

MODEL C FISCAL SPONSORSHIP AGREEMENT

This Model C Fiscal Sponsorship Agreement (this “**Agreement**”) is made by and between Software in the Public Interest, Inc. (“**Sponsor**”) and OpenSSL Software Foundation, a Delaware nonprofit non-stock corporation (“**Grantee**”). Sponsor is a New York non-profit corporation that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (“**IRC**”) and is classified as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi).

RECITALS

A. Grantee has provided to Sponsor a narrative proposal for a set of charitable activities and a fiscally sponsored project known as OpenSSL Software Foundation, with a mission to ensure that everyone, including nonprofits, academics, and independent developers, has access to fundamental data privacy and security tools that are the backbone of internet protection, quietly safeguarding millions of users. We do this to help build a safer internet — one that serves the public interest and upholds privacy and security as foundational rights. (the “**Project Purposes**”). To the extent that the Grantee exclusively conducts the activities submitted to Sponsor in the narrative proposal, the Project Purposes shall include the administrative activities listed in the proposal.

B. Sponsor’s Board of Directors (“**Board**”) has determined that activities in furtherance of the Project Purposes will further Sponsor’s charitable and educational goals and desires for Sponsor to act as the fiscal sponsor of those activities.

C. Sponsor’s Board has approved the establishment of a restricted fund (the “**Restricted Fund**”) to receive donations of cash and other property designated for the support of the Project Purposes.

D. Sponsor’s Board has further decided to, subject to terms and conditions of this Agreement, periodically grant such amounts in the Restricted Fund as set forth below to Grantee (all such grants, collectively, the “**Grant**”) for the Project, provided that Sponsor has exercised and shall retain full discretion and control over the selection of Grantee or any other beneficiary to conduct the Project.

E. The Grantee desires to enter into this Agreement in order to receive the Grant and acknowledges that all Grant funds received are subject to the terms and conditions of this Agreement.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Term of Agreement. On the date that the Agreement is fully executed by the parties (the “**Effective Date**”), Sponsor shall commence receiving funds and, subject to the terms and conditions of this Agreement, making Grant disbursements from the Restricted Fund for the Project Purposes. Sponsor’s fiscal sponsorship of the Project shall continue in effect unless and until terminated as provided under this Agreement. During the term of the Agreement, the Sponsor shall be the exclusive US, 501(c)(3) fiscal sponsor receiving contributions or grants raised for the Project Purposes by any of the parties, except as specifically approved in advance in writing by Sponsor. For avoidance of doubt, nothing in this Agreement shall prohibit Grantee from receiving direct contributions for donors or sponsors willing to make such contributions.

2. Project Activities; Role of Parties.

a. This Agreement shall not be deemed to create any relationship of agency, partnership, or joint venture between the parties hereto, and Grantee shall make no such representation to anyone. Sponsor shall not be responsible for the fundraising events, accounts payable and receivable, negotiation of leases and contracts, insurance, day-to-day disbursement of Project funds once received by the Grantee, or other matters related to activities conducted by Grantee. No one working on the Project shall be an employee or independent contractor of Sponsor. Grantee shall assume full and complete responsibility for all liabilities incurred in connection with each Project, including but not limited to criminal and civil liability, and any and all claims whether asserted or unasserted while this Agreement is in effect. If Sponsor makes any payments of grant funds directly to Grantee's vendors, Sponsor shall do so only as a convenient means of disbursing grant funds for the benefit of Grantee and its conduct of a Project. Sponsor shall not be under any legal obligation to Grantee's vendors. All such payments by Sponsor (in the unlikely event any occur) are voluntary and subject to the availability of revenues deposited with Sponsor and designated for the purposes of the applicable Project.

b. Subject to the remaining terms and conditions of this Agreement, Sponsor's role in supporting the Project shall be limited to accepting contributions for the Project Purposes into the Restricted Fund and making the Grant through periodic disbursements to Grantee from the assets remaining in the Restricted Fund after all credits and debits have been applied. The amount and date of each disbursement shall be within the sole discretion of Sponsor, provided that Sponsor intends to make disbursements periodically as funds are received

c. Sponsor does not expect to incur any administrative expenses on behalf of the Grantee as the Grantee is assuming complete operation of the Project. However, to the extent that Sponsor, on behalf of the Project, makes a payment, for any reason, directly to a recipient other than Grantee, Sponsor shall charge such expense against the Restricted Fund. In the event that there are insufficient funds in the Restricted Fund to pay a charge made under this subsection, Sponsor may submit an invoice to Grantee and Grantee shall pay such invoice within thirty (30) days of receipt in the manner instructed by Sponsor. Charges made under this subsection shall be applied against the Restricted Fund and transferred to Sponsor's general unrestricted fund.

d. Sponsor may periodically review the Project and, after discussion with the Grantee, Sponsor may require adjustments to the Project or Project Purposes in order to continue serving as sponsor, including refinements in mission, operating model, cost structure, and governance. Any such changes will be documented in writing and attached as an addendum to this Agreement.

e. The Grantee may solicit gifts, contributions, and grants to Sponsor identified as made in support of the Project Purposes. Except as specifically permitted by Sponsor in advance in writing or with respect to solicitations that will not be received by Sponsor, the Grantee will provide information and the text of Project's fundraising materials for Sponsor's review, in advance of the use and distribution of these materials. The Grantee agrees to make such changes to fundraising materials as Sponsor determines are appropriate and necessary to ensure that such materials and solicitations comply with the laws applicable to Sponsor. For avoidance of doubt, all fundraising materials and solicitations shall clearly disclose that the Project is a fiscally

sponsored project of Sponsor and that Sponsor is the recipient of such contributions, and shall not state or imply that the contributed funds are earmarked for another legal entity or individual. All grant agreements, pledges, or other commitments with funding sources to support the Project, shall be executed by Sponsor. The cost of any reports or other compliance measures required by such funding sources shall be borne by the Project's Restricted Fund.

3. Restricted Fund / Variance Power.

a. Beginning on the Effective Date, Sponsor shall place all gifts, grants, contributions, and other revenues received by Sponsor for the Project Purposes into the Restricted Fund. Neither party shall spend or otherwise obligate Sponsor to pay for an amount or amounts exceeding the balance in the Restricted Fund, nor shall either party authorize or permit anyone to do so. While Sponsor intends to accomplish the Project Purposes through the Grant to Grantee, Sponsor retains the unilateral right to spend such funds to accomplish the Project Purposes as nearly as possible within Sponsor's sole judgment, subject to any more specific donor-imposed restrictions, on the charitable use of such assets. The parties agree that all money and the fair market value of all property in the restricted fund be reported as the income of Sponsor on Sponsor's financial statements and tax returns. It is the intent of the parties that this Agreement should be interpreted to provide Sponsor with variance powers necessary to enable Sponsor to treat the restricted fund as Sponsor's asset in accordance with Accounting Standards Codification (ASC) paragraphs ASC 958-605-25-25 and -26, formerly expressed in Statement No. 136 issued by the Financial Accounting Standards Board (FASB). Because the restricted fund is held under the charitable trust doctrine for the purposes of the Project as understood by and with funding sources, the parties intend that assets in the restricted fund are not subject to the claims of any creditor or to legal process resulting from activities of Sponsor unrelated to the Project.

b. *Credits to Restricted Fund.* Sponsor shall credit to the Restricted Fund all contributions that Sponsor receives, from any source, for the charitable purposes of the Project.

