

OPENFABRICS, INC.
MEMBERSHIP AGREEMENT

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This MEMBERSHIP AGREEMENT (“Agreement”) is entered into between OpenFabrics, Inc. (“OpenFabrics”), a California, nonprofit, mutual benefit corporation, and the undersigned entity (“Member”).

Member agrees to be a Member of OpenFabrics on the following terms and conditions:

1. DEFINITIONS

1.1 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.

1.2 Board of Directors means the OpenFabrics Board of Directors.

1.3 Bylaws means the OpenFabrics corporate bylaws, as in effect and as amended from time to time, a copy of which is posted on the OpenFabrics website: [www:OpenFabrics.org](http://www.OpenFabrics.org).

1.4 Contributors means those persons or entities defined as Contributors in the Bylaws.

1.5 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.

1.6 Member means the undersigned Member.

1.7 Members mean all OpenFabrics Members, regardless of membership class, including Members who may become Members after the undersigned Member joins.

1.8 Necessary Claims means only those claims as defined in the Bylaws.

1.9 OpenFabrics Software Stack means the software stack as defined in the Bylaws.

1.10 Participants means those persons or entities defined as Participants in the Bylaws.

1.11 Proposal means a proposal as defined in the Bylaws.

1.12 Proposal Meeting means the meeting as defined in the Bylaws.

2. MEMBERSHIP

2.1 Class of Membership. Subject to the terms and conditions of this Agreement and the Bylaws, Member agrees to be a Member of OpenFabrics in the class designated on the signature page of this Agreement.

2.2 Qualifications. The Member is a profit or nonprofit organization, academic, government entity or individual engaged in the use, manufacture, sale, or distribution of computers, computer parts or components, peripherals, software, or related products or services, or engaged in research relating thereto.

2.3 Support for Mission. During the term of its membership in OpenFabrics, the Member expects to support the specific mission of OpenFabrics, as identified in the OpenFabrics Bylaws. However, nothing in this Section or in this Agreement shall obligate Member to manufacture or use OpenFabrics software or preclude the use of alternate or competing specifications.

2.4 Member Benefits. The Member shall be entitled to the benefits provided by this Agreement and the Bylaws. The Member shall be entitled to participate in OpenFabrics membership meetings, to receive materials disseminated to the Member, to access World Wide Web pages maintained by OpenFabrics, and to the other benefits of such membership, as determined by the Board of Directors or as specified in the Bylaws.

2.5 Use of Name. The Member may publicly disclose that it is a Member of OpenFabrics. However, the Member may not identify any product or service as being sanctioned by, sponsored by or associated with OpenFabrics, unless in accordance with policies and procedures which may be established by the Board of Directors. The OpenFabrics shall have the right to include the Member's name in any lists of Members published by OpenFabrics and to announce that the Member has joined OpenFabrics.

2.6 Affiliates. The Member acknowledges and agrees that it and its Affiliates shall be treated for all purposes as one Member, entitled to one vote on all matters upon which the Member is entitled to vote. Member also acknowledges and agrees that Section 4 of this Agreement, entitled "Intellectual Property," binds Member and Member's Affiliates in accordance with its terms.

3. OBLIGATIONS OF MEMBERS

3.1 Bylaws. The Member has reviewed, hereby approves and agrees to abide by the Bylaws. Terms used in this Agreement have the same meaning as when the same terms are used in the Bylaws.

3.2 Contribution. The Member may make contributions to the OpenFabrics software stack and to the OpenFabrics software stack documentation, subject to the terms and conditions of this Agreement and the Bylaws.

3.3 Adoption and Publication. The Member agrees that the adoption and publication of the OpenFabrics software stack and the OpenFabrics software stack documentation will be governed by the Bylaws and the policies and procedures set by the Board of Directors, as amended from time to time.

3.4 Dues and Other Fees. The Member shall pay dues, fees and other assessments applicable to its class, as established from time to time by the Board of Directors. Dues within a

class shall be nondiscriminatory. The Board of Directors may establish reasonable additional fees or charges for participation in meetings or for other benefits of membership.

3.5 Expenses. The Member shall bear its own costs and expenses for its participation in OpenFabrics, such as travel, employee compensation, and incidental expenses.

3.6 Antitrust Policy. The Member agrees to comply with all applicable antitrust laws pertaining to the Member's participation in OpenFabrics. Nothing in this Agreement shall be construed to require or permit conduct that violates any applicable antitrust law. Member consents to the disclosure of its name as a member of OpenFabrics, for the purpose of permitting OpenFabrics to invoke the protection of the National Cooperative Research and Production Act of 1993 (15 U.S.C. §§4301, et seq.)

4. INTELLECTUAL PROPERTY

4.1 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).

4.2 Copyright License from Members. Any and all contributions of software or code by Members, Participants, and Contributors to an OpenFabrics software stack shall (to the extent specified by the Board of Directors) be made under the terms of both the GNU General Public License and/or the Berkeley Software Distribution License (as posted on the [opensource.org](http://www.opensource.org/licenses/bsd-license.php) web site, currently at <http://www.opensource.org/licenses/bsd-license.php>). Any and all contributions other than software or code by Members, Participants, and Contributors to an OpenFabrics software stack shall be made under the terms of the GNU Free Documentation License or a license with similar terms approved by the Board of Directors.

4.3 License from the Corporation. The Corporation will publish and distribute an OpenFabrics software stack under the BSD License Agreement and the GPL License Agreement, the licensee being permitted to elect either. Consequently, the OpenFabrics software stack will be subject to distribution under the terms of either license. Each Member, Participant, and Contributor agrees that its contributions to an OpenFabrics software stack shall be on terms permitting such licenses by the Corporation.

4.4 Trademarks.

(1) **Selection.** Each Member, Participant, and Contributor agrees not to assert against any other Member, Participant, and Contributor 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 and products distributed with an OpenFabrics software stack. If the Board of Directors decides to create or assert trademark or trade name rights in such name or a related logo or another name or logo to be used in conjunction with an OpenFabrics software stack ("Trademarks"), they agree to use commercially reasonable efforts to agree on the nature of ownership, licensing, and registration of such name or logo prior to approval.

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

(3) **Use of the Trademarks.** Each Member agrees that, to the extent it uses the Trademarks, it shall only use the Trademarks subject to the terms and conditions of a license agreement with the Corporation. No Member shall use or adopt any trademarks for any product, service, or specification likely to cause confusion with any Trademarks adopted by the Board of Directors, unless otherwise agreed to by the Board of Directors.

4.5 Patents.

(1) **Agreement not to Assert.** Each Member (which, for purposes of this Section 4.5, includes Participants and Contributors) agrees not to assert any Necessary Claims in an OpenFabrics software stack (or any part thereof) against any person or entity with respect to such person or entity implementing, having implemented, using, importing, selling, leasing, offering to sell or lease, or otherwise distributing an OpenFabrics software stack, unless that Member objects at the Proposal Meeting to the approval of the Proposal as an OpenFabrics software stack, discloses in writing its Necessary Claims in the Proposal, and, if requested by the Board of Directors, terminates its membership and participation in OpenFabrics within thirty days after the Proposal Meeting.

(2) **Reciprocity.** Notwithstanding the provisions of this Section, a Member may assert Necessary Claims in an OpenFabrics software stack (or any part thereof) against any person or entity that asserts Necessary Claims in an OpenFabrics software stack against the Member.

4.6 Representation by Members. Each Member, Participant, and Contributor represents that, to its Actual Knowledge, except as otherwise disclosed in writing at the time the contribution is made, no third party owns any intellectual property rights in any software, code, or documentation that has been or will be contributed by Member to an OpenFabrics software stack. This representation is not based on and does not require a patent search. “Actual Knowledge” means the actual knowledge of its employees who participate in the activities of the Corporation.

5. CONFIDENTIALITY

5.1 Maintenance of Confidentiality. In order to be protected as provided herein, Confidential Information, as defined in the Bylaws, 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, Adopter, and Supporter 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.

5.2 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, Adopter's, and Supporter'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.

5.3 Residuals. Members, Participants, Contributors, Adopters, and Supporters 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.

6. MEMBERSHIP TERMINATION AND WITHDRAWAL

6.1 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.

6.2 Effect of Termination. If a Member's membership is terminated under this Section 6:

(i) Sections 4 and 5 shall survive with respect to OpenFabrics software stacks approved prior to the date of termination.

(ii) 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 an OpenFabrics software stack approved in accordance with the Bylaws prior to the termination of such Member's membership.

(iii) The terminated Member will within ten days following its termination, destroy all copies of Confidential Information (as defined in the Bylaws) 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.

7. NO WARRANTY/LIMITATION OF LIABILITY

7.1 NO WARRANTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL MEMBERS ACKNOWLEDGE AND AGREE THAT ALL INFORMATION PROVIDED AS PART OF THE OPENFABRICS SOFTWARE STACK DEVELOPMENT PROCESS AND THE DRAFT OPENFABRICS SOFTWARE STACK AND

THE OPENFABRICS SOFTWARE STACK IS PROVIDED “AS IS” WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND THE MEMBERS AND OPENFABRICS EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE.

7.2 LIMITATION OF LIABILITY. IN NO EVENT WILL MEMBERS OR OPENFABRICS BE LIABLE TO ANOTHER MEMBER, 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.

8. OTHER PROVISIONS

8.1 No Transfer. The Member may not transfer, assign or sublicense any of its rights or obligations under this Agreement without the prior written consent of OpenFabrics, except to its Affiliates so long as its Affiliate becomes a Member of OpenFabrics and executes this Agreement. Any attempted transfer in violation of this Section is null and void.

8.2 Notice. The Member designates the representative identified below for the purpose of receiving notice under this Agreement. The Member may change the designated representative by written notice to OpenFabrics. If the Member fails to designate a representative, notice may be sent to the Member at its address stated below. Any notification made under this Agreement shall be deemed delivered on the next business day following it being sent by electronic mail, by facsimile, by express mail or by courier, or three (3) days after being sent first-class mail, postage prepaid, addressed to the Member’s designated representative at the address provided. Notice of a breach of this Agreement and notice of termination of this Agreement shall be given both by express mail or by first class mail, postage prepaid, and, in addition, by electronic mail or by facsimile.

8.3 No Joint Venture. Nothing contained in this Agreement and no action taken by the Member shall be deemed to render the Member or its Affiliates an employee, agent or representative of OpenFabrics or any other Member or their Affiliates, or shall be deemed to create a partnership, joint venture or syndicate among or between any of the Members or their Affiliates or with OpenFabrics.

8.4 Compliance with Laws. The obligations of the parties hereto shall be subject to all laws, present and future, of any government having jurisdiction over the parties hereto, pertaining to the Member’s participation in OpenFabrics.

8.5 Governing Law. This Agreement shall be governed by and construed under, and the legal relations among the parties hereto shall be determined in accordance with, the laws of

the State of California, excluding conflict-of-law principles that would cause the application of the laws of any other jurisdiction.

8.6 Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect; and a substitute, valid, and enforceable provision most nearly reflecting the original intent shall be developed in place of the invalid provision.

8.7 Amendments. This Agreement may be amended on a nondiscriminatory basis by the affirmative vote of at least two-thirds (2/3) of the Board of Directors. The Member shall be given at least thirty (30) days' prior written notice of the effective date of an amendment, and amendments shall be prospective only. A Member shall be bound by a duly adopted amendment, unless it elects to terminate this Agreement and its membership in OpenFabrics.

8.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

8.9 Integration. This Agreement supersedes and replaces any and all prior representations, agreements and understandings relating to the Member's membership in OpenFabrics, except the Bylaws.

8.10 Authority. The Member represents and warrants that it is authorized to enter into this Agreement. The undersigned person represents and warrants that he/she is authorized to sign this Agreement on behalf of the Member.

9. EFFECTIVE DATE

9.1 This Agreement shall be effective when it is accepted by OpenFabrics.

MEMBER:

By (signature): _____

Dated: _____

Printed Name: _____

Membership Level (Select One):

Company: _____

Title: _____

Street: _____

City: _____ State: _____

Postal Code: _____ Country: _____

Telephone Number: _____

Facsimile Number: _____

E-mail Address: _____

ACCEPTED AND AGREED:

OpenFabrics, Inc.

By: _____

Dated: _____

Printed Name: _____

Title: _____