Open Fabrics Alliance Intellectual Property Rights Policy

Adopted July 20, 2023

In keeping with the open nature of the OFA, our IPR policy is intended to promote open activities and licensing as much as possible. This IPR policy is structured to recognize these mutually exclusive and nonoverlapping areas:

* **Trademarks, Logos, and other registered branding items**
* **OFA Collaboration with the Open Source Community on Software Projects, including:**
	+ Projects maintained by third parties
	+ Projects maintained by OFA
* **OFA Authored Work Products**
	+ Marketing materials
	+ Training materials
	+ Specifications

Consistent with the categorizations made above and in accordance with the Bylaws of OpenFabrics Inc., dba Open Fabrics Alliance (“OFA”), all members of OFA are subject to these terms.

1. **Trademarks and Logos**
	1. Members may grant the OFA permission to use the name and corporate logo (or similar mark) of member to communicate their membership in the OFA and in connection with communications about OFA activities in which the member is participating, subject to reasonable use limitations communicated by the member to OFA including pursuant to a separate agreement at member’s request.
	2. The OFA grants each member permission to use the OFA name and corporate logo solely to communicate its membership in OFA.
	3. 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 for the specific use of the OFA name and trademarks.
2. **OFA Collaboration with Open Source Software Projects**
	1. **Third-Party Open Source Software Projects:** The OFA is not an interested party when any open source contributor, including members of the OFA acting on their own, whether at an OFA event or not, contribute software to any third-party project. Any contributions made by employees, contractors, or other agents of the OFA to the third-party project will be submitted according to the license terms of the third-party project.
	2. **OFA Initiated/Maintained Software Projects:** The OFA may author or create upstream software projects. In general, OFA Working Groups that create software projects, and any related projects such as associated documentation projects, should do the following:
		1. For code repositories, select an appropriate OSI approved license (<https://opensource.org/licenses>)
			1. At the time of OFA Board approval of a Working Group to create a project, it should be noted if there are any requirements for the project to be dual licensed or licensed under any of the more permissible licenses (such as BSD) so that the software authored by the project can be included in other, proprietary software. If there are special licensing concerns, then the Working Group will be charged with taking them into account when creating repositories.
			2. In the absence of any special requirements, the Working Group is authorized to use any of the OSI approved licenses without prior approval from the Board.
		2. For related, non-code repositories (documentation, wikis, etc., excluding any materials covered under Section 3 of this document)
			1. At the time of OFA Board approval of a Working Group Charter to create a project, it should be noted if there are any special requirements for the licensing of related materials. For example, if it needs a No Derivatives license. If there are special licensing concerns, then the Working Group will be charged with taking them into account when creating repositories.
			2. In the absence of special requirements, the Working Group is authorized to use Creative Commons Attribution 4.0 International (CC-BY 4.0) or Creative Commons Attribution No Derivatives 4.0 International (CC BY-ND 4.0) without prior approval from the Board.
		3. Designate a method of copyright management (DCO, CLA, CA, etc.)
		4. Select an initial maintainer(s) for the project – The maintainer is responsible for ensuring that all contributions to the project meets the Copyright requirements and the Copyright Management requirements selected for the specific repository.
3. **OFA Authored or Created Work Products**

The OFA may create other work products such as marketing materials, specifications, training materials, or any other form of intellectual property other than code or the materials associated with the creation of code as described above in Section 2.

* 1. **Common Policies**
		1. **Contributions.** Any communication intentionally provided for the purpose of advancing an OFA work product 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.” General contributions that have no specific IP value can be made verbally during discussions and meetings. All contributions involving IP protected material, such as material covered under patent or copyright, or confidential material, must be made in writing.
		2. **Attribution.** OFA will use reasonable efforts to abide by industry norms and to honor requests related to individual attribution. However, the OFA reserves the right to attribute collaborative work to just “OpenFabrics Alliance.”
		3. **Confidentiality of Contributions.**
			1. Contributions (a) that are clearly marked “confidential” or with a similar legend, (b) that, if disclosed orally and later documented in writing which, are described as confidential at the time of disclosure, will be deemed the “Confidential Information” of the Contributor. Recipient(s) of “Confidential Information” is(are) free to use information 1) already in its possession without obligation of confidentiality; 2) developed independently; 3) obtained from a source other than the Discloser without obligation of confidentiality; 4) publicly available when received, or subsequently becomes publicly available through no fault of the recipient; or 5) disclosed by the Discloser to another without obligation of confidentiality. 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), for a period of three years from the date of disclosure of such Confidential Information. Confidential Contributions may be shared among parties that have agreed to these terms. In the case of contractors acting as agents for a Contracting Organization, the contractor shall have the right to disclose the Confidential Information to the originator of the contract or the designee thereof. The Contracting Organization will be responsible for protecting the confidentiality of the information in the same manner as the contractor.
			2. Each Member acknowledges that it is responsible for its own compliance with all U.S. export control laws and regulations. Each Member acknowledges that it is responsible for obtaining export license, if required, before giving any foreign person access to Confidential Information. Each Member acknowledges that it is responsible for all regulatory record-keeping requirements associated with the use of export control licenses and license exemptions and exceptions.
			3. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.
			4. This Agreement and all Confidential Information received hereunder, if any, may be transferred to the Contracting Organization or its designee upon termination of the contractor’s contract.
		4. **Confidentiality of draft and final deliverables.** OFA technical collaborative activities will generally produce Deliverables, such as technical specifications, software code, written reports, engineering notes, reference designs, or similar material. The Board may specify that draft versions of Deliverables, and the final Deliverable, may be deemed Confidential Information of the 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. Deliverables released publicly are non-confidential.
	2. **Marketing Materials and Training Materials**
		1. **IP Protected Contributions.** Any images, photos, graphic designs, video recordings, copyrightable written text, audio recordings, or other materials submitted for use in OFA marketing materials need to be provided under appropriate copyright licensing terms for the OFA to utilize the contribution in any final work product. Acceptable terms need to provide a worldwide, perpetual, irrevocable, non-exclusive, royalty free copyright license to reproduce, create derivative works, distribute, display, and perform the Contribution. In addition, if the intention is that members may use the Marketing Material in question as-is or modify the final work product to suit their needs and then use the resulting product, then the license also needs to be fully sublicensable.
		2. **Ownership of final work product.** Any work product that is not substantially the same as contributions from a single contributor will be considered a collaborative work product and the resulting collaborative work product will be owned and copyright by the OFA. Contributors will retain all ownership and copyright interests in their contributions.
		3. **Licensing of final work product.**
			1. **Marketing Materials.** The OFA encourages the wide dissemination of their Marketing Material work products. To allow member companies to utilize and reuse the marketing materials developed at the OFA, the common terms of licensing should allow for use of the original or modified version of the materials such as granted by the Creative Commons Attribution license (CC-BY). At the discretion of the Marketing Working Group, other licenses such as Creative Commons Attribution NoDerivs (CC-BY-ND), which limits the creation of modified versions of the product, may be used.
			2. **Training Materials.** The OFA encourages the wide dissemination of their Training Material work products. However, as the quality of a training materials can be significantly harmed by modifications, the default licensing of Training Material work products should default to a non-modifiable license such as Creative Commons Attribution NoDerivs (CC-BY-ND).
	3. **Specifications**
		1. **General.** 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”).
		2. **Licensing of final work product.** The default licensing of any Specification created by the OFA should be CC-BY-ND. It is typically necessary that a Specification not be modifiable and redistributable by other entities in order to protect the integrity of the spec.
		3. **IP Protected Contributions.** Any sample code, methodologies, techniques, or other IP contributed to the creation of a written specification must be submitted in writing and provide a copyright license grant that allows the IP to be included in the spec. All sample code should be licensed such that it may be copied verbatim in any implementation of the spec, including open source or proprietary implementations. If a member is unable to contribute the IP under these terms, they are requested to refrain from submitting the IP and possibly “contaminating the well”, preventing other members from contributing substantially similar IP of their own under appropriate licensing terms.
		4. **Necessary Claims patent license grant for specifications.** 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 make every effort to grant, or cause its Affiliate to grant, a RAND-Zero License to any implementer of that Specification who requests such a license. Failure to secure permission for a RAND-Zero License grant for the IP is likely to result in the removal of the offending IP and an alternative means of implementation being used. The terms of the RAND-Zero license should conform to the definitions and exceptions described below:
			1. A **“Participant”** is the legal entity that employs the 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 and which are present in the relevant Specification at the time of approval by the Board, 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.
1. **No other licenses.** Except for the rights expressly provided in this IPR policy, no entity grants or receives, by implication, estoppel, or otherwise, any rights under any patents or other intellectual property rights.