**Grid Protection Alliance, Inc., Partner Agreement**

**(“AGREEMENT”)**

**THIS Partner AGREEMENT** (this “**Agreement**”) is made and entered into as of the date last signed by the parties below (“**Effective Date**”), by and between **Grid Protection Alliance, Inc.,** a Delaware Corporation, having a principal place of business at 1100 Market Street, Suite 906B, Chattanooga, TN 37402 (“Grid Protection Alliance” or “GPA”), and the partner identified below (“**Partner**”).

|  |
| --- |
| **PARTNER:** |
| Name:  Address:  Phone Number:  Fax Number: None  Contact Email: |
| **PRODUCTS:** |
| - GPA OpenPDC  - GPA OpenHistorian  - OpenPDC Oscillation Monitoring Package (OM) |

**IN WITNESS WHEREOF,** the parties’ authorized representatives have executed this Agreement as of the Effective Date.

**Grid Protection Alliance, Inc. Partner:**

|  |  |
| --- | --- |
| Name:                  Christoph Lackner  Title:                     Operating Officer  Date: | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

# **DEFINITIONS**

1. “**Affiliates**” means, with respect to a corporation or other entity, any entity or person that directly or indirectly controls, is controlled by, or that is under common control with that corporation or entity. For purposes of this definition, “control” shall mean ownership of greater than fifty percent (50%) of the voting securities of the corporation or entity.
2. **“Agreement”** refers to and includes this Systems Integrator Partner Agreement, the General Terms and Conditions, and the Exhibits, all of which taken together govern the rights and obligations of GPA and Partner.
3. **“Bundled Solution”** means combinations of copies of Software, Maintenance and Support Agreements, and Partner Products sold to End Users as single packages as described on Exhibit A.
4. **“Contract Year”** means a year beginning on the Effective Date of this Agreement and on each anniversary of the Effective Date thereafter during the Term of this Agreement.
5. “**D&E Copies (Demonstration & Evaluation)**” mean the copies of GPA Products provided to Partner.
6. **“Development License”** means the license of Software used in, and limited to, the development of Bundled Solutions and provide Testing and Support Services as defined in this Agreement.
7. **“Documentation”** means the operating instructions, user manuals, read me files, and all technical information and reference materials, in whatever form, provided by GPA or Partner or found at GridProtectionAlliance.org and any applicable GitHub repositories, publicly available and owned by GPA or Partner.
8. **“Effective Date”** means the date first written above.
9. **“End User”** means a customer of Partner or GPA that licenses Partner Products and Bundled Solutions for use in its internal business operations and not for distribution or relicense. End Users shall not include Partner itself, GPA, or their Affiliates.
10. **“End User Evaluation License”** means the license of Software used by Partner to enable the End User to evaluate Partner Products.
11. **“Partner Solutions”** means Partner’s software products in object code form and related product Documentation, each as more fully described in this Agreement as identified in Exhibit A, and any Updates and modifications to such products that may be provided by partner from time to time.
12. **“Software”** means the software or services that GPA provides to produce the Bundled Solution.
13. **“Sublicense Annual Subscription Fees”** means the fees payable by GPA in connection with each sublicense of the Partner Solutions granted by Partner as part of the licensing of the Software Solution.
14. **“Tier I Support”** means End User technical support, software diagnosis, and software problem analysis and resolution provided over the telephone, via e-mail, or by other remote electronic means.
15. **“Tier II Support”** means technical support, software diagnosis, and software problem analysis and resolution provided over the telephone, via e-mail, or by other remote electronic means, and the provision of Updates, bug fixes, and other related services, as described at GridProtectionAlliance.org excluding any direct contact with End User unless the provider of Tier I Support has engaged with the customer and in good faith determined an escalation to Partner personnel is necessary.
16. “**Updates”** means Maintenance releases, improvements, and enhancements to the Software or Documentation, which are generally provided by GPA to current Maintenance customers.
17. **LICENSE AND DELIVERY**
18. **Distribution of Licenses**. During the term of this Agreement and subject to its terms and conditions, Partner grants to GPA a non-exclusive right to distribute and sublicense Partner Solutions. Partner Solutions are not open-source. GPA may market, sublicense, and distribute the Software combined with Partner’s Standard Consulting Services, and/or as part of a Bundled Solution to End User. GPA may market and present Partner Solutions as part of its open-source or Enterprise Software version as long as sublicenses for Partner Solution do not become part of GPA’s open-source code base.
19. **Testing and End User Evaluation Licenses.** GPA may make a reasonable number of copies of the Bundled Solution for the purpose of evaluation at GPA locations and at user groups, or seminar presentations. GPA also may install up to the number of copies of the Bundled Solution set forth in the Agreement at End User locations for End User evaluation. Demonstration and End User Evaluation Copies of the Bundled Solution may not be rented, leased, transferred, distributed, or assigned by GPA in any manner.

Partner may make a reasonable number of copies of the Software for the purpose of evaluation at Partner locations and at user groups or seminar presentations. Demonstration and End User Evaluation Copies of the Software may not be rented, leased, transferred, distributed, or assigned by Partner in any manner.

1. **Third Party Sublicenses**. GPA and Partner are required to abide by any sublicenses as listed in Exhibit A as applicable to components of the Bundled Solution. Partner is responsible to ensure the End User agrees to abide by all third-party sublicenses listed in Exhibit A.

(d) **Source Code Availability**. Partner is required to make any source code that is part of the Bundled Solution available to GPA for continuous vulnerability review as required in End User agreements for Bundled Solution. GPA is required to make any code in the Software available for integration with Partner Solution.

1. **GPA OBLIGATIONS**
2. **Partner Attribution; Compliance.** GPA shall not remove or alter any copyright, trademark, patent, or other proprietary notices contained in the Partner Solution. GPA shall provide Partner with a reasonable number of copies of the Bundled Solution and any related Documentation and collateral upon request with the right to use such products solely to verify compliance with this provision and the licensing restrictions contained in this Agreement.
3. **Partner Reputation and Goodwill.** GPA agrees to use Partner’s correct product names and trademarks for the Bundled Solution, solely in accordance with Partner’s trademark and branding guidelines, and shall not knowingly make false or misleading representations with regard to the Partner Solution, Bundled Solution, or Partner. GPA further agrees to conduct business in a professional manner and act in good faith with respect to the any and all Software and the good reputation of Partner.
4. **Testing and Quality Control**. GPA agrees to test all releases of the products before supplying them to End User. GPA shall inform Partner of any issues identified prior to deploying on End User’s system. GPA shall then work with Partner in good faith to address any defects identified.
5. **SUPPORT and services**
6. **GPA Support to End User.** GPA will provide Tier I Support, including all Updates for Software, directly to End User, solely to the extent described in GPAs then-current Support and Maintenance terms and solely while all applicable fees have been paid for each license subscription term. Any error or other problem arising from End User’s use of GPA Products shall be referred to GPA, and Partner shall have no further obligation with respect to such error or problem.
7. **Partner Support to GPA and End User.** Partner will provide Tier II Support and Consulting. Partner shall require End User to first contact GPA for all Support and Maintenance requests. Partner shall not be responsible for providing Support with respect to GPA Products.
8. **Partner Technical Consultation.** Partner will work with GPA and End Users to provide technical advice on capabilities and interpretation of Partner Solution as necessary. GPA will work with Partner in good faith to limit Partner engagement to a minimum for effective sales and marketing strategies. Partner will make a good faith effort to work with GPA as required for effective marketing and sales, including providing guidance on technical Documentation, presentations, and demonstrations.
9. **FEES AND PAYMENT**
10. **Sublicense OSM.** GPA may provide End User with the Bundled Solution. If GPA provides the End User with the Bundled Solution, GPA will pay Partner the Annual License Fee for Partner Solution as described in Annex B and invoice End Users the appropriate fee in addition to a reasonable markup.
11. **Terms of Payment**. All payments made hereunder shall be in U.S. Dollars. GPA shall pay Partner in full within thirty (30) days of the date of receiving payment from End User.
12. **Audit**. At any time, Partner may, upon five (5) days written notice and not more than once in each twelve (12) month period, examine GPA’s books and records related to the amounts due to Partner. Such examination may be done, at Partner’s expense, by Partner or its certified public accounting firm, provided, however, that if any such audit uncovers one or more underpayments in excess of five percent (5%) of the total amount determined by the audit to be payable to Partner for the audit period, GPA shall immediately reimburse Partner for the full costs of such audit and the amount of underpayment, if any, uncovered during the course of the audit.
13. **TERM AND TERMINATION**
14. **Initial Term.** This Agreement and the licenses granted under it are for a five (5) year period. They shall remain in effect from the Effective Date of this Agreement and shall automatically renew for subsequent one (1) year terms unless terminated in accordance with the terms of this Agreement.
15. **Termination for Cause.** Either party may terminate this Agreement by giving written notice to the other party if such other party fails to perform or comply with this Agreement or any provision hereof. Such termination shall be effective, in the case of non-payment of fees by GPA, ten (10) days after delivery of written notice by Partner. In all other events, termination shall be effective thirty (30) days after written notice from the non-breaching party unless the occurrence giving rise to the right of termination and its adverse effects has been cured to the reasonable satisfaction of the non-breaching party prior to the expiration of such thirty (30) day period. The right to cure shall not apply to a failure to achieve minimum annual quotas.
16. **Termination without Cause.** After the Initial Term, either party may terminate this Agreement at any time without cause by providing the other with notice as set forth in this Agreement.
17. **Bankruptcy.** This Agreement shall terminate automatically if (i) GPA files or has filed against it a petition under any applicable law relating to insolvency or the protection of creditors, (ii) GPA makes an assignment for the benefit of creditors or (iii) a receiver or similar official is appointed for all or a substantial portion of GPA's assets.
18. **Effects of Termination.** Upon termination of this Agreement for any reason, all rights and licenses granted under this Agreement shall terminate and revert to Partner, except that licenses of the Software granted by Partner to End User in accordance with this Agreement as of the date of termination will remain in effect in accordance with their terms and conditions. Upon termination of this Agreement for any reason, GPA shall (i) cease using all Demonstration and Development Licenses and Documentation; (ii) cease issuing any Evaluation Licenses, sales literature and other written information and materials supplied by Partner pursuant to this Agreement or which contain Partner’s trademarks; (iii) cease issuing new sublicenses of Software; (iv) return to Partner all copies of the Partner Solution, sales literature and other written information and materials supplied by GPA pursuant to this Agreement or which contain Partner’s trademarks; and (v) no longer identify or hold itself out as an authorized partner or distributor of the Partner Solution.
19. **CONFIDENTIAL INFORMATION**
20. “**Confidential Information**” means all information related to the business of GPA or Partner (“the disclosing party”) that may be obtained by GPA or Partner (“the receiving party”) from any source as a result of this Agreement, provided that if written, the information is clearly identified as proprietary or confidential, and if oral, shall be followed by a written summary of such oral communication within fifteen (15) days of the date of disclosure. Confidential Information includes (but is not limited to) source code, algorithms, concepts, pricing information, business methods, business and technical plans, research, and test results, including the results of any performance or benchmark tests or evaluation of the Software. Information relating to End Users is Confidential Information. Confidential Information does not include information that the receiving party can demonstrate through written documentation (i) is or becomes publicly available through no act or omission of the receiving party; (ii) the disclosing party discloses to a third party without restriction on further disclosure; (iii) is rightfully disclosed to the receiving party by a third party without restriction on disclosure; (iv) is independently developed by the receiving party without access to the disclosing party’s Confidential Information; or (v) is previously known to the receiving party without nondisclosure obligations.
21. **Nondisclosure.** Each party agrees that it will not disclose to any third party any Confidential Information belonging to the other party without the other party's prior written consent. Each party agrees that it will not use the Confidential Information of the other party except as authorized in the Agreement. Each party further agrees that it will maintain the confidentiality of all Confidential Information of the other party and prevent the unauthorized disclosure or use of any Confidential Information by its clients, customers, employees, subcontractors, or representatives. In no event shall any party use less care to maintain the Confidential Information of the other party than it uses to maintain the confidentiality of its own similar non-public information. Each party further agrees to notify the other in writing of any misuse or misappropriation of the other party’s Confidential Information that may come to its attention.
22. **INDEMNIFICATION**