c. *Debits to Restricted Fund.* The primary debits against the Restricted Fund are expected to be the disbursements to Grantee under the provisions of Section 2. In addition, an administrative charge of five percent (5%) of all amounts deposited to the Restricted Fund (the "**Administrative Charge**") shall be debited from the Restricted Fund and transferred to Sponsor's general fund to defray Sponsor's costs of administering the Restricted Fund and sponsoring the Project. The Administrative Charge is intended to reasonably allocate Sponsor's indirect costs associated with the administration of the Project and the Restricted Fund in the ordinary course of business, including but not limited to: (a) receiving and tracking incoming donations, and handling associated documentation and grant or gift agreements, (b) maintaining financial statements for the Restricted Fund, (c) re-granting funds and reviewing Grantee's reports required under this Agreement to ensure Project activities are consistent with Agreement and donor restrictions. Further, while Sponsor does not expect to incur any programmatic expenses on behalf of the Grantee as the Grantee is assuming complete operation of the Project, to the extent that Sponsor, on behalf of the Project, makes a payment, for any reason, directly to a recipient other than Grantee, Sponsor shall charge such expense against the Restricted Fund. In the event that there are insufficient funds in the Restricted Fund to pay a charge made under this subsection, Sponsor may submit an invoice to Grantee and Grantee shall pay such invoice within thirty (30) days of receipt in the manner instructed by Sponsor.

d. *Interest on Restricted Fund.* All interest earned on the assets in the Restricted

Fund shall be deposited into Sponsor's general fund and shall not be considered an asset of the Restricted Fund.

e. *Not a Donor-Advised Fund; Expenditure Responsibility.* Under no circumstances will any donor or any designee of a donor have any advisory privileges with respect to the Restricted Fund by virtue of their status as a donor or designee of a donor that would result in the Restricted Fund being classified as a donor-advised fund under Code Section 4966(d)(2). The Grantee will not make any representation to any third party that a donor to Sponsor or a designee of a donor will have such a privilege.

4. Performance of Charitable Purposes; Prohibitions.

a. *Charitable Assets.* All of the assets received by Sponsor and any assets disbursed to the Grantee as a Grant under the terms of this Agreement are charitable assets and shall be devoted to the Project Purposes, within the tax-exempt purposes of Sponsor. No change to the Project Purposes may be made without the prior written approval of the Sponsor, and, depending on the terms of contributions, may require the written consent of Project donors.

b. *Prohibited Use of Project Funds.* Neither Sponsor nor Grantee will use or permit the use of, any portion of the assets of the Restricted Fund 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 private benefit to occur, or to take any other action inconsistent with IRC Section 501(c)(3). Further, neither Sponsor nor the Grantee will permit any Project funds to be disbursed to any individual or company associated with the Project, except in the form of reasonable compensation for services to the Project approved in advance of the performance of those services. The rate of compensation paid to any individual or company associated with the Project shall be disclosed to the Sponsor, along with the basis of the Grantee in determining that such compensation does not exceed the fair market value for the services provided, must be disclosed to the Sponsor in advance and in writing. The Project shall not be conducted in any manner that would result in private benefit to any individual or company that is more than incidental to the Project's achievement of the Project Purposes, and the Grant shall not disburse grant funds to any owner of Grantee (or a sub-grantee of Grantee, as applicable) in their capacity as an owner of Grantee (or the sub-grantee, as applicable).

5. Additional Terms of Grant.

a. *Reporting.* To enable the Sponsor to evaluate the effectiveness of the Grant, Grantee shall submit to the Sponsor a written report for any annual accounting period of Grantee during which Grantee receives, holds, or spends any of the Grant funds. The report shall contain: (1) a narrative description of Grantee's use of Grant funds and the progress that Grantee has made toward achieving the Project Purposes; (2) a financial accounting of Grantee's expenditure of Grant funds (including salaries, travel, and supplies); (3) copies of any publications resulting from the Grant; and (4) a report on Grantee's compliance with the terms of this Agreement. Reports are due to the Sponsor 90 days after the close of the accounting period of Grantee covered by the report.

