

1.

Foundation of The OpenDA Association

Concept dated [] of April 2010

On this date, the third day of May two thousand and ten, appeared before me, Mrs. Maria Francisca Elisabeth de Waard-Preller LL M, civil-law notary, practising in Rotterdam, The Netherlands:

- 1.
- 2.
- 3.

The persons appearing, acting as stated, declared as follows:

PREAMBLE

OpenDA is a software toolbox for model calibration and data assimilation. OpenDA has been developed and maintained until to date by the Technical University Delft, VORtech and Deltares.

OpenDA is an open source software product, which, after the establishment of the OpenDA Association, can be downloaded from the OpenDA website maintained by the Association.

The OpenDA software will be distributed by means of the “Lesser General Public Licence Version 3, [full date] 29th of June 2007 (“LGPL”). LGPL for the greater part allows users the same rights and obligations as the GPL, the main difference is however that LGPL allows users to include the software code in proprietary software.

The OpenDA Association has the purpose to organise the product management, coordinate product development, and promote the OpenDA software toolbox for model calibration and data assimilation.

The desire to become a member of the association should be triggered by the wish or need to actively participate in the management of the OpenDA product. The Members jointly will have to finance the performance of the primary tasks of the OpenDA Association from the membership fees. Additional funds, for example for software development, can be provided for by the members on a voluntary basis.

Members and non-members have the same rights for using the released version of the OpenDA software available on the OpenDA website.

FOUNDATION

The persons appearing stated herewith that they wish to form an association with the following Charter:

CHARTER

NAME

Article 1

The Association carries the following name: The OpenDA Association.

SEAT AND DURATION

Article 2

The Association has its seat in Delft, and has been established for an indefinite period of time.

OBJECTIVE

Article 3

- 3.1 The objective of the Association is the promotion of the development, use, management and maintenance of the Open Data Assimilation Toolbox (the OpenDA), a software system for calibration and data assimilation.
- 3.2 The Association seeks to achieve this goal, amongst other things, by:
 - a. exchanging information with regards to OpenDA as described in the objective, in word, writing and by means of electronic devices such as a website, both within the Association as with other organisations pursuing a similar objective;
 - b. stimulating the maintenance and development of the OpenDA software and managing its releases;
 - c. stimulating the provision of information and promoting discussion on OpenDA worldwide by the organising and/or participating in events;
 - d. all that which may be further conducive to the objective.

MEMBERS

Article 4

- 4.1 The following persons/parties are eligible for the membership of the Association:
 - a. institutes or organisations that are legal entities and make direct or indirect use of the OpenDA Association;
 - b. natural persons who have reached the age of eighteen, provided that they applied to the Committee and have been admitted by the Committee to the Membership, unless a General Meeting issued a halt on the recruitment of new members.
- 4.2 The membership is personal or in the case of a legal entity strictly reserved for the legal entity in question. The membership, therefore, cannot be transferred nor is it eligible for acquisition by hereditary succession.
- 4.3 The Committee will keep a register that includes the names and addresses of all members.

TERMINATION OF MEMBERSHIP

Article 5

- 5.1 The membership ends:
 - a. by death or, if the member is a legal entity, by its dissolution;
 - b. by the member's written notice of termination to the secretary;
 - c. by termination by the Association. Such termination can take place if a member no longer meets the membership requirements set out in this Charter, if a member fails to fulfil his or her obligations vis-à-vis the Association, or if the Association can no longer be reasonably required to let the membership continue;
 - d. by expulsion. An expulsion can only be issued if a member has acted in a way which is contrary to the Association's Charter, regulations or resolutions, or if he or she has unreasonably damaged the Association's interests.
- 5.2 Termination required by the Association shall be enforced by the Committee.
- 5.3 Termination of the membership by a member or the Association takes effect at the end of an Association year, subject to four weeks' notice. However, the membership may be terminated with immediate effect if the Association or the member cannot reasonably be required to let the membership continue.
- 5.4 Any termination that contravenes the provisions set out in the previous paragraph will take effect at the earliest permissible time following the date on which the termination was set to take effect.
- 5.5 Immediate termination of membership is permitted:
 - a. within one month after a resolution becomes known or is communicated to the member, in which the members' rights are limited or their duties are increased. The resolution, in that event, will not apply to the member. However, a member

is not permitted to evade a resolution in which the members' monetary obligations are increased on his or her membership.

