

Fundraising and Development Agreement

This Agreement is made by and between the Free Software Foundation (“FSF”), a Massachusetts corporation organized to coordinate and promote the use and development of software that can be freely copied, modified, and redistributed by the general public (“Free Software”) which has received recognition of exemption from federal income tax under Section 501(c)(3) of the Internal Revenue code, and the developers of the Replicant project (“Developers”), each a signatory hereto.

WHEREAS:

- a. FSF’s Board of Directors (the “Board”) has determined that the promotion and development of Free Software that makes a fully free version of the Android mobile operating system (the “Initiative”) is deserving and in need of support by FSF, in furtherance of its exempt purposes.
- b. Developers develop software that fits Initiative needs, (the “Project”) and are dedicated to the further development of the Project.
- c. The Board has determined that Developers engage in activities which further FSF’s exempt purposes (the Sponsored Activities defined in Section 3). The Board has further determined that the Developers operate the Project in a manner consistent with FSF’s exempt purposes and capable of being monitored by the Board, and that Developers have the expertise necessary to promote and coordinate the Sponsored Activities.
- d. Upon review and approval by the Board, FSF and Developers wish to collaborate as of the Effective Date (as defined below) to promote and coordinate the Sponsored Activities.

Now, therefore, the parties hereby agree as follows:

1. **Term.** As of the Effective Date FSF will collaborate with Developers to promote and develop the Sponsored Activities, which relationship will continue unless and until terminated as set forth below.
2. **Collaborative Activities.**
 - a. **Fundraising.** FSF and Developers will collaborate to raise funds for Sponsored Activities. FSF will place all gifts, grants, contributions and other revenues so received and identified with Sponsored Activities or the Project into its general fund, subject to the Accounting provision of this Agreement. These funds shall be used for the promotion and development of the Sponsored Activities, as defined in Section 3 of this Agreement, and as may be redefined by Developers and FSF from time to time in a separate signed agreement. 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 portion of the assets shall be used 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). No agreement, oral or written, contrary to the preceding shall be made between Developers and any revenue source. Besides the requirement that the funds be spent in furtherance of the Sponsored Activities, as subject to the provisions of this Agreement, no donations containing donor imposed restrictions will be accepted by FSF pursuant to this Agreement. FSF must approve all fundraising materials prior to their use by Developers.

- b. **Use of Funds.** FSF will consult with Developers concerning the use of any part of the Initiative Fund. However, subject to the terms of this Agreement, FSF retains sole right to spend the Initiative Fund in furtherance of its exempt purposes[, subject to any donor restrictions]. Developers understand and agree that they shall have no recourse should the funds be expended in a manner inconsistent with their expectations. No funds will be disbursed directly to the Developers under this Agreement, except, as reviewed and approved by FSF, as payment for services performed subject to a written agreement in furtherance of the Sponsored Activities or as reimbursement for funds expended in furtherance of the Sponsored Activities. Unless authorized by a written amendment to this Agreement, signed by both parties, the Initiative Fund shall not be used to pay for software or software development services.
 - c. **Accounting.** As of the Effective Date, FSF will keep records of all money raised for the Sponsored Activities, including records of disbursements in furtherance of the Sponsored Activities (the “Initiative Fund”).
 - d. **Reporting.** Developers shall notify FSF within 30 days of any change in Developers’ legal or tax status.
3. **Sponsored Activities.** “Sponsored Activities” include: development, promotion, infrastructure for, and education about, the Initiative.
 4. **Representation With FSF.** The Developers, each a signatory hereto, shall appoint, by majority vote, a single individual to communicate with FSF (the “Representative”) and shall notify the FSF promptly following the appointment of a new Representative or the addition or removal of any Developer. In the event that a Developer is added to this Agreement, Developers shall ensure that he or she receives and reads a copy of this Agreement. Developers may be added or subtracted from this agreement by majority vote. The Representative will have the authority to instruct

FSF on the Developers' behalf on all matters. The initial Representative shall be Denis Carikli. This section may be modified by a majority vote of the Developers, with the consent of FSF, such consent not to be unreasonably withheld. If for any reason the Developers become unreachable or unresponsive for a period of six months, the Agreement will terminate in accordance with § 7(d) of this Agreement.

5. **Fees.** An administrative charge of 10% of the gross revenue collected by the Initiative Fund will be deducted by FSF to defray FSF's costs in administering the Initiative.
6. **No Agency.** Nothing in this Agreement shall constitute the naming of Developers as an agent or legal representative of FSF. This Agreement shall not be deemed to create any relationship of agency, partnership, or joint venture between the parties. Developers shall make no such representation to anyone. Developers shall undertake no activities for or in the name of FSF without prior agreement by the parties.
7. **Termination.** Either party may terminate this Agreement on 60 days' notice subject to the following understandings:
 - a. **Notice and Successor Search.** Either party 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:
 - 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 must, in the sole discretion of the Board, be willing and able to oversee the promotion and development of the Sponsored Activities, and
 - iv. the Successor is approved in writing by both parties by the end of the 60-day period, such approval not to be unreasonably withheld.
 - b. **Additional Search Periods.** If the parties cannot agree on a Successor to sponsor the Sponsored Activities, the parties shall have an additional 60 days to find a Successor. Upon written agreement of the parties, the parties shall have further additional periods in which to find a Successor. Such periods will be of a duration agreed to by the parties.
 - c. **Transfer to a Successor.** If a Successor is found, the balance of assets in the Initiative Fund together with any other assets held or liabilities incurred by the FSF in connection with Sponsored Activities, 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 Developers 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.

d. **Termination Without a Successor.** If no Successor is found, FSF may dispose of the Initiative Fund and associated liabilities in any manner consistent with applicable tax and charitable trust laws.

8. **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 Commonwealth of Massachusetts. 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. This Agreement may not be amended or modified, except in writing and signed by all parties to this Agreement.

9. **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 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 Agreement effective on the

day of

, 2013 (the "Effective Date").

- Denis Carikli
- Paul Kocialkowski

By:

Date:

FSF:

Date:
