Post-Open License

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Preface

This is a really early draft, so don't expect it to make sense. I have not written the operating agreement, have not specified how payment processors work, and thus how anyone gets paid, and the payment algorithm is still hand-waving so far.

The Post-Open License is part of a program to create a software development sharing community similar to Free Software / Open Source, in which the developers are paid for some uses. Software under this license is not *Free Software* or *Open Source Software,* and should never be referred to as such.

A license has two purposes: to create a legally-binding understanding among the parties that agree to it, and to be parsed by a judge in court when any of the parties to the license choose to enforce it through a lawsuit. It thus must be understandable enough that all of the parties come to a "meeting of the minds", and precise enough that a judge will parse it as intended by the license creator and as expected by the parties to the license.

The rationale for creating a successor to Open Source is discussed in this video:
https://www.youtube.com/watch?v=vTsc1m78BUk
In short, it is meant to provide software that anyone can use for any purpose, while dealing with practices that are currently exploitative of Open Source developers and getting developers paid for certain uses. The typical individual will always be in compliance and may in practice not read the license, only those who produce income from the software must consent explicitly.

It is necessary to make use of a lawyer to tune the license text so that there *will* be confidence that it is likely to be parsed by a judge in court as the author intended. The author is *not* a lawyer, and has not yet put this license through the necessary legal review to establish that confidence.

This license text is not legal advice. Only a lawyer who is licensed in your locality and contracted to advise you can provide that advice.

Definitions

FINAL FORM is DATA or a PROGRAM in the form actually used by the end-user. In the case of a compiled PROGRAM, this is the binary executable and all other PROGRAMS that are combined with the PROGRAM before or during use. Thus, the FINAL FORM would include a compiled program and all libraries combined with it through any interface but a DESIGNATED BARRIER API, whether during compilation or at run-time via dynamic linking.

SOURCE CODE – is the statement of the FINAL FORM in the medium in which was created. For a PROGRAM this would be in a programming language, for DATA this would be a language used to specify data, or another modality used for the creation of DATA such as a copy of the original shots and

the edit list in an audio or video presentation. The form of SOURCE CODE required for compliance with this license is the highest-quality available form which is preferred for editing, without removal of comments or any information that facilitates the reading, processing, and development of the PROGRAM or DATA. SOURCE CODE must include all PROGRAMS and DATA necessary for transforming the PROGRAM or DATA into the FINAL FORM and installing it on the device upon which the FINAL FORM is distributed, except in the case that those components are identical copies of already-publicly-available PO LICENSED WORKS or COMPATIBLE OPEN SOURCE SOFTWARE. If you use INCOMPATIBLY LICENSED WORKS to produce the FINAL FORM, the SOURCE CODE must provide a way to perform that task without using INCOMPATIBLY LICENSED WORKS.

DATA is any information in any form that can be copied, read or transmitted by a computer.

A PROGRAM is the total set of instructions, usually created in the form of SOURCE CODE, combined in any manner other than through a DESIGNATED BARRIER API, that are necessary to perform a task upon the computer. Two or more PROGRAMS that are connected only through a DESIGNATED BARRIER API are considered to be separate programs.

The PO LICENSE or THIS LICENSE is this set of terms.

A LICENSED WORK is a PROGRAM or DATA to which the terms of the PO LICENSE are applied. In plural, LICENSED WORKS. PO LICENSED WORKS are the set of all LICENSED WORKS.

An API is any interface created for the purpose of connecting two or more PROGRAMS together and allowing a program to use the facilities of another PROGRAM.

A DESIGNATED BARRIER API is an API which the LICENSORS of the software have designated to be the boundary between two PROGRAMS. Two programs which communicate with each other only through a DESIGNATED BARRIER API shall be considered to be *separate* programs.

COMPATIBLE OPEN SOURCE SOFTWARE is any PROGRAM or DATA under a license which fulfills all of these terms:

1. It is not also available under the this license – in that case the PO LICENSE must be applied, so that the Open Source developers are LICENSORS and are paid for BILLED USES.