GPA will defend and settle at its own expense and will indemnify Licensee/Partner for any damages or expenses including reasonable attorneys’ fees resulting from, any action brought against the Licensee/Partner by an unaffiliated third party to the extent that it is based on a claim that the Software infringes any U.S. patent issued as of the date of the Agreement, or any copyright or trade secret of a third party in any jurisdiction in which Licensee/Partner is licensed by GPA to use or distribute the Software, provided that: (i) GPA is promptly notified in writing of the claim; (ii) GPA has sole control of the defense and any negotiations for its settlement; and (iii) Licensee/Partner provides GPA, at GPA’s expense, with all reasonable assistance, information, and authority necessary to perform the above.

Licensee/Partner will indemnify GPA for any and all damages, settlements, reasonable attorneys’ fees, and expenses based on any action brought against GPA to the extent that it is based on a claim based on misrepresentations made by Licensee/Partner about the performance or operation of the Software that differ from those found in GPA’s Documentation and marketing material, provided that: (i) Licensee/Partner is promptly notified in writing of the claim; (ii) Licensee/Partner has sole control of the defense and any negotiations for its settlement; and (iii) GPA provides Licensee, at Licensee’s/Partners expense, with all reasonable assistance, information, and authority necessary to perform the above.

FOR ANY BREACH OF THE Software WARRANTY DESCRIBED ABOVE, LICENSEE’S ENTIRE REMEDY AND GPA’S ENTIRE LIABILITY SHALL BE LIMITED TO REPAIR OR REPLACEMENT of the SOFTWARE OR, IF SUCH REPAIR OR REPLACEMENT IS INADEQUATE AS A REMEDY OR, IN GPA’S OPINION, NOT COMMERCIALLY REASONABLE, TO A REFUND OF THE LICENSE FEES paid for the Software.

NEITHER GPA NOR LICENSEE WILL BE LIABLE, UNDER ANY CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY, FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO DATA, LOSS OF ANTICIPATED REVENUE OR PROFITS, WORK STOPPAGE OR IMPAIRMENT OF OTHER ASSETS, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS stated IN SECTION 5 ABOVE, IN NO EVENT SHALL GPA’S LIABILITY under the agreement EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO GPA BY LICENSEE UNDER THE AGREEMENT.

1. **Taxes.** All fees charged by GPA and payable by Licensee are in U.S. Dollars and do not include taxes. If GPA is required to pay any sales, use, value-added, or other taxes based on transactions under this Agreement (other than taxes based on GPA’s income), such taxes shall be billed to and paid for by Licensee.
2. **Force Majeure.** Neither party shall be responsible for any delay in its performance due to causes beyond its reasonable control.
3. **Assignment.** Licensee may not assign, delegate, or otherwise transfer the Agreement or any of its rights or obligations to a third party and any such attempted transfer shall be void. Notwithstanding the foregoing, Licensee may assign, upon written notice to the GPA, its rights and obligations under this Agreement to the surviving corporation in any merger or consolidation to which it is a party or to any entity which acquires all or substantially all of its capital stock or assets, provided that such entity is not a competitor of GPA. GPA may freely transfer and assign this Agreement.
4. **Amendment and Waiver.** Any waiver, amendment, or modification of any provision of this Agreement must be in writing. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except as specifically set forth in writing. The failure of either party to exercise any right provided for by this Agreement shall not be deemed a waiver of that right.
5. **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing, addressed to the Chief Financial Officer or Operating Officer of the party being notified at its address first written above, and shall be deemed given: (a) upon receipt when delivered personally; (b) upon confirmation of receipt following delivery of registered or certified mail, return receipt requested; or (c) upon delivery by a recognized overnight courier service which provides confirmation of delivery.
6. **Attorneys’ Fees.** If either party to this Agreement shall bring any action, suit, counterclaim, appeal, arbitration, or mediation against the other regarding the terms of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys’ fees and costs as determined by the Court, arbitrator, or mediator.
7. **Authority to Sign.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party’s obligations have been duly authorized, and that the Agreement is a valid and legal agreement binding on the party and enforceable according to its terms.
8. **Governing Law.** This Agreement shall be deemed to have been made in, and shall be construed under, the laws of the State of Tennessee without regard to its conflicts of law provisions. Licensee agrees that the federal or state courts of Tennessee shall have the sole and exclusive jurisdiction over the matter.
9. **Survival of Obligations.** The following obligations will survive termination of the Agreement for any reason: (a) all obligations relating to non-use and nondisclosure of Confidential Information; (b) all obligations relating to indemnification and protection of proprietary rights; (c) all obligations to make payments of amounts that are or become due under this Agreement prior to termination; (d) all obligations regarding maintenance of records for tracking sublicense fees owing to GPA; and (e) all provisions regarding the limitations of warranty, remedy, and liability.
10. **Severability.** Wherever possible, each provision of the Agreement shall be interpreted in such a way as to be enforceable and valid under applicable law. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, that provision shall be stricken from this Agreement and shall not affect the legality, enforceability, or validity of the remainder of this Agreement.
11. **Entire Agreement.** The Agreement, including the General Terms and Conditions and attached Exhibits, constitutes the entire Agreement between the parties, and supersedes all prior oral or written agreements or communications with regard to the subject matters described. No additional or conflicting term in a purchase order or other document shall have any effect on the terms of this Agreement.

EXHIBIT A

**Grid Protection Alliance Product Description**

**EXHIBIT B**

Oscillation Module Licensing Fees

**EXHIBIT C**

OScillation Module Sub Licenses

The Oscillation Module Sub License is provided as a separate Document.

**Accepted by:**

**Partner: GPA:**

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*Authorized Signature Authorized Signature*

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:         Christoph Lackner

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:          Operating Officer

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