Testimony submitted to the New York City Council Committee on Contracts Regarding the Free and Open Source Software Act and the Civic Commons Act

Good Morning. I am Karen Sandler, Executive Director of Software Freedom Conservancy. Thank you to Council Member Kallos and the Committee on Contracts for for inviting me to testify before you on the Free and Open Source Software Act (FOSSA) and the Civic Commons Act.

Software Freedom Conservancy is a New York 501c3 charitable nonprofit that promotes, improves, develops, and defends free and open source software. This issue is of great importance to an effective and safe functioning of government.

Free and open source software has many advantages over proprietary software. Studies show that, over time, free software is safer from vulnerabilities. Free software is auditable – security and functionality can be verified upon inspection. Anyone can independently assess the software and its risks. Developers can more easily and quickly repair discovered vulnerabilities or bugs (and bugs are very common in all software – the Software Engineering Institute estimates that an experienced software engineer produces approximately one defect for every 100 lines of code). Free software removes dependence on a single party, as anyone can make changes to their version of the software. And municipalities can hire any contractor on the open market to work on the software.

Companies effectively hold governments hostage with proprietary software. In the case of a security vulnerability, governments must wait for the vendor to admit there is a problem and then provide a fix for it. If the city needs a new feature or other functionality added, they are out of luck if the vendor doesn't consider that work high priority. If the company goes out of business, the city has to find another solution. Proprietary software locks the city into the original vendor forever. In contrast, if the city uses free software, anyone familiar with the software can become a vendor.

Perhaps more importantly, proprietary software companies increase licensing fees regularly, often annually. Fees are paid per user. As a city grows, the fees can rise at a rate much faster than inflation. Free Software liberates the municipality from these challenges. There are no licensing fees for Free Software. Furthermore, disputes with vendors over deployment can lead to costly claims about unpaid licensing fees. Free Software makes the licensing terms clear while providing the city with the rights to do whatever it needs and distribute or deploy the software

to all its citizens without consent of a contractor.

We at Software Freedom Conservancy believe that the Free and Open Source Software Act will protect the city from the greater expense and long term vulnerabilities of proprietary software. We have submitted improvements to the Act via GitHub, which have already been merged.

Proprietary software companies get paid over and over from tax payer dollars for the exact same work. The collaboration inherent to free software assures that all municipalities pay for what they need exactly once, together. They can take advantage of this efficiency and collaborate to advance the technology that cities rely on.

The use of the disaster recovery software, Sahana, already in use here in New York and in many other municipalities, shows the huge benefits that can be gained from governmental use of free software. Sahana was first written to handle disaster recovery in Sri Lanka, yet it's been used and improved for use all over the world. Instead of each municipality starting from scratch, they build on each others' work. Every single improvement made in catastrophe response benefits everyone. I hope the city can learn from success of Sahana and adopt this framework for collaborating with other municipalities to pool their limited resources.

We believe that the Civic Commons Act will provide a framework to benefit from increased use of free software, though we recommend that the Act be amended to be platform neutral.

On a personal note, I am deeply familiar with the dangers of proprietary software. I have hypertrophic cardiomyopathy (I have a big heart) and have an implanted medical device with software that I cannot review or work with my healthcare professionals to modify. I rely on one company to ensure its safety and hope that they provide the life-critical updates I need. I have no real choice because there is no free and open source software defibrillator. I wonder every day if I will get an inappropriate shock or have my device fail through inaction. I live with proprietary software in my body, knowing that it has vulnerabilities I can do nothing about. As a lifelong New Yorker, I love this city and know that shifting to free and open source software will better keep the city safe.

Software Freedom Conservancy fully supports both acts. I thank you for your time and interest. I am available to answer any questions that you may have.