

## **BYLAWS OF THE “OW2 CONSORTIUM” ASSOCIATION**

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# BYLAWS OF THE “OW2 CONSORTIUM” ASSOCIATION

## PREAMBLE

ObjectWeb and OrientWare are two consortiums which purpose is to develop a code base of open source middleware software.

ObjectWeb and OrientWare have decided to join their efforts in order to create this Association.

Initially based in France ObjectWeb was founded by Inria (French National Institute for Research in Computer Science and Control), Bull and France Telecom.

The sponsors in OrientWare for this Association are: Peking University, Beijing University of Aeronautics & Astronautics, National University of Defense Technology (NUDT), CVIC Software Engineering Co., Ltd.(CVIC SE) and Institute of Software, Chinese Academy of Sciences (ISCAS).

## Article I. GENERAL AND DEFINITIONS

### Section 1.01 Legal Status

A non-profit association (hereinafter “the Association”), governed by the French law of July 1st, 1901 and the French decree of August 16th, 1901, is instituted between the Founders, as defined in Section 1.02 hereafter, and any other natural persons or legal entities adhering to the present articles of association (hereinafter referred to as the "By-laws". )

### Section 1.02 Name

The name of the Association is: OW2 Consortium. The acronym is OW2C.

The Board of Directors may, upon super majority vote as set forth in Section 4.12 (b), select a new Name, reasonable advance notice being given to all of the Members prior to the adoption of any new Name.

### Section 1.03 Founders

Founders signing these Bylaws are Bull SAS and Beijing University of Aeronautics & Astronautics. Other members shall be granted Founding Member Status as set forth in Section 7.10 of the then current Bylaws.

### Section 1.04 Purpose

The purpose of the Association is to develop industry grade open source middleware, to nurture the associated code base, to foster cooperation among its Members, and to help foster a vibrant eco-system for the exploitation of its middleware code base. This purpose can be pursued by all means. More specifically, this purpose is pursued through collaborative efforts carried out by the Association and its Members in order to contribute to the creation of a set of collective works including, without being limited to works of authorship and physical artifacts. The activities of the Association shall not be conducted for the financial profit of its Members but for their common benefit.

### Section 1.05 Offices

The Administrative Headquarter of the Association is located Avenue du Port, 86C, 1000 Bruxelles, Belgium and the Social Headquarters Rue Jean-Jaures, 78340, Les Clayes-sous-Bois, France. The Board of Directors is granted full power and authority to change said principal office from one location to another subject to a super majority vote as set forth in Section 4.12 (b).

### Section 1.06 Term and Business Year

The Association is set up for a 30 year period starting on the date the Founders have signed the Bylaws. The business year runs from January 1 to December 31.

## **Section 1.07                    Resources**

The resources of the Association are composed of any resource authorized by law, especially the membership fee paid by Members, which shall be due by any Members. Fees may be paid in money or in kind, under the conditions expressed in the Association Membership Agreement. Notwithstanding article 6 1° of the French law of July 1st 1901, the annual membership fee can not be repurchased.

## **Section 1.08                    Definitions**

Words defined in these Bylaws start with capital letter.

- (a) Activities: shall be defined as set forth in Section 2.02
- (b) Advisory Board: shall be defined as set forth in Section 7.13
- (c) Associate Organization: shall be defined as set forth in Section 3.05
- (d) Association Membership Agreement: shall be defined as set forth in Section 7.01 (g)
- (e) Board of Directors: shall be defined as set forth in Article IV
- (f) Book of Procedures: shall be defined as set forth in Section 7.01 (b)
- (g) Bylaws: shall be defined as set forth in Section 7.01 (a)
- (h) Chairperson: shall be defined as set forth in Section 5.04
- (i) Charters: shall be defined as set forth in Section 7.01 (e)
- (j) Chief Executive Officer: shall be defined as set forth in Section 5.05
- (k) Chief Technology Officer: shall be defined as set forth in Section 6.02 (d)
- (l) Corporate Member: shall be defined as set forth in Section 3.02 (b)
- (m) Council: shall be defined as set forth in Section 6.02
- (n) Founder: shall be defined as set forth in Section 1.02
- (o) Individual Member: shall be defined as set forth in Section 3.02 (c)
- (p) Initiative: shall be defined as set forth in Section 2.02 (b)
- (q) Intellectual Property Rights Policy: shall be defined as set forth in Section 7.01 (c)
- (r) Interim Board of Directors: shall be defined as set forth in Section 7.10
- (s) Internal Policy: shall be defined as set forth in Section 7.01
- (t) Legal Compliance Policy: shall be defined as set forth in Section 7.01 (d)
- (u) Local Chapter: shall be defined as set forth in Section 2.02 (c)
- (v) Management Office: shall be defined as set forth in Section 6.01
- (w) Membership at Large: shall be defined as set forth in Section 3.01
- (x) Participant Agreement: shall be defined as set forth in Section 7.01 (g)
- (y) Project: shall be defined as set forth in Section 2.02 (a)
- (z) Strategic Member: shall be defined as set forth in Section 3.02 (a)

## **Article II.                    COLLABORATIVE ACTIVITIES**

### **Section 2.01                    General principles**

Collaborative Activities ("Activities") are actions undertaken and jointly performed by one or several Members in the framework of the Association operations and pursuant to the Association purposes

as set forth in Section 1.04 of these Bylaws. The objective of Activities is to support the joint development by the Members of the Association of open source code which ownership shall be defined by the then current IPR policy of the Association.

## **Section 2.02                    Activities**

Activities shall comprise, without being limited to, the following categories:

- (a) Projects: the Association's activities for software development are organized into Projects. A Project regroups development actions corresponding to one or more technical software components, or the integration of different technical components in order to build a platform.
- (b) Initiatives: an Initiative is a collaborative activity undertaken to promote a set of technologies from the Association and bring them to the mainstream market. Initiatives shall be used by the Association to make open source middleware widely used in targeted sectors of activity.
- (c) Local Chapters: Local Chapters are activities carried out to contribute to the sustainable development of business ecosystems on a regional scale, in a business neutral way. They represent the Association at a regional level under supervision of the Management Office.

## **Article III.                    MEMBERSHIP**

### **Section 3.01                    Classes of Membership**

There shall be three (3) classes of membership in the Association:

- Strategic Members
- Corporate Members
- Individual Members

As used herein, the term "Member" shall be used to refer generically to a "Strategic Member," an "Corporate Member" or an "Individual Member". All three classes of membership shall be collectively referred to as the "Membership at Large". Founders are Strategic Members matching criteria listed on Section 1.02 and 7.10. The list of Members whatsoever their status shall be public pursuant to Section 7.04.

### **Section 3.02                    Membership Qualifications.**

Membership is open to all legal entities and individuals who support the aim and share the objectives of the Association. The Association does not restrict Membership on the basis of race, color, sex, religion or national origin or for any other reason.

Any corporation, partnership, governmental body or international organization supporting the purposes of the Association and abiding by its bylaws and internal policy may apply for membership as Strategic or Corporate Member. Any individual supporting the purposes of the Association and abiding by its bylaws and internal policy may apply for membership as Individual Member.

Membership comes into effect only after signature of the then current Association Membership Agreement and upon payment of the membership fee, if any.

- (a) Strategic Members: Strategic Members are legal entities who stand out to provide significant resources to support the Association's objectives and wish to play an active role both in setting the direction of the Association's code development activities and facilitating the use and acceptance of the Association's technology. Strategic Members commit to remain members for a minimum of three (3) consecutive years. Strategic Members shall be entities that meet the requirements of a Strategic Member as set forth in the then current Association Membership Agreement, under the heading "Strategic Members".
- (b) Corporate Members: Corporate Members are legal entities that wish to contribute to the code development activities of the Association, to participate in the planning and management of the

Association's technology development process and to facilitate the use and acceptance of the Association's technology. Corporate Members shall be entities that meet the requirements of an Corporate Member as set forth in the then current Association Membership Agreement, under the heading "Corporate Members".

- (c) Individual Members: Individual Members are individuals such as free-lancers, students and technology enthusiasts who meet the requirements of an Individual Member as set forth in the then current Association Membership Agreement, under the heading "Individual Members". No paid employee or contractor of a Strategic Member or a Corporate Member shall be considered an Individual Member unless having joined in person as an Individual Member. Likewise no organization shall be considered a Member (either a Strategic Member or a Corporate Member) by the sole virtue of a paid employee or a contractor having joined the Association as an Individual Member.
- (i) Co-optation: In the event Strategic Membership conditions as set forth in the then current Association Membership Agreement are not affordable to Small and Medium-Sized Organizations, certain Small and Medium-Sized Organizations may still be co-opted as Strategic Members by the then current Board of Directors with a super majority vote as set forth in Section 4.12 (b). The criteria for co-optation shall be defined by the Board of Directors.

### **Section 3.03 Affiliates**

For purposes of these Bylaws, "Affiliate" of a Member means any entity that, directly or indirectly, is controlled by, is under common control with or is controlling that Member. The word "control" or any of its derivatives (such as "controlled", "controlling"... ) means direct or indirect ownership of more than 50% of registered capital.

- (a) Affiliates of Strategic Members: Affiliates of a Strategic Member may (i) either decide to participate in the day-to-day activities of the association without being a Member and in such case shall constitute together with the Strategic Member only one (1) Strategic Member or (ii) either decide to join the Association as Strategic or Corporate Member.
- (b) Affiliates of Corporate Members: Affiliates of a Corporate Member shall not participate in the day-to-day activities of the association without being a Member but may decide to join the Association as Strategic or Corporate Member.

### **Section 3.04 For-profit or Non-Profit Status Entities**

The status of Non-Profit Organization is defined as a legally organized not-for-profit entity such as, but not limited to, an "Association loi de 1901 à but non lucratif" in France or a "501(c)(3)" corporation in the USA. The status of Non-profit Organization is ascertained by the Management Office. All organizations failing to comply with the foregoing criteria shall be deemed For-Profit.

Members agree to inform of and to forward to the Chairman of the Board of Directors any legal publication pertaining to any statutory amendments that may be reached during its participation in the Association.

- (a) Loss of Non-Profit status: If a Member joined the Association as a qualified Non-Profit but at any subsequent time fails to satisfy any of the conditions that give rise to that status, then the Member shall abide by the then-current applicable provisions, in these Bylaws and in the Association Internal Policy, for For-Profit Organizations. The new For-Profit status shall be applicable as from the beginning of the next business year following the one in which the For-Profit status was granted.
- (b) Gain of Non-Profit status: Likewise, if a Member joined the Association as For-Profit but at any subsequent time qualifies as Non-Profit under the conditions that give rise to that status, then the Member shall be entitled to the Non-Profit status, and shall abide by the then-current applicable provisions, in these Bylaws and in the Association Internal Policy, for For-Profit Organizations. The new Non-Profit status shall be applicable as from the beginning of the next business year following the one in which the Non-Profit status was granted.

### **Section 3.05 Associate Organizations**

The Board of Directors may define one or more classes of individuals or entities associated with the Association. Such individuals or entities shall be referred to "Associate Organizations". Associate Organizations are entities, such as standards organizations, research institutions, academic institutions, open source organizations, publishing organizations and other organization types, that are not eligible or desirous of membership in any category but that wishes to support the aims and objectives of the Association. Associate Organizations are approved by the Board of Directors in its sole and absolute discretion. Associate Organizations are not bound by the terms of these Bylaws or by the Association Internal Policy. Separate agreements may be set up between the Association and Associate Organizations. Associate Organizations shall not be represented on the Board of Directors and shall not be permitted to vote with the General Assembly of Members pursuant to Section 3.13. However, representatives of Associate Organizations may attend the annual General Assembly of Members.

### **Section 3.06 Admission**

Decisions to admit members shall be made by the CEO of the Association, pursuant to the membership eligibility criteria established in these Bylaws. In the event that an applicant is not accepted for membership by the CEO, such applicant shall have the right to appeal such decision to the Board of Directors, which shall have the discretion to make final membership admission decisions.

### **Section 3.07 Fees, Dues and Assessments**

Each Member will pay dues as set forth in the then current Association Membership Agreement, as amended from time-to-time by the Board. The Membership Dues Schedule may only be amended or revised by a two-thirds (2/3) majority vote of the Board of Directors.

### **Section 3.08 Termination of Membership**

The membership of any Member shall terminate upon the occurrence of any one or more of the following:

- (a) Resignation: Any Member may resign from the Association in writing filed with the Chief Executive Officer. The resignation of a Member shall not relieve the Member from any payment obligations the Member may have to the Association as a result of obligations incurred or commitments made prior to resignation. Except as otherwise set forth in these Bylaws, a resigning Member shall not be entitled to receive any refund, pro rata or otherwise, of any membership fee, dues or assessments for the balance of the calendar year in which the resignation is effective.
- (b) Expulsion, Termination or Suspension: Membership may be terminated by a two-thirds (2/3) majority vote of the Board of Directors after giving the Member at least fifteen (15) days' written notice and the reasons for the termination, and an opportunity for the Member to be heard by the Board, orally or in writing, no less than five (5) days before the effective date of the termination. The decision of the Board shall be final and binding for all purposes. The Board may decide to deny its seat of right on the Board to a Strategic Member failing to pay the membership fee or to abide by the obligations set forth in these Bylaws or in the Internal Policy, without relieving the Member of its membership nor obligations pertaining to this membership.
- (c) Expiration: A membership issued for a period of time shall expire when such period of time has elapsed unless the membership is renewed.
- (d) Non-Payment of Dues: In the event that a Member does not pay its annual membership dues and all compounded late fees within ninety (90) days of the invoice due date, the Board may without any further action terminate the membership of such Member.

All rights of a Member in the Association shall cease on termination of membership as herein provided.

### **Section 3.09 Reinstatement**

Members expelled, terminated or suspended pursuant to Section 3.08 may be reinstated only (i) upon the affirmative vote of two thirds (2/3) of the members of the Board of Directors then in office and (ii) subject to the cure of the default (if any) why the Member was expelled, terminated or suspended.



### **Section 3.10 Non Liability**

No Member shall be liable for the debts, liabilities, or obligations of this Association merely by reason of being a Member. Members shall not be jointly and severally liable for any losses resulting from membership in the Association and participation in the Association activities

### **Section 3.11 Non Transferability**

No Member may transfer for value or otherwise a membership or any right arising therefrom, and all rights of membership shall cease upon the Member's death, resignation, expulsion, termination or dissolution. Notwithstanding the foregoing, in the event of a merger or acquisition of a Member or of members, the following rules shall apply:

- (a) Merger with a non-Member: In the event that a Member merges with a non-Member, such that the Member is no longer a surviving entity, the non-Member (assuming it meets the criteria for membership) shall be deemed to be a Member of the Association.
- (b) Merger between members: In the event that two members merge, one of the two memberships held by the merged entity shall be deemed to have automatically expired. The surviving entity will however be liable for any unpaid dues for both memberships.
- (c) Waiver: The Board of Directors may also grant a waiver of this Section 3.11 under other circumstances in its reasonable discretion.

### **Section 3.12 Place of Meetings**

All meetings of the Membership At-Large may be held at the principal office of the Association or at any place in or outside of France that has been designated from time-to-time by resolution of the Board or by the written notice of the Chief Executive Officer of the Association.

### **Section 3.13 General Assembly, Regular Meetings**

The General Assembly of the Membership at Large shall be held, once a year, in each calendar year, on such date and at such time and place as determined by the Board of Directors. The General Assembly of the Membership at Large shall be held at places and times that will encourage maximum participation of Members. In addition, the members shall hold at least one other regular meeting each year. Meetings may be attended by the Members in person or by means of telephone conference, video conference or similar means of communication which allow all persons participating in the General Assembly to hear each other at all times.

### **Section 3.14 Special Meetings**

Special Meetings of the members including, but not limited to, Extraordinary General Assembly, may be called at any time by the Chairperson or by the Board of Directors. Such meetings may also be convened by members holding five percent (5%) or more of the voting power of this Association. Notice of a special meeting shall be given within thirty days following the date the written demand is delivered to the Chief Executive Officer. Special Meetings shall be held at places and times that will encourage maximum participation of Members. Meetings may be attended by the Members in person or by means of telephone conference, video conference or similar means of communication which allow all persons participating in the Special Meeting to hear each other at all times. Only matters within the purpose or purposes described in the meeting notice may be conducted at a Members' Special Meeting.

### **Section 3.15 Notice of General Assembly, Regular and Special Meetings**

The General Assembly is convened once a year by the Chairperson. Failing for the Chairperson to do so, whatever the reason, any Director may convene the General Assembly subject to the prior written approval of at least half of the Directors.

The notice shall be issued by means of an electronic mail one (1) month prior to the date of the meeting. Time, date and location of the meeting shall be indicated in the notice. The notice shall include the proposed agenda for the said meeting. Every Member shall be entitled to request additional details to be indicated within fifteen (15) days following the notification of the meeting of the General Assembly of the Membership at Large.

### **Section 3.16                    Adjourned Meetings**

Any Membership at Large meeting, General Assembly, Regular or Special meetings, whether or not a quorum is present, may be adjourned by the vote of a majority of the members either present in person or represented by proxy. In such event, it shall not be necessary to provide further notice of the time and place of the adjourned meeting if announcement of the time and place of the adjourned meeting is given at the meeting so adjourned and the agenda is unchanged.

### **Section 3.17                    Quorum**

Unless otherwise provided herein, the presence in person or by proxy of at least thirty percent (30%) of the Strategic Members and the Corporate Members taken as a whole shall constitute a quorum of the General Assembly or any meeting of the Membership at Large. If this quorum is not reached, a second Assembly shall, within fifteen (15) days, be convened to be held within fifteen (15) days of the date of such notice, with the same agenda. No quorum is required for the second convocation.

### **Section 3.18                    Voting**

Every Member entitled to vote shall have the right to do so in person or by proxy authorized in writing. A proxy must be received prior to the closing of the voting in order to be effective. Votes are made by show of hands, but secret vote may be asked by any Member. Any other means allowing Members to vote may be used such as electronic vote or vote with a written ballot without a meeting.

### **Section 3.19                    Conduct of Meetings**

Meetings of the Membership at Large shall be presided over by the Chairperson of the Board of this Association, or in his absence, by the Vice Chairperson or in his absence, by the Chief Executive Officer, and in the absence of all of them, by the chair chosen by a majority of the members present. The Chief Executive Officer shall act as the Secretary of all meetings of the Membership at Large, provided that in his absence the presiding Officer shall appoint another Member to act as Acting Secretary of the meeting. Regarding specifically the annual General Assembly: The Chairperson of the Board makes a statement on the moral situation of the Association. The Treasurer renders account of his management in a financial report that he submits for approval of the General Assembly. The General Assembly (i) hears the report by the Chief Executive Officer on the actions performed by the Association during the course of the past year, (ii) approves the accounts of the previous business year, (iii) votes on the budget for the following business year, (iv) deliberates on the questions on the agenda and (v) hears candidates for the renewal of the members of the Board of Directors.

## **Article IV.                    BOARD OF DIRECTORS**

### **Section 4.01                    Powers and Duties**

The activities of the Association shall be managed by or under the direction of the Board of Directors. The Board shall be empowered to adopt rules and regulations governing the action of the Board of Directors and of the Association, generally. The Board of Directors shall have the power to select and remove all Officers, to authorize and empower Officers or agents to enter into contracts and other commitments on behalf of this association, and to appoint and delegate responsibilities and authority to committees, Officers and agents. The Board of Directors shall appoint the Chief Executive Officer of this Association.

### **Section 4.02                    Composition of the Board of Directors**

Members of the Board of Directors shall be appointed or elected, as applicable, in the following manner:

- (a) Strategic Members: Each Strategic Member shall appoint one (1) representative to the Board of Directors; such representative must be an employee, officer, director, or consultant of the nominating Strategic Member in order to be eligible to serve as a Director of the Association. Upon the termination of the membership of a Strategic Member, any Director nominated by such Strategic Member shall be removed from the Board of Directors immediately therewith.

- (b) Corporate Members: Corporate Members, as a class, are entitled to as many seats on the Board of Directors as there are Strategic Members in the Association, provided that, such representatives must be employees, officers, directors, or consultants of Corporate Members. Such Corporate Member Director seats shall be filled via annual at-large elections by the Corporate Members. Upon the termination of the membership of an Corporate Member, any Director employed by such Corporate Member shall be removed from the Board of Directors immediately therewith.
- (c) Individual Members: Individual Members, as a class, are entitled to one (1) seat on the Board and such representative shall represent the entire class, provided that such representative must be an Individual Member of the Association. Such Individual Member Director seat shall be filled via annual at-large elections by the Individual Members.

Should the number of Directors become greater than fifty-one (51) members or, at any time, appear to be too large to allow for manageable and efficient meetings of the Board of Directors, the Board may, by resolution, establish new rules of representation to the Board of Directors.

#### **Section 4.03                      Terms and Election**

All Directors shall hold office until the expiration of the term for which elected and until their respective successors shall have been duly appointed or elected, as applicable. Any Director is eligible for re-election or re-designation following the completion of that Director's term of office.

- (a) Strategic Members: Strategic Member Directors shall serve in such capacity until the earlier of their removal by their respective appointing Member organization, or as otherwise provided for in these Bylaws.
- (b) Corporate and Individual Members: Corporate Member and Individual Member Directors shall each serve one-year terms and shall be elected to serve until the next annual meeting and until their respective successors shall have been duly elected, or as otherwise provided for in these Bylaws.

Strategic and Corporate Members may replace their representative on the Board at any time by providing written notice to the Chief Executive Officer of the Association at least five (5) days before the Board meeting at which this replacement will be made effective.

#### **Section 4.04                      Vacancies**

Vacancies in the Board of Directors until the next scheduled election of Board Members shall be filled in the following manner:

- (a) Strategic Member Director vacancy: If the number of Strategic Members becomes less than the number of Corporate Member Directors, the Chairman of the Board shall have as many voting rights as necessary in order that the number of voting rights of both the Strategic Member Directors and the Corporate Member Directors shall be equal.
- (b) Corporate Member Director vacancy: If during a period between two General Assemblies the number of Strategic Members becomes superior to the number of Corporate Member Directors, the Corporate Member Directors shall provide for such provisional appointments as necessary in order that Corporate Members shall have as many seats on the Board as there are Strategic Members.

#### **Section 4.05                      Place of Meetings**

All meetings of the Board of Directors may be held at the principal office of the Association or at any place in or outside of France that has been designated from time-to-time by resolution of the Board or by the written notice of the Chief Executive Officer.

#### **Section 4.06                      Regular meetings**

The Board of Directors meets on convocation of the Chairperson of the Board at any time as the Chairperson of the Board deems necessary or appropriate, and at least every three months, or by request of half of its members. The Executive Director will schedule regular and (as applicable) special meetings of the Board of Directors.

No Board meeting will be deemed to have been validly held unless the Executive Director provided notice of same to each of the Directors in good standing at least thirty (30) calendar days prior to such meeting, which notice will identify all potential actions to be undertaken by the Board at the Board meeting. No Director will be intentionally excluded from Board meetings and all Directors shall receive notice of the meeting as specified above; however, Board meetings need not be delayed or rescheduled merely because one or more of the Directors cannot attend or participate so long as at least a quorum of the Board (as defined in Section 4.11) is represented at the Board meeting.

#### **Section 4.07 Special meetings**

Special meetings of the Board of Directors may be called at any time by the Chairperson of the Board and shall be called by the Chairperson of the Board or the Chief Executive Officer on the written request of five (5) Directors. Notice of special meetings of the Board of Directors shall be given to each Director at least three days before the date of the meeting in such manner as is determined by the Board of Directors.

#### **Section 4.08 Notice of meetings**

Whenever Directors are required to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and time of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

#### **Section 4.09 Telephonic/Online Meetings**

The Board of Directors may permit any or all Directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

#### **Section 4.10 Voting/Electronic Voting**

Each Director has one vote. Decisions are made by the vote of a majority of those present as set forth in Section 4.12. Chairperson has casting vote: in the case of an equality of votes the Chairperson of the meetings shall be entitled to a second or casting vote.

#### **Section 4.11 Quorum and Proxy**

The presence of half of the members of the Board of Directors shall be necessary to constitute a quorum for the transaction of all matters, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors the Directors present thereat shall adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

At every meeting of the Board of Directors, each Member shall be entitled to vote in person or by proxy.

#### **Section 4.12 Actions by the Board of Directors**

- (a) Simple Majority Required: For all other actions not specified by Section 4.12 (b) or (c) below, and for which the Board has authority to take within the stated purpose of the Association as set forth in Section 1.04, such actions must be approved by no less than a simple majority of those Directors present or represented at a Board meeting at which a quorum is present.
- (b) Super-Majority Required: A super-majority defined as the vote of a two-thirds (2/3) majority of those Directors present or represented at a meeting at which a quorum is present is required for actions (i) approving or changing the name of the Association (ii) approving or amending these Bylaws, (iii) approving or amending the IPR Policy, (iv) approving or amending the Membership Agreement, (v) approving changes in Members contributions (financial or in-kind as defined in the Membership agreement), (vi) approving cooptation of a Small and Medium-Sized Organization as Strategic member, (vii) approving or amending the Association's Antitrust Policy, (viii) approving changes to the Councils Charters, (ix) approving the removal of the Chairperson of the Board of Directors or the removal of the Chief Executive Officer, (x) approving the dissolution of the Association and (xi) terminating or reinstating Members.

- (c) Actions by Written Consent: Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if there is a unanimous consent of the members of the Board of Directors in writing to the adoption of the resolution authorizing the action and setting forth the actions so to be taken. All such written consents shall be filed with the minutes of the proceedings of the Board of Directors.

**Section 4.13 Reimbursement/Indemnities/Fees**

No personal service compensation shall be paid to any Director. The preceding sentence notwithstanding, the Board of Directors may authorize the reimbursement of ordinary and necessary out-of-pocket expenses paid by any Director on the Association's behalf.

**Section 4.14 Resignation and Removal**

Any Director may resign his or her office upon giving written notice to the Chairperson of the Board, the Chief Executive Officer or the Board of Directors. Any Director who no longer meets the qualification criteria must resign his/her position.

**Section 4.15 Standard of Conduct**

A Director shall perform the duties of a Director in good faith, in a manner such Director believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would exercise under similar circumstances.

**Article V. OFFICERS**

**Section 5.01 Officers**

The Officers of the Association shall initially consist of: i) a Chairperson of the Board, ii) a Vice-Chairperson, iii) a Chief Executive Officer (CEO). The Board of Directors shall have the power to establish other offices, such as Vice-Presidents and Treasury, as it may deem necessary.

**Section 5.02 Nomination and Appointment**

The Officers of this Association shall be elected or appointed, as applicable, by the Board of Directors. Each Officer shall hold his or her office until his or her resignation or removal and until his or her successor shall be elected and qualified. Elections of Officers shall be held each year, shortly after the election of Directors. The term of office of each Officer shall be one (1) year. Notwithstanding Section 5.06, any two (2) or more offices may be held by the same person, except the offices of Chairperson and Chief Executive Officer.

**Section 5.03 Vacancies**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any Officer shall be filled by the Board of Directors. Vacancies occurring in offices of Officers appointed at the discretion of the Board may or may not be filled as the Board shall determine.

**Section 5.04 Chairperson**

The Chairperson of the Board shall preside at all meetings of the Board of Directors. The Chairperson, with the Chief Executive Officer's assistance, shall be responsible for providing periodic written reports to the Membership at-Large with respect to any and all material developments within the Association. The Chairperson of the Board is the official President and spoke-person of the Association pursuant to the French law governing the "Association Loi de 1901" as set forth in Section 1.01.

**Section 5.05 Chief Executive Officer**

The Board of Directors, by resolution adopted by a simple majority of the Board of Directors, shall appoint a Chief Executive Officer. The Chief Executive Officer sits on the Board with no voting right. The Chief Executive Officer shall have general and active management of the business and affairs of the Association. The Chief Executive Officer shall report to the Board and shall be subject to the oversight of the Board. The Chief Executive Officer may not be an employee, officer, director or agent of any Member of this Association. The Chief Executive Officer may execute on behalf of the Association, and when

required, upon approval and at the direction of the Board, all contracts, agreements, membership certificates and other instruments. The Chief Executive Officer shall from time-to-time report to the Board all matters within the Chief Executive Officer knowledge affecting the Association that should be brought to the attention of the Board. The Chief Executive Officer may hire other employees as deemed appropriate. The Chief Executive Officer shall perform other duties assigned from time-to-time by the Board. The Chief Executive Officer shall be responsible for forming the Management Office as set forth in Section 6.01.

#### **Section 5.06                    Treasurer**

Should a Treasurer not be appointed, the CEO shall act as Treasurer and shall be granted Treasurer powers and responsibilities until a Treasurer is duly appointed. The Treasurer shall: a) be allowed to open bank accounts on behalf of the association in banking institutions selected according to convenience criteria, to run those bank accounts and more generally to manage any necessary banking operations with regard to the Association activities but within its purpose, b) be responsible, with the Chairperson and under the Board of Directors, for the safekeeping of the associations funds in banking institutions c) issue invoices to Members and collect the associations dues, and other monies as directed, d) maintain, by means of a professional accountant external to the association, a set of books in accordance with generally accepted accounting principles, e) have custody of all official financial records, f) render a financial report at least once annually and at other times as requested by the Chairperson or the Board of Directors, g) present the accounting records for an annual review; h) be responsible that proper tax returns are prepared on a timely basis. The Board of Directors shall decide on the amounts above which Treasurer shall have to obtain approval by the Chairperson or the Board of Directors.

#### **Section 5.07                    Standard of Conduct for Officers**

An Officer with discretionary authority shall discharge the duties of an office: a) in good faith; b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and c) in a manner the Officer reasonably believes to be in the best interests of the Association.

#### **Section 5.08                    Removal and Resignation**

- (a) Removal: Any Officer other than the Chairperson of the Board and the Chief Executive Officer, may be removed at any time, either with or without cause, by the Board of Directors at any regular or special meeting thereof. The Chairperson of the Board and the Chief Executive Officer may be removed, either with or without cause, by 2/3 of the Directors then in office.
- (b) Resignation: Any Officer may resign at any time by giving written notice to the Board of Directors or to the Chief Executive Officer of the Association. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board of Directors relating to the employment of any Officer of the Association. Such resignation shall not prejudice the rights of the Association under any contract to which the Officer is a party. Once delivered, a notice of resignation is irrevocable unless otherwise permitted to be withdrawn by the Board of Directors prior to being effective.

### **Article VI.                    MANAGEMENT OFFICE**

#### **Section 6.01                    Overall Responsibilities**

The Management Office is a permanent team of professional executives placed under the responsibility of the Chief Executive Officer. The role of the Management Office is to perform all actions that contribute to the successful operation of the Association in line with the objectives and processes stated in the Bylaws and Internal Policy; to the sustainability of the Association and of its Activities; to the dissemination and adoption of its projects and collective works; and to the promotion of the values carried by the Association. Under the management of the Chief Executive Officer, the Management Office responsibilities shall include: (i) implementing the directions established by the Board of Directors, (ii) managing the Association on a day-to-day basis including managing the physical and online facilities placed under the

Association's responsibility, (iii) establishing an Operations Council as described in Section 6.02 (c), (iv) establishing a Technology Council as described in Section 6.02 (d), (v) establishing an Ecosystem Council as described in Section 6.02 (e), (vi) interacting with the Membership at Large, including registration of new Members and termination of memberships, and the management of members contributions to the Association, (vii) conducting the Association marketing and communication actions including management of brands and trademarks, evangelism, promotion, public relations and industry events, (viii) liaising with third parties and partners including other open source organizations, academic and research community, industrial partners, standardization organizations, public and governmental agencies,

## **Section 6.02                      Councils**

The Management Office shall establish three Councils in order to assist the Board of Directors and provide guidance to the Management Office: an Operations Council, a Technology Council and an Ecosystem Council.

- (a) Councils roles: Councils are thematic governance bodies created to perform the following tasks: (i) contribute to establishing the Internal Policy of the Association; (ii) facilitate communication and information sharing between the Association Members and be the place where decisions governing collaboration across members be taken and (iii) assist the Board of Directors and the Management Office in their duties by providing guidance in relation with their theme.
- (b) Overall structure: Each Council shall be governed by its own Charter which it shall itself define. Each Council shall be comprised of Members' representatives appointed in the following manner: (i) Strategic Members have the obligation to appoint one (1) representative to each Council, (ii) Corporate Members are entitled (no obligation) to appoint one (1) representative. Each Council shall be chaired by a person elected for one (1) year by the Council's members. The day to day operations of each Council shall be managed by a member appointed by the Management Office.
- (c) Operations Council: The Management Office shall establish an Operations Council and manage the definition process of this Council's Charter. The Operations Council is responsible for finance and book-keeping supervision, for audit of operations and for providing legal guidance and resources. The Operations Council shall be chaired by a person elected by the Council's members. The Operations Council shall be managed by the Chief Executive Officer.
- (d) Technology Council: The Management Office shall establish a Technology Council and manage the definition process of this Council's Charter. The Technology Council is responsible for building the overall technical architecture, including defining technical guidelines, for providing technology validation, for making Project lifecycle decisions, for monitoring production and overall Projects consistency. The Technology Council also defines the organization's architecture vision, it validates the founding charters of Projects and Initiatives (as defined in Section 2.02 (a) and Section 2.02 (b) respectively) and it approves reuse of non-Association code into Projects and Initiatives. The Technology Council shall be comprised of Members' representative appointed in the following manner: Strategic Members have the obligation to appoint one (1) representative to the Technology Council whereas Corporate Members are entitled (no obligation) to appoint one (1) representative. The Technology Council shall be chaired by a person elected by the Council's members. The manager of the Technology Council appointed by the Management Office shall be called "Chief Technology Officer".
- (e) Ecosystem Council: The Management Office shall establish an Ecosystem Council and manage the definition process of this Council's Charter. The Ecosystem Council is responsible for providing recommendations regarding new Projects and new Initiatives (as defined in Section 2.02 (a) and Section 2.02 (b) respectively), for driving efforts to increase membership, for helping the Association keep current with market and technology trends, for providing PR and marketing and communication guidance, for monitoring brand building efforts, for ensuring message consistency. The Ecosystem Council shall be chaired by a person elected by the Council's members and managed by a member of the Management Office appointed by the Chief Executive Officer.

## **Article VII. MISCELLANEOUS**

### **Section 7.01 Portfolio of Binding Documents**

These Bylaws are part of a portfolio of documents which, by virtue of this Section 7.01, shall be binding to all Members. The Portfolio includes the following documents: (i) Bylaws, (ii) Book of Procedures, (iii) Intellectual Property Rights Policy, (iv) Antitrust policy, (v) Councils and Activities Charters, (vi) Association Membership Agreement, (vii) Participant Agreement.

The following documents shall constitute the Association's Internal Policy: (i) Book of Procedures, (ii) Intellectual Property Rights Policy, (iii) Legal Compliance Policy, (iv) Councils and Activities Charters.

- a) Bylaws: the Bylaws define the fundamental purpose, activities, organization, responsibilities, and obligations of the Board and membership of this Association.
- b) Book of Procedures: The Book of Procedures set forth the detailed organization and operational terms, conditions and processes of all governance bodies of the Association.
- c) Intellectual Property Rights Policy: The Intellectual Property Policy (IP Policy) sets forth the principles under which the Association manages intellectual property matters.
- d) Legal Compliance Policy: The Legal Compliance Policy is established to ensure that no antitrust or any legal issues are raised and to require that all activities within the Association be conducted strictly in accordance with any applicable laws.
- e) Charters: Councils Charters and Activities Charters contribute to the Internal Policy in so far as they set forth the operational procedures by which members participate in Councils and Activities.
- f) Association Membership Agreement: The Association Membership Agreement gives evidence of the membership of a Member and defines, among others, the fee structure and level of fees for each membership categories.
- g) Participant Agreement: The Participant Agreement gives evidence of the commitment of a Member to participate in a Council or an Activity and to abide by its corresponding Charter.

### **Section 7.02 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 Association in adopting them provides that they are to become effective at a later date.

### **Section 7.03 Language**

The Bylaws of this Association are written in both French and English. In case of any inconsistency between the two versions, the English version shall prevail.

### **Section 7.04 Use of Names**

Any Member may disclose and publicize such Member's Membership in the Association, within guidelines proposed by the Management Office and approved by the Ecosystem Council. Unless requested to the contrary in writing by a Member at the time of application to the Association for Membership, the Association may publicize such Member's Membership in the Association.

### **Section 7.05 Legal Compliance**

Members agree to comply at all times with all applicable laws, rules and regulations with respect to their performance under the Bylaws. The Members understand that in certain lines of business they may be competitors and that it is imperative that they and their representatives act in a manner which does not violate any applicable antitrust law and regulation. Guidelines are provided in the Legal Compliance Policy document.



#### **Section 7.06 Indemnification of Officers and Directors**

The Association shall indemnify any person made or threatened to be made a party to an action by or in the right of the Association to procure a judgment in its favor by reason of the fact that he/she, his/her testator or intestate is or was a director or officer of the Association, against amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred by him in connection with the defense or settlement of such action or in connection with an appeal therein, except in relation to matters as to which such person is adjudged to have breached his duty to the Association.

#### **Section 7.07 Applicable Law - Dispute Resolution**

The Bylaws shall be construed in accordance with the laws of France. Each Member agrees to submit to the sole courts of the jurisdiction where the Association has its registered office for the purposes of any suit, action or other proceedings arising out of the Bylaws.

#### **Section 7.08 Dissolution and Distribution of Assets**

This Association may be dissolved upon the vote of a Super-Majority, as defined in Section 4.12 (b), of the Board of Directors then in office.

The Board of Directors appoints one or more liquidators in charge of the liquidation of the assets and liabilities of the Association. The liquidators are in charge of carrying out the formalities of declaration and publication required by the law and regulations that apply.

Upon dissolution of this Association, and after all of the known debts and liabilities of this Association have been paid or adequately provided for, any remaining net assets of this Association shall be distributed by the Board of Directors to one or more organizations selected by the Board of Directors which will help to further the purposes of this Association and entitled by law to receive such assets (especially those officially recognized as serving the public interest), with the exception of the Members of the Association.

#### **Section 7.09 Amendments to Bylaws**

The Board of Directors of this Board may adopt, amend, or repeal bylaws to the maximum extent permitted by law. The provisions in any such amended Bylaws will be binding, subject to the terms of the Association Membership Agreements, upon all of the Members.

#### **Section 7.10 Founding Members**

Founding member status with voting rights may be conferred at such time and under such terms as the Board of Directors shall determine. Founding Member status is granted to those members in good standing who join the association within 90 days of its establishment. Founding Member status would expire if Founding Member let their annual membership lapse (failed to renew membership).

#### **Section 7.11 Interim Board of Directors**

An interim Board of Directors shall be formed for a 6-month maximum duration starting with the registration of the Association with the French authorities.

Notwithstanding any provision stated herein to the contrary, the Interim Board of Directors shall (i) assume all responsibilities of the Board of Directors as defined in Article IV (ii) manage the affairs of the Association until the first elected Board of Directors takes office (iv) recruit the Chief Executive Officer, (iv) conduct the next election at the earliest of the following: within six (6) months of the Association's registration or within ninety (90) days once the membership of the Association reaches one hundred (100) Strategic or Corporate Members.

Directors on the Interim Board of Directors shall be eligible to run in the next election for Board of Directors membership.

Members of the Interim Board of Directors are Jean-Pierre LAISNE, Chairperson, and Jinpeng HUAI, Vice-Chairperson.

#### **Section 7.12 Interim Officers**

An Interim Office shall be formed for the same duration as for the interim Board of Directors, especially for the purpose of registration of the Association. Officers on the Interim Management Office shall be eligible to be appointed by the next Board of Directors as permanent Officers. Notwithstanding any provision stated herein to the contrary, the Interim CEO shall have all rights of the CEO and the Treasurer as set forth in Section 5.05 and Section 5.06 respectively. The Interim CEO shall from time-to-time report to the Interim Board all matters within the CEO's knowledge affecting the Association that should be brought to the attention of the Interim Board.

Interim Officers are Jean-Pierre LAISNE, as Chairperson of the Board, Jinpeng HUAI, as Vice-Chairperson of the Board and Cedric THOMAS as Chief Executive Officer.

**Section 7.13                      Advisory Board**

The function of the members of the Advisory Board shall be to advise and make non-binding recommendations to the Board of Directors with respect to matters within the areas of their experience, expertise and influence.

- (a) The Advisory Board shall have a maximum of seven (7) members. The members shall be appointed by the Board of Directors of the Association. The term of service for a member of the Advisory Board will be one year from the date he/she is appointed or until his/her successor is duly appointed or until his/her earlier resignation, removal by the Board of Directors, or death. The Board of Directors shall appoint one of the seven members as Chairman of the Advisory Board. The Board of Directors shall have the authority to remove any member of the Advisory Board at any time for any reason.
- (b) The Board of Directors shall have no obligation to adopt, or otherwise be bound to act upon, any recommendation of the Advisory Board, but shall, in its sole and absolute discretion, have the authority to take the Advisory Board's recommendations under consideration.
- (c) The members of the Advisory Board shall not receive any compensation for their services in such capacities. The members of the Advisory Board shall bear their own costs and expenses in connection with their Advisory Board services.
- (d) The members of the Advisory Board shall have no liability or obligations whatsoever for any actions or omissions taken by them in their capacities as such.

**Signed in two copies of each original of the French and English languages**