

OFA INTEROPERABILITY EVENT AGREEMENT

Document Version: 1.6.2 – April 3, 2007

- 1. Purpose.** The OFA (Open Fabrics Alliance) invites the undersigned (“Guest”) to attend the OFA Interoperability Event (each an “Event”, and collectively, the “Events”), which are planned to take place at various times starting on January 1, 20___, and ending on December 31, 20___ This Nondisclosure Agreement (“Agreement”) is made by and among you and all other guests who either sign a counterpart copy of this Agreement or are under the requirements mandated by the OFA-IWG Charter posted at: http://www.openfabrics.org/downloads/OFA_IWG_charter_final.pdf .
- 2. Confidentiality.** Guest agrees to treat as confidential all information concerning activities taking place at the Events, including, but not limited to, all test activities and test results for each Event, and all other guests’ respective information disclosed at the Event to Guest concerning their research, experimental work, development, design details and specifications and engineering information as confidential information (“Confidential Information”). Guest shall treat all Confidential Information of the other guest(s) (each a “Discloser”) with the same degree of care as Guest accords to its own confidential information, but in no case less than reasonable care. Guest shall use such Confidential Information for the sole purpose of testing the interoperability of Guest’s own products with other guests’ products. Guest shall not disclose Confidential Information of the Discloser to any person or entity other than Guest’s officers, employees and consultants who need access to such Confidential Information for the sole purpose of testing the interoperability of Guest’s own products with other guests’ products and who have entered into written confidentiality agreements with Guest which protects the Confidential Information of the Discloser sufficient to enable Guest to comply with the provisions of this Agreement. Guest shall immediately give notice to the applicable Discloser of any unauthorized use or disclosure of that Discloser’s Confidential Information that Guest becomes aware of. Guest agrees to assist the Discloser in remedying such unauthorized use or disclosure of its Confidential Information. The obligations set forth in this Agreement shall not apply to any Confidential Information which is: (a) rightfully in the public domain other than by a breach of a duty to the Discloser; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to Guest without any limitation on use or disclosure prior to its receipt from the Discloser; (d) independently developed by employees of Guest; or (e) generally made available to third parties by the Discloser without restriction on disclosure. Nothing in this Agreement shall prevent Guest from disclosing Confidential Information to the extent Guest is legally compelled to do so by any governmental or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, Guest shall (i) assert the confidential nature of the Confidential Information to the agency; (ii) immediately notify the Discloser in writing of the agency’s order or request to disclose; and (iii) cooperate fully with the Discloser in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality. Guest’s obligation not to use or disclose Confidential Information of the Discloser will terminate three (3) years after the date Guest initially receives the Confidential Information. Upon written request by a particular Discloser, Guest will destroy all tangible Confidential Information of that Discloser in Guest’s possession or control and certify such destruction in writing to the Discloser. All Confidential Information is provided “AS IS” and without any warranty, express, implied or otherwise, for such Confidential Information or its accuracy or performance.
Any problems discovered with the OpenFabrics Alliance Software Stack (OFA-SS) are not confidential. Article 17 of the OFA Bylaws specifically excludes the OFA-SS from being confidential information and Section 5.3 (i) of the UNH-IOL Usage Agreement also excludes the OFA-SS from being Confidential Information.
- 3. Compliance with Laws.** Guest agrees to comply with all applicable laws while attending each Event, including antitrust laws. Without limitation, Guest agrees not to disclose or exchange information relating to Guest’s current or projected product pricing (including price changes, price differentials, markups, discounts, allowances and terms and conditions of sale (including credit terms, etc.)) or data that bear on prices (including

profits, margins or cost), expected purchasing requirements, sales plans, marketing plans, business forecasts or any other topic that relates to a party's ability or plans to compete.

4. Ownership of Confidential Information and Other Materials. All Confidential Information, and any Derivatives thereof, remain the property of the Discloser and no license or other rights to Confidential Information is granted or implied hereby. Confidential Information includes all summaries and abstracts of the same. "Derivatives" shall mean, for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted.
5. Own Risk. Notwithstanding the provisions of this Agreement, Guest agrees that participation in any activities at the Events is solely at Guest's own risk.
6. No Licenses Granted. No licenses are granted by Guest to any other party to any of Guest's intellectual property, and no licenses are granted by any other party to Guest for such other party's intellectual property, as a result of their signing this Agreement and/or their participation in the Events, by implication, estoppel, or otherwise. Intellectual property shall include, without limitation, trademarks, copyrights, patents, mask works and trade secrets.
7. Press Releases. OFA may issue a press release for each Event at its own discretion. Guest agrees that the press release may include Guest's name and indicate Guest participated in the Event.
8. No Export. Guest will not export, directly or indirectly, any technical data acquired from the Discloser during the Events or pursuant to this Agreement, or any product utilizing any such technical data, to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval (nor disclose such technical data to any citizen of such country) without first obtaining such license or approval.
9. General. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. This Agreement will be governed by the laws of the State of California as applied to agreements entered into and performed entirely within California between California residents. This Agreement constitutes the entire agreement with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. This Agreement has been negotiated by the respective parties hereto and their attorneys and the language hereof shall not be construed for or against any party. The titles and headings herein are for reference purposes only and shall not limit in any manner the construction of this Agreement, which shall be considered a whole.

I acknowledge that I have read this Agreement. On behalf of the below-listed company, I understand that the execution of this Agreement is necessary for attending an Event and agree to have my company adhere to the provisions of this Agreement. I also certify that I am authorized to execute this Agreement on behalf of my company.

Name: _____

Title: _____

Company: _____

Signature: _____

Date: _____