



Agreement

between

Bacula, Bacula Systems S.A.

&

Free Software Foundation Europe e.V.

Execution Version 26th September 2013



Agreement between Bacula, Bacula Systems & FSFE

Execution Version 26th^h September 2013

The parties:

Bacula.org community
as represented by Kern Sibbald,
hereinafter referred to as "Bacula.org" or "Kern Sibbald";

Free Software Foundation Europe e.V.
Bilker Allee 173
40217 Düsseldorf
Germany,
as represented by Karsten Gerloff and Matija Šuklje
hereinafter referred to as "FSFE";

and

Bacula Systems SA.,
Rue Galilée 5
CH-1400 Yverdon-les-Bains
Switzerland,
as represented by Frank Baker and Kern Sibald,
hereinafter referred to as "Bacula Systems"

have come to the following agreement:

A. Interpretation of the interrelations between the FLAs signed by contributors to either Kern Sibbald and/or FSFE

FSFE holds that in general, the time-wise first FLA signed by a contributor ("Beneficiary") results in the transfer to the Fiduciary of the copyrights, respectively the granting of an exclusive license to the Beneficiary's contributions.

The situation with regards to the Bacula.org software (understood as the Bacula Community Version) and its documentation (altogether "Software") deviates from this principle in the sense that FLAs related to Bacula.org software are held both by FSFE and by Kern Sibbald.

The parties agree that these documents, while bearing the same name and having similar structures, have different objectives:

- The FSFE FLA has the primary purpose of transferring to FSFE the copyrights existing upon contributions made to the Software by the Beneficiaries, respectively to grant to the FSFE an exclusive license upon such rights in countries where an assignment is not possible in order to ensure the lasting protection of Free Software by making FSFE the fiduciary of the author's interests. It empowers FSFE – and its sister organisations – to uphold the interests of Free Software authors and protect them in court, if necessary.

- Kern Sibbald's FLA has two objectives:

- 1) the primary purpose is to ensure that Kern Sibbald and Bacula Systems S.A. obtain all rights and/or licenses required to be entitled to use the Beneficiaries' contributions and to use, reproduce, redistribute or make available the resulting Software under proprietary licenses (having resulted in the Bacula Enterprise Version).

- 2) the secondary purpose is to secure, wherever possible, the rights and/or an exclusive license to be transferred to the FSFE.

Due to historical reasons Beneficiaries have sometimes signed a second FLA after having signed the first one with either FSFE or Kern Sibbald.

Considering that all the copyrights upon the Software are either held by the FSFE or by Kern Sibbald (after having signed an FLA with Kern Sibbald or the FSFE) and in order to avoid any future potential dispute between the parties and/or respective contributors as to the way these FLAs have to be understood and construed, parties agree that the following interpretation has to be given to these FLAs:

Where Beneficiaries have signed a second FLA with either the FSFE or Kern Sibbald (after previously having signed an FLA with Kern Sibbald or FSFE), their true intent actually was to convey a non-exclusive and sublicensable license to Kern Sibbald, respectively assign their copyrights or grant an exclusive license to FSFE for the contributions they made to the Software. At the time of signing a second FLA with Kern Sibbald, Beneficiaries were well informed that it was Kern's, respectively Bacula Systems S.A.'s intent to use, reproduce, distribute and make available the Software,

including their contributions, under non-free terms i.e. a proprietary license (resulting in the Bacula Enterprise Version), as well as to exercise its rights resulting from such proprietary licenses in case of infringements. These overlapping FLAs are an undesirable situation which arose due to specific historic circumstances and should not be understood as setting any precedent for future cases.

B. Interpretation of the terms "under other licenses" contained in Section 3 (2) of the FLA

Based on the facts

- that all contributors to the open source version of the Software, namely the Bacula Community Version are covered by FLAs with either FSFE or Kern Sibbald,
- that due to historic reasons, some contributors have assigned the rights and licenses in their Software and Documentation to both FSFE and Kern Sibbald,
- that as a result, prior to the agreement between the parties under part A above neither the FSFE or Kern Sibbald appeared to be the sole right-holders of the copyrights upon any and all contributions to the Software,
- that as a result of the interpretation given to the FLAs as agreed upon between the FSFE and Kern Sibbald under part A, the FSFE has to be considered as the assignee of all copyrights upon any and all contributions to the Software, and thus as the right-holder of the copyrights upon any and all of these contributions,

Bearing this in mind, parties agree that:

1. Bacula Systems S.A. respectively Kern Sibbald has the right to use, reproduce, modify, redistribute and make available software based on the contributions made by Beneficiaries and resulting software "under other licenses" including under a proprietary license as the Bacula Enterprise Version, in accordance with Section 3 (2) of the FLA.
2. Any agreements or FLAs, except those for which contributions are explicitly destined for the Bacula Enterprise Version, are automatically covered by the FLA which Kern Sibbald signed with FSFE on 15th November 2006, making FSFE the fiduciary of the rights in the Software according to Section 2 of the FLA.
3. Any agreements or FLAs for which contributions are explicitly destined for the Bacula Enterprise Version are not automatically covered by the FLA which Kern Sibbald signed with FSFE on 15th November 2006, but will be subject to article C of this agreement. For all such contributions, Bacula Systems may exercise its rights in case of infringements.
4. In compensation for the rights granted to FSFE under article B.2 upon contributions made by Beneficiaries, whether now or in the future, and in line with the construction

agreed upon by the parties under article A (final paragraph), Bacula Systems S.A., respectively Kern Sibbald, shall be granted a non-exclusive, sub-licensable license to use such contributions, in accordance with article B.1.

5. Should any provision or part of this agreement prove to be invalid or unenforceable by a competent court of justice, this shall not affect the validity of the remaining provisions of this agreement. In such a case, the parties shall amend this agreement, and the Court shall construe such invalid provision in such a way that the purpose intended by the invalid or unenforceable part of the agreement is achieved to the extent possible.

6. This agreement shall bind any successor of the parties. Should the FSFE cease its activities without having any successor, the parties agree that all rights granted to the FSFE with regards to the Software shall be transferred back to Kern Sibbald as sole and exclusive rightholder of such rights.

C. Additional commitments

In addition to the above, the parties commit to the following:

1. Bacula Systems fully supports the concept of Free Software, and sees benefit in the concept of a thriving community. In support of this goal, Bacula Systems' strategy is to migrate features and plugins into the Bacula.org version over time.

As a strategy, Bacula Systems commits to migrating features and plugins which appear in the Enterprise version into the Bacula.org community version over a period of approximately five years. Bacula Systems will publicly document all features, plugins and bug fixes which Bacula Systems has contributed to Bacula.org.

- Features depending on proprietary upstream licenses with third parties, or on licenses that are anyhow incompatible with the Bacula.org's license, are excluded from this provision. Bacula Systems commits to implementing such excluded features in the form of plugins wherever possible.

2. Should the Bacula Enterprise Version not be distributed by Bacula Systems S.A. or its legal successors for a period of three years, the FSFE shall automatically be granted a non-exclusive license to use, reproduce, redistribute and make available the Bacula Enterprise Version.

- Features depending on proprietary upstream licenses with third parties, or on licenses that are anyhow incompatible with the Bacula.org's license, are excluded from this license article C.2.

- In exercising this article C.2, FSFE commits to making all Bacula Enterprise Version software and documentation available on Free Software terms.

•FSFE will incur in no additional obligations, such as to provide support or maintenance, for any software or documentation obtained under this license article C.2.

•Kern Sibbald grants FSFE a limited license to use the “Bacula” trademark for all software and documentation obtained under this article C.2, provided that they are distributed under Free Software licenses.

Signed in three copies, one held by each party;

For Free Software Foundation Europe e.V.,

For Bacula, Bacula Systems S.A.,

Karsten Gerloff
President, FSFE

Kern Sibbald
Bacula.org Project Manager

Matija Šuklje
Legal Coordinator, FSFE

Kern Sibbald
Chairman, Bacula Systems S.A.

Frank Barker
CEO, Bacula Systems S.A.