

CLIMATE SAVERS COMPUTING TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (“License”) is by and between CLIMATE SAVERS COMPUTING INITIATIVE (the “Initiative”) and Member.

RECITALS

- A. WHEREAS, Member has entered into a Membership Agreement with the Initiative pursuant to which Member agreed to be bound by the terms of the Membership Agreement as well as the terms and conditions stated in the Initiative’s Organizational Documents;
- B. WHEREAS, the Initiative has the right to grant Member certain limited rights to use the name and mark CLIMATE SAVERS COMPUTING and certain derivations thereof that may be approved for use by the Initiative from time to time (the “Initiative Marks”), subject to control by the Initiative over the manner of usage of the Initiative Marks and the nature and quality of the goods and services offered under the Initiative Marks;
- C. WHEREAS, WWF-World Wide Fund for Nature is the owner of the Initiative Marks but, together with its U.S. member World Wildlife Fund, Inc. (collectively, “WWF”), has granted the Initiative the right to use the Initiative Marks and to sublicense the right to use the Initiative Marks to the Initiative’s Members.

NOW, THEREFORE, the parties agree as follows:

- 1. Definitions. Except as otherwise defined herein, all capitalized terms shall have the meanings given to them in the Bylaws and Membership Agreement.
- 2. Trademark License Grant. Subject to and conditioned upon Member’s full compliance with this License, the Initiative grants Member, and Member accepts, a world wide, limited, non-exclusive, non-transferable, royalty-free, fully paid-up license to use the Initiative Marks for the purpose of (i) enabling Member to identify itself as a member of the Initiative; (ii) identifying products of Member that have been properly tested in accordance with the Compliance Program and determined to meet or exceed the Program Criteria set forth in Exhibit A to the Bylaws; and (iii) developing and distributing marketing and promotional materials approved by the Initiative in connection with the same.
- 3. Proper Usage
 - 3.1 Member **WILL NOT** use the term CLIMATE SAVERS standing alone.
 - 3.2 Member **WILL NOT** use the Initiative Marks in any way that disparages the Initiative, WWF, nor any WWF National Organizations or other members of the WWF Network, or their respective products, programs, or services, or in any manner which would diminish or otherwise damage the goodwill or reputation of any of them, including, but not limited to, uses which could be deemed to be obscene, pornographic, excessively violent, or otherwise in poor taste or unlawful, or which purpose is to encourage unlawful activities.
 - 3.3 Member **WILL NOT** use the Initiative Marks to influence the outcome of any public election, or for any purpose not described in Section 2 above.
 - 3.4 Member **WILL NOT** use the Initiative Marks on or in association with products or services that do not meet then-current Energy Star requirements.

- 3.5 Member **WILL** use the Initiative Marks only on products that have been properly tested in accordance with the Compliance Program and determined to meet or exceed the Program Criteria set forth in Exhibit A to the Bylaws;
- 3.6 Member **WILL**, unless otherwise instructed in writing by the Initiative, attribute ownership of the Initiative Marks by using the following trademark attribution in all promotional documents and initiatives and in all other materials bearing the Initiative Marks: “**Climate Savers**® is a trademark or registered trademark of WWF, the international conservation organization. Used under license.”
- 3.7 Member **WILL** use the Initiative Marks only in strict accordance with the Trademark Usage Guidelines, and any amendments thereto, provided by the Initiative from time to time.
4. **Quality Control and Right To Review and Inspect**
- 4.1 To ensure compliance with Member’s obligations under this License, the Initiative may, upon reasonable notice to Member, review and inspect any products to be manufactured and sold by Member displaying the Initiative Marks, together with the containers, packages, cartons and the like therefore. Member shall cooperate fully in providing the Initiative access to or assisting the Initiative in gaining access to Member’s products, documents and materials. Upon request from the Initiative, Member will provide documentation to the Initiative verifying that Member’s products bearing the Initiative Marks are in compliance with the Program Criteria set forth in Exhibit A of the Bylaws, as amended from time to time.
- 4.2 Member shall comply with all applicable laws and regulations in its advertising, promotion, display and use of the Initiative Marks.
- 4.3 In the event the Initiative objects to any product, service, action or activity of Member on the grounds that it violates the provisions of this License, Member shall immediately discontinue the offending activity and if Member fails to do so within ten (10) calendar days, the Initiative may immediately terminate this License.
5. **Indemnity**
- 5.1 Member agrees to indemnify the Initiative against and from all loss, cost, liability and expense incurred by the Initiative which arises out of a claim concerning Member’s use of the Initiative Marks not in accordance with the terms hereof. Furthermore, Member agrees to indemnify, defend and hold the Initiative harmless from all loss, cost, liability and expense incurred by the Initiative which arises out of a claim concerning Member’s marketing, advertising, promotion, endorsement or sale of any products or services, and any claim arising out of Member’s design or manufacture of products bearing the Initiative Marks.
- 5.2 The Initiative does not warrant that the use of the Initiative Marks will not infringe the rights of third parties. In the event of any claim or threatened claim against the Initiative or Member challenging the Initiative Marks, the Initiative reserves the right to terminate, immediately upon written notice, all or a part of this License, and Member will take all steps necessary to immediately cease use of the Initiative Marks.
6. **Protection of Interest**
- 6.1 Member acknowledges WWF’s ownership of the Initiative Marks and all goodwill associated therewith, and acknowledges that any and all use of the Initiative Marks inures to the sole benefit of WWF. Member shall not challenge WWF’s ownership rights in and to the Initiative Marks, nor take action inconsistent with WWF’s or the Initiative’s rights in and to the Initiative Marks.

- 6.2. In the event Member becomes aware of any unauthorized use of the Initiative Marks by a third party, Member shall promptly notify the Initiative in writing, and shall provide reasonable cooperation in any enforcement of WWF's rights against such third party. The right to enforce WWF's rights in the Initiative Marks rests entirely with WWF and shall be exercised in WWF's sole discretion. Member shall not commence any action or claim to enforce WWF's rights in the Initiative Marks.
- 6.3 In the event that a third party challenges Member's use of the Initiative Marks, Member shall immediately notify the Initiative in writing. The Initiative shall, in its discretion, undertake and conduct the defense of such a challenge and Member shall not enter into any discussions, negotiations, or settlements, or any other action pertaining to said challenge without the express written consent of the Initiative. The Initiative and Member may immediately terminate this License in the event that a challenge to the Initiative Marks is brought against Member and Member agrees to cooperate fully with the Initiative, at the Initiative's expense, in the event such a challenge is brought.
7. Term and Termination
- 7.1 Unless terminated earlier in accordance with this License, the term of this License shall remain in effect so long as Member maintains its membership in the Initiative.
- 7.2 This License will immediately and automatically terminate upon the earliest to occur of the following:
- 7.2.1 If Member withdraws from membership in the Initiative, no longer qualifies for membership in the Initiative or if Member's membership in the Initiative is revoked or terminated in accordance with the Membership Agreement or the Bylaws of the Initiative;
- 7.2.2 If the term of Member's Membership Agreement expires;
- 7.2.3 If the Initiative's trademark license agreement with WWF terminates; and
- 7.2.4 In accordance with Sections 4.3, 5.2 or 6.3 of this Agreement.
- 7.3 This License will terminate upon notice by the Initiative to Member if Member materially breaches this License and fails to cure the breach within ten (10) calendar days after the Initiative notifies Member of the breach.
- 7.4 Upon the cancellation, expiration or early termination of this License for any reason whatsoever, all rights in the Initiative Marks automatically shall revert to the Initiative and Member immediately shall cease and thereafter refrain from all use of the Initiative Marks (and any marks similar to the Initiative Marks) and destroy all materials displaying the Initiative Marks, including any containers, packages, cartons, wrappers, advertising and promotional pieces (in whatever medium) and all similar materials displaying the Initiative Marks.
8. Entire Agreement. This License constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all proposals, oral or written, all negotiations, conversations, and/or discussions between the parties relating to the License, and all past courses of dealing or industry customs.
9. Choice of Law and Jurisdiction. This License shall be governed by U.S. federal law and the laws of the State of Oregon, without reference to conflict of laws principles. Any dispute arising out of this License shall be brought in, and the parties consent to personal and exclusive jurisdiction of and venue in, the state and federal courts within Portland, Oregon.

10. Equitable Relief. Member recognizes and acknowledges that the breach of any of its covenants, agreements, undertakings, terms or conditions hereunder may cause the Initiative irreparable damage, which may not be readily remedied by monetary damages in an action at law, and may, in addition thereto, constitute a violation of WWF's trademark rights and rights under the laws of unfair competition. In the event of any default or breach by Member, including any action by Member that could cause some loss or dilution of WWF's goodwill, reputation, or rights in the Initiative Marks then, subject always to Federal Rule of Civil Procedure 65, the Initiative shall be entitled to seek an immediate injunction in addition to any other remedies available, to stop or prevent such irreparable harm, loss, or dilution.
11. Severability. If any provision of this License is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect the validity of the remaining provisions.
12. No Waiver. The failure of any party to enforce at any time one or more of the provisions of this License shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of any party to enforce each and every such provision thereafter.
13. Relationship of the Parties. No agency, partnership, joint venture, or franchise relationship is created between the parties as a result of this License.
14. No Assignment. Member may not assign, sublicense or transfer this License or the rights granted to it herein without the Initiative's prior written consent. Any attempt by Member to assign, sublicense or transfer this License or the rights granted to it herein, whether voluntary or by operation of law, directly or indirectly, shall be void and of no force and effect.
15. Third Party Beneficiary. The parties agree that WWF shall be a third party beneficiary of this License, and shall have the rights and protections provided to the Initiative under this License, including the right to enforce Member's performance of Member's obligations.
16. No Endorsement. Member shall make no claims or indications that WWF endorses its products or services. Member shall make no use of any other WWF mark, including without limitation WWF's panda logo, the WWF initials, and the names World Wildlife Fund or Worldwide Fund for Nature, except as required under Section 3.6 of this License.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this LICENSE.

MEMBER: _____

CLIMATE SAVERS COMPUTING
INITIATIVE

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date