



Open Compute Project Foundation Solution Provider Agreement

This Solution Provider Agreement (“**Solution Provider Agreement**”) is entered into as of the Effective Date, by and between Open Compute Project Foundation, a Delaware nonprofit nonstock corporation with offices at PO Box 82287, Austin, TX 78708 (“**OCP**”) and the party identified on the signature page to this Solution Provider Agreement (the “**Solution Provider**”), (each, a “**Party**”, and together, the “**Parties**”). In the case of any inconsistency between this Solution Provider Agreement and the OCP Bylaws (“**Bylaws**”), the Bylaws control. In the case of any inconsistency between this Solution Provider Agreement and the OCP Membership Agreement (“**Membership Agreement**”), the Membership Agreement controls.

WHEREAS, OCP is the administrator of the OCP’s Solution Provider program and, in connection therewith, makes available licenses to associated membership marks (the “**Licensed Solution**,” as defined below);

WHEREAS, Solution Provider is a member of the Open Compute Project Foundation and desires to participate in OCP’s Solution Provider program, and Solution Provider desires to use the Licensed Solution Provider Marks in connection with Solution Provider’s system integration services, all subject to the terms of this Solution Provider Agreement;

WHEREAS, OCP agrees to grant, and Solution Provider agrees to accept, a license to use the applicable Licensed Solution Provider Marks associated with the Solution Provider program, subject to the terms and conditions herein.

NOW, THEREFORE, in exchange for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. The following terms will have the following meanings in this Agreement:

1.1 “Effective Date” means the date on which this Solution Provider Agreement has been signed by both parties.

1.2 “Licensed Solution Provider Marks” means, collectively, the word mark OPEN COMPUTE PROJECT SOLUTION PROVIDER and associated membership marks and logos, including but not limited to the membership marks and logos set forth in Exhibit A. OCP reserves the right to update, replace, supplement, or revise the contents of Exhibit A.

1.3 “Licensed Solution Provider Marks” means the collective the Licensed Solution Provider Marks, as each is defined above.

1.4 “Open Compute Product” means a product that has been certified by OCP as an OCP ACCEPTED™ or OCP INSPIRED™ product as determined by OCP in its sole discretion pursuant to its Certification Mark program and the terms thereof.



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1.5 “Solution Provider Program” means the program administered by OCP to enable solution providers to design, build, and market technology solutions based on OCP designs.

1.6 “OCP Trademark Usage Guidelines” means the Open Compute Project Trademark Usage Guidelines, which describes the required manner of using and displaying the applicable Solution Provider Marks and is available at <http://opencompute.org/participate/legal-documents>, as the same may be updated by OCP from time to time.

2. Participation in the Solution Provider Program

2.1 Participation. Solution Provider must be a member of OCP in good standing to participate in the Solution Provider Program. The requirements for such membership in the Solution Provider Program will be in accordance with OCP’s then-current Solution Provider Program requirements, which, as of the Effective Date, are listed on OCP’s website on its Solution Provider page located at: <http://www.opencompute.org/about/open-compute-project-solution-providers/> (“Program Requirements”). OCP may update the Program Requirements from time to time; however, Solution Provider will not be obligated to meet any new requirement added during the term of this Solution Provider Agreement, unless and until this Solution Provider Agreement is next renewed as described in Section 4.1.

2.2 Payment. Solution Provider will make the payments to OCP set forth in **Exhibit B**. All sums due hereunder shall be due and payable upon receipt of OCP’s invoice.

2.3 Assignment. Solution Provider may not assign this Solution Provider Agreement (by operation of law or otherwise) without the prior written consent of OCP, and any prohibited assignment will be null and void.

3. Membership Mark License

3.1 License Grant. Subject to the terms and conditions of this Solution Provider Agreement, as well as Solution Provider’s continuing adherence to the Program Requirements, OCP grants to Solution Provider a limited, non-exclusive, revocable, non-transferable, non-sublicensable, royalty-free, worldwide license to reproduce and use the applicable Licensed Solution Provider Marks solely in connection with accurately designating Solution Provider as a member of OCP’s Solution Provider Program. The Licensed Solution Provider Marks may be used only as depicted in Exhibit A and may only be used in a reasonable manner that fully comports with the OCP Trademark Usage Guidelines, which form a portion of this Solution Provider Agreement and are included by reference as if they had been restated here in their entirety. Solutions Provider is prohibited from using the Licensed Solution Provider Marks in any other form than specifically set forth in this Solution Provider Agreement and the OCP Trademark Usage Guidelines. The Licensed Provider Marks must be used only in a manner that accurately describes the activities



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and membership status of Solution Provider. Except for the limited license herein, OCP reserves all right, title and interest in and to the Licensed Provider Marks.

3.2 Required Link. If Solution Provider uses the Licensed Solution Provider Marks on its website or other electronic materials with hyperlinking capability, Solution Provider shall cause the representation thereof to link to the OCP web site at opencompute.org.

3.3 Unlicensed Use. Nothing contained herein grants Solution Provider the right to use of any other trademark, service mark, certification mark, membership mark, tag line and/or logo of OCP without express written permission from OCP. Solution Provider agrees not to use OCP or Open Compute Project Foundation – or any other trademark, service mark, certification mark, membership mark, tag line and/or logo of OCP – on any products, packaging, labels, tags, in signage, advertisements, or any informational or promotional material, whether in print, electronic, or other form, except as expressly permitted in this Solution Provider Agreement or otherwise in writing by OCP. Use of the Licensed Solution Provider Marks in any manner inconsistent with the terms of this Solution Provider Agreement, including the OCP Trademark Usage Guidelines, or use of any other trademark, service mark, certification mark, membership mark, tag line and/or logo of OCP without explicit written permission from OCP, and in accordance with the terms thereof, whether intentional or not, shall be considered an infringement and a breach of this Solution Provider Agreement and the Membership Agreement and could result in revocation of membership and prosecution for trademark infringement, in addition to any other remedies that OCP may have at law, under this Solution Provider Agreement, the Membership Agreement, or otherwise.

3.4 Changes to Guidelines. Solution Provider shall be afforded three (3) months subsequent to any changes to the OCP Trademark Usage Guidelines or the Licensed Solution Marks to implement any new requirements of the OCP Trademark Usage Guidelines or changes to the Licensed Solution Marks or to discontinue use of the Licensed Solution Provider Marks without affecting the validity of this Solution Provider Agreement, including the OCP Trademark Usage Guidelines, or the rights granted hereunder. For a period of one (1) year from the date of the change to the OCP Trademark Usage Guidelines or the Licensed Solution Provider Marks, Solution Provider shall have the right to distribute remaining inventory stock (but not to create or obtain any new inventory stock) of physical materials bearing the Licensed Solution Provider Marks in the normal course of business where such materials have become non-compliant as a direct result of such change to the OCP Trademark Usage Guidelines or the Licensed Solution Provider Marks.

3.5 Jurisdiction-Specific Terms. Solution Provider acknowledges and agrees to abide by any applicable jurisdiction-specific terms and conditions, located at <http://opencompute.org/participate/legal-documents> (or other applicable online location upon notice from OCP).



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3.6 Ownership, Trademark Registration and Protection. Solution Provider acknowledges and agrees that that OCP is the sole owner of the Licensed Solution Provider Marks and all associated goodwill, and Solution Provider shall take no action and make no statement inconsistent therewith. Solution Provider shall not challenge or contest, or cause any third party to challenge or contest, OCP's rights in the Licensed Solution Provider Marks, the validity of the Licensed Solution Provider Marks, or any registrations therefore, or the validity of this Solution Provider Provider Agreement. Solution Provider shall not register or attempt to register anywhere in the world any of the Licensed Solution Provider Marks or any other name or mark confusingly similar thereto. All use of any of the Licensed Solution Provider Marks by Solution Provider will inure solely to the benefit of OCP and Solution Provider shall acquire no rights therein. If at any time Solution Provider acquires any rights in, registrations of, or applications for, any of the Licensed Solution Provider Marks, by operation of law or otherwise, Solution Provider shall immediately upon request by OCP and at no charge to OCP assign such rights, registrations, or applications to OCP, along with any and all associated goodwill. Solution Provider agrees to provide OCP, at OCP's expense, such reasonable assistance as OCP may require in OCP's efforts to register and protect OCP's rights in the Licensed Solution Provider Marks.

3.7 Third Party Infringement. Solution Provider shall immediately notify OCP in writing of any suspected infringement of OCP's rights in the Licensed Solution Provider Marks in any jurisdiction of which Member becomes aware. Solution Provider agrees to notify OCP of any claims made against it, adverse to or conflicting with OCP's exclusive ownership of the Licensed Solution Provider Marks. OCP may, in its sole discretion, enforce its rights in the Licensed Solution Provider Marks to stop unauthorized use of the Licensed Solution Provider Marks, at its OCP's own expense, and will retain all recoveries thereby received.

3.8 Solution Provider's Trademarks. Solution Provider hereby grants OCP the right to use Solution Provider's trademarks or service marks only to identify Solution Provider as a member of the Solution Provider Program, including placing Solution Provider's logo on OCP's applicable web page, or as otherwise approved in advance in writing by Solution Provider.

3.9 Quality Control. OCP may, from time-to-time, request in writing specimens of the materials of the Solution Provider to assess the level of consistency and quality of use of the Licensed Solution Provider Marks and to ensure that Solution Provider maintains the consistency and quality of the throughout the term of this Solution Provider Agreement. Solution Provider shall provide such specimen at no cost to OCP. If at any time OCP reasonably determines that any materials bearing the Licensed Solution Provider Marks fail to materially conform to OCP's minimum standards or the OCP Trademark Usage Guidelines, OCP shall so notify Solution Provider in writing and Solution Provider shall correct the non-conformance and provide a corrected specimen of such materials to OCP for review within thirty (30) days from the written notice from OCP regarding such non-conformance.



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4. Term.

4.1 Term. The term of this Agreement shall commence on the Effective Date of this Solution Provider Agreement, and shall continue for a term of twelve (12) months unless and until terminated as set forth in Section 5 below. Thereafter, Solution Provider may renew this Solution Provider Agreement for a twelve (12) month term by paying the applicable fees for the next year, so long as Solution Provider continues to qualify for participation in the Solution Provider Program as described in Section 2.

5. Termination.

5.1 Termination for Breach. OCP may terminate this license upon thirty (30) days prior written notice to Solution Provider, without need of judicial notice or court action, of a material breach of this Solution Provider Agreement, unless the breach is corrected to OCP's reasonable satisfaction within the thirty (30) day period. Material breaches shall include, but not be limited to, the Solution Provider's use of the Licensed Solution Provider Marks inconsistent with this Solution Provider Agreement.

5.2 Termination of Membership. In the event Solution Provider ceases to be an OCP Member in good standing pursuant to the Bylaws, the Membership Agreement, the Tiered Membership Policy or any other applicable document or agreement, the license granted herein shall terminate without notice and with immediate effect, and Solution Provider shall cease any and all use of the Licensed Solution Provider Marks and destroy any physical materials bearing the Licensed Solution Provider Marks.

5.3 Termination for Failure to Adopt Amended Terms. OCP shall have the right to amend this Solution Provider Agreement by providing Solution Provider with at least forty-five (45) days written notice of such amendment, after which time this Solution Provider Agreement will terminate absent written agreement by Solution Provider to the amended terms (the "Revised Solution Provider Agreement").

5.4 Termination By Solution Provider. Solution Provider may terminate this Solution Provider Agreement (i) any time within thirty (30) days of adoption of a Revised Solution Provider Agreement by giving written notice to OCP; or (ii) any time after giving ninety (90) days advanced written notice to OCP; nothing in these Trademark Terms shall relieve Licensee of its surviving obligations pursuant to Section 5.9 of this Solution Provider Agreement.

5.5 Termination of Solution Provider Program. This this Solution Provider Agreement immediately terminates upon discontinuance of this Solution Provider Program, for any reason. If this Solution Provider Agreement is terminated pursuant to this section, Solution Provider must cease use of the Licensed Solution Provider Mark, but shall be afforded three (3) months



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subsequent to the discontinuance of the Solution Provider Program to cease use of the Licensed Solution Provider Mark. If such termination takes place other than upon a renewal date described in Section 4.1, OCP shall refund to Solution Provider a pro-rata portion of the amounts payable by Solution Provider for the current year.

5.6 Partial Termination by OCP. Upon three (3) days prior written notice, OCP may terminate Solution Provider's right to use the Licensed Solution Provider Marks without need of judicial notice or court action in one or more particular countries, states, counties, or other jurisdictions (each a "jurisdiction") (i) where such continued use is prohibited in any respect by the action of any judicial, administrative or like authority, or as a result of an agreement with a third party to settle a dispute relating to a trademark or service mark based on the Licensed Solution Provider Marks, or (ii) in which OCP determines that the continued use of the Licensed Solution Provider Marks in such jurisdiction may impose potential liability on OCP or seriously threaten OCP's ownership or use of the Licensed Solution Provider Marks.

5.7 Insolvency. This Solution Provider Agreement will terminate immediately and automatically, without the need for notice to Solution Provider, if Solution Provider (i) makes an assignment for the benefit of creditors; (ii) is the subject of any voluntary or compulsory winding-up other than for the purposes of reconstruction or amalgamation; (iii) has a receiver, trustee, liquidator, assignee, custodian or similar official appointed for it or for any substantial part of its property; (iv) is the subject of any dissolution or liquidation proceeding; or (v) discontinues its business in the ordinary course without a successor.

5.8 Effect of Termination. Upon the termination of this Solution Provider Agreement, (a) Solution Provider will have no further rights, privileges, or licenses under this Solution Provider Agreement, (b) Solution Provider will discontinue immediately all use of the Licensed Solution Provider Marks and will not use any marks confusingly similar thereto, (c) and Solution Provider will cooperate generally with OCP to insure that all rights in the Licensed Solution Provider Marks and the goodwill connected therewith shall remain the property of OCP. Unless otherwise specified in a specific provision in Section 5, upon termination Solution Provider may not distribute any remaining materials, including electronic reproduction, bearing the Licensed Solution Provider Marks.

5.9 Survival. The obligations in Sections 3.5 (Ownership), 6.1 (Disclaimers), 6.2 (Limitations on Liability), 5.8 (Effect of Termination), 5.9 (Survival) and 6 (Miscellaneous) will survive termination of this Solution Provider Agreement.

6. Disclaimer and Limitation of Liability.

6.1 DISCLAIMERS. THE LICENSED SOLUTION PROVIDER MARKS ARE LICENSED "AS IS," WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND. OCP



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HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED SERVICE PROVIDER MARKS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

6.2 LIMITATIONS ON LIABILITY. THE OCP ITSELF, ITS MEMBERS, AND THEIR RESPECTIVE AFFILIATES WILL HAVE NO LIABILITY FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, STATUTORY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCURRED BY ANY PARTY ARISING OUT OF OR RELATED TO ANY USE OR EXPLOITATION OR ANY ATTEMPTED USE OR EXPLOITATION OF ANY TRADEMARK OR TRADEMARK LICENSE UNDER THIS SOLUTION PROVIDER SERVICE AGREEMENT.

7. Miscellaneous.

7.1 No Waiver. No failure to exercise, nor any delay in exercising or invoking any right or remedy under this Solution Provider Agreement by OCP shall operate as a waiver thereof, nor shall any single or partial exercise or invoking of any right or remedy prevent any further exercise thereof or the exercise or invoking of any other right or remedy.

7.2 Severability. If any term or condition of this Solution Provider Agreement is or becomes invalid or unenforceable, the validity or enforceability of any other term or condition of this Solution Provider Agreement shall not be affected and such invalid or unenforceable term or condition shall be enforced to the maximum extent permitted by law and completed by a valid interpretation of such term or condition, which to the extent possible, achieves the original purpose of the invalid or unenforceable term or condition.

7.3 Relationship. Nothing contained in this Solution Provider Agreement shall be construed as creating a joint venture, partnership, agency or employment relationship between the parties, and neither party will have any right to bind the other or incur any obligation on the other's behalf without the other's prior written consent.

7.4 Notices. All notices to be given hereunder shall be sent to the addresses set forth in Exhibit C by express, registered or certified mail of the U.S. Postal Service with return receipt requested ("U.S. Mail"), or by a nationally recognized overnight courier service for next business day delivery ("Overnight"). Notice will be deemed to have been given if mailed, five (5) business days after the date on which such notice was mailed or, if sent by courier, two (2) business days after delivery by the courier company. Either party will advise the other of changes of address by written notice.

7.5 Governing Law and Venue. These Trademark Terms shall be governed by the laws of the state of Texas, USA, excluding its choice of law provisions. The parties agree that any dispute



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arising out of or related to these Trademark Terms will be subject to, and Member hereby consents to, the exclusive jurisdiction of the Texas state and federal courts.

ACCEPTED AND AGREED:

(“OCP”)

(“Solution Provider”)

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Please print)

Name: _____
(Please print)

Title: _____

Title: _____

Date: _____

Date: _____

Solution Provider:

Company Name:

Contact:

Address:

Email:

Telephone:



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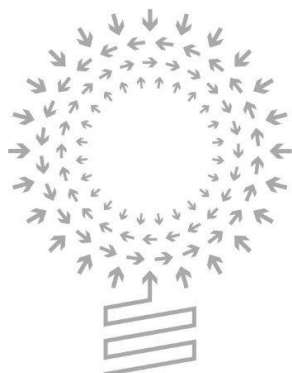
EXHIBIT A

LICENSED MARKS – SOLUTION PROVIDER MARKS



OPEN[™]
Compute Project

SOLUTION PROVIDER



OPEN
Compute Project

SOLUTION PROVIDER



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EXHIBIT B

PAYMENTS

Upon execution of the Solution Provider Agreement, Solution Provider shall pay a non-refundable participation annual fee. This fee is based on meeting the requirements of the Solution Provider Program (as described on the OCP website) and applies to all levels of corporate membership.

Solution Provider Membership Fee: \$4,000

All sums referred to in this Agreement are payable in United States currency. Solution Provider shall be responsible for payment in full of all applicable taxes, tariffs, duties, use fees, deductions, withholding, value added taxes, and other governmental payments of any kind. Solution Provider shall cooperate fully with OCP to file and secure any documents or other items necessary to comply with or obtain the benefits of any applicable laws, regulations, treaties, or other regulations relating to the payment or withholding of such taxes.

All sums due hereunder shall be due and payable upon receipt of OCP's invoice.



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Exhibit C Membership Contact

For Solution Provider:

Name: _____

Address: _____

Email _____

Phone _____

Copy to:

Name: _____

Address: _____

Email _____

Phone _____