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Stichting OAPEN

Instrument of Amendment of Articles

ref: pew/bs/2022.003062.01

This first day of June two thousand and twenty-three, before me, **Ivo Thijs van der Zijl**, civil-law notary [*notaris*] practising in Utrecht [the Netherlands], appeared:

Iris Goes, deputy civil-law notary [*kandidaat-notaris*], born in Utrecht on the twenty-fourth day of February one thousand nine hundred and ninety-four, for the purposes of this instrument choosing her address for service at the offices of the firm of civil-law notaries: Bemuurde Weerd oostzijde 19, 3514 AN in Utrecht.

The person appearing, designated to sign this instrument by the board of the foundation¹ referred to below, stated the following.

RESOLUTION TO AMEND THE ARTICLES.

- The foundation¹: **Stichting OAPEN**, having its registered office under the articles in 's-Gravenhage [The Hague, the Netherlands], and its principal offices at the address: Prins Willem-Alexanderhof 5, 2595 BE in The Hague, listed in the Commercial Register of the [Dutch] Chamber of Commerce under file number 53135296, hereinafter also referred to as «the Foundation», was established by an instrument executed before P.R. Schut, then a civil-law notary practising in Amsterdam [the Netherlands], on the eighth day of July two thousand and eleven; the articles of the Foundation were most recently amended by an instrument executed before the aforementioned civil-law notary Van der Zijl on the fifth day of October two thousand and twenty.
- On the seventh day of May two thousand and twenty-three, the officers of the Foundation adopted a resolution to amend the articles outside a meeting; a copy of this resolution will be attached to this instrument.
- The resolution to amend the articles was adopted with due observance of all the requirements laid down in the articles: In the resolution to amend the articles, the person appearing was designated to effect this amendment to the articles by a notarial instrument.

In implementation of the aforementioned resolution, the articles are amended in their entirety by this instrument; as from this day, they read as follows:

ARTICLES.

1. Definitions.

In these Articles, the following terms have the following meanings:

- *Annual Accounts:*

¹ [as defined under Dutch law; '*stichting*']

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the balance sheet and the statement of income and expenditure of any financial year of the Foundation;

- *Articles:*
the articles of the Foundation, as they will read from time to time;
- *Board:*
the board of the Foundation;
- *Foundation:*
the juristic person to which these Articles relate;
- *Supervisory Board:*
the Supervisory Board of the Foundation;
- *Written/in Writing:*
by letter, fax or email, or by a message that is transmitted by another commonly used means of communication and can be received electronically or in writing, provided the sender's identity can be established sufficiently conclusively.

2. Name and Registered Office.

- 2.1. The name of the Foundation is: **Stichting OAPEN**.
- 2.2. It has its registered office in the municipality of 's-Gravenhage [The Netherlands].

3. Objects.

The objects of the Foundation are:

- a. to promote the Open Access publication of academic books, i.e. publishing such books by making them freely accessible to everyone;
- b. to develop and expand the platform OAPEN, ("Open Acces[s] Publishing in European Networks", "*Vrij Toegankelijk Publiceren in Europese Netwerken*"), by expanding and broadening the collection of Open Acces[s] books and by developing services for academic publishers and libraries;
- c. to develop a model for the sustainable continuation of the activities and of the Foundation in an international context;
- d. to perform all that is related or may be conducive to the foregoing, in the broadest sense of the word, as well as to accept testamentary dispositions under the benefit of inventory.

4. Assets.

- 4.1. The assets of the Foundation will be formed by:
 - a. grants and other (one-off or regular) contributions;

- b. gifts, testamentary dispositions and particular legacies²;
 - c. all other acquisitions and income.
- 4.2. The Foundation may accept testamentary dispositions only under the benefit of inventory.

5. Board.

- 5.1. The Board consists of one (1) officer. The officer is appointed by the Supervisory Board.
- 5.2. The Supervisory Board may grant an officer the title of Managing Director or another title.
- 5.3. The officer may be suspended or dismissed by the Supervisory Board at any time. The officer concerned will be given the opportunity to account for their actions in a meeting of the Supervisory Board. The officer may then be assisted by counsel.
- 5.4. The suspension of an officer lapses if the Supervisory Board fails to adopt a resolution to dismiss the officer or to lift or continue the suspension within thirty (30) days after the commencement date of the suspension. A suspension may continue for no more than sixty (60) days, starting on the date on which the resolution to continue the suspension was adopted.
- 5.5. The officer is appointed for an indefinite period, unless the Board and the Supervisory Board jointly decide otherwise. If the officer is appointed for a definite period, the officer is indefinitely eligible for reappointment.
- 5.6. Any vacancies which may arise will be filled as soon as possible.
- 5.7. In the event that the officer is absent or unable to act, one person who must be appointed for this purpose by the Supervisory Board will be temporarily charged with the management of the Foundation.

In these Articles, 'inability to act' means in any case that

- a. the officer is unavailable for a period of more than seven days due to illness or other causes; or
 - b. the officer has been suspended.
- 5.8. If at any time the officer is absent before the arisen vacancy has been filled, or if the Supervisory Board fails to fulfil the vacancy, it will be filled by the court at the request of any interested party or on the public prosecutor's application.

6. Board Meetings and Resolutions

- 6.1. Annually, within six (6) months after the end of the financial year, a board meeting (the annual meeting) is held to discuss in any case the adoption of the balance sheet and the statement of income and expenditure.

² [Under Dutch law: '*legaat*', a testamentary disposition not being the whole or a fraction of the estate]

6.2. The officer will take minutes of the meeting and subsequently adopt and keep these minutes. The minutes may be signed electronically, provided the identity of the signatory can be established sufficiently conclusively.

6.3. An officer will not participate in the deliberations and decision-making if the officer in question has a direct or indirect personal interest which is in conflict with the interests of the Foundation and its organisation.

If, as a result of this, a board resolution cannot be adopted, the resolution will be adopted by the Supervisory Board.

6.4. The Board may adopt resolutions other than at a meeting. A record will be made of any resolutions thus adopted, which will be signed by the officer and kept as minutes.

7. Administrative Authority and Remuneration.

7.1. The Board is charged with managing the Foundation.

7.2. The Board is not authorised to enter into agreements for the acquisition, disposal and encumbrance of property subject to public registration, or to enter into agreements in which the Foundation binds itself as surety or joint and several debtor, warrants performance by a third party, or provides security for a debt of a third party, unless the resolution to do so is adopted with the prior written approval of the Supervisory Board.

7.3. In the performance of his³ duties, the officer must be guided by the interests of the Foundation and its organisation.

The Board will provide the Supervisory Board with the information required to perform its duties in good time.

The Board will inform the Supervisory Board about the main features of the strategic policy, the general and financial risks and the administration and control system of the Foundation in writing at least once a year.

7.4. The Supervisory Board will determine the officer's remuneration and other terms and conditions of employment.

8. Representation.

8.1. The Foundation is represented by the Board, unless provided otherwise by law.

8.2. The Board may grant others the authority to represent the Foundation at law and otherwise, within the limits of that authority.

³ [In this document, unless stated otherwise, he/his also means she/her and they/their, since the masculine pronouns are used (presumably) solely for grammatical reasons.]

9. End of Board Membership.

Membership of the Board ends:

- on the death of an officer or, if the officer is a juristic person, on its dissolution or if it ceases to exist;
- on the loss by an officer of the right to dispose of their assets;
- on written resignation (stepping down);
- on dismissal under Article 2:298 of the Dutch Civil Code [*Burgerlijk Wetboek*];
- by a resolution adopted by the Supervisory Board;
- on retirement by rotation, if the officer has been appointed for a definite period as set out in Article 5 (5);
- on an officer's accession to the Supervisory Board.

10. Supervisory Board Composition, Appointment of Members and Duties and Powers

10.1. There will be a Supervisory Board, consisting of at least three and no more than seven natural persons.

10.2. The number of members of the Supervisory Board will be determined by the Supervisory Board.

10.3. Members of the Supervisory Board are appointed by the Supervisory Board, with the proviso that one member of the Supervisory Board must be nominated by the Advisory Board, as set out in the standing orders. If that nomination is not made within three months after the Advisory Board was informed of the vacancy, the Supervisory Board is free to make the appointment; such a resolution by the Supervisory Board may be adopted only by a majority of two thirds of the votes cast by all the members of the Supervisory Board.

A recommendation or nomination for the appointment of a Supervisory Board member must state the candidate member's age, profession and the positions the candidate member holds or has held in so far as these are relevant for the fulfilment of the duties of a Supervisory Board member.

It must also state any juristic person(s) with which the candidate member is already affiliated as a supervisory director or member of a supervisory board; if these include juristic persons belonging to the same group, stating that group will suffice.

Reasons must be given for the recommendation or nomination for appointment or reappointment.

Before reappointment, account is taken of the manner in which the candidate has fulfilled the duties as a Supervisory Board member.

The Supervisory Board members are appointed for the first time by this instrument.

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The Supervisory Board is authorised at all times to suspend or dismiss any member of the Supervisory Board.

10.4. The Supervisory Board members will not receive any remuneration for their work as Supervisory Board members, other than reimbursement of reasonable expenses for attending meetings. The Supervisory Board members will be reimbursed on submission of proof of the expenses incurred.

10.5. The role of the Supervisory Board is to supervise the policy of the Board and the general course of events within the Foundation and its organisation.

It advises the Board.

In the performance of their duties, the Supervisory Board members must be guided by the interests of the Foundation and its organisation. The Supervisory Board is furthermore charged with the work assigned to it in these articles and the regulations of the Supervisory Board.

10.6. The Board will provide any Supervisory Board member with all the information regarding the affairs of the Foundation they may require.

The Supervisory Board is authorised to inspect all the books, documents and correspondence of the Foundation, and to take note of all the acts which have taken place.

Each member of the Supervisory Board has access to all the buildings and sites used by the Foundation.

10.7. The Supervisory Board may obtain assistance from experts to perform its duties, at the expense of the Foundation.

10.8. If the Supervisory Board consists of more than one member, the Supervisory Board may appoint one of them Chair and may appoint one or more of them Delegated Member(s) of the Supervisory Board, who will be charged more specifically with the day-to-day supervision of the acts of the Board.

10.9. The Supervisory Board members are appointed for a period of (no more than) three years, and on retirement may be reappointed for no more than one subsequent period of (no more than) three years.

They will retire by rotation in accordance with a retirement schedule to be drawn up by the Supervisory Board.

10.10. If due to some circumstance one or more member(s) of the Supervisory Board is/are absent, the remaining members of the Supervisory Board, as long as at least one Supervisory Board member is in office, will constitute a quorum until the next meeting of the Supervisory Board, which will then fill the vacancy/vacancies or resolve not to fill it/them.

10.11. If there is only one Supervisory Board member, all the powers and obligations granted and imposed on the Supervisory Board and its Chair by the Articles are vested in him.

10.12. The following resolutions of the Board are subject to the approval of the Supervisory Board:

- a. the adoption and amendment of the policy plans for any year or series of years, including changes to the strategy of the Foundation or the activities of the Foundation;
- b. the adoption of the budget;
- c. the entry into or termination of long-term direct or indirect cooperation with other juristic persons, if such cooperation or the termination thereof is of far-reaching significance;
- d. applying for liquidation of the Foundation or suspension of payments [*surseance van betaling*];
- e. the termination of the employment of a substantial number of employees at the same time or within a short period of time;
- f. any drastic changes in the working conditions of a significant number of employees;
- g. the appointment of the accountant or '*registeraccountant*' [Dutch registered accountant];
- h. taking out loans exceeding an amount to be set by the Supervisory Board;
- i. lending money or granting suretyships or other security, including [as a] joint and several debtor;
- j. instituting proceedings, not being collection proceedings, preliminary relief proceedings or lodging an objection or appeal against a grant decision;
- k. legal merger or split-up of the Foundation.

10.13. The Supervisory Board has the power to subject resolutions of the Board other than those referred to in paragraph 12 to its approval. These resolutions must be described clearly and communicated to the Board in Writing.

10.14. The work of the Supervisory Board and everything concerning its operation will be settled in detail by regulations.

11. Meetings of the Supervisory Board and Resolutions of the Supervisory Board

11.1. The Supervisory Board meets as often as the majority of its members or the Chair - if one has been appointed - deem(s) necessary.

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Meetings are convened - stating the points to be discussed - by the Chair of the Supervisory Board or, in the event of the Chair's absence or inability to act, by one of the other Supervisory Board members, with due observance of a notice period of at least eight days.

The Supervisory Board members may arrange to be represented by another Supervisory Board member through a written proxy.

Supervisory Board meetings may be held by telephone or video conference or by any other means of communication, provided that each participating Supervisory Board member can be heard simultaneously by all the others.

If so requested, the officer will attend the meetings of the Supervisory Board; in that case, the officer has an advisory role.

Any Supervisory Board member who has a direct or indirect personal interest which is in conflict with the interests of the Foundation and its organisation will notify the other Supervisory Board members of this forthwith and will provide them with all the relevant information about this.

The other Supervisory Board members will decide, without the Supervisory Board member concerned being present, whether it constitutes an interest which is in conflict with the interests of the Foundation and its organisation.

A Supervisory Board member will not participate in the deliberations and decision-making if the member in question has a direct or indirect personal interest which is in conflict with the interests of the Foundation and its organisation.

If no resolution of the Supervisory Board can be adopted as a result, the resolution will nevertheless be adopted by the Supervisory Board, recording the reasons for the decision in writing.

11.2. The Supervisory Board may also adopt resolutions other than at meetings, provided that this is done in Writing, that all the Supervisory Board members have been consulted about the resolution to be adopted and that none of them have stated their objection to this way of adopting resolutions.

11.3. Resolutions of the Supervisory Board are adopted, at or other than at meetings, by an absolute majority of the votes cast by all Supervisory Board members holding office.

If the votes are tied, no resolution is adopted.

One or more Supervisory Board members are entitled to request, within ten days of the date of the meeting at which the votes were tied, that the Netherlands Arbitration Institute appoint an advisor, in order to take a decision on the motion in question.

The decision of the advisor will then be considered a resolution of the Supervisory Board.

- 11.4. Meetings of the Supervisory Board are chaired by the Chair of the Supervisory Board.
If no Chair of the Supervisory Board has been appointed or the Chair of the Supervisory Board is absent, the meeting will appoint its own chair.
Until that moment, the oldest Supervisory Board member present at the meeting is charged with chairing the meeting.
The chair of the meeting will designate one of the Supervisory Board members present or, if admitted to the meeting, a person invited especially for that purpose, to minute the proceedings at the meeting.
The minutes are signed by the chair and the minutes secretary of the meeting concerned.
The minutes may also be signed electronically, provided the identity of the signatories can be established sufficiently conclusively.
- 11.5. The opinion pronounced by the chair of the meeting of the Supervisory Board concerning the outcome of a vote, or, in so far as voting was on a motion not set out in writing, about the content of a resolution which has been passed, is decisive.
If, however, the correctness of the opinion referred to in the preceding sentence is challenged immediately after it has been pronounced, a new vote will be taken, if so desired by the majority of the persons present and entitled to vote or, if the original vote was not taken by roll call or ballot, by one person present and entitled to vote.
This new vote will nullify the original vote.
- 11.6. All minutes of the meetings of the Supervisory Board as well as all Written resolutions are recorded in a minutes register.
- 11.7. If the Foundation wishes to produce evidence of any resolution of the Supervisory Board, the signing of the document containing the resolution by one Supervisory Board member will suffice and that document will constitute conclusive evidence of the existence of that resolution.
- 11.8. In the event of the absence or inability to act of one or more Supervisory Board members, the remaining Supervisory Board members are charged with the supervision.
The Supervisory Board will arrange for the appointment of one person who will be temporarily charged with the supervision of the Foundation in the event that all Supervisory Board members are or the sole Supervisory Board member is absent or unable to act.

If all the Supervisory Board members are absent and the Supervisory Board has not appointed a person as referred to in the preceding sentence, the Board will be obliged to request, within three months after all the Supervisory Board members were first absent, that the district court appoint one new Supervisory Board member.

If, for whatever reason, the district court subsequently does not appoint one new Supervisory Board member, the Board is obliged to appoint one new Supervisory Board member within three months after it became apparent that the district court would not appoint one new Supervisory Board member.

In these Articles, 'inability to act' refers to a situation in which the Supervisory Board member is unavailable due to illness or other causes for a period of more than one (1) month.

12. Joint Meetings of the Board and the Supervisory Board

12.1. At least once a year, the Board and the Supervisory Board will convene a joint meeting to discuss the general lines of policy pursued and to be pursued in the future.

12.2. The Board and the Supervisory Board are equally authorised to convene a joint meeting.

12.3. The joint meetings are chaired by the Chair of the Supervisory Board.

If the Chair is absent, the officer and the Supervisory Board members present will appoint the chair of the meeting.

Until that moment, the oldest Supervisory Board member present is charged with chairing the meeting.

13. Financial Year, Financial Statements and Register of Distributions.

13.1. The financial year of the Foundation coincides with the calendar year.

13.2. The Board is obliged to keep records of the financial position of the Foundation and of everything concerning the Foundation's activities, in accordance with the requirements arising from these activities, and to keep the relevant books, documents and other data carriers in such a way that the Foundation's rights and obligations can be known from them at any time.

13.3. On the last day of each financial year, the Board closes the books of the Foundation and from these prepares the Annual Accounts for the closed financial year.

The Annual Accounts will be made available to the Supervisory Board within six months after the end of the financial year, accompanied by a report from a 'registered accountant' or an accounting consultant [*accountant-administratieconsulent*] if required by the grant providers.

The Annual Accounts are signed by the officer.

- 13.4. The Supervisory Board will adopt the Annual Accounts and, in evidence thereof, the Annual Accounts will subsequently be signed by all the Supervisory Board members.
- 13.5. The Supervisory Board has the power to discharge the officer from liability for the management conducted, in so far as this is evident from the adopted documents or was communicated to it.
- 13.6. The Board is obliged to keep the books, documents and other data carriers referred to in the preceding paragraphs for seven years.
- 13.7. The information put on a data carrier, with the exception of the Annual Accounts put on paper, may be transferred to and stored on a different data carrier, provided that the transfer is effected with a correct and complete representation of the information and that the information remains available throughout the entire retention period and can be made legible within a reasonable time.
- 13.8. The Board will keep a register containing the names and addresses of all the persons to whom the Foundation made distributions not exceeding twenty-five percent (25%) of the distributable amount in a particular financial year, as well as the amount of the distribution and the date on which this distribution was made.

14. Regulations.

- 14.1. The Board has the power to adopt one or more regulations providing for matters which are not included in these Articles, subject to the prior Written approval of the Supervisory Board.
- 14.2. The regulations may not be in conflict with the law or the Articles.
- 14.3. The Board has the power to amend or revoke the regulations at all times, subject to the prior Written approval of the Supervisory Board.
- 14.4. The adoption, amendment and repeal of the regulations is subject to the provisions of paragraphs 1 and 2 of this article, *mutatis mutandis*.

15. Amendment of the Articles.

- 15.1. The Supervisory Board has the power to amend the Articles.
Without prejudice to the provisions of Article 11 (2), a resolution for that purpose must be adopted by a majority of at least three quarters of the votes cast in a meeting of the

Supervisory Board at which all of the Supervisory Board members entitled to vote are present or represented.

- 15.2. If not all the Supervisory Board members entitled to vote are present or represented at a meeting in which a motion as referred to in paragraph 1 of this Article is to be discussed, a second meeting of the Supervisory Board will be held, no earlier than seven days but no later than twenty-one days after the first, in which such a resolution may be adopted by a majority of at least three quarters of the votes cast, and at which meeting at least the majority of the Supervisory Board members holding office and entitled to vote are present or represented.
- 15.3. The officer is authorised to have the notarial instrument of amendment to the Articles executed.

16. Dissolution and Liquidation.

- 16.1. The Supervisory Board has the power to dissolve the Foundation.
The decision to do so is subject to the provisions of Article 15 (1) and (2), *mutatis mutandis*.
- 16.2. The Foundation will continue to exist after dissolution to the extent necessary for the liquidation of its assets.
- 16.3. The Board will be charged with the liquidation, under the supervision of the Supervisory Board.
- 16.4. The liquidators will ensure that the dissolution of the Foundation is entered in the register referred to in Article 2:289 of the Dutch Civil Code [BW].
- 16.5. During liquidation, the provisions of the Articles will remain in force as far as possible.
- 16.6. Any credit balance of the dissolved Foundation will be used in keeping with the objects of the Foundation.
- 16.7. After conclusion of the liquidation, the books, documents and other data carriers of the dissolved Foundation will be kept in the custody of the youngest liquidator for seven years.

17. Advisory Board.

The Board may set up an Advisory Board, the duties of which will in any case include giving the Board advice on request and on its own initiative. Without prejudice to the provisions of Article 10 (3), any further duties and powers will then be laid down in standing orders.

18. Concluding Provision.

In all cases not provided for by law or the Articles, the Supervisory Board will decide.

FINAL STATEMENT.

Finally, the person appearing, acting in the aforesaid capacity, stated that:

- the aforementioned resolution of the Board is evidenced by a statement signed by all the members of the Board, which will be attached to this instrument (**Appendix**);

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- in implementation of the aforementioned resolution to amend the Articles, the first Supervisory Board will consist of six (6) members, and the current officers of the Foundation are appointed the first Supervisory Board members, viz.:
 1. *Joannes Stephanus Maria Savenije*; [personal information omitted];
 2. *Kurt Fernand Katharina De Belder*; [personal information omitted];
 3. *Antonia Gerarda Wiersma*; [personal information omitted];
 4. *Olaf Reinier Harmen Groen*; [personal information omitted];
 5. *Charles Thomas Watkinson*; [personal information omitted];
 6. *Lidia Borrell Damian*; [personal information omitted];
- in implementation of the aforementioned resolution to amend the Articles, the Board consists of one member, and that the following person is appointed officer:
 - *Niels Saaby Stern*; [personal information omitted].

FINAL CLAUSE.

I have established the identity of the person appearing on the basis of her identity card, and she has thus sufficiently proved her identity to me.

I have explained the substance of this instrument to the person appearing, and explained and pointed out the consequences of its contents. The person appearing stated that she has read a draft of this instrument, that she is familiar with its contents and agrees to them.

Immediately after giving a limited reading, the persons appearing and I signed the instrument. The original of this instrument will be kept at my offices. The instrument was executed in Utrecht [The Netherlands] on the date first hereinbefore written.

ISSUED AS A TRUE COPY

AFTER SIGNING

Utrecht [the Netherlands], 1 June 2023

Ivo Thijs van der Zijl, civil-law notary

[stamp:]

[signature]

I.T. van der Zijl, LLM,

Civil-law notary practising in Utrecht [NL]

[PLEASE NOTE: *This is a sworn translation from Dutch into English of an instrument amendment of the articles ('statuten') of a foundation under Dutch law ('stichting'). An attempt has been made to translate as literally as possible without*

[***TRANSLATION FROM DUTCH***]

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jeopardising the overall continuity of the text. In this translation, Dutch legal concepts are expressed in English terms and not in their original Dutch terms. The concepts concerned may not be identical to concepts described by the English terms as such terms may be understood under the laws of other jurisdictions. Inevitably, differences may occur in translation, and if they do, the Dutch text will prevail. Any changes or additions made to this translation will invalidate it.]

[***END OF TRANSLATION***]