

**Articles of Association**

**of**

**Operational Riskdata eXchange Association (ORX)**

**Registered Office in Geneva, Switzerland**

**15<sup>th</sup> June 2020**

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**I. DEFINITIONS**

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| 1.  | <b>“Alternate Senior Contact”</b>               | shall have the meaning set out in § 5 (1)    |
| 2.  | <b>“Annual Subscription”</b>                    | shall have the meaning set out in § 10       |
| 3.  | <b>“Annual Subscription Supplementary Fees”</b> | shall have the meaning set out in § 10       |
| 4.  | <b>“Association”</b>                            | shall have the meaning set out in § 1 (1)    |
| 5.  | <b>“Confidential Information”</b>               | shall have the meaning set out in § 29 (1)   |
| 6.  | <b>“Executive Members of the Board”</b>         | shall have the meaning set out in § 22       |
| 7.  | <b>“External Directors”</b>                     | shall have the meaning set out in § 19 (2)   |
| 8.  | <b>“Financial Institution”</b>                  | shall have the meaning set out in § 3 (1)    |
| 9.  | <b>“Fiscal Year”</b>                            | shall have the meaning set out in § 31       |
| 10. | <b>“GTC”</b>                                    | shall have the meaning set out in § 10 (2)   |
| 11. | <b>“Global Database”</b>                        | shall have the meaning set out in § 11 (2)   |
| 12. | <b>“Immaterial Assets”</b>                      | shall have the meaning set out in § 12 (1)   |
| 13. | <b>“Industry Association”</b>                   | shall have the meaning set out in § 3 (1)    |
| 14. | <b>“Internal Directors”</b>                     | shall have the meaning set forth in § 19 (1) |
| 15. | <b>“Internal Use”</b>                           | shall have the meaning set out in § 13 (2)   |
| 16. | <b>“Joining Fee”</b>                            | shall have the meaning set out in § 4 (1)    |
| 17. | <b>“Member Institution”</b>                     | shall have the meaning set out in § 2 (2)    |
| 18. | <b>“Merger by absorption”</b>                   | shall have the meaning set out in § 4 (4)    |
| 19. | <b>“Merger by formation of a new company”</b>   | shall have the meaning set out in § 4 (5)    |
| 20. | <b>“Operational Risk Database”</b>              | shall have the meaning set out in § 11 (1)   |
| 21. | <b>“Original Data Owner”</b>                    | shall have the meaning set out in § 12 (6)   |
| 22. | <b>“Other Confidential Information”</b>         | shall have the meaning set out in § 29 (2)   |
| 23. | <b>“Processed Data”</b>                         | shall have the meaning set out in § 29 (1)   |
| 24. | <b>“Qualified Majority”</b>                     | shall have the meaning set out in § 34 (1)   |

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25.	<b>“Raw Data”</b>	shall have the meaning set out in § 11 (1)
26.	<b>“Regional Database”</b>	shall have the meaning set out in § 11 (2)
27.	<b>“Regulations”</b>	shall have the meaning set out in § 20 (1) (4)
28.	<b>“Reports”</b>	shall have the meaning set out in § 29 (1)
29.	<b>“Scenario Database”</b>	shall have the meaning set out in § 11 (2)
30.	<b>“Sector”</b>	shall have the meaning set out in § 11 (2)
31.	<b>“Senior Contact”</b>	shall have the meaning set out in § 5 (1)
32.	<b>“Service Fee”</b>	shall have the meaning set out in § 10 (2)
33.	<b>“Simple Majority”</b>	shall have the meaning set out in § 34 (2)
34.	<b>“Subsidiary”</b>	shall have the meaning set out in § 5 (7)
35.	<b>“Transferee”</b>	shall have the meaning set out in § 4 (3)
36.	<b>“Transferor”</b>	shall have the meaning set out in § 4 (3)

## **II. NAME, REGISTERED OFFICE AND PURPOSE**

### **§ 1. Name and Registered Office**

- (1) The name of the entity shall be **"Operational Riskdata eXchange Association (ORX)"** (hereinafter referred to as "Association").
- (2) The Association shall be a registered Association (eingetragener Verein) pursuant to Articles 60 et seq. of the Swiss Civil Code (Schweizerisches Zivilgesetzbuch) dated 10th December 1907 and amended from time to time.
- (3) The Association has its registered office in Geneva and is entered in the commercial register.

## **§ 2. Purpose**

- (1) The purpose of the Association is to provide an institutionalised forum of the financial services industry, in particular of the insurance, banking and asset management industries, in the field of operational risk for the collection, sharing and analysis of operational risk information, and for learning and networking in the field of operational risk.

The Association, working across the financial services industry, will in particular:

- a) provide a platform for the secure exchange of high-quality operational risk data amongst its members (hereinafter referred to as "Member Institutions");
  - b) develop operational risk management practice and tools;
  - c) set standards for the industry;
  - d) develop professional networks;
  - e) conduct leading edge research;
  - f) support operational risk transfer activities;
  - g) publish information and organize events on topics in the field of operational risk.
- (2) The Association may carry out any legal civil, commercial and financial transactions in pursuit of its purpose as it deems appropriate. It may carry out or be engaged, concerned or interested in any commercial business related to operational risk, provided that any profits derived shall remain in the Association and shall be exclusively used to further the Association's purpose set out in this § 2.
- (3) The Association shall not pursue a commercial purpose and does not in any way constitute a trust according to any applicable law.

## **III. MEMBERSHIP**

### **§ 3. Membership Eligibility**

- (1) Individual financial institutions (each a "Financial Institution") and national or sector industry associations (each an "Industry Association") may apply to become Member Institutions under the conditions set out in this § 3.

- (2) Any Financial Institution may apply for membership which
- is capable of supplying data as required by the Association,
  - has demonstrable capability to collect and to deliver data as required by the Association.
- (3) Any Industry Association may apply for membership, provided that,
- the member firms, on whose behalf the Industry Association is delivering data, meet the conditions of membership eligibility set out under § 3 (2) above, and
  - the Industry Association is capable of ensuring that the data it collects from its member firms and that it delivers meets the requirements of the Association, and
  - the Industry Association has the demonstrable capability to collect from its member firms and to deliver data as required by the Association.
- (4) Member firms of an Industry Association which joins the Association shall not become Member Institutions themselves ipso facto and shall thus have no membership rights unless they apply for membership on their own behalf pursuant to § 3 (1) above.

#### **§ 4. Admission**

- (1) Upon submission of the application for membership by an applicant acceptable to the Association pursuant to § 3 above, the Managing Board shall decide on the application according to the rules set out in the Regulations adopted by the Board of Directors pursuant to § 20 (1) 4 below. Membership applications may be rejected without indicating any reasons.

Any applicant admitted as a Member Institution of the Association shall pay a joining fee as set by the Board of Directors from time to time (the “Joining Fee”).

- (2) Any applicant whose application for membership has been rejected by the Managing Board may request that its application is submitted to the next meeting of the Board of Directors which shall take decision in accordance with § 21 (3) below.

- (3) Any financial institution within the meaning of § 3 (1) above may be admitted as a Member Institution as a result of a transfer of membership (such financial institution being hereinafter called the “Transferee”), without submitting an application form as set out in this § 4, under the following conditions: (i) the Transferee and the Member Institution willing to transfer its membership (the “Transferor”) jointly submit a written membership transfer request to the Managing Board, (ii) the Transferee is under common control with, controls, or is controlled by the Transferor, and (iii) the transfer is based on reasonable grounds. The Transferor and the Transferee may be requested to provide additional information, including without limitation information allowing the Managing Board to assess whether the Transferee meets the membership eligibility criteria set out in § 3 above. The membership transfer request will be decided upon within four (4) weeks after receiving a complete membership transfer request. In case the membership transfer request is rejected, § 4 (2) above shall apply. In case the membership transfer request is approved, the Transferee will become a Member Institution effective at the date of approval by the Managing Board. Upon the transfer becoming effective, the Transferee assumes and becomes liable for any and all accrued payment obligations of the Transferor towards the Association. However, the Transferor will remain jointly and severally liable, together with the Transferee, for said payment obligations. As regards Subscription Fees and/or Service Fees paid for the fiscal year in which the transfer becomes effective, the corresponding payments will be considered as having been paid on behalf of the Transferor for the period until effectiveness of the transfer, and on behalf of the Transferee for the remaining portion of that fiscal year. The Transferee will be completely exempted from the obligation to pay a Joining Fee.
- (4) In case of a merger by absorption involving one or more Member Institutions as transferor company/ies, one single membership in the Association will automatically pass to the transferee company. If the transferee company is already a member of the Association, the membership of all transferor company/ies is automatically terminated. If the transferee company is not already a member of the Association, but more than one of the transferor companies is a member of the Association, only one membership will pass to the transferee company. The other memberships will automatically terminate. In these Articles of Association, “merger by absorption” means an operation in which (a) there are one or more transferor companies; (b) there is an existing transferee company; (c) every transferor company is dissolved without going into liquidation, and on its dissolution transfers all its assets and liabilities to the transferee company.

- (5) In case of a merger by formation of a new company involving one or more Member Institutions as transferor company/ies, one single membership in the Association will automatically pass to the transferee company. If more than one of the transferor companies is a member of the Association, only one membership will pass to the transferee company. The other memberships will automatically terminate. In these Articles of Association, “merger by formation of a new company” means an operation in which (a) there are two or more transferor companies; (b) every transferor company is dissolved without going into liquidation, and on its dissolution transfers all its assets and liabilities to a transferee company formed for the purposes of, or in connection with, the operation.

#### **§ 5. Representation of Member Institutions / Status of Subsidiaries**

- (1) Each Member Institution appoints a senior contact (“Senior Contact”) and an alternate senior contact (“Alternate Senior Contact”). Both the regular and the Alternate Senior Contacts shall be senior officers of the Member Institutions wherever possible. Any such appointment shall be notified to the ORX secretariat and may be terminated at any time.
- (2) Any Industry Association may appoint as a Senior Contact and as an Alternate Senior Contact only representatives of member firms on behalf of which the Industry Association is delivering data to the Association.
- (3) The Senior Contact represents the Member Institution in the Association. Only Senior Contacts or other senior employees of a Member Institution can be appointed as members of the Board of Directors and, with the exception of the Executive Director, to the Managing Board.
- (4) The Alternate Senior Contact represents the Member Institution in the Association, if and when required by reason of the absence of the Senior Contact.
- (5) All Subsidiaries of Financial Institutions shall, as long as their parent company is a Member Institution, be entitled to participate in the activities of the Association and to use the services offered by ORX to its Member Institutions, such as
- Have access to the members’ section of the ORX website;
  - Have access to Reports; and



- Represent Financial Institutions in working groups or otherwise be involved in ORX projects.
- (6) The participation of the Subsidiaries is subject to the same limitations (*e.g.* limited rights to use Immaterial Assets) and obligations (*e.g.* confidentiality obligations) that apply to the Financial Institutions. Each Financial Institution is responsible for the abidance by the present Articles of Association and by any relevant Regulations by its Subsidiaries.
- (7) “Subsidiary” shall mean (i) a company that is controlled by a Financial Institution through the ownership of greater than 50 per cent of its share capital OR (ii) a company that is under the effective control of a Financial Institution, provided always that the company is included in the consolidated accounts of the Financial Institution and that it is able to report data in line with ORX standards.

## **§ 6. Sanctions**

The Board of Directors shall decide on the appropriate sanctions imposed on a Member Institution not complying with its duties and obligations under the present Articles of Association. The Board of Directors shall determine standards for appropriate sanctions and the pertaining procedure in the Regulations pursuant to § 20 (1) 4 below. Sanctions include fines and exclusions. In case of exclusion, the Regulations will provide for a right of the excluded member to have the matter reviewed by the General Meeting of Member Institutions.

## **§ 7. End of Membership**

- (1) A membership to the Association will terminate in the event of:
1. a resignation of membership pursuant to § 8 below;
  2. exclusion pursuant to § 6 above;
  3. a Member Institution ceasing to meet the criteria for membership as per § 3 above, the respective determination being made pursuant to the procedure foreseen in § 6 above and in the pertaining Regulations;
  4. the winding-up of a Member Institution;

5. the dissolution/winding-up of the Association pursuant to § 30 below.
  6. transfer of membership pursuant to § 4 (3), (4) or (5).
- (2) The Member Institutions shall under no circumstances have a right of repayment, in part or in full, of any Joining Fee, Basic Annual Subscription or Annual Subscription Supplementary Fee already paid to the Association. The resigning Member Institution shall have no claims, rights or entitlement to information contained in the Operational Risk Database other than set out in §§ 12 (6) and (7) and § 13 (3) below.

### **§ 8. Resignation**

Any Member Institution may cancel its membership at the end of any calendar year by giving three (3) months prior written notice to the Board of Directors. It shall pay one half of the Annual Subscription and of any applicable Annual Subscription Supplementary Fees for the calendar year succeeding the year of resignation, if the resignation is made to the Board of Directors between 30th September and 31<sup>st</sup> December of the year of resignation.

## **IV. RIGHTS AND DUTIES OF THE MEMBER INSTITUTIONS**

### **§ 9. Duties of the Member Institutions**

- (1) The Member Institutions have the duties set forth in the present Articles of Association and/or in the Regulations. The Member Institutions will contribute to the general purpose of the Association, and refrain from any action that may be contrary to the purpose of the Association as set forth in § 2 (1) and (2) above. Nothing in this section is intended to fetter the commercial business, purposes, or other activities of the Member Institutions.
- (2) In particular, Financial Institutions shall make best efforts to track internal operational risk data such as loss data, controls, key risk indicators, scenarios, other non-financial risk data, etc. within their own organisations and within their respective Subsidiaries, and Industry Associations shall make best efforts to cause their members to track internal operational risk related data within their own

organisations and with their respective Subsidiaries. This tracking obligation shall be limited to such operational risk data which are attributable to the database(s) to which a Financial Institution or Industry Association has chosen to contribute data (cf. § 11(4) below). They shall report all relevant data as determined by the Association.

- (3) For privacy reasons, only cleansed data (i. e. excluding confidential information such as customer data) shall be submitted by the Member Institutions.
- (4) Further details of the duties of the Member Institutions will be determined by the Regulations adopted by the Board of Directors pursuant to § 20 (1) 4 below.

### **§ 10. Fees**

- (1) In the first month of each calendar year, the Member Institutions shall pay an annual subscription (the “Annual Subscription”), which is composed of a basic annual subscription (the “Basic Annual Subscription”) that is identical for all members, on the one hand, and the supplementary fees for the optional services requested individually by each Member Institution (the “Annual Subscription Supplementary Fees”). The Annual Subscription to be paid by each individual Member Institution will thus vary according to the specific services provided to each of them. Details shall be determined by the Regulations adopted by the Board of Directors pursuant to § 20 (1) 4 below. In a separate policy, the Board of Directors will define the circumstances under which special conditions can be offered exceptionally by the Managing Board to a prospective or existing Member Institution.
- (2) The Association can provide certain services to non-members, against payment of a service fee (“Service Fee”).

### **§ 10a. Terms and Conditions**

- (1) The services provided by the Association to its Member Institutions will be governed by the general terms and conditions (“GTC”) that are applicable to the relevant service, as adopted and modified from time to time by the Managing Board. The Association’s GTC are available for download from the member’s section of the Association’s website at [www.orx.org](http://www.orx.org). In case of contradictions between the applicable general terms and conditions and the present Articles of Association, the latter will prevail.

- (2) The services provided to non-members shall also be governed by the relevant GTC. To ensure the valid integration of the relevant GTC into the agreement between the parties, each agreement with non-members shall contain an explicit reference to the applicable GTC which must be covered by the non-member's consent, and a copy of the GTC will be made available or accessible to the non-member. Where justified, the Association may accept to negotiate minor deviations from the general terms and conditions with a non-member.

### **§ 11. Operational Risk Database**

- (1) In the pursuit of its purpose, the Association will organise and maintain a series of databases of operational risk related information (hereinafter altogether referred to as "Operational Risk Database"). In this context, the Association will organize the collection, correction, processing and evaluation of operational risk related information provided by the Member Institutions (hereinafter referred to as "Raw Data"). The Association shall administer access to the processed information kept in the Operational Risk Database and provide administrative support concerning such operational risk related information.
- (2) The Operational Risk Database will consist of several databases organised by (i) type of data (*e.g.* loss data, scenario data etc.), (ii) sector (*e.g.* banking, insurance, asset management; each a "Sector"), (iii) geographic scope, in particular global databases (the "Global Databases") and regional databases (each a "Regional Database"), , and (iv) of any other database(s) as determined from time to time by the Association. Global Databases contain data relating to events in, from or attributable to all available countries. The Regional Databases contain data relating to events in, from or attributable to designated countries or regions.
- (3) Member Institutions shall only have access to the Reports as defined in § 29 and only to Reports of such database(s) for which they have delivered data to the Association. Notwithstanding the aforesaid, the Board of Directors may, in the Regulations adopted by it pursuant to § 20 (1) 4 below, grant new Member Institutions earlier access to the Reports of such database(s) to which a new Member Institution has undertaken to deliver data.
- (4) Individual Members shall elect the database(s) to which they wish to contribute, it being understood that each Member Institution shall contribute Risk Data to at least one database. Any Member Institution may cancel its membership of any database and/or join any database at the end of any calendar year by giving (3) months prior written notice to the ORX secretariat. In case of resignation, it shall pay one half of the Annual Subscription Supplementary Fee for the relevant

database for the calendar year succeeding the year of resignation, if the resignation is made to the Managing Board between 30th September and 31st December of the year of resignation.

- (5) The Association will not be held responsible for the abuse of any Operational Risk Database information by any Member Institution or a third party.
- (6) Further details may be determined in Regulations adopted by the Board of Directors pursuant to § 20 (1) (4) below.

## **§ 12. Ownership of Immaterial Assets**

- (1) The Association can own any types of immaterial assets, for example inventions, developments, improvements, designs, computer programs, know-how, and/or data, and any intellectual property rights related thereto (“Immaterial Assets”). The related ownership rights may be acquired by the Association either by developing itself the assets in question or by right transfers from third parties (including without limitation Member Institutions).
- (2) In particular, the Confidential Information and the Other Confidential Information shall be Immaterial Assets as defined above. With the exception of the Raw Data (cf. § 12 (6) below), as between ORX and its Members, the Confidential Information and the Other Confidential Information shall be owned by the Association.
- (3) Any Immaterial Assets employees of the Member Institutions create or to the creation of which they contribute during the performance of and/or within the context of any activity for and/or within the Association, will be the sole and exclusive ownership of the Association, and the Association will, immediately upon the creation of the Immaterial Asset in question and without owing the employees or their employers any compensation, own all right, title and interest therein, including without limitation any relating documentation, materials and/or intellectual property rights, free and clear of all encumbrances.
- (4) The Member Institutions shall ensure that none of their employees, who deploy any activity for or within the Association have any rights, in particular any intellectual property rights, in, or in connection with, the Immaterial Assets in question.
- (5) For the avoidance of doubt, the ownership rights in any pre-existing Immaterial Asset a Member Institution puts at the Association’s disposal in relation with the development of new Immaterial

Assets by the Association will remain with the Member Institution in question. However, the Member Institution shall grant the Association a perpetual and irrevocable license to use, and to sub-license the right to use, the pre-existing Immaterial Asset as an integrating part of the new Immaterial Asset developed by the Association, which license shall be royalty-free, unless the Member Institution and ORX have entered into a royalty agreement prior to the Member Institution providing the pre-existing Immaterial Asset to ORX.

- (6) Each Member Institution (hereinafter referred to as "Original Data Owner") shall – subject to the restrictions below - remain owner of the Raw Data supplied to the Association. Only the Original Data Owner shall be allowed to make changes or adjustments to the Raw Data supplied by it.
- (7) Upon termination of membership and without regard to the reasons for such termination, no Member Institution shall have the right to withdraw all or part of the Raw Data supplied to the Association. The Association may continue to use such Raw Data for the purposes set out in the present Articles of Association.
- (8) Upon termination of membership, the Raw Data shall be kept in custody by the Association and the Association may not use the Raw Data, unless they have been previously anonymised, without prior written agreement of the Original Data Owner, other than for the purposes of the Association pursuant to § 2. This use restriction will in no way limit the use ORX can make of (i) Raw Data that have been previously anonymised and (ii) of Processed Data. Any Member Institution shall have the irrevocable, non-transferable right to utilise copies of the Operational Risk Database already in its possession at the time of the termination of its membership, provided that such right is only to be exercised in accordance with these Articles of Association and any other applicable Regulation of the Association in force at the time of such termination.

### **§ 13. Member Institutions' Rights to Use Immaterial Assets of the Association**

- (1) As a general rule, the Member Institutions shall have the right to use any of the Immaterial Assets owned by the Association. The Association may however decide to exclude or restrict such right with respect to specific Immaterial Assets, on the basis of reasonable grounds justifying such exclusion or restriction.
- (2) Absent any decision of the Association defining the scope of the use right or restricting or excluding it, the right of use shall be deemed to be granted for the internal use of the Member Institutions

only. For the purposes of the present Articles of Association, shall be considered to be internal any use that does not pursue any revenue generating purpose (“Internal Use”). The transfer of the license and the granting of sub-licenses by the Member Institutions is excluded. The confidentiality obligations in § 29 are reserved.

- (3) Subject to § 12 (6) above, upon termination of membership, a Member Institution’s right to use the Association’s Immaterial Assets that existed at the time of termination will continue for a period equal to the duration of its membership. If the Member Institution had been a member of the Association for more than five complete business years, then the aforementioned right of use will become perpetual. This right of use will under no circumstances bear upon Immaterial Assets to which the Association acquired rights after the termination date of a Member Institution’s membership. Notwithstanding the above, excluded Member Institutions lose their right of use upon the effective date of their exclusion.
- (4) For the avoidance of doubt, each Member Institution shall remain the owner of its own Raw Data (cf. § 12 (6) above) and shall be free to use such Raw Data in its full discretion. Accordingly, this § 13 shall not apply to Raw Data.
- (5) Absent any provision to the contrary in this § 13, and for the avoidance of doubt, the Member Institutions shall have no right to use Raw Data which belong to another Member Institution.

## **V. ORGANIZATION**

### **§ 14. Bodies**

The bodies of the Association are:

- A) the General Meeting of Member Institutions;
- B) the Board of Directors;
- C) the Managing Board;
- D) The Auditor
- E) The Sector Governing Committees

The Board of Directors can institute further bodies of the Association. It will determine their duties and powers in Regulations.

### **A) The General Meeting of Member Institutions**

#### **§ 15. Calling of the General Meeting of Member Institutions**

- (1) A General Meeting of Member Institutions shall be held within six months following the closure of each Fiscal Year. Any extraordinary General Meetings of Member Institutions shall only be called by resolution of the Board of Directors or at the request of one fifth (1/5) of the Member Institutions.
- (2) The General Meeting of Member Institutions shall be called by the Board of Directors by notice in writing or by e-mail not less than one (1) month prior to the date of such meeting and such notice shall specify the place, date and time of the meeting. The agenda, the motions to be considered and any supporting documents shall be distributed to the Member Institutions not less than fourteen (14) calendar days prior to such meeting.
- (3) The General Meetings of Member Institutions shall be chaired by the Chair of the Board of Directors, in their absence by one of the Vice-Chairs.
- (4) The meetings may be held, or one or more Member Institutions may participate, via telephone-conference or video-conference, unless a majority of Member Institutions objects.
- (5) The General Meeting of Member Institutions may take decisions in writing, provided that the formal requirements of § 15 (2) shall be complied with *mutatis mutandis*. The majorities required shall be those set out in or referred to by § 17.

#### **§ 16. Right to Vote**

- (1) Subject to (2) and (3) below, in any voting of the General Meeting of Member Institutions each Member Institution has one vote.



- (2) Voting by proxy is permitted, except for decisions of the General Meeting of Member Institutions pursuant to § 6 above. Only Member Institutions can act as proxies and no Member Institution shall represent more than thirty (30) per cent of the present votes.

### **§ 17. Majority**

Unless provided otherwise by the Articles of Association or the applicable law, decisions by the General Meeting of Member Institutions are taken with a Qualified Majority (§ 34 (1) below) of the votes cast. In each case a presence quorum of 30 % of all Member Institutions or 30 Member Institutions, whichever is lower, of the Association must be met.

### **§ 18. Powers of the General Meeting of Member Institutions**

- (1) The General Meeting of Member Institutions shall have the power to
1. Elect, supervise and discharge the members of the Board of Directors and select the Auditors (subject to § 19 (9) and § 20 (1) (20));
  2. Approve the annual accounts and the annual report;
  3. Decide on further matters submitted by the Board of Directors;
  4. Amend these Articles of Association;
  5. Decide to dissolve the Association.
- (2) Unless provided otherwise in the Articles of Association, the powers and the organisation of the General Meeting for Member Institutions shall be governed by Articles 64 to 68 of the Swiss Civil Code (ZGB) as amended from time to time.

## **B) The Board of Directors**

### **§ 19. Composition of the Board of Directors**

- (1) The members of the Board of Directors shall consist of eleven (11) members including the Chair and two (2) Vice-Chairs (one of which focuses on Services, the other is the Treasurer). It shall be composed of between nine (9) and eleven (11) Senior Contacts or other senior employees of Member Institutions (the “Internal Directors”) and of up to two (2) external directors (“External Directors”).
- (2) Each of the Sectors to which the Association provides services shall be represented by at least one (1) Internal Director. Only persons who are not executive directors, executive officers, general managers or any other type of employees of any of the Member Institutions, their members, their parent companies and/or their subsidiaries, are eligible as External Directors.
- (3) Voting by proxy is permitted, it being specified that only the corresponding Alternate Senior Contact or another member of the Board of Directors can act as proxy.
- (4) The members of the Board of Directors shall be elected by the General Meeting of Member Institutions for a tenure of two (2) years. They may be re-elected for any further tenures. The Internal Directors shall be elected from among the Senior Contacts or other senior representatives of the Member Institutions of the Association. The Managing Board or the body specifically designated by the Board of Directors in the Regulations (*cf.* § 20 (1) (4)), if any, will provide a list of candidates and its recommendations.
- (5) The Board of Directors shall determine the election process in Regulations (*cf.* § 20 (1) (4)).
- (6) The tenure of office shall be the period between one annual General Meeting of Member Institutions and the annual General Meeting of Member Institutions two years later.
- (7) If at any time a member of the Board of Directors ceases to be employed by the Member Institution for which they were such a representative at the time of their election they will simultaneously cease to be a member of the Board of Directors.
- (8) Likewise, if at any time and for any reason (*cf.* § 7 (1)) the membership of a Member Institution ends, such Member Institution’s elected Senior Contact or senior representative will simultaneously cease to be a member of the Board of Directors.

- (9) If at any time and for any reason an Internal or External Director ceases to be a member of the Board of Directors before the end of their tenure, the Managing Board or the body specifically designated by the Board of Directors in the Regulations (*cf.* § 20 (1) (4)), if any, will make recommendations for, and the Board of Directors will elect, a suitable replacement for the remaining tenure.

## **§ 20. Responsibilities of the Board of Directors**

- (1) The Board of Directors shall have the following powers and duties:
1. Ensure that all Member Institutions will be treated fairly, irrespective of geography, size or Sector;
  2. execute the decisions of the General Meeting of Member Institutions;
  3. determine the Association's strategy and give the necessary directives;
  4. adopt and amend the rules and by-laws, including without limitation the governance rules, to be observed by the Board of Directors, the other bodies of the Association and the Member Institutions (the "Regulations").
  5. authorise other bodies of the Association to adopt Regulations on specific topics;
  6. appoint the Executive Director and determine their starting remuneration.
  7. supervise and assess the performance of the Managing Board;
  8. produce and communicate the annual report which has to be communicated to all Member Institutions by the end of June of the calendar year subsequent to the respective Fiscal year;
  9. approve the budget (including investments) and determine the Basic Annual Subscription, and the Annual Subscription Supplementary Fees;
  10. decide on sanctions pursuant to § 6 above;

11. decide on the attribution of mandates to members of the Board of Directors and the corresponding remuneration;
  12. decide to enter into contracts of a non-budgeted amount exceeding 5% individually of the net annual turn-over of the Association;
  13. decide to enter, in the course of one and the same business year, into contracts in excess of a non-budgeted amount of 10% of the net annual turnover of the Association in aggregate;
  14. decide to carry out or get engaged, concerned or interested in any commercial business;
  15. decide on appeals for admission pursuant to § 4 (2);
  16. determine the officers authorised to sign on behalf of the Association and determine their signatory powers.
  17. decide on other matters for which the present Articles of Association attribute decisional power to the Board of Directors.
  18. determine the remuneration of the External Directors.
  19. decide to establish a new Sector service, including a new Sector Governing Committee, and elect its initial members.
  20. Elect replacement members of the Board of Directors in the cases contemplated in § 19 (9).
  21. determine the minimum cash reserves that should be held at all times to cover the orderly dissolution of the Association.
- (2) The Board of Directors can submit any matter in its competence to the General Meeting of Member Institutions for resolution.
- (3) The members of the Board of Directors will fulfil their function with due care and skill and to the best of the Association's interest.

### **§ 21. Meetings of the Board of Directors**

- (1) The Board of Directors shall meet at a minimum four (4) times a year. The meetings shall be called as often as the business of the Association requires.
- (2) Each member of the Board of Directors shall be informed on all matters concerning the Association.
- (3) Unless qualified majority requirements are set forth in in these Articles of Association or in the Regulations for certain decisions, all decisions of the Board of Directors shall be taken by the Simple Majority (§ 34 (2) below) of the members of the Board of Directors present provided that more than half of all the members (i. e. present and non-present) of the Board of Directors are present. If there is equality of votes, the Chair will have the casting vote. In the absence of the Chair, their functions and rights are assumed by one of the Vice-Chairs.
- (4) The discussions and resolutions of the Board of Directors shall be recorded.

### **C) The Managing Board**

#### **§ 22. Composition of the Managing Board**

The Managing Board is composed of at minimum three members of the Board of Directors, namely the Chair, the two Vice-chairs (the “Executive Members of the Board”), and the Executive Director. Voting by proxy is excluded.

#### **§ 23. Responsibilities of the Managing Board**

- (1) The Managing Board shall be responsible for all activities and be authorised to decide on all matters which are not reserved by law or by the Articles of Association to another body of the Association.
- (2) Certain decisional powers of the Managing Board may be delegated to the Executive Director or to another body, on the basis of Regulations adopted by the Board of Directors pursuant to §20 (1) 4 above. Also, the Managing Board may delegate the day-to-day management of certain services to another body.

## **D) The Auditors**

### **§ 24. Selection of the Auditors**

The General Meeting of Member Institutions shall select a certified public accountant as the Auditor for each Fiscal Year (cf. § 18 (1) 1 above).

