act as an agent for Conservancy unless specifically authorized in writing by Conservancy to do so.
3. **Assignment of Intangible Assets.** The Project, and/or the Signatories on their own or on behalf of the Project, have adopted, own and are using, or intend to use, the trademarks and related intangible assets identified on Schedule A ("Intangible Assets").

The Signatories hereby assign and Conservancy hereby receives all of the Project's and the Signatories' rights, title and interest of every kind in the Intangible Assets, including as a title, name, designation, trade name, service mark or trademark, together with the goodwill of the business symbolized thereby and all applications and registrations pertaining thereto, and including the right to sue for current and past infringements.

The Signatories confirm that they own the Intangible Assets and have the right to assign them to Conservancy, or that they have the power to require that the current owner assign the Intangible Assets to Conservancy. The Signatories state that they are not aware of any other person or entity not disclosed who might claim to own the Intangible Assets.

The Signatories will execute and furnish Conservancy all other documents and perform all additional acts that may be necessary for the valid and lawful assignment of the Intangible Assets, for Conservancy to exercise control over them, and for Conservancy (at its option) to register them with and to record the assignment thereof with the U.S. Patent and Trademark Office and foreign trademark offices.

Upon assignment and thereafter, the Signatories will use the Intangible Assets only on the same terms and conditions as may be offered to any member of the public. The Signatories will not adopt or use any name, designation, trade name, service mark, trademark, domain name, or

social media handle that is confusingly similar to those that have been assigned or that may tend to dilute their distinctiveness.

Additionally, the signatories grant to Conservancy a license to use the Sourceware.org trademark for the purpose of supporting, promoting and defending the Project.

4. **Contracts.** Schedule B contains a complete list of all contracts, other than website Terms of Use or Terms of Service, “click through” agreements on websites, and Free Software licenses, to which the Project, or a Signatory on behalf of the Project, is bound (“Contracts”). The Signatories will provide a copy of written Contracts, and a written recitation of the terms of oral Contracts, on request. The Project and Signatories are not aware of any material breach, nor have they received notice that they have materially breached, any Contract.
5. **Fees.** The Signatories agree that the Project shall donate ten percent (10%) of the Project's gross revenue (including, but not necessarily limited to, all income and donations) to Conservancy for its general operations.

Notwithstanding the above, the Signatories agree that should Conservancy be required to pay any taxes (including but not limited to sales taxes and unrelated business taxable income) as the result of any activity of the Project and/or activities undertaken by Conservancy on the Project's behalf, such taxes shall be deducted from the Project Fund.

Conservancy will monitor any unrelated business taxable income and may require that the Project cease activities generating such income if the overall amounts exceed amounts permissible or prudent for Conservancy, given Conservancy's tax exempt status.

6. **Project Fund/Variance Power.** Beginning on the Effective Date, Conservancy shall place all gifts, grants, contributions and other revenues received by Conservancy and identified with the Project into a Project Fund to be used for the sole benefit of the Project's mission as that mission may be defined by the Committee from time to time with the approval of Conservancy. Conservancy retains the unilateral right to spend such funds 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 donor intent in making determinations on the expenditure of that donor's gift; however, the Parties acknowledge that expressions of donor 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 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.

7. **Project Fund Management / Performance of Charitable Purposes.** All of the assets received by Conservancy under the terms of this Agreement shall be devoted to the purposes of the

Project, within the tax-exempt purposes of Conservancy. The Signatories agree not to use its funds or operate in any way which would jeopardize the tax-exempt status of Conservancy. No item of revenue shall be earmarked for use in any attempt to influence legislation within the meaning of IRC Section 501(c)(3) and no agreement, oral or written, to that effect shall be made between Conservancy and any revenue source. Conservancy shall not use any portion of the assets to participate or intervene in any political campaign on behalf or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with IRC Section 501(c)(3).

8. **Representation of the Project in Conservancy.** The Signatories, each a signatory hereto, hereby establish and comprise the initial members of the Committee to represent the Project in its official communication with Conservancy. The Signatories hereby acknowledge that the Committee will be subject to all terms of this Agreement. On the Effective Date, the Signatories hereby transfer all rights, obligations and privileges of this Agreement over to the Committee.

Existing Committee Members (“Members”) can be removed from and new Members can be added to the Committee by simple majority vote of the existing Committee; however, four (4) (the “Minimum”) shall be the mandatory minimum number of Members.

For purposes of this Agreement, a Member is “Financially-Related” to an Entity if the Member owns greater than a 10 percent (10%) equity stake in the Entity, or if the Member is employed, compensated, or funded by such Entity for more than thirty-two (32) hours of work per week for a continuous period of more than sixty (60) days. No more than two (2) Members may be Financially-Related to the same Entity.

