

PDAFlow Foundation

Setting standards for photonic design automation

MEMBERSHIP RULE BOOK (2014.02.17)

1. **DEFINITIONS**

- 1.1. **Agreement:** The rules of this PDAFlow Foundation Membership Rule Book.
- 1.2. **Distribution:** distribution of the PDAFlow API, any associated software source code and its documentation.
- 1.3. **Fees:** The Fees determined by the Foundation which are to be paid annually to the Foundation.
- 1.4. **Foundation:** The legal entity "Stichting PDAFlow Foundation", as registered at the Chamber of Commerce in the Netherlands under number 57943389 as a non-profit organization.
- 1.5. **Initiators:** Filarete, PhoeniX Software, Photon Design and COBRA/Technical University of Eindhoven.
- 1.6. **Internal Use:** The use of the Library for internal product and process development.
- 1.7. **Technical Activities:** activities of the Members relating to the specification, testing and distribution of the PDAFlow API, any associated software source code and its documentation.
- 1.8. **Linked Organizations:** Where one organization directly or indirectly owns more than 25% of another organization, then the two organizations shall be considered Linked Organizations. Where a third organization owns directly or indirectly more than 25% of two other organizations, then the other organizations shall be considered Linked Organizations.
- 1.9. **Membership:** Membership to the Foundation.
- 1.10. **The Library:** The software library and API, now known as PDAFlow, originally developed within the EU projects CP-TP-228839-2 "EuroPIC and 224312 "Helios".
- 1.11. **Compliant Product:** A software product that is compliant with the rules of the Library so that it will correctly work with other Compliant Products.

2. **MEMBERS**

- 2.1. The Foundation is open for membership to any party provided:
 - a) that the party agrees to and abides by the terms of the Membership Agreement;
 - b) that the party pays the Membership Fee, which is € 490,-- per year for academic and € 890,-- per year for commercial organizations;
 - c) the Board does not veto the Membership, and;
 - d) the party makes reasonable effort to support the activities of the Foundation by appointing a responsible technical contact, actively participating in discussions and reviewing the activities of the Foundation.
- 2.2. The Board may veto an application to Membership or a Membership renewal if:
 - a) the Board votes unanimously to do so in a Board meeting, and;
 - b) the Board has genuine grounds to believe that the Membership will not be in the best interests of the stated goals of the Foundation.

The Board has one month from submission of a Membership Application to veto the Membership. Prior to that date Membership is provisional. In the event of a veto, any Fees already paid shall be returned in full.

- 2.3. Members will pay their own expenses that may arise from the Membership.
- 2.4. By signing the Membership Form, a member is bound by this Agreement: The PDAFlow Foundation Rule Book.
- 2.5. Any proposed changes to the Agreement shall be notified to all Members. If a Member does not agree to the changes he may submit his resignation from the Foundation any time within 60 days from the notification, effective 60 days from the notification of changes.
- 2.6. If a Member breaches the terms of the Membership Agreement, the Board may revoke the Membership by majority vote at a Board meeting. In this case, Membership Fees will be refunded on a pro-rata basis for full months remaining. No member shall have his/her membership revoked unless:
 - a) the Member has been given 30 days written notice of the proposed revocation of Membership including the reasons.
 - b) Member has been given the opportunity to answer the concerns of the Board, not less than 7 days before proposed revocation.
- 2.7. Members can end their membership by sending a letter to the Foundation. The Board will respond in writing to accept the termination within 10 working days. The termination will be immediate effective after this confirmation. No refund of the Membership fee will be due.
- 2.8. Members may attend Technical Committee meetings.
- 2.9. Non-academic Members have the right to distribute and sub-license the developed PDAFlow API as described in Article 7.

3. **TECHNICAL COMMITTEE**

- 3.1. The Technical Committee is responsible for supervising the Technical Activities.
- 3.2. There shall be 8 Technical Committee Members (“TC Members”).
- 3.3. Initiators are automatically TC Members for the period up to 31.12.2016, unless an Initiator decides to give up this right .
- 3.4. The Remaining TC Members shall be elected according to Article 4.
- 3.5. The Technical Committee may convene meetings (“TC Meetings”) as required to make formal decisions relating to the Technical Activities.
 - a) an agenda shall be distributed to all Members at least 5 (five) working days in advance.
 - b) a meeting shall require at least half of the TC Members to be present to be quorate.
 - c) decisions shall be made by majority vote of TC Members present.
 - d) all Members are invited to attend TC Meetings. Members shall be given adequate opportunity to present their views at a meeting.
- 3.6. In the event of a hung vote on the Technical Committee, the decision shall pass to the Board.
- 3.7. Any Member may propose an item for a meeting Agenda but it must be supported by at least one TC Member.
- 3.8. Meetings shall be held by phone or an Internet conferencing service unless the Technical Committee agrees by unanimous decision to hold a physical meeting.
- 3.9. Technical Committee Meetings shall be chaired by a Board member, rotating to a different Board member at each meeting.
- 3.10. All decisions of the Technical Committee shall be transcribed by a secretary nominated by the meeting chair, securely archived, and made available to all Members within 7 (seven) days of the meeting. If no TC Member objects to the transcription within 14 days of the meeting it is deemed accepted. Otherwise it shall be placed back on the agenda of the next Technical Committee meeting.

4. **ELECTION OF TECHNICAL COMMITTEE MEMBERS**

- 4.1. When there is a vacancy for a TC Member, the Board shall inform all Members one calendar month ahead of the election date.
- 4.2. Any Member may propose an employee of the organization for election to the Technical Committee by submitting the name to the Board at least two weeks before the election date.
- 4.3. The proposed employee must hold a position within his organization as either General Manager, CTO, Technical Director or Principal Developer, or have at least 3 (three) years' experience in commercial software development, or equivalent.
- 4.4. Each organization may have maximum of one person on the Technical Committee. For the purpose of this clause, Linked Organizations shall be considered as one organization.
- 4.5. The term of office of an elected TC Member shall be 1 (one) year.
- 4.6. Election of TC Members shall be on the basis of 1 (one) Member 1 (one) vote.

5. **THE BOARD**

- 5.1. The Board is governed by the Statutes of the Foundation and registered at the Netherlands Chamber of Commerce. Where there is conflict between the Statutes and this Agreement, the Statutes shall prevail.
- 5.2. Board Members shall not receive any remuneration for their time given to the Foundation.
- 5.3. Board Members may receive reimbursement for actual expenditures related to the attendance at (Board) meetings and other expenditures necessary for the efficient running of the Foundation. The Board reserves the right to refuse reimbursement where expenditure was not necessary or was profligate, for example a first class airfare. Expenditure over € 250,-- shall require prior approval of the Board.

6. **TECHNICAL ACTIVITIES AND MEMBER CONTRIBUTIONS**

- 6.1. It is the ambition of the Foundation to stimulate all Members to make contributions to the development of the Library and to improve the Library and further its usefulness.
- 6.2. Where a member makes a contribution to the Technical Committee, that Member shall grant the Foundation and it's members a non-exclusive, worldwide, royalty-free right to use that contribution without restriction.
- 6.3. Members who contribute to the Technical Committee, grant the Foundation a non-exclusive, worldwide, royalty free right to include the contribution into the Library and to distribute it without restriction.
- 6.4. Members shall always act professionally and to the best of their ability in providing contributions to the Technical Committee.

7. **USE, DISTRIBUTION, IP, WARRANTIES AND LIABILITY**

- 7.1. Members are entitled to use the Library for internal product and process development ("Internal Use") in their own organization.
- 7.2. Commercial Members are entitled to distribute without royalty, their own software products that incorporate the Library in a compiled form ("Distribution").
- 7.3. In case a Memberships ends, the right for "Internal Use" and "Distribution" ceases at the end date of the Membership. Lapsed Members may not distribute any software product that incorporates any part of the Library. This restriction shall apply also to updates or new versions.
- 7.4. Members may only include the Library in their products if such products are Compliant

Products.

- 7.5. Foundation provides the Library on an "AS IS" basis. Foundation shall not be liable for the correctness or the usefulness of the Library.
- 7.6. The Foundation is not liable for any form of loss or damage resulting from use of the Library, including any consequential damages in any form whatsoever or any compensation for any indirect or consequential loss or any loss due to a loss of profits.
- 7.7. Members may make use of the PDAFlow trademark and logo when marketing Compliant Products. For the avoidance of doubt, the PDAFlow trademark and logo may not be used in association with products that are not Compliant Products.
- 7.8. Members shall ensure that to the best of their knowledge their contributions shall not infringe in the IP and/or patents of a third party. Contributing members shall inform the Foundation without delay if such an infringement comes to their knowledge.
- 7.9. The contributing member shall indemnify, defend and hold The Foundation, and all directors, employees, agents and representatives thereof as well as Members, harmless, from any claims asserted or threatened by a third party, including not limited to costs, judgments, attorney's fees and related expenses, related to, allegations that the contribution infringes any Patent, copyright or trademark.

8. **APPLICABLE LAW**

- 8.1. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with Dutch law.
- 8.2. The applicability of the United Nations Convention on Contracts for International Sale of Goods 1980 ("CISG") is excluded.
- 8.3. All provisions of this Agreement which implicitly, or by their nature or express language, impose obligations or confer rights that would extend beyond the date of termination of this Agreement shall survive any such termination or expiration.

9. **ARBITRATION**

- 9.1. All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- 9.2. Arbitration proceedings shall be English and shall be held in Amsterdam unless both parties agree a different location.