

**PREVIEW - NOT FOR EXECUTION**

**SERVICES AGREEMENT**

This Services Agreement (“Agreement”), effective as of \_\_\_\_\_ is entered into by The Linux Foundation (“LF”), and \_\_\_\_\_ (the “Contractor”).

**RECITAL**

WHEREAS, LF desires to obtain various services from Contractor as set forth in the statement of work or statements of work attached hereto (each, a “SOW”);

WHEREAS, Contractor desires to provide services to LF; and

WHEREAS, the parties desire their relationship to be governed by the terms of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

**AGREEMENT**

**1. Duties.** LF engages the Contractor to provide the services (the “Services”) set forth in any SOW executed or agreed to under this Agreement. At the execution of this Agreement the initial services to be provided by Contractor are as set forth in the SOW attached hereto as Exhibit A-1. While there are no assurances that Contractor and LF will agree to the provision of services under additional SOWs, Contractor and LF may agree to the provision of additional services by Contractor through the execution of, or agreement in writing upon, additional SOWs. Additional SOWs shall be labeled as “Exhibit A-” in numbered succession. If the terms of any SOW conflict with the terms of the main body of this Agreement, the terms of the main body of the Agreement will control.

**2. Payment.** LF will pay the Contractor as stated in the applicable SOW or SOWs. LF will pay undisputed invoices within thirty days of receipt. Contractor shall submit an invoice detailing the hours worked and SOW milestones or completed work. If LF disputes any invoice based on a deficiency in the work performed, then LF may withhold payment and promptly notify the Contractor in writing of the dispute, and the Contractor shall have ten calendar days in which to remedy such deficiency to the reasonable satisfaction of LF.

**3. Additional Expenses:** Contractor is responsible for any expenses related to their performance under this Agreement. Any unforeseen expenses requiring reimbursement must be pre-approved by LF in writing prior to having been incurred.

**4. Taxes.** LF shall issue Contractor an IRS Form 1099. The Contractor shall be responsible for any taxes, fines or other liabilities with respect to any federal state or local jurisdiction with taxing authority. The Contractor indemnifies and holds harmless LF

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from any claim of liability of any kind by any taxing authority as a result of the payments made under this Agreement.

**5. Termination.** Either party may terminate this Agreement for any reason immediately upon written notice to the other party. In addition, the Linux Foundation may terminate any SOW under this Agreement for any reason immediately upon written notice to Contractor. Sections 9, 10 and 15 (“Proprietary Rights, Confidential Information”, “Non-Solicitation”, and “Miscellaneous”) shall survive the termination of this Agreement. LF shall owe Contractor payment only on undisputed invoices for Services performed through termination.

**6. Status of Contractor.** The Contractor shall not represent itself as an agent of LF for any purpose, and has no authority to bind LF in any manner whatsoever. The Contractor’s relationship with LF is solely that of an independent contractor, and nothing in this Agreement creates a partnership, agency, joint venture, employment or any other type of relationship. Contractor’s employees and contractors shall not be entitled to any rights or benefits (such as retirement, group health etc.) provided to LF employees. The Contractor is responsible for obtaining all applicable licenses and permits required for performance of this Agreement. All activities and work performed under this Agreement will be at the Contractor’s own risk and liability.

**7. Compliance with Law and Policies.** In performing the work required under this Agreement, the Contractor shall comply with all applicable laws and regulations and LF policies located at <https://www.linuxfoundation.org/policies>.

**8. Limitation of Liability.** LF’s liability to the Contractor for any breach arising out of or relating to this Agreement shall not exceed the total amount payable under Section 2 and shall not include any incidental, indirect, special, consequential or emotional distress damages of any kind.

**9. Proprietary Rights, Confidential Information.**

**9.1.** Contractor hereby agrees that, with regards to all work product developed in performance of this Agreement, including all intellectual property rights therein (including, without limitation, copyright, trade secret, trademark, patent and all other proprietary rights) (the “Work Product”), Contractor shall contribute all such Work Product to the open source projects specified in the Statement of Work attached hereto, with such contributions to be made pursuant to the applicable projects’ intellectual property policies.

**9.2.** Contractor acknowledges that in the course of providing the Services to LF, Contractor and Contractor’s employees and contractors may acquire knowledge (orally, in writing or otherwise) relating to the affairs of LF, its subsidiaries, and LF’s members and potential members, and may be otherwise exposed to LF and LF member confidential or proprietary information including, but not limited to: (a) matters of a technical nature such as inventions, research projects or programs

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(including LF's councils and work groups); (b) matters of a business nature such as costs, profits, policies, members, and strategies; and (c) personnel and other information; which has not been disclosed by LF or its members to the general public (collectively, all such information in any form, "Confidential Information"). Contractor shall not use or disclose Confidential Information, for any purpose except in the course of and for the purposes of performing the Services on behalf of LF. Contractor shall obtain no right, title or interest in the Confidential Information. Contractor shall return all Confidential Information upon request. Information relating to current or future versions of Linux operating system components, which are made available under an open source license, is not considered Confidential Information under this Agreement. Contractor acknowledges and agrees that (a) only employees and contractors of Contractor performing work under this Agreement may be provided access to Confidential Information, and (b) all such employees and contractors that perform work or services under this Agreement will do so pursuant to confidentiality agreements that prohibit their use or disclosure of Confidential Information on terms that are no less restrictive than those that are contained in this Section 9.2.

- 9.3. Contractor represents and warrants that any work created for LF under this agreement is contractor's original work, or work contractor has the legal right to use in a manner contemplated by this agreement, and that no part of the end product is in violation of any copyright, plagiarized or is used without express authorization or permission of its owner. Contractor agrees to indemnify and hold LF harmless for any violation of this provision.

**10. Non-solicitation.** Contractor acknowledges that in providing services to LF, Contractor may have access to key contacts at LF's member companies and participants in LF's programs, and to acquire knowledge (including Confidential Information) about their businesses that Contractor may not otherwise have except as a result of providing services to LF. Contractor shall exercise the highest professional discretion in separating the promotion of any of Contractor's services or the services Contractor provides for other clients of Contractor from services it provides to LF. In addition, during and for one year after Contractor's consulting relationship with LF terminates, regardless of the reason for termination, Contractor will not directly or indirectly solicit or induce any person or entity which then is or was a LF member, a prospective LF member, or a participant or prospective participant in any LF program, in each case during the twelve (12) months prior to termination, to cease or reduce their membership, participation or other relationship with LF. Contractor shall not aid others in doing anything that Contractor is prohibited from doing itself under this Section, whether as an employee, officer, director, shareholder, partner, consultant or otherwise.

**11. Representation & Conflicts of Interest:** Contractor represents that Contractor is free to enter into this Agreement and that this agreement does not violate the terms of any agreement between Contractor and any third party. During the term of this agreement,

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Contractor shall devote as much of Contractor's productive time, energy and abilities to the performance of Contractor's duties hereunder as is necessary to perform the required duties in a timely and productive manner. Contractor is expressly free to perform services for other Parties while performing services for LF.

**12. Entire Agreement:** This Agreement and any SOW attached constitute the final, entire understanding and agreement of the Parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect. This Agreement may not be amended or modified except by a written instrument signed by both parties.

**13. Unenforceability of Provisions:** If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

**14. Waiver:** A party's failure or delay in exercising its rights under the Agreement shall not operate as a waiver of those rights or constitute a waiver of any prior, concurrent, or subsequent breach.

**15. Miscellaneous.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to conflict of law provisions. This Agreement may not be assigned by the Contractor without LF's prior written consent.

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**IN WITNESS WHEREOF**, the Parties hereto are agreed to all terms and conditions of this Agreement by duly authorized representatives of the Parties, whose signatures are set forth below.

**CONTRACTOR**

**THE LINUX FOUNDATION**

Signed:\_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Services Agreement: Exhibit A-1**

**STATEMENT OF WORK**

This SOW is entered into under the terms of that certain Services Agreement entered into by and between The Linux Foundation and Contractor as of \_\_\_\_\_ (the “Agreement”). Capitalized terms not otherwise defined in this SOW shall have the meanings ascribed to them in the Agreement. In the event of a conflict between the terms of this SOW and the terms of the main body of the Agreement, the terms of the main body of the Agreement will control.

**Services:**