Should three (3) or more Members be Financially-Related to the same Entity at any time (e.g., if an existing Member changes employers while a Member), Members Financially-Related to the same Entity must immediately resign in succession until only two (2) of them remain on the Committee. Should voluntarily resignations fail to yield the aforementioned result after sixty (60) days, the Members Financially-Related to the same Entity shall be removed by Conservancy from the Committee in order of decreasing seniority. Seniority shall be determined by length of service by the Member on the Committee, including all historical periods of non-contiguous service.

All decisions of the Committee shall be made by simple majority. Should a vote by the Committee result in a tie where the vote is split evenly between Members that are Financially-Related and those who are not, the Committee shall vote again on the issue within seven days. If the vote remains a tie after this second vote, the Committee shall refer the issue to Conservancy, which shall be empowered to break the tie. When breaking a tie in cases where a vote had more than two choices, Conservancy shall choose only among those choices that received the most votes.

The Committee shall appoint, by majority vote, one Member as its Representative to communicate all Project decisions to Conservancy. The Representative shall promptly inform Conservancy of changes in the Committee composition and of contact information for all Members. If

Conservancy is unable, after all reasonable efforts, to contact a majority of the Members for a period of sixty (60) days, or if the number of Members is fewer than the Minimum for a period of at least sixty days, Conservancy may, after at least thirty days notice to Project, unilaterally appoint new Members from the Project community to replace any unreachable Members and/or to increase the Committee composition to the required Minimum.

9. **Outstanding Liabilities.** The Signatories represent that any liabilities that may be outstanding in connection with the Project have been disclosed to Conservancy.
10. **Termination.** The Committee or Conservancy may terminate this Agreement at any time subject to the following understandings:
 - a. **Notice and Successor Search.** Either Conservancy or the Committee may terminate this Agreement on sixty (60) days' written notice ("the Notice Period") to the other Party, so long as a successor can be found that meets the following requirements (a "Successor" that has "Qualified"):
 - i. the Successor is another nonprofit corporation which is tax-exempt under IRC Section 501(c)(3),
 - ii. the Successor is not classified as a private foundation under Section 509(a),
 - iii. the Successor is willing and able to sponsor the Project, and,
 - iv. the Successor has (a) communicated its willingness to sponsor the Project in writing to Conservancy and (b) sent a copy of its 501(c)(3) determination letter to Conservancy, and,
 - v. the Successor is approved in writing by both Parties by the end of the Notice Period, such approval not to be unreasonably withheld.
 - b. **Additional Search Periods.** If the Parties cannot agree on a Successor to sponsor the Project, the Committee shall have an additional 60 days to find a Successor willing and able to sponsor the Project. Any subsequent search periods of any length shall only be granted at Conservancy's written permission.
 - c. **Transfer to a Successor.** If a Successor has Qualified, the balance of assets in the Project Fund, together with any other assets held or liabilities incurred by Conservancy in connection with the Project, shall be transferred to the Successor within thirty (30) days of the approval of the Successor in writing by both Parties or any extension thereof, subject to the approval of any third parties that may be required.
 - d. **Termination Without a Successor.** If no Successor is found, Conservancy may dispose of Project assets and liabilities in any manner consistent with applicable tax and charitable trust laws.
 - e. **Signatories' Right to Terminate.** The Signatories hereby acknowledge that they will relinquish any rights to terminate separate from the Committee as of the Effective Date.

- 11. **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.
- 12. **Amendments.** This Agreement may not be amended or modified, except in writing and signed by both Conservancy and the entirety of Committee.
- 13. **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. A signed copy of this Fiscal Sponsorship Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Fiscal Sponsorship Agreement.

IN WITNESS WHEREOF, the Parties have executed this Fiscal Sponsorship Agreement effective on the 10th day of May, 2023 (the “Effective Date”).

By: _____
 SOFTWARE FREEDOM CONSERVANCY, INC.
 Karen M. Sandler
 Title: Executive Director

Date: _____

By: _____
 FRANK CH. EIGLER

Date: _____

By: _____
 Christopher Faylor

Date: _____

By: _____
 IAN KELLING

Date: _____

By: _____
IAN LANCE TAYLOR

Date: _____

By: _____
TOM TROMEY

Date: _____

By: _____
JON TURNEY

Date: _____

By: _____
MARK J. WIELAARD

Date: _____

By: _____
ELENA ZANNONI

Date: _____

Schedule A

Unregistered Trademarks

Mark	Goods and Services
Sourceware	hosting for free and open source software projects

Registered Trademarks

Mark	Name of Owner	Country	Application Number	Registration Number
<u>N/A</u>				

Other Intangible Assets

Domain Names	<u>N/A</u>
Email Accounts	<u>N/A</u>
Social Media Accounts	<u>N/A</u>
Website Hosting Accounts	<u>N/A</u>
Code Repository Accounts	<u>N/A</u>

Schedule B

Contracts

Name of Agreement	Counterparty	Effective Date of Agreement
N/A		