

CUMULUS NETWORKS
TECHNOLOGY ECOSYSTEM PARTNER
AGREEMENT

This Technology Ecosystem Partner Agreement (the "**Agreement**") is effective as of the _____ day of _____ 2015 (the "**Effective Date**") and is entered into by and between _____, a [STATE] corporation with an office at _____ ("**Partner**" or "**You**"), and Cumulus Networks, Inc., a Delaware corporation ("**Cumulus**").

Partner wishes to be approved as (please initial):

_____ A Software Technology Ecosystem Partner

_____ A Hardware Technology Ecosystem Partner

1. Definitions.

(a) "**Affiliate**" means any entity that directly, or indirectly through intermediaries, controls, is controlled by, or is under common control with a party to this Agreement.

(b) "**Confidential Information**" means any and all information disclosed by one party to the other party, directly or indirectly, in writing, orally, electronically, or in any other form, that is designated, at or before the time of disclosure, as confidential or proprietary, or is or should be reasonably understood to be confidential or proprietary to the disclosing party given the nature of the information and the circumstances of the disclosure, including, without limitation, information about the Cumulus Linux Software, the Documentation, and the terms of this Agreement. Notwithstanding, the foregoing, Confidential Information does not include information that (i) is or becomes generally available to the public through no breach of this Agreement or any other agreement by the recipient of the information; (ii) is or was known by the recipient of the information at or before the time such information was received from the discloser, as evidenced by the recipient's tangible (including written or electronic) records; (iii) is received from a third-party that is not under an obligation of confidentiality to the disclosing party with respect to such information; (iv) is independently developed by the recipient of the information without any breach of this Agreement, as evidenced by the recipient's contemporaneous tangible (including written or electronic) records; or (v) is approved for release in advance in writing by the disclosing party.

(c) "**Cumulus Documentation**" means any users guides, manuals, and other documentation relating to any Cumulus Software provided by Cumulus to Partner for use in connection with this Agreement.

(d) "**Cumulus Marks**" means all trademarks, servicemarks, tradenames, and logos of Cumulus provided to Partner by Cumulus, whether included within Cumulus Property (as defined below) or not for the purposes set forth in this Agreement.

(e) "**Cumulus Software**" means the any software made generally available for licensed use by Cumulus.

(f) "**Intellectual Property Rights**" means any and all rights existing from time to time under patent, copyright, trademark, trade secret, unfair competition, moral rights, publicity rights, or privacy laws, and any and all other proprietary rights.

(g) "**Legal Requirements**" means all applicable laws, rules, regulations, governmental permits, or other binding determinations of any governmental authorities.

(h) "**Marks**" means the Cumulus Marks and/or the Partner Marks, as applicable.

(i) "**Partner Documentation**" means any users guides, manuals, and other documentation relating to any Partner Product provided by Partner to Cumulus for use in connection with this Agreement.

(j) "**Partner Marks**" means all trademarks, servicemarks, tradenames, and logos of Partner provided to Cumulus for the purposes set forth in this Agreement.

(k) "**Program Guide**" means, for a Hardware Partner, the Hardware Partner Technology Ecosystem Partner Program Guide; and for a Software Partner, the Software Partner Technology Ecosystem Partner Program Guide, in each case made available at <http://cumulusnetworks.com>.

(l) **“Software Ecosystem Technology Partner”** means, a Software Partner, who has initialed the request to be admitted to the program as a Software Ecosystem Technology Partner above, who is currently governed by a valid Technology Ecosystem Partner Agreement with Cumulus and is in compliance with the applicable Program Guide.

(m) **“Hardware Ecosystem Technology Partner”** means, a Hardware Partner, who has initialed the request to be admitted to the program as a Hardware Ecosystem Technology Partner above, who is currently governed by a valid Technology Ecosystem Partner Agreement with Cumulus and is in compliance with the applicable Program Guide.

(n) **“Upgrades”** means any modifications, error corrections, patches, bug fixes, new releases, or other updates of the Cumulus Software, or any component thereof, that Cumulus makes generally available to its customers at no additional charge during the Term of this Agreement.

2. Licenses.

(a) **Cumulus Software.** Except as expressly provided in this Agreement, Partner’s license to the Cumulus Software shall be in accordance to the terms, conditions, and restrictions set forth in the applicable End User License Agreement and this Agreement shall not be construed as granting or conferring to Partner, either expressly or impliedly, any rights or license with respect to Cumulus intellectual property rights.

(b) **Cumulus Marketing Services License Grant.** Cumulus grants Partner a non-exclusive, non-transferable, non-sublicensable (except as otherwise expressly set forth in this Agreement), limited license to use the Marketing Services (defined below) that Cumulus provides to Partner, in its sole discretion, solely for the purpose of promoting the partnership(s) between Cumulus and Partner as contemplated by this Agreement. Partner will cooperate with Cumulus to allow for review of Partner’s use of the Marketing Services and compliance with Cumulus quality standards. If Cumulus, in its sole discretion, objects to Partner’s use of the Marketing Services, Partner will promptly modify or discontinue such use as directed by Cumulus. Partner’s use of the Cumulus marketing programs, marketing materials and marketing tools, (collectively, the “Marketing Services”), will be subject to the terms below and all published Cumulus logo and trademark usage guidelines. Upon reasonable notice from Cumulus, Partner will promptly modify your use of the Marketing Services to conform to any such changed guidelines.

(c) **Trademark License Grant.** Subject to the terms and conditions of this Agreement, each party to this Agreement hereby grants to the other party a non-transferable, non-exclusive, non-sublicensable, royalty-free, limited right and license to use and display such party’s Marks on its corporate website and in other promotional materials for its business and services solely for the purposes of promoting the existence of the relationship between the parties as set forth in this Agreement, subject in each case to the Marks’ owner’s trademark usage guidelines as may be updated from time to time.

(d) **Restrictions.** Each party to this Agreement agrees that (i) all rights, title and interest in and to the Marks of the other party are owned solely and exclusively by the other party; (ii) except for the license granted under this Agreement, it has no rights, title, or interest in or to the Marks of the other party; and (iii) all use of the other party’s Marks, and all goodwill arising out of such use, will inure to the sole benefit of the other party. Each party may only use the other party’s Marks in accordance with any trademark usage guidelines published or provided by the other party from time to time. Each party will refrain from altering any Mark of the other party or using the Mark of the other party for any purpose other than as explicitly set forth under this Agreement. If either party objects to the other party’s use of its Mark, the other party will modify or cease such use promptly after written notice thereof. Neither party will at any time challenge, or assist others in challenging, the other party’s Marks, or do, cause to be done or tolerate any act or thing contesting or in any way impairing or tending to impair any right, title or interest of the other party in such Marks. Each party has the right, in its sole and absolute discretion, to revoke the rights granted to the other party if it objects to any use of its Marks by the other party. Neither party will use the other party’s Marks in any manner that dilutes, tarnishes, degrades, disparages or otherwise reflects adversely on the other party or its business, products or services.

(e) **Recommendations.** Partner hereby grants Cumulus a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use and incorporate into the Cumulus Software any suggestions, enhancement requests, recommendations or other feedback provided by Partner relating to the Cumulus Software.

3. **Ownership.** As between Cumulus and Partner, Cumulus will exclusively own and retain all right, title, and interest, including all Intellectual Property Rights, in and to (i) the Cumulus Software and any other products or services delivered to Partner by Cumulus; (ii) the Cumulus Documentation; (iii) the Cumulus Marketing Materials; (iv) all Confidential Information of Cumulus; and (v) any modifications, updates, copies, translations, improvements, derivative works, or adaptations of any of the foregoing, irrespective of who authored, invented, or made the same (collectively the **“Cumulus Property”**). Partner may not (i) remove or modify any proprietary rights notices or markings contained on any Cumulus Property; (ii) make the Cumulus Property available in any manner to any third party except as expressly permitted in this Agreement; (iii) use the Cumulus Property in a manner that misrepresents Partner’s relationship with Cumulus or is otherwise misleading or that reflects negatively on Cumulus; or (iv) use or duplicate the Cumulus Property for any purpose other than as specified in this Agreement.

4. Representations, Warranties & Covenants.

(a) **Mutual.** Each party represents and warrants to the other party that the execution, delivery and performance of this Agreement (i) is within its corporate powers, (ii) has been duly authorized by all necessary corporate action on such party's part, and (iii) does not and will not contravene or constitute a default under, and is not and will not be inconsistent with, any judgment decree or order, or any contract, agreement, or other undertaking, applicable to such party.

(b) **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CUMULUS EXPRESSLY DISCLAIMS ALL WARRANTIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO ANY ASPECT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUMULUS DOES NOT WARRANT THAT THE CUMULUS PROPERTY WILL MEET ALL OF PARTNER'S REQUIREMENTS OR THAT THE ACCESSIBILITY OR OPERATION OF SUCH PRODUCTS WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE.

(c) **Partner Compliance.** Partner will comply with the requirements set forth in the then-current Program Guide governing the type of Partnership(s) for which Partner is approved. Partner shall comply, and shall ensure that any third parties performing sales or referral activities on Partner's behalf comply, with all applicable foreign and domestic laws, governmental regulations, ordinances, and judicial administrative orders, including, but not limited to, trademark and copyright laws, ICANN policies and procedures governing domain names, the United States Foreign Corrupt Practices Act, 15 U.S.C. 78dd-1, et seq. (the "FCPA") and applicable export control laws or regulations (collectively "Applicable Laws") and shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to Cumulus, Cumulus customers, the Services, or to the public. Partner represents and warrants that Partner sales activities and receipt of any referral fees under this Agreement are consistent with Applicable Laws. Partner shall promptly inform Cumulus in writing upon becoming aware of any violations of Applicable Laws in connection with this Agreement.

5. Term & Termination.

(a) **Term.** This Agreement will remain in effect for one (1) year from the date of this Agreement (the "Initial Term"). Thereafter, this Agreement will automatically renew for successive one (1) year periods (each, a "Renewal Term"; and together with the Initial Term, the "Term") unless either party notifies the other party of its intention not to renew this Agreement at least thirty (30) days before the end of the Initial Term or then-current Renewal Term, as applicable.

(b) **Termination.** Either party may terminate this Agreement if the other party materially breaches this Agreement and such breach is not cured within ten (10) days after written notice thereof by the non-breaching party. Either party may terminate this Agreement at any time for any reason upon at least thirty (30) days prior written notice to the other party.

(c) **Effects of Termination.** Upon the expiration or termination of this Agreement for any reason (i) all rights and licenses granted to both parties will immediately terminate; (ii) Partner will make no further use of the Cumulus Software, the Documentation, the Cumulus Marketing Materials, or the Cumulus Marks; and (iii) within ten (10) days, each party will, at the other party's option, either destroy or permanently erase all copies of the other party's Confidential Information under its control. Upon any expiration or termination of this Agreement, each party will still be obligated to pay all Costs that have accrued prior to the effective date of such expiration or termination on the payment terms set forth in this Agreement. Either party's termination of this Agreement will be without prejudice to any other right or remedy that it may have at law or in equity, and will not relieve either party of breaches occurring prior to the effective date of such termination. Sections 1, and 3-8 will survive the expiration or termination of this Agreement.

6. Confidentiality.

(a) **Obligations.** Each party will (i) hold all Confidential Information of the other party in strict confidence and will not disclose any Confidential Information to any third party; (ii) avoid the unauthorized use or disclosure of the other party's Confidential Information using the same degree of care that it uses in safeguarding its own confidential information, but in no event less than a reasonable degree of care; (iii) use the other party's Confidential Information only in connection with the performance of its obligations under this Agreement; and (iv) disclose the other party's Confidential Information only to such of its officers, employees, contractors and agents as have a need to know such Confidential Information in connection with the performance of its obligations under this Agreement. Notwithstanding the foregoing, the prohibitions on disclosure of Confidential Information contained in this Section will not apply to the extent that such disclosure is: (i) approved in writing by the disclosing party; (ii) necessary for the receiving party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the receiving party promptly notifies the disclosing party in writing of such required disclosure and cooperates with the disclosing party, at the disclosing party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

(b) **Equitable Relief.** The parties acknowledge that (a) the covenants contained in Section 6(a) are reasonable and necessary to

protect the legitimate interests of the parties; (b) the parties would not have entered into this Agreement in the absence of such covenants; and (c) any violation or threatened violation of such covenants would cause irreparable harm for which monetary damages would not be adequate. Therefore, the parties agree that, in the event of a breach of Section 6(a) by a party, the other party will be entitled to seek equitable relief in addition to any remedies it may have hereunder or at law, and the breaching party will reimburse the non-breaching party for the reasonable costs associated with such enforcement (including any attorney's fees).

7. LIMITATION OF LIABILITY

AGGREGATE LIABILITY FROM CUMULUS TO PARTNER, END USERS OR TO ANY THIRD PARTY, FOR ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT UNDER ANY LEGAL THEORY (WHETHER IN TORT, CONTRACT, INDEMNITY, STATUTORY, OR OTHERWISE), WILL NOT EXCEED THE GREATER OF \$500 OR THE FEES ACTUALLY PAID TO CUMULUS BY PARTNER UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN TORT, CONTRACT, INDEMNITY, STATUTORY, OR OTHERWISE) WILL CUMULUS BE LIABLE TO THE PARTNER, END USERS, OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER SIMILAR DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, GOODWILL, LOST PROFITS OR LOST DATA, EVEN IF CUMULUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING FROM THE CUMULUS PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR THE OPERATION OF CUMULUS BUSINESS.

8. General.

(a) Export Restrictions. The Cumulus Software and any related products or services may be subject to international rules that govern the export and re-export of software. The Cumulus Software may be subject to U.S. and foreign export and import control laws, including without limitation the U.S. Export Administration Act. You agree to comply with all such regulations and acknowledge that You are responsible for obtaining any necessary licenses to import and re-export Cumulus Software outside the USA. You will not download, distribute, or otherwise export or re-export Software (i) into, or to a national or resident of, Cuba, Iran, North Korea, Sudan, Syria or any country to which the U.S. at any time has embargoed goods or trade restrictions; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Persons, Denied Entities, and Unverified List.

(b) Relationship of the Parties. The non-exclusive relationship between you and Cumulus is that of independent contractors and licensor/licensee, and nothing contained in this Agreement will create or be construed to create any partnership (notwithstanding any use of the term "partner" by the parties), joint venture, agency, franchise, sales representative, employment or fiduciary relationship between the parties or any of its respective agents or employees. Nothing in this Agreement grants to either party the authority to make any promise, warranty, guarantee, or representation that will create any obligation or liability whatsoever, whether express or implied, on behalf of the other.

(c) Entire Agreement. This Agreement (including all information incorporated into this Agreement by written reference such as references to exhibits or information contained at a URL) constitutes the entire agreement between the parties with respect to the subject matter hereof, and the Agreement supersedes all prior agreements or representations, oral or written, regarding such subject matter. No term or condition in any purchase order or other business form drafted by either party will be effective unless agreed upon in writing signed by an authorized representative of the other party. If there is a conflict between the terms of this Agreement and the terms of any such purchase order or other business form, the terms of the Agreement will prevail.

(d) Severability. If the application of any provision of this Agreement to any particular facts or circumstances was held to be invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, then (i) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement will not in any way be affected or impaired thereby and (ii) such provision will be enforced to the maximum extent possible so as to effect the intent of the parties and reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

(e) Waivers. The waiver by either party of a breach of or a default under any provision of this Agreement will be in writing and will not be construed as a waiver of any subsequent breach or default under the same or any other provision of this Agreement. No delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder shall operate as a waiver of any right or remedy.

(f) Amendment. This Agreement may not be modified or amended except in a writing signed by authorized representatives of Partner and Cumulus.

(g) Notices. All notices under this Agreement will be in writing and will be delivered to a party's primary address, Attn: General Counsel by (i) depositing the notice in the mail, using registered mail, return receipt requested; (ii) overnight delivery service; or (iii) hand delivery to an individual authorized to accept such delivery. The notice will be effective upon the earlier of (i) receipt of return receipt or (ii) the next business day after deposit with an overnight delivery service; or (iii) on the date of hand delivery.

(h) Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to any contrary choice of law rules, and applicable United States federal law. The application of the United Nations Convention of Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act is expressly excluded. Any action or proceeding brought by one party to this Agreement against the other party to this Agreement that seeks to enforce any provision of, or based on any right arising out of, this Agreement will be brought exclusively in the courts of Santa Clara County.

(i) Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

(j) Assignment. This Agreement may not be assigned or delegated by Partner without the prior written consent of Cumulus but may be assigned and/or delegated by Cumulus without your consent to (i) an Affiliate of Cumulus; or (ii) a successor in interest to substantially all of the Cumulus assets or business. This Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Cumulus Networks, Inc.

[PARTNER]

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____