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 (which may be entities and/or individuals, as determined by the Board) in the Corporation may be referred to as “Members” 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 set forth in any membership policies adopted by the Board, and will be subject to any conditions (including any applicable fees) 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 Application & Agreement**. All Members will be required to apply for membership, and must be approved by the Board. The Board shall have the right to refuse membership to any organization or individual in its reasonable discretion, including if it determines that the membership would be detrimental to the Corporation or a violation of applicable law. Upon approval by the Board, Members must execute a Membership Agreement to become effective Members of the Corporation.
  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. **Good Standing**. The membership of any Member will terminate or be suspended upon the occurrence of any one or more of the conditions set forth in this Section 2.8. Upon termination, expiration, or during the suspension, of a Member’s status in the Corporation, all rights and privileges associated with being a Member will terminate and such Member will 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.
     5. **Board-Initiated Member Termination or Suspension.** The Corporation may terminate or suspend a membership if the Board determines that such Member’s membership is detrimental to the Corporation, contrary to the goals or objectives of the OFA, is in violation of applicable law or as otherwise set forth in the Membership Agreement or member policy adopted by the Board. The Chair may immediately temporarily suspend a Member until the following meeting of the Board, if the Chair reasonably believes that inaction may expose the Corporation to significant legal liability.
  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. The Board of Directors shall consist of Promoter Directors plus up to two At-Large Directors.
  3. **Promoter Directors**.
     1. **General.** Each Promoter Member that executes a Promoter Membership Agreement that is countersigned 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”). While, in order to maintain continuity of the Board and its proceedings, Promoter Directors are expected to be ‘permanent’, a 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. **[Will add “Alternates” & “Good Standing” Sections here]**
  4. **Directors At Large.** The Board will also include up to two At-Large Directors who will be elected by the individuals who participate in the Corporation’s annual spring workshop. An At-Large Director may not be an employee of a Promoter Member, however, once elected, an At-Large Director will be provided a non-voting individual 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.

**Alternates.** The intention of this provision is to allow a Promoter Member to maintain its Board representation if its appointed Promoter Director is unavailable. However, care should be taken to avoid rapid or regular rotation of 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][upon written notice]. 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][upon written notice]. At-Large Directors may not designate an alternate unless specifically authorized by the Board. The purpose of this Section 0 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.

* 1. []
  2. **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. A Promoter Director appointed by a new Promoter Member will be considered in good standing for the first five meetings after the Promoter Member joins the Corporation. If a Promoter Director is not in good standing, he or she must attend two consecutive Board meetings to restore his or her good standing, only after which such Promoter Director 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.
  3. **Removal**.A Director may be removed from office for any cause deemed sufficient by the Board, voting in accordance with Section 3.10.d) 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.
  4. **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.
  5. **Transactions with Interested Parties.** The Corporation and its Directors and officers will comply with all applicable requirements regarding transactions with interested parties.
  6. **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 meetings.** Regular meetings of the Board may be held at times determined by the Board and communicated to all Directors via the Corporation’s calendar or such other means as determined by the Board.
     3. **Special meetings.** 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 0 of the special meeting to all other Directors no less than 72 hours prior to the special meeting.
     4. **Notices.** [*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”). The intent of the 72 Hour Rule is to ensure that all Directors are aware of actions that may be taken at any given Board meeting and to allow Directors sufficient time for discussion and consultation prior to a Board action. In short, the intention is to prevent surprises. This is not to say that a proposal, or a voteable item, cannot be amended during the course of discussion at a given Board meeting.*  ]
     5. **Quorum**.Except as otherwise required herein, participation of a majority of the current Promoter Directors in good standing 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.
     6. **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.
     7. **Conduct**. 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. The Chair will serve as chair of Board meetings. In the Chair’s absence, the Vice Chair will serve as chair. In the absence of both the Chair and Vice Chair, the Secretary will serve as chair. And if the absence of the Chair, Vice Chair and Secretary, the Treasurer will serve as chair of the meeting. In the event that no officers are present, the remaining Directors, representing a quorum, may select someone from among themselves to serve as chair.
     8. **Minutes**. The Secretary (or his or her designee) will record minutes of each Board meeting.
  7. **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 Promoter 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 during the submission period specified by the Board, and at least one month before the Board meeting where the elections will be held. 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 (no less than 30 days) after the submission period for 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 his or her 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 be responsible for the 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. **[**
  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.

# Affiliates

* 1. **Affiliates & Voting Rights**. An Affiliate of a Member shall be free to apply to the Corporation as a Member. However, if the membership is approved, a Member and its Affiliate(s) will be deemed a single Member for purposes of (1) any vote of Members (including Promoter Members votes, if applicable, or votes of Working Groups, Committees, or any other sub-group of the Corporation where they otherwise participate as peers); and (2) having a seat on the Board with respect to Promoter Members. “Affiliate” means any legal entity that directly or indirectly controls another entity via beneficial ownership of more than fifty percent (50%) of voting power or equity in another entity (“Control”), or is Controlled by another entity or is under common Control with another entity, so long as such Control exists. When a Member and its Affiliate(s) would have or appear to have two or more votes on a matter if they were not affiliates, the Member and its Affiliate(s) shall designate a single voting representative in a written notice to the Board. The designated voting representative shall be responsible for resolving any disagreements among the Member and its Affiliate(s) and submitting a single vote on behalf of the Member and its Affiliate(s).

# 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. The BSP 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 Member 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 8.
  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 an affirmative vote of the Directors as set forth in Section 3.10.d), 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.d).