



THE COMMONS CONSERVANCY

BYLAWS OF THE FILESENDER PROGRAM

PURPOSE

FileSender is the name of a not-for-profit technical and creative community effort for the common benefit.

The **FileSender** Program (hereafter called: the Program) has been established within [The Commons Conservancy] to facilitate an open, transparent and efficient governance process throughout the future development of the technology and auxiliary materials developed within **FileSender**.

The goal of the Program is to promote all that is related to or beneficial to the users and developers of **FileSender**, its auxiliary technologies and materials (such as documentation, tests, validators and tutorials) and derivatives. The Program seeks to provide guidance, oversight and coordination of activities as well as a long-term, multi-stakeholder and architectural perspective.

In addition, the Program aims to provide a clear and fair way of making decisions, setting or changing conditions concerning anything contributed to or created within the Program - including but not limited to copyrights, domain names, trade marks and other branding rights as well as (software) patents. In such matters the Program SHALL act in the common interest of the user and developer community, respecting the spirit and intents of the original creators of and contributors to **FileSender**.

The goal of the Program is to promote all that is related to or beneficial to the users and developers of **FileSender**, its auxiliary technologies and materials (such as documentation, tests, designs, repositories and tutorials) and derivatives.

All software created or modified within the Program shall be made publically available under one or more of the licenses on the Free Software Foundation's list of "recommended copyleft licenses" or any license approved by the Open Source Initiative on or after the submission date, whether or not such licenses are subsequently disapproved (including any right to adopt any future version or descendants of a license).

REGULAR MEMBERS AND OBSERVERS

REGULAR MEMBERS

The Program SHALL have Regular Members, with the following conditions:

1. Regular Members must be natural persons. Regular Members may be any natural person who has an interest in the purpose of the Program.
2. The application, admission, withdrawal and termination of persons as Members are set forth in the membership and observer policy attached as Appendix 1 ("Member and Observer Policy").
3. There shall be no upper limit on the number of Regular Members.

OBSERVERS

The Program MAY have Observers, with the following conditions:

1. Observers represent a legal person. Observers may be any organisation with an interest in one of the purposes of the Program.
2. The application, admission, withdrawal and termination of organisations as Observers are set forth in the membership and observer policy attached as Appendix 1 ("Member and Observer Policy").
3. There is no limit on the number of Observers.
4. Observers cannot have voting rights or be named officials

FINANCIAL CONSIDERATIONS

The **FileSender** Program currently does not constitute an independent legal entity, but operates as an informal consortium hosted by [The Commons Conservancy], itself a not-for-profit foundation ('Stichting') established under The Netherlands law to facilitate sustainable long term development of important free and libre open source software projects for the common benefit.

The Program operates on a nil budget, and does not have financial considerations.

The Program and its committees and working groups determine the desired direction of the development of the technology within the Program, and provide guidance and inspiration on the establishment and evaluation of activities funded by grantmaking organisations, donors or partners

of the Program.

The Program itself has no direct financial involvement in such activities under any circumstances.

GOVERNANCE

STRATEGIC ADVISORY COUNCIL

The highest decision making body within the Program is the Strategy Advisory Council (SAC). The SAC is a meritocratic committee responsible for making and coordinating decisions on behalf of the user and developer community around the Program, according to the conditions set forth in these bylaws. The SAC cannot be an agent on behalf of the [The Commons Conservancy], nor can any of the committees, working groups or individuals it may appoint.

The SAC acts independent from any other organisation. The SAC determines the Program's structure and processes, including the Program bylaws. The SAC is free to make or revise any decision, but SHOULD respect the law as well as any immutable conditions set forth in this document. The SAC (and anyone mandated by the SAC on its behalf) must act in good faith and in the common interest of the developer community and the wider user community of the Program.

Any amendment to these bylaws requires a full consensus of [TODO: at least three quarters of | the entire] SAC.

COUNCIL MEMBERSHIP

Members of the SAC (hereafter called: Council Members) by definition are required to be Regular Members (see article 2), and have the following tasks:

- to constructively challenge and contribute to the development of strategy within the Program.
- to scrutinise the performance of the Program in meeting agreed goals and objectives
- where necessary, remove friction and conflicts between developers
- to validate that technical and other information relevant to decision within the Program is accurate and that controls and systems of risk management are robust and defensible.

Council Members do not receive any salaries for their services, nor can they claim travel expenses or subsistence costs to attend any in-person meetings. In exceptional circumstances the SAC may assist in seeking external sponsorship to enable a certain Council Member to participate in activities within the Program.

A regular Council Membership term lasts 24 months. The founding SAC has appointed (TODO: three | up to half) of its constituting Council Members to serve a twelve month term, and (three | the other half) to serve a regular term of 24 months.

Subsequent Council Members are elected by "Regular Members" of the Program to staggered 2-

year terms according to the procedure set out in these Bylaws. Council Members are permitted to seek office for multiple terms.

This provides a balance between continuity, equal opportunities and renewal of qualities and competences.

Any Council Member MAY resign at any time by giving written notice, or notice by email, of his or her resignation to the Chair of the SAC, and such resignation shall take effect at the time specified therein, or, if not specified, at the time of its receipt.

Any vacancy on the SAC caused by death, resignation, removal or other cause MAY be filled by a simple majority vote of the remaining Council Members (even if less than a quorum). A Council Member so elected is entitled to hold office until the next SAC Elections, at which time a permanent successor SHALL be duly elected and qualified.

If significant harm to the organization has been committed by any Council Member, including any officials, he or she may be asked to step down by a simple majority vote of the entire board.

The SAC SHALL meet at least every twelve (12) months during an (offline or online) meeting. If the SAC does not fulfill this criterium, it is considered dysfunctional. Any Regular Member MAY trigger a vote among the membership to remove the longest sitting half of the Council Members.

OFFICIALS

PROGRAM CHAIR

The SAC elects the **FileSender** Program Chair from among its members to serve a term of 12 months. The duties of the chair are:

- Preparing the agenda for SAC meetings;
- Ensuring minutes of board meetings are taken.
- Chairing the SAC meetings;
- Reviewing and publishing meeting minutes;
- Scheduling and calling Elections;
- Sign official Program documents;
- Delegating signature authority when unavailable to sign official Program documents;

The chair has the casting vote within the SAC in case of a tie.

TECHNICAL LEAD

The Core Developers appoint a Technical Lead by simple majority vote, which is elected by the Core Developers. A Technical Lead serves a term of 24 months, and can stand for re-election. The Technical Lead is an ex officio voting member of the SAC.

The duties of the Technical Lead are:

- Oversee the code review process
- Scheduling votes on appointment of new Core Developers;

- Organise training for new Core Developers
- Organise succession planning for Core Developers and the Technical Lead
- Represent the Core Developers in the SAC

The Technical Lead has the ability, in exceptional circumstances, to overrule a technical decision by other Core Developers; such a decision MAY be appealed with the SAC. During the decision process on such an appeal, the Technical Lead refrains from voting herself or himself.

CORE DEVELOPERS

Core Developers are reliable contributors that have earned the privilege and responsibility to review and commit source code contributions from other developers into the software repositories of the Program, after scrutinising if that code adheres to the conditions set by the Program.

Core developers act as the technical gatekeepers to keep the Project software safe and maintainable, and provide the sustained effort that keeps the project going over time and do most of the day-to-day work in the Project. The Technical Lead is responsible for publishing the list of current Core Developers on the website of the Program. Core Developers MAY be listed pseudonymously.

Technical contributions from any developer (including Core Developers and incoming ad-hoc contributions from casual contributors) SHALL always be vetted by another Core Developer before they are accepted. Core developers SHALL sign a Fiduciary License Agreement (see Article 7).

Core Developers should strive to keep the interests of the Program separate of possible organisational affiliations, and SHALL make it clear when a potential conflict of interest threatens to emerge. In case a Core Developer violates this principle, she or he may be put on non-active.

OTHER NAMED ROLES

The SAC MAY create and abandon additional official positions, and appoint members to such positions through a simple absolute majority vote. The roles defined above SHALL NOT be abolished.

An example would be a Vice Chair, Secretary or liaison to some other organisation. The SAC MAY delegate the right to handle certain decisions to an individual officer, committee or taskforce, this does not reduce the responsibility of the SAC.

All members of the Program and any of the officials defined in these bylaws are understood to act as fiduciaries with regard to the Program, and their duties include, but are not limited to, the fiduciary duty of care and the fiduciary duty of loyalty. Observers have a tortious duty of care with regards to the Program.

VOTING PROCEDURE

Each Council Member is entitled to one (1) vote on each matter submitted to a vote of the SAC. The chair of the board casts the deciding vote in case of a tie.

A majority of Council Members constitutes a quorum for the transaction of business at any meeting.

Regular decisions of the SAC are taken by an absolute majority of half of the Council Members present at a quorate SAC meeting. However, proposed amendments to the bylaws require a qualified absolute majority of three-quarters of SAC members.

Any conflict of interest or apparent conflict of interest between the Program and Council members MUST be avoided.

Council Members undertake to declare any interest in any item under discussion and MAY be invited by the Chair to withdraw from meetings when business that concerns their personal interests or the interests of natural or legal persons close to them is being dealt with.

Decisions involving activities under which Council Members would have conflicts of interest that are of material significance to the Program and/or to the relevant Council Member require the approval of the entire SAC.

ESCALATION MECHANISM

The SAC formally has an advisory role towards the Board of [The Commons Conservancy] in all matters directly or indirectly concerning the Program.

Any decisions made or approved by the SAC within the scope of its mandate will enter into effect automatically by silent approval of the board of [The Commons Conservancy] within a fortnight after publication on the homepage of the Program, unless the board is petitioned by [at least ten] [an absolute majority of all] Regular Members of the Program with a challenge to a certain decision.

[The Commons Conservancy] will provide an adequate petitioning mechanism open to the members of The Program to gather votes.

When a decision is successfully challenged according to the procedure set out above, the SAC has the following options:

- to withdraw its decision entirely
- to seek independent mediation that leads to withdrawal by the challengers
- to call for a vote of the entire membership

ASSET MANAGEMENT

The SAC is morally responsible for all that is created within or contributed to **FileSender**.

Developers making non-trivial contributions to **FileSender** are requested to sign a Fiduciary License Agreement (FLA) with [The Commons Conservancy] as Fiduciary on behalf of the **FileSender** Program. This reciprocal agreement makes it possible to prevent fragmentation of rights. Note that the process only involves multiplying economic rights. So-called moral rights (e.g. authors right to be identified as author) remain with original author and are inalienable.

Use of the FLA gives the Program the benefit that that (part of) the assets within the project at some point in the future MAY be made available ('re-licensed') under a newer version of a certain license, or that an additional license approved by either the Free Software Foundation or the Open

Source Initiative is added. This could allow the project to collaborate or merge (in part) with other Free Software or Open Source projects with similar or adjacent goals, but an incompatible license.

Of course due to the irrevocable nature of the original licensing the software will always remain available as well under those original licence(s).

The software created within the Program is to remain publically available to users at no cost at all times. If anyone acts against these principles, all granted rights and licenses return to their original owners. That means any malicious actor will be effectively prevented from continuing any activity which is contrary to principles of openness and software freedom.

TRANSITION INTO THESE BYLAWS

The following decisions are ratified by the signatories when these Bylaws take effect:

- The founding SAC shall be comprised of the individuals acting as signatories of the initial version of these bylaws, the act of which also has established all signees as Regular Members.
- is appointed as the Technical Lead for a period of 12 months.
- The current committers of the project (... , ... , ...) shall be appointed as Core Developers, after signing a Fiduciary License Agreement.
- The SAC commits to identify and approach all contributors with non-trivial contributions, and ask them to sign the FLA, so that stewardship of the codebase can be transfered to the Program Conservancy.

Agreed on (date), (location) by: