

# **TERMS FOR OPEN SOURCE ADOPTER CLASS IN OPEN NETWORKING FOUNDATION**

The following Terms for Open Source Adopters (the “**TERMS**”) shall govern the terms of participation for the entity (referred to herein as “**ADOPTER**”) that has executed an Open Source Adopter Agreement (“**ADOPTER Agreement**”) with Open Networking Foundation, an Oregon nonprofit corporation (“**ONF**”) and is incorporated by reference into the Open Source Adopter Agreement. By entering into the Open Source Adopter Agreement, **ADOPTER** agrees that these **TERMS** will apply to all of the activities of ONF, and agrees to comply with all such terms and obligations contained in the Terms for Open Source Adopters, as may be amended by the Board of Directors of ONF following thirty (30) day notice to the all current **ADOPTERS**. The **TERMS** shall be effective as of the Effective Date of your Open Source Adopter Agreement. In accordance with these **TERMS**, **ADOPTER** will collaborate with ONF and other **ADOPTERS** and ONF Members in the activities designated by ONF for **ADOPTERS**. As permitted under the ONF Bylaws, ONF has created the **ADOPTER** class for entities that will participate in the ONF activities which are not specifically and exclusively reserved for ONF Members.

## **1. Definitions**

“**Affiliate**” shall have the meaning set forth in the ONF Bylaws, which term is incorporated by reference. For the avoidance of doubt, Affiliates of ONF Members are subject to **Section 6** of this agreement in addition to all other terms, and **ADOPTERS** that are not Affiliates of ONF Members are not subject to **Section 6** of this agreement.

“**ADOPTER**” means an entity that meets the qualifications for Open Source **ADOPTERS** as set forth in the Terms for Open Source **ADOPTERS** and that has entered into an Open Source **ADOPTER** Agreement.

“**ONF Software Projects**” means the software projects sponsored and maintained by ONF, which are listed on the ONF website, and that are the subject of ONF Contribution License Agreements, including all object code and source code relating thereto that is developed as part of the Project.

## **2. Qualifications of ADOPTER**

**2.1 ADOPTER Requirements.** Any for-profit corporation, nonprofit corporation or other type of entity formed or incorporated under laws of their applicable jurisdiction that (i) is interested in participating in the ONF Software Projects, (ii) has not previously signed an ONF Membership Agreement, (iii) is not otherwise prevented by treaty, law, or regulation from abiding by the terms of the **ADOPTER** Agreement, the Terms for Open Source Adopter Class, and policies of ONF that are applicable to **ADOPTERS**, (iv) **ADOPTER** is doing business distinct from Affiliates as defined in Section 2.2, (v) signs the **ADOPTER** Agreement, and (vi) pays the then-current annual dues applicable to this **ADOPTER** class is eligible to become an

ADOPTER. Entities that are Affiliates of ONF Members may qualify as ADOPTERS; however, the terms of **Section 6** shall apply to all such ADOPTERS.

**2.2 ADOPTER's Distinction from Affiliate.** This agreement (the ADOPTER Agreement and related Terms for Open Source Adopters) makes it possible for an ADOPTER to participate in ONF without binding ADOPTER or ADOPTER'S Affiliates to the terms of ONF Membership or the provisions of the ONF IPR Policy associated with ONF Membership. To this end, a corporate entity is permitted to join as an ADOPTER hereunder separate, unique and apart from its Affiliates to the extent it maintains separate financial reporting from Affiliates, operates under a unique business name from all Affiliates, maintains a unique website with unique domain name, and uses a unique email domain for all employees of the corporate entity.

**2.3 ADOPTER Access.** ONF is a corporation organized in the United States and with operations in the United States and must comply with U.S. laws, including U.S. Export Control laws. ADOPTER acknowledges that ONF reserves the right to restrict ADOPTER'S access to non-public information and materials or, if required, terminate ADOPTER'S status under the ADOPTER Agreement and the Terms for Open Source Adopters if the ADOPTER becomes restricted from receiving the information and materials otherwise provided to ADOPTERS.

### **3. Benefits of ADOPTER**

**3.1 Participation in ONF Software Projects.** ONF has established the ADOPTER class to enable entities to participate in aspects of ONF Software Projects that were previously not available without becoming a Member of ONF.

**3.2 Excluded Rights and Activities.** The only ONF Member rights and activities to which ADOPTER shall be excluded shall be Membership voting, rights to certain leadership positions and the benefits and obligations of the ONF IPR Policy and associated RAND-Z cross-licensing of intellectual property. However, if ADOPTER currently is an Affiliate of an ONF Member, or has been an Affiliate of an ONF Member in the past, **Section 6** of these Terms shall apply to the ADOPTER and these exclusions shall not apply.

**3.3 Logo.** ADOPTER shall have the right to have their name and logo appear in the listing of ADOPTERS on the ONF website.

### **4. Confidentiality and Intellectual Property Rights**

**4.1 Confidentiality.** The ADOPTERS shall not be entitled to receive any confidential information of ONF and are not subject to the confidentiality obligations contained in the ONF Bylaws. The Parties do not intend to disclose confidential information during the activities contemplated by this agreement.

**4.2 Applicability of ONF IPR Policy.** The Parties acknowledge that entering the ADOPTER Agreement shall not cause ADOPTER to be subject to the ONF IPR Policy. If the ADOPTER currently is an Affiliate of an ONF Member, or has been an Affiliate of an ONF Member in the past, then **Section 6** of these Terms shall apply to the ADOPTER.

**4.3 ONF Contributor License Agreement.** The ADOPTER shall enter into an ONF Contributor License Agreement, which is located at [cla.opennetworking.org](http://cla.opennetworking.org), before making any contributions to any ONF Software Projects.

**4.4 Limited Trademark License.** Undersigned ADOPTER grants ONF the non-exclusive, non-transferable, non-sublicensable, royalty-free right to use ADOPTER'S name and logo (together "**Trademark Rights**"), as (a) provided by the ADOPTER to ONF, or (b) associated with the ADOPTER'S official corporate name if ADOPTER chooses not to provide its name and logo, for the duration of the ADOPTER Agreement, on the ONF website and its public collateral. The right to use shall not contain the right to sublicense or to transfer the Trademark Rights. ONF shall not use other trademarks of ADOPTER without the written consent of ADOPTER. ONF shall adhere to any trademark guidelines supplied to ONF with regards to ADOPTER'S Trademark Rights.

**4.5 No Licenses.** Except for the trademark license granted in **Section 4.4**, by entering the ADOPTER Agreement no ADOPTER is granting licenses to another ADOPTER or to ONF (by implication, estoppel, or otherwise) to any intellectual property, including without limitation, licenses to trademarks, copyrights, patents, mask works, and trade secrets, as a result of participation in the activities of ONF.

## **5. Obligations of ADOPTERS.**

**5.1 Rules and Policies.** The ADOPTER during the term of the ADOPTER Agreement and in connection with ADOPTER'S participation in ONF activities agrees to comply with the ONF Antitrust Guidelines and ONF Code of Conduct, each of which is either posted on the ONF website or made available to ADOPTER, and agrees to comply with any future official policies applicable to ADOPTERS which are adopted by the ONF Board of Directors from time to time, provided that such policies shall be made available to ADOPTERS prior to their effective date (collectively, "**Rules and Policies**"). The ADOPTER agrees to cause each of its representatives, and other employees, contractors, and agents who participate in one or more ONF activities to comply with all such Rules and Policies during the term of the ADOPTER Agreement.

## **6. Terms Applicable to Affiliates of ONF Members.**

**6.1 Affiliates of ONF Members.** This ADOPTER program shall be open to Affiliates of ONF Members, for example, a subsidiary of an ONF Member. If ADOPTER is an Affiliate of an ONF Member, then ADOPTER will continue to be subject to all of the obligations and terms under the ONF Bylaws, Membership Agreement, IPR Policy, each as amended, and other official policies of ONF (the "**ONF Membership Terms**") that are applicable to an Affiliate of an ONF Member. The ADOPTER Agreement nor the Terms for Open Source Adopters shall modify or alter the ONF Membership Terms or the obligations or rights of Affiliates of ONF Members thereunder. If the undersigned ADOPTER is an Affiliate of an ONF Member, then the ADOPTER is entitled to receive the additional benefits contained in **Section 3** of this agreement subject to the payment of the applicable annual dues and compliance with the other terms of this Agreement. The Parties agree that any conflict between the terms contained in the ADOPTER Agreement or the Terms for Open Source Adopters on one hand, and the ONF Membership Terms on the other hand shall be resolved in favor of the ONF Membership Terms.

## 7. Representations and Warranties

**7.1 Warranty.** The ADOPTER represents that (i) it has the full right and authority to enter into the ADOPTER Agreement and grant the rights provided herein; and (ii) it has obtained all necessary approvals (both internally and from third parties), if any, for entering into the ADOPTER Agreement.

**7.2 Warranty Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES AND INDEMNITIES, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATING TO THE ADOPTER AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

## 8. Limitations of Liability

**8.1 Certain Types of Damages.** IN NO EVENT SHALL EITHER PARTY UNDER THE ADOPTER AGREEMENT BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE ADOPTER AGREEMENT, THE PROJECT, OR THE PROJECT SOFTWARE OR DOCUMENTATION, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE INCLUDING LOST PROFITS, LOST REVENUES AND LOSS OF BUSINESS ADVANTAGE.

**8.2 Amount of Liability.** IN NO EVENT SHALL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THE ADOPTER AGREEMENT EXCEED ONE THOUSAND DOLLARS (\$1,000) IN THE AGGREGATE.

**8.3 Failure of Essential Purpose.** The limitations set forth above shall survive and apply even if any limited remedy specified under the ADOPTER Agreement and related Terms for Open Source Adopters is found to have failed its essential purpose.

## 9. General

**9.1 Governing Law and Venue.** These Terms for Open Source Adopters and the ADOPTER Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without reference to its conflict of laws provisions. The Parties agree to submit to the exclusive jurisdiction and venue in the state and federal courts located in Delaware, for any and all disputes, claims, and actions arising from or in connection with this Agreement. Each of the Parties hereby submits to the jurisdiction of such courts over the Party personally in connection with such litigation, and waives any objection to venue in such courts and any claim that such forum is an inconvenient forum.

**9.2 Relationship of Parties.** Nothing in these Terms for Open Source Adopters and the ADOPTER Agreement shall be construed to create a partnership, agency relationship, or joint

venture in the legal sense. Neither Party shall have any express or implied authority to bind the other Party to any contract, agreement or undertaking with any third party.

**9.3 Notices.** Any notice permitted or required under these Terms for Open Source Adopters and the ADOPTER Agreement may be given by electronic mail, hand delivery, U.S. or international mail, or nationally or internationally recognized courier. Notice shall be deemed given: (a) immediately upon transmission if delivered by electronic mail, unless returned as undelivered or undeliverable; (b) when delivered, if delivered by hand or nationally or internationally recognized courier; or (c) twenty (20) business days after the date mailed by U.S. or international mail. Notice must be addressed to the Party to be notified at the address or email address set forth below its signature hereto, or at such other address or email address as such Party may designate by advance written notice to the other Party in accordance with this paragraph.

**9.4 Assignment.** The ADOPTER Agreement shall not be assignable by either Party without the prior written consent of the other, except that either Party may assign these Terms and the ADOPTER Agreement without consent to an entity that acquires all or substantially all of the business or assets of the assigning Party, provided that the acquiring entity expressly assumes all obligations of the assigning Party under the ADOPTER Agreement. Subject to the foregoing, the provisions of the ADOPTER Agreement and related Terms for Open Source Adopters shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

**9.5 Entire Agreement.** These ADOPTER Agreement, together with its exhibits, Terms for Open Source Adopters and any other documents or agreements incorporated herein by reference, constitutes the entire agreement between the Parties with respect to the subject matter of the ADOPTER Agreement and supersedes all prior communications, representations and understandings, both oral and written, between the Parties with respect to the subject matter of the ADOPTER Agreement.

**9.6 Amendments and Waivers.** Any amendment to the ADOPTER Agreement must be in writing and signed by both parties, and any waiver of this Agreement must be in writing and signed by the Party providing such waiver, however, the Terms for Open Source Adopters may be amended by ONF if duly approved by the Board of Directors and notice is provided in accordance with these TERMS. The waiver of any breach of or a default under any provision of the ADOPTER Agreement and related Terms for Open Source Adopters shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of the ADOPTER Agreement, nor shall any delay or omission of a Party to exercise or avail itself of any right or remedy that it has or may have hereunder, operate as a waiver of any right or remedy. Notwithstanding the above, ONF may modify the annual dues for ADOPTERs regardless of the description of annual dues in the ADOPTER Agreement, including any renewal fees, upon approval by the ONF Board of Directors.

**9.7 Severability.** The invalidity or unenforceability of any term of the ADOPTER Agreement and related Terms for Open Source Adopters in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms or the validity or enforceability of such term in any other situation or in any other jurisdiction. If a final judgment of any court of

competent jurisdiction declares any term hereof to be invalid or unenforceable, the court making the determination shall have the power to limit the term, to delete specific words or phrases, or to replace it with a term that is valid and enforceable and that comes closest to expressing the intention of the original term that is being replaced, and the ADOPTER Agreement and related Terms for Open Source Adopters shall be enforceable as so modified.

End of Terms for Open Source Adopters