

OCP-INSPIRED™
CERTIFICATION MARK LICENSE AGREEMENT

This Certification Mark License Agreement (“**Certification Mark License Agreement**”) is entered into on the **Effective Date** by and between the Open Compute Project Foundation (“**OCP**”), a Delaware nonprofit nonstock corporation with offices at PO Box 82287, Austin, TX 78708, and the Licensee as identified in Exhibit A to this Agreement (“**Licensee**”). In the case of any inconsistency between this Certification Mark License Agreement and the OCP Bylaws (“**Bylaws**”), the Bylaws control. In the case of any inconsistency between this Certification Mark License Agreement and the OCP Membership Agreement (“**Membership Agreement**”), the Membership Agreement controls.

WHEREAS, Licensee agrees that OCP is the owner of all right, title and interest in the certification mark described and identified in the attached Exhibit B, which, subject to the terms and conditions of this Certification Mark License Agreement, OCP licenses as certification marks to its members to identify products that OCP has certified as compliant with OCP’s standards for data center hardware products and components, namely, computing products, storage products, networking products and peripherals (“**Certification Marks**”);

WHEREAS, Licensee is a member of the Open Compute Project Foundation and desires to obtain a license to use an applicable Certification Mark; and

WHEREAS, OCP agrees to grant, and Licensee agrees to accept, a license to use an applicable Certification Mark, subject to the terms and conditions herein.

NOW, THEREFORE, in exchange for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

a. “**Certification**” means the process in which Licensee has met all the requirements to qualify for use of a Certification Mark as set forth in Exhibit B or in Section 1(e) below, including OCP authorization of the certification in writing.

b. “**Certified Product**” means the specific product the Licensee has submitted to OCP and which has been accepted by OCP for Certification through the process set forth in Exhibit B or in Section 1(e) below.

c. “**Certification Marks**” means those certification marks described and identified in the attached Exhibit B, and any additional certification marks OCP may adopt in the future. OCP reserves the right to update, replace, supplement, or revise the contents of Exhibit B;

d. “**Effective Date**” means the first date on which (1) this Certification Mark License Agreement has been signed by both parties and (2) OCP informed the OCP member seeking Certification (“**Submitter**”) in writing or email that the criteria for “OCP Inspired” certification have been met;

e. **“Grandfathered Certification”** means the process in which Licensee has met all the requirements to qualify for use of a Certification Mark as set forth in this Section 1(e), including OCP authorization of the certification in writing. Grandfathered Certification requires that the submitted product has been approved by OCP to have met all the requirements to qualify for use of a Certification Mark under the pre-September 1, 2016 requirements (“Pre-September 1, 2016 Certification Criteria”). The Pre-September 1, 2016 Certification Criteria is available upon emailed request to OCP at info@compute.org. Submitters qualifying for use of a Certification Mark under the Pre-September 1, 2016 Certification Criteria must have submitted their product for certification review to OCP prior to September 1, 2016 and received OCP authorization of certification under the Pre-September 1, 2016 Certification Criteria in writing prior to October 31, 2016. At all times after Certification, the Licensee must maintain the Certified Product in compliance with the Pre-September 1, 2016 Certification Criteria, otherwise the Certified Product status will be revoked.

f. **“Licensed Certification Mark”** means the specific Certification Mark licensed pursuant to this Certification Mark License Agreement;

g. **“Modification”** means a modification to the Certified Product in a manner that results in more than an immaterial change to the features, functions or performance of the Certified Product.

h. **“OCP Trademark Usage Guidelines”** means the document titled “Open Compute Project Trademark Usage Guidelines,” which describes the proper manner of using and displaying the Certification Mark(s) and is available at <http://opencompute.org/participate/legal-documents>, as the same may be updated by OCP from time to time.

