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. Without limiting the foregoing, 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. **Specific purpose.** The specific purpose (“Mission”) of the Corporation is to promote the common business interests of its members in accelerating the development and adoption of advanced fabrics for the benefit of the advanced networks ecosystem. The mission is accomplished by, for example, 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.

# Membership

* 1. **Membership.** The membership of the Corporation consists of organizations (companies, academic institutions, related trade organizations, etc.) referred to as Member Organizations and individuals (referred to as Individual Members) as permitted subject to a membership policy adopted by the Board and amended from time to time. 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 Member Organizations and/or Individual Members, 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. Members will have the rights and privileges set forth in the membership policy 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, except as otherwise expressly stated in these Bylaws or in a policy of the Corporation.
  2. **Membership Application & Agreement**. All prospective 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 an intellectual property rights policy 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. **Good Standing**. Good standing confers on the Member the right to participate in certain activities of the Corporation. The membership policy adopted by the Board defines the specific rights and privileges accorded to each class of membership. The occurrence of any one or more of the conditions set forth in this Section shall result in the loss of good standing, resulting in the temporary suspension or termination of that Member’s membership privileges.
     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. Such a resignation will result in loss of good standing and loss of membership in the Corporation, although the resigning Member may choose to re-apply for membership at a future date without prejudice.
     2. **Expiration or Termination of the Membership Agreement**. Termination or expiration of the Member’s membership agreement will result in loss of good standing and loss of membership in the Corporation, although the Member may choose to re-apply for membership at a future date without prejudice.
     3. **Change in Control of the Member.** A change in control of a Member through acquisition by another Member of the Corporation will result in loss of good standing and loss of membership in the Corporation for the acquired Member. The membership of the acquiring Member is not affected. In the case of a merger between two Members, only the membership of the Member that survives the merger will continue. This term does not otherwise limit the ability of a Member to assign its membership interest in connection with an acquisition, merger, or other change in control of the Member.
     4. **Board-Initiated Member Termination or Suspension.** The Corporation may terminate a Member’s membership or suspend a Member’s good standing 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 act to temporarily suspend a Member, effective immediately, until the following meeting of the Board, if the Chair reasonably believes that inaction may expose the Corporation to significant legal liability. Provisions for a Board-initiated Member Termination or Suspension are given in Section 3.
  7. **Right of Promoter Members to Approve Certain Changes**. A vote of Promoter Members in good standing is required to approve certain changes. Specifically:
     1. An affirmative vote of two thirds of the Promoter Members in good standing will be required to dissolve the Corporation,
     2. An affirmative vote of a majority of the Promoter Members in good standing will be required to amend the Articles or these Bylaws
     3. An affirmative vote of a majority of the Promoter Members in good standing will be required to create any class of members with rights, responsibilities, and privileges equivalent or senior to those of the Promoter Member or to materially alter, reduce, or eliminate the rights, responsibilities and privileges of the Promoter Members.
  8. **Dissolution.** The Corporation may be dissolved, its assets disposed of, and its affairs concluded by an affirmative vote the Promoter Members as provided in Section 2.7 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.
  9. **Meetings:** Meetings of Promoter Members may be called by the Chair of the Corporation, or by written request of any Promoter Member in good standing, to vote upon any matter for which a vote of the Promoters Members is required as described in Section 2.7. 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 will be provided in accordance with the means and timing requirements applicable to meetings of statutory members as proscribed by the California Nonprofit Mutual Benefit Law (particularly Cal. Corp. Code §7511, as amended or updated). 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.
  10. **Action without a Meeting.** A vote upon any matter requiring a vote of the Promoter Members as described in Section 2.7 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 the majority required in Section 2.7 of those members in good standing as Promoter Members immediately before a vote will constitute the approval of the matter submitted to the vote.
  11. **Liability**. No Member will be individually liable for the debts, liabilities or obligations of this Corporation

# 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. **Board Composition**. The Board of Directors shall consist of representatives of some number of Promoter Members plus up to two, non-voting, At-Large Directors. At the time of the adoption of these Bylaws, every Promoter Member is entitled to appoint an individual to the Board of Directors. Subsequent to the adoption of these Bylaws, the Board (with the approval of the Promoter Members in accordance with Section 2.7 as applicable) may formulate and amend from time to time a policy governing the number of Promoter Members entitled to appoint an individual to the Board of Directors and the method by which those Promoter Members are chosen. A Promoter Member that appoints an individual to the Board of Directors is represented by a “Promoter Director”. In order to encourage consistent attendance at meetings of the Board of Directors, the Board may adopt a policy allowing the Promoter Member to appoint an alternate to the designated Promoter Director.
  3. **Good Standing.** Good standing confers on a Promoter Director the right to fully participate in the activities of the Board including, among other things, the right to vote on all matters that come before the Board. The standing of any given Promoter Director also applies to any alternate serving in the place of the regular Promoter Director. The Board may formulate and amend from time-to-time specific policies governing the conditions under which a Promoter Director may be granted good standing, lose good standing, or regain good standing in the event of its loss for whatever reason.
  4. **Action by the Board.** Except in matters specifically reserved to the Promoter Members as described in Section 2.7, the business of the Corporation may only be transacted at a regularly scheduled or special meeting of the Board of Directors, or via written consent as permitted by the California Nonprofit Mutual Benefit Corporation Law. Any Promoter Director, designated alternate, or Officer may request such Board action. The Board may formulate and amend from time to time a policy governing the conditions, mechanisms, and timing under which Board action may be requested. The Board may formulate and amend from time to time a policy providing for final action to be deferred pending a final vote via email, to the maximum extent permitted by the California Nonprofit Mutual Benefit Corporation Law. Such deferral is intended to provide an opportunity for Promoter Directors to consult with his or her Promoter Member prior to casting a final vote; it does not obviate the requirement for presentation of a motion, discussion, and seconding of such a motion at a meeting of the Board of Directors.
  5. **Quorum**.Except as otherwise required herein, participation of a majority of the Promoter Directors (or alternate) in good standing 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 via direct notice.
  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 recurring meetings of the Board may be held at times determined by the Board and communicated to all Directors via posting to the Corporation’s central calendar, or such other means as approved by the Board. Notice of changes to regularly recurring meetings reflected on the Corporation central calendar shall be given with at least 24-hour notice prior to the new scheduled meeting time via direct notice, as described below.
     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 provide direct notice, as described below, of the special meeting to all Directors not less than 72 hours prior to the special meeting. The notice must include a description of the purpose for the meeting.
     4. **Direct Notice.** Direct notice must be providedto all Directorsfor special meetings and as otherwise expressly required in these Bylaws. Direct notice means notice delivered by any reliable means of personal communication, including but not limited to email, text message, or facsimile. Such a reliability guarantee may include a record showing that such a notice was sent. Direct notice may also be delivered by first class mail to a Director’s last known business address, however notices by mail must be sent at least five business days in advance of when notices sent via instant communications means would be required.

* + 1. **Voting**.
       1. Eligibility. Each Promoter Director in good standing, or his or her alternate, will have one vote. A Promoter Director who is not in good standing is not entitled to vote but may participate in any other Board activities or discussions.
       2. Majority Vote. Except as otherwise required by California Nonprofit Mutual Benefit Corporation Law or by these Bylaws, a vote of the majority of the Promoter Directors in good standing and present at a meeting at which a quorum is met will be an act of the Board.
       3. Actions Requiring Unanimous Vote. For the following actions, a unanimous vote of all disinterested Promoter Directors in good standing will be required: (i) the removal of an officer, (ii) the removal or suspension of a Promoter Director, (iii) the removal or suspension of a Promoter Member. A “disinterested Promoter Director” means a Promoter Director who does not have a direct or indirect material interest in the specific matter or transaction subject to a Board vote.
    2. **Minutes**. In general, the Secretary (or his or her designee) will record minutes of each Board meeting with such minutes to be posted to an appropriate mailing list and/or made publicly available by placing them in a publicly accessible document repository Except in the case of an Executive Session, minutes for which shall be placed in a special repository to which public access is restricted.
  1. **Transactions with Interested Parties.** The Corporation and its Directors and officers will comply with all applicable requirements regarding transactions with interested parties.

# Officers

* 1. **Officers**. The officers of the Corporation will be a Chair, Vice-Chair, Secretary, and Treasurer. In the event that either the Secretary or Treasurer roles are vacant, the Vice-Chair will additionally serve as the interim Secretary or Treasurer, as applicable. 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 except the Treasurer who need not be an employee of, or contractor to, a Promoter Member. An officer need not be a Promoter Director. In the case of an officer who is not also a Promoter Director, that officer will not be included for purposes of quorum of the Board and will not participate in votes taken by the Board, unless that officer is serving as a designated alternate. An officer who is also a Promoter Director or alternate retains all the rights and privileges associated with his or her status as Promoter Director or alternate. The Board may at its discretion appoint an Executive Director to assist in day-to-day operation of the Corporation. Such an Executive Director, if so appointed, is not an officer of the Corporation, but reports to the Chair.
  3. **Nomination and Election of Officers**. 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. Each year, the Board will call for nominations from Promoter Members in good standing to replace Officers whose terms are scheduled to expire. Promoter Members must submit nominations during the submission period specified by the Board, which will extend through the end of the Board meeting preceding the Board meeting for which officer elections are scheduled. Each Promoter Member may submit only one nominee for each Officer position.
  4. **Appointment**. Officers will hold office for two years unless an officer is removed or resigns in which case the method for filling the vacancy for the balance of that officer’s term is as described below in Section 4.6. An election will be scheduled to be held coincident with the two-year anniversary of the election of the current office holders. The term of service for outgoing officers will end, and the term of service for incoming officers will begin at the conclusion of the meeting when the vote is held. There will be no limitation to the number of terms an officer may serve. The Board will vote for each applicable officer position at the next Board meeting after the end of 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.
  5. **Removal & Resignation**. The Board may remove an officer by a unanimous vote of all disinterested Promoter Directors (or alternate) in good standing. Such termination will be communicated in writing to the officer. 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 his or her 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. **Vacancies.**

For any officer position which is vacant, or becomes vacant outside of the regular annual voting cadence, such vacancy can be filled at any regularly scheduled meeting of the Board of Directors provided that a nomination to fill such a vacancy is published to the appropriate email reflector no later than fourteen calendar days prior to the targeted Board meeting. Such a nomination shall serve as the beginning of a nomination period with such nomination period to close 72 hours prior to the targeted Board meeting. All such nominations shall be captured in the agenda for the targeted Board meeting.

* 1. **Responsibilities.**
     1. **Chair**. The Chair will have the responsibilities normally associated with the role of chief executive officer. The Chair will act as chair for 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 for performing all duties of the Chair in his or her absence and to carry out such other duties as may be assigned by the Chair.
     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.
  2. **Salaries**. The officers of the Corporation will serve without compensation from the Corporation, unless otherwise specifically determined and decided by the Board.
  3. **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. **Working Groups**
     1. **Establishment.** The Board may establish technical and non-technical working groups (a “Working Group”) from time to time in its discretion and will specify the goals of the applicable Working Group in a charter. A working group is considered to have been established when the Board formally adopts a charter for the group.
     2. **Management.** A Working Group must have at least one chair/interim chair and may have co-chairs. A Working Group chair (or co-chairs) is responsible to the Board for the accomplishment of the goals specified in the Working Group’s charter. A Working Group chair or co-chairs will be appointed by a majority vote of the Board. A Working Group chair/co-chair serves a one-year term and is reviewed at least annually with an election to be held at least annually; they can be removed at any time by a majority vote of the Board. A Working Group chair may resign at any time. In the event of such a resignation, the Board may appoint an interim Working Group chair to temporarily oversee operation of the Working Group pending appointment of a permanent chair (or co-chairs). The Board may appoint an Interim Chair or Interim Co-chairs to serve for a period of no more than 90 days. The Board may re-authorize a Working Group interim chair. The sole chair, sole interim-chair, or at least one of the co-chairs of each Working Group must be an employee or authorized agent of a Promoter Member in Good Standing. If there are co-chairs for any Working Group, at least one of the co-chairs must be an employee or authorized agent of a Promoter Member in good standing; the other co-chair may be a non-member of the Corporation. Any Working Group that does not have a chair or interim chair for 30 days or more may be dissolved by the Board.
     3. **Governance.** A newly chartered Working Group shall be required to produce a governance policy and procedures that are consistent with any direction given to the Working Group by the Board at the time it is chartered. Such governance policies and procedures must be ratified by the Board by majority vote. A Working Group that lacks approved governance policies and procedures after 90 days will be dissolved.
     4. **Participation.** Participation of Corporation non-Members in Working Groups is allowed if specified in the applicable Working Group’s charter.
     5. **Status Reports.** The Working Group shall be required to make regular status reports to the Board. These reports will occur at the intervals required by the Board and can be delivered in writing or verbally.
     6. **Periodic Review.** Each Working Group shall be reviewed and re-chartered at least annually. Working Group chairs or co-chairs shall be appointed (or re-appointed) by the Board at least annually.
  2. **Advisory Boards & Board Committees**.The Board may establish other advisory boards and board committees 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**. “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. 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. 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 Board of Directors.
  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 or the Treasurer. The Board may formulate a policy, amended from time to time, governing specific spending limits allocated to each authorized signatory.
  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 extent permitted by applicable law. In general, such records are to be publicly available, except for certain records related to confidential matters as determined by the Board, or as discussed during an Executive Session of the Board.

# 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, consistent with best practices for corporate governance.