Open Fabrics Alliance Intellectual Property Rights Policy

{Introductory comment for discussion only, not part of the IPR Policy: Conceptually, in keeping with the open nature of the OFA, we want to keep the IPR policy as narrowly-focused and “lightweight” as possible. We found it helpful to think in terms of a fence within which IPR Policy would apply – quite possibly this would be limited to spec creation specifically. Everywhere else meetings are open, informal and free of unnecessary restrictions or procedures.

An example from the Storage Networking Industry Association (SNIA) might be helpful. SNIA has several types of organizations within its overall SIG structure. Technical Working Groups (TWGs, pronounced “twigs”) are of particular interest here. In TWG meetings only, every meeting starts with the following statement: ***“You are hereby informed that, under the SNIA IP Policy, your presence at this meeting may obligate you and/or your company/organization with respect to any of the work items of the ‘XYZ’ TWG."***

Could something along these lines work for the OFA? – Bylaws team, is this helpful?}

In accordance with the Bylaws of OpenFabrics Inc., dba Open Fabrics Alliance (“OFA”), all members of OFA are subject to these terms. Additionally, these terms apply to non-members who participate in any OFA activities and who manifest agreement to these terms.

1. **Contributions.** OFA facilitates collaborative projects. Any communication (including oral communications) intentionally provided for the purpose of advancing an OFA collaborative activity will be a “Contribution.” The entity (or individual, in a case where an individual is acting in an individual capacity) making the Contribution is the “Contributor.” Licensing obligations associated with Contributions depend on how OFA uses the Contribution, as described below.
2. **Third party (upstream) software projects.** In the event that OFA facilitates a Contribution by a Contributor to a software project governed by a third party, the Contributor will license the Contribution under the terms that the third party has selected as the outbound license terms for that project, provided that the license is an Open Source Initiative-approved license.
3. **OFA software projects.** A software project is an OFA software project if it has been approved by the board and is under the control and maintenance of the OFA. The MIT license, as set forth at <https://opensource.org/licenses/MIT>, will be the default software license for OFA projects, unless prior to starting a software development project the OFA Board identifies a different Open Source Initiative-approved license that will apply as the outbound license for that project. All software Contributions in connection with that project will be licensed on an ‘inbound = outbound’ basis. That is, Contributors will license their associated Contributions inbound to OFA under terms that are identical to the outbound license terms that OFA has selected for that project. If a Contributor includes additional or different terms as part of a Contribution, the additional or different terms are void unless OFA agrees otherwise in writing.
4. **Documents and other works.** Apart from software, when a Contribution is included (in whole or in part) in any work of authorship created in connection with OFA activities, the Contributor grants OFA a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, fully-sublicensable copyright license to reproduce, create derivative works, distribute, display and perform the Contributions. Subject to the Contributor’s continued copyright ownership in their Contributions, OFA will own the copyright in any collective works, compilations, joint works or derivative works created in connection with OFA activities, and will own the copyright in any works created by OFA employees or agents. OFA will exercise its rights and license its own copyrights in a manner consistent with its non-profit mission. Except as otherwise agreed by the OFA Board of Directors (the “Board”), works of authorship (other than software) produced by OFA must be licensed under either a Creative Commons Attribution license (CC-BY) or, in the case of technical specifications or certain training materials, under a Creative Commons Attribution-NoDerivs license (CC-BY-ND).
5. **Attribution; moral rights.** OFA will use reasonable efforts to abide by industry norms and to honor requests related to individual attribution. OFA reserves the right to attribute collaborative work to just “OpenFabrics Alliance,” however. Each Contributor, and each individual making a Contribution, waives any moral rights (or similar rights related to attribution or work integrity) to the maximum extent permitted by applicable law.
6. **Necessary Claims grant for specifications.** The Board can charter a working group to create technical specifications that define requirements necessary to facilitate interoperability between third party products or services, and the Board can formally approve the specifications for distribution (once approved, these are “Specifications”). The written charter for such a group may expressly define boundaries for technology areas that are included and excluded from the effort (i.e., that are in or out of “Scope”). Each Participant in a working group that creates a Specification agrees that if a patent claim that is owned, controlled or licensable (without additional consideration other than to employees or Affiliates) by that Participant or an Affiliate of the Participant becomes a Necessary Claim, then the Participant will grant, or will cause its Affiliate to grant, a RAND-Zero License to any implementer of that Specification who requests such a license, subject to the definitions and exceptions described below.
   1. A **“Participant”** is the legal entity that employs or is otherwise the principal of an individual who participates in a working group (e.g. by joining a group mailing list, accessing member-only online forums, or attending working group meetings), or, if no such entity exists, is the participating individual. An **“Affiliate”** is any entity that, directly or indirectly, owns, is owned by, or is under common ownership with, the Participant, as indicated by ownership of more than 50% of the stock or other interests entitled to vote for the election of directors or an equivalent governing body of the relevant entity.
   2. A **“Necessary Claim”** is any claim in a patent in any jurisdiction that would necessarily be infringed by a compliant implementation of the Specification. A claim is necessarily infringed only when it is impossible to avoid infringing it, because there is no non-infringing alternative for implementing the normative portions of the Specification. All other claims, even if contained in the same patent as Necessary Claims, are not Necessary Claims. Claims which would be infringed only by portions of an implementation that (a) are not expressly specified in the normative portions of the Specification, or (b) are out of Scope, are not Necessary Claims.
   3. A **“RAND-Zero License”** is a worldwide, non-exclusive license, limited to Necessary Claims, to make, have made, use, import, offer to sell, lease, sell, promote and otherwise distribute the portions of implementer’s products and services that comply with the normative portions of the Specification, granted on royalty-free and otherwise reasonable and non-discriminatory (“RAND-Zero”) terms. The license may require that the licensee grant a reciprocal license to claims that the licensee owns, controls, or can license (without additional consideration other than to employees or Affiliates) that are necessarily infringed by implementations of the Specification. It may include a provision that suspends the license grant in the event an implementer initiates litigation related to the Specification, and may include other customary terms.
   4. **Opt out.** The license obligation described above will not apply to patent claims that the Participant opts out. A Participant may opt out a claim by identifying the claim and the applicable portion of the Specification in writing to the Board at any time prior to formal approval of the Specification. The Board will provide a substantially complete draft version of the Specification to Participants no less than 30 days prior to formal approval of a Specification. Participants may not opt out claims that read directly on Contributions made by the Participant that are embodied in the Specification.
   5. **Withdrawal.** Even after the date a Participant formally withdraws from a working group and ceases all participation (the “Withdrawal Date”), a Participant will be obligated to license those claims that became Necessary Claims prior to the Withdrawal Date, as well as Necessary Claims that read on portions of future versions of a Specification that existed prior to the Withdrawal Date if the portions are substantially the same as in the Specification as it was approved prior to the Withdrawal Date. Otherwise, no new obligations attach post Withdrawal Date.
7. **Confidentiality.**
   1. **Confidentiality of Contributions.** Contributions (a) that are clearly marked “confidential” or with a similar legend, (b) that, if disclosed orally, are described as confidential at the time of disclosure, or (c) that a reasonable observer would understand to be confidential due to unequivocal and objective facts and circumstances, will be deemed the “Confidential Information” of the Contributor. Contributions are otherwise non-confidential. A party receiving Confidential Information will maintain the Confidential Information in confidence with the same degree of care that it uses to protect its own confidential information (and at least exercise a reasonable degree of care). Confidential Contributions may be shared among parties that have agreed to these terms.
   2. **Confidentiality of draft and final deliverables.** OFA collaborative activities will generally produce particular deliverables, such as technical specifications, software code, written reports, engineering notes, reference designs, or similar material (the “Deliverables”). The Board may specify that particular draft and final Deliverables will be deemed the Confidential Information of OFA and be subject to the non-disclosure duty described above. The Board will then determine the timing and nature of any public release of the Deliverables. In the event that a Contribution or portion of a Contribution that is Confidential Information under subsection (a) above is included in a Deliverable with the consent of the Contributor, then the confidentiality obligation associated with the included material will be deemed waived upon public release. Deliverables released publicly are non-confidential.
8. **Trademarks.** OFA will be permitted to use the name and corporate logo (or similar mark) of members in connection with communications about OFA activities, subject to reasonable use limitations communicated by the member to OFA. OFA members may use the OFA name and corporate logo solely to communicate their membership in OFA, subject to a reasonable trademark use policy to be published by the Board. The OFA name and trademarks may not be used to communicate compliance or conformance with any OFA specifications or other technology, and may not otherwise be used in connection with any member product or service, unless permitted by an applicable OFA license agreement or Board-approved policy.