2. The license applied is accepted as "Open Source" by the Open Source Initiative (OSI) OR accepted as "Free Software" by the Free Software Foundation, and there must be no additional restrictions other than the text of that accepted license. There may be grants that waive some restrictions of the license.

3. The license applied is compatible with the terms of the Open Source Definition listed at https://licenseuse.org/ . This is because the OSI may change the version of the definition it uses, and may not rigorously follow the present definition.

4. It is compatible with the terms of this license, in that programs under the two licenses may be combined, used, and redistributed in compliance with all of the terms of both licenses, and that the Open Source license must not restrict the LICENSEES from collecting revenue for BILLED USES.

5. The exact version used must widely available to the public in SOURCE CODE form OR PUBLISHED by YOU in SOURCE CODE form.

6. Explicitly prohibited are:

   1. Contractual terms used to restrict works which would be in the public domain in some jurisdictions.

   2. Any additional agreements which restrict the rights that any parties have under the license, which modifies the terms of the license, or that has any penalty or deleterious effect predicated upon the exercise of rights under the Open Source license or the PO LICENSE.

An INCOMPATIBLY LICENSED WORK is any PROGRAM or DATA which is neither PO LICENSED OR COMPATIBLE OPEN SOURCE SOFTWARE. For example "proprietary software", a PROGRAM or DATA for which all rights are reserved, or software under an incompatible license such as the GPL, which prohibits some terms of this license.

POST-OPEN OPERATING AGREEMENT is a separate agreement with its text at (specify the URL here), which is entered into by the LICENSORS.

LICENSORS are the entities that offer rights under this license.

The UNMODIFIED NAME is the names or marks that you are authorized to use by this license only for a version of the PROGRAM OR DATA which is an identical copy of the version distributed by the LICENSORS. Rights to it may be restricted under trademark law, or not, but your use of it is governed by this agreement in any case.

The MODIFIED NAME is the names or marks that you are authorized to use by this license to refer to the PROGRAM OR DATA in any way whatsoever. Rights to it may be restricted under trademark law, or not, but your use of it is governed by this agreement in any case.

TRADEMARK RIGHTS are rights applied to the use of protected marks or names, like the UNMODIFIED NAME and MODIFIED NAME. There may be names or marks which the LICENSORS reserve to themselves. This agreement only grants rights regarding the UNMODIFIED NAME and the MODIFIED NAME.

PROTECTED RIGHTS are any rights under laws applying to copyright, patent, moral rights, mask rights, trademark rights, and any additional forms of right, present or future, which might have an effect upon SOURCE CODE, a PROGRAM, DATA or the FINAL FORM.

YOU are any entity entering into this license and their successors and assigns. YOU also includes any entity associated with you which holds patents on your behalf or engages in the use of PROTECTED RIGHTS under this license on your behalf, and any entity which exercises control over YOU or such entities. In the case that a natural person is not legally able or allowed to enter into a contract, YOU includes the entity legally responsible for that person.

The LICENSEES are all entities to which YOU applies, for all PO LICENSED WORKS.

REVENUE FOR A GOOD OR SERVICE is the total income collected from the end user or on their behalf, by any entity, for the good or service which you provide using the LICENSED WORK.

REVENUE FOR A GOOD OR SERVICE includes payments, rents, memberships, donations, and any other fees paid. This term is explicitly written to cover attempts to shield revenue from billing by splitting or otherwise manipulating business entities.

TOTAL REVENUE includes the total money collected by YOU and other entities controlled by YOU, for any purpose.

PROVIDING LICENSED WORKS AS A SERVICE is exercising PROTECTED RIGHTS to provide a service for a customer, where the functionality provided to that customer or executed on the customer's behalf is predominantly the functionality of a LICENSED WORK or LICENSED WORKS.

A PAYMENT PROCESSOR collects revenue for BILLED USES and distributes it to LICENSORS, accepts works for PUBLICATION and makes them publicly available, and in general performs services to facilitate PO LICENSED WORKS under the POST-OPEN OPERATING AGREEMENT.

LICENSOR REVENUE is the collection of income by a LICENSOR from a PAYMENT PROCESSOR for BILLED USES under this agreement.

BILLED USES are specific uses of a LICENSED WORK mentioned below. You are encouraged to make use of as many PO LICENSED WORKS as you wish for the same rate. If the rate is 1%, you pay 1% whether you use 1 PO LICENSED WORK for a BILLED USE, or 1000.

BILLED USES do not apply to PO LICENSED WORKS that are exclusively authored by YOU, but DO apply as soon as other entities join in the development of those works.

1. VOLUNTARY PAYMENT: YOU may voluntarily pay a self-determined amount for any exercise of PROTECTED RIGHTS which is not covered below.

2. INCOMPATIBLE COMBINATION: Any combination of a LICENSED WORK with a INCOMPATIBLY LICENSED WORK, regardless of how it is used, copied, or performed. This is billed at the rate of 1/2% of the TOTAL REVENUE of the entity making use of the LICENSED WORK, or the rate billed for any uses of such work below, whichever is greater.

3. SALE: Any sale, rental, provision under a subscription program, or other provision of a copy of the LICENSED WORK which produces revenue from a customer. This is billed at 1% of the TOTAL REVENUE FOR A GOOD OR SERVICE.

4. DIGITAL RESTRICTIONS MANAGEMENT: Any sale, rental, or other provision of a copy of the LICENSED WORK in a hardware device which:

    1. Uses technical means or legal terms which prevent or prohibit reverse-engineering by the end-user.

    2. Uses technical means to prevent the end-user from replacing the copy of any PO LICENSED WORK with their own version and exercising all facilities and capability of the originally-provided version. For example any cryptographic system which prevents a device from running modified software, where the cryptographic key is not in the possession of the end-user. Such systems are sometimes called "content protection", "secure boot", "digital rights management", "trusted computing", and "trusted platform".

This is billed at 10% of TOTAL REVENUE FOR A GOOD OR SERVICE. We, the LICENSORS, need hardware devices upon which we and our users can modify and run our software. We encourage you to make your hardware device susceptible to reverse-engineering and modification, and thus pay a lower rate.

5. ANCILLARY SERVICE: Any service connected with the software where PROTECTED RIGHTS of LICENSORS other than YOU, including use, must necessarily be exercised in order to create or sell the service. For example: offering a certification that software meets a particular standard or requirement, support or modification of the software, or the provision of documents which are mainly concerned with the software such as manuals and tutorials. This is billed at 1% of the TOTAL REVENUE FOR A GOOD OR SERVICE.

6. WARRANTY: Offering or **accepting** a warranty, insurance, indemnification, or an offer of financial reimbursement or performance of a service in the event of the failure or mis-performance of PO LICENSED SOFTWARE. YOU must pay for this use or the other party may pay on your behalf. This is billed at 1% of the TOTAL REVENUE FOR A GOOD OR SERVICE.

7. PROVIDING LICENSED WORKS AS A SERVICE is billed at 10% of TOTAL REVENUE FOR A GOOD OR SERVICE, in consideration that the LICENSORS provide most of the value.

8. LICENSEE OPERATIONS: Income from our PAYMENT PROCESSORS is debited 1% automatically on the assumption that their operation makes broad use of PO LICENSED SOFTWARE belonging to other LICENSEES, and those licensees should be paid.

9. LICENSEES NOT EXEMPT: Licensees may also engage in other businesses than LICENSEE INCOME, and will pay for BILLED USES of PO LICENSED SOFTWARE other than their own, when they occur.

MODIFICATION is any alteration of the LICENSED WORK, or any combination of the LICENSED WORK with anything but COMPATIBLE OPEN SOURCE SOFTWARE, regardless of the means of combination.

PUBLISH is to make a PROGRAM or DATA publicly available in SOURCE CODE form. PUBLICATION is the act of PUBLISHING a PROGRAM or DATA. Acceptable means of PUBLICATION are the deposition of the work with a PAYMENT PROCESSOR who will make it publicly available, or placement of the PROGRAM or DATA on a site which offers public access to that software such as https://github.com/, and can be expected to continue to offer that access.

BEST PRACTICES are practices that make compliance easier. YOU should keep all PO LICENSED WORKS in a particular PROGRAM or DATA together in a single location, which facilitates being able to tell which ones you are using when it is time to provide REQUIRED INFORMATION. We suggest a directory called "po_licensed". If you download the LICENSED WORKS at build-time or use any means which prevents you from keeping the packages in a directory called "po_licensed", we suggest that you maintain a file listing the works that you download. We suggest that this be called "po_licensed/PACKAGES.txt", and that it include one Official Package Name and URL per line. We encourage that your build software make use of this file, so that it remains consistent with your actual

use. Remember that development tools such as compilers (if they are PO LICENSED WORKS) and libraries are also part of the PROGRAM and should be listed. You must not remove any statements of PROTECTED RIGHTS or any license statements, as such actions may be infringing. You should not employ any automatic facilities that mark files as copyrighted by YOU automatically if such facilities will improperly mark PO LICENSED WORKS.

REQUIRED INFORMATION is a statement, for each BILLED USE, of the LICENSED WORKS YOU make use of for that use, including all PO LICENSED WORKS used as development tools. This is deposited online at our PAYMENT PROCESSOR along with your payment. In order to facilitate the easy production of REQUIRED INFORMATION, we may provide access to software tools to assist with the process. However, you are urged to make use of BEST PRACTICES, which themselves should be sufficient.

The OFFICIAL PACKAGE NAME is the name of the package for accounting purposes, mainly the distribution of LICENSEE REVENUE. It should be separate from information indicating the package version, and is not expected to change.

Parameters

The OFFICIAL PACKAGE NAME is *A.*

The most recent released stable version of the package may always be found at *B.*

There are no DESIGNATED BARRIER APIs in this work.

There is no UNMODIFIED NAME for this work.

The MODIFIED NAME is *X.*

A copy of the LICENSED WORK is PUBLISHED at *Y.*

License

The LICENSORS reserve all PROTECTED RIGHTS regarding the LICENSED WORK. They offer a license to exercise some PROTECTED RIGHTS rights to YOU, as specified by these terms, including the right to run, make use of, copy, and modify the LICENSED WORK. This comes with obligations, in that you must also agree to abide by all of the terms of this license in order to exercise the PROTECTED RIGHTS. Regardless of what party presents you with THIS LICENSE, this agreement is directly between YOU and LICENSORS.

This license includes by reference the Definitions section above.

Each LICENSOR attests that they are required to enter into the POST-OPEN OPERATING AGREEMENT and abide by its terms, and that they have so entered and shall abide.

Each LICENSOR agrees that they shall PUBLISH a copy of any LICENSED WORK.

All natural persons executing this agreement on behalf of YOU attest that they are authorized to enter into such agreements.

In the case that parties in your employ or otherwise acting on your behalf enter into this agreement on behalf of you without authorization, or make use of PROTECTED RIGHTS without entering into this agreement, you are granted no PROTECTED RIGHTS, and are liable for prosecution for infringement or other violation.

You may copy modify, and redistribute the LICENSED WORK, and engage in any activity regarding the LICENSED WORK other than a BILLED USE, without charge, provided that you comply with these terms regarding ALL PO LICENSED WORKS. If you do not comply with these terms regarding any PO LICENSED WORK, you are in infringement of this work (the LICENSED WORK) because you are denied practice of any PROTECTED RIGHTS. In this case, you are required to initiate the REMEDY PROCESS regarding ALL PO LICENSED WORKS.

You are encouraged to engage in BEST PRACTICES.

You must consent to this license by digital signature at one of your PAYMENT PROCESSORS before or as soon as you engage in a BILLED USE. You must pay for BILLED USES through our PAYMENT PROCESSORS, within one year of your initial BILLED USE and every year thereafter as long as you continue to engage in BILLED USES. Payment and the provision of REQUIRED INFORMATION discharges your compliance obligation for the period of one year, provided that you have paid accurately and otherwise comply with the terms of this license.

In the case that YOU are not the party collecting revenue from the end-user, you must still endeavor to determine the amount collected from the end user, and pay that amount.

When you combine a LICENSED WORK with a work that is available to you under either THIS LICENSE or another license, you must apply the THIS LICENSE to the combined work. This facilitates payment to Open Source developers who dual-license with the PO license, and proprietary developers who join the PO LICENSE community.

LICENSOR shall have the right to require an accurate accounting of the revenue subject to payment for a BILLED USE. This accounting must be sworn by a principal of YOU (or yourself if you are a natural person). This process is meant to be unusual, and only employed when there is reason to believe a party is not providing REQUIRED INFORMATION properly or has not entered into these terms.

If YOU engage in MODIFICATION of a LICENSED WORK without engaging in a BILLED USE, YOU must make the modified LICENSED WORK available entirely under THIS LICENSE OR you must make all new portions available as COMPATIBLE OPEN SOURCE SOFTWARE. You must PUBLISH the modified program. If YOU do not wish to PUBLISH your MODIFICATIONS, this is a BILLED USE (combination with PROPRIETARY SOFTWARE) and you must pay the rate described above.

All copies of this software must include this license, any statements of authorship or ownership of PROTECTED RIGHTS, and any other license statements such as those of INCOMPATIBLY LICENSED WORKS or COMPATIBLE OPEN SOURCE SOFTWARE.

YOU agree not to bring suit for infringement within PO LICENSED WORKS of any patent claims over which YOU have control. You indemnify the LICENSORS from such suits.

YOU agree not to create, offer, accept or make use of a license, covenant, or other rights regarding patents for the purpose of exercising any claims of those patents in PO LICENSED WORKS, except for one that allows all LICENSORS and LICENSEES of PO LICENSED SOFTWARE to practice those claims in PO LICENSED SOFTWARE without any additional restrictions or fee.

You and LICENSORS agree not to create, offer, or enter into any agreement which restricts the rights that YOU or other licensees have under this license, which modifies the terms of this license, or that has any term, penalty, or effect predicated upon the exercise of rights under this license.

Warranties, insurance, indemnification, or an offer of financial reimbursement or performance of a service in the event of the failure or mis-performance of the LICENSED WORK may be available from the LICENSORS or other parties under a separate agreement, but they are not offered through this license. The LICENSORS disclaim all warranties to the extent permitted by law, including warranties of merchantability or fitness for use. YOU agree to indemnify the LICENSORS against all liability in connection with failure or mis-performance of the LICENSED WORK in connection with YOU.

The LICENSORS represent that the licensed work has not received the care necessary to make it suitable for any purpose where its failure may cause injury or damage or endanger life or property. YOU agree that all responsibility for such use is yours, and that YOU indemnify the LICENSORS against all such use by YOU.

The LICENSORS wish to make software for everyone to use, redistribute, and modify, with easy compliance and reasonable payment to them for a few specific uses. In the case that you are informed or come into the knowledge that you may be in infringement of PO LICENSED WORKS, the licensors offer you a remedy:

Within 60 days, YOU, or an officer of YOU if you are not a natural person must initiate the *remedy process* through these actions:

1. Indicate your consent to this license via electronic signature with one of our PAYMENT PROCESSORS at (URL). This is necessary even if YOU have entered into the license previously.

2. Inform the PAYMENT PROCESSOR that YOU are performing the *remedy process* via electronic signature at (URL).

Within 60 days of initiating the remedy process, transmit retroactive payment to the PAYMENT PROCESSOR for ALL PO LICENSED WORKS for which you have engaged in BILLED USES, up to the present day.