

Sponsorship Agreement For Ben Nickolls and Andrew Nesbitt (aka Libraries.io)

1 Objective and Recitals

This Sponsorship Agreement (the "Agreement") is made on September 19, 2016 (the "Effective Date"), by and between Brave New Software, Inc. ("Sponsor" or "BNS") and Ben Nickolls and Andrew Nesbitt (together, the "Committee"). Sponsor is a California nonprofit corporation located in Los Angeles, California, qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (the "IRC") and classified as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi). The Committee is an unincorporated nonprofit association established to manage the affairs of the project known as the Libraries.io (the "Project"). The principal office of the Committee is located at TODO.

The Sponsor has approved the establishment of a restricted fund to receive donations of cash and other property designated for support of the Project and to make disbursements in furtherance of the Project's mission of monitoring open source libraries to support continued access to free communication and computing tools and resources.. The Committee, with the administrative and financial assistance of the Sponsor, desires to implement the Project.

2 Sponsor's Duties

Sponsor shall act as the fiscal sponsor of the Project, by receiving assets and incurring liabilities related to the Project beginning on the Effective Date, and using them to pursue the objectives for which the Project has been established, which Sponsor has determined will further its own charitable and educational goals. Sponsor's responsibilities as the fiscal sponsor of the Project are as follows:

2.1 Accept Contributions

Sponsor shall accept funds from donors, grantors, partners and the public (the "Funds"), and designate such funds for specific program goals. Sponsor shall record receipt of funds as they relate to the Project and note any donor preferences or contractual obligations as to how the Funds shall be spent.

2.2 Disbursements

Sponsor shall disburse the Funds with input, consultation and guidance (“Consultation”) from Project. Sponsor and Project shall cooperate to ensure that the Funds are used in ways that meet obligations to donors, grantors and partners.

Prior to disbursing the Funds with Project Consultation, Sponsor retains full discretion and control over the use of the Funds to accomplish its charitable purposes. This power includes the unilateral right, if the Project breaches this Agreement or if Sponsor determines that the Project’s activities jeopardize Sponsor’s legal or tax status, to withhold, withdraw or demand immediate return of the Funds and to spend the Funds so as to accomplish the purposes of the Project as nearly as possible within Sponsor’s sole judgment.

Sponsor will make commercially reasonable efforts to make disbursements (either by mailing payment or arranging funds transfer) within 10 business days of Consultation with Project and approving payment.

Sponsor may refuse to reimburse expenses unless accompanied by true and correct receipts for same.

2.3 Accounting

Sponsor shall maintain all books and financial records for the Funds in accordance with generally accepted accounting principles. The Funds shall be segregated on the books of Sponsor. Reports reflecting receipts, expenditures and balances will be delivered by Sponsor to the Project periodically on a schedule agreed to by the parties. In the alternative, Sponsor may provide a mechanism for the Project to access financial and accounting reports via the Internet.

2.4 Tax Filings

Sponsor shall prepare all requisite state and federal governmental reports and informational returns required in connection with the Funds, including those required by the Internal Revenue Service and any state or local regulatory authority. Sponsor shall retain all records relating to the Funds for such period as shall be required by law.

2.5 Donor Communication

Sponsor shall provide any acknowledgments and receipts to donors which reflect that the contributions were made to Sponsor, as required under applicable law. Project will be notified or copied on all such communication, as appropriate.

2.6 Project Communication

Sponsor shall notify Project as soon as is reasonably possible of any substantive change in, or loss of, its tax-exempt status.

2.7 No Interference

Subject to Section 3, Sponsor shall permit the Project to operate freely within the guidelines of the Project's purposes and shall not interfere with such purposes.

2.8 Administrative Fees

Sponsor shall be entitled to deduct from each separate donation or receipt of Funds from Donors or other sources an administrative fee of 12% of the amount of such award. This fee may be adjusted in a writing signed by both parties at a later date, depending on amount of funds received. In addition, if the Project has no financial activity (either in income or in spending its allocated project budget) for a period of 12 months Sponsor shall be entitled to deduct additional fees of 12% on an annual basis rather than reallocate the remaining project budget.

