

SAMPLE AGREEMENT ANNOTATIONS

Generic Agreement for Contributions to an Open Source Project

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License Term	Remarks
<p>Generic Software Foundation Software Grant and Contributor License Agreement</p> <p>("Agreement") http://www.Generic.org/licenses/ (v 0.1) [1, 2]</p> <p>Thank you for your interest in The Generic Software Foundation (the "Foundation"). In order to clarify the intellectual property license granted with Contributions from any person or entity, the Foundation must have a Contributor License Agreement (CLA) on file that has been signed and agreed by each Contributor, indicating agreement to the license terms below. This license is for your protection as a Contributor as well as the protection of the Foundation and its users; it does not change your rights to use your own Contributions for any other purpose.</p> <p>This version of the Agreement allows an entity [3] (the "Corporation") to submit Contributions to the Foundation, to authorize Contributions submitted by its designated employees to the Foundation, and to grant copyright and patent licenses thereto.</p> <p>By accepting the CLA, You are agreeing to be bound by its terms. If You want to accept this CLA, complete the form completely, print a copy for Your records, and when ready, press the "Accept" button at the end of this form on this webpage after filling in the blanks in the form text below.</p>	<p>[1] Note: This is a sample and not a real website.</p> <p>[2] Using components from real Open Source or Free Software CLA's. The All Seen Alliance agreement is licensed under the Creative Commons Attribution 4.0 International License. You are free to use this form and modify it but please continue to provide attribution to the Apache Foundation, the all Seen alliance and the Creative Commons. See https://www.apache.org/licenses/cla-corporate.txt , https://allseenalliance.org/sites/default/files/pages/files/allseen_alliance_optional_contribution_agreement_20131105.pdf and https://creativecommons.org/licenses/by/4.0/ for more information.</p> <p>[3] Consider whether you want to have an agreement that has different terms for Individuals that submit Contributions on their own. Do you want the individual committed too if the contribution is a corporate contribution? Although this concern is that there is no clear way to signify which individuals are "designated employees," this agreement solves this problem in section 4a. If it did not, the corporation could be subject to risk of uncontrolled contributions via apparent authority of anyone with a corporate email address. From the project's point of view, this could be a failure of rights transfer in the making, risking real control over the whole set of rights it is seeking through this agreement, if the corporation merely claims that a particular contribution was not authorized because some employee who made it was not designated. Also, using language like this in someone else's CLA risks your company losing control over contributors if you are not careful outlining specific persons who are entitled to contribute to a project with such a CLA. Also should identify carefully who will sign for the company. The CLA should</p>

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<p>If necessary, you may send an original signed Agreement to The Generic Software Foundation, Dept. Snail-mail CLA forms, Anytown, IA 00001, U.S.A.</p> <p>Please read this document carefully and keep a copy for your records, filling in the blanks below and clicking the ACCEPT button on the signature line at the end of this form.</p> <p>Your Name:</p> <p>Corporation name:</p> <p>Corporation address:</p> <p>E-Mail:</p> <p>Telephone:</p> <p>Fax:</p> <p>You accept and agree to the following terms and conditions for Your present and future Contributions [4] submitted to the Foundation. In return, the Foundation shall not use Your Contributions in a way that is contrary to the public benefit or inconsistent with its nonprofit status and bylaws in effect at the time of the Contribution.[5] Except for the license granted herein to the Foundation and recipients of software distributed by the Foundation, You reserve all right, title, and interest in and to Your Contributions.</p> <p>1. Definitions.</p> <p>"You" (or "Your") shall mean the copyright owner or legal entity authorized by the copyright owner that is making this Agreement with the Foundation. For legal entities, the</p>	<p>point to the forms which should have detail over who can contribute and how they will do it if you want to be clear about that.</p> <p>[4] This agreement covers future submissions so that repeated agreements will not be necessary. Consider whether your client as contributor will want to bind its future contributions. Can you control your corporate client's employee contributions in the future? Note often corporations choose to put in place open source contribution policies for their own employees so that they can manage risk with such future grants in mind (as well as other risks to participating in open source communities). This is an administrative cost as well as potential business risk that should be factored in when agreeing to a future grant. As for representing the project, this coverage is a positive, unless a corporate contributor balks at its inability to control contributions in the future.</p> <p>[5] What will the project do if the project changes its view on public benefit? How do you track the code contribution vs that change in view, status or bylaws, and how does it deal with that? What is the contributor's remedy for this? Moral rights issues? Probably useful to leave this out since it creates an unknown contingency and need for tracking.</p>
