

THE LINUX FOUNDATION
NDA PROGRAM
CONFIDENTIAL DISCLOSURE AGREEMENT
FOR CONTRIBUTORS

This NDA Program Confidential Disclosure Agreement for Contributors (the “Agreement”) is made by and between The Linux Foundation, an Oregon nonprofit mutual benefit corporation (“LF”), located at 210 Fell Street, Suite 16, San Francisco, California and the undersigned Contributor (“Contributor”), as of the date of LF’s signature below (the “Effective Date”).

WHEREAS, Contributor wishes to participate in the LF NDA Program (the “Program”), the purpose of which is to facilitate the sharing of proprietary specifications with open source community developers who are actively working on projects that depend on the interfaces defined in such specifications in order to do so; and

WHEREAS, LF wishes for Contributor to participate in the Program on the terms and conditions set forth herein.

NOW WHEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. Admission. Subject to compliance with the terms and conditions set forth herein, LF admits Contributor to the Program as of the Effective Date.

2. Program Participation.

A. Contributor hereby grants to LF, at no charge, the non-exclusive, limited right and license to use, and to permit its employees, authorized consultants and agents, and the Authorized Developers (as defined in Section 4) to use, the Contributor’s Confidential Information (defined below), for the following purposes only (the “Purposes”): (i) to evaluate the feasibility of using such Confidential Information to develop open source software products; (ii) to aid in debugging issues and improving the overall stability and functionality of such open source software products; and (iii) to develop, use, modify and/or distribute such open source software products, provided that each such open source software product shall only be distributed or otherwise made accessible under the terms of such Acceptable Open Source License (defined below) as LF selects from time to time in its discretion (such product as licensed, an “Open Source Software Program”). Notwithstanding anything to the contrary above, except as expressly provided below, LF acknowledges and agrees that the Contributor’s Confidential Information is being provided for reference only, and that no Open Source Software Product shall contain any of the Contributor’s Confidential Information except to the extent required in order to effect the Purposes, for example, where components of the Contributor’s Confidential Information must be incorporated into the source code of an Open Source Software Product in order for the Open Source Software Product to function properly. For purposes of this Agreement, an “Acceptable Open Source License” is an open source software license approved by the Open Source Initiative (www.opensource.org).

B. Contributor acknowledges and agrees that Contributor fully intends and desires that the Contributor’s Confidential Information will be used for the Purposes, including developing, making, using and/or distributing Open Source Software Programs. Accordingly, Contributor hereby irrevocably and perpetually covenants that, subject solely to the last sentence of this Section 2(B), Contributor will not seek to enforce any of its U.S. or foreign patents against any Open Source Software Program, any derivative work based upon such Open Source Software Program that is permitted by the Acceptable

Open Source License under which such Open Source Software Program is distributed (each a “Permitted Derivative Work”), or any use of any of the foregoing, in each case to the extent such use complies with the terms of the applicable Acceptable Open Source License (the “Contributor’s Covenant not to Assert”). Notwithstanding the foregoing, LF acknowledges and agrees that the Contributor’s Covenant not to Assert shall not apply with respect to, and Contributor makes no assurance, covenant or commitment not to assert or enforce any patent right against, any individual, corporation or other entity that asserts, threatens or seeks at any time to enforce its own or any third party’s U.S. or foreign patents or patent rights against any, or the use of any, Open Source Software Program or Permitted Derivative Work that has been developed, in whole or in part, using the Contributor’s Confidential Information in accordance with the terms of this Agreement.

C. Notwithstanding anything to the contrary in this Agreement, this is not a service agreement. Nothing herein shall be construed to impose any obligation on LF to deliver to Contributor any software product, information, materials, results, plans, modifications of any of the foregoing or other work product (written or otherwise) whatsoever (collectively, “Work Product”). Notwithstanding the foregoing, any Work Product provided to Contributor or any third party by LF is provided without any warranty or representation whatsoever, as provided in Section 6, below. In addition, Contributor acknowledges and agrees that any Work Product (written or otherwise) provided to Contributor or any third party by LF shall not constitute business or legal advice on which it is intended that Contributor or any such third party may rely.

3. Confidential Information. In connection with the Purpose, LF and Contributor may each disclose Confidential Information.

A. The party disclosing Confidential Information is referred to in this Agreement as the “Discloser” and the party receiving Confidential Information is referred to as the “Recipient.”

B. The term “Confidential Information” means all information disclosed by the Discloser to the Recipient during the term of this Agreement to the extent such information is (i) itemized in Attachment A, as Attachment A may be revised from time to time by the parties upon written mutual consent (not to be unreasonably withheld), (ii) marked as confidential at the time of disclosure or (iii) not marked as confidential at the time of disclosure (including without limitation, information disclosed orally or visually) but treated as confidential at the time of disclosure and described in detail and designated to Recipient by the Discloser in writing as confidential within 30 days after the initial disclosure. Notwithstanding the foregoing, the term “Confidential Information” shall not include information that (a) was in Recipient’s possession prior to receipt from Discloser, (b) is or becomes publicly known or readily ascertainable, in either case by lawful means, (c) is rightfully received by Recipient from a third party without a duty of confidentiality, (d) is disclosed by Discloser to a third party without a duty of confidentiality on the third party, (e) is independently developed or learned by Recipient without reference to any Confidential Information of the Discloser, or (f) is disclosed by Recipient with Discloser’s prior written approval.

4. Obligations. During the Protection Period (defined in Section 7, below), Recipient will protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as Recipient uses to protect its own confidential information of a like nature. Recipient will provide reasonable prior notice to Discloser if Recipient is required to reveal the Confidential Information under a subpoena, court, governmental or regulatory order or other operation of law. Recipient may disclose the Discloser’s Confidential Information on an as needed basis to (i) its employees and (ii) those of its non-employee authorized consultants and agents in respect of which Recipient has received Discloser’s prior written consent for purposes of such disclosure. Additionally, LF may disclose

Contributor's Confidential Information on a need to know basis to the individuals and/or entities specified on Attachment B hereto (collectively, "Authorized Developers"), as such list may be revised from time to time by the parties upon written mutual consent (not to be unreasonably withheld). Recipient shall not use or disclose the other party's Confidential Information for any purpose other than the Purposes.

5. Non-Confidential Information. Information that is disclosed in connection with this Agreement and that does not constitute or at any time no longer constitutes Confidential Information of the Discloser ("Non-Confidential Information") is not subject to the restrictions set forth in Section 4. Each Discloser hereby waives all claims or portions of claims that assert the confidentiality of, limitation of use of, breach of duty of care with respect to, or breach of this Agreement with respect to: (i) Non-Confidential Information, to the extent such claim (or portion thereof) arises at any time after such information is or becomes Non-Confidential Information and (ii) Confidential Information, to the extent such claim (or portion thereof) arises after the Protection Period. Any cause of action, whether in contract, tort or otherwise, either arising under this Agreement or alleging the confidentiality of Confidential Information, if litigated, will be litigated in court. The parties irrevocably waive any right to a jury trial.

6. Limited Warranties; Warranty Disclaimers; Limitation of Liability.

A. Each Discloser warrants that it has the right to make the disclosures provided for under this Agreement and to engage in the Project and conduct the Purposes. Each Recipient warrants that each of the employees, authorized consultants and agents, and Authorized Developers to whom the Recipient discloses the Discloser's Confidential Information will be required to protect such Confidential Information in a manner consistent with the terms of this Agreement. ALL INFORMATION AND MATERIALS PROVIDED BY ONE PARTY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ALL CONFIDENTIAL INFORMATION, NON-CONFIDENTIAL INFORMATION, WORK PRODUCT, AND EACH PORTION OF ANY OF THE FOREGOING (COLLECTIVELY, THE "DISCLOSURE MATERIALS"), IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY WHATSOEVER. EACH PARTY HEREBY DISCLAIMS, AND THE OTHER PARTY HEREBY WAIVES, ANY AND ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE DISCLOSURE MATERIALS, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

B. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN ANY CASE OR CONTROVERSY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, THE SUBJECT MATTER HEREOF OR THE FURNISHING, THE PERFORMANCE OR USE OF THE DISCLOSURE MATERIALS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE AGGREGATE MAXIMUM LIABILITY OF EITHER PARTY FOR ALL CASES AND CONTROVERSIES ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION (WHETHER BROUGHT IN CONTRACT, TORT OR OTHERWISE), EXCEED \$10,000, ALTHOUGH THIS CLAUSE SHALL NOT BE READ TO LIMIT EITHER PARTY'S ABILITY TO SEEK EQUITABLE RELIEF.

7. Term. This Agreement shall terminate two (2) years after the Effective Date or may be earlier terminated by either party at any time upon thirty (30) days' written notice to the other party. Receiver's obligations hereunder with respect to each item of Discloser's Confidential Information shall continue in full force and effect for a period of five (5) years from the date of such disclosure, or until such earlier time as such item of Confidential Information becomes Non-Confidential Information through no wrongful action or inaction on the part of the Receiver (such period, the "Protection Period").

Such obligations shall survive termination or earlier expiration of this Agreement for any reason and shall be binding upon Receiver's heirs, successors and assigns. Upon termination of this Agreement for any reason: (i) each Receiver shall, at the request and election of the Discloser, return or destroy (and certify to the Discloser as to such destruction) all Confidential Information and all copies thereof in whatever form (other than copies required to be retained by law and copies automatically generated as a part of Receiver's standard electronic backup procedures) and (ii) except as otherwise expressly provided in this Agreement, and except as provided in Sections 2(B), 2(C), 6 through 8, all of the parties' respective rights and obligations under this Agreement shall immediately cease.

8. Miscellaneous. No rights or obligations other than those expressly recited herein are to be implied from this Agreement. This Agreement does not impose any obligation to use, sell, market, purchase, transfer or otherwise dispose of any products or services. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereto and supersedes all previous agreements between the parties, whether expressed, implied, written or oral, on the subject matter hereof. This Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of each party. All notices required or permitted hereunder shall be addressed to the intended recipient at the address set forth in this Agreement and be effective: upon delivery by hand, five (5) days after deposit in the mails, or one (1) day after deposit for overnight delivery with an internationally recognized overnight courier. This Agreement is governed by the laws of the State of California without regard to its conflict of law provisions, and the parties agree to the exclusive jurisdiction and venue of the state and federal courts located in San Francisco, California.

IN WITNESS WHEREOF, this Agreement has been duly executed by the undersigned authorized signatory of each party hereto as of the Effective Date.

THE LINUX FOUNDATION

CONTRIBUTOR:

[TYPE CONTRIBUTOR NAME]

Authorized Signature

Authorized Signature

Printed Name of Signatory

Printed Name of Signatory

Title of Signatory

Title of Signatory

Date

Address: _____

Attachment A

Specified Confidential Information

The use of the following materials and information is exclusively governed by the terms and conditions of the NDA Program Confidential Disclosure Agreement for Contributors to which this Exhibit is attached:

[LIST ALL CONTRIBUTED TECHNOLOGY AS SPECIFICALLY AS POSSIBLE]

Attachment B
Authorized Developers

[LIST ALL AUTHORIZED DEVELOPERS]

[ALL AUTHORIZED DEVELOPERS MUST SIGN THE NDA PROGRAM DEVELOPER NDA WITH LF]