Initial Draft Bylaws 7/12/19

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# Name, Offices, Purpose

## Name

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

## Offices

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

## Purpose

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

## Specific Purpose

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

## Organization

The Corporation shall be organized as a series of zero or more Working Groups chartered and overseen by a Board of Directors (“Board”). Working Groups may be formed to:

1. Manage the operation of the Corporation
2. Advise the Board on various matters
3. Develop technical proposals
4. Promote the interests of the Corporation or its Members
5. Any other purpose consistent with the Corporation’s Mission.

In any case, the Board has overall responsibility for the Corporation.

# Article 2 Membership

## Section 2.1 Member Organizations

The membership of the OpenFabrics Alliance consists primarily of organizations (companies, academic institutions, related trade organizations, etc.) referred to as Member Organizations. Individual memberships, referred to as Individual Members, are permitted subject to policy established by the Board, but only to the extent that such memberships are bona fide individual memberships.

## Section 2.2 Promoter Members

There shall be a Promoter class of membership. As specified in Article 3, a Promoter Member organization shall have the right to appoint a Director to the Board of Directors, subject to any restrictions as described in Article 3.

## Section 2.3 Membership Levels

In addition to the Promoter class, the Board may create a policy specifying additional membership classes. The Board shall also create and may amend from time to time a policy establishing the rights, obligations, restrictions, and fees of all membership classes.

## Section 2.4 Board Approval

An organization or individual wishing to join the OFA must complete a Membership Agreement, which must then be approved by the Board.

The Board shall have the right to refuse membership to any organization or individual if such membership would be in violation of United States law, California law, or if in the Board’s best judgement such a membership would be detrimental to the OFA.

The Board may revoke or suspend an existing membership if that membership is detrimental to the OFA, is contrary to the goals or objectives of the OFA or is in violation of United States or California law. In the case where inaction by the OFA may expose the OFA to significant legal liability, the Chair may immediately and temporarily suspend an existing membership until the next Board Meeting.

# Board of Directors

## Powers

Except as otherwise provided by California law, in the Articles of Incorporation, or in these Bylaws, the Board directs 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.

## Board Composition

The Board of Directors shall consist of “Promoter Directors” (“regular Directors”) plus up to two At-Large Directors. Each Promoter Member organization shall have the right to appoint one Director. Each Director must be an employee or authorized agent of a Promoter Member organization. A Director can represent only one Promoter Member organization. The number of Directors shall not exceed the number of Promoter Member organizations plus two. A Director may serve until:

1. He or she is no longer an employee or agent of the Promoter Member organization that appointed him or her,
2. He or she resigns from the Board, is replaced by his or her employer, or is removed from office,
3. The membership of the Promoter Member organization is terminated or its class of membership changes.

The At-Large Directors shall be elected and serve as set forth in Section 3.2.1.

### At-Large Directors

The Board of Directors shall also include up to two At-Large Directors who shall be elected at the Annual Meeting. There is no requirement that a candidate for At-Large Director be an OFA member however, once elected, an At-Large Director is provided with an Individual Membership, at no cost, for the period of his or her term. An At-Large Director cannot represent or be affiliated with a Promoter Member organization. At-Large Directors serve beginning as of the date of the election and ending on the date of the succeeding election. An At-Large Director shall have no voting rights, and participation shall not count towards quorum for the purposes of conducting Board business.

### Alternates

Each Director may designate an individual to act as an Alternate Director (‘Alternate’) in his or her stead, whether for a single meeting or as a standing alternate. The intention of this provision is to allow a company to maintain its representation on occasions when the normal Director is unavailable. Care should be taken to avoid rapid or regular rotation of alternates. An Alternate must be affiliated with the same Promoter Member organization as the Director. The Alternate designation is made by the Director by posting a notice to the appropriate mailing list. For purposes of quorum and attendance, when represented by an Alternate, the original Director is considered to be present for that meeting, and any action taken by such an Alternate shall be valid as if taken by the original Director. The original Director or the Promoter Member organization that that Director represents may withdraw such designation at any time by posting a notice to the appropriate mailing list.

Designating an Alternate is distinctly different from assigning a proxy which is described in detail in Section 3.8.7 Quorum and Voting. An Alternate is empowered to act on behalf of the Director in all respects; a proxy is the assignment of a Director’s ballot for a specific vote. A proxy is not empowered to act on behalf of the Director as is an Alternate, nor does a proxy count toward participation on behalf of the Director assigning such proxy.

## Appointment of Directors

Each Director is appointed by a Promoter Member organization as provided in Section 3.2; no annual or other meeting of members or Directors for the purpose of electing or appointing Directors is required. While Directors are expected to be ‘permanent’ (in order to maintain a sense of continuity of the Board and its proceedings), a Promoter Member organization may periodically appoint a new Director as its Board representative by posting a notice to the appropriate mailing list prior to the start of the meeting when the new Director’s appointment begins. At no time may a Promoter Member organization be represented by more than one individual.

## Good Standing

A Director shall be considered in Good Standing if:

1. He or she has participated in at least three of the previous five duly announced meetings (not including the current meeting) and that Director represents a Promoter Member organization in Good Standing, or
2. He or she represents a new Promoter Member organization. A new Promoter Member organization, and its appointed representative, are considered automatically to be in Good Standing.

A Director in Good Standing shall have the privilege to assign an alternate, as described in Section 3.2.2, to represent him or her on any matter that may come before the Board.

Once lost, a Director’s Good Standing is restored at the end of the second consecutive meeting attended by that Director. Attendance by an Alternate is not counted toward restoration of Good Standing.

A Promoter Member organization may replace a Director who is not in Good Standing, but the new Director inherits the standing of the Director being replace. That is, the Good Standing rule cannot be circumvented by replacing a Director who is not in Good Standing. Similarly, a Director who is not in Good Standing may assign an Alternate, but that Alternate also inherits the standing of the appointing Director.

## Removal

A Director may be removed from office by the Board for any cause deemed sufficient by the Board acting by the affirmative vote of the full number of Directors then in Good Standing, minus the Director facing removal. In the event of the removal of a Director, the Promoter Member organization retains its right to appoint a Director but may not re-appoint the removed Director. As above, a newly appointed Director inherits the Standing of the removed Director.

## Compensation

A Director shall not receive compensation from the Corporation for carrying out his or her duties as a Director. The Board may adopt policies providing for reasonable reimbursement of Directors for expenses as deemed appropriate by the Board.

## 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, shall 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 her votes are counted for such purpose.

## Meetings

### 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, teleconference, web-based collaboration methods 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 law.

### Regular Meetings

Regularly scheduled, recurring meetings of the Board may be held at times determined by the Board and communicated to all Directors as described in Section 3.8.4.

### Special Meetings

Any Officer of the Corporation may call a special meeting of the Board, or any one Director may call a special meeting if that one Director is the only Director then in office. Notice of such a meeting must be provided no less than 48 hours before the scheduled meeting time and must include an agenda indicating the purpose for the meeting. Notice may be provided by any of the methods described in Section 3.8.4 Notices.

### Notices

All notices required under this Article will be given to all Directors in office at the time of such notice. 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 to such Director’s last known business address at least three business days in advance. Posting of such regularly recurring meetings to the OFA central calendar shall constitute notice.

### Action by the Board

Action is taken by the Board during a meeting through a vote held pursuant to a proposal (“proposal”, “motion”, or “voteable item”) offered by a Director in Good Standing. Any proposal before the Board is considered adopted if a majority of the Directors present at a meeting for which quorum has been achieved vote in favor of the proposal, except for certain actions described elsewhere in these Bylaws that require greater than a majority. Before the Board can take action on any proposal, such a proposal must have been made available to the Board not less than 48 hours prior to the commencement of the meeting (“the 48 Hour Rule”). A “proposal” may take the form of a motion presented to the Board for its consideration, or it may be as a result of a previous discussion at a prior Board or XWG meeting. The intent of the 48 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.

During a Board meeting, the 48 Hour Rule may be waived by unanimous agreement of all Directors in Good Standing present at the meeting, however such action taken during the meeting is considered conditional for a 24-hour period following the close of the meeting. During that 24-hour period, those not present at the meeting may raise an objection to the action. If no such objection is raised, the action is considered final and the topic is closed. If such an objection is raised, the matter can be re-considered at a later Board meeting where the 48 Hour Rule is considered to have been met. None of this is to construe that a motion, or voteable item, cannot be offered or amended during the course of a given Board meeting, provided that sufficient notice has been given.

### Action via Email

Under extraordinary circumstances, action may be taken by the Board through an email vote held pursuant to a proposal offered by a Director in Good Standing. Before an email vote can be held, a proposal must have been offered to the Board for its consideration consistent with the 48 Hour Rule and may only be held for a proposal that has been considered by the Board during its meeting. An email vote must not be used to circumvent the Board’s normal practice of conducting business during its regular meetings as described in this section and is only offered in extraordinary circumstances, for example to allow Directors to confer with his Promoter Member organization following discussion of the proposal. In the case of an email vote, the chair of the meeting shall 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.

### Quorum and Voting

For any given meeting each Director (or Alternate) in Good Standing is counted toward quorum for that meeting and is eligible to vote on any matter before the Board at that meeting. A Director who is not in Good Standing is not counted toward quorum for that meeting and is ineligible to vote at that meeting. He or she may participate in any other Board activities or discussions.

A majority of the Directors in Good Standing at the start of the meeting constitutes a quorum for the transaction of business at that meeting. Each Director in Good Standing will have one vote.

Except as otherwise required by California law or by these Bylaws, the act of the majority of the voting Directors in Good Standing present at a meeting at which a quorum is present will be an act of the Board.

In the absence of a quorum at any such meeting, a majority of the Directors present may adjourn the meeting from time to time and set a time for the meeting to be continued. Notice of the new time will be given to all Directors as provided in Section 3.8.4.

A Director may be excused for a particular meeting by notifying the meeting chair prior to the start of the meeting. An excused Director is not counted toward quorum but is counted as present for purposes of calculating Good Standing.

For any one meeting, a Director (or Alternate) in Good Standing may assign his or her vote on a particular proposal to a proxy by posting a notice to the appropriate mailing list prior to the start of the meeting. The proxy need not be a representative of the Promoter Member’s organization, nor does the proxy represent the Director in any way, other than to cast a vote on that particular proposal on behalf of the absent Director.

### Conduct of Meetings

The chair for any given meeting of the Board is charged with the orderly conduct of business during that meeting. This includes the right to limit the length of discussion, to limit who may speak and for what duration, and to limit the topics to be discussed at the meeting. The purpose is to ensure orderly conduct of business; this right shall not be employed to artificially stifle or limit discussion among Board members.

Any Board member shall have the right to petition the chair to add a topic to the agenda for any given meeting. However, the Board may not take action pursuant to Section 3.8.5 on such a topic in violation of the 48 Hour Rule.

The Corporation’s Chair shall serve as chair for each meeting of the Board. In his or her absence, the meeting shall be chaired by the Vice Chair. In his or her absence, the meeting shall be chaired by the Secretary. In his or her absence, the meeting shall be chaired by the Treasurer.

In the event that no Officers are present, the remaining Directors, representing a quorum, may select someone from among themselves to serve as chair for the conduct of that meeting. Minutes of each meeting shall be kept by a secretary for the meeting appointed by the chair for that meeting. The Corporation’s Secretary shall be responsible for maintaining and archiving the minutes of each meeting.

# Article 4: Officers

## Section 4.1 Officers

The OpenFabrics Alliance is organized as a 'California Nonprofit Mutual Benefit Corporation' which governs the minimum requirements for Corporate Officers. The current Officer positions of the OpenFabrics Alliance are Chair, Vice-Chair, Secretary, Treasurer. The Board may from time to time appoint other Officers with powers and duties as determined by the Board. Participation in the nomination and voting for Officers shall be limited to Promoter Member organizations. The Officers shall serve without compensation unless otherwise approved by the Board.

## Section 4.2 Qualifications

An Officer must be an employee or contractor to a Promoter Member organization. Any one person can hold only one Officer role at a time. A representative of the Promoter Member organization is called a Director; in the case of an Officer who is not also a Director, such Officer shall not be included for quorum and shall not participate in votes taken by the Board. An Officer who is also a Director retains all the rights and privileges obtaining to any other Director.

If an individual serving as an Officer ceases employment with the Promoter Member organization, or if the Board takes action to remove that individual due to loss of Good Standing or for other reasons, the Board shall at its earliest convenience accept nominations and hold an election to fill the remainder of that individual’s term. If a Promoter Member organization loses its Good Standing, any Officer employed by, or contracted to, that Promoter Member Company also loses his or her Good Standing. In that case, the Board shall at its earliest convenience accept nominations and hold an election from among the employees or contractors of the remaining Promoter Member organizations to fill the remainder of that individual’s term.

## Section 4.3 Term in Office, Nominations, Voting

The term of office for all Officers shall be two years with no limit on the number of terms allowed, subject to election to an Officer position. There shall be a call for nominations during the April Board meeting with nominations closing at the end of the May Board meeting. Any given Promoter Member organization may submit only one nominee for each Officer position.

Elections for Officers shall be scheduled for the June Board meeting with nominations published as part of the June Board meeting agenda. Elections for Chair and Secretary shall be held in even numbered years; elections for Vice Chair and Treasurer shall be held in odd numbered years. Each Promoter Member organization is entitled to one vote for each Officer position. Votes for each Officer position are held independently. 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 first place, there shall be a run-off vote.

## Section 4.4 Responsibilities

(a) Chair

The Chair is responsible for the overall day-to-day operation of the Corporation, and acts as principal for all meetings of the Board and General Member meetings unless that responsibility has been delegated to another.

(b) Vice-Chair

The Vice Chair shall act in the Chair’s stead on occasions when the Chair is not available.

(c) Secretary

The Secretary shall be responsible for maintaining the documents of the Corporation including, but not limited to, legal documents related to the Corporation, membership agreements, and executed contracts. The Secretary shall ensure that minutes of Board meetings and General Membership meetings are recorded. The Secretary shall be responsible for maintaining a repository for all such documents, allowing access to these documents as the Board shall direct from time to time.

(d) Treasurer

The Treasurer is responsible for oversight of the financial condition and affairs of the Corporation, including maintaining the tax, regulatory, and financial records of the Corporation, and for rendering an accounting as required by the Board. The Treasurer is also responsible for disbursing funds as authorized by the Board, as well as managing accounts receivable such as member dues.

# Article 5 Working Groups

## Section 5.1 Creation

A Working Group is created by majority vote of the Board approving the charter and the initial Chair(s) and/or Interim Chair(s). There are no special notice requirements for the vote.

All Working Groups will be subject to intellectual property policies and applicable Bylaws of the OFA.

## Section 5.2 Dissolution/Review

A Working Group can be dissolved at any time by a majority vote of the Board.

A Working Group’s charter can be reviewed and changed at any time by a majority vote of the Board. Working Groups and their Chair(s) shall be re-chartered annually by a majority vote of the Board at the Board meeting following officer elections.

## Section 5.3 Governance

A Working Group must have at least one Chair/Interim-Chair and may have Co-chairs. The Working Group Chair or Co-chairs are responsible to the Board for the accomplishment of the goals specified in the Working Group’s charter.

Working Group Co-Chairs/Interim Chair(s) are appointed by a majority vote of the Board; they can be removed at any time by a majority vote of the Board. Chairs may resign at any time.

One of the Working Group Chairs/Interim-Chairs must be a representative of an OFA Promoter Member; if there are co-Chairs, the other Chair may be an OFA non-member. Any Working Group without a Chair/Interim-Chair for 30 days must be dissolved.

The Board may appoint an Interim Chairs to a Working Group for a period of no more than 90 days. The Board may re-authorize an Interim Chair. An Interim Chair may lead the Working Group until a permanent Chair/co-Chair(s) are appointed.

Internal governance of the Working Group is subject to the requirements in the group’s charter. Participation of OFA non-members in Working Groups is allowed if specified in the group’s charter.

A Working Group shall be required as its first act to produce a governance policy and procedures consistent with direction from the Board and the governance policy must be approved by the Board by majority vote. A Working Group must produce its policy within 90 days of its creation or be dissolved.

Status reports to the Board these reports will occur at the intervals required by the Board and can be in writing or verbally during Board meetings. Questions to Working Group Chairs by the Board concerning governance issues should be documented, either in meeting minutes or by such means as cc’ing emails to the Board.

# Article 6: Financial Administration and Recordkeeping

## Section 6.1 Fiscal Year

The fiscal year of the Corporation shall be January 1 – December 31.

## Section 6.2 Checks and Notes.

The Corporation may contract with an external Business Services Provider (BSP) which will be responsible for managing accounts payable and accounts receivable and bank accounts. The Treasurer shall be the lead Director for oversight of the financial condition and affairs of the Corporation and shall have the duty and power to keep and be responsible for all funds of the Corporation. A contract BSP may maintain financial records under the direction of the Treasurer. Additional necessary documents may be provided to the BSP for their records, such as signed Membership Agreements.  A contract BSP may directly support the annual budgeting process and provide detailed, monthly financial reports including budget vs. actual to the Treasurer.  Under the direction of the Treasurer, a BSP may provide tax filings, including, specifically, those required to maintain the Corporation’s non-profit status under California State law for California Nonprofit Mutual Benefit Corporations. A BSP will provide financial information upon request and will perform an independent audit at the request of the Corporation.

## Section 6.3 Maintenance of Corporate Records; Reports; Inspection

The Corporation shall keep records of Board proceedings and actions, corporate records such as its Certificate and Bylaws, records of its contractual relationships, andrecords at its principal office. Subject to reasonable confidentiality requirements, any member shall have the right to inspect these records upon request.

# Article 7: Indemnification and Insurance

## Section 7.1 No Liability for Debts of Corporation.

To the maximum extent permitted by applicable law, no Director or any of the Members shall be personally liable for the debts, liabilities, or other obligations of the Corporation.

## Section 7.2 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.

## Section 7.3 Indemnification.

The Corporation shall indemnify Directors and Officers to the fullest extent permissible under California law.

## Section 7.4 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.

# Article 8: Amendments

Except as otherwise prohibited by law or in these Bylaws, these Bylaws may be amended by a two-thirds vote of the Board.

Article 9: Intellectual Rights Policy

The Board will create, and may amend as needed, an intellectual property rights policy for the OpenFabrics Alliance.  This policy may cover multiple different areas of Intellectual Property Rights, including but not limited to: software copyright policies, marketing asset copyright policies, fair use policies, software licensing policies, written material copyright and licensing policies, etc.