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<p>entity making a Contribution and all other entities that control, are controlled by, or are under common control with that entity are considered to be a single Contributor. [6] For the purposes of this definition, "control" means (i) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (ii) ownership of fifty percent (50%) or more of the outstanding shares, or (iii) beneficial ownership of such entity.</p> <p>"Contribution" [7] shall mean the code, documentation or other original works of authorship expressly identified in Schedule B, as well as any original work of authorship, including any modifications or additions to an existing work [8], that is intentionally submitted by You to the Foundation for inclusion in, or documentation of, any of the products owned or managed by the Foundation (the "Work"). [9] For the purposes of this definition, "intentionally submitted" means any form of electronic, verbal, or written communication sent to the Foundation or its representatives, including but not limited to communication on electronic mailing lists, source code control systems, and issue tracking systems that are managed by, or on behalf of, the Foundation for the purpose of discussing and improving the Work, but excluding communication that is conspicuously marked or otherwise designated in writing by You as "Not a Contribution." [10] Furthermore, for the purposes of definition, the Work means the product[s] owned or managed by the Foundation that You are contributing to.</p> <p>2a. Grant of Copyright License. Subject to the terms and conditions of this Agreement, You hereby grant to the Foundation and to recipients of</p>	<p>[6] Definition for the entities that are covered later by copyright and patent license grants. Read carefully the definition of "control", which determines which entities fall within the license grant, to cover any complex corporate structures. This one is pretty broad and should cover most, obligating all relevant affiliates, and maybe some which are not.</p> <p>[7] Defines the breadth of the contribution that is subject to copyright and patent licenses.</p> <p>[8] Creates boundaries on whether a work is a Contribution or not.</p> <p>[9] Does not define the "Work" well: ..." any of the products owned or managed by the Foundation (the "Work")." What does this mean? Will you be granting patent licenses to any use of what you contribute by the Foundation? Or will it be just to the file? Or what the file is combined with in the project to which the file belongs? It would be useful to specify that a Work is going to be just the code file or the whole program, or perhaps all the files that implement the functionality that's modified, and whether it's date limited to the date of contribution. Think about what's reasonable from the perspective of the contributor who will be giving up rights. How in your situation is it clear what the scope of the Work is? Here there are unknowable "any... products ...of the foundation" which may not even need to be known to the contributor.</p> <p>[10] Defines methods of submission that are used for sending the contribution to the Foundation.</p>
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<p>software distributed by the Foundation [11] a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable copyright license to reproduce, prepare derivative works of, publicly display, publicly perform [12], sublicense [13], and distribute Your Contributions and such derivative works.</p> <p>2b. Copyright Grant-Back License. [14] The Generic Foundation hereby grants to You a non-exclusive, irrevocable, perpetual, worldwide, royalty-free, sublicensable and transferable copyright license to use, copy, prepare derivative works of, modify, distribute directly or indirectly through multiple tiers, publicly perform and publicly display by all means now known or later discovered, and/or otherwise fully exploit any derivative works of Your Contribution or modifications created to Your Contribution for any purpose or use.</p> <p>3. Grant of Patent License. [15] Subject to the terms and conditions of this Agreement, You hereby grant to the Foundation and to recipients of software distributed by the Foundation a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable (except as stated in this section) patent license to make, have made, use, offer to sell, sell, import, and otherwise transfer the Work [16], where such license applies only to those patent claims licensable by You that are necessarily infringed by Your Contribution(s) alone or by combination of Your Contribution(s) with the Work to which such Contribution(s) were submitted at the time of submission. If any entity institutes patent litigation against You or any other entity (including a cross-claim or counterclaim in a lawsuit) alleging that your Contribution, or the</p>	<p>[11] Clarifies the scope of who receives the copyright grant. Typically, a licensee cannot sublicense the work. Be sure that the wording here matches the open source license that you distribution your product under.</p> <p>[12] Exclusive rights under copyright law, for which the copyright license is being granted. Again, be sure that the wording here matches the open source license that you distribution your product under.</p> <p>[13] Sublicensing is included in the grant. As noted above, a licensee cannot sublicense a work to others, unless the right to sublicense is specifically stated.</p> <p>[14] Since this is not an assignment of rights to the Foundation, the Contributor retains ownership and is granting a license to the Foundation. The Foundation is granting back a license to the contributor for any derivative works or modifications made based on the contributor's work. Note that this grant back includes a "use" license, which is patent-related, not copyright-related, even though the word "use" is in many OS license grant clauses without clear patent licensing intent – See the MIT license or BSD licenses for examples. Also, if this agreement is changed to an assignment, the grantback of the contributor's work should be included.</p> <p>[15] Contributor's patent license is to the Foundation, and to recipients of the software from wherever they get it downstream from a Foundation distribution. This clarifies which rights are licensed. In the past, there have been issues related to implied patent licenses in open source licenses – see comment 14. Be sure that the wording here matches the open source license that you distribution your product under.</p> <p>[16] Although it may be easy to miss, the grant covers NOT JUST THE CONTRIBUTION's functionality but the functionality of the work "by Your Contribution(s) alone or by combination of Your Contributions with the Work to which such Contribution(s) were submitted."</p>
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<p>Work to which you have contributed, constitutes direct or contributory patent infringement, then any patent licenses granted to that entity under this Agreement for that Contribution or Work shall terminate as of the date such litigation is filed. [17]</p> <p>You:</p> <p>4a. Represent that You are legally entitled to grant the above license. You represent further that each employee of the Corporation designated on Schedule A below (or in a subsequent written modification to that Schedule) is authorized to submit Contributions on behalf of the Corporation. [18] (In Item 10, check CLA Corporate.)</p> <p>4b. Represent that you are legally entitled to grant the above license. If your employer(s) has rights to intellectual property that you create that includes your Contributions, you represent that you have received permission to make Contributions on behalf of that employer, that your employer has waived such rights for your Contributions to the Foundation, or that your employer has executed a separate Corporate CLA with the Foundation. [19] (In Item 10, check CLA Individual.)</p> <p>5. You represent that each of Your Contributions is Your original creation (see section 7 for submissions on behalf of others). [20]</p> <p>6. You are not expected to provide support for Your Contributions, except to the extent You desire to provide support. You may provide support for free, for a fee, or not at all. Unless required by applicable law or agreed to in writing, You provide Your Contributions on an "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, either</p>	<p>[17] By revoking the patent license, this part gives the Contributor the right to countersue for patent infringement if another entity claims that the contribution infringes the other entity's patents. It also opens up the patent claimant to loss of patent licenses from ALL Contributors. There is no cure provision either. It is an automatic termination and it's not limited to contributions.</p> <p>[18] Binds the person submitting the Contribution to a statement that s/he has the right to do so on behalf of the Corporation, and gives the corporate entity an ability to limit those who would be entitled to bind it to this agreement. (Corporation is defined on the first page).</p> <p>[19] Clarifies that the person submitting the Contribution has the right to do so, and if the person is employed, then the employer has given permission for the employee to make the submission. CLA is defined on the first page. Allows for individual to sign an Individual CLA even when on the list of Corporate contributors.</p> <p>[20] Statement that the contribution is contributor's own, and refers to section 7, if not. Does not deal with joint contributions.</p>
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<p>express or implied, including, without limitation, any warranties or conditions of TITLE, NON-INFRINGEMENT, MERCHANTABILITY, or FITNESS FOR A PARTICULAR PURPOSE. [21]</p> <p>7. Should You wish to submit work that is not Your original creation, You may submit it to the Foundation separately from any Contribution, identifying the complete details of its source and of any license or other restriction (including, but not limited to, related patents, trademarks, and license agreements) of which you are personally aware, and conspicuously marking the work as "Submitted on behalf of a third-party: [named here]". [22]</p> <p>8. [23] It is your responsibility to notify the Foundation when any change is required to the list of designated employees authorized to submit Contributions on behalf of the Corporation, or to the Corporation's Point of Contact with the Foundation.</p> <p>9. Notice of Export Control Law. Cryptographic software is subject to the US government export control and economic sanctions laws ("US export laws") including the US Department of Commerce Bureau of Industry and Security's ("BIS") Export Administration Regulations ("EAR", 15 CFR 730 et seq., http://www.bis.doc.gov/). By You making a Contribution or other submission of software or technology related to encryption to the Generic Foundation and/or inclusion on the Generic Foundation web site, You may also be subject to US export laws, including the requirements of license exception TSU in accordance with part 740.13(e) of the EAR. It is Your responsibility to ensure compliance with US export laws when making a Contribution or other submission of</p>	<p>[21] Warranty disclaimer statement from Contributor enabled by this CLA.</p> <p>[22] Statement for contributions from third parties that may be incorporated in contributor's contribution. Note that because it is Your contribution, You would be bound to the patent license clause for this other person's work included in Your Contribution.</p> <p>[23] Attempt to shift blame for contributions made by unauthorized employees. Nevertheless take it as a warning to notify the Foundation, when a project contributor is terminated, to update the list.</p>
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<p>software and technology to the Foundation. Software and/or technical data subject to the US export laws may not be directly or indirectly exported, re-exported, transferred, or released ("exported") to then current US embargoed or sanctioned destinations. US export laws prohibit the acceptance of contributions from nationals of embargoed and sanctioned countries. In addition, software and/or technical data may not be exported to an entity barred by the US government from participating in export activities. Denied persons or entities include those listed on BIS's Denied Persons and Entities Lists, and the US Department of Treasury's Office of Foreign Assets Control's Specially Designated Nationals List. The country in which you currently are located may have restrictions on the import, possession, use or re-export of encryption software. You are responsible for compliance with the laws where You are located.</p> <p>10. [24] I understand that any code submissions will be subject to review before inclusion in a Foundation project, and will be subject to sign off by contributors using the form Developer's Certificate of Origin below.</p> <p><input type="checkbox"/> CLA Corporate (see 4a above) <input type="checkbox"/> CLA Individual (see 4b above)</p> <p><input type="checkbox"/> I Accept and intend to be bound by the terms and conditions of this Contributor License Agreement by either clicking this Accept button or sending a fully executed copy to the address of the Generic Software Foundation as listed above.</p> <p>Signature line for hard copy: _____</p>	<p>[24] Common way that OS projects get comfortable without using CLA's. Provides some individual responsibility for their individual contributions. Trust is a key part of the OS project's nature and these sorts of mechanisms, even without CLA's, provide much of the grease that allows them to function.</p>
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<p>Printed name:</p> <p>_____</p> <p>_____</p> <p>Schedule A [25]</p> <p>[Initial list of designated employees. NB: authorization is not tied to particular Contributions.]</p> <p>Schedule B [26]</p> <p>[Identification of Works that are being contributed. Would be left blank or omitted if there is no Work being contributed at this stage.]</p> <p>Developer's Certificate of Origin 1.1</p> <p>By making a contribution to this project, I [27]certify that:</p> <p>(a) (i) The contribution was created in whole or in part by me and I have the right to submit it under the open source license indicated in the file; or</p> <p>(ii) The contribution is [28] based upon previous work that, to the best of my knowledge, is covered under an appropriate open source license and I have the right under that license to submit that work with modifications, whether created in whole or in part by me, under the same open source license (unless I am permitted to submit under a different license), as indicated in the file; or</p> <p>(iii) The contribution was provided directly to me by some other person</p>	<p>[25] A list of designated employees who are authorized to make contributions on behalf of the Corporation. See Section 4a above.</p> <p>[26] Schedule of works that are being contributed.</p> <p>[27] Consider legal significance of Certify vs represent or warrant. Use the one that works best for your situation. Note however as you review this section, that this is the statement all code submitters to the Linux Kernel make on submission of their code, and also many other Open Source projects are now demanding it.</p> <p>[28] How would an individual contributor know these facts and be able to represent to them? How would he know that he had these rights in paragraph (b)? From the perspective of representing a contributing entity, I would not want that entity's employees making this determination, and if it had to, you should assure that it has processes in place to make sure they are accurate before allowing it to make contributions.</p>
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<p>who certified (i) or (ii) and I have not modified it.</p> <p>(b) I understand and agree that this project and the contribution are public and that a record of the contribution (including all personal information I submit with it, including my sign-off) is maintained indefinitely and may be redistributed consistent with this project or the open source license(s) involved.</p>	
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