2. **Certification Mark License.**

a. **Grant.** Subject to the terms of this Agreement, OCP grants to Licensee a limited, non-exclusive, revocable, non-transferable, non-sublicensable, royalty-free, worldwide license to reproduce and use the Licensed Certification Mark on or in connection with the Certified Products, subject to the OCP Trademark Usage Guidelines, which form a portion of this Certification Mark License Agreement and are included by this reference as if they had been restated here in their entirety. Licensee may not use or reproduce the Licensed Certification Mark in any manner other than as described in this Certification Mark License Agreement and the OCP Trademark Usage Guidelines. This Agreement includes the limited right to sublicense the use of the Licensed Certification Mark with prior written approval by OCP and only for the limited purposes of allowing advertisers, promoters, and marketers to use the Licensed Certification Mark in promoting the Certified Product. The Licensed Certification Mark must be used only in a manner that accurately describes the Certified Product. Except for the limited license herein, OCP reserves all right, title and interest in and to the Certification Marks.

b. **Certification Requirements for Modifications.** Licensee shall not make any Modifications to the Certified Product without first disclosing the Modifications in writing to

OCP and re-submitting the Certified Product for Certification at Licensee's sole cost and expense if OCP in its sole discretion determines that re-testing is warranted. Licensee may not use the Licensed Certification Mark on or in connection with Certified Products or Services containing Modifications unless OCP has confirmed continued Certification after review of the disclosed Modifications and, if applicable, re-testing.

c. Duration. The license granted in this Certification Mark License Agreement will continue only while Licensee remains a member of the OCP in good standing, pursuant to the Membership Agreement, the OCP's Bylaws, and otherwise, or until terminated under Section 10 of this Certification Mark License Agreement, whichever occurs first.

d. Unlicensed Use. Nothing contained herein grants Licensee the right to use of any other trademark, service mark, certification mark, membership mark, tag line and/or logo of OCP without express written permission from OCP. Licensee agrees not to use OCP or Open Compute Foundation – or any other trademark, service mark, certification mark, membership mark, tag line and/or logo of OCP – on any products, packaging, labels, tags, in signage, advertisements, or any informational or promotional material, whether in print, electronic, or other form, except as expressly permitted in this agreement or otherwise in writing by OCP. Use of the Licensed Certification Mark in any manner inconsistent with the terms of this Certification Mark License Agreement, including the OCP Trademark Usage Guidelines, or use of any other trademark, service mark, certification mark, membership mark, tag line and/or logo of OCP without explicit written permission from OCP, and in accordance with the terms thereof, whether intentional or not, shall be considered an infringement and a breach of this Certification Mark License Agreement and the Membership Agreement and could result in revocation of membership and prosecution for trademark infringement, in addition to any other remedies that OCP may have at law, under this Certification Mark License Agreement, the Membership Agreement, or otherwise.

e. Press Releases. Licensee shall not issue a press release or make any other public announcement without OCP's prior written approval regarding Licensee's activities as an OCP certification mark licensee, including but not limited to regarding any new project or program involving OCP or the OCP community, first announcements of newly certified products, or future OCP projects, plans or directions. For avoidance of ambiguity, Licensee does not need prior written approval from OCP for promotional material or announcements regarding (i) Licensee's own product information after OCP certification is achieved and announced by OCP, (ii) Licensee's activities regarding such products, or (iii) Licensee's own projects unrelated to OCP or the OCP community. Licensee shall not make a press or other public announcement that names the identifies of any other OCP member unless prior written consent is received from any and all OCP members named or referenced in the press release or public announcement. Unless otherwise stated above, OCP may make a press or other public announcement regarding any subject germane to its purposes and may identify Licensee as a member of the OCP.

f. Changes to Guidelines. Licensee shall be afforded three (3) months subsequent to any changes to the OCP Trademark Usage Guidelines or the Licensed Certification

Mark to implement any new requirements of the OCP Trademark Usage Guidelines or changes to the Licensed Certification Mark or to discontinue use of the Licensed Certification Mark without affecting the validity of this Certification Mark License Agreement, including the OCP Trademark Usage Guidelines, or the rights granted hereunder. For a period of one (1) year from the date of the change to the OCP Trademark Usage Guidelines or the Licensed Certification Mark, Licensee shall have the right to distribute remaining inventory stock (but not to create or obtain any new inventory stock) of physical materials bearing the Licensed Certification Mark in the normal course of business where such materials have become noncompliant as a direct result of such change to the OCP Trademark Usage Guidelines or the Licensed Certification Mark. Distribution of remaining inventory pursuant to this section does not permit distribution of the inventory at no cost or at an unreasonably discounted cost.

g. Membership Status. Licensee must remain an OCP Silver, Gold, or Platinum level member in good standing all times while using any Certification Mark.

3. Formalities. In order to comply with the requirements under certain foreign trademark laws, OCP may need to know if the Licensed Certification Mark is being used in a particular country or countries and other information regarding such use. Licensee shall supply such information upon OCP's request. The Licensee shall assist OCP in complying with the formalities of local law, including but not limited to, the execution of any application for registration as a registered user, the execution of additional license agreements suitable for recording with appropriate authorities, of providing proof of use of the Licensed Certification Mark or any other applicable documents. The licensee shall pay the expense of complying with such formalities.

4. Trademark Registration and Protection. Licensee agrees to provide OCP, at Licensor's expense, such reasonable assistance as Licensee may require in OCP's efforts to register and protect OCP's rights in the Certification Marks.

5. Quality Control. OCP may, from time to time, request in writing specimens of the products and services and materials of the Licensee to assess the level of consistency and quality of use of the Licensed Certification Mark in connection with the Certified Products and to ensure that Licensee maintains the consistency and quality of the Certified Products and materials throughout the term of the Agreement. Licensee shall provide such specimen at no cost to OCP. If at any time OCP reasonably determines that any product or materials bearing the Licensed Certification Mark fail to materially conform to OCP's minimum standards or the OCP Trademark Usage Guidelines, OCP shall so notify Licensee in writing and the Licensee shall correct the non-conformance and provide a corrected specimen of such products to OCP for review within thirty (30) days from the written notice from OCP regarding such non-conformance.

6. Suspected Infringement. Licensee agrees to immediately notify OCP in writing of any suspected infringement of the Certification Marks in any jurisdiction of which Licensee becomes aware. Licensee agrees to notify OCP of any claims made against it, adverse to or conflicting with OCP's exclusive ownership of the Certification Marks. OCP may, in its sole discretion,

enforce its rights in the Certification Marks to stop unauthorized use of the Certification Marks, at its OCP's own expense, and will retain all recoveries thereby received.

7. NO WARRANTIES. THE LICENSED CERTIFICATION MARK IS LICENSED "AS IS," AND LICENSOR DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES OR CONDITIONS TO LICENSEE, CONSUMERS, OR ANY OTHER PERSONS OR ENTITIES WITH RESPECT TO THE MARK OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

8. LIMITATIONS ON LIABILITY. THE OCP ITSELF, ITS MEMBERS, AND THEIR RESPECTIVE AFFILIATES WILL HAVE NO LIABILITY FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, STATUTORY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCURRED BY ANY PARTY ARISING OUT OF OR RELATED TO ANY USE OR EXPLOITATION OR ANY ATTEMPTED USE OR EXPLOITATION OF ANY CERTIFICATION MARK OR LICENSE UNDER THIS CERTIFICATION MARK LICENSE AGREEMENT.

9. Term. The term of this Agreement shall commence on the Effective Date, and shall continue unless and until terminated as set forth in Section 10 below.

10. Termination.

a. **Termination for Material Breach.** OCP may terminate this license upon thirty (30) days prior written notice to Licensee, without need of judicial notice or court action, of a material breach of this Agreement, unless the breach is corrected to OCP's reasonable satisfaction within the thirty (30) day period.

b. **Material Breach Defined.** Material breaches shall include, but not be limited to:

i. The Licensee's use of the Licensed Certification Mark on products or materials inconsistent with the license granted under this Certification Mark License Agreement, or otherwise contrary to the provisions of such license;

ii. Licensee's challenge to OCP's ownership of any of the Certification Marks or the validity of any of the Certification Marks.

c. **Termination of Membership.** In the event Licensee ceases to be an OCP silver, gold or platinum tiered member in good standing pursuant to the Bylaws, the Membership Agreement, the Tiered Membership Policy or any other applicable document or agreement, the license granted herein shall terminate without notice and with immediate effect, and Licensee shall cease any and all use of the Licensed Certification Mark and destroy any physical materials

bearing the Licensed Certification Mark.

d. **Termination for Failure to Adopt Amended Terms.** OCP shall have the right to amend this Certification Mark License Agreement by providing Licensee with at least sixty (60) days written notice of such amendment, after which time this Certified Mark License Agreement will terminate absent written agreement by Licensee to the amended terms (the “Revised Certification Mark License Agreement”).

e. **Termination By Licensee.** Licensee may terminate this Certification Mark License Agreement (i) any time within thirty (30) days of adoption of a Revised Certification Mark License Agreement by giving written notice to OCP; or (ii) any time after giving sixty (60) days advanced written notice to OCP; provided, however, nothing in this Certification Mark License Agreement shall relieve Licensee of its surviving obligations pursuant to Section 10(k) of this Certification Mark License Agreement.

f. **Partial Termination by OCP.** Upon three (3) days prior written notice, OCP may terminate Licensee’s right to use the Licensed Certification Mark without need of judicial notice or court action in one or more particular countries, states, counties, or other jurisdictions (each a “jurisdiction”) (i) where such continued use is prohibited in any respect by the action of any judicial, administrative or like authority, or as a result of an agreement with a third party to settle a dispute relating to a trademark or service mark based on the Licensed Certification Mark, or (ii) in which OCP determines that the continued use of the Licensed Certification Mark in such jurisdiction may impose potential liability on OCP or threaten OCP’s ownership or use of any of the Certification Marks.

g. **Termination of Certification Mark Program.** This Certification Mark License Agreement immediately terminates upon discontinuance of the Certification Mark program, for any reason. If this Certification Mark License Agreement is terminated pursuant to this section, Licensee must cease use of the Licensed Certification Mark, but shall be afforded three (3) months subsequent to the discontinuance of the Certification Mark program to distribute any remaining inventory stock of physical materials bearing the Licensed Certification Mark in the normal course of business. Distribution of remaining inventory pursuant to this section does not permit distribution of the inventory at no cost or at an unreasonably discounted cost.

h. **Insolvency.** The license under this Certification Mark License Agreement will terminate immediately and automatically, without the need for notice to Licensee, if Licensee (i) makes an assignment for the benefit of creditors; (ii) is the subject of any voluntary or compulsory winding-up other than for the purposes of reconstruction or amalgamation; (iii) has a receiver, trustee, liquidator, assignee, custodian or similar official appointed for it or for any substantial part of its property; (iv) is the subject of any dissolution or liquidation proceeding; or (vi) discontinues its business in the ordinary course without a successor.

i. **Termination of Grandfathered Certification.** If a license is granted pursuant to the Grandfathered Certification provision in Section 1(e) of this Certification Mark

License Agreement, the license shall terminate without notice and with immediate effect one (1) year from the Effective Date, and Licensee shall cease any and all use of the Licensed Certification Mark and destroy any physical materials bearing the Licensed Certification Mark, unless prior to such termination (a) the Licensee has submitted the same product, including any Modifications, to OCP for Certification through the process set forth in Exhibit B and (b) such product, including any Modifications, has been accepted by OCP for Certification through the process set forth in Exhibit B, at which time the license hereunder shall continue for the Certified Products without regard to the Grandfathered Certification provision.

j. Effect of Termination. Upon the termination of this Certification Mark License Agreement, (a) Licensee will have no further rights, privileges, or licenses under this Certification Mark License Agreement, (b) Licensee will discontinue immediately all use of the Licensed Certification Mark and will not use any marks confusingly similar thereto, (c) and Licensee will cooperate generally with OCP to insure that all rights in the Licensed Certification Mark and the goodwill connected therewith shall remain the property of OCP. Unless otherwise specified in a specific provision in Section 10, upon termination Licensee may not distribute any remaining inventory bearing the Licensed Certification Mark.

k. Survival. The obligations in Sections 11 (Trademark Ownership), 7 (No Warranties), 8 (Limitations on Liability), 10(j) (Effect of Termination), 10(k) (Survival), and 14 (Miscellaneous) will survive termination of this Service Provider Agreement.

11. Trademark Ownership. Licensee acknowledges and agrees that OCP is the sole owner of the Certification Marks and all associated goodwill, and Licensee shall take no action and make no statement inconsistent therewith. Licensee shall not challenge or contest, or cause any third party to challenge or contest, OCP's rights in the Certification Marks, the validity of the Certification Marks, or any registrations therefore, or the validity of this Certification Mark License Agreement. Licensee shall not register or attempt to register anywhere in the world any of the Certification Marks or any other name or mark confusingly similar thereto. All use of any of the Licensed Certification Mark by Licensee will inure solely to the benefit of OCP and Licensee shall acquire no rights therein. If at any time Licensee acquires any rights in, registrations of, or applications for, any of the Certification Marks, by operation of law or otherwise, Licensee shall immediately upon request by OCP and at no charge to OCP assign such rights, registrations, or applications to OCP, along with any and all associated goodwill.

12. Jurisdiction-Specific Terms. Licensee acknowledges and agrees to abide by any applicable jurisdiction-specific terms and conditions to this Certification Mark License Agreement, located at <http://opencompute.org/participate/legal-documents> (or other applicable online location upon notice from OCP).

13. OCP's Use of Licensee Mark and Display of Licensee's Certified Product. Licensee hereby grants to OCP the right to use Licensee's trademarks and service marks to identify Licensee's Certified Product and to identify Licensee as the source of the Certified Product, including by placing Licensee's name, trademark, logo, Certified Product name, trademark, logo, Certified Product image and Certified Product

information on OCPF's applicable webpage and in any other electronic and print materials through which OCP identifies, describes, promotes, or markets OCP Inspired certified products or OCP's OCP Inspired certification mark program.

14. Miscellaneous.

a. No Waiver. No failure to exercise, nor any delay in exercising or invoking any right or remedy under this Certification Mark License Agreement by OCP shall operate as a waiver thereof, nor shall any single or partial exercise or invoking of any right or remedy prevent any further exercise thereof or the exercise or invoking of any other right or remedy.

b. Severability. If any term or condition of this Certification Mark License Agreement is or becomes invalid or unenforceable, the validity or enforceability of any other term or condition of this Certification Mark License Agreement shall not be affected and such invalid or unenforceable term or condition shall be enforced to the maximum extent permitted by law and completed by a valid interpretation of such term or condition, which to the extent possible, achieves the original purpose of the invalid or unenforceable term or condition.

c. Successors or Assigns. If this Certification Mark License Agreement is permissibly assigned pursuant to the Bylaws and the Membership Agreement, it shall be binding on, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns.

d. Relationship. Nothing contained in this Certification Mark License Agreement shall be construed as creating a joint venture, partnership, agency or employment relationship between the parties, and neither party will have any right to bind the other or incur any obligation on the other's behalf without the other's prior written consent.

e. Notices. All notices to be given hereunder shall be sent to the addresses set forth in Exhibit A by express, registered or certified mail of the U.S. Postal Service with return receipt requested ("U.S. Mail"), or by a nationally recognized overnight courier service for next business day delivery ("Overnight"). Notice will be deemed to have been given if mailed, five (5) business days after the date on which such notice was mailed or, if sent by courier, two (2) business days after delivery by the courier company. Either party will advise the other of changes of address by written notice.

f. Governing Law and Venue. This Certification Mark License Agreement shall be governed by the laws of the state of Texas, USA, excluding its choice of law provisions. The parties agree that any dispute arising out of or related to this Certification Mark License Agreement will be subject to, and Licensee hereby consents to, the exclusive jurisdiction of the state and federal courts located in Travis County, Texas.

IN WITNESS HEREOF, the undersigned have affixed their signatures on the dates set forth below:

OPEN COMPUTE PROJECT FOUNDATION:

By: _____

Printed Name: _____

Date: _____

LICENSEE:

By: _____

Printed Name: _____

Date: _____

Exhibit A

LICENSEE:

Notice Contact Information

If to Open Compute Project Foundation:

Name: _____

Address: _____

Copy to:

Name: _____

Address: _____

If to Licensee:

Name: _____

Address: _____

Copy to:

Name: _____

Address: _____


Exhibit B

CERTIFICATION MARK STANDARDS

OCP Principles

- 1) **Efficiency** – A key OCP tenant is efficient design. Aspects that can be considered include (but aren't limited to) power delivery and conversion, thermal efficiency, platform performance (per-W for example), reducing overall infrastructure costs, reducing code weight, reducing latencies and more.
- 2) **Scale** – OCP contributions must be scale-out ready. This means that the technology is designed with the right supporting features to allow for its maintenance in large scale deployments. This includes physical maintenance, remote management, upgradability, error reporting and appropriate documentation. Management tools should strive to adhere to the guideline provided by the OCP Hardware Management Project. Documentation should enable adopters towards a successful deployment, providing guidance on equipment installation, turn on and configuration, as well as physical and remote service.
- 3) **Openness** – OCP encourages as much open source contribution as possible, but understands that in certain cases 100% open source contribution may not be possible. Whether fully open source or not, a contribution should strive to comply with a set of already existing open interfaces, at the very least provide one. Providing a solution compatible with already existing OCP contributions is one way to implement existing (open) interfaces.
- 4) **Impact** – New OCP contributions must create meaningful positive impact within the OCP ecosystem. This can be attained by introducing efficiency gains, introducing new technologies and products that are valuable for scale out computing, creating a multiplier effect by building on top of already existing OCP solutions, and enabling a more robust supply chain by contributing alternative compatible solutions.

[Continued on next page]

Certification Mark	Requirements to Qualify for Use of Certification Mark
	<p>1) Submitter must be a Silver, Gold, or Platinum Level Member of OCP in good standing (“Member”), must complete the OCP INSPIRED Checklist (available at http://opencompute.org/participate/legal-documents), and must submit the completed OCP INSPIRED Checklist to OCP, along with a signed copy of the Copyright License Agreement (available at http://opencompute.org/participate/legal-documents) by which Submitter licenses to OCP the rights to all materials and documentation submitted by Submitter as part of and/or in support of Submitter’s application for certification pursuant to OCP’s OCP INSPIRED certification program, including the submitted product description, the submitted OCP INSPIRED Checklist, and all documentation and materials attached thereto.</p> <p>2) Through the completed OCP INSPIRED Checklist, Submitter must demonstrate all of the following:</p> <ul style="list-style-type: none"> a) The product for which the Submitter seeks certification (the “Product”) must conform with an OCP Accepted Specification, pursuant to the OCP Accepted Specification and Design Program, but the Product need not conform with any OCP Accepted Design. Accepted Specifications and Designs and details about the OCP Accepted Specification and Design program are available at http://opencompute.org/participate/legal-documents. b) The Product must follow and adhere to at least three of the OCP Principles, listed above. c) The Submitter shall provide engineering evidence that the Product meets the OCP Principles and conforms with an accepted OCP Specification through the submission of engineering documentation, including but not limited to plugfest results, test results, compatibility reports, or other engineering documentation. d) The Submitter must provide a list of orderable SKUs and self-assessment documentation that attests that each orderable SKU meets the OCP Accepted Specification. e) The Submitter must provide a detailed description of the Product, its features, functions, and components, and how it conforms with an OCP ACCEPTED Specification. f) The Submitter must have in place a support agreement and support services for the Product, which are available to end users or solution providers (“Support Agreement”), and must provide a copy of that Support Agreement to OCP. g) The Product must be manufactured (i.e., at least one physically available version must exist) and must have a SKU upon application for certification, and must be available for purchase by any Member within 120 days of receiving OCP INSPIRED certification. <p>3) OCP must confirm that the OCP INSPIRED checklist is complete and that all licenses and membership requirements have been met, and must vote to accept the Product.</p> <p>4) At all times after the Product received OCP INSPIRED certification, the Submitter must maintain the Product in compliance with these criteria, otherwise the OCP INSPIRED certification will be revoked.</p>