

OPENFABRICS LOGO AGREEMENT

This License Agreement ("Agreement") is entered into effective as of the "Effective Date" as defined herein by and between the OpenFabrics Alliance, a California nonprofit mutual benefit corporation, and the applicant requesting to use the design mark identified herein ("Licensee").

BACKGROUND

The OpenFabrics Alliance owns the "OpenFabrics Alliance" logo shown on Exhibit A and defined herein as the "Logo," which it licenses to its members to identify their affiliation with the OpenFabrics Alliance and to promote public awareness of the OpenFabrics Alliance, its mission, and the product and service certification services that it provides. Licensee, a member of the OpenFabrics Alliance, wishes to obtain a license to use the Logo and the OpenFabrics Alliance is willing to grant the license, subject to the terms and conditions herein.

AGREEMENT

1. **Definitions.** For purpose of this Agreement:

- (a) "Application" means the application that Licensee submitted.
- (b) "Effective Date" shall be the date on which this Agreement is signed by the OpenFabrics Alliance.
- (c) "Manual" means the "OpenFabrics Alliance Logo Usage Manual" as in effect from time to time and available for download from the OpenFabrics website.
- (d) "Logo" means the mark identified on Exhibit A hereto.

2. **Logo License.**

- (a) **License Grant.** Provided that Licensee complies with the terms, conditions and provisions hereof, the OpenFabrics Alliance hereby grants Licensee a limited, non-exclusive, worldwide, revocable, non-transferable royalty-free license, with limited right of sublicense solely as provided in Section 2(b), to use the Logo to identify that it is a OpenFabrics Alliance member and to promote the mission and certification programs of the OpenFabrics Alliance by placing the Logo on such merchandising materials as the Manual may permit from time to time.
- (b) **Sublicense Grant.** The OpenFabrics Alliance hereby grants to the Licensee a limited, non-exclusive, worldwide, revocable, non-transferable license to sublicense the Logo to third parties with which Licensee has contracted to provide advertising or promotional services for Licensee, to manufacture merchandise for Licensee as permitted pursuant to the Manual and to distribute merchandise bearing the Logo in connection with Licensee's promotional activities using the Logo as permitted in Section 2(a). Licensee shall require all such third parties to agree in writing to all terms and conditions necessary and appropriate to protect

the OpenFabrics Alliance's right, title and interest to the Logo, which shall include, but not be limited to, all applicable terms and conditions of this Agreement, and which shall also provide that the OpenFabrics Alliance shall be a third party beneficiary of each such agreement.

- (c) **Reservation of Rights.** Except for the limited license rights granted herein, the OpenFabrics Alliance reserves to itself all right, title and interest in and to the Logo.
3. **License Requirements and Limitations.** The licenses granted pursuant to Section 2 are granted subject to the following requirements and limitations:
- (a) **Compliance with Manual.** Licensee shall comply with all requirements in the Manual that pertain to the Logo. Licensee is solely responsible for keeping itself informed of the current requirements in the Manual by reviewing from time to time the version posted on the OpenFabrics Alliance website and for making any necessary changes to its practices to remain in compliance with any revisions to the Manual. The OpenFabrics Alliance is under no obligation to inform Licensee of changes to the Manual other than by posting the revised version on its website, but the OpenFabrics Alliance agrees to refrain from taking action without prior affirmative notice to Licensee if the provision upon which the OpenFabrics Alliance action is to be based is materially different from the Manual that are applicable to this Agreement on the Effective Date. If Licensee does not agree with any changes to the Manual, Licensee's sole remedy is to terminate this Agreement as provided herein.
 - (b) **Membership Status.** Licensee will maintain its membership in both the OpenFabrics Alliance and in the OpenFabrics Interoperability Logo Group in good standing at all times while using the Logo.
 - (c) **Certain Geographic or Usage Limitations.** In the event the OpenFabrics Alliance determines that use of the Logo may in any particular manner or jurisdiction violate any applicable laws or regulations, be contrary to public policy or may subject Licensee, the OpenFabrics Alliance, or the OpenFabrics Interoperability Logo Group to any third party claims, legal proceedings, governmental investigations or proceedings, penalties or liabilities, Licensee agrees, upon receipt of notice and request from the OpenFabrics Alliance, to promptly cease and desist from all use of the Logo in such particular manner or jurisdiction.
 - (d) **Control.** The OpenFabrics Alliance shall have absolute determination and control, in its sole discretion, over the design, redesign, modification, change, enhancement, improvement, authorized or unauthorized use, manner and degree of application, manner and extent of registration, maintenance, protection, enforcement, ownership, licensing, use and termination of the Logo and the Manual.
 - (e) **Specific Use Restrictions.** The licenses granted in Section 2 may be used solely in connection with the products that have been permitted by the OpenFabrics Alliance to bear the logo, and only for the duration granted, and are subject to the restrictions and obligations of Licensee set forth in this Agreement, includ-

ing, without limitation, the following:

- (i) Licensee shall strictly comply with the graphics representation requirements for the Logo, as set forth in the Manual.
 - (ii) Licensee shall not modify, enhance or change the Logo or combine it with another mark, or use, adopt or register any marks confusingly similar to the Logo.
 - (iii) Licensee shall not omit portions or use a partial version of the Logo.
 - (iv) Licensee shall not use the Logo, or any portion thereof, as a domain name, including, without limitation, as a sub-domain name or name of the service or company.
 - (v) Licensee shall not use the Logo: (a) in any manner that is likely to reduce, diminish or damage the goodwill, value or reputation associated with the Logo; (b) in any manner as would violate the rights of any third parties; (c) in any manner as would result in any third party claim or in any governmental investigation, claim or proceeding alleging unlawful or improper use of the Logo; (d) or on or in connection with any goods, services or activities except as permitted under the licenses in Section 2 or the Manual.
- (f) **Inspection.** Licensee will, upon the OpenFabrics Alliance's request and at no cost to the OpenFabrics Alliance, provide the OpenFabrics Alliance with a reasonable number of samples of products or materials bearing the Logo within ten (10) business days from receipt of its written request.
- (g) **Nonconforming Goods, Services, Activities and Materials.** If Licensee becomes aware at any time that any goods, services, activities or materials with which it is using the Logo do not comply with the requirements of this Agreement or the Manual, it will, at its sole cost and expense, immediately cease all use of the Logo on or in association with the nonconforming goods, services, activities or materials, as applicable, and shall immediately discontinue distribution of any non-compliant or nonconforming tangible items. Licensee will immediately remove the Logo from all such tangible items, or if it is not feasible or is impractical to remove the Logo from such items, destroy them.
- (h) **Third-Party Infringement.** Licensee will promptly notify the OpenFabrics Alliance if it becomes aware of any infringement of the Logo by a third party. Licensee shall have neither the right nor the obligation to prosecute any infringement claims against third-party infringers.
- (i) **Noncompliance.** Licensee shall immediately at its sole cost and expense correct any usage of the Logo that the OpenFabrics Alliance regards as failing to comply with the requirements of this Agreement or the Manual.
- (j) **No Use as Certification Logo.** Licensee shall under no circumstance use the Logo as a certification mark or use the Logo in a manner that could lead third parties to believe that the OpenFabrics Alliance or any other party has certified its

products or services.

- (k) **Use of "OpenFabrics."** Nothing in this Agreement gives Licensee the right or license to use the mark "OpenFabrics" apart from the Logo as shown in Exhibit A. Any use of such mark shall occur only if and to the extent permitted by the Manual or a separate agreement between Licensee and the OpenFabrics Alliance. Licensee shall not use "OpenFabrics" except as permitted therein.
 - (l) **Unauthorized Use of the Logo by Licensee.** Licensee acknowledges that if it engages in any unauthorized use or reference to the Logo, its right to continue using the Logo may be terminated and that irreparable injury will occur if such unauthorized use continues.
 - (m) **Relationship of Agreement and OpenFabrics Alliance Membership.** This Agreement constitutes a portion of the "rules and regulations" of the OpenFabrics Alliance as contemplated by the corporation's Bylaws. Licensee acknowledges that a breach of this Agreement is also a breach of those rules and regulations and may give rise to the suspension or termination of Licensee's membership in the OpenFabrics Alliance.
4. **License Fees and Royalties.** The licenses granted hereunder are fully paid and without royalty.
5. **OpenFabrics Alliance Ownership of the Logo.** Licensee acknowledges the OpenFabrics Alliance's exclusive right, title, and interest in and to the Logo and acknowledges that nothing herein shall be construed to accord to Licensee any rights in the Logo except as otherwise expressly so provided. Licensee acknowledges that its use of the Logo hereunder will not create in it any right, title or interest in the Logo other than the limited license rights granted herein and that all such use of the Logo and the goodwill generated thereby will inure to the benefit of the OpenFabrics Alliance. Should the OpenFabrics Alliance, in its sole discretion, deem it necessary to record Licensee as a registered licensee of the Logo in any jurisdiction, it shall do so at Licensee's expense (provided that Licensee may avoid such expenses by covenanting in an amendment to this Agreement that it will not use the Logo in such countries), and Licensee will cooperate with the OpenFabrics Alliance to affect such records. Licensee warrants and represents with respect thereto that (a) it will not at any time challenge the OpenFabrics Alliance's right, title, or interest in the Logo or the validity the Logo or any registration thereof; (b) it will not do or cause to be done or omit to do anything, the doing, causing, or omitting of which would contest or in any way impair or tend to impair the rights of the OpenFabrics Alliance in the Logo; (c) it will not represent that it has any ownership in or rights with respect to the Logo; and (d) it will not, either during or subsequent to the term of this Agreement, adopt, use, or register any certification mark, trademark, service mark, trade name, insignia or logo that is confusingly similar to or a colorable imitation of the Logo or any of the OpenFabrics Alliance's other marks.
6. **Representations of Licensee.** Licensee represents and warrants that

- (a) It is duly organized and in good standing under the laws of its jurisdiction of organization;
 - (b) Licensee has taken all actions that are necessary or advisable in order for it to enter into this Agreement;
 - (c) The person Executing this Agreement on behalf of Licensee is authorized to do so;
 - (d) The Agreement, upon its Execution by Licensee (and assuming due Execution by the OpenFabrics Alliance) shall be the binding obligation of Licensee, enforceable in accordance with its terms;
 - (e) Licensee will comply with all changes to the Manual within three (3) months from the date of receipt of written notice of such changes; and
 - (f) Licensee will not challenge the OpenFabrics Alliance's rights under the Manual, or this Agreement and will not challenge the validity of any OpenFabrics Alliance mark.
7. **No Warranty by the OpenFabrics Alliance.** The OpenFabrics Alliance provides the licenses granted hereunder without warranty of any kind. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE OPENFABRICS ALLIANCE DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES.
8. **Limitation of Liability.** IN NO EVENT SHALL THE OPENFABRICS ALLIANCE BE LIABLE FOR LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH CLAIM IS BASED AND EVEN IF THE OPENFABRICS ALLIANCE HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.
9. **Indemnity.** Licensee agrees to defend, indemnify and hold the OpenFabrics Alliance and its respective representatives, employees, officers, directors and agents harmless against all claims, suits, cost, damages, judgments, attorney's fees, settlements or expenses incurred caused by, arising from or relating to any breach of this Agreement by Licensee or claimed, obtained or sustained by any third party, whether for personal injury, misrepresentation, or otherwise arising out of or relating to the Licensee's business activities, including, without limitation, the manufacture, advertising, promotion, use, marketing or sale of the goods, services, or activities using the Logo, provided such claims are not caused by OpenFabrics Alliance's negligence or breach of this Agreement.
10. **Effective Date, Term and Termination.**
- (a) **Effective Date.** This Agreement shall commence and the licenses granted hereunder shall become effective (the "Effective Date") upon Licensee's Execution of this Agreement.
 - (b) **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated by a party as provided herein.

(c) **Termination.**

- (i) **Termination by Licensee.** Licensee may terminate this Agreement at any time by providing notice to the OpenFabrics Alliance and by discontinuing all use of the Logo. Termination in this manner shall be effective upon receipt of the notice by the OpenFabrics Alliance or at such time (not to exceed thirty (30) days) specified in the notice from Licensee.
- (ii) **Termination by the OpenFabrics Alliance.** The OpenFabrics Alliance may terminate this Agreement upon thirty (30) days notice if Licensee breaches any provision of this Agreement and fails to cure such breach within such thirty (30)-day period. The OpenFabrics Alliance may terminate this Agreement upon written notice if Licensee ceases to be a member in good standing of the OpenFabrics Alliance or the OpenFabrics Interoperability Logo Group. The OpenFabrics Alliance may terminate this Agreement for convenience upon not less than thirty (30) days' written notice to Licensee if it discontinues its use of the Logo for the purposes for which it is licensed hereunder.
- (iii) **Consequences of Termination.** Upon termination of this Agreement, the licenses and all sublicenses granted hereunder shall immediately terminate. Licensee will immediately discontinue all use of the Logo and shall immediately cause each sublicensee of the Logo to discontinue its use. Licensee and its sublicensee(s) shall thereafter immediately remove the Logo from all materials to which it is applied, or if removal of the Logo is not feasible or is impractical, destroy all materials in their possession containing the Logo and shall certify to the destruction of such materials if the OpenFabrics Alliance requests that they do so.

11. **Compliance with Laws.** Licensee will at all times comply with all laws, regulations, ordinances, rules and orders that are applicable to it in connection with the operation of its business generally.

12. **Miscellaneous.**

- (a) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California as applied to agreements entered into and fully performed therein by residents thereof. Both parties submit to jurisdiction in California and further agree that any cause of action arising under this Agreement shall be brought in a court in the County of Santa Clara, California.
- (b) **Severability; Headings.** If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

- (c) **Independent Contractors.** The parties are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement. Neither party shall make any warranties or representations on behalf of the other party.
- (d) **Notice.** The OpenFabrics Alliance may give notice to Licensee by personal delivery, mail, courier, or facsimile to Licensee's physical address as identified in the OpenFabrics Alliance's membership records or by e-mail to the e-mail address of record. Licensee may give notice to the OpenFabrics Alliance by personal delivery, mail, courier, or facsimile to the OpenFabrics Alliance's physical address or electronically by e-mail to logo@openfabrics.org. Notice shall be deemed given: upon personal delivery; if sent by fax, with confirmation of correct transmission, on the next business day after it was sent; upon the courier's confirmed delivery if sent by courier; and if sent by mail with proper postage prepaid, five (5) days after the date of mailing. Notices by e-mail shall be deemed given by the end of the business day on which they are sent.
- (e) **Entire Agreement; Waiver.** This Agreement sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. This Agreement may be changed only by a writing executed by both parties that expressly states that it is changing the provisions of this Agreement. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- (f) **Assignment.** Licensee may not transfer its rights or obligations under this Agreement in whole or in part to any third party without the prior written consent of the OpenFabrics Alliance and any attempt to do so is void.
- (g) **Counterparts.** This Agreement may be Executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

OpenFabrics Alliance	Licensee_____
Signature_____	Signature_____
Title_____	Title_____
Date_____	Date_____

EXHIBIT A

