

MEMBERSHIP AND COOPERATION AGREEMENT BETWEEN FEDORA COMMONS, DBA, DURASPACE AND THE TECHNISCHE UNIVERSITÄT BERLIN

This Membership and Cooperation Agreement is entered into, on the one hand, by the **TECHNISCHE UNIVERSITÄT BERLIN** (henceforth **TU Berlin**) with registration N°..., and legally based in..., represented by its ...; and, on the other hand, **FEDORA COMMONS, dba DuraSpace**, (henceforth **DuraSpace**) with registration N° 26-0389639 and based in 9450 SW Gemini Drive # 79059, Beaverton, OR 97008, United States of America, represented by its CEO, Ms. **DEBRA HANKEN KURTZ**.

For the purposes of this Agreement, whenever **TU BERLIN** and **DuraSpace** shall be mentioned together, they shall be hereinafter jointly referred to as **THE PARTIES**.

THE PARTIES will comply with the terms and conditions specified in the following clauses:

FIRST CLAUSE: THE PARTIES

TU Berlin is a

DuraSpace is a 501 (c) (3) independent not-for-profit organization that provides leadership and innovation to open technologies that promote long-lasting and persistent access to digital data. **DuraSpace** collaborates with academic, scientific, cultural and technological communities supporting projects and creating services to help ensure that current and future generations have access to our collective digital heritage. Open technology projects supported by **DuraSpace** provide long-term access and discovery of digital assets.

SECOND CLAUSE: THE OBJECT

A group of German Institutions identified in the Technische Universität Berlin (TU Berlin) a leading organization to form a consortium and coordinate their activities within the DSpace community.

With this agreement DuraSpace recognizes that TU Berlin was granted the right to act on behalf of the single German institutions members of the German Consortium.

In particular, the purpose of this Agreement is for the German Consortium to:

- Contribute to the development and maintenance of the DSpace software, which allows to share and give visibility to the scientific production generated in higher education institutions and national scientific research.
- Guarantee the continuity of the DSpace Project and promote its future development.
- Promote cooperation with **DuraSpace**, its members and strategic partners in any promotional activities, technical and functional trainings for the benefit of German institutions that are using DSpace repositories.

THIRD CLAUSE:	COMMITMENTS OF THE PARTIES
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For the fulfillment of this Agreement, **THE PARTIES** agree to undertake the following actions:

- 4.1. TU Berlin will be responsible for collecting the fees from the Consortium Members.
- 4.2. Before July 1st of every year TU Berlin will send DuraSpace a list of the German Institutions that are members of the German Consortium with details of each member's contribution.
- 4.3 DuraSpace will send one (1) invoice to TU Berlin for the total amount based on the total individual Consortium's members contributions.
- 4.4 If an Institution joins the Consortium during the year, DuraSpace will apply a pro-rated membership for 6 months instead of a full membership rate.
- 4.5 All the members of the German Consortium will nominate and select a representative from the Consortium to the Leadership Group of DSpace (if the cumulative contributions of the Consortium's members reach at least the amount of a regular DuraSpace Gold Member).
- 4.6 Each Institution will have the right to be listed on the DuraSpace and DSpace websites as "(Tier) Member as part of the German Consortium".
- 4.7 DuraSpace will recognize the Consortium as a whole to be a member of DuraSpace and it will grant the Consortium the voting rights / membership participation corresponding to the DuraSpace membership level reached in total.
- 4.8 The contribution provided by **the German Consortium** will allow **DuraSpace** to carry out the following activities in relation to the DSpace Project:
 - Project administration
 - Leading the technical development and maintenance of DSpace
 - Ensuring the sustainability of DSpace
 - Raising funds for DSpace
 - Coordinating the DSpace user community
 - Promoting globally the activities related to the DSpace Project
 - Establishing international collaborations and strategic partnerships
 - Keeping the source code of DSpace publicly available for anybody

FOURTH CLAUSE:	VALIDITY
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This agreement shall be valid for one (1) year, starting from the next day of its subscription. The Agreement will be automatically renewed every year if not requested and communicated by one of THE PARTIES to the other at least sixty (60) days prior to the next renewal.

FIFTH CLAUSE:	MODIFICATION
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In the case **THE PARTIES** agree to modify or extend this Agreement, such a modification shall be approved with the same procedures followed for this document and shall form an integral part of this Agreement.

SIXTH CLAUSE:	FINANCING
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TU Berlin will contribute annually to **DuraSpace** with a fee based on the cumulative contributions of the members of the German Consortium, as indicated in Sections 4.2 and 4.3 of Clause Fourth of this Agreement.

SEVENTH CLAUSE:	RESPONSIBILITIES AND CONFIDENTIALITY
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The information obtained by **THE PARTIES** during or as a result of their obligations, as well as the reports and all kind of documents generated in relation to the Agreement will be confidential and therefore cannot be disclosed to third parties outside **THE PARTIES**, without express authorization. This obligation will remain in effect even after the Agreement has been concluded. This agreement itself is not confidential and maybe disclosed at any time.

NINTH CLAUSE:	INTER-INSTITUTIONAL COORDINATION
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For the achievement of the object and commitments agreed in this Agreement, as well as the coordination that is necessary for the follow-up, **THE PARTIES** agree to designate the following institutional coordinators:

For TU Berlin :	Director ...
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For DURASPACE :	Chief Executive Officer Debra Hanken Kurtz International Membership and Partnership Manager Michele Mennielli
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THE PARTIES may appoint a different representative or replace those designated in this document by a written communication to be sent to the other Party.

NINTH CLAUSE:	TERMINATION
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The present Agreement can be terminated:

- a) By mutual agreement between **THE PARTIES**. For the agreement to be valid it shall be written, approved and signed by **THE PARTIES**.

- b) Failure to comply with any of the commitments agreed upon in this Agreement. In case of non-compliance, the affected party shall require the other party to comply with the commitments assumed, within a deadline of fifteen (15) business days, under penalty of termination of the Agreement by law.
- c) Due to unforeseeable circumstances or force majeure, which precludes compliance, duly accredited. In this case, the breaching party will be exempt from any liability. The termination shall have full effect on the date that any of **THE PARTIES** notify it in written form to the other party.

In the case of termination for any reason, **THE PARTIES** undertake to comply with the commitments listed in this Agreement until the end of the validity period.

TENTH CLAUSE: SETTLEMENT OF DISPUTES

Any dispute, controversy or discrepancy that may arise from this Agreement, or that is related to it, including, among others, its expiration, invalidity, execution, compliance or interpretation shall be resolved through the practice of friendly and direct dialogue, adopting solutions of mutual agreement following the rules of good faith and common purpose of **THE PARTIES**.

If the controversy or discrepancy persists, this shall be resolved through conciliation and / or arbitration of law.

THE PARTIES agree that since this Agreement has been negotiated, drafted and signed in accordance with the legal norms of the United States of America, its content, execution and other consequences that may arise from it will be governed by the legal system of the United States of America.

ELEVENTH CLAUSE: FINAL PROVISIONS

THE PARTIES agree on the terms and conditions of this Agreement and they sign it in two (2) authentic copies.

...
Technische Universität Berlin
Date:

Debra Hanken Kurtz
DuraSpace
Date: