

Articles of Association

of the

OPEN DATABASE ALLIANCE

Article 1 – Name and Seat

Under the name “Open Database Alliance” (ODBA) exists an association pursuant to articles 60 ff. of the Swiss Civil Code Articles with domicile Zurich, Switzerland.

Article 2 – Purpose

The Association is not-for-profit and pursues the purpose of promotion, protection and growth of the ecosystem around Open Source (a.k.a. Free Software, FOSS, FLOSS) databases.

Activities of the Association in promotion of this goal include:

- networking technology providers, service providers and users of Open Source databases;
- providing a single point of contact for products and services around Open Source databases;
- promoting the business of its members through member partnering and revenue sharing;
- supporting the development and use of Open Source databases;
- representing the interests of the members in other forums;
- participating in standardization of technologies and promotion of compliant implementation;
- supporting the usage of Open Source/Free Software by improving the quality of products and services to increase their competitiveness.

The Association is confessionally and politically neutral and independent.

Article 3 – Membership

Section 3.1 **Categories and classes of membership.**

There shall be three (3) categories of membership:

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- (i) Producers of Databases and Engines;
 - (ii) Associated Technologies and Services; and
 - (iii) User Organizations.

Each of these three groups shall be divided into three classes of membership:

- (a) Platinum Members;
- (b) Gold Members; and
- (c) Silver Members.

The term “Member” shall be used herein to refer in a general manner to a member of any category or class of members. Members can be natural persons, organizations or corporate entities.

Section 3.2 Membership Qualifications.

The fulfillment of the following requirements shall qualify for a membership of a respective membership category:

- (i) **Producers of Databases and Engines.** This category shall be open for individuals and entities providing or being a major contributor to an Open Source Database or Database Engine supported by the ODBA.
- (ii) **Associated Technologies and Services.** This category shall be open for individuals and entities providing tools, applications, support, consultancy, training or other services supporting one or more of the Open Source core technologies of the ODBA, regardless of the software model chosen for such products.
- (iii) **User Organizations.** This category shall be open for user groups as well as individuals and entities that are major users of one of the core technologies of the ODBA, to the extent that their requirements and feedback drive the development of the technology.

Every Member of any of these three categories must additionally meet the qualification of one of the following membership classes:

- (a) **Platinum Members.** Platinum members shall pay an annual membership fee as identified in Article 5 of these Articles.
- (b) **Gold Members.** Gold members shall pay an annual membership fee as identified in Article 5 of these Articles.
- (c) **Silver Members.** Silver members shall pay an annual membership fee as identified in Article 5 of these Articles.

All Members regardless of category or class must additionally meet the requirements set forth by the terms of the ODBA Membership Agreement and the ODBA Code of Conduct. The terms of these documents become part of the basic requirements for all Members.

Article 4 – Admission of new members

Section 4.1 Applications for one of the Membership Categories and Membership Classes as defined in Article 3 shall be possible at any time.

Section 4.2 Applications have to be made in writing to the Board of Directors. All applications must be associated by a written confirmation that the member meets the qualifications for the respective Membership Qualifications as set forth in Articles Section 3.2 above.

Section 4.3 The Board of Directors decides irrevocably with a majority of its members present about the admission of an applicant as Member of the Association.

Section 4.4 Memberships suspended, terminated or expelled pursuant to Section 6.2 may be reinstated upon the affirmative vote of an absolute majority of the directors then in office.

Article 5 – Membership Fees

Section 5.1 The Membership Fees shall be determined by the General Assembly of the Association. Membership fee can vary per (i) category, (ii) class, and (iii) size of entity.

Section 5.2 The Board of Directors is authorized to develop and maintain a policy for in-kind contributions to pay the dues defined under Section 5.1.

Article 6 – Termination of Membership

Section 6.1 **Termination.** The Membership of a natural person ceases with his or her death, the Membership of an entity with its dissolution. The Membership with the Association might be terminated at any time by written notice to the chairman of the Board of Directors of the Association. The termination shall be effective immediately and shall not relieve the member from any obligations the member may have to the Association or other members as a result of these Articles or obligations incurred or commitments made prior to the termination, including, but without limitation,

- (i) obligations agreed to as part of any co-marketing, reference selling or other joint activity of the Association members, or
- (ii) any Membership Fees for the current calendar year during which the termination notice has been delivered.

Section 6.2 **Exclusion.** A Member can be excluded from the Association without cause by a decision of the board of directors, which must be given by the absolute majority of the Directors then in office. Before the decisions to exclude a member, such member shall be heard by the Board of Directors. The exclusion of a Member is final and cannot be appealed to a court. An excluded Member has to fulfill all his financial duties, including any outstanding Membership Fees, towards the Association, which all shall become immediately due with the exclusion.

Section 6.3 If a Member does not fulfill its financial duties towards the Association it shall be automatically excluded from the Association thirty days after the Association has served the second payment reminder to such Member.

Section 6.4 A withdrawing or excluded Member is not entitled to receive any refund, pro rata or otherwise, of any Membership Fees, fees or assessments for the balance of the calendar year in which the resignation is effective and he loses all and any entitlements to the Association's assets.

Section 6.5 **Death and Dissolution.** All rights of membership shall cease upon the member's death, resignation, exclusion, termination or dissolution. Notwithstanding the foregoing:

Subsection 6.5.1 **Acquisition by third party.** Upon the completion of any acquisition or merger involving a single Member in which such Member will be acquired or otherwise over taken, the Board of Directors in its discretion may permit such member's membership to be transferred to the entity acquiring or otherwise over taken the Member for the remainder of the then-current membership year if the surviving entity qualifies for membership as provided in these Articles; provided, however, that the acquiring entity remains fully liable for any unpaid Membership Fees, fees, or assessments of the disappearing member.

Subsection 6.5.2 **Acquisition by member.** On the completion of any acquisition or merger involving two members, one of the two memberships shall be deemed to expire as of the effective date of the merger, which election shall be made by the acquiring entity provided the acquiring entity qualifies for membership in the elected class; provided, however, that there shall be no proration or refund of Membership Fees, fees or assessments for the year of the acquisition or merger and the acquiring entity shall remain fully liable for any unpaid Membership Fees, fees, or assessments for both memberships for the entire then-current membership year; and

Subsection 6.5.3 The Board of Directors in its discretion may permit a Member to transfer its membership to another entity within its same Control Group (as defined in Section 10.13, below) if the transferee qualifies for membership in the transferring member's class; provided, however, that the transferor and transferee shall be and remain jointly and severally liable for any unpaid membership dues, fees, or assessments of the transferring member.

Subsection 6.5.4 The Board of Directors may grant a waiver of any provision of this Section 6.5 in its discretion.

Article 7 – Liability

Section 7.1 Any assets of the Association bear sole liability for the obligations of the Association. The members and bodies of the Association bear no personal liability whatsoever.

Article 8 – Bodies of the Association

The bodies of the Association are

- The General Assembly
- The Board of Directors
- The Auditor
- The Committees

Article 9 – General Assembly

Section 9.1 The General Assembly is the supreme body of the Association. The ordinary General Assembly is normally convened in the fourth quarter (October to December).

The Members will be invited to the General Assembly by written notice four (4) weeks in advance. The invitation has to contain the agenda of the day. Proposals to the agenda of the General Assembly from Members shall be served in writing to the Chairman of the Board of Directors five (5) weeks before the date of the Assembly.

Section 9.2 Each General Assembly convened as per Section 9.1 shall be deemed as properly convened and having the right to make decisions.

Section 9.3 The ordinary General Assembly has the following non-transferable powers:

- a) Approval of the Minutes of the last General Assembly;
- b) Electing the Board of Directors and the Auditors;
- c) Approval of the annual report of the Board of Directors;
- d) Approval of the annual accounts, the auditor's report and the annual budget;
- e) Determination of the Membership Fees;
- f) Discharge of the members of the Board of Directors and other officers of the Association;
- g) Approval of changes to the Articles of Association;
- h) Approval of Rules and Regulations;
- i) Dissolving of the Association;
- j) Approval about the appropriation of the liquidation process.

Section 9.4 The following Members shall have the following voting rights in the General Assembly:

- **Platinum Members:** three (3) votes.
- **Gold Members:** two (2) votes.
- **Silver Members:** one (1) votes.

Section 9.5 Every member shall have the right to vote in person or by one or more representatives authorized by written proxy.

Section 9.6 An extraordinary General Assembly can be convened at any time upon invitation of the Board of Directors. An extraordinary General Assembly must be convened by the Board of Directors if one fifth (1/5) of the votes vested in the Membership so requests in writing by serving the agenda for such Assembly.

Section 9.7 The General Assembly is chaired by the Chairman of the Board, or in his or her absence, by the Vice Chairman, or in his or her absence, by the Executive Director. In absence of all of them, the General Assembly shall elect its chair under the guidance of one of the other officers or directors of the Association, or if no officer or director is present, the most senior member present. The weighing of votes according to Section 9.4 also applies to the election of the chair.

Section 9.8 All votes and elections shall be open, unless otherwise decided by the Assembly. Decisions in the General Assembly are normally made by simple majority of the votes of the Members presents unless otherwise stated herein. Changes to these Articles of Association require a majority of two thirds (2/3) of all represented votes. Dissolution of the Association requires a majority of 80% of all votes of current members of the Association.

Section 9.9 Any action that may be taken at any assembly of members may be taken without calling an assembly if a written ballot is delivered to every member entitled to vote on the matter. Such written ballot shall indicate the time to return the ballot and leave no less than 5 days for members to cast their vote, taking into account potential delays of the means of transmission. A written ballot shall (i) set forth the proposed action, (ii) provide an opportunity to specify approval, disapproval or abstention of each proposed action, and (iii) with respect to each matter other than the election of directors, state the percentage of approvals necessary to pass each matter. The quorum for such written ballots are all members entitled to vote on the matter. Ballots that are not returned within the indicated time frame are counted as abstentions.

Article 10 – Board of Directors

Section 10.1 The Board of Directors contains of five to fourteen members, who are appointed for a tenure of two (2) years. Reelection is possible.

Section 10.2 Every Membership Category is entitled to be represented by a certain number of

members of the Board of Directors as follows:

- **Producers of Databases and Engines:** 3 Seats
- **Associated Technologies and Services:** 2 Seats
- **User Organizations:** 3 Seats

There can be up to three (3) additional seats in the Board of Directors reserved exclusively for Platinum class members.

Subsection 10.2.1 Any member can put forward candidates for election to the board in their own category or class, respectively, provided that such member would meet the eligibility criteria and for directors set forth in Section 10.13 and Section 10.14.

Subsection 10.2.2 Every member from the corresponding category gets to vote according to the weighing of votes detailed in Section 9.4.

Subsection 10.2.3 The elections to the board of directors takes place by category or class in the following order: 1) Directors for Platinum class members, 2) Producers of Databases and Engines; 3) Associated Technologies and Services and 4) User Organizations.

Subsection 10.2.4 Platinum members that have succeeded to be represented in the Board of Directors through their nominee to Platinum Director do not have a vote in their respective category. Platinum members not directly represented on the Board of Directors vote normally.

Subsection 10.2.5 Each category or class shall vote for all available board seats through written ballot listing the members' name, category and voting weight. Each ballot shall list one or more names of candidates up to a maximum defined by the number board seats available to the category or class. It is not possible to list a candidate more than once.

Subsection 10.2.6 Votes are counted for each candidate across all ballots regardless of position on the ballot. The candidates that received the most votes shall be considered elected.

Subsection 10.2.7 In case of equality of votes between more candidates than board seats available, the tie shall be broken by a separate ballot. This ballot shall be conducted according to the mechanisms outlined in Subsection 10.2.5 for the remaining board seats available.

Subsection 10.2.8 The Members may remove a director with or without cause at a General Assembly. Only the Members from the category that is represented by the director, who shall be removed, can vote to remove such director. A majority of 2/3 (two thirds) of all votes of such respective Member Category is required to remove a director.

Subsection 10.2.9 A director nominated by a Platinum member shall automatically be deemed to have resigned if the initially nominating Platinum Member ceases to be a Platinum Member or ceases

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to be a member of the Association for any reason.

Section 10.3 Subject to the limitations of the Articles and the Swiss Civil Code, and subject to the duties of directors as prescribed by the Articles, the Board of Directors shall have full authority and power to decide upon all matters of the Association that have not been delegated to other bodies. The authority of the Board of Directors includes in particular the power to represent the Association, to run the current businesses of the Association, including also to select and remove all officers, agents, employees and contractors, and to fix reasonable compensation therefor, 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.

Section 10.4 The Board of Directors constitutes itself among its members, whereby the Board shall appoint a Chairman and a Vice-Chairman and any further office as it seems necessary. It decides also about the signatory power of its members and the Associations' officers, whereby the signatory power shall be jointly by two.

Section 10.5 The Board of Directors may appoint or have elected up to three directors known as the "At-Large Directors" or the "Directors At-Large". The At-Large Directors shall have the same and complete voting rights, privileges and competences as all other directors appointed by the General Assembly. All other procedures and criteria pursuant to which the At-Large Directors are elected or appointed will be established by resolutions of the Board.

Section 10.6 Meetings of the Board of Directors shall be held at such intervals and in such places as may from time to time be approved by the Board of Directors or required by the activities of the Association.

Section 10.7 Meetings of the Board of Directors shall be convened by the Chairman by written notice to all members containing the agenda of such meeting. If all members of the Board of Directors are present, board meeting can also be convened without fulfilling the requirements for the convention of a board meeting.

Section 10.8 Minutes have to be taken about every board meeting containing at least the decisions of the Board.

Section 10.9 Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action. Unless otherwise specified in the action, the action becomes effective with the signature of the last director. Due records of such action shall be submitted to the records of the Association and shall be communicated to the Members no later than the next General Assembly.

Section 10.10 The Board of Directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through, use of any means of communication by which all directors participating 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 10.11 Unless otherwise provided herein, the Board of Directors takes its resolutions and votes with the majority of its members present in a meeting, whereby at least three have to be present. Each member of the Board of Directors has one vote.

Section 10.12 Directors and members of committees will not receive any compensation for their duties in connection with their office. However, the Board of Directors may decide to compensate expenses in connection with fulfillment of a director's duties in connection with their office, either on a case by case basis or by issuing written rules for compensation of such expenses. Nothing in this Section 10.12 shall prevent directors from accepting other positions and responsibilities in the ODBA, including remunerated ones.

Section 10.13 **Restrictions on Eligibility.** There can never be more than two individuals employed by or performing monetarily compensated services for a Control Group on the Board of Directors at the same time. In addition, no more than one individual employed by or performing monetarily compensated services for a Control Group can be on the board for any particular membership category. For purposes of this clause, "Control" shall mean (i) the ownership of more than 50% of the total voting securities of another entity, or (ii) in the case of unincorporated entities "Control" shall mean the ownership of more than 50% of the ownership interest representing the right to make decisions for the entity; and "Control Group" shall include all corporations or other entities which are Controlled by a Platinum Member, a Gold Member, or a Silver Member, which Control a Platinum Member, a Gold Member, or a Silver Member, or which are also Controlled by this corporation or entity Controlling a Platinum Member, a Gold Member, or a Silver Member.

Section 10.14 **Restrictions imposed by Conflict of Interest Transactions.**

- (a) **Conflict of Interest.** As used in this section, a "conflict of interest transaction" is a transaction with the Association in which a director or a Member of the Association has a direct or indirect interest.
- (b) **Approval.** A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction is fair to the Association and the director's interest were disclosed and known to and approved by the Board of Directors.

Article 11 – Auditors

Section 11.1 The General Assembly has to appoint one or more individual or corporate auditors.

Section 11.2 The auditors shall be appointed for a tenure of two (2) years. The auditors have to review the annual financial accounts, books and reports of the Association and to render their report to the ordinary General Assembly.

Article 12 – Committees

Section 12.1 The Board of Directors may appoint such committees as the Board from time to time deems necessary or appropriate to conduct the business and further the objectives of this Association. The appointment by the Board of any committee having the authority of the Board shall be by resolution adopted by a majority of directors then in office. Any committee having authority of the Board shall consist of two (2) or more directors. The Board of Directors shall retain the right to limit the powers and duties of any committee that it has created and to disband any such committees in its sole discretion.

Article 13 – Miscellaneous

Section 13.1 Corporate Loans, Guarantees and Advances. This Association shall not make any advances or make any loan of money or property to or guarantee the obligation of any director or officer.

Section 13.2 Upon dissolution of the Association, remaining assets shall go to the Free Software Foundation Europe (FSFE) which pursues goals compatible to those of the ODBA.

Section 13.3 Place of jurisdiction for all rights and duties resulting from this statute is Zurich, Switzerland.