- b. within one month after a resolution seeking to convert the Association into a different legal entity or to effect a merger, is communicated to the member.

5.6 Expulsion from the membership shall be effected by the Committee.

5.7 In the event of the Committee's decision to terminate the membership – or to do so based on the ground that the Association cannot be reasonably required to let the membership continue, or in the event of a decision by the members to expel a member, the member in question can appeal within one month of receiving the decision's notification with the General Meeting. To this end, the aforementioned member shall be notified of the decision in writing forthwith, stating the reasons. The member is suspended during the term of appeal and pending the appeal. The General Meeting will confirm the termination or expulsion by a closed ballot in which there must be a two-thirds majority in favour of the termination or expulsion.

5.8 If the membership ends during an Association year, the annual fee will never-the-less still be due in its entirety.

5.9 In the event of a member's termination of membership, or his or her expulsion from the membership by the Committee, the former member cannot claim any refund of the membership fee and/or the admission fees.

ANNUAL CONTRIBUTIONS / ADMISSION FEES

Article 6

6.1 The members are obliged to pay an annual membership fee, which shall be established by the Committee.

6.2 The member is obliged to pay the annual fee not later than by the first day of January of each Association year.

6.3 A membership fee established by the Committee pursuant to this article must first be approved by the General Meeting, in accordance with the provisions set out in this Charter with regard to decision-making in the General Meeting.

COMMITTEE

Article 7

7.1 The following rules apply to the appointment of the Committee:

- a. The Committee, with the exception of the Committee appointed first in position, consists of an uneven number of at least three natural persons or legal entities. The appointment takes place from the members, or from the representatives of the members, except for the provisions set out in paragraph 2. For each member only one Committee Member may be appointed.
- b. The following persons/parties cannot be appointed as Committee Members:
 - i. any person or party who has been declared bankrupt;
 - ii. any person or party who has applied for a moratorium on payments, or who has been placed under guardianship or administration;
 - iii. any person or party who has applied for admittance to a debt rescheduling arrangement as referred to in the Netherlands Bankruptcy Act.

7.2 The appointment of Committee Members takes place on one or more binding recommendations, except for the provisions set out in paragraph 4. Both the Committee and two members are authorised to draw up such a recommendation, on the understanding that a maximum of two (2) prospective Committee Members can be recommended by each member of the Association. The Committee's recommendation is communicated at the convocation of the meeting. A recommendation by two or more members must be submitted to the Committee in writing prior to the commencement of the meeting.

- 7.3 The binding nature of any recommendation can be removed by a resolution taken by the General Meeting which is adopted by at least two-thirds of the votes cast, at a meeting in which at least two-thirds of the members are represented.
- 7.4 If no recommendation has been drawn up, or if the General Meeting resolves to remove the binding nature of the drawn-up recommendations in accordance with the previous paragraph, the General Meeting is free to choose.
- 7.5 If there is more than one binding recommendation, the appointment will take place from these recommendations.
- 7.6 The expenses incurred by Committee Members in the fulfilment of their duties can – after the Committee’s prior approval of the activity and expenses in question – be reimbursed by the Committee. The Committee can set out further regulations with regard to the abovementioned reimbursement by means of standing orders.

TERMINATION OF COMMITTEE MEMBERSHIP, PERIODICAL MEMBERSHIP, SUSPENSION

Article 8

- 8.1 Every Committee Member – even if he or she has been appointed for a definite period of time – can be suspended or dismissed at any time by the body that appointed him or her. A suspension that is not followed by a decision to dismiss within three months, ends when this term lapses.
- 8.2 Notwithstanding the provisions the provisions in Article 7, the Committee Members appointed first in position, mentioned at the end of this Charter, shall resign not later than three (3) years after their appointment. The resigned member is eligible for re-appointment, except for the provisions set out in Article 7(1)(b). Furthermore the Committee Membership shall end as well:
- with regard to a Committee Member who was appointed from amongst the members: by the termination of the membership of the Association;
 - by written termination, subject to at least two months’ prior notice.
 - in case of the circumstances referred to in Article 7(1)(b).

COMMITTEE POSITIONS, DECISION-MAKING BY THE COMMITTEE

Article 9

- 9.1 From among the Committee Members, the Committee shall elect a Chairman, a Secretary and a Treasurer, who shall jointly form the Managing Committee, with authority to take action in the name of the Committee on the basis of decisions supported by a majority of its members. The Managing Committee can appoint a replacement from its midst. A Committee Member can hold more than one position.
- 9.2 The Secretary shall keep minutes of the proceedings at every meeting, which will be adopted at the next meeting and, after adoption, signed by both the Chairman and the Secretary.
- 9.3 The opinion given by the Chairman regarding the outcome of a vote, and the contents of a decision, is binding.
- 9.4 It is possible to set out further rules regarding the Committee’s meetings and decision-making by means of standing orders.

COMMITTEE’S DUTY, REPRESENTATION

Article 10

- 10.1 Except for the limitations set out in this Charter, the Committee is charged with the management of the Association.
- 10.2 If the number of Committee Members falls below the required statutory minimum of Committee Members, the Committee will retain its powers. However, the Committee is obliged to convene a General Meeting forthwith, at which Meeting the filling of the vacancy/vacancies shall be discussed.
- 10.3 The Committee is authorised – within its own sphere of responsibility – to have certain parts of its task carried out by (sub)committees to be appointed by the Committee.

The Committee is authorised to revoke the management tasks delegated to the committees at all times, and to carry them out itself.

- 10.4 The Committee is authorised – subject to the General Meeting’s approval – to make decisions to enter into contracts for the acquisition, alienation and/or encumbrance of registered property, and into contracts in which the Association commits itself as a joint and several co-debtor, acts as a guarantor for a third party, or stands surety for a third-party debt. The absence of the aforementioned approval can be invoked against third parties.
- 10.5 The Committee also requires prior approval from the General Meeting for decisions that seek to effect:
- a. without prejudice to the provisions set out under Article 10(5)(b) – the performance of juridical acts and the making of investments that exceed a sum or value to be annually established by the General Meeting;
 - b.
 - i. the letting, letting out, leasing and obtaining and granting the use or enjoyment of registered property in any other manner;
 - ii. the conclusion of contracts in which the Association is granted a bank credit;
 - iii. giving money on loan, as well as withdrawing money as a loan, which does not include the use of a bank credit granted to the Association;
 - iv. the reaching of settlements;
 - v. the instigation of legal proceedings, including the commencement of arbitration proceedings, with the exception of the implementation of protective and/or legal measures that cannot be postponed;
 - vi. the conclusion and adjustment of employment contracts.The absence of the aforementioned approval cannot be invoked against and by third parties.
- 10.6 Without prejudice to the provisions set out in the last sentence of paragraph 4, the Managing Committee represents the Association judicially and extra-judicially.
- 10.7 The representative authority also belongs to two Members of the Managing Committee, acting jointly. As regards the representative authority as referred to in Article 10(6), they can be represented by an authorised representative, bearing a written power of attorney, on the understanding that this can only take place within limits that are specifically defined in the power of attorney.
- 10.8 The Committee can – without approval from the General Meeting – be represented in law by a solicitor engaged by the Committee.

ANNUAL REPORT, RENDERING ACCOUNT

Article 11

- 11.1 The financial year and the Association year coincide with the calendar year.
- 11.2 The Committee is obliged to keep records of the Association’s financial position and activities – in accordance with the requirements resulting from these activities – and keep books, documents and other information carriers, in such a manner that the Association’s rights and obligations can be obtained from them at any time.
- 11.3 Every year, within six months of the end of the Association year – except if there is an extension of this term granted by the General Meeting – the Committee shall issue its annual report on the state of affairs within the Association and the policy that has been conducted. The Committee will submit the balance sheet and the statement of income and expenditure for approval by the General Meeting. These documents shall be signed by all the Committee Members; if any signature is missing, the reason for this omission shall be stated. After the expiry of this term, every member can claim from the joint Committee Members in law that they fulfil these obligations.

- 11.4 If no audit opinion regarding these documents' accuracy, as referred to in Article 2:393(1) of the Netherlands Civil Code, is presented to the General Meeting, then the General Meeting each year shall appoint a committee which consists of at least two members who cannot be Committee Members.
- 11.5 The Committee is obliged to provide this committee with all the information that the latter requires for its audit and – if necessary – show the committee the Association's cash and assets, and render all the Association's books, documents and other information carriers available for inspection.
- 11.6 The committee audits the documents referred to in Articles 11(3) and 11(5), and reports on its findings to the General Meeting. If the audit of the accounts to be rendered requires special accounting expertise, the committee may be assisted by an expert.
- 11.7 The Committee is required to keep the documents, books and other information carriers, as referred to in Articles 11(2) and 11(3), in its custody for a period of seven years.

GENERAL MEETINGS

Article 12

- 12.1 The General Meeting has all powers within the Association that have not been granted to the Committee by law or in this Charter.
- 12.2 A General Meeting – the annual meeting – shall be held every year, and not later than six months following the end of the Association year. The following items shall, amongst other things, be discussed at this annual meeting:
- a. the annual report and the accounts to be rendered pursuant to Article 11, which also includes the report to be issued by the committee appointed in the aforementioned article;
 - b. granting a discharge from liability to the Committee Members for their management as conducted during the Association year in question, insofar as this management is revealed from the annual report and rendered accounts, or if such management has been disclosed to the General Meeting in any other way.
 - c. the appointment of the committee referred to in Article 11 for the next Association year;
 - d. filling possible vacancies;
 - e. recommendations by the Committee or the members, as announced at the convocation of the meeting.
- 12.3 Other General Meetings may be held as often as considered desirable by the Committee.

ACCESS AND VOTING RIGHTS

Article 13

- 13.1 All members of the Association shall have access to the General Meeting. No access shall be granted to suspended members and suspended Committee Members, on the understanding that a suspended member is permitted to attend the meeting at which the decision for his or her suspension will be discussed. This member shall also be authorised to speak at this meeting.
- 13.2 Any interested person or group can participate in General Meetings as observer without voting rights except for provisions set out in Article 13(1).
- 13.3 Every Association member can cast one vote; suspended members shall not have a right to vote.
- 13.4 A member may have a representative, bearing a written proxy, cast his or her vote, on the understanding that the aforementioned representative may not cast more than a total of two votes per item in each meeting.
- 13.5 Members will not have the right to vote on matters that relate to themselves, their spouses or any of their relations by blood or affinity in the direct line.

CHAIRMANSHIP, MINUTES

Article 14

- 14.1 The General Meetings shall be led by the Association's Chairman or his or her deputy. If the Chairman and his deputy are absent, then one of the other Committee Members – to be appointed by the Committee – will act as Chairman. If neither the Chairmanship can be provided for in this manner, the meeting shall choose its own Chairman.
- 14.2 The Secretary, or another person to be appointed by the Chairman, shall keep minutes of the proceedings at every meeting, which shall be adopted at the same or the next meeting. After adoption, both the Chairman and the Minutes Secretary shall sign the minutes. The members shall be notified of the contents of the minutes.

DECISION-MAKING BY THE GENERAL MEETING

Article 15

- 15.1 Insofar as not stipulated otherwise at law or in this Charter, all resolutions of the General Meeting shall be adopted by an absolute majority of the valid votes cast.
- 15.2 In case of equality of the votes regarding a proposal, such proposal shall be considered as rejected.
- 15.3 All votes shall take place orally or by raising hands, unless the Chairman or at least one-third (1/3rd) of the total number of Members of the Association entitled to vote desire a vote in writing.
- 15.4 A unanimous resolution by all Members of the Association (cast by means of electronic means) – even when they have not convened in a meeting – will have the same effect as a resolution by the General Meeting, as long as it was adopted with the prior knowledge of the Committee.
- 15.5 As long as at least two-third (2/3rd) of the total number of members are present or represented at a General Meeting, valid resolutions can be adopted on all items that are discussed – with the exception of a proposal for an amendment to the Charter or for dissolution pursuant to Article 17 or 18.

CONVOCAION OF THE GENERAL MEETING

Article 16

- 16.1 The Committee convenes the General Meetings. The convocation takes place not later than four (4) weeks prior to the date of the meeting.
- 16.2 The convocation notice shall state the items to be discussed, as well as the place, date and time of the meeting, without prejudice to the provisions set out in Article 17.
- 16.3 The Committee is also obliged – at the written request of at least two-third (2/3rd) of the total number of members of the Association – to convene a General Meeting within a term that may not exceed a period of four (4) weeks after such request was made. If the request is not met within fourteen days, the applicants can convene the meeting themselves by means of a convocation in accordance with this article.

AMENDMENT TO THE CHARTER

Article 17

- 17.1 The Association's Charter cannot be amended other than by a resolution adopted by a General Meeting, which was convened with the notification that amendments to the Charter will be discussed at this particular meeting.
- 17.2 The persons or parties who convened the General Meeting at which a proposal for an amendment to the Charter will be made, shall make available, within at least fourteen (14) days prior to the date of the meeting, a copy of this proposal including the verbatim text of the proposal, for inspection by the members at a designated location, until the end of the day on which the meeting is held. Furthermore, the aforementioned copy shall be sent to all the members.
- 17.3 A resolution for any amendment to the Charter can only be adopted with a majority of at least two-thirds (2/3rd) of the valid votes cast in a meeting at which at least two-thirds of the total number of members of the Association are present or represented. If two-thirds of the members are not present or represented, a second meeting shall be

convened and held within four weeks. At this second meeting, a resolution can be adopted regarding the proposal that was discussed at the previous meeting – regardless of the number of members who are present or represented – as long as the resolution is adopted with a majority of at least two-thirds (2/3rd) of the valid votes cast.

17.4 An amendment to the Charter will not take effect until a notary's deed has been drawn up thereof. Every Committee Member is authorised to have this deed executed.

DISSOLUTION

Article 18

- 18.1 The Association can be dissolved by a resolution adopted by the General Meeting. The provisions set out in paragraphs (1) up to and including (3) of the previous article apply by analogy.
- 18.2 The Committee effects the winding-up.
- 18.3 The General Meeting establishes the allocation of a possible positive balance, on the understanding that the positive balance may only accrue to a legal entity, institute or organisation:
- a. whose objective is similar to that of the Association; and
 - b. whose Charter prohibits making distributions to its members in any form. The liquidators will transfer the positive balance for this purpose.
- 18.4 The winding-up concludes at the time at which there are no more assets known to the liquidator.
- 18.5 In the event of a winding-up, the Association ceases to exist as soon as the winding-up ends. The liquidators shall send a notification thereof to the registers which the Association has been entered into.

STANDING ORDERS

Article 19

- 19.1 The Committee is authorised to adopt standing orders that provide for subjects that require (further) regulation in the opinion of the Committee.
- 19.2 Such standing orders cannot be contrary to provisions of law or this Charter.
- 19.3 The Committee is authorised to amend or cancel the standing orders.

FINAL DECLARATION

Finally, the persons appearing declared that – contrary to the provisions set out above under Articles 7 and 8, the following persons shall be appointed as Committee Members for the first time:

1. A.W. Heemink, representing Technical University Delft as Chairman;
2. M.R. Roest, representing VORtech as Treasurer;
3. M. Verlaan, representing Deltares as Secretary;

CONCLUSION OF THE DEED

[mention any powers of attorney, if necessary]

The persons appearing are known to me, civil-law notary.

This Deed was executed in Rotterdam on the day mentioned at the beginning of this Deed.

After the deed's contents were communicated by me, civil notary, and explained to them by me, civil notary, the persons appearing declared that they had taken cognizance of the deed's contents, and that they agreed thereto and that they did not require a full reading of the deed.

Immediately after a limited reading, this deed was signed by the persons appearing and by me, civil-law notary.