

OW2 Associate Organisation Memorandum of Understanding

This Memorandum of Understanding is made this _____

entered into by and between:

OW2 ("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 Headquarter 7 rue de Phalsbourg, 75017, Paris, France,

AND (the "Associate Organization")

a legal entity (formed and existing under the laws of:

(state, province, country) _____

having its principal address at _____

Associate Organisations are entities, such as standards organisations, research institutions, academic institutions, open source organisations, publishing organisations, not-for-profit organisations and other organisation 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.

OW2 and Associate Organisation are collectively referred to as the "Parties".

Recitals

WHEREAS, OW2 is a not-for-profit organisation 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 organisations and corporations, large and small, for-profit and not-for-profit, and individuals to be OW2 Members or Associate Organisations which want to promote and to improve the ecosystem for open source middleware and infrastructure software.

WHEREAS, the undersigned wishes and hereby agrees to become an Associate Organisation of OW2, as defined in the then-current version of the Bylaws as set forth in Appendix One (the "Bylaws", which is hereby incorporated into this Memorandum of Understanding by reference, and which exists on the OW2 website at the url here-after* and to conform to all of the applicable terms and conditions set forth in this Memorandum of Understanding.

*(https://www.ow2.org/download/Membership_Joining/Legal_Resources/OW2-BylawsVERSION2021.pdf)

NOW, THEREFORE, OW2 AND ASSOCIATE ORGANISATION AGREE AS FOLLOWS.

1. Term and termination

1.1 Term: This Memorandum of Understanding becomes effective and shall be dated (the "Effective Date") on the date upon which it is signed by Associate Organisation, This Memorandum of Understanding shall automatically renew for successive one-year terms ("Renewal Terms") beginning on each calendar year subject to termination rights of OW2 as set forth in the Bylaws or written notice from Associate Organisation.

2 Rights and obligations

2.1 Rights and Duties: It is understood that OW2 and Associate Organisation will be governed by their own Bylaws and any and all other policies and procedures adopted.

- 2.2 No commitments:** This Memorandum of Understanding acts as a declaration of friendship between OW2 and an Associate Organisation who wish to support the aims and objectives of OW2. No other reciprocal commitment whatsoever is implied by this Memorandum of Understanding.
- 2.3 Cost and Expenses:** The Parties shall bear all of their own costs and expenses related to participation in this Memorandum of Understanding and support of OW2 including, but not limited to, compensation payable to Associate Organisation's employees, representatives and consultants and all travel and other expenses associated with participation in OW2's activities.
- 2.4 Use of Names, Publicity:** The Parties may disclose and publicize their participations in this Memorandum of Understanding, within their own communication guidelines. OW2's guidelines are set forth in Section 7.04 of the Bylaws. Associate Organisation and OW2 shall agree on any public announcement within ninety (90) days of the Effective Date of this Memorandum of Understanding.
- 2.5 Non liability:** No Organisation shall be liable for the debts, liabilities, or obligations of OW2, nor will OW2 be liable for the debts, liabilities, or obligations of Associate Organisation.

3 General Provisions

- 3.1 Authority to Execute:** Associate Organisation represents and warrants to OW2 that a) it has full right, power and authority to enter into and execute this Memorandum of Understanding, b) it has taken all actions necessary to authorize it to enter into and perform its obligations under this Memorandum of Understanding.
- 3.2 Entire Memorandum of Understanding:** This Memorandum of Understanding, any Appendix attached hereto and the documents referred to herein, constitute the entire Memorandum of Understanding between the Parties, and supersede all prior agreements, understandings and negotiations, with respect to the subject matter hereof.
- 3.3 No amendment.** There will be no amendment to this Memorandum of Understanding. Should any change be required, a new Memorandum of Understanding will be signed.
- 3.4 Assignment:** Neither this Memorandum of Understanding nor any rights hereof, in whole or in part, are assignable by Associate Organisation without the prior written consent of OW2 as set forth in Section 3.11 of the Bylaws .
- 3.5 Confidentiality:** All information exchanged between the Associate Organisation 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.
- 3.6 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.**
- 3.7 Disclaimer of Liabilities: IN NO EVENT SHALL EITHER OW2 NOR ASSOCIATE ORGANISATION BE LIABLE TO EACH OTHER OR TO ANY OTHER OW2 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.**
- 3.8 Relationship of Parties:** This Memorandum of Understanding shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the Parties. Nothing in this Memorandum of Understanding shall be construed to prohibit or restrain the entry by any Organisation into any separate contract or agreement with OW2 Members, Associate Organisations or third parties on any terms.
- 3.9 Force Majeure:** Notwithstanding anything in these conditions to the contrary, neither OW2 nor the Associate Organisation 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.

- 3.10** Governing Law: This Memorandum of Understanding 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.
- 3.11** Legal Compliance: Associate Organisation and OW2 agree to comply at all times with all applicable laws, rules and regulations with respect to their participation in this Memorandum of Understanding. Associate Organisation and, when applicable, its members understand that in certain lines of business they may be in competition with other OW2 Members and Associate Organisations and that it is imperative that they and their representatives act in a manner which does not violate any applicable antitrust law or regulation.
- 3.12** 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.
- 3.13** No other rights granted: No other license to any patent, trade mark, copyright or other proprietary right is granted in this Memorandum of Understanding or through any disclosure hereof except where expressly stated.
- 3.14** Counterparts: This Memorandum of Understanding 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 Memorandum of Understanding.

OW2

Associate Organisation

Represented by:

Pierre-Yves Gibello

CEO

Signature:

Associate Organisation Name:

Represented by (Name):

Signature:
