

OW2 Consortium Membership Agreement

This Membership Agreement is made this _____ day of _____, 201_

And entered into by and between:

OW2 Consortium ("OW2") established as a non-profit association, governed by the French law of July 1st, 1901 and the French decree of August 16th, 1901, having its Administrative Headquarter 112-114, Bd Haussmann, 75008, Paris, France and its Social Headquarters Rue Jean-Jaures, 78340, Les Clayes-sous-Bois, France,

AND _____

a company incorporated under the laws of, or a sole proprietorship, business, partnership, society, unincorporated association registered under the laws of:

(state, province, country) _____,

an Individual,

having its registered address at _____

_____ (the "Member").

OW2 and Member will be collectively referred to as the "Parties".

Recitals

WHEREAS, OW2 is a not-for-profit organization which aims are a) to develop industry grade open source software, b) to nurture the associated code base, c) to facilitate cooperation among its members, and e) to help foster a vibrant eco-system for the exploitation of its open source code base.

WHEREAS, OW2 is open to all kinds of organizations and corporations, large and small, for-profit and not-for-profit, and individuals to be OW2 Members or Associate Organizations which want to promote and to improve the ecosystem for open source middleware and infrastructure software.

WHEREAS, the undersigned hereby agrees to become a Member or an Associate Organization of the OW2 Consortium, as defined in the then-current version of the Bylaws as set forth in Appendix One (the "Bylaws"), which is hereby incorporated into this Agreement by reference, the then current version of which exists at https://www.ow2.org/bin/download/Membership_Joining/Legal_Resources/OW2C-Bylaws.pdf, in the Membership status selected by Member in Appendix Four and to conform to all of the applicable terms and conditions set forth herein.

NOW, THEREFORE, OW2 AND THE MEMBER (OR ASSOCIATE ORGANIZATION) AGREE AS FOLLOWS.

1 Membership Categories

- 1.1 Generally: There shall be three (3) categories of membership in OW2: a) Strategic Members, b) Corporate Members, c) Individual Members. For entities which wish to be associated with OW2, the consortium also recognizes Associate Organizations which is not a Membership Category. Membership Categories are defined by a set of fees, rights and duties (hereafter the "Membership Conditions").
- 1.2 Strategic Members: Strategic Members are legal entities which comply with the Strategic Membership Conditions set forth in Appendix Four of this Agreement.
- 1.3 Corporate Members: Corporate Members are legal entities which comply with the Corporate Membership Conditions set forth in Appendix Four of this Agreement.
- 1.4 Individual Members: Individual Members include individuals such as, without limitation, free-lancers, students and technology enthusiasts who meet the requirements of an Individual Member as set forth in Appendix Four of this Agreement.

For all but Associate Organizations: please proceed through the online process which will generate the specific Membership Agreement for your registration at <http://joining.ow2.org/registration.html>.

- 1.5 Associate Organizations: Associate Organizations are entities, such as standards organizations, research institutions, academic institutions, open source organizations, publishing organizations, not-for-profit organizations and other organization types, that are not eligible or desirous of membership in any category but that wish to support the aims and objectives of OW2 as set forth in Section 3.05 of the Bylaws.
- 1.6 Founding Members: Members entering this agreement before March 18, 2007, shall have the quality of Founding Members of the Consortium as set forth in Section 7.10 of the Bylaws.

2 Term and termination

- 2.1 Term: This Agreement becomes effective and shall be dated (the "Effective Date") on the last to occur of: (a) the date upon which it is signed by the Member, and (b) the date upon which the Member's membership fee is received by OW2. Except as provided in Sections 2.2 this Agreement shall automatically renew for successive one-year terms ("Renewal Terms") beginning on each calendar year subject to the rights of termination set forth in Section 2.3.
- 2.2 Strategic Membership Term: The Initial Term of Strategic Membership ("Initial Term") shall begin on the Effective Date and shall continue in force for three years from the first day of the calendar year in which the Effective Date falls ("Anniversary Date"). Thereafter, this Agreement shall automatically renew for successive one-year terms ("Renewal Terms") subject to the rights of termination set forth in Section 2.3.
- 2.3 Termination: The Membership of any Member shall terminate in accordance with Section 3.08 of the then-current Bylaws. Upon termination of Member's membership, this Membership Agreement shall terminate.
- 2.4 Survival: In the event of termination under Section 2.3, the following paragraphs 3.1, 3.2, 3.4 and 3.6 shall survive and remain in effect. Member shall be obligated to pay all costs, expenses and dues that accrued prior to the effective date of termination.

3 Rights and obligations

- 3.1 Intellectual Property Policy: The Parties agree to abide by the Intellectual Property Policy as set forth in Section 7.01 of the Bylaws.
- 3.2 Compliance with policies: Member agrees to abide by all applicable rules of conduct and policies as set forth in the then current Bylaws, IP Policy, Book of Procedures and any and all other policies and procedures adopted and as may be amended from time to time in accordance with the Bylaws.
- 3.3 Fees, Dues: Member agrees to pay the annual fees established for its Membership Category, if any, as set forth in Appendix Four hereto, as may be amended from time to time in accordance with the then-current Bylaws. Any Officer (as defined in Appendix Two) contributed by a Strategic Member to work in the Managements will be fully compensated by such Strategic Member and not by OW2.
- 3.4 Cost and Expenses: Each Member shall bear all of its own costs and expenses related to membership in OW2 including, but not limited to, compensation payable to Member's employees and consultants and all travel and other expenses associated with Member's participation in OW2's activities including but not limited to meetings, conferences and Activities as set forth in Section 2.02 of the Bylaws.
- 3.5 Use of Names, Publicity: Any Member may disclose and publicize such Member's Membership in OW2, within guidelines proposed by OW2 as set forth in Section 7.04 of the Bylaws. Member shall assist OW2 in publicly announcing such new Member's membership therein within ninety (90) of the Effective Date of this Agreement.
- 3.6 Non liability: No Member shall be liable for the debts, liabilities, or obligations of OW2 merely by reason of being a Member.

4 General Provisions

- 4.1 Authority to Execute: Member hereby represents and warrants to OW2 that a) it has full right, power and authority to enter into and execute this Agreement, b) it has taken all actions necessary to authorize it to enter into and perform its obligations under this Agreement.
- 4.2 Entire Agreement: This Agreement, its Appendix attached hereto and the documents referred to herein, constitute the entire agreement between the Parties, and supersede all prior agreements, understandings and negotiations, with respect to the subject matter hereof.

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- 4.3 Amendment. OW2 may from time to time modify the terms of this Agreement in accordance with the Bylaws. Unless Member objects to the revised agreement in writing to OW2 within thirty (30) days of receiving notice of the change, Member will be deemed to have accepted the terms of the revised Agreement and the as-revised Agreement will take effect and be binding on both Parties at the end of Member's thirty (30) day objection period. Amendments shall be prospective only unless agreed to otherwise by Member and OW2.
- 4.4 Assignment: Neither this Agreement nor any rights hereof, in whole or in part, are assignable by Member without the prior written consent of OW2 as set forth in Section 3.11 of the bylaws.
- 4.5 Confidentiality: All information exchanged between the member and OW2 shall be considered non-confidential and provided under terms consistent with OW2's IP Policy. In the event confidential information needs to be shared with third parties, with the consent of the disclosing party, such confidential information shall be disclosed solely pursuant to a confidentiality agreement entered into in advance by the participants in such disclosure.
- 4.6 Disclaimer of Warranty : EXCEPT AS OTHERWISE AGREED IN WRITING, ALL INFORMATION PROVIDED UNDER THIS AGREEMENT, IS PROVIDED ON AN "AS IS" BASIS, WITH NO WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, ACCURACY, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 4.7 Disclaimer of Liabilities : IN NO EVENT SHALL EITHER OW2 NOR MEMBER BE LIABLE TO EACH OTHER OR ANY OTHER MEMBER OR THIRD PARTY FOR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER INCLUDING, BUT NOT LIMITED TO, MONETARY DAMAGES, LOST PROFITS, LOST REVENUE, LOST SALES, LOSS OF DATA, LOSS OF USE.
- 4.8 Relationship of Parties: This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the Parties. Nothing in this Agreement shall be construed to prohibit or restrain the entry by any OW2 Member into any separate contract or agreement with other OW2 Members or third parties on any terms.
- 4.9 Force Majeure: Notwithstanding anything in these conditions to the contrary neither OW2 nor the Member shall be liable to each other for any loss or damage consequential or otherwise caused by or arising out of any Act of Parliament, Order in Council, Act of State, strike of employees, lock-out, trade dispute, enemy action, rioting, civil commotion, fire, force majeure, or other similar contingency beyond the control of either of them.
- 4.10 Governing Law: This agreement shall be governed by laws of France as set forth in section 7.07 of the Bylaws, the Parties consenting to the jurisdiction and venue of the Tribunal de Commerce de Versailles, France.
- 4.11 Legal Compliance: As set forth in Section 7.05 of the Bylaws, 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 in competition with other OW2 Members and that it is imperative that they and their representatives act in a manner which does not violate any applicable antitrust law and regulation.
- 4.12 Headings: The headings to the sections hereof are for reference purposes only and shall not be used in the interpretation of the content of this document.
- 4.13 No other rights granted: No other license to any patent, trade mark, copyright or other proprietary right is granted in this Agreement or through any disclosure hereof except where expressly stated.
- 4.14 Entire Agreement: This Agreement, together with Appendix 1, 2, 3 and 4 embodies the entire understanding between OW2 and the Member for the Member's participation in OW2, and cancels and supersedes all prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they relate in any way to its subject matter.
- 4.15 Counterparts: This Agreement may be executed in one or more counterparts, which may be facsimile counterparts, each of which shall be deemed to be an original, but collectively shall constitute one and the same Agreement.

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APPENDIX ONE

[BYLAWS]

APPENDIX TWO

OFFICERS CONTRIBUTED BY STRATEGIC MEMBERS

For the purpose of this Agreement, Officers are defined as permanent members of the Management Office as set forth in Article VI of the then-current Bylaws. Strategic Members agree to commit for three years and on full-time basis at least one (1) Officer assigned to work in either or both the Management Office and one of the Councils (as set forth in Section 6.02 of the Bylaws) under the managerial authority of the CEO of OW2.

APPENDIX THREE

LORGS and SMORGS DEFINITIONS

For the purpose of this agreement, Large Organizations (LORGS) and Small and Medium Size Organizations (SMORGS) are defined according to the European Commission definition which can be found at <http://europa.eu/scadplus/leg/en/lvb/n26026.htm>.

APPENDIX FOUR

MEMBERSHIP CONDITIONS

| | | Strategic Membership | Corporate Membership | Individual Membership | Associate Organization |
|---|---------------------------|---|---|---|-------------------------------|
| Membership Fee Structure* * Fees may be amended from time to time by the Board of Directors in accordance to the Bylaws and shall from the date of such amendment replace the previously existing Fees. Any such change to the Fees shall not require re-execution of this Agreement. | Annual Fee | €50,000 3-year commitment | LARGE (2): €10,000 MEDIUM (2): €5,000 SMALL (2): €3,000 MICRO (2): €1,500 Academia: €4,000 Laboratory (3): €1,000 1-year commitment | No Charge | No Charge |
| | Special Conditions | SMORGs and Academia may become Strategic Member by cooptation by the Board of Directors. Purchasing Power Parity applicable to Founding Members | Purchasing Power Parity applicable to Corporate members registered before Dec. 31, 2012 | - | - |
| Membership Rights | Board of Directors | One seat by right | Through representation: As many representatives as Strategic Members | One representative | - |
| | Councils | Eligible to chair a Council Entitled to participate in any Council | Entitled to participate in any Council | Entitled to participate in any Council | - |
| | Projects | Eligible to lead any Project Entitled to participate in any Project Mgt Team | Eligible to lead any Project Entitled to participate in any Project Mgt Team | Eligible to lead any Project Entitled to participate in any Project Mgt Team | - |
| | Initiatives | Entitled to lead an Initiative Entitled to participate in any Initiative Mgt Team | Entitled to participate in any Initiative Mgt Team | Eligible to participate in any Initiative Mgt Team | - |
| | Local Chapters | Entitled to lead a Local Chapter Entitled to participate in any LC Mgt Team | Entitled to participate in any LC Mgt Team | Eligible to participate in any LC Mgt Team | - |
| Membership Duties | Board of Directors | Must appoint one Director | - | - | - |
| | Councils | Must appoint one representative in each Council | - | - | - |
| | Projects | Must appoint at least two contributors to at least one Project | - | - | - |
| | Initiatives | Must participate in at least one Initiative Management Team | - | - | - |
| | Management Office | Must provide in-kind contribution to be recognized as a Benefactor Member | - | - | - |

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Please select applicable membership status:

- Strategic Membership, represented by (name): _____
- Corporate Membership - LORGs, represented by (name): _____
- Corporate Membership – SMORGs or Academia, represented by (name): _____
- Corporate Membership – MICRO or Research Lab., represented by (name): _____
- Individual Membership
- Associate Organization, represented by (name): _____

Billing address if different from the address mentioned above

Signed by

OW2 Consortium

Date:

Represented by (Name):

Signature:

The Member (or Associate Organization)

Date:

Organization Name (if applicable):

Represented by (Name):

Signature:
