

EVERGREEN 2019 CONFERENCE HOSTING AGREEMENT

This Conference Hosting Agreement (“Agreement”) dated May 11, 2018 (“Agreement Date”) is between Software Freedom Conservancy, a US 501(c)(3) public charity having a place of business at 137 Montague Street, Suite 380, Brooklyn, NY 11201-3548 USA (“Conservancy”) and MOBIUS, a US 501(c)(3) corporation having a place of business at 111 E. Broadway STE 220, Columbia, MO, 65203 (“MOBIUS”)(each, a “Party”; together, “the Parties”).

WHEREAS Conservancy is the fiscal sponsor and corporate home of Evergreen, a free and open source software project, and has the sole right to license the use of the Evergreen literary mark, logo and related marks as described in Appendix A (the “Trademarks”); and

WHEREAS MOBIUS desires to use the Trademarks to organize and host a conference in FIXME-PLACE in FIXME-MONTH, 2019 (the “Conference Date”) regarding the Evergreen project and software (“the Conference”), in accordance with Conservancy’s purpose of promoting the use, development, and improvement of free and open source software;

NOW, THEREFORE, in consideration of the above premises and mutual covenants herein contained, and for good and valuable consideration, the Parties hereto agree as follows:

- 1 **MOBIUS’S HOSTING SERVICES.** MOBIUS agrees to organize and host the Conference, and manage all necessary logistics associated with hosting the Conference, including project management, financial management of any associated budgets, registration pricing, event management, registration and ticket sales, Conference sponsor management, delegate management, venue management, contractor and vendor management, and on-site management. In particular, MOBIUS agrees to provide Conservancy with the following services:
 - 1.1 **Group Rate for Conference Lodging.** MOBIUS shall make a good faith effort to identify a lodging provider for Conference attendees and negotiate a group conference rate for attendees with that lodging provider.
 - 1.2 **Collection and Management of Funds.** MOBIUS shall manage the collection of all registration and sponsorship revenues associated with the Conference, and shall be responsible for managing all tax-related issues associated with the receipt of said revenues.
 - 1.3 **Code of Conduct.** MOBIUS agrees to institute and enforce a code of conduct for the Conference.
 - 1.4
- 2 **CONSERVANCY’S SUPPORT.** Conservancy expects that volunteers from the Evergreen project will assist MOBIUS with the Conference and Conservancy agrees to provide MOBIUS with the following additional support, in support of hosting the Conference and in furtherance

of Conservancy’s charitable mission:

- 2.1 **Domain Access.** Conservancy will provide MOBIUS access to the *evergreen-ils.org* domain for the limited purpose of developing a website to promote the Conference.
- 2.2 **Input on Conference Content.** Conservancy’s Evergreen project will provide input on content, content strategy, and program design, with considerations made towards promoting diversity amongst presenters and attendees.
- 2.3 **Assessing Talk and Presentation Proposals.** Conservancy’s Evergreen project will assess proposed talks and presentations.
- 2.4 **Connections to Sponsors.** Conservancy’s Evergreen project will introduce MOBIUS to potential Conference sponsors.
- 2.5
- 2.6 **No Competing Events.** Conservancy agrees not to schedule or sponsor any event in connection with the Evergreen project, software or protocols during a time that conflicts or overlaps with any official event scheduled during the Conference.

