

InfiniBand® Trade Association Plugfest Participation and Non-Disclosure Agreement

Company Name: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

E-mail Address: _____

Please return this signed Plugfest Participation and Non-Disclosure Agreement (“Agreement”) to IBTA Administration, 3855 SW 153rd Drive, Beaverton, OR 97006 U.S.A. You can also [email](#) the signed copy to the IBTA Administration.

This Agreement is effective on the date it is accepted by the InfiniBand® Trade Association (IBTA).

Participant agrees that it assumes the full risk of damage to or loss of its equipment while at any Plugfest or in shipment to or from any Plugfest, regardless of the cause thereof. Participant and/or Participant’s employees present at the event agree to assume the full responsibility for all room and incidental charges they incur at the hotel. Participant also agrees that it assumes the full risk of claims by its employees, agents, other participants and attendees for personal injury or property damage arising from or relating to Participant’s participation in any Plugfest, and agrees to defend, indemnify, and hold IBTA harmless from any and all such claims.

Participant agrees that IBTA shall not be responsible or liable for any claims, damages, acts, errors, or omissions arising from or related to any Plugfest (collectively “Claims”), excluding any such claims, damages or errors caused by IBTA’s willful or grossly negligent actions or omissions.” Participant generally and specifically waives and releases IBTA from any and all such Claims, whether known or unknown, foreseen or unforeseen. Without limiting the generality of the foregoing, Participant further agrees that in no event shall IBTA be liable for consequential, incidental, or special damages arising from or related to a Claim.

Participant shall indemnify and hold IBTA harmless from any and all claims arising out of or in connection with any claim that any materials, equipment, devices, processes or dramatic right furnished by Participant during any Plugfest infringe any copyright, patent, trade secret or other proprietary right held by any third party.

The foregoing indemnification shall also include reasonable costs, expenses, and attorney’s fees incurred in the defense of such indemnified claim, or incurred in connection with successfully establishing the right to indemnification hereunder. If any action is brought against either party in respect to which indemnity may be sought from the other party, the party seeking indemnification shall promptly notify the other party, in writing, specifying the nature of the action and the total monetary amount or other relief sought. The party seeking indemnification hereunder shall cooperate with the other party at the other party’s expense in all reasonable respects in connection with the defense of any such action. The party from whom indemnification is sought may, upon written notice to the party claiming indemnification, undertake to conduct all proceedings to settle or defend any such action, including the employment of counsel satisfactory to the party seeking indemnification, and payment of all reasonable expenses. The party seeking indemnification shall

also have the right to employ separate counsel and participate in the defense of any claim, which is subject to indemnification hereunder.

IBTA shall have the right to cancel any Plugfest with or without cause. In the event IBTA cancels, IBTA will not be held responsible for any expenses incurred by the Participant for the event prior to cancellation.

IBTA shall have the right to transfer management of any Plugfest to a third party contractor. If the management of any Plugfest is transferred all terms and conditions of this agreement shall be applicable to the selected contractor.

NON-DISCLOSURE

RECITALS

IBTA is engaged in an effort to develop and publish specifications (“InfiniBand™ Specifications”) that support the creation of interoperable, scalable and reliable I/O products, computer systems and computer technologies.

IBTA sponsors Plugfests from time to time for educational, developmental, and the Integrators List Program purposes (each a "Plugfest").

Participant is a Member of IBTA that desires to participate in a Plugfest from time to time.

NOW, THEREFORE, for due consideration, receipt of which is hereby acknowledged, IBTA and Participant agree to the following terms and conditions:

1. PARTICIPATION IN PLUGFEST

Participant acknowledges and agrees that each Plugfest is for educational, developmental, and the Integrators List Program purposes only.

Except as expressly permitted in this agreement, all test results, all compliance data and information, and all interoperability data and results from any Plugfest (individually and collectively, “Test Information”) are for Participant’s internal use only. Such information constitutes Confidential Information subject to the provisions of this Agreement set forth below. Additionally, any such information obtained at any Plugfest regarding the products of any other participant in the Plugfest also constitutes Confidential Information.

Nothing that is said, done, or performed at any Plugfest may be used by Participant as evidence that Participants’ products comply with InfiniBand Specifications or that the products are entitled to or subject to certification by IBTA for any purpose. Notwithstanding anything to the contrary in this agreement, a participant shall be allowed to release, under NDA, Test Information regarding its products to potential customers and partners. Under no circumstances does IBTA grant participants a right to collect or disclose results obtained at the Plugfest regarding the products or components of any other InfiniBand product vendor.

EXCEPT AS NOTED IN SECTION 3 OF THIS AGREEMENT, NOTHING THAT IS SAID, DONE, OR PREFORMED AT ANY PLUGFEST MAY BE USED BY PARTICIPANT AS EVIDENCE THAT PARTICIPANTS’ PRODUCTS COMPLY WITH INFINIBAND SPECIFICATION OR THAT THE PRODUCTS ARE ENTITLED TO OR SUBJECT TO CERTIFICATION BY IBTA FOR ANY PURPOSE.

2. CONFIDENTIALITY

2.1 Confidential Information. Participant agrees that it will maintain the Confidential Information in confidence with at least the same degree of care that the Participant uses to protect its own similar confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. The Participant will not use, disclose, copy, or distribute Confidential Information, except to its employees, its contractors and/or its customers (under a comparable nondisclosure agreement restricting the contractor's right⁹ to use to be solely with respect to work done for Participant) with a need to know for the purpose of designing or making products or services in compliance with InfiniBand Specifications. The obligations of this section apply to all of Participant's employees and to all of its contractors who have access to the Confidential Information. The obligation of confidentiality shall expire three (3) years from the date of disclosure to Participant.

The restrictions on the use and disclosure of the Confidential Information shall not apply to any such Confidential Information:

- (i) in the public domain other than by Participant's breach of a duty of confidentiality; or
- (ii) rightfully received from a third party without any obligation of confidentiality; or
- (iii) rightfully known to Participant without any limitation on use or disclosure prior to its receipt at the applicable Plugfest; or
- (iv) independently developed by employees or contractors of the Participant; or
- (v) disclosed as required by law; or
- (vi) released for disclosure by IBTA.

2.2 Residuals. Participant shall be free to use and disclose the residuals of Confidential Information for any purpose including use in the development, manufacture, marketing and maintenance of its products and services. The term "residuals" means that Confidential Information in non-tangible form, which may be retained in the memories of individuals who have had rightful access to such Confidential Information. It is understood that receipt of Confidential Information shall not create any obligation in any way limiting or restricting the assignment and/or reassignment of any employees of a Participant within Participant's organization. However, this Section 2.2 shall not be deemed to grant to any party a license under the other party's copyrights or patents.

3. PERMITTED USE OF TEST INFORMATION

3.1 This Section 3.1 applies, unless Participant has opted out of this provision by initialing below.

OPT OUT: _____

Participant agrees to grant access to certain Test Information (namely, test results, device configuration and logs relating to interoperability) regarding its participation and products from a particular Plugfest to all other participants in that Plugfest participating in the same interoperability test (except those who have opted out of this Section 3.1), and to receive certain Test Information (namely, test results, device configuration and logs relating to interoperability) regarding the other participants in that Plugfest participating in the same interoperability test (except those who have opted out of this Section 3.1), provided that Participant and all such participants agree to use such information strictly and only internally to debug and work on the interoperability of their own products—and agree that they may not use any such information to

compare their products against other participants' products, for any marketing purposes, or in any external or public-facing materials.

3.2 Except as allowed in section 3.3 below, and without limiting the generality of Sections 1 and 2 hereof, Participant specifically agrees not to publish or use for marketing or promotional purposes any Test Information. Participant further agrees not to claim or represent, directly or indirectly, that data from or the results of its participation in any Plugfest or other Test Information indicate or constitute compliance with InfiniBand Specifications.

3.3 Integrator's List (IL) – Participant is permitted to publish, disclose, and use for marketing or promotional purposes the fact that its device has been listed on the IL following the applicable Plugfest.

4. WARRANTY DISCLAIMER

4.1 The Plugfest Attendance. The IBTA Plugfest brings all Participants together at a single location for testing of InfiniBand and RoCE Products. At the Plugfest, various companies, institutions and entities including Participant may interact, discuss with and participate in open forums and discussion groups with other Participants in attendance.

4.2 Risk and Indemnity. Participant accepts all responsibility for any claims for loss of or damage to any products or property of and for any personal injury to any of Participant's employees, agents, contractors, assigns or invitees, arising out of the participation in the Plugfest, except to the extent any such claims can be directly and solely attributable to the gross negligence and/or willful or criminal fault of such other Participant or its employees, agents, contractors, assigns, or invitees.

4.3 DISCLAIMER. IBTA MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED WITH RESPECT TO ANY INFORMATION, PRODUCTS, RESULTS OR CONFIDENTIAL INFORMATION DISCLOSED AT THE PLUGFEST, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY. ALL SUCH INFORMATION, RESULTS, PRODUCTS OR CONFIDENTIAL INFORMATION ARE ALL PROVIDED AS IS, WITHOUT WARRANTY OF ANY KIND.

4.4 LIMITATION OF LIABILITY. IN NO EVENT WILL IBTA OR ANY PARTICIPANT HAVE ANY LIABILITY TO EACH OTHER OR TO ANY OTHER PARTICIPANT OR ANY OTHER THIRD PARTY FOR ANY LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5. OTHER PROVISIONS

5.1 Notice. Participant designates the representative identified below for the purpose of receiving notice under this Agreement. Participant may change the designated representative by written notice to IBTA. 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 shall be given both by express mail or by first class mail, postage prepaid, and, in addition, by electronic mail or by facsimile.

5.2 No Joint Venture. Nothing contained in this Agreement and no action taken by either IBTA or Participant shall be deemed to render Participant or IBTA an employee, agent or representative of the other or any other participant, or shall be deemed to create a partnership, joint venture or syndicate among or between Participant and any other participant or with IBTA. No other participant may rely upon the terms of this Agreement unless such participant has entered into an agreement with IBTA in similar form and substance as this Agreement.

5.3 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 Confidential Information.

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

5.5 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 both parties may agree to develop in its place a substitute, valid, and enforceable provision most nearly reflecting the original intent of the invalid provision.

5.6 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.

5.7 Entire Agreement. This Agreement constitutes the entire and sole agreement between the parties regarding the Confidential Information, and it supersedes and replaces any and all prior representations, agreements and understandings relating thereto.

5.8 Authority. Participant represents and warrants that it is authorized to enter into this Agreement and that this Agreement will be binding on all of its employees. The undersigned person represents and warrants that he/she is authorized to sign this Agreement on behalf of Participant.

I have read the IBTA Plugfest Participant Agreement. I understand the conditions necessary for participation and agree to adhere to them. I further understand that final qualification and acceptance of this Agreement is determined solely by IBTA and agree to abide by their decision and may not contest, appeal or take action, legal or otherwise, or in any way seek to overturn or change that decision. On behalf of Participant, I acknowledge our acceptance of this Agreement by signing in the space provided.

PARTICIPANT

Company Name:

By: _____

Printed Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

INFINIBAND® TRADE ASSOCIATION

BY: _____

Printed Name: _____

Title: _____

Address: 3855 SW 153rd Drive
Beaverton, OR 97006

Telephone: (503) 619-0565

Facsimile: (503) 644-6708

Email: administration@infinibandta.org