

**BYLAWS**  
**OF**  
**OPENFABRICS, INC.**  
**A CALIFORNIA NONPROFIT MUTUAL BENEFIT CORPORATION**

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## **ARTICLE 1. NAME**

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

## **ARTICLE 2. PURPOSES**

**2.1 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.

**2.2 Specific Purposes.** The specific purposes for which the Corporation is formed are to support the creation of interoperable computer products by developing, maintaining, approving, testing, releasing, supporting and promoting certain Open Source software that may be combined into a suite or stack known as an “OpenFabrics software stack.” The Corporation may engage in these activities for several OpenFabrics software stacks for different operating systems and transports. Known as the “OpenFabrics Alliance,” it may support or promote similar related activities in the Open Source or other software communities. OpenFabrics software stacks shall be limited to code and documentation that implement the kernel and upper layer protocol requirements of industry interest groups or internationally recognized standards such as the Internet Engineering Task Force (IETF), the InfiniBand Trade Association (IBTA), the Remote Direct Memory Access Consortium (RDMAC), the Open Group and such other groups and architectures, interfaces, protocols and transports that are developed or supported by recognized industry entities, and that are approved by the Board of Directors (“Board”) of the Corporation.

The Corporation is not representing, warranting or in any way guaranteeing that all patents which are related to the aforementioned groups, standards, entities, etc. and which may be required for distribution of any OpenFabrics software stack are subject to Section 16 herein.

OpenFabrics software shall be researched, developed, contributed, tested, distributed, supported and education therein provided by the Corporation under Board approved contribution agreements and open-source licenses and services to the computer and software industries and their customers, for training and use in the manufacture of or use in provision of products and applications that can be both transport agnostic and transport specific.

The Corporation will sponsor one or more open-source code repositories to facilitate the development of OpenFabrics software stacks. All code contributed to the repository will be contributed and so marked under license terms approved by the Board and the contributor. As further described in these Bylaws the Corporation shall, at a minimum, allow licensees of the OpenFabrics software stack code the choice of downloading the code either under the GNU General Public License or a Berkeley Software Distribution License and the download shall be so marked.

All documents contributed to the repository will be contributed under license terms, as further described in these Bylaws that permit the corporation, at a minimum, to make such documents freely available to others without restriction.

The Corporation may charter, approve, or support one or more working groups and/or "maintainers" ("Maintainers") in furtherance of the foregoing purposes, including, without limitation, the purpose to facilitate the development, testing and inclusion of OpenFabrics software both in the Linux kernel and its distributions as appropriate and the Windows or other operating system consistent with the performance and functional expectations for the architectures, protocols, transports and environments described above.

The Corporation may develop, certify, allow use by its members, apply for and enforce trademark and service mark licensing policies related to OpenFabrics software stacks as approved by the Board.

### **ARTICLE 3. PRINCIPAL OFFICE**

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

### **ARTICLE 4. MEMBERSHIP**

#### **4.1 Members.**

A. 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.

B. There shall be five classes of Members, consisting of Promoters, Adopters, Supporters, Academic and Individual. Representatives of all classes of Members shall be eligible to participate in Working Groups. Only Promoters and Adopters shall have voting rights in Working Groups. In addition, Promoters are entitled to designate a single representative eligible for election to the Board of Directors, to designate representatives eligible to Chair or Co-Chair one or more Working Groups, and to designate representatives eligible to be a Maintainer of an OpenFabrics Alliance Software Stack or module thereof. Supporters', Academic's and Individual representatives are eligible to participate in Working Group and Board Meetings but shall have no voting rights at such meetings. All members may participate and have voting rights at Annual and Special meetings.

**4.2 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 working groups developing OpenFabrics software stacks and to contribute work to the OpenFabrics software stacks, under the terms and conditions of a separate Participation, Consultant or Contribution Agreement as determined by the Board. 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. Participants, Contributors, and Consultants

shall have only the rights expressly granted these Bylaws or by the Board, subject to change or elimination by the Board at any time.

#### **4.3 Qualifications of Members.**

A. 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 number of Members may be limited by the Board.

B. 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.

C. Each Member agrees:

(i) 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);

(ii) to adhere to these Bylaws as amended from time to time in accordance with the terms of these Bylaws;

(iii) to pay dues and assessments; and

(iv) to comply with policies and procedures duly adopted by the Board.

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

### **ARTICLE 5. MEETING OF MEMBERS**

**5.1 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.

**5.2 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.



**5.3 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.

**5.4 Notice of Meetings.**

A. 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, at the direction of the Board, or the persons calling the meeting by personal delivery, by postal mail, by express mail, by electronic mail with return notification, by facsimile transmission, or by other electronic means. If mailed, such notice shall be deemed to be delivered three (3) days after being deposited in the mail addressed to the Member's prime contact at his or her address as it appears on the records of the Corporation, with postage prepaid, or, if sent by express mail, such notice shall be deemed delivered on the following business day. If the notice is sent by electronic mail, by facsimile transmission or by other electronic means, the notice shall be deemed delivered when the return notification is received by the Corporation. If the notice is personally delivered, the notice shall be deemed delivered on the day it is personally delivered.

B. The notice of any meeting of Members at which Directors are to be elected by the Members shall also state the names of all those who are nominees or candidates for election to the Board at the time notice is given or as soon thereafter as such information is known.

C. 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.

**5.5 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.

**5.6 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.

**5.7 Voting Procedure.** Each Member 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 ballot.

**5.8 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:

- A. Set forth the proposed action;
- B. Provide an opportunity to specify approval or disapproval of each proposal;
- C. State the percentage of approvals necessary to pass the measure submitted; and
- D. Shall 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 to the Corporation.

Ballots shall be mailed or delivered in the manner required for giving notice of membership meetings as specified in these Bylaws.

### **5.9 Conduct of Meetings.**

A. 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.

B. 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.

**5.10 Proxies.** Every Member shall have the right to vote either in person or by one (1) or more agents 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 revocability of a proxy that states on its face that it is irrevocable shall be governed by the applicable provisions of the Corporations Code.

## **ARTICLE 6. BOARD**

**6.1 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.

**6.2 Number of Directors.** The number of Directors shall be equal to the number of Members for the first three years of the Corporation's existence ("Initial Period"). After the Initial Period, the number of Directors shall be equal to the number of Directors at the end of the Initial Period, unless and until the number of Directors is changed by a vote of the Members.

**6.3 Appointment/Election of Directors.** During the Initial Period each Member is entitled to appoint one representative to serve as a Director. After the Initial Period, Directors shall be elected by all Members, and, at that point, each Member shall have one vote for each vacancy on the Board.

**6.4 Qualifications.** An individual serving as a Director must either be and remain an employee of a Member, or be an independent contractor representing a single Member. No Member may have more than one employee or independent contractor serving as Director.

**6.5 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 subject to removal as provided in Section 6.7.

**6.6 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.

### **6.7 Vacancies, Resignations, Removals.**

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

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

C. Any Director may be removed if, without a leave of absence approved by the Chair, the Director fails to attend four (4) consecutive meetings or misses more than twenty-five percent (25%) of meetings within a twelve (12) month period.

D. If two (2) or more Members that have employees serving as Directors become Affiliates, only one (1) of their employees may remain on the Board as a Director and the other employee's tenure on the Board shall automatically terminate. "Affiliate" means an

entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists. "Control" means beneficial ownership of more than fifty percent (50%) of the voting power or equity in an entity, or the direct or indirect right to manage the business affairs of an entity.

E. 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.

F. A Director may be removed by the Member that appointed the Director.

**6.8 Filling Vacancies on the Board.** During the Initial Period, a vacancy of a Director shall be filled by an individual appointed by the Member who appointed the Director whose resignation or removal created the vacancy. If such Member has ceased to exist, has become an Affiliate of another Member that appoints a Director, or has failed to remain a Member, the vacancy shall not exist. After the Initial Period, vacancies shall be filled by the Board.

**6.9 Term of Office.** After the Initial Period, Directors shall serve a term of two years, subject to reappointment or re-election.

**6.10 No Compensation.** Directors shall serve without compensation from the Corporation.

## **ARTICLE 7. BOARD MEETINGS**

**7.1 Place of Meetings.** The Annual Board meeting and Regular Board meetings shall be held at places and times set by the Board.

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

**7.3 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.

**7.4 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.

**7.5 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.)

**7.6 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.

**7.7 Actions Requiring Two-Thirds Votes.** 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 approve a proposed OpenFabrics software stack (e.g., WinOF), or any revision or substantial part thereof (e.g., iWARP support addition), for consideration for approval by the Members; 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 15), (d) the intellectual property provisions (Article 16), (e) the confidentiality provisions (Article 17), (f) the freedom of action provisions (Article 19), and/or (g) the provisions of Articles 21.1, 21.2, 21.3, 21.4, 21.5, 21.6 and/or 21.9 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.

**7.8 Conduct of Meetings.** The Board shall be presided over by the Chair or, in his or her absence, by a Director selected by a majority of the Board present at the meeting. 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.

**7.9 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.

**7.10 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.

## **ARTICLE 8. OFFICERS**

The Board may appoint officers at any time. The officers of the Corporation may include a Chair, President, Vice Chair, Secretary, Treasurer, and any other officer as determined by the Board, with the powers and duties as determined by the Board. The same person may serve as Chair and President. The officers shall serve at the pleasure of the Board, and shall serve without compensation unless otherwise approved by the Board.

## **ARTICLE 9. 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 size of the Executive Committee will be made by the Board.

## **ARTICLE 10. WORKING GROUPS**

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

**10.2 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.

**10.3 Composition of Working Groups.** The Board shall select the Chair or Co-Chairs of a working group from among representatives of Promoter Members. 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.

## **ARTICLE 11. MAINTAINERS**

**11.1 Maintainers.** The Corporation may designate, approve, or support Maintainers with respect to an identified OpenFabrics software stack or code (or part thereof). Maintainers shall serve in accordance with the policies and procedures adopted by the Board, and, where feasible, adhere to the practices and procedures of the licensees for which such OpenFabrics software stack may be or is targeted by the Alliance. Maintainers shall have the responsibilities, expertise and capabilities suitable for the operating environment of the applicable software stack and purposes of the Alliance.

## **ARTICLE 12. APPROVAL OF OPENFABRICS SOFTWARE STACK**

**12.1 Approval and Notice of the Proposal.** If a majority of Directors agree that a Proposal put forward by a Member for an OpenFabrics software stack (or part thereof) (“Proposal”) is consistent with the purposes, the licensing, the patent and the documentation policies of the Corporation and for consideration for approval by the Members as an approved OpenFabrics software stack, the Board will notify each Member of the Proposal under consideration for approval, along with notice of a meeting of the Members to vote on approval of the Proposal (“Proposal Meeting”).

**12.2 Timing of Proposal Meeting.** The Proposal Meeting shall be at least thirty days after the date notice of the meeting and the Proposal as approved by the Board is sent to the Members.

**12.3 Changes to the Proposal.** Prior to and during the Proposal Meeting, any Member, may propose a change or modify, remove from, or add to the Proposal provided such change is made known to all Members simultaneously. Upon any such proposed change being made known, the Board will vote to amend or not to amend the Proposal and reschedule, or not, the Proposal process.

**12.4 Termination.** If a Member terminates its own membership after the notice given in Section 12.2 and before the Proposal Meeting, the Board may postpone the Proposal Meeting upon the request of any remaining Member.

**12.5 Approval.** The Proposal is approved as an OpenFabrics software stack (or part thereof) when approved at the Proposal Meeting by more than two-thirds of the Members in attendance in person or by proxy, or by voting by written or electronic ballot and so recorded by the Board. By the same method (i.e., by a vote of more than two-thirds of the Members at a Proposal Meeting or by written or electronic ballot) the Alliance may delegate any part of its approval authority to a designated Working Group.

**12.6 Notice of Approval.** Within one week following the date of approval, the Board will send written or electronic record of such approval including the approved Proposal and the voting record to all Members, Contributors and Participants that are reachable using the Boards approved communication mechanisms.

**12.7 Continued Work.** In the event the Proposal is not approved at a Proposal Meeting, the Members shall be free to continue work on the Proposal and resubmit the Proposal for approval.

## **ARTICLE 13. PUBLICATION**

**13.1 Publication of an OpenFabrics Software Stack.** The Board will use reasonable efforts to ensure that all OpenFabrics software stack releases will be published in a timely manner following approval, and will not be subject to trade secret or confidential treatment. The publication of an OpenFabrics software stack by the Board or by a designated Working Group delegated approval authority as described in Article 12.5, above, shall, where feasible, adhere to the schedules, processes and release procedures for the environment in which such stack is targeted to be included and operate correctly. All publications shall include:

A. measures necessary to ensure that any person or entity obtaining an OpenFabrics software stack has agreed to accept it under the terms of a GPL License, or a BSD License or other open source license approved by the Board, and

B. appropriate disclaimers intended to prevent any third party from claiming that any rights are granted by implication or estoppel because of such publication.

**13.2 Publication of Draft Documents.** “Draft Documents” includes any written information provided by a Member, Contributor, Consultant, or Participant for the purpose of creating, specializing, guiding, commenting on, revising, updating, modifying, or adding any information that is to be considered for approval as an OpenFabrics software stack. With permission from the Board, a Member may publish or distribute any portion of a Draft Document, provided that all publications shall include the notices and disclaimers required for publication of an OpenFabrics software stack.

## **ARTICLE 14. MAINTENANCE OF AND MODIFICATION TO OPENFABRICS SOFTWARE STACKS**

**14.1 Updates.** By a majority vote, the Board or its designated Working Group may at any time update an OpenFabrics software stack for the sole purpose of making error corrections or updates (e.g. a subnet manager change, additional driver, or operating system release synchronization) that do not substantially alter or augment the functionality or capabilities of an OpenFabrics software stack. The Board or Working Group may publish such Updates subject to the terms of Article 13.

**14.2 Modification.** Once an OpenFabrics software stack has been approved, published and released, any additions or alterations (but not Updates) that substantially augment (e.g. a new transport, or operating system) the functionality and capability of such OpenFabrics software stack shall follow the procedures for approval of a Proposal in Article 12.

## **ARTICLE 15. TERMINATION AND WITHDRAWAL**

**15.1 Termination of Membership.** The membership of a Member shall terminate upon a failure without cure of a Member to pay dues within 45 days 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.

**15.2 Effect of Termination.** If a Member's membership is terminated under this Article:

A. Articles 17 and 19 shall survive with respect to OpenFabrics software stacks approved prior to the date of termination. Articles 14 and 16 shall survive with respect to (i) OpenFabrics software stacks approved prior to the date of termination, and (ii) the Member's Contribution but only as used in certain OpenFabrics software stacks for which such Contribution was accepted prior to the date of termination and for approved succeeding stacks (e.g., Updates of such stacks) for backwards compatibility purposes only (not, for example, for new uses).

B. The terminated Member grants to all other Members and to OpenFabrics a perpetual, irrevocable, worldwide, royalty-free license to any copyrights that Member has in any work contributed to an OpenFabrics software stack approved in accordance with these Bylaws prior to the termination of such Member's membership.

C. The terminated 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.

## **ARTICLE 16. INTELLECTUAL PROPERTY**

**16.1 Copyright Ownership of the OpenFabrics Software Stack.** Except as may be separately agreed, copyright ownership of an OpenFabrics software stack (or portion thereof)



remains with the Member, Participant, or Contributor that contributed such OpenFabrics software stack (or portion thereof).

**16.2 Copyright License from Members and Other Contributors.** Any and all contributions of code and documentation to an OpenFabrics software stack shall be made in written or electronic form that specifies the items being contributed, and, except as provided in paragraphs (A)-(C), below, shall be contributed under a license that grants the Corporation a perpetual, irrevocable, worldwide, non-exclusive, royalty-free copyright license to reproduce, display, perform, prepare and have prepared derivative works based upon and distribute such documents and derivative works thereof, including in both source code and object code formats, with no other terms and conditions. Each Member agrees, and all other Contributors shall be required to agree, that its contributions to an OpenFabrics software stack shall, no matter which licensing mechanism is used, be on terms permitting the Corporation to carry out the licensing policy set forth in Section 16.3.

A. **Dual License.** In lieu of such comprehensive and unrestricted license, a Member or other Contributor that contributes code to an OpenFabrics software stack shall, for any software stack not designated “BSD Only,” contribute such code under both the Berkeley Software Distribution (“BSD”) license and the GNU General Public License (Version 2) (“GPL”).

B. **BSD Only.** In lieu of such comprehensive and unrestricted license, a Member or other Contributor that contributes code to an OpenFabrics software stack designated by the Board of Directors as “BSD Only” shall contribute such code under the Berkeley Software Distribution (“BSD”) license only.

C. **Documents.** In lieu of such comprehensive and unrestricted license, each Member or other Contributor that contributes documents other than code to the Corporation may contribute such documents under the GNU Free Documentation License.

**16.3 License from the Corporation.** The Corporation will publish and license an OpenFabrics software stack (as the Board may determine) under both a BSD license and a GPL license, giving the licensee the freedom to elect either one or both, except that in the case of an OpenFabrics software stack designated as “BSD Only” the stack shall be licensed only under a BSD license.

#### **16.4 Trademarks.**

A. **Selection.** Each Member agrees not to assert against any other Member, OpenFabrics Alliance or licensee, any trademark, trade name, or similar rights it may have now or hereafter in the name “OpenFabrics” when used to identify or refer to an OpenFabrics software stack. Subject to legal requirements and the legal rights of other parties, OpenFabrics may develop, own, and register trademarks (“Trademarks”) relating to its activities or to an OpenFabrics software stack.

B. **No Obligation to Use Trademarks.** No Member, Contributor or licensee shall be obligated to use any of the Trademarks on any product, advertising, or on any other material in any manner.

C. **Use of the Trademarks.** Each Member agrees to not use “OpenFabrics” or any Trademarks that have been registered by the Corporation unless said use is either subject to the terms and conditions of a license agreement with the Corporation or otherwise permitted by law.

## 16.5 Patents.

A. **Agreement Not to Assert.** Each Member and each Contributor, on behalf of itself and its Affiliates agrees:

(i) not to assert against any person or entity, subject to a reciprocity requirement such that such person or entity agrees not to assert as provided in this Section 16.5, any Necessary Claims with respect to such person or entity making, having made, using, importing, selling, leasing, offering to sell or lease, or otherwise distributing any approved OpenFabrics software stack (as licensed and downloaded from the Corporation) under the terms of an open source license officially approved by the Open Source Initiative (such approved licenses are currently listed at <http://www.opensource.org/licenses/>) (“Approved OpenFabrics software stack”),

(ii) that all transfers, whether by Member, Affiliate or a subsequent transferor, of any right to assert any such Necessary Claim will be subject to the transferee’s agreement not to assert such Necessary Claim as provided in this Section 16.5, and

(iii) that, in the event a party other than Member or its Affiliate asserts a Necessary Claim(s) against a person or entity with respect to an Approved OpenFabrics software stack, such Necessary Claim(s) being one(s) for which Member or its Affiliate has the right to grant a license or release with no requirement of payment or other consideration other than to Affiliates or employees, Member will grant, to the extent of its right to do so, such person or entity a release and a worldwide, irrevocable, non-exclusive, non-transferable, royalty-free and fully paid up license only under such asserted Necessary Claim(s) and only with respect to such person or entity making, having made, using, importing, selling, leasing, offering to sell or lease, license or otherwise distributing such Approved OpenFabrics software stack to the extent necessary to dispose of such assertion.

This "agreement not to assert" shall not require disclosure of Member's or Affiliate's Necessary Claims in any portion of an OpenFabrics software stack (except as set forth herein in order to comply with the exception to the non-assert). This “agreement not to assert” shall not apply to any person’s or entity’s making, having made, using, importing, selling, leasing, offering to sell or lease, or otherwise distributing an OpenFabrics software stack which is not governed by the terms of a license officially approved by the Open Source Initiative. For clarification, the agreement not to assert does not apply to the distribution of an OpenFabrics software stack if the distribution is governed by the terms of a proprietary license and not excluded from such proprietary license as separately licensed under the terms of an open source license officially approved by the Open Source Initiative.

**B. Defensive Assertion and Exception.** Notwithstanding the provisions of Section 16.5.A, a Member or its Affiliate may assert *ab initio* any Necessary Claims in an Approved OpenFabrics software stack (or any portion thereof):

(i) against any person or entity who, either itself or its Affiliate, is not in compliance with the reciprocity requirement of Section 16.5(A)(i) or otherwise asserts a Necessary Claim against an Approved OpenFabrics software stack that is made, have made, used, imported, sold, offered for sale or provided by the Member or its Affiliate or that is in any product, technology or service of Member or its Affiliate, or

(ii) otherwise against any person or entity, only if that Member objects at the Proposal Meeting to the approval of the Proposal as an OpenFabrics software stack, discloses in writing its or its Affiliate's Necessary Claims in the Proposal, and, if requested by the Board, terminates its membership and participation in OpenFabrics within thirty days after the Proposal Meeting, provided that the foregoing objection is unavailable with respect to Necessary Claims in such Member's (or Affiliate's) own Contributions. "Contribution" means a submission that is in writing or electronic media that the Member (or Affiliate) submitted for inclusion in the OpenFabrics software stack.

**C. Definition of Necessary Claims.** Necessary Claims means only those claims of patents and published patent applications that are necessarily infringed by an Approved OpenFabrics software stack (or any portion thereof). A claim is necessarily infringed only where there is no commercially reasonable non-infringing alternative. Necessary Claims do not include:

(i) any claims other than as set forth above even if contained in the same patent as Necessary Claims;

(ii) any claims that would be infringed as a consequence of further modification of the Approved OpenFabrics software stack (or any portion thereof) as licensed and downloaded from the Corporation; or

(iii) any claims which would be infringed only by:

(a) portions of an implementation of an Approved OpenFabrics software stack that are not required by such Approved OpenFabrics software stack;

(b) enabling technologies that may be necessary to make or use any product or portion thereof that implements an Approved OpenFabrics software stack, but are not themselves expressly included in an Approved OpenFabrics software stack (e.g., semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology, and the like); or

(c) the implementation of technology not developed under the auspices of the Corporation or contributed to the Corporation, which is merely incorporated by reference into an Approved OpenFabrics software stack.

**16.6 Representation by Members, Participants and Contributors.** Except as otherwise disclosed in writing at the time a Contribution is made, each Member, Participant and

Contributor represents that it will not make a Contribution to an OpenFabrics software stack that its contributing representative knows, with Actual Knowledge, includes unlicensed third party intellectual property rights. This representation is not based on and does not require a patent search. "Actual Knowledge" means actual knowledge of the individual representatives.

**16.7 Non-Member Contributors.** All Contributors shall be required to agree, as a condition precedent to making a contribution to a software stack, to be bound by the obligations contained in Sections 16.5 and 16.6, and shall enjoy the benefits thereof.

## **ARTICLE 17. CONFIDENTIALITY**

**17.1 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.

**17.2 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); disclosed as required by law; or included in an OpenFabrics software stack adopted and approved for release by the Board.

**17.3 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.

## **ARTICLE 18. 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.

## **ARTICLE 19. FREEDOM OF ACTION**

Neither participation in the Corporation nor the Corporation's approval or release of an OpenFabrics software stack shall require any Member, Participant, Contributor, or Consultant to use or implement an OpenFabrics software stack, to preclude it from developing or employing additional, competing, or alternative products, or to foreclose taking a different course of action should it so desire. 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.

## **ARTICLE 20. 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.

## **ARTICLE 21. MISCELLANEOUS**

**21.1 NO OTHER WARRANTY.** EXCEPT AS PROVIDED IN SECTION 16.6, ALL MEMBERS ACKNOWLEDGE AND AGREE THAT ALL INFORMATION PROVIDED AS PART OF THE OPENFABRICS SOFTWARE STACK DEVELOPMENT PROCESS AND THE OPENFABRICS SOFTWARE STACK IS PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND THE MEMBERS, PARTICIPANTS, CONTRIBUTORS, AND CONSULTANTS AND THE CORPORATION EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR

PURPOSE, OR ANY WARRANTY ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE. ANY CONTRIBUTION AGREEMENTS OR SIMILAR MEANS OF PARTICIPATION FOR NON-MEMBERS SHALL PROVIDE FOR SUCH DISCLAIMER OF WARRANTY EXTENDING TO ALL OTHER NON-MEMBER PARTICIPANTS, CONTRIBUTORS, AND CONSULTANTS.

**21.2 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.

**21.3 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.

**21.4 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.

**21.5 Waiver of Personal Liability.** The liability of Directors of this Corporation for monetary damages shall be waived and limited to the fullest extent permissible under California law.

**21.6 Indemnification.** The Corporation shall indemnify Directors to the fullest extent permissible under California law.

**21.7 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.

**21.8 Fiscal Year.** The Corporation's fiscal year shall be the calendar year or as otherwise determined by the Board.

**21.9 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 October 2010 is as follows:

Amendment No.	Reason for Amendment	Date	Articles Affected	Membership Agreement Articles & Amendment No.
1.	Add Academic and Individual Members	February 2011		

**21.10 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 2011 constitute the bylaws of said corporation, as duly approved by the Board of this Corporation on \_\_\_\_\_, 2011.

\_\_\_\_\_  
\_\_\_\_\_, Secretary