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Foundation-as-a-Service Operating Rules

Description:

Defining corporate and legal infrastructure and fiscal agency services that allows groups to form and run their own Foundations

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1. Overview.

The OASIS Foundation-as-a-Service program provides corporate and legal infrastructure and fiscal agency services that enable groups to quickly form and run their own Foundations for advancing open source code, standards and related activities. OASIS created the Foundation-as-a-Service program for groups that wish to run as separate, freestanding development entities, hosted with OASIS assistance, but with separate brand identity, membership, and rules. Foundation-as-a-Service groups maintain their independence while enjoying the benefits of OASIS' nonprofit corporate structure. By providing Foundations with a legal umbrella and administrative services, the Foundation-as-a-Service program helps groups grow, attract members, collect funds, support developers, hold copyrights, and much more.

2. Establishment of Host LLC.

OASIS Open, a global consortium organized as a nonprofit Pennsylvania corporation ("**OASIS**"), formed the OASIS Open Development Foundation LLC, a Delaware nonprofit Series Limited Liability Company (the "**Host LLC**"), as an independent hosting structure for freestanding nonprofit technical Foundations, hosted with OASIS assistance but with separate brand identities.

3. Host LLC Governance and Administration.

The Host LLC is governed by the terms of its Certificate of Formation and a Limited Liability Company Agreement prepared by OASIS counsel and approved by the OASIS Board (as defined below). Those company documents provide that: (a) OASIS is the sole member of the Host LLC, with authority to appoint the Managers of the Host LLC; (b) the OASIS Board initially shall appoint three Managers for the Host LLC; (c) the administration of the Host LLC shall be performed by OASIS staff under a master service contract with the Host LLC as described below; and (d) the operations and purposes of the Host LLC are limited to nonprofit activities. The Host LLC is a nonprofit subsidiary controlled by, but distinct from OASIS, so that the operations, accounts, assets, contracts and liabilities of the Host LLC, and those of any Foundation (as defined below) hosted by the Host LLC, are isolated and separate from the operations, accounts, assets, contracts and liabilities of OASIS.

OASIS delegates day-to-day management of the Host LLC to the Host LLC's Managers. The Host LLC Managers are appointed by the OASIS Board of Directors ("**OASIS Board**") and may be removed or replaced at any time by the OASIS Board. A majority of the Host LLC's Managers shall be persons acting under the direction of OASIS. The OASIS Board may appoint as Managers a minority of one or more persons from other stakeholders as it may deem appropriate. The Host LLC Managers act as stewards for the Host LLC and shall review the administrative work performed by OASIS staff under the Master Contract (as defined below), but shall defer to each Foundation Board (as defined below) on matters related to that Foundation's activities and expenditures so long as they conform to applicable laws and the rules, budgets and procedures described herein.

The Host LLC shall enter into a master administrative services contract with OASIS (the "**Master Contract**"), under which OASIS staff shall provide each Foundation with administrative assistance and operational and financial control services including those described below, in return for compensation to be agreed between OASIS and the Host LLC. The Host LLC also must comply with the OASIS conflict of interest, antitrust, whistleblower, and document retention and destruction policies and the OASIS privacy statement.

4. Host LLC Financial Controls.

The financial activities and budget of the Host LLC itself is administered on a day-to-day basis by OASIS staff under the Master Contract. Those administrative actions are reviewed and subject to approval by the Host LLC Managers. The funds of the Host LLC shall be deposited in, and its expenses paid from, accounts separate from those of OASIS, capable of being separately audited and, if OASIS so elects, subject to separate tax identification numbers. However, OASIS reserves the right to report its activities for tax purposes as a consolidated entity with the Host LLC and to perform any independent audit of the separate accounts of the Host LLC, or any series, or as a part of a consolidated audit or review.

The Host LLC's annual budget includes income items for (a) an administrative fee ("**Hosting Fee**") collected from the Foundation Dues paid by each Foundation, based on a percentage scale or as otherwise set by the Host LLC, and (b) projected income and costs from administrative services provided to each Foundation.

All accounting controls and policies employed by OASIS, including all rules relating to nonprofit status and appropriate legal purposes, are also applied to the operations and expenditures of the Host LLC. The operations, projections, and financial results of the Host LLC (and summary Foundation reporting) are included in the monthly operating reports and regular financial reporting provided by OASIS.

5. Creating a Foundation.

Each group supported by the Foundation-as-a-Service program ("**Foundation**") is established as a distinct series (company sub-entity) of the Host LLC.

A Foundation must be formally proposed by parties committed to join the group as initial members ("**Foundation Proposers**"). The following documents (collectively, the "**Foundation Proposal**") are prepared by the Foundation Proposers and reviewed by OASIS staff for economic feasibility, nonprofit eligibility, and suitability to the Host LLC.

- bylaws (as defined below);
- budget, including projected financial statements for the first full year, membership categories, and dues schedule;
- existing contracts with service providers, independent contractors or employees that will be assumed by or replaced in the Foundation, if any;
- known risks or any anticipated legal issues;
- planned activities;
- prior operational history of a predecessor program, if any; and
- such other matters as the Host LLC or Foundation Proposers determine are relevant.

The OASIS staff prepare a confidential feasibility assessment for each new proposed Foundation (the "**Feasibility Summary**"), including pro forma financials, for review by the Host LLC Managers. The recommendation of the Host LLC Managers, the Feasibility Summary, and the Foundation Proposal (the "**Review Package**"), are transmitted to the OASIS Board, on a confidential basis.

Foundation Proposals proceed in one of the following ways:

- *If the Host LLC does not recommend approval*, the Foundation Proposal is provided to the OASIS Board for information but requires no further action.
- *If the Host LLC recommends approval, but two or more OASIS Board members object to the Review Package within 15 days in writing to the Host LLC Managers*, then the OASIS Board may act to accept, reject, or place conditions on the proposal. The Board will communicate its decision, together with its reasoning, to the Foundation Proposers and the Host LLC Managers within 30 days after the objections are made, or else the Host LLC may move to form the Foundation.
- *If the Host LLC recommends the proposal, and the OASIS Board approves the Review Package without objections as described above*, the Host LLC will accept the proposal, open a new legal series and initiate the Foundation. Acceptance by the Host LLC and initiation of the Foundation must be consistent with the statements in the Review Package and comply with any conditions imposed by the OASIS Board.

Review of Foundation Proposals by OASIS and the Host LLC are intended to confirm feasibility and conformance to applicable laws, the stated purposes of OASIS, and the requirements and procedures described in these Operating Rules; they are not an assessment, critique, or endorsement of the proposed Foundation's technical merits or goals.

The Series LLC Agreement, confirming the Foundation's acceptance into the Foundation-as-a-Service program, must be executed by a representative of the Foundation Proposers and the Host LLC.

6. Foundation Operation, Bylaws, and Governance.

Each Foundation accepted by the Host LLC is hosted in a distinct company series, established in the manner provided by the Host LLC's governing documents and these Operating Rules. Once initiated, Foundations are subject to the continuing budgeting, feasibility, and termination requirements described in these Operating Rules.

The procedural and technical work rules under which a Foundation and its members operate are set forth in its "**Foundation Bylaws**", which must contain sufficient process rules to begin operations. The proposers may either use the Bylaws template provided by OASIS or create their own custom Bylaws, which will be subject to evaluation by the Host LLC. That evaluation may require additional time, and the Host LLC reserves the right to require the inclusion of certain elements and rules, and specific levels of clarity.

The Foundation Bylaws must include (a) the manner of creation and maintenance of a Foundation Board of Directors ("**Foundation Board**"), (b) the Foundation's intellectual property policies, (c) the expected transparency and public visibility of the Foundation and access to its outputs, and (d) its expected relationship, if any, to OASIS open standards or open source projects. The Foundation Bylaws also must confirm the Foundation's adherence to OASIS conflict of interest, antitrust, whistleblower, privacy and information security policies and with the Foundation's own Code of Conduct.

Once a Foundation's initial Bylaws have been approved, subsequent changes require the agreement of all members of the Foundation (each of which is a signatory to the Charter) as well as the approval of the Host LLC, and must be notified (with an opportunity to decline or depart) to all members of Foundation members in a process defined in its Bylaws. Changes to the Foundation Bylaws also shall be notified to the OASIS Board, and reviewed and subject to the same objection and consent procedure as applies to the initial Bylaws.

The Foundation Member Agreement must be executed by each member of the Foundation. New members may join the Foundation (subject to the eligibility rules in its Bylaws) by executing and delivering a copy of the Member Agreement to the Host LLC and paying the required membership dues.

7. Foundation Financial Controls.

Under its Master Contract with the Host LLC, OASIS provides staff or subcontractor support for the management of the distinct accounts, assets, contracts, and liabilities of each Foundation, and day-to-day administration of its costs, expenses, and budget. As part of that support, OASIS provides or arranges for regular financial reporting to each Foundation Board, as well as to the Host LLC Managers, on a schedule similar to that employed by OASIS for other dedicated funds.

The day-to-day administration of a Foundation's financial activity is reviewed and approved by that

Foundation's Treasurer (or its Executive Director if no Treasurer is appointed), and also periodically reviewed by its Foundation Board, all subject to the requirements of its Foundation Bylaws and these Operating Rules.

Each Foundation's Board must approve in advance an annual budget for review by the Host LLC which includes:

- projection of expected Foundation Dues from members;
- allocation for the Hosting Fee, at the rate established by the Host LLC;
- contracted or otherwise projected costs of any OASIS services provided to the Foundation;
- projected costs and any income for the activities of the Foundation;
- costs of any third-party services to be provided to the Foundation; and
- all other elements of a budget required by the accounting policies, controls, and practices employed by OASIS for its own operations.

The methods and schedule for assessment and collection of Foundation Dues, as provided in a Foundation's Bylaws and budget, must be conducted as determined by OASIS staff providing administrative support under the Master Contract, so as to regularize accounting, permit consolidation of reporting, and ensure for the adequate provision of sufficient resources for Foundation expenses.

The first fiscal year for each Foundation ends at the same time as the then-current fiscal year of the Host LLC as directed by OASIS. However, the Foundation Board and the Host LLC, in consultation with OASIS, may mutually agree to set different fiscal year anniversaries and commensurate deadlines. Each Foundation must propose and obtain approval of its annual budget for each new fiscal year and should propose its annual budget at least 60 days before the expiry of its prior fiscal year. If a Foundation's annual budget for the next year has not been finally approved by the Host LLC by the 30th day prior to the prior fiscal year end, the Host LLC may suspend that Foundation's financial activity and decline to incur or make any further payments of that Foundation's expenses at the end of that fiscal year (that is, 30 days later).

The Host LLC and OASIS reserve the right to limit, decline, or suspend action on any expenses incurred, paid, or planned by a Foundation Board if at any time the existing and projected revenues do not appear to the Host LLC Managers or OASIS staff to adequately provide for those expenses. Neither the Host LLC nor OASIS has any responsibility for a Foundation's liabilities caused by or relating to shortfalls in a Foundation's budget or assets.

All accounting controls and policies employed by OASIS, including rules relating to nonprofit status and appropriate legal purposes, also are applied to the operations and expenditures of each Foundation, as managed by OASIS staff providing administrative support under the Master Contract.

The operations, projections, and financial results of the Foundation also may be reported in consolidated form to, and shall be included within, the monthly operating reports and regular financial reporting provided by OASIS.

8. Foundation Contract Administration.

A Foundation may contract separately for the provision of services, including promotional, event, and technical services, that the Foundation Board wishes to obtain, so long as those activities are consistent with these Operating Rules, its Foundation Bylaws, and its approved budget. However, such contracts, and any other legal contracts entered into by the Foundation, are subject to the approval of the Host LLC and OASIS staff. In its review and approval of proposed contracts, the Host LLC may require such additional terms or conditions as are

necessary in its judgment to assure adherence to the Foundation's budget and the financial controls described in these Operating Rules.

For the benefit of each Foundation Board, OASIS will maintain information regarding the services that are available by contract to the Foundation from OASIS ("**Contracted Services**") (beyond the services provided through the Master Contract in return for the Hosting Fee), as well as information regarding suggested external service resources.

A Foundation, as a legal series of the Host LLC, cannot enter into mergers, acquisitions, asset dispositions, or similar agreements that substantially change its nature or company structure, except to the extent such a change is (a) recommended by its Foundation Board, (b) approved by the Host LLC, (c) consistent with applicable law, (d) approved by the OASIS Board, and then (e) duly executed by the Host LLC.

9. Foundation Inactivity or Termination.

If a Foundation either (a) fails to timely adopt an approved budget, (b) fails to maintain the minimum required number of Foundation Board members specified in its Bylaws, or (c) no longer has an Executive Director, then the Host LLC reserves the right to declare the Foundation dormant, by notifying its remaining Foundation Board members. The Host LLC may indicate that status change in its communications and decline to make any further payments or commitments or perform further services until the condition that causes the dormancy is corrected.

If a Foundation has been declared dormant for more than 60 days, the Host LLC reserves the right to terminate the Foundation and wind up its existence as a legal series in a manner consistent with applicable law. If a Foundation, one or more members of its Foundation Board, one or more of its members, its Executive Director, or its Treasurer act in violation of applicable laws, or act in a manner that materially violates these Operating Rules or endangers assets of the Host LLC or OASIS, then the Host LLC reserves the right at any time at its sole discretion to (a) remove the entity so acting from its position within the Foundation, or (b) terminate the Foundation and wind up its existence as a legal series in a manner consistent with applicable law, or (c) take such other steps as may be necessary to protect the assets of the Host LLC or OASIS, or (d) any combination of the foregoing.

A Foundation's Board may also voluntarily, by a written vote of a majority of its currently-seated members (or such other minimum number as its Bylaws may specify), terminate and wind up its affairs, in which case the Host LLC shall administer its asset disposition and winding up as a legal series in a manner consistent with applicable law, over such period of time as the Host LLC may in its sole discretion agree.

In the event of any termination or wind-up of a Foundation, its data assets and remaining intellectual property rights shall be handled as described below.

10. Foundation Data Availability.

Each Foundation sets its own policies regarding the accessibility of the Foundation's documents and technical resources to the public and its own members, consistent with its Bylaws.

The Host LLC retains its administrative, governance, budget, and operating records for each Foundation, for the period of time provided for that class of records in the OASIS Document Retention and Destruction Policy. During that period, the Host LLC will take reasonable steps to cooperate with appropriate requests for access to that data, from parties entitled to access, at the cost of the requesting party.

Any obligation of the Host LLC, OASIS, or another contractor to retain, maintain, or support continued public availability of a Foundation's email, web content, technical work documents, or similar data exists only to the extent specified in a written agreement for Contracted Services.

Any technical or similar work associated with an entity outside the Foundation, including but not limited to OASIS, is subject to the availability rules provided by those other programs.

However, notwithstanding any other term of these Operating Rules or any service agreement, neither the Host LLC, nor OASIS, nor any of their assigns, shall be obligated to: (a) perpetually maintain its own existence, nor (b) provide for the perpetual existence of a website or other public means of accessing such material, nor (c) maintain any material which it is legally required to remove from publication.

11. Foundation Visibility and Branding.

OASIS and the Host LLC each reserve the right to disclose its hosting affiliation with any Foundation. Foundation self-descriptive materials must include the statement, *"Hosted by the OASIS Open Development Foundation LLC."* Foundations otherwise only may use the OASIS logo or the name of OASIS as may be approved in advance in writing by OASIS staff and in third-party references as consistent with the OASIS Trademark Policy.

12. 11. Changes to these Operating Rules.

These Operating Rules were approved by the Board of Directors of OASIS, the sole member of the Host LLC. OASIS reserves the right to amend these Operating Rules in the future.

This version of the OASIS Foundation-as-a-Service Operating Rules was approved by the OASIS Board of Directors on 18 February 2020 and became effective immediately.

Dates

Approved:

Tue, 2020-02-18

Effective:

Tue, 2020-02-18