INFINIBAND[SM] TRADE ASSOCIATION
PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT ("Agreement") is entered between InfiniBand Trade Association[1] ("IBTA"), an Oregon non-profit mutual benefit corporation, and the undersigned individual or entity ("Participant").

IBTA and Participant agree as follows:

1. DEFINITIONS

Definitions for this Agreement are set forth on Attachment 1. Defined terms are used with initial letters capitalized.

2. PARTICIPATION

2.1 Participation. Subject to the terms and conditions of this Agreement, Participant wishes to participate in certain permitted activities of IBTA, and IBTA agrees to permit such participation. The scope of permitted participation shall be as set forth in Section 2.2.

2.2 Permitted Activities. Participant shall be permitted to participate in the activities of IBTA only to the following extent: _____
_____
_____.
Permitted participation may be expanded or limited by the IBTA Steering Committee ("Steering Committee"), acting in its sole discretion.

2.3 Not a Member. Participant acknowledges and agrees that nothing in this Agreement shall be deemed to make Participant a Member of IBTA. Participant agrees that it does not have the rights, privileges or benefits of a Member.

3. OBLIGATIONS OF PARTICIPANT

3.1 Dues and Other Fees. The Participant shall pay dues, fees and other assessments applicable to its participation, as established from time to time by the Steering Committee.

3.2 Expenses. The Participant shall bear its own costs and expenses for its participation in IBTA, such as travel, employee compensation, and incidental expenses.

3.3 Antitrust Policy. The Participant agrees to comply with all applicable antitrust laws pertaining to the Participant's participation in IBTA. Nothing in this Agreement shall be construed to require or permit conduct that violates any applicable antitrust law.

[1] InfiniBand[SM] is a service mark of the InfiniBand Trade Association.

4. INFORMATION

4.1 Confidential Information. Participant agrees that Confidential Information is confidential and shall be maintained in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. Participant and its Affiliates may neither disclose, use, nor distribute Confidential Information, unless specifically allowed under Section 2.2. This obligation of confidentiality will expire three (3) years from the date of the disclosure to the Participant. However, Participant will not be liable for the disclosure, use, or distribution of any information that is:

(i) in the public domain other than by the recipient's breach of a duty of confidentiality;
(ii) rightfully received from a third party without any obligation of confidentiality; or
(iii) rightfully known to the recipient without any limitation on use or disclosure prior to its receipt from the disclosing party; or
(iv) independently developed by employees or contractors of the recipient; or
(v) disclosed as required by law; or
(vi) made public by action of the Steering Committee; or
(vii) inherently disclosed in the manufacture, marketing, sale or maintenance of a product.

The obligations of this Section shall survive termination of this Agreement.

4.2 Residuals. Any party shall be free to use the residuals of Confidential Information for any purpose including use in the development, manufacture, marketing and maintenance of its products and services, subject only to the obligations herein with respect to disclosure of such Confidential Information. The term "residuals" means that Confidential Information in non-tangible form, which may be retained in the unaided memories of individuals who have had rightful access to such Confidential Information under this Agreement. It is understood that receipt of Confidential Information under this Agreement shall not create any obligation in any way limiting or restricting the assignment and/or reassignment of any employees. This Section 4.2 shall not be deemed to grant to any party a license under any other party's copyrights or patents.

5. INTELLECTUAL PROPERTY

5.1 Agreement to Grant Licenses. With respect to any Specification approved for release by the Steering Committee before this Agreement is terminated (except as otherwise provided in Section 6.2 and 6.3) and with respect to any Contribution Participant makes to a Draft Specification, Participant and its Affiliates hereby agree that, if they own or hereafter acquire patents or patent applications containing Necessary Claims, they will agree to grant to Members and Members' Affiliates, upon request, on reasonable and non-discriminatory terms, a nonexclusive, nontransferable, worldwide license under Participant's and its Affiliates' Necessary Claims, if any, to allow Members of IBTA to make, have made, use, import, offer to sell, lease and sell and otherwise distribute Compliant Portions, provided that such agreement to

license shall not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion. Participant agrees that it will not transfer patents having Necessary Claims for the purpose of circumventing this Section 5.1.

5.2 Limited Agreement to Disclose. In the event that the Participant has actual knowledge that the Participant or its Affiliates would be unwilling to provide a license to a work-in-progress of any Working Group, such Participant agrees to promptly provide written notification to the Secretariat and appropriate Work Group chairperson of such Participant's intent not to license. Nothing in this Section is intended to create a duty for a Participant to conduct a search of its patent portfolio.

5.3 Transfer of Necessary Claims to Third Parties. Any transfer by Participant to a third party of a patent having Necessary Claims shall be subject to: (i) the terms and conditions of this Agreement, and (ii) the agreement to grant licenses by the Participant to Members and their Affiliates pursuant to Section 5.1 of this Agreement.

5.4 Copyrights. The Participant hereby grants to IBTA a worldwide, royalty-free, irrevocable, non-exclusive, transferable copyright license (including author's rights) to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Contributions of the granting Participant solely for the purposes of developing, publishing and distributing (i) Specifications, Design Guidelines, and Programming Guidelines, and (ii) products based on such documents.

5.5 Trademarks. The Participant, for itself and its Affiliates, agrees not to assert against IBTA or any Member any trademark or trade name rights it may have now or hereafter in the term "InfiniBand™/℠,"[2] or any confusingly similar terms. In the event that IBTA proposes to adopt any other name or logo as a trademark or trade name, IBTA may notify the Participant in writing of the proposal. The Participant will have not less than forty-five (45) days' notice to review the trademark or trade name proposal ("Review Period"). The Participant agrees that unless the Participant provides written notice to the Secretariat of the Participant's challenge to the proposed trademark or trade name within the Review Period, then the Participant and its Affiliates shall not assert against IBTA or any Member any trademark or trade name rights they may have or thereafter possess in the proposed trademark or trade name. The Participant will not use any name or logo adopted by IBTA except to refer to a Specification and to products which comply with a Specification. Participant shall not use or adopt any trademarks for any product, service or specification likely to cause confusion with any trademarks or trade names adopted by IBTA, unless agreed to by the Steering Committee.

5.6 Use of Name. The Participant may publicly disclose that it is a Participant of the IBTA. However, the Participant may not identify any product or service as being sanctioned by, sponsored by or associated with the IBTA, or compliant with a Specification or Design or Programming Guideline, unless in accordance with policies and procedures which may be established by the IBTA. The IBTA shall have the right to include the Participant's name in any

[2] InfiniBand™ is a trademark of the InfiniBand Trade Association.

lists of Participants published by the IBTA and to announce that the Participant has started working with the IBTA.

6. TERM AND TERMINATION

6.1 Term. Unless terminated as provided herein, this Agreement shall remain in full force and effect, renewing annually upon the Participant's payment of dues.

6.2 Termination by Participant. The Participant may withdraw from participation by terminating this Agreement at any time upon the giving of written notice to the Secretariat. Participant shall be obligated to pay dues, assessments, or fees, which accrued prior to the effective date of termination.

After the effective date of termination, Participant shall remain subject to its agreement as set forth in Section 5.1 to grant a license of its Necessary Claims:

(i) as to any Specification approved for release more than sixty (60) days prior to the effective date of termination ("Committed Specifications");
(ii) as to any Contribution made by Participant to a Draft Specification, whether or not the Draft Specification is approved prior to the effective date of termination; and
(iii) for unmodified portions of Committed Specifications that are contained in Specifications approved after the effective date of Participant's termination. Such agreement shall extend to all Members of the IBTA, including Members who become Members after the effective date of Member's termination.

The agreement to license that survives under Section 6.2 shall terminate completely:

(i) as to any Specification which does not include all applicable requirements for interoperating, communicating or connecting with or to products that comply with Specifications that were in effect sixty (60) days prior to the effective date of Participant's termination; or
(ii) as to Specifications, any portion of which is inconsistent with or exceed the bounds of the specific purpose of the IBTA as stated in its Bylaws prior to or as of sixty (60) days before the effective date of Participant's termination.

6.3 Termination by IBTA. IBTA may terminate this Agreement on written notice, if Participant breaches its obligation under this Agreement, provided IBTA shall first give Participant written notice and thirty (30) days' opportunity to cure the breach. Participant shall be obligated to pay dues, assessments, or fees, which accrued prior to the effective date of termination.

After the effective date of termination, Participant shall be subject to its agreement as set forth in Section 5.1 to grant a license of its Necessary Claims

(i) as to any Specification approved for release more than sixty (60) days prior to the effective date of termination;
(ii) as to any Contribution made by Participant to a Draft Specification, whether or not the Draft Specification is approved prior to the effective date of termination; and

(iii) for unmodified portions of Committed Specifications that are contained in Specifications approved after the effective date of Participant's termination. Such agreement shall extend to all Members of the IBTA, including Members who become Members after the effective date of Member's termination.

The agreement to license that survives under Section 6.3 shall terminate completely:

(i) as to any Specification which does not include all applicable requirements for interoperating, communicating or connecting with or to products that comply with Specifications that were in effect sixty (60) days prior to the effective date of Participant's termination; or

(ii) as to Specifications, any portion of which is inconsistent with or exceed the bounds of the specific purpose of the IBTA as stated in its Bylaws prior to or as of sixty (60) days before the effective date of Participant's termination.

7. NO WARRANTY/LIMITATION OF LIABILITY/REPRESENTATION

7.1 NO WARRANTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL CONTRIBUTIONS, SPECIFICATIONS, AND GUIDELINES PROVIDED TO IBTA BY PARTICIPANT OR ITS AFFILIATES OR TO PARTICIPANT OR ITS AFFILIATES BY IBTA OR BY OR TO ANY MEMBER OR MEMBERS' AFFILIATES, ARE PROVIDED AND RELEASED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

7.2 LIMITATION OF LIABILITY. IN NO EVENT SHALL ANY PARTICIPANTS OR MEMBER OR IBTA BE LIABLE TO OTHER PARTICIPANTS OR TO MEMBERS OR TO IBTA FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.3 REPRESENTATION. THE PARTICIPANT REPRESENTS THAT ITS REPRESENTATIVES TO IBTA SHALL NOT SUBMIT A CONTRIBUTION THAT ITS REPRESENTATIVES KNOW VIOLATES THE PATENT, COPYRIGHT OR TRADE SECRET RIGHTS OF ANY THIRD PARTY.

8. OTHER PROVISIONS

8.1 No Transfer. The Participant may not transfer, assign, delegate, or sublicense any of its rights or obligations under this Agreement without the prior written consent of IBTA. Any attempted transfer in violation of this Section is null and void.

8.2 Notice. The Participant designates the representative identified below for the purpose of receiving notice under this Agreement. The Participant may change the designated representative by written notice to IBTA. If the Participant fails to designate a representative, notice may be sent to the Participant at its address stated below. Any notification made under this Agreement shall be deemed delivered on the next business day following it being sent by

electronic mail, by facsimile, by express mail or by courier, or three (3) days after being sent first-class mail, postage prepaid, addressed to the Participant's designated representative at the address provided. Notice of a breach of this Agreement and notice of termination of this Agreement shall be given both by express mail or by first class mail, postage prepaid, and, in addition, by electronic mail or by facsimile.

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

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

8.5 Governing Law. This Agreement shall be governed by and construed under, and the legal relations among the parties hereto shall be determined in accordance with, the laws of the State of New York, excluding conflict-of-law principles that would cause the application of the laws of any other jurisdiction.

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

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

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

8.9 Integration. This Agreement supersedes and replaces any and all prior representations, agreements and understandings relating to the Participant's participation in IBTA.

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

9. EFFECTIVE DATE

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

PARTICIPANT:

By:_____ Dated:_____

Printed Name:_____
Title:_____

Address:_____

_____

_____

Telephone Number:_____
Facsimile Number:_____

e-mail Address:_____

ACCEPTED AND AGREED:

INFINIBAND[SM] TRADE ASSOCIATION

By:_____ Dated:_____

Printed Name:_____

Title:_____

ATTACHMENT 1

DEFINITIONS

1.1 **Affiliates** means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists.

1.2 **Bylaws** means the IBTA corporate bylaws, as in effect and as amended from time to time, a copy of which is posted on the IBTA website: www:IBTAta.org.

1.3 **Compliant Portion** means only those specific portions of products (hardware, software or combinations thereof) that: (I) implement and are compliant with all relevant portions of a Specification, and (ii) are within the bounds of the Scope.

1.4 **Confidential Information** means and includes: (i) a Draft Specification, (ii) a Specification prior to its release by the Steering Committee; (iii) a Draft Design or Draft Programming Guideline; (iv) a Design Guideline or Programming Guideline prior to its release by the Steering Committee; (v) Contributions, (vi) written materials marked as confidential at the time of disclosure; (vii) orally-disclosed material that is designated as confidential at the time of disclosure and in a written memorandum sent to the Secretariat within thirty (30) days of disclosure, summarizing the Confidential Information sufficiently for identification; and (viii) all minutes of meetings of a Working Group or Steering Committee.

1.5 **Contribution** means a submission to or for a Working Group or Steering Committee proposing an addition to or modification of an existing Specification or a new Specification or portion thereof, or a submission proposing changes or modifications to, or new, Design Guidelines or Programming Guidelines, provided that the submission is either (i) submitted in writing (including a writing in electronic medium) or (ii) stated orally, memorialized with specificity in the written minutes of a Working Group, and attributed in the meeting minutes to the submitting Participant, provided that the minutes are promptly provided to the individual representing the Participant, unless the submitting Participant withdraws its submission in writing as soon as practicable and in any event, no later than forty-five (45) days of receipt of such written minutes.

1.6 **Control** means beneficial ownership of more than fifty percent (50%) of the voting power or equity in an entity.

1.7 **Design Guideline** or **Programming Guideline** means a document or documents entitled Design Guideline or Programming Guideline containing functional and technical guidelines to aid in interoperability of implementations of a Specification as adopted and approved for release by the Steering Committee.

1.8 **Draft Design Guideline** or **Draft Programming Guideline** means a proposal, document or documents entitled Draft Design Guideline or Draft Programming Guideline in draft or non-final form, being worked on or considered by IBTA prior to adoption and approved for release as a Design Guideline or Programming Guideline.

1.9 Draft Specification means a proposal, document or documents entitled Infiniband Specifications in draft or non-final form, being worked on or considered by IBTA prior to adoption as a Specification.

1.10 Member means a Member of IBTA, and does not include Participant.

1.11 Members mean all IBTA Members, regardless of Membership class.

1.12 Necessary Claims means those claims of all patents and patent applications, other than design patents and design registrations, throughout the world which a Participant or its Affiliates has the right, at any time during the term of this Agreement, to grant licenses of the nature agreed to be granted herein without such grant resulting in payment of royalties or other consideration to third parties (except for payments to Affiliates or employees), which claims are necessarily infringed by an implementation of a Specification adopted and approved for release by the Steering Committee and which are within the bounds of the Scope, where such infringement could not have been avoided by another commercially reasonable non-infringing implementation of such Specification. Necessary Claims do not include any claims other than those set forth above even if contained in the same patent as Necessary Claims.

1.13 Participant means the Participant that executes this Agreement.

1.14 Scope means the protocols, electrical signaling characteristics, mechanical requirements for connectors, cards and cabling, register models, data structures and verbs software interface solely to the extent disclosed with particularity in a Specification where the sole purpose of such disclosure is to enable products to interoperate, interconnect or communicate as defined within a Specification. Notwithstanding the foregoing, the Scope shall not include (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a Specification, but are not themselves expressly set forth in a Specification (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology); (ii) the implementation of other published specifications not developed by or for IBTA but referred to in the body of a Specification; or (iii) application programming interfaces, device drivers, device driver models, peripheral control languages, and peripheral devices, except for the portions of peripheral devices that are required by an interconnect that is compliant with a Specification.

1.15 Secretariat means the company designated by IBTA as the Secretariat with which IBTA has contracted to provide management and administrative services.

1.16 Specification means a document entitled Infiniband Specification adopted and approved for release by the Steering Committee, and any updates or revisions adopted and approved for release by the Steering Committee.