2.9 Indemnity

Sponsor shall, to the fullest extent permitted by law, indemnify, defend and hold harmless Project, its officers, directors, founders, employees and agents from and against any and all claims, liabilities, losses, damages, and expenses (including reasonable attorneys' fees and expenses of litigation) arising from or related to (i) Sponsor's negligent disbursement or use of the Funds; (ii) the breach or alleged breach of any covenant, representation, or warranty made by Sponsor in this Agreement; or (iii) the acts, omissions, gross negligence or willful misconduct of Sponsor or its employees, agents or volunteers in connection with Sponsor's performance (or failure to perform) under this Agreement. This paragraph shall survive the termination of this Agreement.

3 Project Obligations

Project's responsibilities under this Agreement are as follows:

3.1 Restricted Use of Funds

Project shall use the Funds solely for the purposes of monitoring open source libraries to support continued access to free communication and computing tools and resources. The Project shall obtain written approval from Sponsor of any changes in the purposes for which the Funds are to be spent.

3.2 Indemnity

Project shall, to the fullest extent permitted by law, indemnify, defend and hold harmless Sponsor, its officers, directors, founders, employees and agents from and against any and all claims, liabilities, losses, damages, and expenses (including reasonable attorneys' fees and expenses of litigation) arising from or related to (i) Project's acceptance or use of the Funds; (ii) the breach or alleged breach of any covenant, representation, or warranty made in this Agreement; or (iii) the acts, omissions, gross negligence or willful misconduct of Project or its employees,

agents or volunteers in connection with Project's performance (or failure to perform) under this Agreement. This paragraph shall survive the termination of this Agreement.

3.3 Credit

Project shall credit Sponsor on all publicity, advertisements, and acknowledgments related to the Project's operations and activities in the form mutually agreed to by the parties.

3.4 Tax Exemption Notice

If Project submits an application for tax-exemption under Section 501(c)(3) of the Code, or receives a determination or denial letter from the Internal Revenue Service in response to such application, Project shall notify Sponsor within a reasonable time period not to exceed one week.

3.5 Accounting Reporting

Project shall submit a full and complete report to Sponsor as of the end of the Project's annual accounting period describing the charitable programs conducted by the Project with the aid of the Funds and the expenditures made with the Funds, together with a certification by an officer of the Project that the Project's use of the Funds complied with the terms of this Agreement and the laws, rules and regulations applicable to organizations exempt from taxation under Section 501(c)(3) of the Code.

3.6 Project Shall Operate Itself

Project shall assume all responsibilities and liabilities related to the goals, plans, and/or activities of the Project.

3.7 Legal and Regulatory Compliance

Project shall ensure that the Project's goals, plans, and/or activities adhere to the laws, rules and regulations applicable to organizations exempt from taxation under Section 501(c)(3) of the Code, including the maintenance of proper corporate records (if any), and the submission of invoices and supporting documentation for requested disbursements of the Funds by Sponsor. Project shall ensure that its activities do not pose any risk of compromise to Sponsor's tax-exempt status, including by refraining from any attempt to influence legislation or to participate or intervene in any political campaign on behalf of 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 benefit to occur or to take any other action inconsistent with section 501(c)(3) of the Code.

4 Terms and Termination

Either party may terminate this Agreement due to a material breach by the other party, provided that the non-breaching party gives the other party written notice of the alleged breach and at least seven (7) days to cure the breach or take reasonable steps to cure such breach, or upon thirty (30) days' written notice for any reason.

Within a reasonable period after termination, but in no case less than 60 days, Sponsor shall, with input, consultation and guidance from Project, form a plan for disbursement of any remaining Funds. This plan can include transfer of Funds to another organization exempt from taxation under IRC Section 501(c)(3), continued operation of existing program work, or new program work. As well, Sponsor will cooperate with Project in the transfer of any books and records held by Sponsor and requested by Project relating to Project or the Funds.

