**Bylaws of the OpenFabrics Alliance**

**Revised 2018-xx-xx**

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# Name

The name of this corporation is OPENFABRICS, INC. (the “Corporation”).

# Purposes

## Tax-exempt Purpose

The Corporation is organized exclusively for one or more of the purposes permitted by Section 501(c)(6) of the Internal Revenue Code, including the making of distributions to other organizations that qualify as exempt organizations under Section 501(c)(6) of the Internal Revenue Code.

## Specific Purposes

The mission of the OpenFabrics Alliance is to accelerate the development and adoption of advanced fabrics for the benefit of the advanced networks ecosystem. The mission is accomplished by: creating opportunities for collaboration among those who develop and deploy such fabrics, incubating and evolving vendor independent open source software for fabrics, and supporting and promoting the use of such fabric technologies software.

# Principal Office

The principal office for the transaction of business of the Corporation shall be at such location as the Board may determine.

# Membership

## Members

### The Corporation shall have members (“Members”) who shall be “members” as that term is defined in Section 5056 of the California Corporations Code (“Corporations Code”) or any successor statute. Members shall have all of the rights of members of a California Mutual Benefit Corporation, which are provided in the Corporations Code and these bylaws. Members shall constitute the membership of the Corporation within the meaning of the Corporations Code and these Bylaws.

### The number of membership levels, as well as their titles, fees and benefits, shall be defined and decided by the Board of Directors.

## Participation by Non-Members

The Board, in its discretion, may allow non-Members to participate in the activities of the Corporation. By way of example but not limitation, the Board may allow participation by non-Members, who may be referred to as “Participants,” “Contributors,” and “Consultants” to participate in any of the working groups. Such Participants, Consultants and Contributors shall not, by virtue of such status, be deemed “members” of the Corporation as defined in Section 5056 of the California Corporations Code or any successor statutes, nor shall they have any of the rights of members that are provided by the Corporations Code. Non-members shall have only the rights expressly granted these Bylaws or by the Board, subject to change or elimination by the Board at any time

## Member Qualifications

### An organization seeking to become a Member must request membership and obtain the approval of the Board. Approval shall be based on whether the organization meets the qualifications of membership set forth in this section and on the extent to which the acceptance of the organization as a Member may advance the purposes of the Corporation. The Board may limit the number of Members.

### Membership will be available to a for-profit or nonprofit organization, academic or government entity or individual that supports the specific purpose of the Corporation and that is engaged in the use, manufacture, sale, or distribution of computers, computer parts or components, peripherals, software, or related products or services or that is engaged in research relating thereto.

### Each Member agrees:

#### To adhere to the Corporation’s Membership Agreement signed by such Member and the Corporation, as it may be amended from time to time, provided that amendments may not be inconsistent with these Bylaws, may only be prospective, and are only effective with Member’s consent either expressly or by remaining a member of the Corporation for more than thirty (30) days after receiving written notice of such amendment(s);

#### To adhere to these Bylaws as amended from time to time in accordance with the terms of these Bylaws;

#### To pay dues and assessments; and

#### To comply with policies and procedures duly adopted by the Board.

## Dues

The annual dues payable to the Corporation by Members shall be established and may be changed from time to time by the Board.

# Meeting of Members

## Place of Meetings

Meetings of Members shall be designated from time to time by resolution of the Board and be held at places and times reflecting the global nature of the Corporation and to encourage maximum participation. Meetings may be held in person or by any combination of audio or video teleconferencing techniques.

## Regular Meetings

There will be an Annual Meeting of all Members, held for the purpose of transacting the business as may come before the meeting. Other regular meetings of the Members shall be held on dates and at times to be determined by the Board.

## Special Meetings of the Members

Special meetings of the Members for any purpose may be called by the Chair of the Board, by any four (4) Directors, or by written request of one-third (1/3) of the Members.

## Meeting Notices

### Unless otherwise provided by these Bylaws or provisions of law, written notice stating the place, day and hour of a meeting of Members and, in the case of a special meeting of Members, the purpose or purposes for which the meeting is called, shall be delivered to each Member not less than fifteen (15) days before the date of the meeting. This may be done via personal delivery, postal mail, express mail, electronic mail, facsimile transmission, or by other electronic means. Regardless of the method, the notice is deemed received 3 days after being sent.

### Whenever any notice of a meeting of Members is required to be given to any Member under provisions of these Bylaws or the law of this state, a waiver of notice in writing signed by the Member, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

## Quorum for Meetings

A majority of the Members present in the person of a duly authorized representative or present by proxy shall constitute a quorum for meetings of the Membership.

## Membership Action

Every act or decision done or made by a majority of the Members present in person or by proxy at a duly held meeting is the act of the Members, unless these Bylaws or provisions of law require a greater number or different method of calculation.

## Voting Procedure

Each Member organization shall have one (1) vote on each matter submitted to a vote by the Members. Voting on all matters shall be by a show of hands if held in person, or by voice ballot if held by audio or video teleconferencing, unless otherwise required, or by secret ballot if requested by a majority of any class of Members. Results of all ballots shall duly be distributed to all Members within thirty (30) days of each vote.

## Action by Written or Electronic Ballot

Except as otherwise provided under these Bylaws or provisions of law, any action which may be taken at any regular or special meeting of Members may be taken without a meeting if the Corporation distributes a written or electronic ballot to each Member. The ballot shall:

### Set forth the proposed action

### Provide an opportunity to specify approval or disapproval for each proposal and state the percentage of approvals necessary to pass the measure submitted.

### Specify the date by which the ballot must be received by the Corporation in order to be counted. The date set shall afford Members a reasonable time within which to return the ballots.

## Conduct of Meetings

### Meetings of Members shall be presided over by the Chair of the Board or, in his or her absence, by another individual serving on the Board or, in the absence of all of these persons, by the person appointed to serve as secretary of the meeting.

### Meetings shall be conducted to allow for active, fair and open participation by all Members attending the meeting. All Members shall have the right to express opinions on the subject matter, whether or not the opinions differ from those of the majority. Where a decision is called for, it shall be determined by vote, and each Member shall have the opportunity to vote on the outcome. Meetings may not be adjourned until questions, opinions and comments from all participating Members are voiced and duly recorded by the presiding officers, subject to reasonable limitations on the time and duration of meetings.

## Proxies

Every Member shall have the right to vote either in person or by one (1) agent authorized by a proxy validly executed by the Member. A proxy may be executed by written authorization signed, or by electronic transmission authorized, by the Member, giving the proxy holder(s) the power to vote on behalf of the Member. A proxy shall be deemed signed if the Member’s name or other authorization is placed on the proxy (whether by manual signature, typewriting, telegraphic or electronic transmission or otherwise) by the Member. A proxy may only be held by a Member. A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect unless revoked by the person executing it, prior to the vote pursuant thereto, by a writing delivered to the Corporation stating that the proxy is revoked or by a subsequent proxy executed by, or attendance at the meeting by the person executing the proxy; provided, however, that no such proxy shall be valid after the expiration of eleven (11) months from the date of such a proxy, unless otherwise provided in the proxy. The applicable provisions of the Corporations Code shall govern the revocability of a proxy that states on its face that it is irrevocable.

# Board of Directors

## Powers of the Board

Subject to the provisions of the Corporations Code and any limitations in these Bylaws relating to action required to be taken or approved by the Members, the Corporation’s activities and affairs shall be managed by, and all corporate powers shall be exercised by or under the direction of, its Board.

## Number of Directors

The Board shall consist of Member Directors and two At-Large Directors. Each Organization who is a member at the level defined as including the benefit of having a seat on the Board of Directors shall have the right to appoint one Member Director. The At-Large Directors will be elected as set forth in section 6.2.A and 6.2.B. The total number of Directors shall not exceed the number of Member Directors plus two.

### Nominations for the At-Large Directors will be accepted only from the floor at the Annual General Meeting (AGM) held at the annual OpenFabrics workshop. Anyone registered at the conference can nominate a candidate. It is permissible to nominate oneself. Candidates for nomination cannot be affiliated with an organization already represented on the OFA Board of Directors. Candidates must accept the nomination either verbally at the AGM or by email sent to the Secretary of the Board prior to the conclusion of the AGM.

### Voting for the At-Large OFA Directors will be by secret ballot.  All registered attendees at the OFA workshop will be allowed to vote via a provided ballot.  Voting will begin following the AGM and will end at the close of the workshop.

## Appointment/Election of Directors

Member Directors are appointed by the organization they represent. At-Large Directors shall be nominated and elected by the general membership at its annual meeting. There is no requirement that a candidate for At-Large Director be an OFA member, however, once elected, an At-Large Director is provided with an Individual Membership, at no cost, for the period of his or her term. An At-Large Director cannot represent, or be affiliated with, a Member Director organization. An At-Large Director shall have no voting rights, and participation shall not count towards quorum for the purposes of conducting Board business.

## Qualifications

An individual serving as a Member Director must either be and remain an employee of the Member organization who appointed them, or be an independent contractor representing the Member organization who appointed them. No member organization may have more than one employee or independent contractor serving as Director.

## Attendance

Directors are expected to attend, in person or by telephone, at least seventy-five percent (75%) of all duly noticed Board meetings and not to miss three (3) consecutive meetings. If a Director does not meet this requirement, that Director is deemed to be no longer in Good Standing and is subject to removal as provided in Section 6.07.

## Suspension

The Board, by majority vote, may suspend a Director who has consecutively missed the previous three duly noticed Board meetings without being excused. A suspended Director is not considered in determining a quorum, and a suspended Director may not vote. A Director may be removed from suspended status and reinstated on the Board by majority vote of the remaining Directors.

## Vacancies, Resignations, Removals

### Vacancies of the Directors on the Board shall exist whenever a Director is removed or resigns or his or her tenure otherwise terminates.

### Any Director may resign effective upon giving written notice to the Board Chair, unless the notice specifies a later time for the effectiveness of such resignation.

### Any Director may be removed if, without a leave of absence approved by the Chair, the Director fails to attend three (3) consecutive meetings or misses more than twenty-five percent (25%) of meetings within a twelve (12) month period.

### Directors may be removed by a unanimous (with the exception of the individual under consideration) vote of the Board. Only one (1) Director on the Board may be removed at any one (1) Board meeting.

### The organization that appointed the Member Director may remove that Member Director.

## Term of Office

Member Directors serve at the discretion of their organizations, with no term length or limit imposed. At-Large Directors serve beginning as of the date of the election and ending at the date of the succeeding election.

## Compensation

All Directors shall serve without compensation from the Corporation.

# Board Meetings

## Place of Meetings

The Annual Board meeting and Regular Board meetings shall be held at places and times set by the Board.

## Regular Meetings

There will be an Annual Meeting of the Board, held in conjunction with the Annual Meeting of the Members.

## Special Meetings

Special meetings of the Board may be called by the Chair or by any four of the Directors, or, if different, by the persons specifically authorized under the Corporations Code to call meetings of the Board.

## Notice of Meetings

Unless otherwise provided by provisions of law, notice of Meetings will be given to Members in accordance with policies set by the Board.

## Quorum for Meetings

A quorum shall consist of a majority of the number of Directors actually serving as a Director. If a Member eligible to appoint a Director has not done so, that vacancy will not be considered in determining a quorum. At-large directors do not count towards quorum.

## Board Action

Every motion, act or decision passed, done or made by the affirmative vote of a majority of Directors in attendance at a meeting, is the motion, act or decision of the Board, unless another section of these Bylaws, or provisions of law require a greater or different voting percentage or different rules for approval of a matter by the Board.

## Actions Requiring Two-Thirds Approval

The affirmative vote of two-thirds of Directors then in office shall be required to establish or materially change the charter of a working group; or to materially change: (a) the purpose of the Corporation (Article 2), (b) the provisions relating to the Board of Directors (Article 6 and Article 7), (c) the termination and withdrawal provisions (Article 11), (d) the confidentiality provisions (Article 12), (e) the freedom of action provisions (Article 14), and/or (f) the provisions of Article 16 of these Bylaws; or file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors; or merge or consolidate with or into another entity; or directly or indirectly sell all or substantially all of the assets of the Corporation.

## Conduct of Meetings

The Board shall be presided over by the Chair or, in his or her absence, by the Vice Chair or, in his or her absence by the Secretary. The Secretary of the Corporation shall act as secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting. Meetings shall be governed by such procedures as may be approved from time to time by the Board, insofar as such rules are not inconsistent with or in conflict with these Bylaws or with provisions of law.

## Meetings by Telephone or Video Conference

Directors may participate in a regular or special meeting through use of conference telephone, videoconference, or similar communications device, or in person, so long as all people participating in such meeting can hear one another. Participation in a meeting pursuant to this Section constitutes presence at such meeting for all purposes, including the existence of a quorum and voting.

## Board Action Without a Meeting

Any action that the Board is required or permitted to take may be taken without a meeting if all of the Directors consent in writing or by electronic message to that action. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. All consents shall be filed with the minutes of the proceedings of the Board.

# Officers

The Officers of the Corporation shall consist of a Chair, a Vice Chair, a Treasurer, and a Secretary.  Any one person can hold only one Officer role at any time. An Officer may be, but need not be, a Member Director. The officer must, however, be an employee of, or contractor to, a member organization at the level defined as including the benefit of having a seat on the Board of Directors. In the case of an Officer who is not also a Director, such Officer shall not be included for quorum and shall not participate in votes taken by the Board.  An Officer who is also a Director retains all the rights and privileges obtaining to any other Director.  The Officers shall serve without compensation unless otherwise approved by the Board.

The term of office for all Officers shall be two years with no limit on the number of terms allowed, subject to election to an Officer position.  Elections for Officers shall be scheduled for the June Board meeting, with nominations closing at the end of the May Board meeting.  The initial term in office for the Chair and Secretary shall be one year beginning in June 2017 and thereafter two years, in order to stagger the terms such that Chair and Vice Chair expire one year apart from each other and Secretary and Treasurer expire one year apart from each other.  Subsequently, elections for Chair and Secretary shall be held in even numbered years; elections for Vice Chair and Treasurer shall be held in odd numbered years.

## Participation

Participation in the nomination of, and voting for, Officers shall be limited to Member Directors.

## Nominations

The Secretary shall accept nominations until the close of the Board meeting immediately preceding the meeting designated for electing Officers.  Any given Member Director may submit only one nominee for each Officer position

## Voting

Voting shall occur during a regularly scheduled Board meeting, including proper notice of the meeting agenda.  Nominations shall be published as part of the agenda. Each Member Director is entitled to one vote.

## Tie Vote

At the conclusion of voting, the nominee with the largest number of votes is declared the winner.  In the event of a two or more-way tie for first place, there shall be a run-off vote.

## Slates

No slates of candidates are allowed. Votes for each Officer position are held independently.

## Eligibility

Only employees or contractors of Member Director organizations are eligible to serve as Officers.  Other classes of members, including At Large Directors, are not eligible to serve as Officers.

## Individual Succession

If an individual serving as an Officer ceases employment with a Member Director organization, or if the Board takes action to remove that individual due to loss of Good Standing or for other reasons, the Board shall at its earliest convenience accept nominations and hold an election to fill the remainder of that individual’s term.

## Member Director Organization Succession

If the organization associated with a Member Director loses its Good Standing, any Officer employed by, or contracted to, that organization also loses his or her Good Standing. In that case, the Board shall at its earliest convenience accept nominations and hold an election from among the employees or contractors of the remaining Member Director organizations to fill the remainder of that individual’s term.

# Executive Committee

The Executive Committee shall include the officers of the Corporation, if any, and other Directors appointed by the Board. Members of the Executive Committee serve at the pleasure of the Board. It is expected that the Executive Committee may carry out the duties of the Board, subject to limitations provided by law, but the final determination as to the composition, duties, policies, procedures, and the Board will determine and approve the size of the Executive Committee.

# Working Groups

The Corporation may have such working groups with such charters as may from time to time be determined by the Board.

## Meetings and Actions of Working Groups

Meetings, responsibilities and actions of the working groups shall be governed by, noticed, held and taken in accordance with policies and procedures established by the working groups, as approved or ratified by the Board

## Composition of Working Groups

The Board shall select the Chair or Co-Chairs of a working group from among representatives of organizations at the level defined as including the benefit of being eligible to Chair Working Groups. Such Chair or Co-Chairs shall serve for a one (1) year term. Each Member is eligible to designate one or more employees as included in a working group. The Board may authorize participation of non-Members in a Working Group according to Article 4.2 herein.

# Membership Termination and Withdrawal

The membership of a Member shall terminate upon a failure without cure of a Member to pay dues within 3 months of the due date, or upon termination of the Member’s Membership Agreement. A Member may terminate its own membership at any time upon written notice to the Board. Termination shall not entitle a Member to a dues refund or reduction. If a Member’s membership is terminated under this Article, the Member shall within ten days following its termination, destroy all copies of Confidential Information in its possession and certify such destruction to the Board, provided that Member may retain one copy of such Confidential Information solely for archival purposes.

# Confidentiality

## Maintenance of Confidentiality

The Board may deem the content of its deliberations (including the content of a Contribution and the deliberations of a working group) and the Corporation’s business plans to be “Confidential Information”. In order to be protected as provided in these Bylaws, Confidential Information, if embodied in tangible form must be marked with a restrictive legend, or if disclosed orally, must be identified as confidential at the time of disclosure. Each Member, Participant, Contributor, and Consultant agrees not to disclose the Confidential Information and agrees to maintain the confidentiality of the Confidential Information with at least the same degree of care as it maintains its own similar confidential information, for a period of three years from the date of disclosure of such Confidential Information

## Exclusions

Confidential Information does not include any information that is: publicly available other than by breach of a duty of confidentiality; rightfully received from a third party without any obligation of confidentiality; rightfully known to the receiving party without any limitation on disclosure prior to or after its receipt from the disclosing party (including without limitation a Member’s, Participant’s, Contributor’s, and Consultant’s own code, documentation and/or other information provided to the Corporation); or disclosed as required by law.

## Residuals

Members, Participants, Contributors, and Consultants shall be free to use the residuals of Confidential Information for any purpose including use in the development, manufacture, marketing and maintenance of products and services, subject only to the obligations herein with respect to maintaining the confidentiality of such Confidential Information. The term “residuals” means that Confidential Information in non-tangible form, which may be retained in the memories of individuals who have had rightful access to such Confidential Information. It is understood that receipt of Confidential Information shall not create any obligation in any way limiting or restricting the assignment or reassignment of any employees within an organization. Nothing in this paragraph shall be construed to grant a patent license, express or implied.

# Antitrust

Each Member, Participant, Contributor, and Consultant acknowledges that they are committed to fostering competition in the development of new products and services and that the Corporation’s activities are intended to promote such competition. They further acknowledge that some of them may compete with one another in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable antitrust laws and regulations. Without limiting the generality of the foregoing, Members, Participants, Contributors, and Consultants, acknowledge that they shall not discuss issues relating to product costs, product pricing, methods or channels of product distribution, any division of markets, or allocation of customers or any other topic that would be prohibited by applicable antitrust laws. Accordingly, each Member, Participant, Contributor, and Consultant hereby assumes responsibility to provide appropriate legal counsel to its representatives regarding the importance of limiting their discussions to subjects that relate to the purposes of the Corporation, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise. Each Member, Participant, Contributor, and Consultant consents to the Corporation giving notice of Member’s membership in the Corporation, to the extent necessary for the Corporation to invoke the protection of the National Cooperative Research and Production Act of 1993. Corporation may, but is not obligated to, invoke such protection

# Freedom of Action

No provision of these Bylaws or the Membership Agreement shall be interpreted to prevent any Member, Participant, Contributor, or Consultant from engaging in any other activities or business ventures, independently or with others, whether or not competitive with the activities contemplated herein or those of any other and regardless of the effect thereof on the Corporation.

# Dissolution

The Corporation shall be dissolved, its assets shall be disposed of, and its affairs wound up upon the two-thirds vote of the Board and the majority vote of the Members, or as otherwise permitted by law. In the event that the Corporation is dissolved or wound up at any time, all of the remaining properties, monies, and assets of the Corporation after provision has been made for its known debts and liabilities as provided by law, shall be distributed by the Board, in accordance with the requirements of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended.

# Miscellaneous

## Limitation of Liability

In no event will members or the corporation be liable to each other, or to any third party for the cost of procuring substitute goods or services, lost profits, loss of use, loss of data or any incidental, consequential, indirect, or special damages, whether under contract, tort, warranty, or otherwise, arising in any way out of this or any other related agreement, whether or not such party had advance notice of the possibility of such damages, any contribution agreements or similar means of participation for non-members shall provide for such limitation of liability extending to all other non-member participants, contributors, and consultants.

## No Other Licenses

Except for the rights expressly provided in these Bylaws, no entity grants or receives, by implication, estoppel, or otherwise, any rights under any patents or other intellectual property rights.

## No Liability for Debts of Corporation

No Director or any of the Members shall be personally liable for the debts, liabilities, or other obligations of the Corporation.

## Waiver of Personal Liability

The liability of Directors direct agents of this Corporation for monetary damages shall be waived and limited to the fullest extent permissible under California law.

## Indemnification

The Corporation shall indemnify Directors direct agents to the fullest extent permissible under California law.

## Insurance for Corporate Agents

Except as may be otherwise provided under provisions of law, the Board may approve a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation (including Directors and employees or other agents of the Corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent’s status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under these Bylaws or provisions of law.

## Fiscal Year

The Corporation's fiscal year shall be the calendar year unless otherwise determined by the Board

## Amendment

Except as otherwise provided by law or in these Bylaws, these Bylaws may be amended upon the affirmative vote of a majority of the Board. The table recording amendments subsequent to June 2018 is as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Amendment No. | Reason for Amendment | Date | Articles Affected | Membership Agreement Articles & Amendment No. |
|  |  |  |  |  |

## Law of California

These Bylaws and all amendments hereto shall be governed by the laws of the State of California; and in the event of litigation, venue shall be in the city and county where the Corporation has its principal place of business.

# CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of OPENFABRICS, INC., a California nonprofit mutual benefit corporation; and

That the foregoing bylaws, as amended in 2018 constitute the bylaws of said corporation, as duly approved by the Board of this Corporation on , 2018.

Printed Name / OFA Secretary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature / OFA Secretary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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