



Open Compute Project Foundation Solution Provider Agreement

This Solution Provider Agreement (“**Agreement**”) is entered into as of _____, 201__ (the “**Effective Date**”), by and between Open Compute Project Foundation, with offices at Open Compute Project Foundation PO Box 82287, Austin, TX 78708 (“**OCPF**”) and the party identified on the signature page to this Agreement (the “**Solution Provider**”), (each, a “**Party**”, and together, the “**Parties**”).

WHEREAS, OCPF is the administrator of the OCPF Solution Provider program and in connection therewith makes available licenses to associated trademarks (the Licensed Mark, as defined below); and

WHEREAS, Solution Provider desires to participate in the Open Compute Solution Provider program, and to use the Licensed Mark in connection with its system integration services, all subject to the terms of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

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

- 1.1 “**Licensed Mark**” means, collectively, the word mark OPEN COMPUTE SOLUTION PROVIDER and associated trademarks and logos, including but not limited to the trademarks and logos set forth in Exhibit A. OCPF reserves the right to update, replace, supplement, or revise the contents of Exhibit A.
- 1.2 “**Open Compute Product**” means a product that has been accepted as an Open Compute-compliant product (which may include OCP-certified products, OCP-inspired products, or OCP-ready products), as determined by OCPF in its sole discretion.
- 1.3 “**Solution Provider Program**” means the program administered by OCPF to enable solution providers to design, build, and market technology solutions based on OCPF designs.

2. Participation in the Solution Provider Program

- 2.1 **Participation.** Solution Provider must be a Gold Member or Platinum Member in good standing of the Open Compute Foundation to participate in the. Solution Provider Program. The requirements for such membership will be in accordance with OCPF’s then-current Solution Provider Program requirements, which, as of the Effective Date, are listed on OCPF’s Web site on its Solution Provider page. (<http://www.opencompute.org/about/open-compute-project-solution-providers/>) OCPF may update such requirements from time to time; however, Solution



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Provider will not be obligated to meet any new requirement added during the term of this Agreement, unless and until this Agreement is next renewed as described in Section 4.1. Solution Provider may also, as a benefit to participation in the Solution Provider Program, qualify for Platinum membership as described in **Exhibit B**.

- 2.2 **Sales Information.** Solution Provider shall share sales information for Open Compute Products with OCPF on a quarterly basis, including customer identities and sales volumes, to the extent such information can be shared in compliance with customer agreements entered into by Solution Provider. OCPF shall treat such information as confidential, shall use such information only for the purpose of administering the Solution Provider Program, and shall not disclose it to third parties without Solution Provider's prior written consent.
- 2.3 **Cost Information.** The Parties acknowledge that transparency in pricing is a key concern of the Open Compute community. Therefore, to the extent it has the right to do so without violating third party confidentiality requirements, Solution Provider shall share component pricing with Solution Provider's customers who purchase Open Compute-based products.
- 2.4 **Payment.** Solution Provider will make the payments to OCPF set forth in **Exhibit C**.
- 2.5 **Press Releases.** Solution Provider shall not make a press or other public announcement regarding its activities as a OCPF member or that names the identities of any other OCPF member unless prior written consent is received from any OCPF member named in the press release or public announcement. OCPF may make a press or other public announcement regarding any subject germane to its purposes and may identify Solution Provider as a member of the OCPF.
- 2.6 **Assignment.** Solution Provider may not assign this Agreement (by operation of law or otherwise) without the prior written consent of OCPF, and any prohibited assignment will be null and void; provided, however, that Solution Provider may assign this Agreement to its successor in the event OCPF approves a transfer of the applicable membership in OCPF to such successor.

3. Trademark License

- 3.1 **License.** Conditioned upon Solution Provider's continuing adherence to the Program Requirements and the requirements of this Article, OCPF hereby grants to Solution Provider a non-exclusive, nontransferable license to use the Licensed



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Mark and a non-exclusive, nontransferable license to reproduce the graphic representation(s) of the Licensed Mark solely in connection with (a) the promotion and advertising of the Solution Provider program during the term of this Agreement, and (b) designating Solution Provider as a member of the Open Compute Solution Provider Program. The Licensed Mark must be used only as depicted in Exhibit A and subject to any written guidelines for display that are provided by OCPF. The Licensed Mark must be used only in a manner consistent with the quality of services historically associated with the Licensed Mark. The Licensed Mark must be used only in a manner that accurately describes the products and services of Solution Provider.

- 3.2 **Ownership.** Solution Provider acknowledges that, as between Solution Provider and OCPF, OCPF is the owner of the Licensed Mark. Solution Provider shall not use the Licensed Mark in a manner that dilutes the goodwill in, or disparages, the Licensed Mark. Solution Provider shall not file any application for registration of the Licensed Mark or any mark confusingly similar to the Licensed Mark. Solution Provider shall not challenge the validity of the Licensed Mark. Use by Solution Provider of the Licensed Mark shall inure to the sole benefit of OCPF and nothing herein shall be construed as a grant to Solution Provider of any ownership rights in or to the Licensed Mark.
- 3.3 **Solution Provider's Trademarks.** Solution Provider hereby grants OCPF the right to use Solution Provider's trademarks or service marks: (a) by identifying Solution Provider as a member of the Solution Provider Program, including placing Solution Provider's logo on OCPF's applicable web page, and (b) as otherwise approved in advance in writing by Solution Provider.

4. **Term and Termination.**

- 4.1 **Term.** The term of this Agreement will be 12 months after the Effective Date. Thereafter, Solution Provider may renew this Agreement 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 1.
- 4.2 **Termination For Breach.** In the event of a material breach of this Agreement by either party, if the breaching party fails to cure within 30 days after receiving written notice of its breach from the non-breaching party, then the non-breaching party may, at its election, immediately terminate the Agreement at the end of such 30-day period, in addition to any and all other remedies that may be available.



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- 4.3 **Termination By Solution Provider.** Solution Provider may terminate this Agreement at any time by giving written notice to OCPF.
- 4.4 **Termination By OCPF.** OCPF may terminate this Agreement in the event it terminates the Solution Provider Program; provided that if such termination takes place other than upon a renewal date described in Section 4.1, OCPF shall refund to Solution Provider a pro-rata portion of the amounts payable by Solution provider for the current year.
- 4.5 **Insolvency.** This Agreement may be terminated immediately by either Party upon notice to the other Party, if the other Party (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. Miscellaneous.** This Agreement is the entire agreement between the parties on the subject matter hereof. No amendment or modification hereof will be valid or binding upon the parties unless made in writing and signed by the duly authorized representatives of both parties. The relationship of the parties hereunder is that of independent contractors, and this Agreement will not be construed to imply that either party is the agent, employee, or joint venturer of the other. In the event that any provision of this Agreement is held to be unenforceable, this Agreement will continue in full force and effect without said provision and will be interpreted to reflect the original intent of the parties. This Agreement will be governed by the laws of the State of Texas, without regard to its conflict of laws principles. The parties consent to the personal and exclusive jurisdiction of courts located in Texas. This Agreement will be binding upon and will inure to the benefit of the parties permitted successors and/or assignees. Waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder will not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right.



**Open Compute Project Foundation
Solution Provider Agreement**

ACCEPTED AND AGREED:

(“OCPF”)

(“Solution Provider”)

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Please print)

Name: _____
(Please print)

Title: _____

Title: _____

Date: _____

Date: _____

Solution Provider:

Company Name:

Contact:

Address:

Email:

Telephone:



**Open Compute Project Foundation
Solution Provider Agreement**

**EXHIBIT A
LICENSED MARK**



OPENTM
Compute Project
SOLUTION PROVIDER



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EXHIBIT B

ALTERNATIVE MEMBERSHIP OPTION

In addition to the other options available to Solution Provider to become an OCPF Platinum Member and provided that Solution Provider makes all required payments for such OCPF Platinum membership status, OCPF shall waive a single instance of Solution Provider's requirement to provide a Contribution (as such term is defined in the Open Compute Project Foundation Intellectual Property Rights Management Policy) in connection with Solution Provider's tiered membership requirements set forth in the Tiered Membership Policy (available at <http://www.opencompute.org/assets/Uploads/OCP-Tiered-Membership-Policy-OMM-Final-11-June-2015-.pdf>), if all of the following conditions are met on an annual basis:

- (a) Solution Provider sells or provides 1,000 or OCP Motherboards to Solution Provider customers within a rolling 12-month period;
- (b) Solution Provider receives contractual commitments from at least 2 Solution Provider customers that grant Solution Provider and OCPF the right to publicly reference such customers in Solution Provider's and OCPF's promotional, marketing, and advertising materials within a rolling 12-month period; and
- (c) All Motherboards referenced in above are OCPF-accepted specification solutions.

Notwithstanding the foregoing, any sales of motherboards to, or contractual commitments received from, customers which are board members of the OCPF will not be counted in determining Solution Provider's satisfaction of the requirements for Platinum membership status set forth above.

During the term of the Agreement Solution Provider shall develop and maintain a product portfolio that includes at least 10% of OCP Accepted Open Compute Products, as measured as a percentage of total sales by the Solution Provider.



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EXHIBIT C

PAYMENTS

Upon execution of the Agreement Solution Provider shall pay a non-refundable participation fee based on Solution Provider's membership level (as described in the table set forth below:

Solution Provider Membership Level	Fee
Gold	\$50,000
Platinum	\$40,000

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 OCPF 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 OCPF's invoice.

Solution Provider may offset (on a dollar-for-dollar basis) any amounts expended by Solution Provider and paid to OCPF in sponsoring Qualifying OCPF-Specific Events against the OCPF membership fees payable by Solution Provider upon the annual renewal of Solution Provider's membership in the Open Compute Foundation. A "Qualifying OCPF-Specific Event" is an OCPF-hosted non-summit event approved by OCPF in its reasonable discretion. The Solution Provider will notify OCPF at least 30 days prior to such event. The annual OCPF-sponsored "Open Compute Summit" is not a Qualifying OCPF-Specific Event and Solution Provider will not be entitled to offset amounts expended by Solution Provider in the sponsorship of the same under this Exhibit C. The maximum amount Solution Provider may offset under this Exhibit C is limited to 50% of Solution Provider's tiered membership fee. Solution Provider shall provide OCPF with appropriate documentation to support its offsetting of fees upon request by OCPF.