

**Stichting NixOS Foundation**

*Deed of Formation*

Ref: jvm/svp/2015.001424.01

On this day, Friday, the twelfth of June, two thousand fifteen, there appeared before me, **Ellen van Leusden**, civil-law notary in Utrecht:

1.

2.

3.

**INCORPORATION**

These persons appearing declared by this deed that they are forming a foundation and that they adopt its articles of incorporation as follows.

**ARTICLES OF INCORPORATION**

**Name, registered office, term**

- 1.1. The name of the foundation is: **Stichting NixOS Foundation**.
- 1.2. The foundation has its registered office in the municipality of Utrecht.

**Purpose**

- 2.1. The purpose of the foundation is: to develop, propagate, and promote the adoption of a purely functional software deployment model and to support open-source projects that implement that model, as well as other activities that relate to, pertain to, and/or can be conducive to the foregoing in the broadest sense.
- 2.2. The foundation does not intend to make a profit.

### **The board & its composition**

- 3.1. The board manages the foundation, sets the policy, and bears ultimate responsibility for the realization of the foundation's purpose.
- 3.2. The foundation's board comprises a number of members to be set by the board itself; the number of board members shall be no fewer than three and no more than seven.
- 3.3. Even if the number of board members has fallen to below three, the board remains authorized; however, it must fill the vacancy or vacancies as quickly as possible.
- 3.4. The board itself names its new board members.
- 3.5. The members of the board elect a chair, a secretary, and a treasurer from among themselves; the position of chair is incompatible with the position of secretary or treasurer.
- 3.6. The board members enjoy no remuneration for their board activities apart from compensation for expenses incurred. Board members may also be granted an attendance fee that is not excessive.

### **Term of board membership**

- 4.1. The members of the board are appointed for an indefinite period.
- 4.2. A member of the board who is designated to fill an interim vacancy will hold the same position as the person in whose place he was appointed.
- 4.3. Board membership ends:
  - a. through voluntary resignation;
  - b. as a result of dismissal by the board;
  - c. through receivership or bankruptcy of the board member;
  - d. through the death of the board member.
- 4.4. Notice of dismissals and resignations must be given by registered mail.

### **Meetings of the board**

- 5.1. The board meets preferably once every four months, and as often as the chair or at least two other board members deem necessary.
- 5.2. The secretary or the board members who deem the holding of a meeting necessary convene the members of the board for a meeting with observance of a notice period of at least seven days, not counting the dates of the notice and of the meeting. Meeting notices may also be sent to the email address that a board member has provided to the foundation for that purpose.
- 5.3. The agenda of subjects to be discussed must be attached to the meeting invitation.

- 5.4. If the meeting notice was not given in writing or subjects are raised that were not stated in the meeting notice, or if the meeting notice was given with observance of a notice period shorter than seven days, then valid decision-making by the board is nevertheless possible, provided that all serving board members are present at the respective meeting and none of board members is opposed to this manner of decision-making.
- 5.5. The chair of the board conducts the meetings; in his presence, the board designates one of its members to conduct the meeting.
- 5.6. The secretary of the board or another board member to be designated by the chair of the meeting keeps minutes of each meeting.
- 5.7. The minutes of a meeting must be adopted at the next board meeting; as evidence of this, such minutes must be signed by the chair and secretary at said meeting.

#### **Decision-making by the board**

- 6.1. The board may adopt resolutions only if a majority of serving board members is present or represented.
- 6.2. If the quorum referred to in paragraph 1 of this article is not present or represented, the members of the board who are indeed present may resolve, in the manner indicated above, to convene a new meeting, which must be held no fewer than fourteen but no more than twenty-eight days after the first meeting; at that second meeting, said resolution may be adopted only with a majority of at least two-thirds of the number of votes cast, regardless of the number of board members present.
- 6.3. A board member may represent only one other member of the board at a meeting and vote for the represented member; the associated proxy must be granted in writing.
- 6.4. Unless these articles specify otherwise, the board adopts its resolutions by a simple majority of votes.
- 6.5. Each board member has one vote. All votes carry the same weight.
- 6.6. The board may also adopt resolutions outside meetings; however, such a resolution may be adopted only if all board members express their support of the resolution in writing.

#### **Limitation of board authorities**

- 7. The board is not authorized to enter into agreements for the acquisition, sale, or encumbrance of registered property, or to enter into agreements under which the

foundation is committed as guarantor or joint and several debtor, warrants performance by a third party, or provides security for the debt of a third party.

#### **Representation**

- 8.1. The board represents the foundation, but the foundation may also be represented by two jointly acting board members.
- 8.2. The board may grant, in writing, a general or special power of attorney to one or more specific board members or other persons for the purpose of representing the foundation. The board must make a general power of attorney known to third parties through publication in the commercial register at the Chamber of Commerce in the locale where the foundation is registered.

#### **The foundation's assets**

- 9.1. The foundation's assets are formed in part by:
  - a. gifts, subsidies, inheritances, and bequests;
  - b. the proceeds from its activities;
  - c. the income from the assets themselves.
- 9.2. The foundation must see to the proper management of its assets.
- 9.3. Inheritances may be accepted by the foundation only with the benefit of inventory.

#### **Accounting & annual reports and accounts**

- 10.1. The foundation's fiscal year is the same as the calendar year.
- 10.2. Within six months after the end of each fiscal year, the board must adopt the annual financial statement for the previous year.
- 10.3. The annual financial statement is understood to mean: a balance sheet, a statement of revenue and expenditure, and notes to those documents.
- 10.4. Before adopting the annual financial statement, the board may have them examined by an auditor to be designated by the board. Said auditor shall report to the board concerning his examination.
- 10.5. At the board meeting at which the annual financial statement is adopted, the secretary shall report on the foundation's activities during that previous year.
- 10.6. At said meeting, the treasury shall render account for the management performed by him in the previous year; if the board has adopted the annual financial statement, the treasurer is granted discharge.
- 10.7. The board must retain the annual financial statements for a period of at least seven years.

### **Committees & workgroups**

11. The board may establish committees or workgroups, which may carry out specific board tasks under the board's responsibility.

### **Regulations**

- 12.1. The board may adopt regulations concerning its functioning and that of any committees and workgroups.
- 12.2. Said regulations must not conflict with the law or the articles of incorporation.
- 12.3. The provisions of Article 13(1) and (2) apply *mutatis mutandis* to a resolution on adopting, amending, or rescinding regulations.

### **Amendments of the articles & dissolution of the foundation**

- 13.1. The board may resolve to amend these articles or to dissolve the foundation. A resolution to that effect may be adopted by the board only with a majority of at least a two-thirds share of the number of votes validly cast at a meeting at which at least a three-fourths share of the number of serving board members is present or represented.
- 13.2. If the quorum referred to in paragraph 1 of this article is not present or represented, the members of the board who are indeed present may resolve, in the manner indicated above, to convene a new meeting, which must be held no fewer than fourteen but no more than twenty-eight days after the first meeting; at that second meeting, said resolution may be adopted only by unanimous vote, regardless of the number of present and represented members of the board.
- 13.3. In the notice convening a meeting at which a proposal to amend the articles of incorporation or to dissolve the foundation is to be considered, the agenda—which in that case must be sent to the board members at least two weeks in advance—must contain the proposal to amend the articles and the text thereof or the dissolution proposal.
- 13.4. If the board of the foundation resolves to amend the foundation's articles of incorporation, two jointly acting board members are authorized to sign the deed containing the amendments of the articles on the foundation's behalf.

### **On liquidation of the foundation's assets**

- 14.1. Following a resolution to dissolve the foundation, the board, as liquidator, must liquidate the foundation's assets, unless the board has designated a different party to do so.
- 14.2. Liquidation must take place with due observance of the requirements laid down in

Article 2:23 a through c of the Civil Code.

- 14.3. In the event of a positive balance following liquidation, the board must designate a use that is as consistent as possible with the purpose of the foundation.
- 14.4. After the completion of liquidation, the annual reports and accounts and other records of the dissolved foundation must be retained for at least seven years by the party designated by the board for that purpose; within eight days after the completion of liquidation, the custodian must report his retention obligation to the commercial register of the Chamber of Commerce.

#### **Concluding provisions**

- 15.1. In all cases not provided for by these articles, the board decides.
- 15.2. Anywhere in these articles where the masculine form is used to refer to persons, such references are understood to include both women and men without distinction.
- 15.3. "Written" in these articles is understood to mean: by letter, fax, or email, or by message that is transmitted by another conventional means of communication and that can be received electronically or in written form, provided that the identity of the sender can be established with adequate certainty.

#### **OTHER INFORMATION ABOUT THE FOUNDATION**

In closing, the persons appearing also declared the following:

1. the address of the foundation is: <not up to date>
2. the founders have constituted the first board as follows:
  - as chair: the aforementioned *Eelco Dolstra*;
  - as secretary: the aforementioned *Armijn Hemel*;
  - as treasurer: the aforementioned *Robert Vermaas*.
3. the first fiscal year of the foundation runs through the thirty-first of December, two thousand fifteen.

#### **THE CONCLUSION OF THIS DEED**

I established the identity of the persons appearing on the basis of their identity documents, so that they are known to me.

I explained the contents of this deed to the persons appearing, provided clarification, and referred to the consequences of its contents. They declared that they had read a draft of this deed, are familiar with the contents, and consent to it.

After I had read part of the deed aloud, the persons appearing and I signed the deed. The original of this deed will remain in my office. The deed was executed in Utrecht on the date that I stated at the beginning of this deed.

[seal:]  
Royal Dutch Association  
of Civil-Law Notaries

van **Grafhorst** notarissen

**AFTER SIGNING**  
**ISSUED AS TRUE COPY**

Utrecht, June 12, 2015  
Ellen van Leusden, Civil-Law Notary

[seal:]  
Ellen van Leusden  
Civil-Law Notary in Leiden      [signature]