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Formation of the foundation

STICHTING DOAB (DIRECTORY OF OPEN ACCESS BOOKS)

On this @ day of @ in the year two thousand and eighteen, the following person appeared before me, Rutger Paul Revoort, a civil law notary practising in The Hague:

Mr **Eelco Tjaderik Ferwerda**, [personal information omitted]

for the purposes hereof acting as an attorney-in-fact duly authorized in writing to represent:

- a. **Stichting OAPEN**, a foundation having its seat in The Hague and its office address at Prins Willem Alexanderhof 5, 2595 BE The Hague, registered in the Trade Register under number 53135296, hereinafter referred to as "OAPEN";
- b. **Centre National de la Recherche Scientifique**, établissement public à caractère scientifique et technologique (EPST), a legal entity under French law, having its office address at 3 Rue Michel Ange, 75016 Paris (France), registered under SIREN number 180 089 013, hereinafter referred to as "CNRS";

- c. **Aix-Marseille Université**, établissement public à caractère scientifique, culturel et professionnel, a legal entity under French law, having its office address at 58 Boulevard Charles Livon, 13284 Marseille Cedex 07 (France), registered under SIRET number 130 015 332 00013 code APE 8542 Z, hereinafter referred to as “AMU”;

Centre National de la Recherche Scientifique and Aix-Marseille Université are both involved in **OpenEdition**.

The person appearing, acting as aforesaid, declared that by this deed he formed a foundation, which is governed by the following Constitution:

#### Name and Seat

##### Article 1

1. The name of the Foundation is **Stichting DOAB (Directory of Open Access Books)**.
2. The Foundation has its seat in the **municipality** of The Hague.

#### Objects and finance

##### Article 2

1. The objects of the Foundation are:
  - a. to promote Open Access, meaning the making available of academic publications in such a way that they are freely accessible online to the general public;
  - b. to make academic books discoverable and available on an open access basis;
  - c. to perform any acts relating or potentially conducive to the foregoing in the broadest sense of the word.
2. The Foundation seeks to achieve these objects by, inter alia:
  - a. providing a service which enables academic publishers to make available information on and the metadata of their academic books;
  - b. establishing criteria that must be met by publishers to make use of the service;

- c. providing information regarding the academic quality of publications from participating publishers;
  - d. making the metadata of academic publications in DOAB available to third parties.
3. The financial resources of the foundation consist of:
- a. Income from contributions from OAPEN, CNRS and AMU, jointly responsible for the establishment of the foundation;
  - b. Financial contributions obtained through subsidies and sponsorships;
  - c. Income from the provision of services to third parties;
  - d. Financial contributions obtained through **constitution of heir**, legacy, **charged benefit or** by donation;
  - e. The revenues from its financial resources;
  - f. All other benefits accruing to the foundation.
4. **The foundation owns and operates the DOAB service, which service consists of the existing website doabooks.org and all its attributes, including brand name and logo, data regarding publishers and publications that are collected in the DOAB system and all other related data.**
5. The Foundation is a not-for-profit organization.

Executive Board: membership, appointment

Article 3

1. The Executive Board of the Foundation shall consist of such a number of members as shall be determined by the Supervisory Board, subject to a minimum of two.
2. The Executive Board members shall be appointed and may be suspended by the Supervisory Board. Vacancies shall be filled as soon as possible.
3. The chair, secretary and treasurer are appointed to office. The positions of chair, secretary and treasurer may be held by one person, but only if and for so long as the Executive Board consists of one member.

4. Executive Board members shall be appointed for a term of four years. They shall retire in accordance with a retirement schedule to be prepared by the Executive Board. An Executive Board member retiring in accordance with the retirement schedule shall be eligible for immediate reappointment without restriction. An Executive Board member appointed to fill a casual vacancy shall retire when the person he replaces was due to retire.
5. If there are one or more vacancies on the Executive Board, the Executive Board shall retain its powers.
6. The Supervisory Board may decide to remunerate one or more Executive Board members for their services.  
All the members of the Executive Board are entitled to reimbursement of the expenses they incur in performing their duties.

#### Executive Board: duties and powers

##### Article 4

1. The Executive Board is charged with the management of the Foundation.
2. The Executive Board may not decide to enter into agreements for the acquisition, disposal or encumbrance of property subject to compulsory registration.
3. The Executive Board may not decide to enter into agreements by which the Foundation binds itself as surety, guarantor or joint and several debtor or by which the Foundation warrants performance by a third party or provides security for a debt of another party.
4. Inheritances may be accepted only under benefit of inventory (i.e. without liability for debts beyond the assets inherited).

#### Executive Board: meetings

##### Article 5

1. The meetings of the Executive Board shall be held at the venue specified in the notice of meeting.

2. A meeting of the Executive Board (the Annual Meeting) shall be held each year within six months of the end of the financial year. The agenda for the Annual Meeting shall in any case include the adoption of the balance sheet and the statement of income and expenditure. Further meetings shall be held once every quarter.
3. Meetings shall be held, furthermore, whenever a meeting is convened by one of the Executive Board members.
4. A minimum of seven days' written notice shall be given of a meeting, not counting the day on which the notice is given and the day of the meeting.
5. A notice of meeting shall state the business to be considered as well as the venue, date and time of the meeting.
6. The meetings shall be chaired by the chair. If the chair is absent, the Executive Board members who are present shall appoint someone else to chair the meeting. Until then, the meeting shall be chaired by the oldest Executive Board member present at the meeting.
7. The secretary shall take the minutes of the meeting. If the secretary is absent, the person chairing the meeting shall appoint a minuter. The minutes shall be confirmed and signed as a true and accurate record by the persons acting as chair and minuter at the meeting in question. The minutes shall be retained by the secretary.
8. The meetings of the Executive Board shall be open to the serving members of the Executive Board as well as to persons invited by the Executive Board.

#### Executive Board: decision-making

##### Article 6

1. The Executive Board may pass resolutions at a meeting only if the majority of its serving members are present or represented.  
An Executive Board member may be represented at a meeting by another Executive Board member on presentation of a written proxy that is acceptable to the person chairing the meeting. An Executive Board

member may not act by proxy for more than one other Executive Board member.

2. If the majority of the serving Executive Board members are not present or represented at a meeting, a second meeting shall be convened, to be held no earlier than two and no later than four weeks after the first meeting. At such second meeting resolutions may be passed in respect of the items included on the agenda for the first meeting regardless of the number of Executive Board members present or represented. The notice of the second meeting must state that and why a resolution may be passed regardless of the number of Executive Board members present or represented.
3. If all the serving members of the Executive Board are present at a meeting, valid resolutions may be passed on any matters arising, even if the provisions of the Constitution relating to the convocation and holding of meetings have not been complied with.
4. The Executive Board may also pass resolutions without holding a meeting, but only by unanimous vote. The secretary shall make a record of a resolution passed in this manner, which record shall be co-signed by the chair and be retained as minutes.
5. Each Executive Board member has one vote.  
Resolutions of the Executive Board shall be passed by an absolute majority of the valid votes cast, unless these bylaws prescribe differently. If the votes are equally divided, the motion is defeated.
6. All voting at meetings shall be by voice vote, unless one or more members of the Executive Board request a ballot vote. Ballot votes shall be by secret ballot using folded, unsigned ballot papers.
7. Blank votes shall be treated as abstentions.
8. The chair of the meeting shall decide on any disputes regarding votes and ballots.

9. In the event of a tie vote, the **proposal** will be submitted to the Supervisory Board for **decision-making**.

Executive Board: termination of membership

Article 7

An Executive Board member shall cease to hold office:

- a. if he dies;
- b. if he loses the right to dispose of his property;
- c. if he retires, either by rotation in accordance with the retirement schedule referred to in Article 3 or otherwise;
- d. if he is removed from office by the Supervisory Board;
- e. if he is removed from office by virtue of Section 298 in Book 2 of the Dutch Civil Code;
- f. if he becomes a member of the Supervisory Board.

Representation

Article 8

1. The Executive Board shall represent the Foundation.
2. Power to represent the Foundation shall also be vested in two Executive Board members acting jointly.
3. Acts performed in contravention of the provisions of Article 4 may be invoked against third parties.
4. The Executive Board may give one or more Executive Board members, as well as third parties, power of attorney to represent the Foundation within the terms of the power of attorney.

Supervisory Board

Article 9

1. The Foundation has a Supervisory Board. The Supervisory Board is charged with the supervision of the policies pursued by the Executive Board and the general running of the Foundation, and shall perform the duties and exercise the powers imposed on or vested in the Supervisory Board by this Constitution.

2. The Supervisory Board shall consist of five natural persons. CNRS and AMU, both involved in OpenEdition, shall each appoint one member, and OAPEN shall appoint two members, and these four natural persons shall jointly appoint a fifth natural person.
3. The members of the Supervisory Board may be removed from office by the party that appointed them. Vacancies shall be filled as soon as possible.
4. The Supervisory Board shall appoint a president and a secretary from its number.
5. The members of the Supervisory Board may not be members of the Executive Board.
6. The Executive Board shall furnish the Supervisory Board in good time with the information it requires to perform its duties and powers and shall, furthermore, furnish each Supervisory Board member with all such information relating to the Foundation's affairs as such member may request. The Supervisory Board is entitled to inspect and have inspected all the books, records and other data carriers of the Foundation.
7. In the discharge of its duties, the Supervisory Board may seek the assistance of one or more experts at the expense of the Foundation.
8. A Supervisory Board member shall cease to hold office:
  - a. if he dies;
  - b. if he loses the right to dispose of his property;
  - c. if he steps down;
  - d. if he becomes a member of the Executive Board;
  - e. if he is removed from office by the party that appointed him.
9. The provisions of Articles 5 and 6 shall apply by analogy to the Supervisory Board as far as possible.

The Supervisory Board shall meet at least once a year and, furthermore, whenever this is considered advisable by two of its members.



All the members of the Supervisory Board are entitled to reimbursement of the expenses they incur in performing their duties.

10. The Supervisory Board shall decide by a qualified majority, consisting of an absolute majority including at least one member appointed by OAPEN and one member appointed by CNRS and AMU, for the following resolutions:
  - a. Appointment of a member of the Executive Board, conform Article 3.2;
  - b. Approval of the balance sheet and the statement of income and expenditure, conform Article 12.3;
  - c. Approval of the annual budget, conform Article 12.4;

In the event that a resolution under a, b, or c lacks a qualified majority, the Supervisory Board will attempt to reach a new resolution that can be decided by a qualified majority within three months of the event.

If the Supervisory Board cannot reach a decision by a qualified majority within this period of three months, the resolution shall require an absolute majority of the valid votes cast. It being understood that no contribution by OAPEN, CNRS or AMU to the annual budget may be included without **their prior permission.**

### Scientific Committee

#### Article 10

1. The Executive Board and the Supervisory Board are assisted by a Scientific Committee [whose members] shall be appointed by the Executive Board subject to the prior approval of the Supervisory Board.
2. The chair shall be appointed by the members of the Scientific Committee. The members of the Scientific Committee shall be appointed for a four-year term, which may be extended by further terms of four years each.
3. Members of the Executive Board and the Supervisory Board may not be members of the Scientific Committee
4. The Scientific Committee shall advise the Executive Board and the Supervisory Board in particular on academic issues, the admission criteria

for publishers and their publications, and the services the Foundation should provide. After consultation with the Scientific Committee, the Executive Board may request organizations that are active in related areas to appoint an advisory member of the Scientific Committee.

5. The chair of the Scientific Committee shall act as advisor to the Executive Board.
6. Resolutions shall be passed by a majority of votes.

#### Joint meeting of the Executive Board and the Supervisory Board.

#### Article 11

1. The Executive Board and the Supervisory Board shall hold a joint meeting at least once a year to discuss the broad outline of current and future policy.
2. The Executive Board and the Supervisory Board are equally entitled to convene a joint meeting.
3. The joint meetings shall be chaired by the president of the Supervisory Board. If the president of the Supervisory Board is absent, the Executive Board members and Supervisory Board members who are present shall appoint someone else to chair the meeting. Until then, the meeting shall be chaired by the oldest Supervisory Board member present at the meeting.

#### Financial year and financial statements

#### Article 12

1. The financial year of the Foundation coincides with the calendar year.
2. The Executive Board is obliged to keep such records of the Foundation's financial position and of everything relating to the activities of the Foundation, in a manner appropriate to those activities, and to keep the corresponding books, records and other data carriers in such a manner as to ensure that the Foundation's rights and obligations can be ascertained at any time.

3. Within six months of the end of each financial year, the Executive Board shall prepare, put down in writing and adopt the balance sheet and the statement of income and expenditure of the Foundation. The balance sheet and the statement of income and expenditure shall require the approval of the Supervisory Board. To that end, the adopted documents shall be sent to the Supervisory Board within one month of their adoption. Before giving its approval, the Supervisory Board may instruct the Executive Board to have the balance sheet and the statement of income and expenditure audited by a *registeraccountant*, an *accountant-administratieconsulent* or another expert as defined in Section 393 in Book 2 of the Dutch Civil Code, designated by the Supervisory Board. Such expert shall report on his audit to the Supervisory Board and lay down the findings of his audit in an opinion on the fair presentation of the documents referred to in the preceding Paragraph. He shall submit his report for information to the Executive Board.
4. At least two months before the end of each financial year, the Executive Board shall prepare, put down in writing and adopt the budget for the following year. The budget shall require the approval of the Supervisory Board.
5. The Supervisory Board is entitled to release the members of the Executive Board from liability for their management as far as this management is disclosed in the adopted documents or is otherwise communicated to the Supervisory Board.
6. The Executive Board is required to retain the books, records and other data carriers referred to in the preceding Paragraphs for a period of seven years.
7. The data stored on a data carrier, with the exception of the balance sheet and the statement of income and expenditure put down in writing, may be transferred to and saved on another data carrier, on condition that the data in question is transferred correctly and completely, and that such data is

available throughout the prescribed retention period and can be viewed as human-readable text within a reasonable time.

### Standing orders

#### Article 13

1. The Executive Board may adopt standing orders dealing with matters which, in the opinion of the Executive Board, require (further) regulation.
2. The standing orders must not be inconsistent with the law or this Constitution.
3. The Executive Board may amend or repeal the standing orders.
4. The provisions of Paragraph 1 of Article 14 shall apply by analogy to the adoption and repeal of and any amendments to the standing orders.

### Amendments to the Constitution

#### Article 14

1. The Executive Board is entitled to amend this Constitution, subject to the prior approval in writing of the Supervisory Board. A resolution to amend this Constitution must be passed by unanimous vote at a meeting at which all Executive Board members are present or represented.
2. An amendment shall be effective only after it has been laid down in a notarial deed. Each individual member of the Executive Board is entitled to arrange for such deed to be executed.
3. The Executive Board members are obliged to lodge a certified copy of the amendment and the full text of the amended Constitution with the office of the Trade Register.

### Dissolution, winding-up and liquidation

#### Article 15

1. The Executive Board may dissolve the Foundation.
2. A resolution of the Executive Board to dissolve the Foundation must be passed by unanimous vote at a meeting at which all Executive Board members are present or represented.

3. If the Executive Board passes a resolution to dissolve the Foundation, it shall also determine how any surplus on winding up is to be allocated. The resolution to dissolve the Foundation and the allocation of the surplus on winding up provided for by the resolution shall require the prior approval in writing of the Supervisory Board. If the Foundation is dissolved in any other way, the liquidators shall determine how any surplus on winding up is to be allocated.
4. Once the Foundation has been dissolved, its affairs shall be wound up and its assets shall be liquidated by the members of the Executive Board, unless other liquidators are appointed by the resolution to dissolve the Foundation.
5. Once the winding up and liquidation process is complete, the books and records of the dissolved Foundation shall, for the period prescribed by law, remain in the custody of the person designated by the liquidators.
6. In all other respects the provisions of Title 1, Book 2 of the Dutch Civil Code shall apply to the winding up and liquidation.

#### Final provisions

##### Article 16

1. The Executive Board shall decide in all cases not provided for by law or this Constitution.
2. For the purposes of this Constitution, the terms 'in writing' and 'written' shall be deemed to refer to any message transmitted by standard means of communication and evidenced in writing.
3. The Foundation's first financial year will end on the thirty-first day of December two thousand and eighteen.

#### Final declaration

Finally, the person appearing declared that on formation of the Foundation:

- a. the Executive Board consists of two members;
- b. the following are appointed as the first members of the Executive Board, to the positions stated after their names:

1. Mr **Pierre Mounier**, [personal information omitted] chair;
  2. **Mr Eelco Tjaderik Ferwerda**, aforementioned, secretary/treasurer;
- c. the Supervisory Board consists of five members;
- d. the following are appointed as the first members of the Supervisory Board, to the positions stated after their names:
1. mrs **Marie Masclet de Barbarin**, [personal information omitted] appointed by AMU;
  2. mr **Didier Torny**, [personal information omitted] appointed by CNRS;
  3. mr **Joannes Stephanus Maria Savenije**, [personal information omitted] appointed by OAPEN;
  4. mrs **Lucinda M Jones**, [personal information omitted] appointed by OAPEN;
  5. mr **Neil Jacobs**, [personal information omitted] appointed by the other members of the Supervisory Board.

#### Concluding statement

This deed was executed in one original copy in The Hague on the day and in the year first above written.

I, civil law notary, stated and explained the sum and substance of this deed to the person appearing. Thereupon, I, civil law notary, advised the person appearing of the consequences ensuing from the contents of this deed. In conclusion, the person appearing declared that he had taken note of the

contents of this deed in good time and that he agreed thereto.

The person appearing is known to me, civil law notary.

This deed was then signed, immediately after it had been read out in part, by the person appearing and by me, civil law notary.