

# Constitution

## openHAB Foundation

**(only the German version is legally binding, the English version is only a non-binding translation)**

### Preamble

More and more new technologies are reaching into our home and working environments. Although these technologies are designed to make our lives easier, they share a common problem; They are not able to interact with each other due protocol differences and conflicting commercial interests. This inability for technologies to cooperate makes it difficult for users to achieve a compelling home automation vision.

A holistic, multi-vendor solution can only succeed if it is free from commercial interests. To allow for the freedom of ideas, a free and open platform is critical for continued research and education into the field of home automation. The open source project openHAB is designed to be this platform. With a large and diverse set of users spread all over the world, its continued development is paramount to provide an alternative to closed, commercial systems.

### § 1 Name, location, fiscal year

1. The association bears the name "openHAB Foundation" with the suffix "e.V." after being registered in the official register.
2. The registered location is 64372 Ober-Ramstadt, Germany.
3. The financial year is considered the calendar year.

### § 2 Purpose

1. The purpose of the openHAB Foundation is to provide consumer advice and protection in regards to free software for home automation as listed under the principles stated in the preamble. Its purpose is also to support the free exchange of knowledge and equal access to such software as well as public education.
2. This purpose may include:
  - a. Support of governmental and private organizations in all matters relating to free software for home automation.
  - b. The distribution of the philosophical ideals of free software.
  - c. Educating and training the public about the possibilities of free software in the home automation field, for example by producing flyers, documents, publications, and the coordination of events.

### § 3 Tax relief

1. The association's purpose is exclusively charitable as it relates to the section "tax purposes" of the tax code. The association is a not-for-profit organisation; it does not pursue its own economic purposes.
2. Association funds may only be used for statutory purposes. Members in their capacity as a member of the association do not receive any benefit from the association. They have at their departure no claim to the association's assets. No person may benefit by expenditures that are alien to the purposes of the association, or by disproportionately high remuneration.

## **§ 4 Membership**

1. Membership is open to any domestic or foreign natural or legal person or partnership. Individuals must be at least 16 years old. Minors may not stand for election.
2. There is a distinction between ordinary members and sustaining members. Sustaining members support the association financially or through personal involvement. They may attend the General Meeting, but may not vote.
3. Corporate members will appoint a permanent individual who will act as a representative on behalf of the company.

### **§ 4.a Membership Application**

1. Applications for membership must be made in writing to the President.
2. An email address is required as part of the application and will be used to communicate the application process.
3. The Board may approve the application for membership by a two-thirds majority vote. If the application is rejected, there is no obligation to communicate the reasons to the applicant.

### **§ 4.b Termination of Membership**

1. Membership ends
  - a. With the death of an individual member or liquidation in the case of legal entities and partnerships;
  - b. By withdrawal from the association;
  - c. By exclusion from the association.
2. A request to withdraw membership from the openHAB Foundation must be made in writing to the President and give at least 3 months notice until the end of the fiscal year. Members with limited legal capacity require a signature from their legal representative.
3. For any reason the board may decide to terminate a membership. Before adopting its decision the board must give the member an opportunity to respond in writing. The decision of the board will be made in writing and sent to the member. This decision may be appealed by the member to the General Assembly. The appeal must be lodged within two weeks after receipt of the decision to the President. The President shall convene a general assembly within three months of receiving the appeal. The decision may be upheld with a majority of three quarters of the remaining members. During the appeal process, all rights and obligations of the member remains suspended.

## **§5 Membership fees and remuneration**

1. Members of the association will be required to pay annual fees. Members can make their contributions in the form of financial contributions or through voluntary work (tasks). Tasks that are to be made in lieu of membership fees must be approved by the Board.
2. The membership fees and the procedure for their collection shall be determined by the General

Assembly.

3. The President, the Vice President, the Chief Financial Officer and other association officials, performing work for or under the general assembly, may receive an appropriate remuneration. The amount of remuneration shall be determined on the basis of the financial situation of the association and must not be higher than the usual remuneration for comparable freelance work with relevant non-tax-privileged organizations, businesses or government agencies (eg IT-industry). The amount of remuneration of Directors is determined by the General Assembly.
4. Members and non-members can be reimbursed for reasonable costs incurred for work related to the purpose of the association (eg project work). A reasonable remuneration for such activities is based on similar sectors (eg IT sector) and shall not be higher than the usual remuneration for comparable freelance work with relevant sized non-tax-privileged organizations, businesses or government agencies. The conditions and amount of remuneration for members and non-members are determined by the General Assembly, a General Assembly appointed representative or the Vice President.

## **§ 6 Bodies of the Association**

1. The General Assembly;
2. The President;
3. The Vice President;
4. The Chief Financial Officer;
5. The Management Board;
6. The Extended Board.

### **§ 6.1 The General Assembly**

1. In the General Assembly, each ordinary member has one vote. To exercise the right to vote another member can be authorized by written notice to the President. The authorization is to be given separately for each meeting. A member may not exercise voting rights for more than one third of all members.
2. The association may decide on and define an assembly procedure. The General assembly is responsible creating and modifying the procedure.
3. The General Assembly has the sole responsibility for the following:
  - a. Budgeting;
  - b. Determining the available monetary limit that individual board members may spend without a formal decision;
  - c. Determining the agenda and priorities for the President and Vice-President;
  - d. Receiving reports of the board and financial auditor;
  - e. Discharge of the board members;
  - f. Election and dismissal of the President, Vice President and Chief Financial Officer;
  - g. Appointment of a financial auditor;
  - h. Confirmation of the selection of the extended board members.
4. Members are liable to the association for the preservation of confidential and critical information of the organization. This obligation shall survive the termination of membership.
5. Members are not liable to the association for slightly negligent behavior.

### **§ 6.1.a Convening of the General Assembly**

1. At least once per calendar year (usually in the first quarter) the Annual General Assembly will be held. This is convened by the President and with an agenda presented six weeks prior to meeting. This period begins on the day after the invitation letters are sent. Reception of the invitation letter is assumed if it has been sent to the last known address of the member. With written agreement of three quarters of the members, the invitation period can be shortened to three weeks.
2. The agenda is set by the President. Any member may request, in writing, changes to the agenda no later than one week before a meeting with the President. The President then must communicate the supplemental change of the agenda at the beginning of General Assembly. A request to amend the agenda, which is made at the meeting, is at the decision of the Assembly.
3. A transcription of the decisions as well as any clarifying changes to those decisions will be signed by the chairman and the secretary.

### **§ 6.1.b Extraordinary General Assembly**

1. The President may at any time convene an extraordinary General Assembly. It must be called if the convening of at least one quarter of all members is required in writing, stating the purpose and reasons to the President.

### **§ 6.1.c Decisions of the General Assembly**

1. The General Assembly is not public.
2. The assembly has a quorum if the meeting has been duly convened (according to the assembly procedure document). The assembly can make decisions regardless of the number of people that are present, which must be mentioned in the invitation letter.
3. If there are no exceptions defined in the constitution, decisions are done with a simple majority of votes, disregarding abstentions. For changes of the statute, a three-quarters majority of votes, disregarding abstentions, is necessary. For dissolution of the association, a four-fifths majority vote of all members of the organization is required. Changing the purpose of the association can be decided only with the consent of all members. Members that are absent during the meeting can declare their consent in writing to the president up to one month after the meeting
4. In Elections, a candidate is elected by receiving more than half of the valid votes cast. If no candidate has obtained more than half of the valid votes, a new election between the two candidates with the most votes will occur and will be decided by a majority of valid votes cast. If a candidate cannot be selected by a majority (in the case of a tie), then the election shall be determined by flipping a coin.
5. Decisions will be recorded in the minutes of the Assembly. The minutes must be signed by the secretary and the chairman and contain the following ascertainments: place and time of the meeting, the person acting as the assembly director, the recording clerk, the number of members present, the agenda, the individual election results and the method of voting. Any modification to the constitution must be provided with its exact wording.

## **§ 6.2 The President**

1. The President is elected by the General Assembly and may serve for a period of one year starting on the day of being elected. The President can continue to serve past this one year period until such a time that a new president is elected.
2. Ordinary members are eligible for election. Termination of membership also terminates the office of President for that member.
3. If the President prematurely leaves office or the President is voted out of office, the Vice President automatically takes over the role of President until the next regular election of a new President.
4. The President is responsible for all matters of the association, unless they are transferred by statute to another body of the association. In addition he shall be responsible for:
  - a. Coordination of the findings and decisions of the General Assembly;
  - b. Convening and preparing the General Meeting and setting the agenda;
  - c. The annual report;
  - d. Representation of the association to the outside;
5. The President shall not be liable to the association for slightly negligent behavior.

## **§ 6.3 The Vice President**

1. The Vice President supports and advises the President in all tasks.
2. The Vice President acts as the President in the following events:
  - a. Departure of the President.
  - b. The President is temporarily unavailable.
  - c. Written delegation of tasks by the President.
3. The President may be excused from business activities by notifying the Vice President in writing. The Vice President shall conduct the business as long as and to the extent that they were transferred to him writing by the President. The president is assumed to be unavailable if he is not reachable for at least 7 consecutive days.
4. The Vice President of the general assembly may serve for a period of one year starting on the day of being elected. The Vice President can continue to serve past this one year period until such a time that a new Vice President is elected.
5. Ordinary members are eligible for election. Termination of membership also terminates the office of Vice President for that member.
6. If the Vice President prematurely retires their office, the President can select a successor for the remaining term of office of the retiring member.
7. The Vice President shall not be liable to the association for slightly negligent behavior.

## **§ 6.4 The Chief Financial Officer**

1. The Chief Financial Officer is responsible for the monitoring of association finances on behalf of the General Assembly and shall report on financial decisions made back to the General Assembly.
2. The Chief Financial Officer is responsible to advise the President and Vice President of changes to the budget between meetings.

3. The Chief Financial Officer must in particular ensure that
  - a. Profits are used only for statutory purposes and that the association is working selflessly;
  - b. Members may not receive shares of profits and other benefits from the association. This also applies to separating members;
  - c. The association may fund other other charity organizations who use of those funds conform to the association's constitutional goals.
  - d. Administrative expenditures, which are alien to the purpose of the association, are not granted. This also applies to disproportionately high payments institutions.
4. The Chief Financial Officer is responsible for managing the finances of the association, including:
  - a. Representation of the organization in financial matters;
  - b. Representation of the organization in tax matters;
  - c. Current attitude of members files;
  - d. Collection / control of membership fees;
  - e. All invoice processing;
  - f. Determining the year end balance.
5. The Chief Financial Officer of the general assembly may serve for a period of one year starting on the day of being elected. The Chief Financial Officer can continue to serve past this one year period until such a time that a new Chief Financial Officer is elected.
6. Ordinary members are eligible for election. Termination of membership also terminates the office of the Chief Financial Officer for that member.
7. If the Chief Financial Officer prematurely leaves their office, the President can select a successor for the remaining term of office of the retiring member.
8. The Chief Financial Officer is not liable to the association for slightly negligent behavior.

## **§ 6.5 The Management Board**

1. The Management Board consists of the President, Vice President and Chief Financial Officer.
2. The members of the Management Board constitute the legal representatives of the organization according to § 26 BGB. Each member is entitled to represent the organization individually.
3. The Management Board is coordinated by the President.
4. The Management Board has a quorum if at least two members are present, including the President. Resolutions are passed by a simple majority vote.
5. The Management Board is responsible for the
  - a. Approval of expenditures that exceed those established by the General Assembly;
  - b. Confirmation of amendments to the budget between general meetings.
6. Members of the board are not liable to the association for slightly negligent behavior.

## **§ 6.6 The Extended Board**

1. The Extended Board consists of the Management Board and up to 4 assessors.
2. The assessors join in an advisory capacity to the Board in the pursuit of its statutory purposes.
3. The assessors are appointed by the board and approved by the General Assembly. Ordinary members are eligible for appointment.
4. The assessors take part in the meetings of the Board.
5. Assessors do not have a vote within the Board nor are they official representatives of the association unless explicitly authorized.
6. Members of the extended board are not liable to the association for slightly negligent behavior.

## **§ 7 Amendments and Resolution**

1. Changes or additions to the statutes can happen only in a General Assembly with the conditions laid down in §6.1.c.
2. Changes or additions to the articles that are required by the registration or tax authorities shall be implemented by the Board and do not require a decision by the General Assembly. They shall be communicated to members in the next meeting invitation.
3. The dissolution of the association can only be decided in a general assembly with the conditions laid down in §6.1.c.
4. In the event of the dissolution of the association the President shall act as the authorized liquidator unless the assembly chooses another representative.
5. In the event of liquidation or loss of charitable status, available funds go to a legal entity under public law or another tax, which has to use it directly and exclusively for charitable purposes in accordance with this Statute. Decisions on the future use of the assets may only happen after the approval of the tax office are carried out.
6. The above provisions shall apply accordingly if the association is dissolved for another reason or loses its legal capacity.

## **§ 8 Written Form**

A written form is fulfilled if one of the following conditions is

1. Handwritten signed paper document;
2. e-mail, which has been confirmed by an auto-reply of one of the association's accounts

## **§ 9 Jurisdiction**

All rights and obligations under this statute are covered under the jurisdiction of Darmstadt.

Signature, place, and date:

