

OpenCDSS Contributor License Agreement

Version 1.0

January 1, 2019

Thank you for your interest in contributing to OpenCDSS.

This contributor agreement ("Agreement") documents the rights granted by contributors to the Colorado Department of Natural Resources ("CDNR"). To make this document effective, please sign it and send it to CDNR by mail, email, fax, or electronic submission, following the instructions at <https://path/to/submission/instructions> (being finalized). This is a legally binding document, so please read it carefully before agreeing to it. It applies to past, current, and future Contributions made by You to Us. The Agreement may cover more than one software project managed by CDNR.

1. Definitions

"You" means the individual who Submits a Contribution to CDNR. If the Submitter of a Contribution is a Legal Entity, "You" includes the Legal Entity on behalf of whom a Contribution has been received by CDNR as well as any Affiliates of that Legal Entity. "Legal Entity" means an entity which is not a natural person. "Affiliates" means other Legal Entities that control, are controlled by, or under common control with that Legal Entity. For the purposes of this definition, "control" means (i) the power, direct or indirect, to cause the direction or management of such Legal Entity, whether by contract or otherwise, (ii) ownership of fifty percent (50%) or more of the outstanding shares or securities which vote to elect the management or other persons who direct such Legal Entity or (iii) beneficial ownership of such entity.

"Contribution" or "Submission" means any work of authorship that is Submitted by You to CDNR in which You own or assert ownership of the Copyright. If You do not own the Copyright in the entire work of authorship, please note the terms in Sections 3(d) and 3(e).

"Copyright" means all rights protecting works of authorship owned or controlled by You or Your Affiliates, including copyright, moral and neighboring rights, as appropriate, for the full term of their existence including any extensions by You.

"Employer" means any party who employs You or contracts You to provide work or other services. For the purposes of this agreement, at the time of each Contribution, "Employer" includes all prior Employers since the Effective Date.

"Material" means the work of authorship which is made available by CDNR to third parties. When this Agreement covers more than one software project, the Material means the work of

authorship to which the Contribution was Submitted. After You Submit the Contribution, it may be included in the Material.

"Submit" means any form of electronic, verbal, or written communication sent to CDNR or our representatives, including but not limited to electronic mailing lists, source code control systems, and issue tracking systems that are managed by, or on behalf of, CDNR for the purpose of discussing and improving the Material, but excluding communication that is conspicuously marked or otherwise designated in writing by You as "Not a Contribution."

"Submission Date" means the date on which You Submit a Contribution to CDNR.

"Effective Date" means the date You execute this Agreement or the date You first Submit a Contribution to CDNR, whichever is earlier.

"Media" means any portion of a Contribution which is not software.

"Us" or "We" means the Colorado Department of Natural Resources ("CDNR").

2. Grant of Rights

2.1 Copyright License

- (a) You retain ownership of the Copyright in Your Contribution and have the same rights to use or license the Contribution which You would have had without entering into the Agreement.
- (b) To the maximum extent permitted by the relevant law, You grant to CDNR a perpetual, worldwide, non-exclusive, transferable, royalty-free, irrevocable license under the Copyright covering the Contribution, with the right to sublicense such rights through multiple tiers of sublicensees, to reproduce, modify, display, perform and distribute the Contribution as part of the Material; provided that this license is conditioned upon compliance with Section 2.3.

2.2 Patent License

For patent claims including, without limitation, method, process, and apparatus claims which You own, control or have the right to grant, now or in the future, You grant to CDNR a perpetual, worldwide, non-exclusive, transferable, royalty-free, irrevocable patent license, with the right to sublicense these rights to multiple tiers of sublicensees, to make, have made, use, sell, offer for sale, import and otherwise transfer the Contribution and the Contribution in combination with the Material (and portions of such combination). This license is granted only to the extent that the exercise of the licensed rights infringes such patent claims; and provided that this license is conditioned upon compliance with Section 2.3.

2.3 Outbound License

As a condition on the grant of rights in Sections 2.1 and 2.2, CDNR agrees to distribute the Contribution only under the terms of one or more of the following licenses:

- The license or licenses which CDNR is using on the Submission Date for the Material, including any future versions of those licenses.
- Any license listed as a "recommended copyleft license" by the Free Software Foundation on or after the Effective Date, including later versions of such licenses, and without regard to any later revocation of approval.
- Any license listed as "approved" by the Open Source Initiative on or after the Effective Date, including later versions of such licenses, and without regard to any later revocation of approval.