3 TRADEMARK LICENSE.

- 3.1 **Scope of License.** Subject to the terms of Section 6, Conservancy grants to MOBIUS the following licenses:
 - 3.1.1 Conservancy grants to MOBIUS a worldwide, non-exclusive, non-transferable, non-assignable license to use the Trademarks for the sole purpose of marketing and organizing the Conference up to and through the dates of the Conference.
 - 3.1.2 Conservancy further grants to MOBIUS a perpetual, worldwide, non-exclusive, non-transferable, non-assignable license to use the Trademarks solely to refer to the Conference on MOBIUS's website for historical purposes.
- 3.2 **Use of the Trademarks.** MOBIUS hereby acknowledges and agrees to use the Trademarks in accordance to the following provisions:
 - 3.2.1 **Use of Trademarks in Accordance with Conservancy's Mission.** MOBIUS agrees to use the Trademarks in a matter consistent with Conservancy's mission of promoting the use, development, and improvement of free and open source software.
 - 3.2.2 **Field of Use.** MOBIUS agrees to use the Trademarks only in the following ways:
 - 3.2.2.1 referring to software built from source code provided by the Evergreen project in substantially unmodified form;
 - 3.2.2.2 referring to modifications of said software, when clearly marked as a “modification of” or “derivative of” Evergreen;
 - 3.2.2.3 referring to the Evergreen project itself, its products, or its protocols;

- 3.2.2.4 referring to, promoting and conducting the Conference; and
- 3.2.2.5 designing and selling t-shirts, memorabilia, and other conference-related merchandise for sale and/or distribution at the Conference, subject to Conservancy's review of the item's design and written approval.

3.2.3 **Use of Graphic Marks.** MOBIUS agrees to use Evergreen graphic marks and logos in their entirety, and as presented and used in a style template to be provided by Conservancy. MOBIUS agrees not to break up, crop, dissect, recolor or otherwise modify the Evergreen graphic marks and logos.

3.2.4 **Use of Literal Marks.** MOBIUS agrees to use the literal marks “Evergreen”, “Evergreen-ILS” and “Evergreen International Conference” in their entirety, without abbreviation or modification including, but not limited to, modification of the mark's capitalization. MOBIUS agrees not to add letters to, create compound words, or create portmanteaus using the “Evergreen”, “Evergreen-ILS” and/or “Evergreen International Conference” literary marks.

3.3 **Prohibited Uses of the Trademarks.** MOBIUS hereby acknowledges and agrees that this license does not grant the use of the Trademarks in any way except as expressly granted herein, subject to Conservancy's written approval. MOBIUS hereby acknowledges that it is prohibited from using the Trademarks in the following ways:

- 3.3.1 in any manner likely to cause confusion as to the identity and/or origin of the Evergreen project and any associated software, products, or protocols;
- 3.3.2 any promotion of other events, conferences and/or meetings that relate to the Evergreen project without Conservancy's written approval;
- 3.3.3 any use that states or implies that the Evergreen project, software, products and/or protocols favor one distribution, platform, product or company over any other;
- 3.3.4 any use that implies a designated successor for the Evergreen project; or
- 3.3.5 in any use inconsistent with Conservancy's mission of promoting the use, development, and improvement of free and open source software.

3.4 **Limited Right to Sublicense.** Conservancy grants to MOBIUS the limited right to sublicense the use of the Trademarks to sponsors, vendors and participants in the Conference at no cost, subject to Sections 3.2 and 3.3.

3.5 **Acknowledgment of Ownership.** MOBIUS hereby acknowledges that Conservancy is the sole and exclusive owner of the entire right, title and interest in and to the Trademarks, including all associated goodwill.

3.6 **Covenant Not to Contest the Trademarks.** MOBIUS hereby covenants not to

attack the validity of the Trademarks, or engage in any conduct, directly or indirectly that would contest the Trademarks, any associated goodwill, or Conservancy's rights in and ownership of same in perpetuity.

3.7 **Covenant Not to Pursue Similar Marks.** MOBIUS hereby covenants not to use, register or apply to register any literary or graphic mark identical or confusingly similar to the Trademarks in any jurisdiction. MOBIUS further covenants not to register domain names that incorporate all or a portion of the Trademarks or that would otherwise cause a likelihood of confusion as to the source, ownership, sponsorship or affiliation of the content published or to be published under said domain names.

3.7.1 In the event that MOBIUS is found to be in violation of Section 3.7, Conservancy shall have sole discretion to compel MOBIUS to assign any violating literary marks, graphic marks, pending applications for same, and/or domain names to Conservancy at no cost to Conservancy.

3.8 **Trademark License Provided Without Warranty.** The Trademark is provided to MOBIUS "AS IS" and without warranty of any type or kind. Conservancy disclaims any and all warranties, whether statutory, express, or implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose and any warranty of noninfringement of third party rights.

3.9 **Cessation of Rights Upon Termination.** Upon the termination of this Agreement, the license granted hereunder shall immediately terminate.

4 PERSONAL DATA.

4.1 **Registration Data.** MOBIUS acknowledges that it will receive and temporarily store personal data associated with Conference registrants, attendees, speakers, presenters, and sponsors; including, but not limited to, email addresses, identity of employers, and job titles ("Personal Data"). MOBIUS agrees to provide Conference registrants, attendees, speakers, presenters, and sponsors with an option to affirmatively indicate their express permission for either MOBIUS or Conservancy to store their Personal Data and to contact them ("Permitted Personal Data"). MOBIUS agrees to share Permitted Personal Data with Conservancy within sixty (60) days after the end of the Conference. MOBIUS agrees not to share any Personal Data collected during the hosting of this Conference with any third parties without the relevant individuals' express written consent. MOBIUS shall destroy all Personal Data other than Permitted Personal Data in a reasonable time.

4.2 **Conference Photos.** MOBIUS grants to Conservancy a license to use MOBIUS's photos taken at the Conference for the limited purpose of marketing and educating the public about Conservancy's charitable mission. Should Conservancy use any of MOBIUS's photos on its websites and/or printed materials, Conservancy agrees to provide accurate photo credits and copyright citations for MOBIUS.

5 FEES AND REPORTING.

- 5.1 **MOBIUS's Trademark License Fee.** MOBIUS agrees to pay Conservancy **two hundred US dollars (\$200)** to Conservancy, earmarked for the Evergreen project.
- 5.2 **Conference Budget.** MOBIUS agrees to provide Conservancy a final "Conference Budget" for Conservancy's approval by FIXME-DATE, detailing the projected budget for the conference. The Conference Budget as approved by Conservancy will be incorporated to this agreement by reference. MOBIUS further agrees not to deviate from any expense line item in the Conference Budget by more than 15% without Conservancy's written approval.
- 5.3 **Conference Report.** Within 60 days of the end of the Conference, MOBIUS agrees to provide Conservancy a "Conference Report" containing itemizations of all specific expenses and revenues associated with the Conference, a calculation of Gross Profits, and a calculation and summation of all payments to be made under this Section. MOBIUS agrees to provide Conservancy with the receipts and/or documentation associated with any specific expense upon Conservancy's written request. Conservancy agrees to provide MOBIUS with either written approval of or written questions regarding the Conference Report within seven (7) days of receipt. In the event that Conservancy has questions regarding the Conference Report, the Parties agree to discuss in good faith towards creating a mutually-agreed upon Conference Report.
- 5.4 **Gross Profit.** IMOBIUS agrees to donate to the Evergreen Project of Conservancy any Conference Gross Profits generated by the Conference, as documented in the Conference Report. "Conference Gross Profits" shall be defined as all attendee registration revenue and all sponsorship revenue associated with the Conference, less any Conference-specific expenses incurred by MOBIUS. MOBIUS's general expenses – including administrative expenses, overhead that is not directly and solely attributable to the Conference, and/or staff time, other than as articulated in the Conference Budget or as otherwise approved by Conservancy and the Evergreen Project in writing – shall not be included in the calculation of Conference Gross Profits.
- 5.5 **Conservancy Venue Payment.** Conservancy shall transfer an amount of **three thousand seven hundred and fifty dollars (\$3,750.)** for MOBIUS to reserve the venue.
- 5.6 **Payment.** If, after the Parties have agreed to the Conference Report, the Parties determine that a balancing payment is due to MOBIUS, MOBIUS shall submit an invoice to Conservancy. Conservancy shall remit payment within thirty (30) days of receipt of an invoice. If the Parties determine that a balancing payment is due to Conservancy, MOBIUS shall remit payment by check or electronic funds transfer to Conservancy within 30 days of the receipt of Conservancy's written approval of the Conference Report. If MOBIUS desires to remit payment by check, the check shall be remitted to:

Software Freedom Conservancy
137 Montague Street
Suite 380
Brooklyn, NY 11201

Payment can also be remitted via electronic funds transfer to Conservancy, using the following SWIFT protocols:

Field 57	Pay To:	First Republic Bank 111 Pine Street San Francisco, CA 94111
	SWIFT Code:	MLBTUS33FRB
	ABA:	//FW321081669
Field 59	Client Account Name:	Software Freedom Conservancy
	Client Account Number:	97300702721
Field 70	Reference:	Evergreen Conference

6 CONSERVANCY'S RIGHT TO TERMINATE.

- 6.1 **Notice of Termination.** Conservancy reserves the right to terminate this Agreement with 15 days' written notice, up until 15 days before the Conference Date.
- 6.2 **Termination Report.** In the event that Conservancy terminates, MOBIUS shall provide Conservancy a "Termination Report" containing itemizations of all nonrefundable, non-recoupable, Conference-specific expenses incurred by MOBIUS before the date of termination. MOBIUS can, at MOBIUS's discretion, include a "Staff Time Fee," based on the number of days MOBIUS worked on the Conference up until the date of termination, billed at **two hundred fifty US dollars (\$250) per day**, up to **ten thousand US dollars (\$10,000)**. MOBIUS agrees to provide Conservancy with the receipts and/or documentation associated with the Staff Time Fee or any specific expense upon Conservancy's written request. Conservancy agrees to provide MOBIUS with either written approval of or written questions regarding the Termination Report within 7 days of receipt. In the event that Conservancy has questions regarding the Termination Report, the Parties agree to discuss in good faith towards creating a mutually-agreed upon Termination Report.
- 6.3 **Compensation for Expenses.** After the Parties have agreed to the Termination Report, MOBIUS shall submit an invoice to Conservancy for the total amount detailed in the Termination Report. Conservancy shall remit payment within 30 days of receipt of an invoice.

7 INDEMNITY AND LIMITATION OF LIABILITY.

- 7.1 Neither party may incur any liabilities on behalf of the other party, including but not limited to: taking on debt, making offers of employment, purchasing assets of any kind, making assurances to any third party of any kind, or entering into contractual relationships with any third party.
- 7.2 Neither Conservancy and its employees, nor any members, contributors, and volunteers otherwise affiliated with Evergreen project shall be liable for, and MOBIUS hereby releases them from, any claims for damage, loss, harm, or injury to the person, property, or business of MOBIUS and/or any of its visitors, officers, agents, employees, or other representatives, resulting from any reason in connection with the Conference.
- 7.3 Other than losses that result directly from a breach of the terms of this Agreement or as agreed in this contract, neither Party shall under any circumstances whatsoever be liable to the other Party for: loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

8 MISCELLANEOUS.

- 8.1 **Authority.** Each Party represents and warrants that the execution, delivery and compliance with the terms of this Agreement by such Party and consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate or other action and the agreements contained herein constitute valid and legally binding obligations and are enforceable in accordance with their terms, except to the extent that the enforceability thereof may be affected by the bankruptcy, insolvency or other laws of general application affecting the enforcement of creditors' rights and by general principles of equity.
- 8.2 **Waiver.** The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.
- 8.3 **Enforceability.** 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.
- 8.4 **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of New York, USA.

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

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the date above written.

Karen M. Sandler
Executive Director
Software Freedom Conservancy

FIXME
FIXME
MOBIUS

APPENDIX A

For the purposes of this Agreement, the licensed Trademarks shall include the following:

- Evergreen
- Evergreen-ILS
- Evergreen International Conference

The Evergreen logo:

