



**BYLAWS**  
**OF THE**  
**OPTICAL INTERNETWORKING FORUM**

*Approved by the OIF Board of Directors  
December 4, 2020*

**AMENDED AND RESTATED BYLAWS**  
**OF THE**  
**OPTICAL INTERNETWORKING FORUM**

**A CALIFORNIA NONPROFIT MUTUAL BENEFIT CORPORATION**

**ARTICLE 1**

**PURPOSE AND OBJECTS**

**Section 1.1. Name**

The name of this corporation is the Optical Internetworking Forum (OIF), the "Corporation." The business of the Corporation shall not be conducted for the financial profits of its members, but shall be conducted for the mutual benefit of its members.

**Section 1.2. Activities**

The Corporation is an international group of telecom industry participants including service providers, equipment manufacturers, and end users, and other interested parties, as approved by the Board of Directors, promoting the acceptance and implementation of interoperable products and services for data switching and routing using optical internetworking and other technologies. The intent of this Corporation is to support the rapid advancement of an efficient and compatible technology base that promotes a competitive marketplace. The Corporation's activities will include promoting global development of optical internetworking technology, identification of optical internetworking applications; providing educational services; promoting worldwide compatibility and interoperability; encouraging input to appropriate national and international standards bodies; and identifying, selecting, augmenting as appropriate, and publishing implementation agreements which may be drawn from appropriate national and international standards.

**Section 1.3. Purposes**

- (a) The Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law of the State of California.
  
- (b) The purposes of the Corporation shall be promoted by: identifying, selecting, augmenting as appropriate and publishing implementation agreements which may be drawn from appropriate national and international, defacto and de jure standards; conducting cooperative research; developing proposals to be made to appropriate

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national and international standards bodies; promoting/fostering the measurement, demonstration and testing of optical internetworking products in order to further compatibility and interoperability; developing publications and informational materials; and performing other activities permitted under these Bylaws in furtherance of the purposes and objects of the Corporation.

**(c)** In working toward the achievement of these stated purposes and objects, the Corporation and its members intend to comply with the National Cooperative Research and Production Act, 15 U.S.C.A. §4301 et seq., and to engage in a "joint research and development venture" as defined therein. The Corporation and its members are individually and collectively committed to open competition in the development of products, technology and services, and the members are not restricted in any way from designing, developing, marketing, and/or procuring hardware, software, systems, technology, or services. Implementation or use of specific optical networking standards, recommendations and implementation agreements will be voluntary, and no member shall agree to be obliged to implement them by virtue of participation in the Corporation.

**(d)** In order to help support the global adoption and dissemination of optical internetworking technology, applications, services, products and related information, subject to the remainder of this paragraph, the Corporation shall make its technical proceedings and documents publicly available to all interested parties without restrictions upon further dissemination and on reasonable terms applied uniformly and openly. Without limiting the foregoing, the Corporation shall ensure that any interested person has the opportunity to (a) obtain access to any technical materials, technical documents, technical information or software as and when made available to Members by or through the Corporation, whether in written, electronic, draft, final, or other form (the foregoing, collectively, "Technical Information"), and (b) attend, on a non-voting observer basis, all Corporation meetings, events or other gatherings during which otherwise non-published Technical Information is developed or disclosed; in each case: (i) to the extent necessary to ensure that all Technical Information satisfies the definition of "Published" for purposes of Export Administration Regulations Section 734.7(a) and related official U.S. government guidance ("EAR Requirements"), and (ii) subject to such rules, policies, procedures and other requirements as the Board of Directors from time to time determines to be reasonable and appropriate ("Board Policies"), including but not limited to, appropriate terms of use, meeting registration requirements, and payment of appropriate subscription, access, participation, attendance or other fees; provided that such Board Policies are consistent with the EAR Requirements.

### **Section 1.4. Limitation on Purposes**

**(a)** Notwithstanding anything herein to the contrary, nothing contained in these Bylaws shall authorize the Corporation directly or indirectly to engage in any act or thing incidental to or connected with the purposes set forth in Article 1 hereof or in

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advancement thereof which would cause the Corporation to be disqualified as a business league within the meaning of Section 501(c)(6) of the United States Internal Revenue Code. The Corporation and its members and participants shall strictly comply with state and federal antitrust laws.

**(b)** The Corporation, Directors and members acknowledge that the purposes and objects of the Corporation prohibit discussion about sales levels, methods, or channels of distribution, markets, customers, prices or profitability or any other topic which would restrict use of optical internetworking technology or any other hardware, software, technology, or services. The Corporation, Directors and members further direct that the purposes and objects of the Corporation prohibit discussions or activities on any topic that could have an adverse impact on national or international competition or trade or could violate any national or international law regarding competition or trade. The Corporation will make a filing under and in accordance with the National Cooperative Research and Production Act, 15 U.S.C.A. §4301 et seq., that describes the work performed by the Corporation, and will update the filing to reflect any changes in the filed information as required by such Act. In the event that the Corporation does not make the foregoing filings timely, any member may if it wishes, make one or more filings under and in accordance with the National Cooperative Research and Production Act to maintain its status under that Act.

**(c)** No part of the Corporation's net earnings or assets will inure to the benefit of any member, director or private person.

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## ARTICLE 2

### OFFICES

#### Section 2.1. Principal Office

The principal office of this Corporation shall be located at such location within the state of California, as the Board of Directors so elects. The principal office of the Corporation may be changed to another location within the State of California if the Board of Directors so elects.

#### Section 2.2. Additional Offices

In addition to the principal office, the Corporation may have other offices within or without the State of California, as shall be designated by the Board of Directors.

## ARTICLE 3

### MEMBERSHIP

#### Section 3.1. Membership Candidates

(a) Any individual, firm, partnership, corporation, unincorporated association, or government body (hereinafter "Person"), with a demonstrated interest in promoting the cause of the Corporation, may apply for membership in the Corporation. However, the cause of the Corporation does not restrict membership on the basis of race, color, sex, religion, or national origin. There shall be only one class of voting members within the meaning of the California Nonprofit Corporation Law, designated as "Principal Members," who shall have the rights and obligations set forth in Section 3.2. All other member classes shall be nonvoting, and shall have only the rights and responsibilities specifically set forth in these Bylaws. The benefits of membership shall be determined by the Board of Directors from time to time.

(b) Upon admission to the membership of the Corporation, an entity member shall designate an individual who shall represent the member in all transactions with the Corporation (the "Representative"), and the address of such Representative for purposes of giving notice to the member. In the absence of a designation of a Representative's address, the address provided for the member shall be used. A member's Representative may be replaced by the member at any time, and such replacement shall be effective (30) thirty days after receipt of the Corporation by written notice from any authorized Representative of the member, naming the successor Representative. References in these Bylaws to any action to be taken by, or notice to be made to, a member shall be deemed to refer to the member's Representative.

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(c) Any Person possessing the requisite qualifications to secure admission to membership in this Corporation shall make written application to the Membership Committee. The initiation fee shall be disclosed to the applicant. The application, in a form prescribed by the Board of Directors, shall be signed by the applicant and submitted to Membership Committee. The Membership Committee shall approve or reject of such application in accordance with criteria consistent with Article 3 of these Bylaws and established by the Board of Directors and fairly applied. The decision of the Membership Committee shall be made in accordance with the Committee's operating procedures following its receipt of the application as set forth in part in Section 7.3 of these Bylaws.

### **Section 3.2. Principal Membership**

(a) Any Person who is an optical internetworking product or service provider, equipment manufacturer, or user, and others approved by the Board of Directors, shall be deemed qualified to apply for Principal Membership in the Corporation. Principal Members are required to identify and make available employees willing to serve on the Board of Directors if elected. An applicant for Principal Membership that is an Affiliate (within the meaning of Section 3.2(b) of these Bylaws) of an existing Principal Member will not be considered for Principal Membership but is eligible for Auditing Membership.

(b) "Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with, another Person and a Person who has a material financial relationship (within the meaning of Section 3.2(c) of these Bylaws) with any other existing Principal Member or Person for whom the relationship would in the sole, reasonable judgement of the membership committee, interfere with the ability to meet the responsibility of independent representation on the Board of Directors or Committees of the Corporation.

(c) A "material financial relationship" shall include, but shall not be limited to, the receipt of compensation for services as a consultant from another Principal Member or Affiliate, and any joint venture or partnership arrangement with or stock ownership in, another Principal Member or Affiliate.

(d) Each Principal Member shall be entitled to send Representatives attending technical task groups of the Working Committee, Annual, General and Special meetings of the Corporation and shall have access to all working documents, minutes of Committee meetings and written contributions to the Corporation.

(e) Each Principal Member shall be entitled to one (1) vote at Annual, General and Special meetings of the members of the Corporation.

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(f) Principal Members may be requested by the Board of Directors to provide qualified Representatives to further the work of various Corporation Committees which may be created from time to time. Each Principal Member shall have one (1) vote in each of the Committees in which it participates.

### **Section 3.3. Auditing Membership**

(a) Any Person who is an optical internetworking product or service provider, or end user, and others approved by the Board of Directors, shall be deemed qualified to apply for Auditing Membership in the Corporation.

(b) Each Auditing Member shall be entitled to send Representatives to attend the Annual and General meetings of the members of the Corporation and have access to all working documents, minutes of Committee meetings and written contributions to the Corporation.

(c) Auditing Members do not have any voting rights. Auditing Members do not have the privilege to call any meetings, Special or otherwise, of the Corporation.

### **Section 3.4. Additional Classes of Membership**

Additional classes of non-voting membership may be created, upon the approval of the Board of Directors or a majority of the Principal Membership.

### **Section 3.5. Dues**

(a) Each member shall pay annual dues to the Treasurer of the Corporation according to schedules which from time to time may be prescribed by the Board of Directors. The Dues structure for the forthcoming year shall be reported to the membership at the Annual meeting or Special meeting called for that purpose and shall be provided to an applicant.

(b) If any payment of dues or any assessment is not made as and when required, the Board of Directors shall cause notice to be sent to the member whose payment is delinquent. Sixty (60) days of default in payment of any assessment or installment of any dues shall entitle the Board of Directors without notice to the member or members in default to suspend the membership until the default in payment of dues or installments is cured. In the event of such a suspension, membership shall be reinstated upon payment of the unpaid dues or assessment plus a penalty equal to fifty (50%) percent of the amount of the unpaid dues or assessment. In the event of extenuating circumstances

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the Membership Committee in its sole discretion may waive the penalty on reinstatement.

### **Section 3.6. Special Assessments**

(a) This Corporation shall raise no revenue other than that required to pay all its expenses including such unusual or extraordinary expenses as may be authorized and incurred from time to time at properly noticed Annual, General or Special meetings of the members or the Board of Directors in furtherance of the business and objects of the Corporation. The moneys so required may be raised by special assessments which shall be levied from time to time against all members by the Board of Directors. The Board of Directors shall not levy special assessments which, in any fiscal year, cumulatively exceed fifty percent (50%) of the annual dues of all members. Special assessments which exceed fifty percent (50%) of the annual dues of all members in a fiscal year shall be approved by a resolution of the Principal Members; *provided, however*, no special assessment with respect to a resolution or a series of resolutions shall exceed two (2) times the annual dues within a fiscal year. Within forty-five (45) days after any assessment has been levied, notice thereof shall be given to each and every member of the Corporation stating the amount of such assessment and the date or dates which the same was ordered by the Board of Directors to be paid.

(b) No newly elected members shall be required to pay any special assessment or portion thereof levied prior to the date such member was admitted to membership in the Corporation.

### **Section 3.7. Change of Control**

In the event that through merger or acquisition or other cause, a member's assets are totally or substantially transferred to another entity, that member's membership may be transferred to the new entity, provided all appropriate membership documents and the Membership Application are properly executed in the name of the new entity. Should the other entity already hold a Principal Membership, that membership is automatically terminated. Any such transfer of membership shall be subject to approval by the Board of Directors or its designee.

### **Section 3.8. Change in Membership**

An Auditing Member of the Corporation may request a change in its status to a Principal Membership by written application to the Membership Committee. Auditing Members shall be required to pay full current dues for their Principal Memberships, except that they shall also receive full credit for the prior current dues payments of the Auditing Membership.



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### **Section 3.9. Resignation**

Any member of the Corporation may withdraw from membership by tendering a written resignation to the Board of Directors at any time; *provided, however*, that no resignation shall relieve a member from full payment of any and all initiation fees, dues and special assessments and each and every installment thereof remaining unpaid on the date of tender of resignation.

### **Section 3.10 Withdrawal from Business**

Membership in the Corporation shall automatically terminate upon withdrawal from or cessation of business by any member or upon such an alteration in the nature of business transacted by the member as would disqualify a member from securing a membership on application therefor.

### **Section 3.11. Suspension and Expulsion**

(a) Any member of the Corporation which violates any of the Bylaws, documented procedures or resolutions adopted by the Board of Directors from time to time, or fails to pay dues or special assessments shall, by a two-thirds vote of the Board of Directors present at any meeting at which a quorum exists, be subject to suspension, expulsion, or any other sanction approved by the Board of Directors. Expulsion or suspension for any reason other than non-payment of dues or special assessments shall occur only after the affected member has been advised, at least 15 days in advance of such expulsion or suspension, in writing of the proposed expulsion or suspension and the reasons therefor. Such written notice shall provide an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion or suspension by the Board of Directors, as to the reasons in support of its continued membership in the Corporation. The notice to the affected member shall include the name and address of the individual or corporation making the charge and a concise statement of the material facts constituting the charge. If the Board of Directors determines in good faith that the allegations are substantiated, the Board of Directors shall vote on appropriate sanctions. The decision of the Board of Directors concerning an expulsion or a suspension shall be final and binding.

(b) A member may be suspended based on the good faith determination of the Board of Directors that the member has failed in a material or serious degree to observe the Corporation's rules, or has engaged in conduct seriously prejudicial to the purposes and interests of the Corporation. Any member whose membership in this Corporation shall have been suspended by the Board of Directors shall not be a member during the period of suspension and shall have no interest in any of the activities, funds, property, rights, and interests belonging to the Corporation until such time as such member complies with the requirements of the Board of Directors for the removal of the suspension and the return of good standing.

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(c) A member expelled for any reason shall forfeit any dues or special assessments paid during membership. No member who has been expelled shall be eligible for reelection to membership for at least one (1) year from the date of expulsion; such former members shall not be reconsidered for membership until all arrears in dues and/or monetary obligations to the Corporation shall have been paid.

**Section 3.12. In Good Standing**

A member shall be considered in good standing if the member has a completed an approved membership application on file and its membership has not been suspended due to nonpayment of dues or any assessment in accordance with Section 3.4b of these Bylaws.

**Section 3.13. Nonliability**

Pursuant to California Nonprofit Mutual Benefit Corporation Law Section 7350, no member shall be permanently liable for the debt, liabilities or other obligations of the Corporation.

**Section 3.14. Nontransferability**

No member may transfer for value or otherwise a membership or any right arising therefrom.

**ARTICLE 4**

**MEETINGS OF MEMBERS**

**Section 4.1. Annual Meeting**

The Annual meeting of the members of the Corporation, at the direction of the Board of Directors, may be held inside or outside the State of California, shall be on such date (but in any event in each year in which Directors are to be elected) and time and at such place as shall be designated from time to time by the Board of Directors as stated in the notice of the meeting. In the absence of such determination of place, members meetings shall be held at the Corporation's principal office. At the Annual meeting, the Principal Members shall nominate and elect a sufficient number of Directors to replace all Directors whose terms are expiring, and shall transact such other business as may properly come before the meeting. If the Corporation fails to hold an Annual meeting (or circulate a written ballot to the Principal Members for election of Board members) as set forth in this Section 4.1, any Principal Member may petition the superior court of the proper county to order such meeting or ballot, as permitted by California Nonprofit Corporations Code §7510.

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### **Section 4.2. General Meetings**

General meetings of the members of the Corporation may be held at any place designated by the President or the Board of Directors, upon call by the President or the Board of Directors. General meetings are intended to be a vehicle to discuss the work plan of the Corporation and the progress thereof, and to solicit member contributions.

### **Section 4.3. Special Meetings**

Special meetings of the members of the Corporation may be called by the President, Chairman of the Board, Board of Directors or by not less than 5% of the Principal Members of the Corporation. A Special meeting called by any Person (other than the Board of Directors) entitled to call such a meeting shall be called by written request, specifying the general nature of the business proposed to be transacted, and submitted to the Chairman of the Board, the President, any Vice President, or the Secretary of the Corporation. The Officer receiving the request shall cause notice to be given promptly to the members, in accordance with Section 4.4 of these Bylaws, stating that a meeting will be held at a special time and date fixed by the Board of Directors; *provided, however*, that the meeting date shall be at least twenty (20) but no more than ninety (90) days after receipt of the request. If the notice is not given within twenty (20) days after receipt of the request, the Person or Persons requesting the meeting may give the notice. Nothing in this Section shall be construed as limiting, fixing, or affecting the time at which a meeting may be held when the meeting is called by the Board of Directors. No business, other than the business of the general nature of which was set forth in the notice of the meeting, may be transacted at a Special meeting. Minutes of the meeting will be kept and archived by the Secretary.

### **Section 4.4. Notice**

Written notice of the time and place and purpose of holding any Annual meeting or General meeting of the members of the Corporation shall be given to each member of this Corporation who on the record date of notice is permitted to attend such meeting, at least ten (10) days but no more than ninety (90) days prior to the scheduled date for the meeting. The written notice of such a meeting will include the proposed agenda for that meeting. All notices shall be given at the address on file with the Corporation either personally or by facsimile, electronic mail, first class, registered, or certified mail. Notice of a meeting need not be given to any member who signs a waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any member at a meeting, in person or by proxy, shall constitute a waiver of notice by that member.

### **Section 4.5. Quorum and Adjournments**

Fifty-one percent (51%) or more of the Principal Members of the Corporation eligible to vote shall be necessary to constitute a quorum for the transaction of business at an Annual, General or

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Special meeting of the members of the Corporation. If such quorum and the voting requirements set forth in Section 4.6 of these Bylaws are not met at any such meeting, a majority of the Principal Members present in person or by proxy shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting of the time and place to which the meeting is adjourned. No meeting may be adjourned for more than forty five (45) days. At such adjourned meeting at which the requisite number of Principal Members shall be represented, any action may be taken which might have been transacted at the meeting as originally noticed. If after adjournment the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting and the new record date shall be given to each member of record entitled to notice in the manner set forth in Section 4.4 of these Bylaws.

### **Section 4.6. Voting**

A fifty-one percent (51%) or more vote of the Principal Members eligible to vote and present in Person or represented by proxy is required to pass a resolution of the members. Notwithstanding the foregoing, Directors shall be elected by a plurality of the votes cast at an election. Each Principal Member eligible to vote shall be entitled to one vote for each Director position to be filled and shall have one vote upon any questions coming before any meeting of the Principal Members. Voting may be by voice or ballot, except that the election of Directors must be by ballot. The Secretary will provide to any Principal Member in good standing, upon request, complete voting tallies of any balloted vote, except that ballots for directors shall remain secret.

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### Section 4.7. Proxies

- (a) At all meetings of the Corporation, any Principal Member eligible to vote shall be entitled to vote either in person or by a duly accredited proxy. Every proxy shall be executed in writing by the Principal Member's Representative authorized to cast the Principal Member's vote except that a proxy may be given by a Principal Member's Representative by telegram, electronic mail, cable or its equivalent. Such proxy shall be filed with the Secretary of the Corporation or its delegate (i.e., Executive Director). A proxy shall not be valid for more than the meeting for which it is intended to be used thereat, or any adjournment thereof. An individual named in a proxy as the attorney or agent of a Principal Member may, if the proxy so provides, substitute another individual to act in that individual's place, including any other individual named as an attorney or agent in the same proxy. The substitution shall not be effective until an instrument effecting it is filed with the Secretary of the Corporation.
- (b) Any revocable proxy concerning the following matters for which a vote of the Principal Members is required shall not be valid unless the proxy sets forth the general nature of the matter to be voted on:
- (i) amendments to the Articles of Incorporation,
  - (ii) amendments to the Articles or Bylaws changing proxy rights,
  - (iii) removal of a Director without cause,
  - (iv) filling vacancies on the Board of Directors,
  - (v) the sale, lease, exchange, conveyance, transfer or other disposition of all or substantially all of the Corporate assets,
  - (vi) the principal terms of a merger or the amendment of a merger agreement,
  - (vii) the election to dissolve the Corporation,
  - (viii) contracts or transactions between the Corporation and one or more Directors or between the Corporation and an entity in which a Director has material financial interest, and

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(ix) a plan of distribution of assets to the members when the Corporation is in the process of winding up.

(c) The Corporation's philosophy is to promote a "one Principal Member, one vote" environment, and the existence of proxy voting is intended to enable voting by Principal Members absent from any particular meeting. The Corporation discourages the solicitation and gathering of proxies by any one or a small group of Principal Members in order to further a particular position to be voted upon. Therefore, the validity of the submission of a material number of proxy votes by one or a small group of Principal Members may be challenged by any Principal Member eligible to vote and present in person at the particular meeting. Such a proxy challenged will be decided by a vote of the Principal Members eligible to vote and present in person at the particular meeting. If two-thirds (2/3) of these Principal Members vote in favor of the challenge, the challenged proxies shall be declared not valid.

### **Section 4.8. Material Relationship**

At all meetings of the Corporation any Principal Member eligible to vote that is at the time of such vote an Affiliate (as defined in Section 3.2(b) herein) of another Principal Member shall disclose the existence of such relationship to the meeting chairperson and refrain from voting

### **Section 4.9. Written Consents**

(a) Subject to the provisions of this Subsection, any action required or permitted to be taken at a meeting of the members of the Corporation by the California Nonprofit Corporations Code, the Articles of Incorporation, or the Bylaws (including the election of directors) may be taken without a meeting and without prior notice upon compliance with this Section 4.9.

(b) Approval by written ballot pursuant to this Section shall be valid only when the number of votes cast by ballot within the time specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the proposal at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) The Corporation shall distribute one written ballot to each Principal Member entitled to vote on the matter. Such ballots shall be mailed or delivered in the manner required by Section 4.4 of these Bylaws. All solicitations of votes by written ballot shall:

(i) indicate the number of responses needed to meet quorum requirements,

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(ii) state the percentage of approvals necessary to pass the measure or measures, and

(iii) specify the time by which the ballot must be received in order to be counted.

(d) Each ballot so distributed shall:

(i) set forth the proposed action,

(ii) provide the voting Principal Members an opportunity to specify approval or disapproval of each proposal, and

(iii) provide a reasonable time in which to return the ballot to the Corporation.

(e) If the Corporation has one hundred (100) or more Principal Members any written ballot distributed to ten (10) or more Principal Members shall provide, subject to reasonable specified conditions, that if the Principal Member solicited specifies a choice with respect to the matter being voted upon, the vote shall be cast in accordance with that specification. A written ballot may not be revoked.

(f) Whenever action is taken pursuant to Subsections (a) and (b) of this Section, the written consents of the Principal Members consenting thereto shall be filed with the minutes of proceedings of members.

### **Section 4.10. Record Date for Member Notice**

(a) For the purposes of determining which Principal Members are entitled to receive notice of any meeting, to vote, to give consent to corporate action without a meeting, or to take other action, the Board of Directors may fix, in advance, a "record date," which shall not be more than ninety (90) nor fewer than ten (10) days before the date of any such meeting, nor more than sixty (60) days before any such action without a meeting. Only Principal Members of record on the date so fixed are entitled to notice, to vote, to give consents, or take other action, as the case may be.

## **ARTICLE 5**

### **DIRECTORS**

#### **Section 5.1. Number and Election**

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**(a)** The properties and business of this Corporation shall be managed, and all corporate powers shall be exercised by or under the direction of its Board of Directors. The authorized number of Directors shall be no less than five (5) nor more than eleven (11). Each Director shall be elected by the Principal Membership at an Annual meeting, or as otherwise specified herein. The Board of Directors shall by resolution approve the number of Director positions to be filled at each Annual meeting and the length of term for each Director position, provided that the term shall be at least one (1) and no more than three (3) years. A Director may serve a maximum of three (3) consecutive terms. A Director shall be required to resign if his/her employer ceases to be a Principal Member in good standing or if the Director leaves the employment of the Principal Member.

**(b)** The Directors shall be selected from employees of Principal Members, but no more than one Director may be employed by any one Principal Member. The candidates for Director shall be identified by the Membership Committee in accordance with Section 7.3 herein. Candidates for Director may also be nominated by the membership at large.

**(c)** The President and Chairman of the Board shall be elected by the Board from the members of the Board of Directors. The Vice President(s), Secretary, Treasurer and Executive Director may also serve as members of the Board of Directors. Officers who are not members of the Board of Directors shall be ex-officio members but shall not be voting members of the Board.

### **Section 5.2. Vacancies**

**(a)** A vacancy or vacancies in the Board of Directors shall be deemed to exist on the occurrence of the following:

**(i)** the death, resignation, or removal of any Director;

**(ii)** the declaration by resolution of the Board of Directors of a vacancy in the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony or has been found by final order or judgment of any court to have breached a duty under the California Corporations Code §7231 and/or the California Nonprofit Corporations Code;

**(iii)** the vote of a majority of all Principal Members to remove a Director;

**(iv)** the increase of the authorized number of Directors;



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- (v) the failure of the Principal Members, at any meeting of the members of the Corporation at which any Director or Directors are to be elected, to elect the number of Directors to be elected at such meeting, or

the automatic removal of a Director who has terminated their employment with a Principal Member, or who is employed by a Principal Member whose membership in the Corporation has been suspended or otherwise ended.

(b) Except as provided in this paragraph, any Director may resign, which resignation shall be effective on giving written notice to the Chairman of the Board, the Secretary, or the Board of Directors, unless the notice specifies a later time for the resignation to become effective. If the resignation of a Director is effective at a future time, the Board of Directors may elect a successor to take office when the resignation becomes effective. No Director may resign where the Corporation would then be left without a duly elected Director or Directors in charge of its affairs.

(c) Any Director may be removed, with or without cause, by the vote of the majority of the Principal Members:

- (i) at a Special meeting called for that purpose,
- (ii) at any Annual or General meeting, provided notice of that meeting and of the removal question are given as provided in Section 4.4, or
- (iii) by written ballot as provided in Section 4.9.

(d) Any vacancy in the Board of Directors shall be filled for the unexpired portion of the term of the preceding Director by a majority vote of the Directors present at any meeting of the Board of Directors at which a quorum exists. If no quorum exists, the vacancy may be filled by (i) the unanimous written consent of the Directors then in office, (ii) the affirmative vote of a majority of the Directors then in office at a meeting complying with the notice requirements of Section 5.4(c) of these Bylaws or (iii) a sole Director. In filling any vacancy, the Board of Directors may fill the vacancy with an individual who is an employee of any Principal Member not currently represented on the Board of Directors. If no replacement can be found to fill the vacancy, the vacancy shall be filled at the next Annual meeting. A Director who resigns due to the requirement of Section 5.1(a) of these Bylaws may be elected by the Board or the Principal Members to succeed him/herself provided that he/she remains eligible for board membership.

### **Section 5.3. Powers**

The Board of Directors shall have power to:

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- (a)** Elect all Officers and appoint all agents of the Corporation and prescribe their duties and fix their compensation except as otherwise provided by these Bylaws.
- (b)** Appoint such Committees of the Board and/or the membership as may be found necessary or desirable to carry out the objects and purposes of the Corporation, and to fix their powers and prescribe their duties. Notwithstanding anything contained herein, there shall be the Committees set forth in Articles 7 and 8 herein.
- (c)** Select a management service for administering the day-to-day activities necessary for the conduct of business of the Corporation, and fix and prescribe its duties and compensation.
- (d)** Bond such Officers, agents, and employees of the Corporation as may be necessary in such amounts and with such sureties as may be reasonable.
- (e)** Designate depositories for the Corporation, rent safety deposit vaults, and provide the manner of signing checks, notes, bills, and other evidences of indebtedness of the Corporation.
- (f)** Invest and reinvest the funds of the Corporation and to change such investments from time to time.
- (g)** In general do all lawful things and exercise all such lawful powers as are not vested in the members of the Corporation and which will promote the objects and purposes of the Corporation.
- (h)** Interpret and administer these Bylaws and other documents and agreements related to the Corporation.

### **Section 5.4. Meetings**

- (a)** Meetings of the Board of Directors may be held either within or without the state of California. Regular meetings of the Board of Directors may be held at such intervals as shall be determined by the President and/or Chairman of the Board of Directors. Such regular meetings may be held without notice of the time and place except announcement at the last previous regular meeting of the Board of Directors. Notice shall be given to newly elected Directors of the first meeting of the Board of Directors following the Annual meeting of the Corporation. Any meeting, regular or special, may be held by telephone conference or similar communication equipment, so long as all Directors participating in

## **Optical Internetworking Forum Bylaws**

the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting.

**(b)** Special meetings of the Board of Directors may be called by the Chairman or President on at least seven (7) days notice prior to the meeting of the date, time, and place given either personally, by mail, or by electronic transmission with acknowledgment of receipt. In addition, special meetings of the Board of Directors shall be called by the Chairman or President on like notice on the written request of one-third (1/3) of the Board of Directors.

**(c)** Notice of any meeting need not be given to any Director who signs a waiver of notice, whether before or after the meeting. The attendance of any Director at a meeting without protesting prior to the conclusion of the meeting the lack of notice of meeting shall constitute a waiver of notice by the Director. Notice of an adjourned meeting need not be given if the time and place are fixed at the meeting adjourned and if the period of adjournment does not exceed ten (10) days in any one adjournment. Notice shall be given to any Director absent at any adjourned meeting of the new date, time and place of the meeting.

### **Section 5.5. Quorum and Voting**

Fifty-one percent (51%) or more of the Board of Directors shall be necessary to constitute a quorum for the transaction of business and the act of fifty-one percent (51%) or more of the Directors present at any meeting at which there is a quorum shall be an act of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of any Director, if any action taken is approved by at least a majority of the quorum required for meeting.

### **Section 5.6. Compensation**

Directors shall receive no compensation for their services as Directors. For attendance at meetings of the Board of Directors each Director so attending may, under certain unusual circumstances as may be approved by the Board of Directors, be paid a sum to defray reasonable and actual expenses of attendance.

### **Section 5.7. Written Consent**

Notwithstanding anything contained herein to the contrary, any action required or permitted to be taken pursuant to authorization voted at a meeting of the Board of Directors may be taken without a meeting if, prior or subsequent to the action, all members of the Board of Directors consent thereto in writing and the written consents are filed with the minutes of the proceedings of the Board of Directors.

# Optical Internetworking Forum Bylaws

## ARTICLE 6

### OFFICERS

#### **Section 6.1. Election and Tenure**

The Officers of the Corporation shall be elected by the Board of Directors annually after the Annual meeting of members and shall serve at the pleasure of the Board of Directors, subject to the rights, if any, of any Officers under contract of employment. The Officers of the Corporation shall be a Chairman of the Board of Directors, a President, a Vice President, a Secretary, and a Treasurer. No Officer, except the President and Chairman, need be a Director. The Board of Directors may elect such other Officers, including additional Vice Presidents, assistant Secretaries and assistant Treasurers as it may deem necessary, who shall have such authority and perform such duties as from time to time may be prescribed by the Board of Directors. The offices of the Chairman of the Board and President may be filled by the same individual. Board members may, when there is a lack of qualified candidates, concurrently serve in one or more Officer positions. Officers shall hold their offices for one (1) year or until their successors are chosen. Any Officer may be removed with or without cause at any time by resolution passed by the Board of Directors. In the event of the death, resignation, removal, or disqualification of any Officer, the vacancy shall be filled by the Board of Directors. The Officers shall not receive any compensation for their services, except as may be provided from time to time by resolution of the Board of Directors.

#### **Section 6.2. Chairman of the Board**

The Chairman of the Board shall set the agenda and preside at all meetings of the Board of Directors. The Chairman of the Board shall also act as liaison from and spokesperson for the Board of Directors and shall participate in long term planning for the Corporation. The Chairman of the Board shall perform all such other duties as pertain to the Office of the Chairman of the Board and shall perform such other duties as the Board of Directors shall prescribe by resolution.

#### **Section 6.3. President**

The President shall be a member ex-officio of all Committees of the Corporation. The President shall perform all such other duties as pertain to the office of the President and shall see that all resolutions of the Board of Directors shall be carried into effect. In the absence of the Chairman of the Board from any meeting of the Corporation or the Board of Directors, the President shall preside.

#### **Section 6.4. Vice President**

## **Optical Internetworking Forum Bylaws**

The Vice President shall in the absence of the President, perform the duties and exercise the powers of the President and shall perform such other duties as the Board of Directors or the Principal Members shall prescribe by resolution. In the event that there is more than one Vice President, the Board of Directors shall designate, at the time of the election of the Vice Presidents, which Vice President position shall perform the duties of the President during any absence of the President.

### **Section 6.5. Secretary**

The Secretary shall keep a correct list of the names and addresses of the members of the Corporation, shall attend all meetings of the members and of the Board of Directors and shall keep a correct record of all the transactions at such meetings in a minute book belonging to the Corporation. The Secretary shall be the custodian of the corporate records, except those pertaining to the office of the Treasurer. The Secretary shall send out notice of meetings of the members and of the Board of Directors and shall conduct all correspondence other than that appertaining to the office of President and Treasurer. The Secretary shall perform such other duties as pertain to the office of the Secretary and shall do all such things and carry out all such orders as are required by the members of the Corporation or the Board of Directors. The Secretary shall keep or cause to be kept at the principal office of the Corporation in California a copy of the Articles of Incorporation and Bylaws as amended to date. The Secretary may nominate an Assistant Secretary to perform some of the duties as they pertain to the office of the Secretary. Such nomination must be approved by a vote of the Board.

### **Section 6.6. Treasurer**

If required by the Board of Directors, the Treasurer shall give bond in such amount and with such surety as may be designated by the Board of Directors, the cost of such bond to be paid by the Corporation. The Treasurer shall receive, disburse, and collect any moneys due and belonging to the Corporation and shall, under the supervision of the Board of Directors, deposit the moneys for the Corporation, in its name and to its credit in such depository or depositories as may be designated by the Board of Directors. The Treasurer shall invest all funds not needed for current disbursements, or may be directed by the Board of Directors, and shall pay all bills and make all disbursements authorized by the Board of Directors, taking proper vouchers for such disbursements. The Treasurer shall notify the Secretary of all delinquencies in the payment of special assessments, dues, and initiation fees by members and shall render a full and annual report of the financial condition of the Corporation to the Directors prior to the Annual meeting of the membership. The Treasurer shall perform all other duties required by resolution of the Principal Members of the Corporation or the Board of Directors and shall perform all duties as pertain to the office of Treasurer. The Treasurer shall maintain or cause to maintain the financial records of the Corporation according to the Generally Accepted Accounting Principles (GAAP). The Treasurer may nominate an assistant Treasurer to perform some of the duties as they pertain to the office of the Treasurer. Such nomination must be approved by a vote of the Board. The

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Treasurer will provide to the Board of Directors, in a timely manner, an audited annual financial report.

### **Section 6.7. Counter-Signature**

The Treasurer, under authorization of the Board of Directors is authorized to approve disbursements up to the amount of \$5,000 per occurrence. Expenditures over \$5,000 per occurrence will require the approval of two Officers of the Corporation. For this purpose, the Executive Director shall be considered an officer of the Corporation. Proper vouchers must be taken for all such disbursements.

## **ARTICLE 7**

### **ADVISORY (BOARD) COMMITTEES**

#### **Section 7.1. Committee Authority**

(a) The Board of Directors by resolution adopted by a fifty-one percent (51%) or more vote of all Directors comprising the Board of Directors shall appoint one or more Advisory (Board) Committees, each of which shall include as members at least two (2) individuals who are Directors of the Corporation. To the extent provided in such resolution, each such Advisory Committee shall have all the authority of the Board, except that no such Committee, regardless of Board resolution, may

(i) Fill vacancies on the Board of Directors or on any Committee;

(ii) Amend or repeal the Articles of Incorporation or Bylaws or adopt new Bylaws;

(iii) Amend or repeal any resolution of the Board;

(iv) Designate any other Committees of the Board or appoint the members of any Advisory Committee;

(v) Approve any transaction to which the Corporation is a party and as to which one or more Directors has a material financial interest or between the Corporation and one or more of its Directors or between the Corporation and any corporation or firm in which one or more of its Directors has a material financial interest.

(b) The Corporation may have five (5) Advisory Committees or more as deemed necessary: the Membership Committee, the Intellectual Property Committee, the Finance

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and Audit Committee and the Liaison Committee. The duties of the five (5) Advisory Committees are as follows:

### **Section 7.2. Membership Committee**

The size and composition of the Membership Committee shall be determined by the Board of Directors. The Membership Committee shall review the qualifications of all applicants for membership and recommend to the Board of Directors the approval or rejection of each application. The Committee shall consider whether an applicant for membership understands the commitments required of members of the Corporation. The Committee shall consider and accept whether applicants for membership have relationships with existing members or Persons for whom the relationship would interfere with the applicants ability to meet the responsibility of independent representation on Committees of the Corporation (as defined in part by Section 3.2(b) herein) and may recommend or require that such applicants be considered for Auditing Membership. Notwithstanding anything contained in this Section 7.3, the Membership Committee may consider any facts or circumstances it deems necessary, desirable, or appropriate in making its proposal whether to approve the membership of an applicant. The Committee shall review the standing of all members and is empowered to recommend to the Board of Directors a change in classification of a member or the expulsion, suspension, or any other sanction deemed necessary and reasonable under the circumstances. The Committee shall also propose nominees to the Board of Directors which shall stand for election at the Annual meeting of the Corporation.

### **Section 7.3. Finance and Audit Committee**

The size and composition of the Finance and Audit Committee shall be determined by the Board of Directors. The Committee shall review the finances of the Corporation and prepare and propose to the Board of Directors the dues, fees, and special assessments to be paid to the Corporation. The Committee shall recommend an annual budget or amendments thereto to the Board of Directors. The Committee shall recommend auditors to the Board of Directors.

### **Section 7.4. Liaison Committee**

The size and composition of the Liaison Committee shall be determined by the Board of Directors. The Committee, under the policy guidance of the Board of Directors, shall create liaisons with other national and international industry forums, standards bodies, consortia, and similar groups.

### **Section 7.5. Intellectual Property Committee**

The size and composition of the Intellectual Property Committee shall be determined by the Board of Directors. The Committee shall review and propose to the Board of Directors intellectual property policies to be adopted by the Corporation. The Committee shall propose licensing

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arrangements and technical submission policies, among other things, to protect the legitimate intellectual property rights of Members and facilitate the activities of the Corporation.

### **Section 7.6. Enactment of Advisory Committees**

The Board of Directors shall constitute the membership of each unenacted Advisory Committee. Advisory Committees are enacted by a resolution of the Board.

### **Section 7.7. Quorum and Voting**

A fifty-one percent (51%) majority of the members of the Committees provided for in this Article 7 shall be necessary to constitute a quorum for the transaction of business. A fifty-one percent (51%) or more vote of the members shall be sufficient to pass a resolution of these Committees. Meetings and actions of Advisory Committees shall be governed by, and held and taken in accordance with, the provisions of Article 5 of these Bylaws, concerning meetings of Directors, with such changes in the context of those Bylaws as are necessary to substitute the Advisory Committee and its members for the Board of Directors and its members, except that the time for regular meetings of Advisory Committees may be determined either by resolution of the Board of Directors or by resolution of the Advisory Committee. Special meetings of Advisory Committees may also be called by resolution of the Board of Directors. Notice of special meetings of Advisory Committees shall also be given to any and all alternate members, if any, who shall have the right to attend all meetings of these Committees. Minutes shall be kept of each meeting of any Advisory Committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the governance of any Advisory Committee not inconsistent with the provisions of these Bylaws.

### **Section 7.8 Composition**

Members of any committee of the Corporation must be employed by a member of the Corporation. Only employees of Principal Members may vote on any committee matter.

## **ARTICLE 8**

### **WORKING COMMITTEES**

The Board of Directors by resolution shall appoint one or more Working Committees, each of which shall consist of Representatives of the members of the Corporation as provided by the Board of Directors. To the extent provided in such resolution, each such Working Committee shall have the authority prescribed by the Board of Directors, except to the extent prohibited by California Nonprofit Mutual Benefit Corporation Law. The Corporation shall have at least two (2) Working Committees: the Technical Committee and the Market Awareness and Education



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Committee (MA&E). The Corporation may also establish "Other Working Committees" as set forth in Article 9 herein.

### **ARTICLE 9**

#### **OTHER WORKING COMMITTEES**

##### **Section 9.1. Generally.**

Other Working Committees shall be formed by the Board of Directors as stated in Article 8 to serve at the pleasure of the Board. The Working Groups of such Other Working Committees may be formed by the Board of Directors. These Other Working Committees shall have a written charter which clearly states the purpose and objects of the Committees and is entirely consistent with the goals of the Corporation as stated in Article 1.

##### **Section 9.2. Chairs and Responsibilities**

(a) Other Working Committees shall have a Chairperson and Vice Chairperson, elected by the Principal Members for a one (1) year term. The chairperson may serve for a maximum of three (3) consecutive terms. The Chairperson sets the overall direction of the Committee. The Chairperson sets the agenda and schedule for the meetings, conducts the meetings and bears responsibility for adequate communication to all Committee members. Notification of meetings of Other Working Committees should be made to the Principal Member Representatives of these Committees at least three (3) weeks in advance. The Chairperson assigns responsibility for writing meeting minutes in the absence of the Vice-Chairperson.

(b) The Vice-Chairperson takes minutes for all meetings, conducts meetings in the absence of the chairperson and assists the Chairperson in the operation of the Committee. The Vice-Chairperson keeps roll of attendees and assures that participants are Principal Member Representatives or permitted observers. The Vice Chairperson ensures timely distribution (by electronic mail or otherwise) of minutes and contributions discussed at the meeting to the Corporation's Executive Director who makes them available to all members and registered observers in accordance with Corporation policy and procedures.

##### **Section 9.3. Participation**

Participation and attendance at the meetings of the Other Working Committees will be according to guidelines and policies established by the Board of Directors. Additional subject matter experts may attend as required. However, such attendance must be communicated, by electronic mail, to the Chairperson and approved by the Chairperson in advance. Once discussions concerning

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the expert's area are concluded, the expert may remain but must refrain from taking active part in the meeting.

Additionally, all technical meetings and events of the Corporation shall be open to attendance by interested and technically qualified members of the public ("Observers"), subject to applicable registration and attendance requirements, Observer rules of engagement approved by the Board, and payment of applicable fees.

It is the Chairperson's responsibility to enforce the foregoing rules and see that an orderly meeting occurs including the censure or ejection of disruptive participants/observers.

### **ARTICLE 10**

#### **NO WARRANTY**

Members and the Corporation makes no express or implied warranty as to any matter whatsoever, including the conditions of the research or any invention or product, whether tangible or intangible, made or developed by the Corporation or in the course of its activities, or the ownership, merchantability, or fitness for a particular purpose, or any research, invention, product or submission. This provision shall survive resignation, expulsion or cessation of business of any member or dissolution of the Corporation.

### **ARTICLE 11**

#### **EXECUTIVE DIRECTOR**

The Corporation may have an Executive Director which shall be appointed by or staffed as directed by the Board of Directors. The Executive Director shall perform those functions which are necessary for the administration of the Corporation, as more particularly described in these Bylaws or as delegated by the Board of Directors.

### **ARTICLE 12**

#### **DISSOLUTION**

##### **12.1. Dissolution of Property**

In the event of dissolution of this Corporation, any property of the Corporation held subject to a valid condition requiring the return, transfer or conveyance of such property on dissolution to a

## **Optical Internetworking Forum Bylaws**

member, shall, after paying the necessary expenses thereof, be returned to the member who contributed such property.

### **12.2. Dissolution of Assets**

Except for distributions in 12.1, all assets of the Corporation, if any, remaining after payment of necessary expenses, shall be distributed to either an entity which qualifies under Section 501(c)(6) of the Internal Revenue code of 1986, as amended (or any successor provision in any future Federal Income Tax law) and which has substantially similar purposes as this Corporation, or to an entity which qualifies under Section 501(c)(3) of the Internal Revenue Code, as amended (or any successor provision in any future Federal Income Tax Law).

## **ARTICLE 13**

### **FISCAL YEAR**

The fiscal year of the Corporation shall end on the thirty first (31st) day of December in each year.

## **ARTICLE 14**

### **INDEMNIFICATION**

#### **14.1. Indemnification of Directors**

To the fullest extent permitted by law, the Corporation shall indemnify its Directors, Officers, and employees, and other individuals described in Section 7237(a) of the California Corporations Code, including individuals formerly occupying any such position, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding", as that term is used in that Section of the California Corporations Code, and including an action by or the right of the Corporation, by reasons of the fact that the individual is or was an individual described in that Section of the California Corporations Code. "Expenses", as used in Bylaws, shall have the same meaning as in Section 7237(a) of the California Corporations Code.

#### **14.2. Request for Indemnification**

On written request to the Board of Directors by any person seeking indemnification under Section 7237(a) or Section 7237(c) of the California Corporations Code, the Board of Directors shall promptly determine under Section 7237(c) of the California Corporations Code whether the applicable standing of conduct set forth in Section 7237(b) or Section 7237(c) has been met and, if so, the Board of Directors shall authorize indemnification. If the Board of Directors cannot

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authorize indemnification because the number of Directors who are parties to the proceedings with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to that proceeding, the Board of Directors shall promptly call a meeting of the Principal Members of the Corporation. At that meeting, the Principal Members shall determine under Section 7237(e) whether the applicable standard of conduct set forth in Section 7237(b) or Section 7237(c) has been met and, if so, the Principal Member Representatives present at the meeting in person or by proxy shall authorize indemnification.

### **14.3. Indemnity Expense**

To the fullest extent permitted by law and except as otherwise determined by the Board of Directors in a specific instance, expenses incurred by a person seeking indemnity under this Bylaw shall be advanced by the Corporation before final disposition of the proceeding, on receipt by the Corporation of an undertaking by or on behalf of that individual that the advance will be repaid unless it is ultimately determined that the individual is entitled to be indemnified by the Corporation for those expenses.

### **14.4. Indemnity Insurance**

The Corporation shall have the power to purchase and maintain insurance on behalf of any individual who is or was a Director, Officer, employee or agent of the Corporation, against any liability asserted against or incurred by such individual in such capacity, or arising out of such individual's status as such, whether or not the Corporation would have the power to indemnify such individual against such liability under the provisions of this Bylaw; *provided, however*, that the Corporation shall have no power to purchase and maintain such insurance to indemnify any Director, Officer or agent of the Corporation for any self-dealing transactions, as described in Section 7237 of the California Nonprofit Corporations Code.

## **ARTICLE 15**

### **EFFECTIVE DATE AND AMENDMENTS**

#### **Section 15.1 Effective Date**

These Bylaws shall become effective immediately upon their adoption. Amendments to these Bylaws shall become effective immediately upon their adoption unless the Board of Directors of this corporation is adopting them provided that they are to become effective at a later date.

#### **Section 15.2 Amendments**

## **Optical Internetworking Forum Bylaws**

Pursuant to the California Nonprofit Mutual Benefit Corporation Law, Section 7150, these Bylaws may be amended or repealed and new Bylaws adopted by the vote of the majority of the members of the Board of Directors then in office upon proper notice, unless the action would (i) materially and adversely affect the rights of members as to voting, dissolution, redemption, or transfer; (ii) increase or decrease the number of members authorized in total or for any class; or (iii) effect an exchange, reclassification or cancellation of all or a part of the memberships. Additional approval by the members of an affected class is needed in situations listed in Section 7150(b). Bylaws affecting the following may be adopted, amended or repealed only by the affirmative vote of a majority of the votes represented and voting at a duly held meeting of members at which a quorum is present, or by written ballot:

- a. A Bylaw specifying or changing the maximum or minimum number of Directors;
- b. A Bylaw increasing the term of office of Directors;
- c. A Bylaw increasing the quorum of members;
- d. A Bylaw repealing, restricting, creating or expanding proxy rights; and
- e. A Bylaw repealing or amending the right to cumulative voting.

### **ARTICLE 16**

#### **LAWS**

Notwithstanding anything contained in these Bylaws to the contrary, these Bylaws shall apply to members of the Corporation and shall be interpreted in a manner consistent with all federal and state laws and the California Nonprofit Corporation Law, except as permitted by Section 7235 of the California Nonprofit Corporation Law.

### **ARTICLE 17**

#### **CONTRACTS AND LOANS WITH DIRECTORS AND OFFICERS**

##### **Section 17.1. Contracts with Directors and Officers**

**(a)** No Director or Officer of this Corporation, nor of any other corporation, firm, association, or other entity in which one or more of this Corporation's Directors or Officers are directors or have a material financial interest, shall be interested, directly or indirectly, in any contract or other transaction with this Corporation, unless:

**(i)** the material facts regarding such Director's or Officer's financial interest in such contract or transaction and/or regarding such common Directorship,

## **Optical Internetworking Forum Bylaws**

Officership, or financial interest are fully disclosed in good faith and are noted in the minutes, or are known to all members of the Board prior to consideration by the Board of such contract or transaction;

(ii) such contract or transaction is authorized in good faith by a majority of the Board by a vote sufficient for that purpose without counting the vote or votes of such interested Director(s);

(iii) prior to authorizing or approving the transaction, the Board considers and in good faith determines after reasonable investigation under the circumstances that the Corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and

(iv) the Corporation enters into the transaction for its own benefit, and the transaction is fair and reasonable to the Corporation at the time the transaction is entered into; or

(b) the material facts regarding such Director's or Officer's financial interest in such contract or transaction and/or regarding such common Directorship, Officership, or financial interest are fully disclosed in good faith and are noted in the minutes of a membership meeting, or are known to all Principal Members, prior to consideration by the Principal Members of such contract or transaction, and such transaction is approved by a majority of the Principal Members in good faith, with any membership of an interested Director or Officer not being entitled to vote thereon.

### **Section 17.2. Loans to Directors and Officers**

The Corporation shall not make any loan of money or property to or guarantee the obligation of any Director or Officer.

## **ARTICLE 18**

### **MISCELLANEOUS**

#### **Section 18.1. Maintenance of Corporate Records**

(a) The Corporation shall keep:

(i) Adequate and correct books and records of account;

## **Optical Internetworking Forum Bylaws**

- (ii) Minutes in written or electronic form of its members, Board, and Committees of the Board (i.e., Advisory Committees as described herein);
  - (iii) A record of its members, giving their names and addresses and the class of membership held by each.
- (b) All such records shall be kept at the Corporation's principal office.

### **Section 18.2. Principal Members' Inspection Rights**

- (a) Any Principal Member of the Corporation may:
- (i) inspect and copy the records of members' names and addresses and voting rights during usual business hours on five (5) days' prior written demand on the Corporation, stating the purpose for which the inspection rights are requested; or
  - (ii) obtain from the Executive Director of the Corporation, on written demand and on the tender of the Executive Director's usual charges for such a list, if any, a list of names and addresses of Principal Member Representatives who are entitled to vote for the election of Directors, and their voting rights, as of the most recent record date for which that list has been compiled, or as of a date specified by the demanding Principal Member after the date of demand. The demand shall state the purpose for which the list is requested. This list shall be made available to any such Principal Member Representative by the Executive Director on or before the later of ten (10) days after the demand is received or the date specified in it as the date by which the list is to be compiled.
- (b) Any Principal Member Representative of the Corporation authorized to vote may inspect the accounting books and records and minutes of the proceedings of the members and the Board and Committees of the Board, at any reasonable time, for a purpose reasonably related to such Representative's interest.
- (c) Any inspection and copying under this Section may be made by the Principal Member's Representative or by an agent or attorney of the Principal Member and the right of inspection includes the right to copy and make extracts.

### **Section 18.3. Maintenance and Inspection of Articles and Bylaws**

## **Optical Internetworking Forum Bylaws**

The Corporation shall keep at its principal office the original or a copy of the Articles and Bylaws as amended to date, which shall be open to inspection by any member of the Corporation at all reasonable times during office hours.

### **Section 18.4. Inspection by Directors**

Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the Corporation. This inspection by a Director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

### **Section 18.5. Annual Statement of Certain Transactions and Indemnifications**

Pursuant to Section 8322 of the California Nonprofit Corporation Law, the Board of Directors shall cause an annual statement of certain transactions and indemnifications to be delivered to the Board of Directors not later than one hundred twenty (120) days after the close of the fiscal year. If this corporation issues an annual report, this requirement shall be satisfied by including the required information, as set forth below, in said annual report. Such annual statement shall describe:

- (a) The amount and circumstances of any loans, guarantees, indemnifications or advances aggregating more than Ten Thousand Dollars (\$10,000) paid or made during the fiscal year of this corporation to any officer or Director of this corporation; provided, that no such report need be made in the case of any loan, guaranty, indemnification or advance approved by the members; and
- (b) Any “covered transaction” (defined below) during the previous fiscal year of this corporation involving (1) more than Fifty Thousand Dollars (\$50,000) or, (2) which was one of a number of “covered transactions” in which the same “interested person” (defined below) had a direct or indirect material financial interest, and which transactions in the aggregate involved more than Fifty Thousand Dollars (\$50,000). The statement shall describe the names of any “interested persons” involved in such covered transactions, including such “interested person’s” relationship to the transaction, and, where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which the interested person is only a partner, only the interest of the partnership need be stated. For the purposes of this section, a “covered transaction” is a transaction in which this corporation, or its parent or subsidiary, was a party, and in which either of the following had a direct or indirect material financial interest:



## **Optical Internetworking Forum Bylaws**

(i) Any Director or officer of this corporation, or its parent or subsidiary;  
or

(ii) Any holder of more than ten percent (10%) of the voting power of this corporation, or of its parent or subsidiary.

For purposes of this section, any person described in either subparagraph (i) or (ii) above is an “interested person.”

### **Section 18.6. Public Inspection and Disclosure**

The corporation shall have available for public inspection at its principal office a copy of its three (3) most recent annual exempt organization information returns and a copy of its application for recognition of exemption and determination letter. In addition, in the event that the corporation provides services or information to the public for a fee, and such services or information are available from the federal government free of charge or for a nominal cost, such availability shall be conspicuously disclosed in an easily recognizable format in any solicitation or offer by the corporation.

### **Section 18.7. Export Control and Compliance**

The technical data and technology inherent in the materials and information produced, provided and/or made accessible by the Corporation or its members in connection with its activities may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations (“Export Control Laws”). Each Member, in connection with its participation in such activities, shall at all times comply with all applicable Export Control Laws, and agrees that any right of any Member as set forth in these Bylaws shall be subject to, and may only be exercised to the extent that it is not in conflict with, applicable law, including without limitation Export Control Laws.

### **Section 18.8. Political Activities**

The corporation shall not make any political expenditure or lobbying expenditure which will result in the loss of, or otherwise adversely affect, its status as a tax-exempt organization under the Internal Revenue Code of 1986, as amended.

I, certify that I am the presently elected and acting Executive Director of the Optical Internetworking Forum, a California Nonprofit Mutual Benefit Corporation, and the above Bylaws,

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consisting of (\_\_\_\_) pages, including this page, are the Bylaws of this Corporation as adopted by a written consent ballot of the Principal Members of the Corporation completed on \_\_\_\_\_, 1998.

Date: \_\_\_\_\_, 1998