b. *Recordkeeping.* Grantee shall treat Grant funds as restricted assets and shall maintain the Grant funds in a separate account on Grantee's books that is restricted to the specific charitable purposes for which the Grant is made. All expenditures made in furtherance of the purposes of the Grant shall be charged off against the Grant on such books. Grantee shall keep adequate records to substantiate its expenditures of Grant funds. Grantee shall make these books and records available to the Sponsor at reasonable times for review and audit, and shall comply with all

reasonable requests of the Sponsor for information regarding use of Grant funds. Grantee shall keep copies of all relevant books and records and all reports to the Fund for at least four years after completion of the use of the Grant funds.

c. *Lobbying*. No portion of the grant is earmarked for influencing legislation, within the meaning of IRC Section 4911(d), as interpreted by its accompanying regulations. Any use of Grant funds by Grantee is the Grantee's decision and wholly independent from Sponsor.

6. Intellectual Property. Except as noted below, all copyrights, patents, or other intellectual property developed using Grant funds as part of the Project ("**Funded IP**") shall be the property of Grantee, subject to the requirement that it be used for the charitable purposes of the Project.

7. Termination.

a. Either party may terminate this Agreement, based upon a material breach of this Agreement by the other party, by giving ten (10) days' written notice to the other party.

b. This Agreement may be terminated by Sponsor upon thirty (30) days' written notice if (i) the Sponsor determines that the objectives of the Project can no longer reasonably be accomplished by Sponsor; (ii) the Sponsor determines in its reasonable discretion that continued sponsorship of the Project is inconsistent with Sponsor's charitable purposes or tax-exempt status; or (iii) the Sponsor determines in its reasonable discretion that another organization would better serve the Project's charitable purposes as a fiscal sponsor.

c. This Agreement may be terminated, with or without cause, by the Grantee at any time upon sixty (60) days' written notice to the Sponsor.

8. Effect of Termination. Upon termination of this Agreement, the Sponsor and Project shall work together in good faith to dispose of any Project assets and liabilities as follow:

a. During the notice period, the Grantee will identify another organization (including the Grantee or an organization that was formed by the Grantee for this purpose) that has received a determination letter from the Internal Revenue Service recognizing that the organization is tax-exempt under IRC Section 501(c)(3) and is not classified as a private foundation under Section 509(a) (a "**Successor**"), and is willing and able to sponsor the Project. As used in this Section 8(a), the word "able" shall mean that the Successor has charitable purposes compatible with the purposes of the Project and has the financial and administrative capacity to manage the Project competently.

b. Before being eligible to succeed to the role of sponsor of the Project, the Successor shall be subject to the approval of the Sponsor, which approval shall not be unreasonably withheld or delayed.

c. The notice period may be extended by mutual agreement of the parties, provided that Sponsor will not unreasonably withhold its approval of an extension.

d. Once the parties agree on a Successor, the balance of assets in Sponsor's restricted fund for the Project, together with any other tangible and intangible assets held and liabilities incurred by Sponsor in connection with the Project, shall be transferred to the

Successor at the end of the notice period or any mutually agreed upon extension thereof, subject to the approval of any third parties that may be required.

e. If no Successor acceptable to both parties is found by the end of the notice period or any mutually agreed upon extension thereof, or if the Project was terminated by Sponsor as a result of a material breach of this Agreement by Grantee, Sponsor may dispose of the Project assets and liabilities in any manner consistent with applicable tax and charitable trust laws.

9. Miscellaneous. In the event of any controversy, claim, or dispute between the parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs of sustaining its position. 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 applicable to contracts to be performed entirely within such State. Time is of the essence of this Agreement and of every provision hereof. The failure of Sponsor to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights.

10. Entire Agreement. 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.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have executed this Fiscal Sponsorship Agreement as of the Effective Date.

SPONSOR

SOFTWARE IN THE PUBLIC INTEREST

By: _____

Its: _____

Dated: _____

GRANTEE

OPENSOURCE SOFTWARE FOUNDATION

By: _____

Its: _____

Dated: _____