In addition, CDNR may distribute Media in the Contribution under the terms of: the Creative Commons Attribution License or the Creative Commons Attribution-ShareAlike License (including any future versions of those licenses).

2.4 Moral Rights

If moral rights apply to the Contribution, to the maximum extent permitted by law, You waive and agree not to assert such moral rights against CDNR or our successors in interest, or any of our licensees, either direct or indirect.

2.5 Our Rights

You acknowledge that CDNR is not obligated to use Your Contribution as part of the Material and that CDNR may decide to include any Contribution in whole or in part as CDNR considers appropriate.

2.6 Reservation of Rights

Any rights not expressly assigned or licensed under this section are expressly reserved by You.

3. Agreement

At the time of each Contribution, past, present, and future, You represent and warrant that:

- (a) You have the legal authority to enter into this Agreement.
- (b) You own the Copyright and patent claims covering the Contribution which are required to grant the rights under Section 2.
- (c) The grant of rights under Section 2 does not violate any grant of rights which You have made to third parties or any copyright or patent claims of third parties. If you are an individual Contributor, you represent and warrant that to the extent your Employer has any claim of right to the Contribution, you act as your Employer's agent for the purposes of Submitting the Contribution and executing this Agreement, and that your Employer intends to be bound by the terms of this Agreement.
- (d) For each part of the Submission in which you do not own the Copyright (the "3rd Party Submission"), your submission includes documentation of the source of the 3rd Party Submission as well as its copyright status.
- (e) You are aware of no fact that would prevent CDNR from distributing the 3rd Party Submission as part of the Material in full compliance with the current licenses used to distribute both the 3rd Party Submission and the Material.

If you make a Submission for which You cannot provide the representations and warranties required in this section, you agree to inform CDNR as soon as reasonably possible after You realize you have made such a Submission.

4. Disclaimer and Waiver

EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 3, THE CONTRIBUTION IS PROVIDED "AS IS". MORE PARTICULARLY, ALL EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED BY YOU TO US (AND BY US TO YOU). TO THE EXTENT THAT ANY SUCH WARRANTIES CANNOT BE DISCLAIMED, SUCH WARRANTY IS LIMITED IN DURATION TO THE MINIMUM PERIOD PERMITTED BY LAW.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL YOU OR WE BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

5. Miscellaneous

5.1 Choice of Law and Forum

This Agreement is executed and delivered in the State of Colorado and shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado, excluding its conflicts of law provisions. Under certain circumstances, the governing law in this section might be superseded by the United Nations Convention on Contracts for the International Sale of Goods ("UN Convention") and the parties intend to avoid the application of the UN Convention to this Agreement and, thus, exclude the application of the UN Convention in its entirety to this Agreement.

Any dispute or other legal action concerning this Agreement, including any arbitration or litigation proceedings shall be exclusively conducted in the State of Colorado, and You and CDNR consent to the jurisdiction and venue of any State or Federal Court located in the State of Colorado.

5.2 Entire Agreement

This Agreement sets out the entire agreement between You and CDNR for Your Contributions to CDNR and overrides all other agreements or understandings.

5.3 Assignment

If You or CDNR assigns the rights or obligations received through this Agreement to a third party, as a condition of the assignment, that third party must agree in writing to abide by all the rights and obligations in the Agreement or such assignment is null and void.

5.4 Failure to Enforce

The failure of either party to require performance by the other party of any provision of this Agreement in one situation shall not affect the right of a party to require such performance at any time in the future. A waiver of performance under a provision in one situation shall not be considered a waiver of the performance of the provision in the future or a waiver of the provision in its entirety.

5.5 Limit Non-Enforceability

If any provision of this Agreement is found void and unenforceable, such provision will be replaced to the extent possible with a provision that comes closest to the meaning of the original provision and which is enforceable. The terms and conditions set forth in this Agreement shall apply notwithstanding any failure of essential purpose of this Agreement or any limited remedy to the maximum extent possible under law.

Signature: _____

Signature: Brian Macpherson _____

Contributor: _____

CDNR signer: Brian Macpherson (CWCB) _____

Address: _____

Address: 1313 Sherman St. Room 718 _____

Denver, CO 80203 _____

Date: _____

Date: 1/1/2019 _____

Email: _____

Email: brian.macpherson@state.co.us _____

Contributor executes and agrees to this Agreement as agent for any Employer with claims in the Contribution. This Agreement is dated as of the latest date written in the signature block above.

NB: This document is based on the Harmony Combined Contributor Agreement Template 1.0, licensed under a CC-BY 3.0 Unported License.