

TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (the “**Agreement**”) is made and entered into as of _____, 2012 (the “**Effective Date**”), by and between Open Source Initiative, a _____ corporation with a place of business at _____ (“**Licensor**”), and _____, a _____ company with a place of business at _____ (“**Licensee**”).

BACKGROUND

1. Licensor is the owner of all right, title and interest in the mark “OSI” (the “**Licensed Mark**”);
2. Licensee desires to obtain a license to use the Licensed Mark on hardware which meets the standards approved by the Licensee as “open hardware” [Need to understand how they designate OS hardware], and
3. Licensor agrees to grant, and Licensee desires to accept, a license to use the Licensed Mark on the Goods.

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

AGREEMENT

1. LICENSE GRANT.

Subject to the terms of this Agreement, Licensor grants to Licensee a non-exclusive, worldwide, non-transferable right (without any right to sublicense) to use the Licensed Mark solely on the Goods in all jurisdictions throughout the world (“Territory”) for the term set forth in Section 4.

2. QUALITY CONTROL.

a. **Quality Standards.** Licensor acknowledges that the current level of quality of the Goods meets its minimum standards and Licensee agrees to maintain such quality level to at least this minimum amount for the duration of the Agreement. Licensor may, from time-to-time, request in writing specimens of the Goods to assess the level of consistency and quality of use of the Licensed Mark in the Goods and to ensure that Licensee maintains the consistency and quality of said Goods throughout the term of the Agreement. Licensee shall provide such specimen at no cost to Licensor. If at any time, Licensor reasonably determines that the Goods bearing the Licensed Mark fails to materially conform to Licensor’s minimum standards, Licensor shall so notify Licensee in writing and the Licensee shall correct the non-conformance and provide a corrected specimen of the Goods to Licensor for review within thirty (30) days from the written notice from Licensor regarding such non-conformance.

b. **Markings.** Licensee will cause the Licensed Mark to be displayed only in such form or manner as may be specifically approved by Licensor. Licensee will also cause to appear on all materials on or in connection with which the Licensed Mark are used such legends, markings and notices as Licensor may request in order to give appropriate notice of any trademark, trade name or other rights. No other markings, legends or notices may be used by Licensee except as approved by Licensor in advance of such use.

3. **OWNERSHIP.**

a. **Acknowledgement.** Licensee acknowledges that Licensor is the sole and exclusive owner of the Licensed Mark. Except as prohibited by law, Licensee agrees that it will do nothing inconsistent with such ownership either during the term of the Agreement or afterwards. Specifically, Licensee shall supply best efforts to use the Licensed Mark in a manner that does not deviate from Licensor's rights in the Licensed Mark and will take no action that will interfere with or diminish Licensor's right in the Licensed Mark. Licensee agrees that its use of the Licensed Mark shall inure to the benefit of and be on behalf of Licensor. Licensee acknowledges that the Licensed Mark is valid under the applicable law and that Licensee's utilization of the Licensed Mark will not create any right, title or interest in said Licensed Mark. The Licensee shall use the Licensed Mark so that such trademark rights are separate and distinct impression from any other trademark that may be used or affixed to the Goods, their associated documentation or marketing material. Except as permitted in this Agreement, Licensee agrees that it will not adopt or use as part or all of any corporate name, trade name, trademark, service mark or certification mark, the Licensed Mark, either alone or in combination with other words, or any other mark based on the Licensed Mark or any designation confusingly similar to the Licensed Mark.

b. **Non-Assistance.** The Licensee agrees not to apply or assist any third party to register the Licensed Mark or a confusingly similar designation anywhere in the world. If any application for registration is or has been filed by or on behalf of Licensee in any country and relates to any mark which, in the reasonable opinion of Licensor, is confusingly similar, deceptive or misleading with respect to, or dilutes or any way damages the Licensed Mark, Licensee shall, at Licensor's request, abandon all use of such mark, and any registration or application for registration thereof and shall reimburse Licensor for all costs and expenses of any opposition or related legal proceeding, including attorneys' fees, instigation by Licensor or its authorized representative.

4. **TERM AND TERMINATION.**

a. **Term.** Unless terminated earlier pursuant to the terms of this Agreement, the term of this Agreement shall commence on the Effective Date and shall continue until terminated as provided below.

b. **Termination by Licensor.** Licensor may immediately terminate this Agreement without need of judicial notice or court action by written notice to Licensee if:

i. Licensee makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they come due, commences or is the subject of any proceeding under law relating to any bankruptcy, arrangement, insolvency, or readjustments of its debt, which proceeding is not dismissed within sixty (60) days after commencement;

ii. Licensee materially breaches a provision of this Agreement and such breach remains uncured thirty (30) days after Licensor's written notice thereof. Examples of material breaches shall include, but are not limited to: (1) Licensee's use of the Licensed Mark inconsistent with the license granted under this Agreement, or otherwise contrary to the provisions of this license; (2) Licensee's challenge to Licensor's ownership of the Licensed Mark or the validity of the Licensed Mark; or (3) failure of any Licensee Goods to meet Licensor's quality control standards or trademark policy.

c. **Termination by Licensee.** Licensee may terminate this Agreement at any time upon giving Licensor at least sixty (60) days prior written notice of its intention to do so;

d. **Partial Termination.** Upon thirty (30) days prior written notice, Licensor may terminate Licensee's right to use the Licensed Mark without need of judicial notice or court action in a particular country or countries 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 Mark or in any country in which Licensor determines that the continued use of the Licensed Mark in such country may impose potential liability on Licensor or seriously threaten Licensor's ownership or use of the Licensed Mark.

e. **Effect of Termination of this Agreement.** Subject to the terms of this Agreement, upon termination or expiration of this Agreement for any reason, Licensee shall immediately cease all use of the Licensed Mark either alone or in conjunction with another term. Licensee further agrees that it will not thereafter readopt or use any trademark, service mark, trade or corporate name or business title, or other indicium of origin, which consists of, or includes therein, any of the Licensed Mark, or any portion thereof. Sections 3 (*Ownership*), 4(e) (*Effect of Termination*), 11 (*Warranty Disclaimer*), 12 (*Limitation of Liability*) and 14 (*General Provisions*) shall survive any expiration or termination hereof.

5. **Trademark Infringement Proceedings.**

Licensee recognizes the necessity for Licensor to protect the integrity of the Licensed Mark and, accordingly, Licensee agrees to cooperate fully with Licensor in protecting the Licensed Mark, and all protectable variations thereof, by promptly informing Licensor of any infringement or misuse of the Licensed Mark, or any protectable variations thereof, by a third party, which comes to Licensee's attention. If Licensee learns of any use by any person of a trademark or trade name similar to the Licensed Mark, Licensee shall immediately notify Licensor in writing of such use, and Licensor may elect, in its discretion, to (a) take such action, at its sole expense, in its own name or in the name of Licensee or join the Licensee as a party, as it in its sole discretion deems required, and to retain all amounts awarded as damages, profits or otherwise in connection with such actions, or (b) grant Licensee the right to take such action, at Licensee's own expense, and by attorneys of Licensee's choice, as Licensee in its sole discretion may deem advisable, including the right to sue for infringement. Should Licensor request the assistance of Licensee in conjunction with any such legal action, Licensee agrees to cooperate fully and completely with Licensor as requested by Licensor, at Licensor's expense. Any such action taken by Licensee may be taken in the name of Licensor or Licensee, as Licensee deems appropriate. The monetary proceeds from any such action, claim or settlement arising from any such action, will belong exclusively to Licensee.

9. **REPRESENTATIONS AND WARRANTIES OF LICENSOR.**

Licensor hereby represents and warrants as follows:

a. To its best knowledge, Licensor owns all right, title and interest to the Licensed Mark, free and clear of any liens or encumbrances;

b. Licensor has not entered into any exclusive agreements relating to the Licensed Mark with any person;

c. To the knowledge of Licensor, there is no unauthorized use, disclosure, infringement or misappropriation of any of the Licensed Mark by any third party; and

d. No written claim of infringement of any of the Licensed Mark has been made by a third party and, to the knowledge of Licensor, no claim of infringement of any of the Licensed Mark has been threatened by any third party and there is no basis for such a claim.

10. **REPRESENTATIONS AND WARRANTIES OF LICENSEE.**

Licensee hereby represents and warrants as follows: All products and services supplied in connection with the Goods and bearing the Licensed Mark will comply with the quality standards set forth in Section 2(a) (Quality Standards).

11. **WARRANTY DISCLAIMER.**

Except as expressly specified in Section 9 (Representations and Warranties of Licensor), the Licensed Mark are provided to Licensee "As Is" and without warranty of any type or kind. **LICENSOR HEREBY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.**

12. **LIMITATION OF LIABILITY.**

In no event shall either party be liable to the other party or any third party for any indirect, incidental, special, punitive or consequential damages (including but not limited to loss of profits or revenue) in any way arising out of or related to this Agreement, even if any representative of the party has been advised of the possibility of such damages.

13. **FORMALITIES.**

In order to comply with the requirements under certain foreign trademark laws, Licensor may need to know if the Goods are being sold in a particular country or countries and other information regarding such use. Licensee shall supply such information upon Licensor's request. The Licensee shall assist Licensor 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 Mark or any other applicable documents. The Licensee shall pay the expense of complying with such formalities.

14. **GENERAL PROVISIONS.**

a. **Governing Law and Forum.** This Agreement shall be governed and construed in accordance with the laws of the State of California applicable to agreements made and to be performed by California residents entirely within the State of California. Any litigation to enforce or interpret the provisions of this Agreement or the parties' rights or obligations arising out of this Agreement or the performance hereunder shall be maintained only in the courts in the [County of Santa Clara, California and the parties expressly consent to personal jurisdiction in such courts.

b. **Assignment.** Licensee shall not assign or delegate this Agreement or any of its

rights, duties or obligations thereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of Licensor which approval shall not be unreasonably withheld Licensor may assign this Agreement upon notice to Licensee.

c. **No Agency.** Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever.

d. **Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement, on any occasion, shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term, or any other term, of this Agreement.

e. **Notices.** Any notice or other communication under this Agreement shall be in writing and shall be considered given five (5) days after being mailed by prepaid registered mail, return receipt requested, being faxed or immediately upon delivery by recognized courier service, to the parties at the addresses first specified above, or at such other address as a party may specify by notice to the other.

f. **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, all remaining provisions of this Agreement shall remain in full force and effect.

g. **Successors and Assigns.** This Agreement shall be binding on, and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Licensee may not assign this Agreement without the prior written consent of Licensor except as part of a corporate reorganization, consolidation, or merger, which consent shall not be unreasonably withheld.

h. **Entire Agreement.** This Agreement, including any attached exhibits, contains a complete statement of all the agreements between the parties concerning the subject matter herein, and supersedes all prior and contemporaneous agreements between them. No modification, amendment or waiver of this Agreement shall be effective without the express written consent of an authorized representative of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Licensor:

Licensee:

Authorized Signature

Authorized Signature

Name (Printed)

Name (Printed)

Title

Title