## **E) The Sector Governing Committees**

### **§ 25. Creation and Dissolution of Sector Governing Committees**

For each Sector for which the Association provides services, the Board of Directors may decide at any time to establish a Sector Governing Committee, depending in particular on the existence of a corresponding demand on the part of the Member Institutions. A Sector Governing Committee can be dissolved anytime by decision of the Board of Directors. The dissolution decision must be taken by unanimity of the cast votes.

### **§ 26. Composition of the Sector Governing Committees**

The initial members of each Sector Governing Committee are elected by the Board of Directors. The subsequent elections shall take place by co-optation. The Sector Governing Committee will be chaired by a member of the Board of Directors.

### **§ 27. Responsibilities of the Sector Governing Committees**

The Sector Governing Committees shall have, with respect to the relevant services, the following responsibilities:

1. Establish service internal governing models, e.g. officers, managing body, etc.;
2. Defining service membership standards;
3. Review membership recommendations;
4. Defining the service model, e.g. frequency of submission;
5. Defining data and quality assurance standards;
6. Create regional and other databases;

7. Sponsoring and approving reporting;
8. Sponsoring and approving benchmarking and analytics;
9. Sponsoring and oversight of research projects;
10. Sponsoring projects with other Sectors.

The Sector Governing Committees shall report to the Board of Directors.

## **VI. GENERAL PROVISIONS**

### **§ 28. Funding**

The funding of the Association shall be derived from

1. the Annual Subscription of the Member Institutions;
2. the Joining Fees and any other payments of Member Institutions to the Association in accordance with these Articles and other rules or decisions of the Association;
3. Service Fees paid by non-members for services provided by the Association.
4. interest on the working capital of the Association;
5. any profits drawn from any commercial business which the Association carries out or is engaged, concerned or interested in

### **§ 29. Confidentiality**

- (1) The Raw Data provided by the Member Institutions and the Processed Data are confidential (altogether called the “Confidential Information”). “Processed Data” shall mean any data derived from the Raw Data or in connection therewith by the Association and/or by a third party service provider, and consists of, on the one hand, the data sets and reports and other summary anonymised information that are forwarded to the Member Institutions according to the corresponding Regulations (cf. §11, the “Reports”) and, on the other hand, other data and/or information derived from the Raw Data, provided, in each case, that such derived data cannot be reverse engineered in such way as to reveal the underlying Raw Data and the Member Institution(s) which provided them.
- (2) Other Confidential Information shall mean and include, without limitation, any know-how, data, methodologies, algorithms, software, business plans, contracts, and other information related to the

Association, which is unpublished and not available to the general public or trade, and which does not qualify as Confidential Information (“Other Confidential Information”).

- (3) The Association will at all times hold and treat all Confidential Information, as well as any business or technical information of a Member Institution that has been clearly identified as confidential and/or that by the nature of the circumstances surrounding disclosure ought to be treated as confidential, in strict confidence and will not disclose such information to any third parties (including, without limitation, Member Institutions) in any manner whatsoever, in whole or in part, provided that the Association will be entitled to disclose:
- (a) Any Processed Data to third party service providers, it being specified that such disclosure may not take place without such service providers having signed a strict confidentiality undertaking. The scope and purpose of this disclosure right is limited to the Processed Data strictly necessary, as determined by the Managing Board, in order for the third-party service provider to be able to provide their services to the Association.
  - (b) Any Processed Data to the Member Institutions. The Member Institutions shall have the following rights to use and/or to disclose the Processed Data:
    - Financial Institutions shall be allowed to use the Processed Data exclusively for their Internal Use as defined in § 13 (2); they shall not be entitled to disclose them to any third parties. Notwithstanding the aforesaid, a Financial Institution shall be entitled to disclose Processed Data to third parties, provided (i) the data disclosure is necessary to further its own interest (*e.g.* to enable a consultant to support the Financial Institution), (ii) a strict confidentiality undertaking is in place with the third party specifying in particular that the data shall be used exclusively for the Member Institution’s benefit, that all Processed Data shared will be deleted by the third party once the specific purpose has been completed, and that the third party will not use the Processed Data under any circumstances for their own commercial benefit.
    - Industry Associations may disclose the Processed Data to those of their member firms which provide data on a regular basis to the Association via the Industry Association, and which have, previously to the disclosure, signed a written undertaking to comply with the present Articles and with any relevant Regulations, in particular with any use and confidentiality restrictions. The member firms may use the Processed Data exclusively for their Internal Use as defined in § 13 (2); they shall not be entitled to disclose them to any



third parties. Any use by the Industry Associations other than the disclosure to their member firms shall be excluded.

Each of the Financial Institutions, the Industry Associations and their member firms will not unreasonably disclose the Reports to any person within their respective organisation, who does not have a business-related need to have access to such Reports.

- (c) Upon a decision taken by the Managing Board, any Processed Data to the public or to specific third parties, if and to the extent such disclosure is reasonably necessary and useful to reach the Association's Purposes;
  - (d) Any Processed Data to any entity responsible for any commercial business in which the Association is concerned or interested, it being specified that such disclosure may not take place without the responsible entity having signed an appropriate confidentiality undertaking. The scope and purpose of this disclosure right is limited to the Processed Data reasonably necessary for the purposes of the commercial business in question.
  - (e) Any Raw Data to any person provided the Original Data Owner gives prior written consent, such Original Data Owner acting in its absolute discretion.
- (4) The Association itself shall use the Confidential Information exclusively for the purposes set out in § 2 above, and only to the extent reasonably necessary in order to reach said purposes. Furthermore, the Association shall be entitled to use Processed Data for any commercial business it carries out or is engaged in to the extent reasonably necessary for the purposes of the commercial business in question.
- (5) The Association may, but has no obligation to, disclose any Other Confidential Information to Member Institutions and/or to any third parties, if this is necessary or useful in view of the Association's purposes set forth in § 2. Any disclosure of Other Confidential Information to third parties shall not take place until the third parties in question have signed an appropriate confidentiality undertaking.
- (6) The obligations of § 29 (5) also apply to the Member Institutions. However, absent any such confidentiality undertaking, the following shall apply: The Member Institutions shall at all times hold and treat all Other Confidential Information in strict confidence and will not, without the Association's written consent, disclose any Other Confidential Information to any person in any

manner whatsoever, in whole or in part, or use it for any purposes other than for their Internal Use as defined in § 13 (2). They will not disclose the Other Confidential Information to any person within their respective organisation, who does not have a business-related need to have access to such information and who is not bound by an appropriate confidentiality obligation. Subject to § 13 (3) above, any Other Confidential Information, including any copies thereof, shall be promptly returned to the Association or destroyed (certification of said destruction to be provided upon request) upon the Association's first request or upon the Member Institution ceasing to be a member of the Association, whatever occurs first.

- (7) The obligations mentioned in this § 29 shall not apply to any Confidential Information or Other Confidential Information which is already or becomes generally known or freely available to the public through no breach of these obligations. Furthermore, the obligations mentioned in this § 29 shall not apply to any Confidential Information or Other Confidential Information which the Association and/or the Member Institutions are required to disclose by law, by order of any competent public authority or upon request of a Member Institution's regulator or – with respect to the return or destruction of Confidential Information or Other Confidential Information – which the Association and/or the Member Institutions are required to retain by law. In case of a corresponding disclosure requirement, the Association and/or the Member Institutions shall inform and fully cooperate with each other in order to seek for respective protection measures and to reduce the scope of disclosure to the extent permitted by the presiding judicial or administrative officer.

### **§ 30.       Dissolution/Winding-up**

- (1) The General Meeting of Member Institutions, deciding by Qualified Majority vote (§ 34 (1) below) of the Member Institutions of the Association, may decide on the dissolution of the Association.
- (2) After the settlement of all liabilities of the Association, the remaining working capital shall be refunded to the Member Institutions in equal parts.

### **§ 31.       Fiscal Year**

The fiscal year of the Association shall be the calendar year (the "Fiscal Year"). The annual account shall be closed on 31st December of each respective calendar year.

**§ 32. Language**

Any communication pertaining to the business of the Association, within the Association or by the Association with any Member Institution or by any Member Institution with the Association shall be made in English. Notwithstanding the aforesaid, in case of translation disputes, it will be referred to the French version of the Articles of Association. The official language of the Association to be used with Swiss authorities is French.

**§ 33. Effective Date**

These Articles of Association have been approved on 15<sup>th</sup> June 2020 and will enter into force on the same day.

**§ 34. Majority**

- (1) Unless provided otherwise in these Articles of Association, qualified majority in connection with a vote shall mean two thirds (2/3) of the cast votes (the "Qualified Majority"). Abstentions are not to be considered.
- (2) Unless provided otherwise in the Articles of Association, simple majority shall mean more than fifty (50) per cent of the cast votes (the "Simple Majority"). Abstentions are not to be considered.
- (3) In case the General Meeting of Member Institutions or the Board of Directors shall decide on any matter directly concerning a Member Institution or a member of the Board of Directors respectively, especially, but not exclusively when deciding on the exclusion or other sanctions against a Member Institution pursuant to § 6 above or against a member of the Board of Directors, such Member Institution or member of the Board of Directors shall not have a right to vote in such decision and the vote of such Member Institution or of such member of the Board of Directors shall not be taken into consideration when determining the Qualified Majority or the Simple Majority of votes pursuant to this § 34.

**§ 35. Effectiveness / Publication**

These Articles of Association and any Regulations, and any amendments thereto, shall enter into force immediately upon their adoption by the competent body, unless otherwise determined in the relevant document. They shall be published in the members' section of the Association's web site.

**§ 36. Miscellaneous**

- (1) These Articles of Association shall be construed in accordance with and governed by the laws of Switzerland.
- (2) Place of jurisdiction for any dispute arising out of or in connection with these Articles of Association or between the Association and any Member Institution shall be Geneva.
- (3) In the event that a provision of these Articles of Association is or becomes ineffective in whole or in part, this shall not affect the effectiveness of the remaining provisions. In this case, the ineffective provision shall be replaced by an effective provision which comes as closest as possible to the original purpose of the ineffective provision. Likewise, in the event that a provision is missing in the present Articles of Association that should be addressed by the Articles of Association, the present Articles shall be completed by a provision which best harmonises with the intent and the spirit of the existing provisions.



Date: 15<sup>th</sup> June 2020

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Mark Cooke

Chair