OpenFabrics Inc. Bylaws

# Name, Offices and Purpose

* 1. **Name.** The name of this corporation is OpenFabrics Inc. (dba OpenFabrics Alliance) and which is referred to in these Bylaws as the “Corporation”.
  2. **Offices.** The Board of Directors of the Corporation (the “Board”) may determine and change the location of the Corporation’s principal office, and may establish branch or subordinate offices at any location worldwide.
  3. **Purpose.**
     1. **Organization and general purpose.** The organizational structure, the general purpose of the Corporation, and important limitations on the permissible actions of the Corporation, are described in the Corporation’s Articles of Incorporation (the “Articles”). The Corporation will abide by all provisions of the Articles as amended from time to time as permitted under these Bylaws and California Nonprofit Mutual Benefit Corporation Law.
     2. **Specific purpose.** The Corporation is formed to promote the common business interest of its members in the development and adoption of advanced fabrics for the benefit of an advanced networks ecosystem. In furtherance of this goal, the Corporation intends to create opportunities for collaboration among those who develop and deploy such fabrics, incubate and evolve vendor-independent open source software for fabrics, and support and promote the use of such fabric technologies software.

# Membership

* 1. **Membership.** There will be only one voting class of Members in the Corporation within the meaning of Section 5056 of the California Nonprofit Corporation Law, and such Members will be known as “Promoter Members.” Promoter Members of the Corporation will be those entities listed on the Promoter Membership List maintained by the Corporation. Other classes of participants in the Corporation may be referred to as “Members”, “Adopters”, “Supporters” or by any other designation given to them by the Board (and collectively, together with “Promoter Members” referred to in these Bylaws as “Members”); however no class of Members other than Promoter Members will be considered "statutory members" within the meaning of Section 5056 or any other applicable section of the California Nonprofit Corporation Law. Any Member, including a Promoter Member, will automatically cease to be a Member upon the occurrence of an event set forth in Section 2.8. Members will have the rights and privileges specifically given to them by the resolutions adopted by the Board, and will be subject to any conditions imposed thereon by the Board. Non-statutory members will not be entitled to any voting rights with respect to the business or proceedings of the Corporation, including without limitation, any matters relating to the adoption of a deliverable or any other matters presented to the Corporation and/or the Promoter Members for voting or election.
  2. **Membership Agreement**. All Members will be required to execute a Membership Agreement.
  3. **Intellectual Property Policies**. Members will be subject to intellectual property rights policies, as adopted by the Board and amended from time to time. [*The intellectual property rights policy may cover multiple different areas of intellectual property rights, including but not limited to copyrights and licensing terms for software, marketing assets and written materials, trademarks, and fair use.*]
  4. **Operational Policies**. Members will abide by reasonable operational policies, including a Code of Conduct, as adopted by the Board and amended from time to time.
  5. **Costs**. Members will bear all of their own costs associated with participation in the activities of the Corporation, except as otherwise agreed by the Board.
  6. **Right of Promoter Members to Approve Certain Changes**. A vote of Promoter Members then holding active memberships and in good standing will be required for an amendment to the Articles or these Bylaws (a) to create any class of members with rights, responsibilities and privileges equivalent to or senior to those of the Promoter Members, or (b) to materially alter, reduce or eliminate the rights, responsibilities and privileges of the Promoter Members.
  7. **Member voting**. In the event that the California Nonprofit Mutual Benefit Law or other applicable law requires a vote of members on a matter, the Promoter Members will vote on the matter, following the processes described in Section 2.10 below.
  8. **Membership Terminations**. The membership of any Member will terminate upon the occurrence of any one or more of the conditions set forth in this Section 2.8. Upon termination or expiration of the status of a Member in the Corporation, all rights and privileges associated with being a Member will terminate and such Member shall not be considered in good standing for purposes of these Bylaws:
     1. **Resignation**. A Member may resign from the Corporation at any time by sending a resignation letter to the Chair or Secretary of the Corporation. No pro rata refund of any membership fees, dues or assessments will be made for the balance of the calendar year in which the resignation is effective.
     2. **Expiration and Disqualification**. A membership issued for a period of time will expire when such period of time has elapsed unless the membership is renewed.
     3. **Dues and Assessments**. Membership will terminate upon the failure of the Member to pay any fees, dues or assessments within the time periods established by the Board of Directors.
     4. **Termination of the Membership Agreement**. Membership will terminate upon termination or expiration of the applicable Membership Agreement, in accordance with its terms.
  9. **Liability**. No Member will be personally liable for the debts, liabilities or obligations of this Corporation
  10. **Member voting process**.
      1. **Quorum; Voting as a Single Class**.A majority of Promoter Members in good standing immediately before a vote required under this section will constitute a quorum for the approval of the matter submitted to the vote. Except as otherwise required or permitted by law or by these Bylaws, the act of the majority of the Promoter Members present at any meeting at which a quorum is present will be an act of the Promoter Members. Promoter Members will vote as a single class with one vote per Promoter Member.
      2. **Meetings**.Meetings of Promoter Members may be called to vote upon any matter for which a vote of Promoters Members is required upon action of the Chair of the Corporation or the written request of any Promoter Member. The Corporation will provide notice to each Promoter Member at its address as shown on the records of the Corporation, addressed to the Director representing each Promoter Member or, if such Promoter Member does not have a representative then serving on the Board, to the attention of its legal department. Notice may be given by telephone (including voice message), email, facsimile, or in person at least 24 hours in advance of the meeting or by first class mail at least three business days in advance. Participation by telephone, videoconference or any similar means is sufficient provided that all meeting participants can concurrently communicate with each other, and such participation will constitute presence for the purposes of these Bylaws and California Nonprofit Mutual Benefit Corporation Law.
      3. **Action without a Meeting.** Any vote of the Promoter Members may be taken without a meeting if the Corporation delivers a written (including electronic) ballot to the Promoter Members entitled to vote on the matter and conducts that vote in accordance with the California Nonprofit Mutual Benefit Corporation Law. Approval by a majority of those members in good standing as Promoter Members immediately before a vote will constitute the approval of the matter submitted to the vote.

# Board of Directors

* 1. **Powers**. Except as otherwise provided by California Nonprofit Mutual Benefit Corporation Law, in the Articles or in these Bylaws, the Board will direct all affairs of the Corporation and may exercise all powers available to a corporation under applicable law, including without limitation the power to authorize officers or agents to enter into contracts, execute financial instruments, and make other commitments on behalf of the Corporation. All corporate powers are exercised by or under authority of the Board.
  2. **Number of Directors**. **[**The Corporation will have no fewer than one and no more than xxx Directors.] The exact number of Directors will be determined as set forth in Section 3.3.
  3. **Board Composition**.
     1. **Promotor Directors.** Each Promotor Member that executes a Promotor Membership Agreement that is accepted by the Corporation, will, so long as it is a Promoter Member of the Corporation in good standing, be entitled to appoint one Director via written notice to the Corporation (a “Promoter Director”). The Promoter Member may replace its appointee from time to time upon written notice to the Corporation. Each Promoter Director must be an employee, or authorized agent, of the corresponding Promoter Member. A Promoter Director will serve until (a) she or he is no longer an employee (or agent) of the Promoter Member, (b) she or he resigns, is replaced by the applicable Promoter Member, or is removed from office, (c) the membership of the Promoter Member that appointed the Director terminates, or (d) the status of the Promoter Member that appointed the Promoter Director is changed from Promoter Member to any other class of membership that does not entitle the Member to the appointment of a Director**.**
     2. **Directors At Large.** The Board will also include up two At-Large Directors who will be elected by the Board [at the Annual Meeting]. An At-Large Director may not be an employee of a Promoter Member, however, once elected, the employer of an At-Large Director will be provided a non-voting membership, at no cost, for the period of the At-Large Director’s term. An At-Large Director may not be employed or have a contractual relationship with a Promoter Member. The term of service of At-Large Directors will begin upon election and end on the date of the next annual election of At-Large Directors, unless he or she resigns or is terminated prior. An At-Large Director will have no voting rights, and participation of At-Large Directors will not count towards quorum for the purposes of conducting Board business.
  4. **Alternates.** Each Promoter Director, or the Promoter Member that appointed such Promoter Director, may designate an individual to act as a Director in his or her stead, whether for a single meeting or as a standing alternate by posting notice to the appropriate mailing list designated by the Board. When acting in place of the original Promoter Director, the alternate will be acting as a Director of the Corporation, subject to all associated rights and obligations. The individual must also be an employee (or authorized agent) of the relevant Promoter Member. The Promoter Director or Promoter Member (as applicable) may withdraw such designation at any time by posting notice to the appropriate mailing list designated by the Board. Directors that are not Promoter Directors may designate an alternate only if specifically authorized by a policy adopted by the Board. [*The purpose of this Section 3.4 is to allow a Promoter Member to maintain its representation on the Board on occasions when the associated Promoter Director is unavailable, but not to encourage Promoter Members to regularly rotate alternates as such lack of continuity may negatively impact the efficacy of the Board*.]
  5. **Election of Directors**. Directors will be appointed or elected as provided in Section 3.3. The Directors will hold an annual meeting in [ ] for the purpose of electing Directors At-Large.
  6. **Good Standing**. In order to be in good standing for and have the right to vote in any particular Board meeting, a Promoter Director (or the applicable alternate Director of the relevant Promoter Member) must have participated in at least three of the five duly announced meetings prior to the meeting at issue to the extent Promoter Members have been active Promoter Members of the Corporation during the period of such five prior meetings. In order to restore a Promoter Director’s good standing status, the Promoter Director must attend two consecutive Board meetings, after which he or she will be considered in good standing for the following meeting. The attendance by an Alternate Director will not be considered in the restoration of a Promoter Director’s status of good standing. A Promoter Member may replace a Director who is not in good standing, but the new Promoter Director will inherit the standing of the Promoter Director being replaced.
  7. **Removal**.A Director may be removed from office for any cause deemed sufficient by the Board, voting in accordance with Section 3.10.b) below. In the event of removal of a Promoter Director, the Promoter Member will retain its right to appoint a Promoter Director, but must not re-appoint the removed Director.
  8. **Compensation.** Directors will not receive compensation for carrying out their duties as Directors. The Board may adopt policies providing for reasonable reimbursement of Directors for expenses incurred in conjunction with carrying out Board responsibilities, such as travel expenses to attend Board meetings.
  9. **Transactions with Interested Parties.** No contract or transaction between the Corporation and one or more of its Directors or offi­cers, or between the Corporation and any other corporation, partnership, association or other organ­ization in which one or more of its Directors or officers are directors or have a financial interest, will be void or void­able solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction or solely because his or their votes are counted for such purpose, if:
     1. the material facts as to the transaction and as to such Director’s his or her relationship or interest are fully disclosed or are known to the Board, and the Board in good faith authorize, approves or ratifies the contract or transaction by the affirma­tive votes of a majority of the disinterested Directors, even if the disinterested Directors represent less than a quorum; and
     2. The contract or transaction is just and reasonable as to the Corporation as of the time it is authorized, approved or ratified, by the Board.
  10. **Meetings.**
      1. **Location; telephonic meetings.** The Board and any Board committees may hold regular or special meetings at any location worldwide or by any electronic means. Participation by telephone, videoconference or any similar means is sufficient provided that all meeting participants can concurrently communicate with each other, and such participation will constitute presence for the purposes of these Bylaws and California Nonprofit Mutual Benefit Corporation Law.
      2. **Regular and special meetings.** Regular meetings of the Board may be held at times determined by the Board and communicated to all Directors. Any officer of the Corporation may call a special meeting, or if there are no officers currently in office, any Promoter Director may call a special meeting. The party calling a special meeting must use all reasonable efforts to provide actual notice (as set forth in Section 3.9.b)**Error! Reference source not found.**) of the special meeting to all other Directors no less than 72 hours prior to the special meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting. [*Before the Board can take action on any proposal at a meeting, such a proposal must have been posted to the appropriate mailing list not less than 72 hours prior to the commencement of the meeting (“the 72 Hour Rule”).* ]
      3. **Quorum**.Except as otherwise required herein, participation of a majority of the current Promoter Directors in good standing office or their alternates immediately before a meeting will constitute a quorum for the transaction of business at that meeting of the Board. In the absence of a quorum at any such meeting, a majority of the Directors present may adjourn the meeting and set a time for the meeting to be continued. Notice of the new time and details of participation will be given to all Directors.
      4. **Voting**. Except as otherwise required by California Nonprofit Mutual Benefit Corporation Law or by these Bylaws, the act of the majority of the voting Directors present at which a quorum is present will be an act of the Board. For the following actions, a vote by two thirds of the entirety of all Promoter Directors in good standing will be required: (i) the dissolution or merger of the Corporation, or the transfer of all or substantially all of the Corporation’s assets, (ii) changing the Corporation’s purpose, (iii) amendment to the Articles or these Bylaws. A unanimous vote of all disinterested Promoter Directors in good standing will be required for the following actions: (i) the removal of a officers or Directors [*or (ii) an action on a proposal that did not follow the 72 Hour Rule. In the case of a proposal that did not follow the 72 Hour rule, the vote will not be considered final until 72 hours following notice of such action (publication of meeting minutes) during which time any Promoter Director in good standing may object to the action resulting in the nullification of the vote).]* Each Promoter Director in good standing will have one vote. A Director who is not in good standing is not entitled to vote but may participate in any other Board activities or discussions.
      5. **Conduct**. The Chair (or in his or her absence, the Vice Chair, or if both are unavailable the Chair’s other designee) will serve as chair of Board meeting. The chair for any given meeting of the Board may take such actions as necessary to ensure the orderly conduct of the meeting, including limiting the length of discussion, determining who may speak, deciding whether a proposal complies with [*the 72 Hour Rule*] and whether other topics may be raised at such meeting.
      6. **Minutes**. The Secretary (or his or her designee) will record minutes of each Board meeting.
  11. **Action without a Meeting.** Board actions may be taken without a meeting if (a) a Director in good standing sends a written communication to all Directors then in office describing the action by email, facsimile or first class mail to the contact information then on file with the Board, (b) all non-interested Promoter Directors individually or collectively consent in writing to that action. The Chair will set the terms of the vote, including the method by which votes are collected, and the window during which the vote is to remain open.

# Officers

* 1. **Officers**. The officers of the Corporation will be a Chair, Vice-Chair, Secretary and, Treasurer. The Board may appoint such other officers as it may deem appropriate.
  2. **Qualifications.** An officer of the Corporation must be an employee (or authorized agent or contractor) of a Promotor Member, but need not be a Promoter Director. In the case of an officer who is not also a Promoter Director or an alternate Director, the officer will not be included for purposes of quorum of the Board and will not participate in votes taken by the Board. An officer who is also a Promoter Director or alternate Director retains all the rights and privileges associated with his or her status of Promoter Director or alternate Director. The Corporation may also have an Executive Director, which the Board may designate as a non-officer role, in its discretion.
  3. **Nominations**. The Board will call for nominations for relevant officers from Promoter Members in good standing annually, and Promoter Members must submit their nominations before the next Board meeting. Each Promoter Member may only submit one nominee for each Officer position. Elections for Chair and Secretary will be held in even numbered years; elections for Vice Chair and Treasurer will be held in odd numbered years.
  4. **Appointment**. The Board will vote for each applicable officer position within a reasonable time after nominations. Each Promoter Director is entitled to cast a vote for each applicable officer position. At the conclusion of voting for each officer position, the nominee with the largest number of votes is declared the winner. In the event of a two or more-way tie for a specific position, there will be a run-off vote until a winner is declared. The term of service for such officers will begin after the vote and officers will hold office for two years, unless an officer is removed or resigns. There will be no limitation to the number of terms an officer may serve.
  5. **Removal & Resignation**. The Board may remove an officer by an affirmative vote of the Directors as set forth in Section 3.10 and communicate such termination to the officer in writing. If the membership of the Promoter Member terminates, or the status of a Promoter Member is changed from Promoter Member to any other class of membership, any officer of the Corporation associated with that Promoter Member will be removed. An officer may resign their position by communicating their resignation in writing to the Board. Termination or resignation of an officer who also serves as a Director will not alter an individual’s role as a Director. In the event of removal, resignation or other termination of an officer’s active term, the Board will at its earliest convenience accept nominations from remaining Promoter Members and hold an election to fill the remainder of that officer’s term.
  6. **Responsibilities.**
     1. **Chair**. The Chair will have the responsibilities normally associated with the role of chief executive officer. The Chair will act as chair of all meetings of the Board, or delegate that responsibility. The Chair will oversee the management of the business of the Corporation and will see that orders and resolutions of the Board are carried into effect.
     2. **Vice Chair**.The Vice Chair will have the responsibility of performing all duties of the Chair in his or her absence.
     3. **Secretary.** The Secretary will have the powers and perform the duties that are incident to the office of Secretary under California Nonprofit Mutual Benefit Corporation Law, including overseeing the recording of proceedings of the Board, documenting the actions of the Board and its committees, maintaining the documents of the Corporation, and allowing access to these documents as the Board will direct from time to time.
     4. **Treasurer.** The Treasurer will responsible for oversight of the financial condition and affairs of the Corporation and will have the duty and power to keep and be responsible for all funds of the Corporation, to maintain the financial records of the Corporation, to deposit funds of the Corporation in depositories as authorized, to disburse such funds as authorized by the Board, to manage accounts receivable, make proper accounts of the Corporation’s funds, and to render accounts of all such transactions and of the financial condition of the Corporation, as required by the Board.
     5. **Executive Director.** The Executive Director will preside over the day-to-day affairs of the Corporation under the direction of the Board and of the Chair, and will perform the duties and have the powers prescribed by the Board, including for example the management and reporting on Corporation programs, resources and work flow. The Chair will appoint the initial Executive Director of the Corporation, and such Executive Director is not required to be associated with a Member of the Corporation. As noted above, the Board retains the discretion to create an Executive Director role filled by a party who will not be deemed a corporate officer.
  7. **Salaries**. The officers of the Corporation will serve without compensation, unless otherwise specifically determined and decided by the Board.
  8. **Delegation of Authority**. The Board may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

# Board Committees and Working Groups

* 1. **Advisory Boards, Board Committees and Working Groups**.The Board may establish other advisory boards, board committees and technical and non-technical working groups from time to time in its discretion. The Board will establish the size, duration, composition, and purpose of such groups. The work of the groups will be subject to intellectual property policies, governance models, and operational rules determined by the Board.

# Financial Administration and Recordkeeping

* 1. **Fiscal Year**. The fiscal year of the Corporation will be January 1 – December 31.
  2. **Fiscal Management and Tools**. The Treasurer will be responsible for oversight of the financial condition and affairs of the Corporation and will have the duty and power to keep and be responsible for all funds of the Corporation. However, the Corporation may contract with an external Business Services Provider (BSP) to provide the day-to-day administration of these accounts, who may under the direction of the Treasurer, maintain the Corporation’s financial records, support the annual budgeting process, and file federal and state tax returns on behalf of the Corporation. A BSP will provide financial information upon request and will perform an independent audit at the request of the Corporation.
  3. **Checks and Notes**. Except as otherwise resolved by the Board or as required by law, any checks, notes or other manifestation of a financial obligation by the Corporation must be signed or otherwise expressly authorized by either the Chair, Treasurer or the Executive Director.
  4. **Deposits**. Funds of the Corporation will be deposited from time to time to the credit of the Corporation with a bank, trust company or other depository selected by the Board.
  5. **Maintenance of Corporate Records; Reports; Inspection**. The Corporation will keep records of Board proceedings and actions, corporate records such as its Articles and Bylaws, records of its contractual relationships, and adequate and correct financial records in compliance with applicable law governing maintenance of such records and in a manner consistent with any relevant policies approved by the Board from time to time. These records may be managed and stored electronically to the maximum extent permitted by applicable law. Subject to reasonable confidentiality requirements, any member will have the right to inspect these records upon request.

# Indemnification and Insurance

* 1. **Indemnification and Payment of Expenses in Advance**. To the fullest extent permitted by the California Nonprofit Mutual Benefit Corporation Law, no Director or any Members will be personally liable for the debts, liabilities, or other obligations of the Corporation. The Corporation will indemnify and defend any person who is made, or threatened to be made, a party to an action, suit or proceeding by reason of the fact that the person is or was a Director, officer or agent of the Corporation. The Corporation may approve advancing to any such person who may be entitled to indemnification all expenses incurred by such person in defending or settling any such action upon receipt of an undertaking by or on behalf of such person to repay such amount if it will ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article 7.
  2. **Insurance**. The Board may authorize the purchase and maintenance of insurance on behalf of any particular agent of the Corporation (including a Director, officer, employee or other agent of the Corporation) against liabilities asserted against or incurred by the agent arising out of the agent’s role as an agent of the Corporation.

# Dissolution

* 1. The Corporation may be dissolved, its assets disposed of, and its affairs concluded upon if resolved by an affirmative vote of the Directors as set forth in Section 3.10.b), or as otherwise provided by law. In the event that the Corporation is dissolved, all remaining assets and property of the Corporation, after payment of all necessary expenses and payment for all debts, liabilities or obligations of the Corporation, shall be distributed for one or more exempt purposes within the meaning of Sections 501(c)(3) or 501(c)(6) of the Code or the corresponding provision of any future federal tax code, or shall be distributed to the federal, state or local government for a public purpose. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes.

# Amendments

* 1. Except where such power is expressly limited by law, the Articles or these Bylaws, these Bylaws may be amended or repealed, and new Bylaws may be adopted, by an affirmative vote of the Directors as set forth in Section 3.10.b).