Either Sponsor or Libraries.io may terminate this Agreement at any time subject to the following understandings:

4.1 Notice and Successor Search

Either BNS or Libraries.io may terminate this Agreement on 60 days' written notice to the other party, so long as a Successor can be found that meets the following requirements:

1. the Successor is another nonprofit corporation which is tax exempt under IRC Section 501(c)(3); and
2. the Successor is not classified as a private foundation under Section 509(a); and
3. the Successor is willing and able to sponsor the Project; and
4. the Successor is approved in writing by both parties by the end of the 60-day period, such approval not to be unreasonably withheld.

4.2 Additional Search Periods

If the parties cannot agree on a Successor to sponsor Libraries.io, BNS shall have an additional 60 days to find a Successor willing and able to sponsor the Project. Upon written agreement of the parties, BNS shall have further additional periods in which to find a Successor. Such periods will be of a duration agreed to by the parties.

4.3 Transfer to a Successor

If a Successor is found, the balance of the Funds, together with any other assets held or liabilities incurred by BNS in connection with the Project, shall be transferred to the Successor by the end of the notice period or any extension thereof, subject to the approval of any third parties that may be required. If the Project has formed a new organization qualified as a Successor as set forth in this Section, such organization shall be eligible to receive all such assets and liabilities so long as such organization has received a determination letter from the Internal Revenue Service,

indicating that such qualifications have been met, no later than the end of the notice period or any extension thereof.

4.4 Termination Without a Successor

If no Successor is found, Sponsor may dispose of the Project assets and liabilities in any manner consistent with applicable tax and charitable trust laws.

5 Project Communication

Sponsor will communicate with Project by email sent to a Point of Contact designated by the Project. Any approval, notice or action through email by the Point of Contact will constitute written approval, notice or action.

6 Intangible Rights

If Project is an incorporated or organized entity under the laws of any State of the United States, all right or title to or ownership of copyrights, trademarks, patents, trade secrets or other intellectual property created by the Project (collectively, “Intangible Rights”) with the Funds shall belong to the Project. Otherwise, such Intangible Rights shall belong to the Sponsor and be held and disposed of in the same manner as the Funds, including upon termination.

The Project represents to Sponsor that the Project is the owner of all Intangible Rights and other property rights with respect to the Project, or has obtained legal permission to use any Intangible Rights owned or controlled by a third party and used by the Project in the course of operation.

7 Confidentiality

Each party agrees that information received from the other, and/or any of its subsidiaries, affiliates, or joint venturers, may be confidential and/or proprietary, and agrees to comply with the other party’s reasonable requests to avoid disclosure of any such information to any third party except with specific written authorization.

8 No Obligation to Provide Support

It is expressly understood that Sponsor, by disbursing the Funds upon Consultation and entering into this Agreement, has no obligation to provide other or additional support to the Project.

9 Relationship of Parties

Nothing in this Agreement shall constitute the naming of the Project as an agent or legal representative of Sponsor for any purpose Nothing in this agreement creates a relationship of employ-

ment, agency, partnership or joint venture between Sponsor and any member of the Committee or any person working on the Project. Unless such a relationship arises under separate agreement, the Project will not represent itself as employee, agent or partner for Sponsor or endeavor to act on Sponsor's behalf.

10 Entire Agreement

The terms contained in this Agreement constitutes the sole agreement between the Sponsor and the Project regarding fiscal sponsorship. It shall supersede any prior oral or written understandings or communications between the parties with regard to fiscal sponsorship.


11 Amendment

This Agreement may not be amended or modified, except in a writing signed by both parties.

12 Acceptance

The undersigned agrees to the terms of this agreement on behalf of her or his organization or business as of the date written below:

Libraries.io

Signature: 

Print Name: Benjamin Nickolls

Title: Head of Product

Date: September 19, 2016

Brave New Software, Inc.
Signature: 

Print Name: James Vasile

Title: VP, Grant Operations

Date: September 19, 2016