

FISCAL SPONSORSHIP AGREEMENT

This Agreement is made by and between Software Freedom Conservancy (“Conservancy”) and Daniel Compton, Toby Crawley, Maria Geller, Daniel Solano Gomez, Bridget Hillyer, Larry Staton, and Devin Walters (the “Signatories”) on behalf of the project known as Clojars (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 to 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: 61 Dandelion Drive, Leicester, NC 28748.

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 § 8.
- 2. **Project Management and Activities.**
 - a. **The Clojars Community 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 Clojars Community Committee (“CCC”) as defined in §6, 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 in compliance with §2(b) or §5 of this Agreement.

- b. **The Project Will Be Free Software.** Conservancy and the CCC agree that any and all software and/or documentation distributed by the Project will be distributed solely as Free Software. Conservancy retains the sole right to determine whether the Project's software and/or documentation constitutes Free Software (as defined herein).
 - c. **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 be generated in the name of Conservancy, beginning on the Effective Date.
 - d. **Project Not An Agent Of Conservancy.** The Signatories hereby acknowledge that the Project and the CCC do not and shall not act as an agent for Conservancy unless specifically authorized in writing by Conservancy to do so.
3. **Fees.** The Signatories agree to 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 the Project to cease activities generating such income if the overall amounts exceed amounts permissible or prudent for Conservancy, given Conservancy's tax exempt status.

4. **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 CCC 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.

5. **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).
6. **Representation of the Project in Conservancy.** The Signatories, each a signatory hereto, hereby establish and comprise the initial members of the CCC to represent the Project in its official communication with Conservancy. The Signatories hereby acknowledge that the CCC 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 CCC. Existing CCC members ("Members") can be removed from and new Members can be added to the CCC by simple majority vote of the existing CCC; however, five (5) (the "Minimum") shall be the mandatory minimum number of Members.

For purposes of this Agreement, a Member is "Employed" by an Entity if the Member is compensated for more than thirty-two (32) hours of work per week by such Entity for a continuous period of more than sixty (60) days. No more than two (2) Members may be Employed by the same Entity.

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

All decisions of the CCC shall be made by simple majority. The CCC 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 CCC 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 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 CCC composition to the required Minimum.

7. **Outstanding Liabilities.** The Signatories represent that any liabilities that may be outstanding in connection with the Project have been disclosed to Conservancy.
8. **Termination.** The CCC or Conservancy may terminate this Agreement at any time subject to the following understandings:
- a. **Notice and Successor Search.** Either Conservancy or the CCC may terminate this Agreement on 60 days' written notice ("the Notice Period") to the other Party, so long as a Successor can be found that meets the following requirements (the "Successor 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 CCC 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 CCC as of the Effective Date.
9. **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.

10. **Amendments.** This Agreement may not be amended or modified, except in writing and signed by both Conservancy and the entirety of CCC.

11. **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 Fiscal Sponsorship Agreement effective on the FIXME day of FIXME, FIXME (the “Effective Date”).

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

Date: _____

By: _____
DANIEL COMPTON

Date: _____

By: _____
TOBY CRAWLEY

Date: _____

By: _____
MARIA GELLER

Date: _____

By: _____
DANIEL SOLANO GOMEZ

Date: _____

By: _____
BRIDGET HILLYER

Date: _____

By: _____
LARRY STATON

Date: _____

By: _____
DEVIN WALTERS

Date: _____