# **RESELLER AGREEMENT**

# **(International Reseller)**

THIS RESELLER AGREEMENT (“Agreement”), effective May 1, 2015 (“Effective Date”), is between Low Power Company, Inc., with offices in California, USA (“Lopoco”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Reseller”).

Lopoco develops and markets power efficient computer servers and storage hardware, and markets and sells services such as internet cloud services and professional services. Lopoco wishes to engage third parties to assist in selling and supporting such products and Reseller is willing and qualified to do so.

The parties therefore agree as follows:

# Agreement

1. Appointment of Reseller. Lopoco hereby appoints Reseller as a non-exclusive reseller of the Lopoco Products (as defined in Section 2 below) within \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Territory”). This appointment does not authorize any subsidiary or affiliate of Reseller to act as a reseller for Lopoco Products without the prior, written approval of Lopoco. Reseller will acquire the Products under this Agreement solely for sale to end-users in the Territory and for no other purpose.

2. Products. “Products,” as used in this Agreement, means those products and services listed in the then-current Lopoco International Reseller price list in the form furnished to Reseller upon execution of this Agreement (the “International Price List”), as such list is amended from time to time by Lopoco. Such amendments may take the form of limited time, specific, price quotes delivered as a separate document to Reseller.

3. Term of the Agreement. Unless sooner terminated pursuant to the terms of Section 4a, Section 16 or otherwise under this Agreement, the initial term of this Agreement will be for one (1) year and will automatically renew for successive one-year terms. Either party may terminate this Agreement upon notice of termination at least 30 days prior to the end of any term.

4. Reseller’s Warranties and Obligations.

a. Reseller represents and warrants that it is familiar with the market for Lopoco’s Products and will further develop such expertise in accordance with its applicable Lopoco Reseller Partner Program level requirements. Reseller’s achievement of either Lopoco Authorized Advantage Partner or Lopoco Premier Partner status, as outlined in Exhibit C, shall entitle Reseller to purchase Products at the discounted prices in the then-current International Price List. Reseller has 90 days from the Effective Date (the “Qualifying Period”) in order to complete the training requirements necessary to achieve Lopoco Authorized Advantage Partner or Lopoco Premier Partner status as outlined in Exhibit C. From the Effective Date, Reseller will be entitled to Authorized Advantage Partner level discounts; provided, however, that if, during the Qualifying Period, Reseller fails to complete the necessary training requirements to achieve at least Authorized Advantage Partner status, Lopoco may, at its discretion, terminate this Agreement or assign Reseller to “Inactive” status (as defined below) as of the last day of the Qualifying Period. Similarly, if Reseller fails to achieve the revenue or qualifying deal quota set forth in Exhibit C, or as otherwise agreed in writing, for a given period, Lopoco may, at its discretion, terminate this Agreement or assign Reseller to “Inactive” status. “Inactive” status, for purposes of this Section 4a, shall entail Reseller retaining its rights as a reseller under this Agreement without the right to submit purchase orders to Lopoco at Authorized Advantage-, Premier- or any other level of discount off list prices in the then-current Lopoco International Price List.

b. Reseller agrees to furnish “point-of-sale” (POS) data for all of its end-user customers to which it has resold Products during the term of this Agreement. Such POS reports shall be furnished to Lopoco by Reseller on a quarterly basis within fifteen (15) days of the end of each calendar quarter of the term of this Agreement and shall include, for each Product sold, the serial number, end-user identity, end-user purchase order number and date, end user ship-to address and date of installation. Lopoco will not use the information provided in such POS reports (the “Information”) for any purpose other than to determine appropriate sales personnel compensation and end-user support. Specifically, the Information shall be treated as Confidential Information under the terms of Section 15 and Lopoco will not use the Information for marketing or as a direct sales tool.

c. In selling the Products, Reseller will use only marketing materials supplied by Lopoco or such other materials as have been approved in advance by Lopoco. Reseller will represent the Products to customers in a knowledgeable and professional manner, and will not represent any Product in a manner which is false or misleading or which may adversely affect the reputation or goodwill of Lopoco or its Products.

d. Reseller will remain a single-tier reseller, selling directly to end-users.Reseller will comply with applicable laws in selling the Products including all export and import restrictions imposed by U.S. law and the law of the country of import.

e. Reseller agrees to send at least one (1) technical personnel and one (1) sales personnel, annually during the term of this Agreement, at Reseller’s expense, to Lopoco’s annual partner conference, if any.

5. Lopoco’s Obligations. Lopoco will provide Reseller with sales and marketing information, assistance and training as reasonably necessary to enable Reseller to effectively fulfill its obligations under this Agreement. Such assistance will include on-site visits to Reseller’s offices or customer locations as reasonably requested and provided on an as-available basis. Lopoco will also provide training classes at Lopoco’s offices, or at a mutually agreed upon location, pursuant to the terms set forth in the International Price List.

6. Prices and Price Changes. Reseller will be entitled to purchase Lopoco Products at prices that are defined in Lopoco’s then current International Price List, subject to the conditions set forth in Section 4, the Deal Registration terms set forth on Exhibit A, and otherwise in this Agreement. Lopoco will be free to change prices, discount schedules, and any other terms of the International Price List (or any other price list) at any time and without advance notice to Reseller. If Lopoco increases its list prices, all Products shipped on or after the effective date of such increase will be at the new higher price, except that Lopoco will honor all accepted Reseller purchase orders that were received prior to notice of the price increase at the prices in effect at the time the order was received. Lopoco will protect Reseller from price increases for outstanding end-user price quotations for up to 30 days provided that Reseller gives written notification of such quotes (including a copy of the customer quotation) within 10 days after the effective date of the new price. If Lopoco decreases its list prices, equitable price protection mechanisms will be implemented as necessary.

7. Purchase Orders, Payment, Taxes and Fees.

a. Except by virtue of a separate agreement with Lopoco, Reseller will submit purchase orders to an Lopoco distributor (each, an “Lopoco Distributor”) authorized to sell to resellers in the Territory (a list of which distributors is available from Lopoco upon request) and all terms relating to Product ordering, payment, taxes and fees shall be as set forth in Reseller’s agreement with such authorized Lopoco Distributor. At its sole discretion, Lopoco may elect to sell certain services (e.g., training or additional terms on any consulting services) directly to Reseller. Except where specifically authorized by Lopoco in a separate written agreement, each Lopoco Product unit identified on a purchase order must be purchased in connection with a single end-user customer and Reseller may not use (or permit to be used) any such Product unit for third parties other than the single, identified end-user customer, whether on a service bureau, time sharing, application service provider or managed service provider basis or otherwise, without the express written authorization of Lopoco. Where Lopoco has consented to Reseller offering the Product on a managed service provider basis in a separate written agreement, Reseller agrees to also indicate clearly on each purchase order any Product unit that will be deployed in such manner.

**Subsections b. and d. below are only applicable where a purchase order is processed by Lopoco directly, rather than an authorized Lopoco Distributor.**

b. Lopoco will provide Products under this Agreement pursuant to purchase orders that are accepted by Lopoco. Lopoco will invoice upon receipt of the purchase order. Payment terms will be 70% of net at submission of purchase order, and the balance due upon shipment of Products. All payments will be made in US dollars, unless the parties agree otherwise in writing. Lopoco may accept payment in any amount without prejudice to its right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere will be construed as an accord or satisfaction. Lopoco reserves the right to conduct a credit check to confirm Reseller’s creditworthiness. Lopoco’s obligations under this Agreement shall be contingent upon Lopoco’s receipt of a completed credit application as set forth on Exhibit B and confirmation of Reseller’s creditworthiness to Lopoco’s reasonable satisfaction based on the results of any such credit check. If Reseller fails to make any payment when due, Lopoco may withhold further shipments until the past-due payment is made, and may require that subsequent orders be paid for prior to delivery of shipment. In addition, overdue payments may be charged interest at the lesser of 1.5% per month or the maximum interest allowed by law. If Lopoco is required to retain a collection agency or attorney to collect overdue payment, all reasonable collection costs, including attorney fees, will be payable by Reseller.

c. Lopoco shall have the right, upon reasonable advance notice and during normal business hours, to audit Reseller’s business records to confirm compliance with the terms hereof. Such audit shall be conducted in a non-disruptive manner and no more than once during any 12-month period. In the event that such audit determines that (i) Reseller has underpaid over the time period since the previous audit, if any, by more than five percent (5%) or (ii) Reseller has failed to comply with a material obligation of this Agreement, including but not limited to the restrictions of Section 7a, Reseller shall reimburse Lopoco for the reasonable costs of performing the audit.

d.In addition to the purchase price, Reseller will be responsible for and pay, or reimburse Lopoco for, all taxes or other amounts payable to governmental authorities on account of the sale or use of the Products. In lieu of such payment, Reseller may, at the time the order is submitted, provide Lopoco with an exemption certificate satisfactory to the authority imposing the tax, fee or charge. Lopoco reserves the right to charge a 15% restocking fee, where applicable.

**Section 8 below is only applicable where a purchase order is processed by Lopoco directly, rather than an authorized Lopoco Distributor.**

8. Shipment and Delivery.Lopoco will ship all Products FCA Lopoco’s manufacturing facilities (Incoterms 2010). Lopoco will not insure the shipment unless specifically requested by Reseller. Reseller is responsible for all shipping and handling charges including, but not limited to, premiums for freight insurance, inspection fees, assessments, import duties, V.A.T. and similar taxes and all other costs incurred in transporting the Products to the shipping destination. Such costs will be prepaid by Lopoco and added to Reseller’s invoice except for import duties and taxes which will be paid directly by the Reseller. Title to, and all risk of loss of or damage to, all Products purchased from Lopoco will pass to Reseller upon delivery to the carrier. Reseller will be responsible for any claims against the carrier arising from or relating to shipment. Lopoco will retain a security interest in all Products until it has received payment in full therefor.

9. Trademarks, Trade Names and Intellectual Property.

a. During the term of this Agreement, Reseller is authorized to use Lopoco’s trademarks, trade names and logos in connection with Reseller’s sale, advertisement and promotion of Products. All such usage is subject to Lopoco’s approval and must be in accordance with Lopoco’s instructions. Upon termination of this Agreement, Reseller will cease use of such marks, names or logos and will, within a reasonable time, remove any reference to Lopoco from its advertising and promotional material.

b. Reseller acknowledges that all trademarks, trade secrets and other intellectual property associated with the Products are and will remain the sole property of Lopoco, and Reseller will take all reasonable steps necessary to protect such property. Reseller will promptly notify Lopoco of any possible third-party infringement of Lopoco’s intellectual property rights of which it becomes aware. Reseller will not remove any trade name, trademark or other attributing mark or designation which Lopoco may place on any Product, and will fully and fairly attribute the origin of the Products.

10. Warranty.

a. Lopoco warrants that for a period of 90 days from the date of delivery: (i) the media on which the software component of any Product (“Software”) is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software substantially conforms to its published specifications. Except for the foregoing, the Software is provided AS IS. In no event does Lopoco warrant that the Software is error free, that the Product will operate with any software or hardware other than that provided by Lopoco or specified in the Product documentation, or that the Product will satisfy any end-user’s own specific requirements.

b. Lopoco warrants that the hardware component of any Product will, for a period of one year from the date of delivery, be free from defects in material and workmanship under normal use.

c. Reseller’s exclusive remedy and the entire liability of Lopoco under this limited warranty and any other guarantee made by Lopoco is, at Lopoco’s option, to repair or replace any Product or component that fails during the warranty period at no cost.

d. For hardware Products: Products returned to Lopoco must be pre-authorized by Lopoco with a Return Material Authorization (RMA) number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for safe shipment. The decision to issue an RMA shall be at Lopoco’s sole discretion, subject to the warranty terms hereof. Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by Lopoco's receiving department. All other packages will be rejected. The repaired or replaced item will be shipped to the customer, at Lopoco’s expense, no later than seven (7) days after receipt by Lopoco. Lopoco may invoice Reseller for any failed Products or components (a) with respect to which the damage to such Products or components is attributable to actions taken by the end user customer or Reseller or any of their agents (including but not limited to the categories set forth in subsection (e) immediately below); or (b) not returned within ten (10) days of shipment of the replacement unit(s). Title to any returned Products or components will transfer to Lopoco upon receipt. Lopoco will replace defective media or documentation or, at its option, undertake reasonable efforts to modify the software to correct any substantial non-conformance with the specifications.

e. The foregoing limited warranties extend only to the original end user of the Product (and not to any subsequent purchasers or third parties), and do not apply if the Product (i) has been altered or serviced, except by Lopoco or an Lopoco-authorized service provider (except that end-user may install end-user replaceable Lopoco parts or parts expressly approved by Lopoco for end-user’s specific Product in the servicing country, if any (for example, end user may only replace hard drives with Lopoco-approved hard drives of correct capacity)), (ii) has not been installed, operated, or maintained in accordance with Lopoco’s instructions, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, (iv) is licensed for beta, evaluation, testing or demonstration purposes for which Lopoco does not receive a payment of full purchase price or license fee, (v) has been damaged or rendered defective by the use of parts not manufactured or sold by Lopoco or (vi) has been opened or repaired by other than Lopoco or Lopoco-authorized service provider or (vii) has been operated outside the usage parameters stated in the documentation shipped with the Product. Lopoco’s limited software warranty does not apply to software corrections or upgrades. Lopoco’s limited hardware warranty does not apply to any Product from which the serial number has been removed. Reseller will pay for repair of Products requested after the expiration of the warranty period at Lopoco’s then current repair charges.

11. Support, Upgrades.Subject to payment by customer of the applicable maintenance fees, Lopoco provides support services. Such support includes responding to trouble calls as reasonably required to make the Product perform as described in the Product specifications and provision of unpaid replacement FRUs if agreed in a separate written document. Lopoco reserves the right to limit or terminate support (including error correction services) of any Product version six (6) months after the date of release of a subsequent version of such Product.  The foregoing restriction shall apply even if Customer elects to install a Product version other than the then-currently shipping version of the Product.

12. Infringement Indemnity.

a. Lopoco will, at its expense, defend any suit brought against the Reseller based upon a claim that the Product as delivered by Lopoco directly infringes a valid United States patent or copyright. Lopoco will pay costs and damages finally awarded against Reseller directly attributable to any such claim, but only on condition that: (a) Lopoco is notified in writing of such claim promptly following receipt by Reseller; (b) Lopoco has sole control of the defense and settlement negotiations, (c) the party receiving the claim provides Lopoco all information and communications received by them concerning such claim, and (d) the party receiving the claim provides reasonable assistance to Lopoco in addressing the claim when requested. Lopoco will have the right, at its option and expense: (i) to obtain for Reseller rights to use the Products, (ii) to replace or modify the Products so that they become non-infringing, or (iii) to accept return of the Products in exchange for a credit not to exceed the purchase price paid to Lopoco by the Reseller for such Products. The foregoing, subject to the following restrictions, states the exclusive liability of Lopoco to Reseller concerning infringement.

b. Lopoco will have no liability for any claim of infringement based on: (i) use of a superseded or altered release of a Product, (ii) use of a Product in combination with equipment or software not supplied by Lopoco where the Product would not itself be infringing, (iii) use of the Product in an application or environment not described in the Product documentation or (iv) Products that have been altered or modified in any way by anyone other than Lopoco.

13. DISCLAIMER; LIMITATION OF LIABILITY**.**  EXCEPT FOR THE WARRANTIES SPECIFICALLY DESCRIBED HEREIN, LOPOCO DOES NOT MAKE ANY GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS, SPECIFICATIONS, SUPPORT, SERVICE OR ANYTHING ELSE. LOPOCO HAS NOT AUTHORIZED ANYONE TO MAKE ANY REPRESENTATION OR WARRANTY OTHER THAN AS PROVIDED ABOVE. LOPOCO DISCLAIMS ANY AND ALL WARRANTIES AND GUARANTEES, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE PRODUCTS OR SERVICES DELIVERED HEREUNDER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OF NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. LOPOCO’S LIABILITY FOR LOSS UNDER THIS CONTRACT IS LIMITED TO THE TOTAL AMOUNT PAID TO LOPOCO BY RESELLER DURING THE PREVIOUS CALENDAR YEAR. LOPOCO WILL HAVE NO OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH ANY OF THE PRODUCTS OR OTHER GOODS OR SERVICES FURNISHED BY LOPOCO UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. General Indemnification. Each party agrees to indemnify and hold the other harmless from and against any claims, damages, penalties and liabilities asserted by any person or entity resulting directly or indirectly from any breach by such party of this Agreement or any warranties, representations, covenants or obligations as provided for in this Agreement; or from claims, damages or liabilities arising out of any negligent act or negligent failure to act where action was required. Such indemnification will include the payment of all reasonable attorneys’ fees and other costs incurred by the party seeking indemnification in defending such claims. The indemnified party must provide the indemnifying party reasonable notice of all claims and the opportunity to assume control of the defense or settlement of those portions of the claim for which indemnification is sought, provided that the indemnified party will have the opportunity to approve any such defense or settlement.

15. Confidentiality.

a. “Confidential Information” means nonpublic information that either party discloses, or has disclosed, to the other which is designated as being confidential or proprietary, or which is of a nature or presented under circumstances that would cause one to reasonably conclude it should be treated as confidential. “Confidential Information” includes, without limitation, information relating to either party’s inventions, intellectual property, research, testing results, released or unreleased products or services, marketing or promotion of any products or service, contracts, business plans, policies and practices, and information received from others that either party is obligated to treat as confidential. “Confidential Materials” means all tangible materials containing Confidential Information including, without limitation, written or printed documents and computer disks or tapes, whether machine or user readable.

b. Confidential Information will not include any information that: (i) is or subsequently becomes publicly available without the receiving party’s breach of any obligation of confidentiality owed to the disclosing party; (ii) became known to the receiving party prior to disclosure of such information by the disclosing party; (iii) became known to the receiving party from a source other than the disclosing party hereunder, other than by breach of an obligation of confidentiality owed to the disclosing party; or (iv) is independently developed by the receiving party without the use of any Confidential Information received from the disclosing party.

c. Each party expressly acknowledges that the Confidential Information of the other party consists of trade secrets and proprietary information having significant commercial value, and that knowledge of all or any part of the Confidential Information would potentially yield a competitive advantage over others not having such knowledge. Accordingly, neither party will disclose the Confidential Information of the other party to any third party except to its directors, employees, or consultants to the extent necessary to carry out the purposes of this Agreement, provided that all such recipients are obligated by a written agreement of confidentiality the same as that described herein. Each party will take such steps as may be reasonable in the circumstances, or as may be reasonably requested by the other party to prevent any unauthorized disclosure, copying or use of the Confidential Information by such third parties. Each party may also disclose Confidential Information to the extent required by judicial or governmental order or as necessary to comply with any applicable law or regulation governing regulated businesses or the issuance of securities to the public, provided that the party making the disclosure gives the other party reasonable notice prior to such disclosure and, in the case of a judicial or governmental order, complies with any applicable protective order or equivalent.

d. Each party will promptly return all originals, copies, reproductions and summaries of Confidential Information and Confidential Materials at the other party’s request. Each party acknowledges that monetary damages may not be a sufficient remedy for the unauthorized disclosure of Confidential information of the other party, and the disclosing party will be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

16. Termination. This Agreement may be terminated as described in Section 3 or Section 4a above, or by either party on 30 days’ written notice if the other party fails to perform any of its obligations hereunder and fails to cure during such 30 day period. Lopoco may terminate the Agreement immediately if Reseller (a) misrepresents the Products or Lopoco, (b) damages Lopoco’s reputation or relationship with customers, (c) fails, in Lopoco’s sole discretion, to make adequate progress toward sales objectives, (d) fails to fulfill its obligations under Section 4d or (e) breaches the terms of Section 7a. Either party may terminate immediately if the other party breaches the confidentiality obligations under Section 15. The provisions of Sections 12, 13, 14, 15, and 17e, the remaining portion of any warranty and the obligation to pay any amount accrued during the term of this Agreement will survive termination. Upon termination, Reseller will: (i) return all Confidential Information to Lopoco; (ii) immediately discontinue any previously authorized marketing or use of Products; and (iii) cease all conduct which might cause anyone to believe that Reseller is a marketer of the Products or is otherwise connected with Lopoco.

17. General Provisions.

a. Notices. All notices and demands under this Agreement will be in writing and deemed given two (2) business days after it is sent by registered or certified mail, return receipt requested and postage prepaid, one business day after it is sent via reputable international overnight courier service, or upon personal delivery, in each case to the other party at the address set forth at the beginning of this Agreement or at such other address as may be given in writing by either party to the other in accordance with this Section 17. Notice may also be sent by fax, receipt confirmed.

b. Force Majeure. If either party is unable to perform any of its obligations under this Agreement due to any cause beyond its reasonable control, such party's performance will be excused and the time for performance extended for the period of delay or inability to perform due to such occurrence.

c. Waiver. The waiver by either party of a breach or default of any provision of this Agreement by the other party will not be construed as a waiver of any succeeding breach of the same or any other provision, nor will any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such party.

d. No Agency; Independent Contractors. Lopoco and Reseller are independent contractors, and neither will be considered the agent of the other for any purpose. Nothing contained in this Agreement will be construed to establish a relationship that would allow either party to make representations or warranties on behalf of the other except as expressly set forth herein.

e. Dispute Resolution. This Agreement shall be governed by the laws of the State of Delaware, without reference to conflict of laws principles. The United Nations Convention on the Sale of Goods does not apply to this Agreement. In the event of any dispute arising out of or relating to this Agreement, the parties shall seek to settle the dispute via direct discussions. If a dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute via voluntary non-binding mediation, before resorting to arbitration. A mediator will be selected by voluntary agreement of both parties, or in the event both parties cannot agree on a mediator, a mediator will be selected in accordance with the rules of the American Arbitration Association. The mediation shall be held in Santa Clara County, California, USA. Each party shall bear its own costs and expenses and an equal share of the administrative and other fees associated with the mediation. Any dispute that remains unresolved following mediation shall be settled by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of a sole arbitrator. The place of arbitration will be Santa Clara County, California, USA. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. In rendering the award, the arbitrator(s) shall determine the rights and obligations of the parties according to the substantive and procedural laws of the State of Delaware.

f. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties with regard to its subject matter. No waiver, consent, modification or change of terms of this Agreement will bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change will be effective only in the specific instance and for the specific purpose given.

g. Severability. If any provision of this Agreement is found to be unenforceable, the remainder of the Agreement will be enforced as fully as possible and the unenforceable provisions will be deemed modified to the limited extent required to permit its enforcement in the manner most closely representing the intention of the parties as expressed herein.

h. Costs, Expenses and Attorneys' Fees. If either party commences any action or proceeding against the other party to enforce or interpret this Agreement, the prevailing party in such action or proceeding will be entitled to recover from the other party the actual costs, expenses and reasonable attorneys' fees (including all related costs and expenses), incurred by such prevailing party in connection with such action or proceeding and in connection with obtaining and enforcing any judgment or order thereby obtained.

i. Assignment. This Agreement, and the rights and obligations hereunder, may not be assigned, either voluntarily or by operation of law, by either party without the prior written consent of the other party except for a sale by either party of substantially all its assets, or a merger where the party to this Agreement does not survive.

j. Publicity. Neither party will publish any press releases or make other announcements or public disclosures regarding the existence or content of this Agreement or the relationship between the parties without the prior approval of the other party.

**Low Power Company, Inc. Reseller**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit A**

**Lopoco Partner Deal Registration Process**

The Lopoco Partner deal registration process allows channel partners (“Partners”) to secure deals they are working on and guarantees Authorized Advantage or Premier Partner margins (per the International Price List) for registered deals that successfully close.\* The principle behind deal registration is both to reduce channel conflict in driving a specific Lopoco opportunity and to reward Partners for identifying in advance and successfully closing business incremental to Lopoco.

In order to be eligible for Partner margins (see below in Point 3), Partners must perform the following steps.

1. Complete the deal registration application and submit online at www.Lopoco.net/partners/deal-registration.php. By completing the form, the Partner notifies Lopoco of its intention to “own” a specific customer opportunity. Please note that Lopoco allows Partners to register customer opportunities, **not accounts**. In order for Lopoco to expedite the process and ensure that the opportunity can be uniquely secured, the Partner must disclose to Lopoco all customer and opportunity information required in the deal registration application. Incomplete applications may be rejected at Lopoco’s discretion.
2. Lopoco will evaluate the application and, in its sole discretion, make the determination (or not) that this opportunity is incremental, that no other Partner has registered this opportunity and that Lopoco is not already working with this account on this opportunity. Once confirmed, the Lopoco representative will send a registration approval email to the requesting Partner representative. The final decision to approve a registered deal will be at Lopoco’s sole discretion.
3. On approval and provided the Partner has also met the Lopoco Partner Program Requirements applicable to Partner’s designated Partner level as set forth on Exhibit C, the Partner is entitled to the Partner margins on products as indicated in the then-current International Price List. Without deal registration, Partners will not be eligible for margins unless otherwise specified in a separate written agreement.

In order to maintain status as a registered deal, the Partner also agrees to the following:

1. The Partner will lead the engagement, e.g. drive each step of the sales cycle.

2. The Partner will stay active in the engagement, e.g. maintain consistent progress through stages of the sales cycle.

3. The Partner will regularly update the Lopoco inside sales rep (min. once every two weeks) regarding the progress on the deal.

4. Deal registration has a 90-day limit. Extensions will be at the sole discretion of Lopoco sales and/or channel management and must be in writing (email is acceptable).

5. Dual proposals on the part of the Partner, e.g. offering competing alternatives, will disqualify the deal registration.

**Order Acceptance**

Any order placed with Lopoco at a Partner margin discount must be accompanied by the written confirmation of deal registration from an authorized Lopoco representative.

\* For the avoidance of doubt, deal registration alone does not assure Partner of receiving a particular discount level; Partner must also comply with the Lopoco Partner Program Requirements set forth on Exhibit C applicable to its Partner level.

**Exhibit B**

### Credit Application

**Credit Application (cont.)**

**Exhibit C**

**Lopoco Partner Program Requirements**

**Lopoco Reseller Partner Program Requirements:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Partner Level** | **Discounts** | **Requirements** | **Metrics / Qualification** |
| **Lopoco Authorized Advantage Partner** | See Lopoco International Reseller Price List  And  Current Program Specification | Revenue attainment and/or registered deal completion | Revenue quota = $500,000 during the first 12 months of this Agreement  -or-  Five (5) total completed Lopoco product deals that amount to at least 160 servers or equivalent.  If less, stay at this tier at sole discretion of Lopoco. The revenue quota will be established by the parties annually. |
|  |  | Demonstrated Experience | Strong Client Base  Two (2) customer references able to speak to technical representation of like products during the sales cycle.  Submitted line card for currently repped products. |
|  |  | Demonstrated Financial Stability | Lopoco to review most recent balance sheet. |
|  |  | Demonstrated Sales and technical staff retention | Two-year average tenure for sales and technical staff.  Exceptions may be made for younger companies at the discretion of Lopoco. |
|  |  | Established Marketing Structure | Submitted marketing plan for Lopoco products.  Must include Lopoco logo on website with a link to the Lopoco website. |
|  |  | Basic Training | Completion of basic training for all sales associates representing the Lopoco product line. Training to be purchased from Lopoco at Partner’s expense at current list price as specified in the International Reseller Price List. Technical & sales qualification training must be completed within 120 days from the Effective Date; if not, stay at this tier or in program and/or retain discounted pricing at sole discretion of Lopoco.  Minimum of one trained associate per office location. |
|  |  |  |  |
| **Lopoco Premier Partner** | See Lopoco International Reseller Price List  And  Current Program Specification | Revenue attainment and/or registered deal completion | Revenue quota = $1,200,000 during the first 12 months of this Agreement  -or-  Ten (10) total completed Lopoco product deals for a total of at least 350 servers or equivalent.  If less, stay at this tier at sole discretion of Lopoco. The revenue quota will be established by the parties annually. |
|  |  | Technical Training | Completed modular training for a minimum of three (3) sales engineers.  Must pass practical troubleshooting certification exam with 80% or higher. |
|  |  | Authorized Advantage Level Requirements | **Must also meet all Authorized Advantage Partner-level requirements if not otherwise specified in this section.** |

**Exhibit D**

**Master End-User Evaluation Unit Authorization**

1. Reseller shall have the right to request and place with prospective or existing end-user customers Lopoco Product units for evaluation purposes, upon written request to Lopoco (for the avoidance of doubt, email is acceptable as written request). In each case, a request for an evaluation Product unit shall be subject to approval by Lopoco at its sole discretion. Upon receipt and approval of each written request, Lopoco will promptly ship the evaluation Product unit to the Reseller or to Reseller’s end-user customer, as designated in Reseller’s request.

2. If Reseller takes possession of any Product unit, Reseller (a) acknowledges that Lopoco owns all right, title, and interest, including all intellectual property rights, in and to the Product, including any improvements, modifications, and enhancements to it; (b) acknowledges that except for those rights expressly granted in this Exhibit D, no other rights are granted, either express or implied, to Customer; (c) will use a reasonable degree of care to maintain and protect the Product; and (d) will assume all risk of loss, damage (except reasonable wear and tear), theft, or destruction of the Product while it is in its possession or control or that of its agents, including any carrier, and will reimburse Lopoco for any costs of repair or replacement.

3. Reseller agrees and acknowledges that each such end-user customer shall be subject to the Evaluation License Agreement terms set forth on Attachment 1 hereto, which each such end-user customer shall be required to accept as a signed license in order to operate the Product. Reseller agrees to use commercially reasonable efforts to cooperate with Lopoco to ensure compliance by Reseller’s end-user customers with the terms of the Evaluation License Agreement, including without limitation the return shipment obligations of Section 2 thereof. Reseller agrees, within three (3) business days of installation of any Product at a Reseller end-user customer location for evaluation purposes, to furnish to Lopoco in writing the following information for each Product installed: serial number, end-user identity and location, date of shipment, and date of installation.

# **ATTACHMENT 1 TO EXHIBIT D**

# **EVALUATION LICENSE AGREEMENT**

# IMPORTANT – READ BEFORE INSTALLING OR OPERATING THIS PRODUCT

**LICENSEE AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT BY INSTALLING, HAVING INSTALLED, COPYING, OR OTHERWISE USING THE PRODUCT. IF LICENSEE DOES NOT AGREE, DO NOT INSTALL OR USE THE PRODUCT.**

1. **SCOPE AND DEFINED TERMS.** This evaluation license agreement (“Agreement”) is a legal agreement between Low Power Company, Inc. (“Lopoco”) and the single entity (“Licensee”) that has acquired Product (as defined in Section 2 below) from Lopoco under applicable terms and conditions. The Product may incorporate certain third party software programs that Lopoco has full rights to license in conjunction with the Lopoco product hereunder. “**Hardware**” means the Lopoco Application Delivery Assurance system products identified in **Exhibit A**. “**Software**” means the computer software that is pre-installed on the Hardware, and/or, where applicable, the standalone software specified on Exhibit A. “**Product**” means the Hardware, Software, and any related documentation provided by Lopoco to Licensee.
2. **EVALUATION PROCESS.** Licensee will test and evaluate such Product for purchase by Licensee for Licensee’s own use, or for resale either separately or as an integrated part of Licensee’s product. Lopoco is willing to loan the Product to Licensee for evaluation purposes, subject to the terms of this Agreement. At the end of the Evaluation Period (as defined below), Licensee will, at its expense, securely package in the original packaging materials using the original packaging method,and ship the Product, complete with all components and related materials, back to Lopoco within 3 business days. Licensee will assume all risk of loss, damage, theft, or destruction of the Product during shipping until received by Lopoco. If Licensee fails to return ship the Product within the three business-day timeframe above, a late fee of $100 per day, per individual Product unit, shall be charged to Customer until the Product is returned to Lopoco. If Licensee fails to return ship the Product within sixty (60) days of the end of the Evaluation Period, then Licensee will pay, as liquidated damages, the list price of any such unreturned Product unit, plus the late fee referenced in the preceding sentence.
3. **EVALUATION PERIOD.** This Agreement will begin on the Effective Date and continue in effect for the Evaluation Period specified in **Exhibit A**, unless earlier terminated in accordance with this section. Lopoco may immediately terminate this Agreement if Licensee materially breaches any provision of this Agreement. Upon the expiration or termination of this Agreement, Licensee will return to Lopoco, in accordance with Section 2, the Product and any other materials provided by Lopoco to Licensee, the license granted in Section 4 and the lease granted in Section 5 will immediately terminate, and Licensee will discontinue all use of the Product. Sections 3, 6, 7, 8, 9, 10, 11 and 12 will survive termination or expiration of this Agreement.
4. **SOFTWARE LICENSE.** Subject to the terms and conditions of this Agreement, Lopoco hereby grants to Licensee a non-exclusive, non-transferable, non-sublicenseable license to execute and run the Software, if any, solely for internal evaluation during the Evaluation Period.
5. **HARDWARE LOAN TO USE.** Subject to the terms and conditions of this Agreement, the Hardware is provided to Licensee solely for internal evaluation during the Evaluation Period. The Hardware is loaned, not sold, to Licensee solely for use during the Evaluation Period. Licensee will use a reasonable degree of care to maintain and protect the Hardware. Licensee will assume all risk of loss, damage (except reasonable wear and tear), theft, or destruction of the Hardware while it is in its possession or control or that of its agents, including any carrier, and will reimburse Lopoco for any costs of repair or replacement. Licensee will keep the Product free of all security interests, liens, and other encumbrances.
6. **OWNERSHIP.** Lopoco owns all right, title, and interest, including all intellectual property rights, in and to the Product, including any improvements, modifications, and enhancements to it. Except for those rights expressly granted in this Agreement, no other rights are granted, either express or implied, to Licensee. Licensee will not modify, disassemble, decompile, reverse engineer, rent, lease, loan, transfer, or copy the Product.
7. **FEEDBACK.** Licensee will provide feedback to Lopoco concerning the functionality and performance of the Product as reasonably requested by Lopoco, including identifying potential errors and improvements (“**Feedback**”). Licensee hereby assigns to Lopoco all right, title, and interest in and to the Feedback.
8. **CONFIDENTIALITY.** Licensee will maintain the confidentiality of and not disclose to any third party: (a) the terms of this Agreement, (b) all non-public information disclosed by Lopoco to Licensee under this Agreement, and (c) all Feedback, all Product performance data, and all other information obtained through evaluation of the Product.
9. **WARRANTY DISCLAIMER.** THE PRODUCT IS PROVIDED “AS IS” FOR LIMITED EVALUATION ONLY, AND LOPOCO DOES NOT WARRANT THAT THE PRODUCT WILL OPERATE WITHOUT ERROR OR INTERRUPTION. LOPOCO SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, QUALITY, ACCURACY, AND FITNESS FOR A PARTICULAR PURPOSE.
10. **LIMITATION OF LIABILITY.** THE TOTAL LIABILITY OF LOPOCO ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT PAID BY LICENSEE TO LOPOCO PURSUANT TO THIS AGREEMENT. IN NO EVENT WILL EITHER PARTY HAVE LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSE­QUEN­TIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THESE LIMITATIONS WILL APPLY NOT­WITH­STANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.
11. **RESTRICTED USE.** If a software component of the Products is licensed for use by the United States or for use in the performance of a United States government prime contract or subcontract, it is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable). Contractor/licensor is Low Power Company, Inc.
12. **MISCELLANEOUS.** This Agreement will be governed by the laws of the State of Delaware without reference to conflict of law principles. All disputes arising out of or related to it, will be subject to the exclusive jurisdiction of the state and federal courts located in Delaware, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts. Licensee will not assign this Agreement, directly or indirectly, by operation of law or otherwise, without the prior written consent of Lopoco. This is the entire agreement between the parties relating to the subject matter hereof. No waiver or modification of this Agreement will be valid unless in writing signed by each party.

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**EXHIBIT A**

1. **PRODUCT**

Lopoco will provide Licensee with one (1) Lopoco hardware product. Lopoco will also provide related documentation and technical support necessary for the Licensee to evaluate the Product.

1. **EVALUATION PERIOD**

The Evaluation Period will commence on date the Product is received by Licensee and end 30 days later.

1. **EVALUATION CRITERIA**

The evaluation criteria are specified in the test plan to be developed between Licensee and Lopoco.

1. **TERMS OF PURCHASE AND PURCHASE PRICE**

If Licensee elects to purchase the Product in lieu of returning it at the end of the Evaluation Period, Licensee will purchase the configuration described in the applicable Lopoco Quotation for the Product before the end of the Evaluation Period.