

OPENPOWER TRADEMARK LICENSE AGREEMENT

This OpenPOWER Trademark License Agreement (this "**Agreement**") is made and entered into by and between the OpenPOWER Foundation ("**OpenPOWER**") and the licensee ("**Licensee**") identified in the Application Approval Statement(s) (defined below).

RECITALS

WHEREAS, the primary mission of OpenPOWER is to create an open ecosystem using the OpenPOWER architecture to share expertise, investment, and validated and compliant server-class intellectual property to serve the new consumption needs of customers that require scale-out capabilities;

WHEREAS, Licensee seeks to obtain a limited license to use certain trademarks owned by OpenPOWER and has submitted one or more license requests to OpenPOWER ("**License Request**") requesting the same, and OpenPOWER has consented to grant Licensee a license to use the trademarks of OpenPOWER that are identified in one or more application approval statements sent to Licensee by OpenPOWER (the "**Application Approval Statement(s)**").

NOW THEREFORE, the parties hereby agree as follows:

1. LICENSE GRANT

1.1 License. OpenPOWER hereby grants Licensee, and Licensee hereby accepts, a world-wide, royalty-free, non-exclusive, non-transferable, non-sublicensable, revocable right to use trademarks and service marks listed in the Application Approval Statement(s) (the "**Licensed Marks**"), solely in connection with the products, services, events, and activities, as the case may be, identified in the Application Approval Statement(s). If Licensee desires to obtain a license to use additional marks or to use marks previously licensed for additional products or purposes, Licensee must submit another License Request in accordance with the Guidelines (defined below); if OpenPOWER issues an additional Application Approval Statement in response to such additional License Request, such additional Application Approval Statement shall automatically become part of this Agreement and shall be governed by its terms.

1.2 Trademark Usage Guidelines. The foregoing license is subject to Licensee's continuing compliance with the Trademark Usage Guidelines ("**Guidelines**") which are available from admin@openpowerfoundation.org and are subject to amendment from time to time by OpenPOWER in its sole discretion. Licensee shall comply with any updated Guidelines within the time periods described in Section 2.

1.3 Updates to Licensed Marks. The Licensed Marks listed in the Application Approval Statement(s) are subject to amendment from time to time by OpenPOWER in its sole discretion. In the event OpenPOWER terminates any of the Licensed Marks, OpenPOWER may, in its sole discretion, replace any such terminated mark with a substitute mark. In the event OpenPOWER modifies or terminates any of the Licensed Marks, Licensee shall comply with any such modification and cease all use of any terminated mark within the time periods described in Section 2.

2. TIME PERIOD FOR COMPLIANCE WITH MODIFICATION OR TERMINATION

If the Guidelines are modified in accordance with Section 1.2, if any Licensed Marks are terminated or modified in accordance with Section 1.3, or if this Agreement is terminated for any reason other than Licensee's breach of its terms, in each such case, Licensee shall comply with any such modifications and cease all use of any terminated

marks (and in the event of termination of this Agreement, Licensee shall cease use of all Licensed Marks) as soon as practicable, but in any event, (a) with respect to Licensee's use of the Licensed Marks on its website and other materials in electronic form, Licensee shall comply with such modification or termination not later than sixty (60) days after the date of receiving notice of such modification or termination and, (b) with respect to physical articles (e.g., printed materials and physical goods) that have already been printed, manufactured, assembled or are already in the process of being printed, manufactured, or assembled as of the date of such modification or termination, Licensee shall have one hundred eighty (180) days after the date of receiving notice of such modification or termination to dispose of such physical articles or alter them to comply with such modification or termination. In the event this Agreement is terminated due to Licensee's breach of its terms, upon termination, Licensee must immediately cease all use of the Licensed Marks.

3. RESTRICTIONS

3.1 Compliance Generally. Licensee represents, warrants, covenants, and agrees that it will use the Licensed Marks solely as provided in this Agreement and in compliance with the Guidelines, and that Licensee will comply with all applicable laws, rules, and regulations in connection with all products, services, websites, materials, marketing, advertising, business activities, and events that the Licensed Marks are used on, in, or in connection with, and will not knowingly violate or infringe any right of any third party in connection with any use of the Licensed Marks.

3.2 Quality Standards and Maintenance. Licensee acknowledges that maintaining a high level of quality for the products, services, and/or events that Licensee provides in order to enhance OpenPOWER's goodwill as symbolized by the Licensed Marks is the essence of this Agreement. Accordingly, Licensee covenants, represents, and warrants that Licensee shall conduct its business operations, including the marketing and selling of its products and services and the operation of its activities and events in compliance with all applicable laws and regulations and in accordance with high quality standards, specifications, and procedures at least equal to those currently used by Licensee.

3.3 Audit Rights. Licensee shall reasonably cooperate with OpenPOWER to facilitate periodic review of Licensee's use of the Licensed Marks and of Licensee's continuing compliance with this Agreement and the Guidelines. If OpenPOWER, in its sole reasonable discretion, determines that any use of the Licensed Marks fails to conform to this Agreement, OpenPOWER shall provide Licensee with written notice of such failure or noncompliance. The Licensee shall have thirty (30) days thereafter to fully correct and remedy any such noncompliance to OpenPOWER's satisfaction. Should the Licensee fail to cure the noncompliance to OpenPOWER's satisfaction within said thirty (30) day period, OpenPOWER may, in its sole discretion, terminate this Agreement in its entirety or terminate the license granted under Section 1 or reduce its scope (including amending the Application Approval Statement(s) to remove certain Licensed Marks or certain authorized purposes) with respect to the uses of the Mark that are noncompliant.

4. IDENTIFICATION AND OWNERSHIP

4.1 Ownership. Licensee agrees and acknowledges that OpenPOWER retains all right, title and interest in and to the Licensed Marks as well as to all combinations, forms, and derivations of the Licensed Marks, and all goodwill associated therewith; and Licensee acknowledges and agrees that any and all goodwill derived from Licensee's use of the Licensed Marks shall inure to the sole benefit OpenPOWER. Except as expressly granted in this Agreement, Licensee shall have no rights in the Licensed Marks. Under no circumstances will

anything in this Agreement be construed as granting, by implication, estoppel or otherwise, a license to any technology or proprietary right of OpenPOWER or any Member thereof other than the permitted use of the Licensed Marks pursuant to this Agreement. If, at any time, Licensee acquires any rights in, or registrations or applications for, the Licensed Marks, whether by operation of law or otherwise, Licensee hereby immediately, and at no expense to OpenPOWER, assign all such rights, registrations, and/or applications to OpenPOWER, along with any and all associated goodwill.

4.2 Licensee Restrictions. Licensee will not take any action to challenge or oppose OpenPOWER's ownership of the Licensed Marks, nor take any action inconsistent with such ownership. Licensee further agrees not to challenge, contest, or otherwise interfere with OpenPOWER's use, adoption, licensing, application to register, or registration of the Licensed Marks or any trademark, service mark, trade name, domain name, or other designation that is similar to the Licensed Marks. Licensee agrees not to adopt, use, apply to register, or register as Licensee's own corporate name, trade name, trademark, domain name, product name, service mark or certification mark, or other designation any word, phrase, or design that is the same as or confusingly similar to or that dilutes the Licensed Marks in any country.

4.3 Attribution. Licensee shall mark all materials containing the Licensed Marks, where space permits, with the trademark attribution statement described in the Guidelines.

5. DEFENSE OF CLAIMS; LIABILITY AND INDEMNIFICATION

5.1 Limitations of Liability. OpenPOWER shall have no liability for any intellectual property infringement claim based on Licensee's manufacture or distribution of any products or services, or Licensee's organization or sponsorship of any activities or events, or its use of the Licensed Marks. OPENPOWER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOSS OF BUSINESS PROFITS) ARISING FROM OR RELATED TO LICENSEE'S USE OF THE LICENSED MARKS, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, INFRINGEMENT OF INTELLECTUAL PROPERTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OPENPOWER BE LIABLE FOR ANY DAMAGES FOR LICENSEE'S USE OF THE LICENSED MARKS IN VIOLATION OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

5.2 No Warranties. THE MARKS ARE PROVIDED "AS-IS" AND, EXCEPT FOR OPENPOWER'S EXPRESS REPRESENTATIONS AND WARRANTIES MADE HEREIN, OPENPOWER MAKES NO WARRANTIES EITHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE MARKS, INCLUDING ANY WARRANTY OF TITLE, NON-INFRINGEMENT, VALIDITY OF OPENPOWER'S RIGHTS IN THE MARKS IN ANY COUNTRY, OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.3 Unauthorized Third Party Use. Licensee shall promptly notify OpenPOWER of any unauthorized third-party use of the Licensed Marks of which Licensee becomes aware. The right to enforce OpenPOWER's rights in the Licensed Marks rests entirely with OpenPOWER and shall be exercised, if at all, at OpenPOWER's discretion. Licensee shall not commence any action or claim to enforce OpenPOWER's rights in the Licensed Marks.

5.4 Claims By Third Parties. In the event that a third party challenges Licensee's use of the Licensed Marks, Licensee shall immediately notify OpenPOWER in writing. OpenPOWER shall undertake and conduct the defense of such a challenge, and Licensee shall not enter into any discussions or settlements, or take any other action pertaining to said

challenge without the express written consent of OpenPOWER. OpenPOWER or Licensee may immediately terminate this Agreement in the event that a challenge to the Licensed Marks is brought against Licensee. Licensee agrees to cooperate fully with OpenPOWER, at OpenPOWER's expense, in the event such a challenge is brought. OpenPOWER or Licensee may immediately terminate this Agreement in the event that a challenge to the approved Licensed Marks is brought against Licensee. Licensee agrees to cooperate fully with OpenPOWER, at OpenPOWER's expense, in the event such a challenge is brought, even if this Agreement is terminated by either party as a result of such challenge. This Section 5.4 does not limit OpenPOWER's rights provided in Section 5.5 of this Agreement.

5.5 Indemnification. Licensee agrees to indemnify, defend, and hold harmless OpenPOWER and its officers, directors, employees, and agents for, from, and against any and all claims, demands, losses, liabilities, fines, sanctions, judgments, awards, costs, and expenses (including reasonable attorneys' fees and costs) incurred by OpenPOWER through a claim or allegation arising out of or relating to: (i) the inaccuracy or violation of any of Licensee's representations, warranties, undertakings, covenants, and/or conditions contained in this Agreement; (ii) Licensee's use of one or more of the Licensed Marks; or (iii) Licensee's marketing, advertising, promotion, endorsement, sale, or distribution of products or services; provided, however, that in no case shall Licensee be required to indemnify OpenPOWER regarding a claim or allegation that the Licensed Marks are invalid or that they infringe or misappropriate any third party trademark, patent, or other intellectual property rights, so long as Licensee uses the Licensed Marks in strict accordance with this Agreement and the Guidelines. Licensee shall not enter into any settlement or make any admission or statement that is detrimental to or disparaging of OpenPOWER or that requires any obligation, financial or otherwise, of OpenPOWER, without OpenPOWER's prior written consent.

6. TERM AND TERMINATION

6.1 Duration. The term of this Agreement shall be indefinite and continue until its termination as provided herein.

6.2 Termination by Agreement. This Agreement may be terminated by the parties at any time by mutual written agreement.

6.3 Termination Due to Alleged or Suspected Infringement. This Agreement may be terminated by either party immediately upon notice to the other party of such termination if (i) a third party alleges or claims that the Licensed Marks infringe, misappropriate, or violate a third party's trademark or other intellectual property rights; or (ii) such party otherwise has reason to believe or suspect that a third party may make such claim.

6.4 Termination Due to Breach. This Agreement may be terminated by either party if the other party has breached this Agreement (i) and such breach is, by its nature, not capable of being cured; or (ii) if such breach is, by its nature, capable of being cured, and the breach is not cured by the other party within thirty (30) days after the breaching party's receipt of written notice from the non-breaching party of the breach.

6.5 Automatic Termination. This Agreement shall terminate automatically upon the occurrence of any of the following unless otherwise agreed in advance in writing by OpenPOWER: (a) Licensee makes an assignment for the benefit of creditors, or if any proceeding under any bankruptcy or insolvency law is commenced by or against Licensee; (b) the sale, transfer, or encumbrance of any rights granted hereunder, or the making of any levy, seizure, or attachment thereof or thereon without the consent of the OpenPOWER; (c)

an acquisition, merger, or other transaction that results in a change of control of the Licensee; or (d) Licensee violates Section 4.2.

6.6 Termination for Convenience. This Agreement may be terminated by either party for convenience by providing at least sixty (60) days prior written notice to the other party.

6.7 Effect of Termination. Upon termination of this Agreement, the rights and license granted in this Agreement shall immediately and automatically terminate, and Licensee shall cease all use of the Licensed Marks, subject to the compliance periods set forth in with Section 2. Any provisions of this Agreement that are intended to survive its termination, as indicated by their nature, context, or express terms, shall survive such termination, including without limitation Sections with Section 2 (Time Period for Compliance with Modification or Termination), 4 (Identification and Ownership), 5 (Defense of Claims; Liability and Indemnification), 6 (Term and Termination), and Section 7 (Miscellaneous).

7. MISCELLANEOUS

7.1 Assignment. The license granted in Section 2 of this Agreement is personal to Licensee, and Licensee shall not assign, transfer or sublicense this Agreement (or any right granted herein) in any manner.

7.2 Publicity. Licensee agrees that OpenPOWER may, in its discretion, publicly disclose Licensee's status as a licensee and supporter of OpenPOWER. OpenPOWER shall have no obligation to do so.

7.3 Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be considered given or paid when delivered (or when delivery thereof is refused) via personal delivery; certified mail, return receipt requested; nationally recognized overnight courier; or e-mail provided that the sender does not know or have reason to know that the recipient did not receive the e-mail. Notices, demands, or other written communications that are sent in any manner other than as described in this Section 12 will be void and not binding on the Party sending or receiving the communication. Notices to Open Power shall be sent to the following email address or address:

OpenPOWER Foundation
445 Hoes Lane
Piscataway, NJ 08854
admin@openpowerfoundation.org

w/ copy to

Timothy F. Haslach
Schwabe, Williamson & Wyatt, P.C.
1211 SW Fifth Avenue, Suites 1500-2000
Portland, Oregon 97204

Notices to Licensee shall be sent to the address or email address set forth in its License Request. Either party may update its contact information for notices by providing notice to the other party of such update in accordance with this Section 7.3.

7.4 Entire Agreement. OpenPOWER providing this Agreement to Licensee does not constitute an offer by OpenPOWER. This Agreement, together with the Guidelines and all

Application Approval Statement(s) issued from time to time by OpenPOWER, contains the entire agreement of the parties with respect to the subject matter hereof, and shall supersede and merge all prior and contemporaneous communications.

7.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware and applicable federal laws. Any dispute arising out of or related to this Agreement (including any agreements or documents incorporated herein by reference) or the breach hereof shall be brought in the state or federal courts sitting in the State of Delaware, and the parties hereby waive any claim or defense that such forum is not convenient or proper. Each party hereby consents to jurisdiction and venue in the state and federal courts sitting in the State of Delaware.

7.6 Equitable Remedies. The parties agree that any material breach of this Agreement by Licensee or its directors, officers, employees, affiliates, agents, advisers, attorneys, accountants, consultants, bankers, or other representatives may cause immediate and irreparable harm, for which monetary damages would be inadequate or difficult to ascertain. The parties therefore agree that upon the existence of any such breach or threatened breach by Licensee, OpenPOWER may immediately seek a temporary restraining order or other appropriate form of equitable relief, without posting a bond or other form of security, from any court having jurisdiction over the matter. This paragraph will not limit OpenPOWER's rights to obtain monetary damages in addition to or as substitution for such equitable relief.

7.7 Headings. Section headings are used in this Agreement for convenience of reference only and shall not affect the meaning of any provision of this Agreement.

7.8 Waiver. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

7.9 Severability. If any provision of this Agreement (or any other agreements incorporated herein) shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

7.10 Relationship. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating an employment, partnership, joint venture or agency relationship or as granting a franchise, and the parties shall be deemed independent contractors. OpenPOWER is not a guarantor of the fitness or quality of any product, service, or Approved Event.

SIGNATURE

By signing below I assert that I have the authority to sign on behalf of the Licensee, and that Licensee agrees to abide by the terms and conditions herein if an Application Approval Statement is issued to Licensee by OpenPOWER.

Licensee:

Name: _____

Title: _____

Company: _____

Date: _____

OpenPOWER Foundation:

Name: _____

Title: _____

Company: _____

Date: _____