

**Membership agreement
The PHARO Consortium**

Between:

**INSTITUT NATIONAL DE LA RECHERCHE EN INFORMATIQUE ET EN
AUTOMATIQUE (INRIA)**

A public technological and scientific research establishment, governed by the French national decree n°85831 of August 2, 1985.

Domaine de Voluceau – Rocquencourt
BP 105
F-78153 LE CHESNAY

Represented by its President Antoine PETIT

Who has delegated his signature, for the purpose hereof, to the director of the research center Inria Lille Nord-Europe, Isabelle Herlin

Hereinafter designated as «Inria»

And:

.....
.....
.....

Represented by
Hereinafter designated as «the Partner»

Individually referred as the **Party** and jointly as the **Parties**.

WHEREAS:

The Inria “RMOD” team, a research team from Lille research center, has developed a software platform named PHARO available under the MIT license. It wants to create a community of users and contributors to this platform by letting organizations join a consortium created for this purpose.

The Partner, user of and/or contributor to PHARO, wishes to take part in the PHARO Consortium to promote, sustain, and develop the software platform PHARO, to ensure its continuity.

The Partner's participation in the Consortium and its cooperation with Inria pursuant to the

term of this agreement will advance Inria's research objectives in accordance with the needs of major users of PHARO.

The terms of this membership agreement cannot be subject to negotiation in order to ensure equal treatment between the different Partners of the consortium.

THE FOLLOWING HAS BEEN AGREED:

Article 1: Definitions

For purposes of enforcement and interpretation of this Agreement, the following terms have the following meanings:

PHARO Team: Inria “RMOD” team and all new and future Inria research team in charge of the development of PHARO

PHARO: an open-source programming environment inspired by the “smalltalk” language. This is an attractive platform to build and deploy software applications and tools. The release of this platform already contains many tools and applications.

MIT License: The MIT License is a free software license originating at the Massachusetts Institute of Technology (MIT). It is a permissive free software license, meaning that it permits reuse within proprietary software provided all copies of the licensed software include a copy of the MIT License terms.

Release: new versions of PHARO containing improvements, new tools, etc. managed by PHARO Team and published under the MIT License.

Agreement: the present membership agreement and its appendix.

Consortium: Community of users and contributors to the platform PHARO who have signed this membership agreement to participate in PHARO’s promotion and development according to the conditions below.

Support: On a member’s request, and within the limits specified in Article 6, the PHARO team provides consulting on PHARO, giving advice and recommendations to the Partner to help implement a technical solution to a problem encountered regarding the integration of tools and applications in PHARO. In addition PHARO bugs will be considered without any obligation to fix them.

Specific Consulting or Development: On a Platinum member’s written request to board@pharo.com, and within the limits specified in Article 6, the PHARO team provides specific consulting or development in connection with the Partner business work with PHARO, giving advice and recommendations to the Partner to help implement a technical solution to a problem encountered regarding its own software or to help for fixing a bug in its own software which can prevent proper use or generate dysfunction, failure when used with PHARO.

Year: Calendar year

PHARO Consortium Website: a web site hosting the consortium. This website is available at the following address: <http://consortium.pharo.org>

All training, offers and information will be posted on this website.

The Partner will receive by email a login and password to connect to this website.

Article 2: Purpose

This Agreement defines and organizes the terms and conditions of Partner participation in the PHARO Consortium.

By signing this Agreement, the Partner undertakes to participate in the PHARO Consortium, and to abide by all its rules, both organisational and operational, as defined by this Agreement.

The purpose of the PHARO Consortium is described in the presentation sheet appended to this Agreement (appendix 1).

Article 3: Membership

To be considered a member of PHARO consortium, the Partner agrees to pay Inria an annual fee for each Year. An invoice shall be sent by Inria to the Partner in the first quarter of each calendar year.

If the Partner joins during the course of the Year, the membership fee for that particular Year is to be calculated on a pro rata basis according to the full membership months.

This proportional fee will be calculated by Inria. The starting point will be the date of signature of this Agreement by the Partner.

The Partner can choose between four levels of annual fees relative to four different kinds of member status:

- 1) « Bronze » member : 1 000 euros net of taxes (without VAT)
- 2) « Silver » member : 2 000 euros net of taxes (without VAT)
- 3) « Gold » member : 4 000 euros net of taxes (without VAT)
- 4) « Platinum » member : from 8 000 euros net of taxes (without VAT)

For french Partner joining to the Consortium, the VAT applicable at the date of signature of this Agreement shall apply.

Each Partner shares mutual benefits and has also specific benefits depending on its member status as described in articles 5 and 6 below.

On the signature page of this Agreement, the Partner will make its choice by checking the box corresponding to the selected membership category. For Platinum membership category, the Partner shall also specify on this page, the amount of the annual fee it wants to pay which can't be less than 8 000 euros net of taxes (without VAT)

Two months before the end of a Year, the Partner will be able to change its membership category. In this period, it will have to make a written request to the chairman of the steering committee (described in article 7) and resign this Agreement.

Article 4 Financial Terms

Inria shall send to the Partner an invoice corresponding to its annual fee according to provisions of Article 3. The first invoice (first Year) shall be sent by Inria to the Partner after signature of this Agreement by both Parties.

Payments shall be made within thirty (30) days from the date of receipt of Inria invoice.

Payment shall be made, either by check addressed to Inria's accountant, or by bank transfer to the international account n° FR76 1007 1780 0000 0010 0395 848 – BIC : TRPUFRP1 opened in Inria's accountant's name in the Yvelines Treasury (France).

Article 5 Mutual Benefits

By signature of the present Agreement and payment of the annual fees, the Partner shall have:

- Direct access to PHARO core developers via an automatic subscription to a specific mailing list.
- The right to propose to the steering committee (see Article 7) development priorities and the implementation of collaborative projects for the development of PHARO applications that are of interest to the Partner.
- Access to Support provided by PHARO Team in accordance with Articles 1 and 6.
- Two days per Year of training provided by PHARO Team at special prices (For the first Year of membership it could be on a pro rata basis according to the full membership months as specified for Support days in article 6 below)
- For specific developments, the Partner has access to a list of PHARO experts (other than staff of PHARO Team). Note that Inria will give only contact details. It shall not be held responsible for any troubles resulting from the use by the Partner of expert's services.
- Its logo posted on most of the PHARO website pages.

All these benefits and offers will be accessible via the PHARO Consortium Website. The Partner will subscribe to all these benefits on PHARO Consortium Website.

Article 6 Specific Benefits

6.1. Advantages per category

Depending on the membership category chosen, the Partner has specific advantages reserved according to its status.

For « Bronze » member :

- one day per Year of Support.

For « Silver » member :

- two days per Year of Support;
- a dedicated space on PHARO Consortium Website allowing the Partner to broadcast its news.

For « Gold » member :

- four days per Year of Support;
- a dedicated space on PHARO Consortium Website allowing the Partner to broadcast its news which will be published by PHARO Team prominently on the frontpage of the website.

For « Platinum » member:

- ten days per Year of Support or of Specific Consulting or Development. These days can be divided by the Partner, as it wants, to allow him to have both Support days and Specific Consulting or Development days. In the event of the fees paid by the Partner are exceeding 8 000 euros, it is entitled to get four additional days every additional 2 000 euros.
- A dedicated space on PHARO Consortium Website allowing the Partner to broadcast its news which will be published by PHARO Team prominently on the frontpage of the website.
- Possibility to ask for Inria to take a trainee on PHARO topics which the Partner wants to see develop in the consortium subject to pay to Inria an supplementary sum on a Year in addition to the fees within the limit of two trainee demand per Year. This advantage will take effect by the signature and sending, by the Partner to Inria, of a registered letter with acknowledgment of receipt according to the template attached to the present Agreement (see appendix 3).

6.2. Conditions for Support

Any unused Support day in a Year is lost without any possibility to transfer them on next Year.

If the Partner joins during the course of the Year, the days of Support for that particular Year are to be calculated and defined by Inria on a pro rata basis according to the full membership months.

Outside of this Consortium, if Partners want extra Support days, they have to make a written request to Inria and to the extent that is possible, a service provision agreement will be established at Inria prices

6.3. Conditions for Support and/or Specific Consulting or Development (Platinum member only)

The Specific Consulting or Development performed by Inria for a « Platinum » member will be considering as “other results” according to article 11.4 of this Agreement. As such, the Partner shall have ownership of them.

The Specific Consulting or Development performed by Inria for a « Platinum » member will be provided “as is”, without warranty of any kind. Inria notably excludes all warranties, expressed or implied, relating to commercial or industrial use of these task results, their safety, their sufficiency, compatibility or fitness for the Partner needs, absence of errors or defects. The Partner shall in all cases be entirely and solely liable for the use to which it puts such results and consequently waives all recourse against Inria, in any capacity whatsoever for any reason whatsoever due to the use of them.

Any unused Support and/or Specific Consulting or Development days in a Year are lost without any possibility to transfer them on next Year.

If the Partner joins during the course of the Year, the days of Support and/or Specific Consulting or Development for that particular Year are to be calculated and defined by Inria on a pro rata basis according to the full membership months.

Outside of this Consortium, if Partners want extra Support or Specific Consulting or Development days, they have to make a written request to Inria and to the extent that is possible, a service provision agreement will be established at Inria prices .

6.4. Conditions for trainee (Platinum member only)

Inria's requirement to take a trainee will take effect from the date of receipt by Inria of a registered letter with acknowledgment of receipt duly signed by the Partner according to the template attached to the present Agreement (see appendix 3).

This letter shall specify the amount paid for the internship and the desired subject. The trainee will be chosen and supervised by PHARO team. Inria will make its best effort to find and take a trainee in the Year but it will not be required to meet a certain deadline to take a trainee. The duration of the internship will be decided by Inria and will depend on the additional amount paid by the Partner. In all cases, the trainee period may not exceed six (6) months.

If the Partner wants Inria to take a new trainee on a new topic, for each trainee demand it shall apply the same process.

Inria shall integrate the contributions of the trainee in the PHARO Release.

Article 7: Governance

7.1 Steering Committee

A Steering Committee shall be set up.

7.1.1 Composition of the Steering Committee

Each Partner shall appoint a representative to the Steering Committee and a possible substitute. The Partner shall reserve the right to appoint a new representative during the execution of the present membership Agreement, after having informed in writing the chairman of the Steering Committee.

An Inria representative shall act as the chairman of the Steering Committee.

On the date this membership Agreement comes into force, Inria's representative shall be Stéphane Ducasse.

In the event of a change, Inria shall appoint a successor and shall inform the other Partners in writing.

The Steering Committee secretariat services shall be provided by Inria.

7.1.2. Periodicity

The chairman of the Steering Committee shall organise at least one (1) meeting each Year of the Steering Committee for which he shall set the agenda. This agenda will be sent to the Partners one week before the meeting. The Steering Committee shall also meet if so requested by at least two (2) of the representatives who shall propose an agenda to the chairman. The meetings will be remotely accessible.

Meetings will be held regardless of the number of Partner representatives present.

7.1.3. Role of Inria

The roadmap will be defined by Inria and introduced during the first meeting of the Steering Committee.

During these meetings, the chairman will produce a financial reporting of PHARO activities.

7.1.4 Role of the Steering Committee

The Steering Committee shall:

- Analyse the development work on PHARO done by the Technical Committee,
- Review the results obtained and their fit with the roadmap,
- Prepare possible events (meetings, conferences) and approve their estimated budgets,
- Study, propose, and collect suggestions and priorities for the development of PHARO which will be reported to the Technical Committee,
- Coordinate with the Technical Committee possible collaborative implementation efforts made by Partners,
- Coordinate hiring of engineers to help the Technical Committee (depending on the available resources),
- Approve the work programme presented by the Technical Committee,
- Approve the suggestions of PHARO developments proposed by the Technical Committee.

7.1.5 Decisions

During these meetings, and after consultation with the representatives of the Partners present, all final decisions shall be taken by the chairman

7.2 Technical Committee

A second committee with a more technical role regarding analysis and eventual implementation of contributions shall be set up.

7.2.1 Composition

It will be composed of at least three members of the PHARO Team and up to three Partners proposed by the Partners' representatives in the steering committee. The chairman of the steering committee validates these choices.

7.2.2 Role

The technical committee shall:

- Conduct and supervise the PHARO development. As such, it shall be responsible to integrate contributions to PHARO from third parties and Partners, and to report to the Steering Committee their integration in the PHARO release.
- Study, analyze, and make suggestions to the Steering Committee for development of PHARO, including studying the feasibility of developments.
- Prepare a provisional work programme and to present it to the Steering Committee for approval.
- Report to the Steering Committee.
- Coordinate the PHARO Releases.

This technical committee meets as often as necessary. The meetings will be remotely accessible.

During these meetings, and after consultation with the representatives of the Partners present, all technical decisions shall be taken by PHARO Team

Article 8: Commitments

8.1 Inria commitments

8.1.1 Inria shall employ its best efforts to develop PHARO in accordance with the Consortium's objectives.

8.1.2 Inria shall lead the development of the PHARO Consortium Website (accessible to all Partners). It shall post all necessary information to enable Partners to subscribe to their mutual and specific benefits.

8.1.3 Inria shall employ its best efforts to provide the technical and administrative coordination for the Consortium's actions. It shall particularly work to group together on the PHARO Consortium website the scientific contributions to the PHARO platform made by third parties or by the Partners that are considered to be of general interest by the Steering Committee, and incorporated into the Release in accordance with the provisions of Article 11 of this Agreement.

8.1.4 Inria shall ensure monitoring of the financial fees and shall use them to bring forward the Consortium's objectives as defined by the Steering Committee. In particular, it commits to recruit engineers for integration of the contributions to the PHARO Release.

8.1.5 Inria shall guarantee to the Partner that the other members of the Consortium have signed an agreement with Inria under the same terms as this Agreement.

8.2 The Partner Commitments

8.2.1 The Partner shall renew its financial fee each Year, under the conditions set forth in articles 3 and 4. Failing renewal, it shall be excluded from the Consortium according to article 13.1 and 13.2.

8.2.2 The Partner undertakes to inform the chairman of the Steering Committee in writing of any change concerning the structure of its company during its participation in the Consortium and liable to have direct consequences on the Partner's execution of its obligations pursuant to this Agreement.

8.2.3. No provision in this Agreement shall oblige the Partner to use PHARO or any feature, specifications, version or application of PHARO produced within the framework of the Consortium, or to refrain from using any other platform with languages other than PHARO.

Article 9 Confidential information

9.1 To be considered as confidential, the written information exchanged by the Parties should bear a written mention indicating its confidential nature.

9.2 In order to be considered as confidential, verbal information should be put into writing within a period of fifteen (15) days after its disclosure. This written document must bear the mention indicating its confidential nature.

9.3 Exchanges of written or verbal information by the Parties shall be presumed as non-exclusive and non-confidential, subject to application of the provisions of articles 9.1 and 9.2.

9.4 Any information considered as confidential pursuant to 9.1 and 9.2 shall not be disclosed to third party or published without written agreement of the Party, owner of this information.

9.5 Are not considered confidential the information for which the receiving Party can prove:

- that the information was in the public domain at the time it was communicated; or
- that it later entered the public domain otherwise than by a failure to comply with the present obligation of confidentiality; or

- that the Party was in possession of the information prior to its being communicated; or
- that it received the information freely from a third party authorized to disclose it; or
- that it is legally required to communicate the information.

Article 10 Publications

The Partners shall be encouraged to disclose to third parties their participation in the Consortium, the subject of this membership Agreement, and have the right to mention its existence, as well as the names of the other Partners in the Consortium.

The Parties are free to make scientific publications regarding work undertaken under the Consortium subject to the provisions of article 9.

Scientific publications shall include any oral or written communication whatever the medium and context may be, intended for a particular public, the subject of which is the technical and scientific aspects of the work carried out within the framework of the Consortium.

Article 11: Intellectual Property rights

11.1. Background

The background concerned by this agreement is PHARO in its latest Release.

PHARO is released under the MIT open source License and is available at the following address: <http://www.pharo-project.org>

11.2. License

The terms and conditions of use, exploitation, and distribution of PHARO by a third party are provided by the MIT open source License. Prior acceptance of these conditions is necessary to have access to the PHARO source code. The text of this license is accessible at the following address: <http://opensource.org/licenses/mit-license.php>

11.3. Consortium results

The Consortium results include all improvements, new versions, and changes made by one or more Partners, decided, funded, and monitored by the Parties under Article 7 of this Membership Agreement.

The Consortium results are incorporated into the latest Release of PHARO on the proposal of the Technical Committee, by a decision taken by Inria within the Steering Committee, in accordance with the procedure described in the article 7 of this Membership Agreement.

The Consortium results incorporated under the latest Release remain the ownership of the Partners who have generated them.

The Consortium results incorporated into PHARO shall be edited, published, and disclosed by Inria via the Technical Committee.

To this end, each partner allows Inria to edit, publish, and disseminate its results and contributions under the MIT License. This commitment will be officially recorded by written agreement between the Partner concerned and Inria according to the template attached to the present Agreement (see appendix 2).

The incorporation of Consortium results into PHARO is final and irreversible. The PHARO Release with improvements and results is available under the MIT License.

11.4. Other results

Results obtained outside of the Consortium are:

- All improvements, new versions, and changes to PHARO performed by a third party or third parties (i.e., any individual person or corporate body) who have not signed this membership Agreement with Inria.
- All improvements, new versions, and changes to PHARO performed by one or more Partners outside the Consortium's objectives and therefore not contained in the Release.

These results outside the consortium comprising derived or composite works in the meaning of Article L 113-2 paragraph two of the Intellectual Property Code, belong to third parties and partners who developed them. Such third parties or partners are free to use these results as they wish (to incorporate them in other software, etc.) and these results can be disseminated under the license of their choice.

Nevertheless, if third party results have a general interest, the Technical Committee shall employ its best efforts to approach the third party to propose incorporating its results into the PHARO Release, in accordance with the procedure described in article 7 of this Membership Agreement.

Incorporation of Consortium results into PHARO is final and irreversible. The PHARO Release with improvements and results from third parties is available under MIT License.

Article 12: Duration

The Agreement shall enter into effect from its date of signature by the Partner. It is tacitly renewed on each Year failing termination of the Agreement by the Partner or by Inria according to article 13.3. and 13.4. A condition of this automatic renewal is the payment of the annual fees by the Partner. Failing this, the Partner shall be excluded from the Consortium according to article 13.1 and 13.2.

Article 13: Termination

13.1. In the case of non-renewal of the financial fee by the Partner to the Consortium under the terms covered by articles 3 and 4, the Agreement shall be terminated by Inria under the conditions described in article 13.2 below.

13.2. This Agreement shall be terminated by one of the Parties in the event of failure by the other Party to perform one or more of the obligations contained in the above provisions. This termination shall become effective only three (3) months after the plaintiff Party has sent a registered letter with acknowledgement of receipt describing the reasons for the complaint unless, within this period of time, the defaulting Party has met its obligations. Such termination does not prevent the defaulting Party from fulfilling its contractual obligations until the entry into force of such termination, subject to any losses possibly sustained by the plaintiff Party due such termination of the agreement.

13.3. The Partner has the right to terminate this agreement at any time on prior notice sent by registered letter with acknowledgement of receipt to Inria two months before the desired termination date. All sums already paid to Inria are not refundable. At the effective date of termination the Partner will no longer be consider as a Consortium member and will lose all membership benefits.

13.4. Inria has the right to terminate this agreement at the end of each Year on prior notice sent by registered letter with acknowledgement of receipt to all Partners two months before the end of the concerned Year. All sums already paid to Inria are not refundable.

Article 14: Notification

Any notification related to the implementation or interpretation of this Agreement shall be validly made if sent by registered letter with acknowledgment of receipt, by fax, or email with return receipt immediately confirmed by email in the last two cases to contact of the respective Parties listed below.

For Inria

Name: Stéphane Ducasse

Address: 40 avenue Halley, Villeneuve d'Ascq, FR-59650 France

Tel: +33 (0)3 59 35 87 52

Email: stephane.ducasse@inria.fr

For the Partner

Name:

Address:

Tel:

Email:

Article 15: Nature of the Consortium

Under no circumstances shall this membership Agreement constitute a company, as *affectio societatis* does not exist.

The Parties have only an obligation of means regarding the objectives of this Agreement.

Article 16: Entire agreement

This membership Agreement and its appendix constitute the entire agreement between the Partner and Inria with respect to the PHARO Consortium, and replace all other agreements or representations, whether written or oral.

Article 17: Independence of the provisions

If one or more provisions of this Agreement are held to be invalid or declared as such by application of a law, a regulation, or a final decision by a relevant jurisdiction, the other provisions shall retain all their force and validity.

Article 18 Assignment of the agreement

This Agreement is concluded *intuitu personae*. It is personal, non-transferrable, and non-assignable.

In the event of merger, acquisition, transformation of the Partner, transfer of activity to another entity, this agreement cannot be transferred without prior written consent from Inria.

Article 19: Governing law

This Agreement is governed by french law.

Article 20: Settlement of disputes

Any dispute which may arise from the interpretation or performance of this Agreement remaining unresolved by the Parties for a period of thirty (30) days, shall be brought before the relevant court.

Drawn up at, on
in two original copies

For The Partner

For Inria

« Bronze » Member

« Silver » Member

« Gold » Member

«Platinum» Member foreuros per Year

Appendix 1

Presentation of PHARO Consortium and its objectives

The goal of the consortium is to structure and build an umbrella to foster business around Pharo and to promote Pharo.

There are several goals for the consortium.

Promote. The consortium will promote Pharo by supporting conferences, books, videos, exhibitions, and conference participation. It will improve Pharo visibility and support the expansion of its community.

Give the direction of Pharo. The role of the consortium is also to help deciding the future development of Pharo. The consortium will gather input from its members from a business perspective.

Support the day to day development of Pharo. The consortium will collect funds. The consortium will structure the development of Pharo. It will pay engineering tasks to be performed such as improving the virtual machine, network libraries, better JIT support or any other tasks decided by the Pharo Steering Committee.

Provide a solid, trustable visibility. The consortium should show that Pharo is a mature and relevant technology. The website will provide a virtual showrooms for Pharo success stories.

Provide support. The consortium will support a business eco-system around Pharo. The consortium will offer some support to help its members and their developments in Pharo.

Appendix 2

Agreement on Partner contributions to PHARO SOFTWARE DISTRIBUTION AGREEMENT

This Distribution Agreement (“Agreement”) is entered into as of _____
(the “Effective Date”) by and between _____ (“Supplier”),
whose
address _____ is
_____ and Inria (“Distributor”).

Together,

Distributor and Supplier are referred to herein as the “Parties” and each individually as a “Party.”

The Parties agree that Supplier wishes to contribute to the development of the open source software known as Pharo, which is currently supported by the Distributor. The Parties acknowledge that the Software in its entirety is a work containing source code contributions from several authors, and that Supplier’s Code is only a small component part of the Software work as a whole.

When submitting a contribution, (the “Supplier’s Code”) ,the Parties agree that Supplier retains all rights in and to Supplier’s Code, aside from the rights expressly granted to Distributor in this Agreement.

When submitting Supplier's Code to be integrated in Pharo, Supplier hereby grants Distributor a perpetual, irrevocable, non-exclusive, royalty-free, worldwide license to distribute the Software, and specifically the Supplier’s Code therein, to end users, subject to the license agreement commonly known as the “MIT License” which is provided at the following URL:

<<http://www.opensource.org/licenses/mit-license.php>>.

Should the Supplier not be willing for its Supplier's Code to be distributed in Pharo in the above cited conditions, the Supplier should then refrain from submitting it.

Supplier acknowledges that it has the required rights to submit Supplier's Code, to be integrated and distributed in Pharo in the above cited conditions.

FOR SUPPLIER

Name
Date
Signature

Appendix 3 Model letter for internship demand

(To be completed on official letterhead of the partner)

Internship Demand for PHARO consortium

According to article 6.1 and 6.4 of the membership agreement to the consortium PHARO, I undersigned, hereby, M., as representative of (*name of the company*) platinum member of the consortium PHARO, call for Inria to take a trainee on the following topic :

To allow Inria RMOD team to take a trainee, (*name of the company*) shall pay Inria the amount of euros without VAT (*For french Partner, the VAT applicable at the date of signature of this letter shall apply*) in additional of its annual fees as Platinum member.

Said sum shall be paid by (*name of the company*) upon presentation of an invoice by Inria.

The invoice has to be sent by Inria to the following address:

.....
.....
.....

Payments shall be made within thirty (30) days from the date of receipt of Inria invoice.

Payment shall be made, either by check addressed to Inria's accountant, or by bank transfer to the international account n° FR76 1007 1780 0000 0010 0395 848 – BIC : TRPUFRP1 opened in Inria's accountant's name in the Yvelines Treasury (France).

For
Name.....
Title
Date.....
Signature :