

**Version 14-10-2024**

**APPROVED VERSION**

**(EN)**

O-RAN Alliance e.V.

(O-RAN e.V.)

Constitution

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**General Meeting**

**Date: 14.10.2024**

**Location: Audio Call**

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## 1. General Terms, Objects and Definitions

- 1.1. The Association is named “Open RAN Alliance (O-RAN)”.
- 1.2. The Association is to be registered with the register of associations at the Court in Bonn/Germany. Following its registration, the suffix “e.V.” (registered association) will be added to its name.
- 1.3. O-RAN is an association in the sense of Section 21 Bürgerliches Gesetzbuch (BGB).
- 1.4. O-RAN has its seat in Bonn/Germany.
- 1.5. The business year is the calendar year.
- 1.6. Bodies of the Association are the Members’ Meeting and the Board of Directors.
- 1.7. The objects for which the Association is established (“the Objects”) are to develop architectures and specifications and to take other actions to encourage rapid and broad industry promotion and adoption of open standards and interfaces, embedded intelligence, software-based functions/microservices (including open source) and white box hardware for radio access networks.
- 1.8. In this Constitution:

**“Academic Contributor”** means a person qualifying as academic institution, non-industry affiliated research institute or, at the O-RAN Board’s discretion, other non-profit making organisations;

**"Affiliate"** means in relation to any person any Association which is a direct or indirect subsidiary or holding Association of that person and any Association which is a direct or indirect subsidiary of such holding Association (“holding Association” and “subsidiary Association” as defined in section § 271 Para 2 Handelsgesetzbuch (HGB));

**"Constitution"** means this Constitution of the Association as amended from time to time;

**“Extended Board”** means the Board of Directors not having any power of legal representation;

**“Executive Board”** means the Board of Directors having power of legal representation;

**“Board”** means jointly the Extended Board and the Executive Board;

<b>“Contributor”</b>	means a person being admitted by the Association as the Contributor pursuant to Article 2.12, such person includes without limitation, a manufacturer, a vendor, research institute, service providers, network operators not falling into the definition of “Mobile Network Operator”;
<b>“Contributor Application Form”</b>	means the application form to be delivered by a proposed Contributor or an Academic Contributor pursuant to Article 2.12 and which shall be in such form and contain such obligations as the Board of Directors may, in their absolute discretion, from time to time require or determine;
<b>"Control"</b>	as defined in § 37 des Gesetzes gegen Wettbewerbsbeschränkungen (GWB) and "controlled" shall be construed accordingly;
<b>"Corporate Representative"</b>	means a person appointed by a Member to represent that Member at any meeting of the Members in accordance with Article 10;
<b>"Director"</b>	Members of the Extended Board are also called “Director”
<b>"electronic"</b>	means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy and "by electronic means" means by any manner only capable of being so actuated;
<b>“Executive Committee”</b>	means the Board Committee which consists of representatives of Founder Members and elected Board Directors;
<b>“Founding Director”</b>	Members of the Extended Board as nominated by the Founder Members;
<b>"Founder Member"</b>	means any one of the following: <ul style="list-style-type: none"> <li>(1) AT&amp;T</li> <li>(2) China Mobile Communications Group Co., Ltd.</li> <li>(3) Deutsche Telekom AG</li> <li>(4) NTT DOCOMO, INC.</li> <li>(5) Orange S.A.</li> </ul>

<b>“Initial Period”</b>	means the period commencing on the date of registration of the Association and ending on the date of the second annual general meeting;
<b>“Member”</b>	means any member of the Association, including but not limited to the Founder Members;
<b>“Member Application Form”</b>	means the application form to be delivered by a proposed Member pursuant to Article 2.3 or 2.4 (as may be appropriate) and which shall be in such form and contain such obligations as the Board of Directors may, in their absolute discretion, from time to time require or determine;
<b>“Membership Fee”</b>	means the annual membership fee payable by Members in respect of each financial year of the Association in accordance with Constitution 2.5 and 19;
<b>“Mobile Network Operator”</b>	means a person providing mobile telecommunication services to the public owning or controlling all the elements necessary to sell and to deliver services to the end-user including in particular radio spectrum allocation and wireless network infrastructure and owning a spectrum license to operate and deliver services to end-users through the use of mobile network infrastructure;
<b>“Office”</b>	means the office of the Association from time to time;
<b>“Participant”</b>	means any person qualifying as Contributor or Academic Contributor and for the time being appearing in the register of Participants’ of the Association;
<b>“Participation Fee”</b>	means the annual participation fee payable by Participants in respect of each financial year of the Association in accordance with Constitution 2.15 and 19;
<b>“person”</b>	includes any partnership, firm, company, organisation or other entity whether incorporated or not;
<b>“Project”</b>	means any project of the Association, which the Board of Directors may initiate from time

to time in pursuance of the Objects in accordance with such rules, as the Board of Directors shall in its absolute discretion determine;

- 1.9. The Association has power to do anything within the law that may promote or may help to promote the Objects or any of them.
- 1.10. The Association is liable for the damage to a third party that the Board, a member of the Board or another constitutionally appointed representative causes through an act committed by it or him in carrying out the business with which it or he is entrusted, where the act gives rise to a liability in damages. There are no obligations whatsoever, including under either this Constitution or any other agreement between the Association and any Member, which could lead to any liability of the Members.
- 1.11. The income and capital of the Association and the contribution of each Member must be applied solely towards the promotion of the Objects. No part of the Associations' income or capital or contribution of Members may be paid or transferred, directly or indirectly, to the Members, whether by way of dividend or bonus or in any other way that amounts to a distribution of profit or surplus. This does not prevent the payment of:
  - reasonable and proper remuneration to any employee or Member of the Association in return for any services provided to the Association;
  - a reasonable rate of interest on money lent to the Association;
  - reasonable rent for property let to the Association;
  - reasonable expenses to any officer, employee or Member of the Association; or
  - premiums on the indemnity insurance referred to in clause 23.2.

### **Compliance with Antitrust Laws**

- 1.12. Each Member is committed to fostering competition in the development of new products, software and services, and the work of the Association is intended to promote such competition. Each Member further acknowledges that it may compete with the others in various lines of business and that it is therefore imperative that they and their representatives act in a manner which does not violate any applicable antitrust laws or regulations or applicable orders. Accordingly, each Member hereby assumes responsibility to provide appropriate legal counsel to its representatives acting under this Agreement regarding the importance of limiting the scope of their discussions to the topics that relate to the Objects, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise. Each Member further acknowledges that it and each other Member is free to develop competing technologies and to license its technology to any third parties, including without limitation, to enable competing technologies and standards. The Association shall (i) adopt the Antitrust Guidelines attached hereto as Exhibit [A], and (ii) file a notification to the Federal Antitrust Agency in Germany disclosing the name and principal place of business of the Association as well as

documents showing the nature and scope of its standards development activity, no later than ninety (90) days after the registration of the Association.

## **2. MEMBERSHIP AND PARTICIPATION IN THE ASSOCIATION**

- 2.1.** The Association shall admit any person as a Member who has applied to become a Member and satisfies the membership criteria set out in Article 2.2.
- 2.2.** No person shall be admissible as a Member if:
  - neither that person nor one or more of its Affiliates qualifies as a Mobile Network Operator; or
  - it is an Affiliate of an existing Member.

### **Application**

- 2.3.** Each proposed Member not being a Founder Member shall execute and deliver to the Association a Member Application Form thereby agreeing to observe and perform the obligations contained in such Member Application Form (including the payment of fees). Upon receipt by the Association of the duly completed and signed Member Application Form, the Association shall notify the proposed Member of acceptance of the Member Application Form and the proposed Member shall, within 45 days of such notification, transfer the applicable Membership Fee in cleared funds to the Association. Upon receipt of such Membership Fee by the Association, the applicant shall be admitted as the Member.
- 2.4.** No amendments shall be made to any section of the Member Application Form unless the Board of Directors resolve to approve such amendments by a majority of not less than two thirds of those Directors present and entitled to vote on such a resolution.
- 2.5.** Every Member shall pay an annual Membership Fee to the Association of such amount(s) and on such date(s) as shall be determined by the Board of Directors pursuant to Article 19 and such Membership Fee shall not be refundable in the event of the resignation or expulsion of a Member.
- 2.6.** Membership of the Association and the privileges, rights and obligations of such membership shall be personal and not transferable.
- 2.7.** Any Member shall be entitled to participate in any Project subject to the O-RAN Membership and Participation Guidelines but, for the avoidance of doubt, participation at any level within a Project shall not result in a Member becoming liable to pay a fee in addition to payment of the annual Membership Fee.

## **Change of Control of Members**

- 2.8.** Any Member which is subject to a change of Control shall notify the Association in writing of such change of Control within 7 days of the change of Control taking effect.

## **Cessation of Membership**

- 2.9.** A Member may withdraw its membership from the Association with 14 days' written notice to the Board of Directors. A Member shall cease to be a Member in the event that:

- the relevant Member is wound up, dissolved, ceases to trade, becomes or is declared insolvent;
- the relevant Member has an administrator or liquidator appointed in respect of all or any part of its undertaking or otherwise ceases to exist; or
- the relevant Member ceases to meet the criteria for membership set out in Article 2.1.

- 2.10.** The Board of Directors shall be entitled to suspend or expel from membership of the Association any Member on the grounds of misconduct, in relation either to the Association, its property or its Members, or of conduct likely to prove prejudicial to the good standing of the Association or to the attainment of its Objects. A Member whose suspension or expulsion is to be decided upon at a meeting of the Board of Directors shall be entitled to not less than 7 clear days' notice (excluding the days on which the notice is served or is deemed to be served and for which it is given) of that meeting, stating the case made against such Member. Such Member shall be entitled to attend and speak at that meeting at any time during which its membership is discussed but shall withdraw prior to voting and shall not be entitled to vote on the charge of misconduct. A resolution under this Article shall not be effective unless passed by a majority of not less than two thirds of the Directors present and voting.

Reasons justifying a suspension or exclusion are in particular – but not exclusively – in the case of:

- The corresponding member fails to pay any sums to the association, which it was obliged to pay within two months of its due date;
- The relevant member is in material breach of any of the provisions of this Constitution or of the membership application and fails to remedy this violation within 30 days of receiving the notification of the Association with regard to the rectification of that infringement, and the notification of the Association has determined whether a breach is deemed to be material;
- The corresponding member violates his obligations to the Association, a Member or third parties in connection with the confidentiality of information which it has received in connection with the activities of the Association of any person;



## **Contributors**

- 2.11.** Any Participant shall be entitled to receive and comment on any documents produced by a Project subject to the O-RAN Membership and Participation Guidelines, which will be drafted and are subject to amendment by the Board of Directors from time to time by a majority of not less than two thirds of those Directors present and entitled to vote on such resolution.
- 2.12.** Each person willing to be Contributor or Academic Contributor shall execute and deliver to the Association a Contributor Application Form thereby agreeing to observe and perform the obligations contained in such Contributor Application Form (including the payment of fees). Upon receipt by the Association of the duly completed and signed Contributor Application Form, the Association shall notify the proposed Contributor or Academic Contributor of acceptance of the Contributor Application Form and the proposed Contributor or Academic Contributor shall, within 45 days of such notification, transfer the applicable Participation Fee in cleared funds to the Association. Upon receipt of such Participation Fee by the Association, the applicant shall be admitted as the Contributor or the Academic Contributor as the case may be. The Board of Directors shall then enter the details of such Contributor or Academic Contributor in the Association's register of Participants.
- 2.13.** The Association shall at all times maintain a register of Participants.
- 2.14.** No amendments shall be made to any section of the Contributor Application Form (including any Schedule to the Application Form) unless the Board of Directors resolves to approve such amendments by a majority of not less than two thirds of those Directors present and entitled to vote on such resolution.
- 2.15.** Every Participant shall pay an annual Participation Fee to the Association of such amount(s) and on such date(s) as shall be determined by the Board of Directors and such Participation Fee shall not be refundable in the event the Participant ceases to be a Participant or to participate in any Project.
- 2.16.** Any Participant which is subject to a change of Control shall notify the Association in writing of such change of Control within 7 days of the change of Control taking effect.
- 2.17.** A Participant may withdraw its membership from the Association with 14 days' written notice to the Board. A Participant shall cease to be a Participant in the event that:
  - the relevant Participant is wound up, dissolved, ceases to trade, becomes or is declared insolvent;

- the relevant Participant has an administrator or liquidator appointed in respect of all or any part of its undertaking or otherwise ceases to exist; or
- the relevant Participant ceases to meet the criteria for membership set out in Article 2.12.

**2.18.** The Board of Directors shall be entitled to suspend or expel from participation of the Association any Participant on the grounds of misconduct, in relation either to the Association, its property or its Members, or of conduct likely to prove prejudicial to the good standing of the Association or to the attainment of its Objects. A Participant whose suspension or expulsion is to be decided upon at a meeting of the Board of Directors shall be entitled to not less than 7 clear days' notice (excluding the days on which the notice is served or is deemed to be served and for which it is given) of that meeting, stating the case made against such Participant. Such Participant shall be entitled to attend and speak at that meeting at any time during which its participation is discussed but shall withdraw prior to voting and shall not be entitled to vote on the charge of misconduct. A resolution under this Article shall not be effective unless passed by a majority of not less than two thirds of the Directors present and voting.

**2.19.** Any Participant shall be entitled to participate in any Project but, for the avoidance of doubt, participation at any level within a Project shall not result in a Participant becoming liable to pay a fee in addition to payment of the annual Participation Fee.

### **3. GENERAL MEETINGS**

The Association shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it.

The annual general meeting of the Association shall be held at such time and place as the Board of Directors shall appoint provided that each annual general meeting shall be held not more than four months after the Association's end of business year in each year. Meetings may be held in person, or by any combination of audio conferencing or video conferencing.

An extraordinary general meeting shall be convened by the Board of Directors if the interest of the Association so requires. The general meeting shall also be convened if at least 10% of the Members so require, indicating the purpose and the reasons.

Similarly, a minority of at least 10% of the Members may request that items be placed on the agenda and published. Each new item must be supplied with a justification or a draft decision. The supplementary request must be received by the Association at least 14 days before the meeting; the day of receiving the request is not to be counted.

## **4. NOTICE OF GENERAL MEETINGS**

- 4.1.** An annual general meeting or an extraordinary general meeting shall be called by the Executive Board at least one month's notice. The time limit can be shortened to up to 14 days in urgent cases if the interests of the Association require a short-term decision-making. Compliance with the deadline may be waived if all Members agree.
- 4.2.** The invitation shall be made by written notice. In urgent cases in accordance with paragraph 4.1 above the invitation shall be transmitted electronically or by fax in advance. The letter of invitation shall be communicated to all Members, to the members of the Board of directors and to the auditors of the Association and shall contain the following:
- the date, time and place of the meeting;
  - in the case of an annual general meeting, that it is such a meeting;
  - the agenda of the general meeting including proposed resolutions;
  - in a reasonably prominent position on the notice, that a Member entitled to attend and vote is entitled to appoint a proxy or proxies (who need not be a Member) in accordance with Article 9 to attend and, on a poll, to vote instead of him.

## **5. PROCEEDINGS AT GENERAL MEETINGS**

### **Chairperson**

- 5.1.** The Executive Board shall chair each general meeting and shall have the right to speak at such meetings.
- 5.2.** Where the Executive Board is not present within fifteen minutes after the time appointed for holding the meeting or is otherwise unable to act as the chairperson of any general meeting, the Members present and entitled to vote (whether in person or by proxy) shall choose one of their number (by simple majority vote) to be the chairperson of the meeting.

### **Quorum**

- 5.3.** No business shall be transacted in any general meeting unless a quorum of Members, which shall be a majority of Members in number, is present in person or by proxy at the time when the meeting proceeds to business, save the appointment of a chairperson of the meeting.

### **Adjournment**

- 5.4.** If within half an hour from the time appointed for a meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the Executive Board may determine, and if at the adjourned

meeting a quorum is not present within half a hour from the time appointed for the meeting the Members present shall be a quorum.

- 5.5. The Chairperson may, with the consent of any general meeting in which a quorum number of members is present (and shall do so at the request of the general meeting), postpone once the general meeting to another date, which may not be more than 14 days later, and/or to another place.
- 5.6. No business shall be transacted at any adjourned meeting other than business which might lawfully have been transacted at the meeting from which the adjournment took place.
- 5.7. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of the original meeting.

### **Amendment to Resolutions**

- 5.8. An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if
  - notice of the proposed amendment is given to the Association in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairperson of the meeting may determine), and
  - the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

### **Written Resolutions of Members**

- 5.9. A resolution in writing signed by the required majority of eligible Members for the time being entitled to receive notice of and to attend and vote at general meetings shall be as valid and effective as if it had been duly passed at a general meeting of the Association duly convened and held.

A proposed written resolution lapses if it is not passed before the end of the period of 28 days beginning with the date of circulation of the resolution to the Members. The agreement of a Member to a written resolution is ineffective if signified after the expiry of that period. A Member's agreement to a written resolution, once signified, may not be revoked.

## **6. DECISION-MAKING OF THE GENERAL MEETING**

- 6.1. Resolutions of the Members shall be passed at a general meeting if in excess of 50% respectively of the votes are in favour of these resolutions.

### **Demand for Poll**

- 6.2. At any general meeting a resolution put to the vote of the meeting shall be decided by a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

- the chairperson of the meeting; or
  - at least three Members present in person or by proxy and having the right to vote at the meeting; or
  - a Member or Members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting.
- 6.3.** A demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the Chairperson.

#### **Procedure on a Poll**

- 6.4.** A poll shall be taken in such manner (including the use of ballot or voting papers or tickets) as the chairperson of the meeting may direct. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The chairperson of the meeting may (and if so directed by the meeting shall) appoint scrutineers (who need not be Members) and may adjourn the meeting to some place and time fixed by him for the purpose of declaring the result of the poll.
- 6.5.** On a poll, votes may be given either personally or by proxy. A person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.
- 6.6.** A poll demanded on the choice of a chairperson or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such subsequent time (within a period of 30 days from the date of the meeting) and place as the chairperson may direct. No notice need be given of a poll not taken immediately. The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

### **7. VOTES OF MEMBERS**

- 7.1.** On a show of hands every Member who is present in person or by proxy shall have one vote and, on a poll, every Member who is present in person or by proxy shall have one vote.

#### **Restriction on Voting etc. in Particular Circumstances**

- 7.2.** If any monies payable by a Member to the Association (whether pursuant to this Constitution or to the conditions on which such Member agreed to become a Member or otherwise) shall be outstanding and overdue, such Member shall not, unless the Board otherwise determine, be entitled to:
- vote either personally or by proxy at a Members' meeting;
  - exercise any other right conferred by membership in relation to general meetings;
  - exercise any rights or powers conferred by this Constitution on such Member to nominate, elect or appoint any Director; or

- exercise any other right or privilege conferred by membership as may be determined by the Directors in their absolute discretion.

### **Validity and Result of Vote**

- 7.3.** Every vote not disallowed at such meeting shall be valid for all purposes. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered. Any such objection shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.
- 7.4.** Unless a poll is taken, a declaration by the chairperson of the meeting that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book, shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded for or against such resolution.

### **Protocol of Decisions**

- 7.5** A protocol shall be drawn up for each General Meeting and the decisions taken therein. The minutes shall specify:
- place and the day of the meeting,
  - person chairing the meeting,
  - nature and outcome of the voting,
  - chairman's statement on the quorum, and
  - chairman's findings on the decision-making.

The Minutes shall be signed by the chairperson of the general meeting. The Members will receive a copy without delay.

## **8. QUALIFIED MAJORITIES AND RESERVED MATTERS**

- 8.1.** The following matters shall be reserved to the Members for decision by not less than 75% of all votes received ("Qualified Majority"):
- Amending the Constitution including without limitation amendments to the process of election of Directors;
  - winding-up the Association;
  - imposition of or charging any extraordinary levies on Members, including but not limited to any additional funding, other than Membership Fees, or the request of any loan, advance, or the granting of any guarantee or indemnity in favour of the Association;
  - creation of any security, charge, lien or other encumbrances whatsoever over any Association's assets; and
  - sale of any part of the business of the Association or the acquisition of any part of the business of any other Association.

## **9. PROXIES**

- 9.1.** Any Member may appoint another person as his proxy to attend any general meeting and exercise all or any of his rights to attend and to speak

and vote at general meetings. A proxy need not be a Member of the Association.

**9.2.** The document appointing a proxy shall be in writing in any usual or common form or in any other form which the Association may approve. The form of proxy shall be signed by a duly authorised officer of the Member.

**9.3.** A form of proxy must:

- for the general meeting or adjourned meeting at which it is to be used, be delivered:
  - either to the place specified in (or in a note to) the notice convening the meeting for the delivery of forms of proxy, at least one hour before the time fixed for the start of that meeting; or
  - to the chairperson of the meeting at the place where the meeting is to be held, on the day of, and before the time fixed for the start of, the meeting; and
- in the case of a poll which is not to be taken at or on the same day as the general meeting or adjourned meeting at which the relevant resolution has been proposed, be delivered:
  - either to the place specified in (or in a note to) the notice convening the meeting for the delivery of forms of proxy, at least one hour before the time fixed for taking the poll; or
  - to the chairperson of the meeting at the place where the poll is to be taken, on the day, and before the time, fixed for taking the poll.

If no place is specified in (or in a note to) the notice convening the meeting for the delivery of forms of proxy, then such forms may be delivered instead to the Office. A form of proxy will be valid for any adjournment of a meeting in addition to the meeting to which it relates, unless it is stated on the relevant form that the form of proxy cannot be used at any such adjournment. If a form of proxy relates to more than one meeting (including any adjournment of any such meetings) and has been delivered as required by this Article for or in respect of one of those meetings, it will be valid for all subsequent meetings to which it relates and need not be re-delivered.

**9.4.** A form appointing a proxy shall be deemed to include the right to speak at the meeting.

**9.5** A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment to it, even though a valid proxy notice has been delivered to the Association by or on behalf of that person.

**9.6** An appointment under a proxy notice may be revoked by delivering to the Association a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

- 9.7** If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it on the appointor's behalf,
- 9.8.** A vote cast or demand for a poll made by a proxy shall not be invalidated by the previous death or insanity of the Member or by the revocation of the appointment of the proxy or of the authority under which the appointment was made unless written notice of such death, insanity or revocation has been received by the Association at the Office at least one hour before the commencement of the meeting or adjourned meeting or (in the case of a poll which is not taken at or on the same day as the meeting or adjourned meeting) the time appointed for the taking of the poll at which the vote is cast.

## **10. CORPORATIONS ACTING BY REPRESENTATIVES**

- 10.1.** Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its "Corporate Representative" at any Members' meeting.
- 10.2.** The person so authorised shall be entitled to exercise the same powers on behalf of such corporation as the corporation could exercise if it were an individual Member.
- 10.3.** Such corporation shall, for the purposes of this Constitution, be deemed to be present in person at any such meeting if a person so authorised is present at that meeting.

## **11. BOARD OF DIRECTORS**

- 11.1.** The Board of the association consists of the Executive Board and the Extended Board.

The association is managed solely by the Executive Board. The Executive Board represents the association in and out of court. The Executive Board is Board within the meaning of § 26 BGB. If only one Executive Board member is appointed, this Executive Board member represents the association alone. If the Executive Board consists of several persons, the association is represented by the majority of the Executive Board members. The General Meeting may grant all or individual Executive Board members sole power of representation and/or exemption from the restrictions of § 181 of the Civil Code.

- 11.2.** The Executive Board is elected by the General Meeting with qualified majority according to Section 8.1.
- 11.3.** The Board may adopt regulations governing its decision-making process, any internal division of its duties among the Directors, guidelines for conflict of interests and the formation and operation of any Project. Resolutions on technical matters related to Projects of the Association need to be decided by a majority of 2/3 of the Board.



- 11.4. To prepare technical decisions the Board will be supported by an Executive Committee. The Executive Committee will propose agendas, priorities, projects, and releases for the Board to consider and approve. In addition, the Executive Committee may be asked to make recommendations to the Board to overcome any ties. The Executive Committee will consist of representatives of the Founder Members during the Initial Period and two additional Board Directors out of the Board Directors elected in accordance with Section 12.5. The Board will elect such two additional Board Directors.
- 11.5. The Board of Directors shall keep a written record of all resolutions of the Board. Such records will be held available for inspection by the Directors at the Office of the Association.
- 11.6. The personal liability of Board Directors is within the provisions of the law limited to wilful misconduct and gross negligence.

#### **Directors of the Board: Number of Directors**

- 11.7. The Executive Board will have one or several persons. If the Executive Board consists of several persons, the Executive Board will nominate a chairperson of the Executive Board.

The Extended Board shall have a maximum number of up to 5 Founder Directors, and up to 10 elected Directors after the Initial Period has ended.

- 11.8. During the Initial Period the Founder Members may invite Members to nominate Extended Board Directors.
- 11.9. The Members may by qualified majority from time to time set and/or vary the number of Directors.
- 11.10. Only those persons who are employees, executives or corporate representatives of a Member or an affiliated company of a Member shall be elected to the Extended Board. The Executive Board does not have to belong to this group of persons mentioned. In the internal relationship, however, the Executive Board is subject to the reservation of approval in accordance with Section 14.4.
- 11.11. The Board shall elect a Chairman of the Board every two (2) years out of the appointed Board Directors.

#### **Director's Qualification**

- 11.12. No person shall be appointed as a Director unless he is an employee or officer or director of a Member or of an Affiliate of a Member.

## **12. APPOINTMENT OF DIRECTORS OF THE EXTENDED BOARD**

### **Appointment of Founder Directors**

- 12.1. Each Founder Member shall have the right to appoint one Founder Director for the Initial Period and after the Initial period has ended.
- 12.2. If a Founder Director resigns his office or is removed from office the relevant Founder Member shall be entitled to appoint a new Founder Director in his place.
- 12.3. Any appointment or removal of a Founder Director pursuant to Articles 12.1 and 12.2 shall be in writing, signed by and on behalf of the Founder Member, and shall be sent or delivered to the Association at its Office. Any such appointment or removal shall take effect upon delivery of such notice to the Office.
- 12.4. If a Founder Member ceases to be a Member, that Founder Member shall be deemed, at the same time, to have given notice in writing to the Association at its Office pursuant to Article 12.3 to remove, with immediate effect, any Founder Director appointed by such Founder Member.

#### **Election of Directors after the Initial Period**

- 12.5. At the first general meeting of the Association after the Initial Period and to be held every two years thereafter, the Members shall elect up to 10 electable Directors. In case of more than 10 candidates the Members will vote on the nominated candidates with simple majority.
- 12.6. No Director may be appointed unless he has been nominated or otherwise appointed in accordance with the procedure set out in the following provisions of this Article 12. A Director must be a technical decision maker at senior management level of a respective entity.
- 12.7. Any such nomination shall be made on a nomination form supplied by the Association. Such form must be lodged at the Office by the time specified on the relevant form (which, in any event, shall be no later than 14 days following expiry of each successive 24-month period) and, if not so returned, shall not be valid. Such form must also include or be accompanied by a notice in writing signed by the person so nominated indicating his willingness to be appointed as Director and the particulars which would, if such person were to be so appointed, be required to be included in the Association's register of directors. If the nomination form does not include or is not accompanied by such consent and/or particulars, the nomination will not be treated as valid.
- 12.8. The nomination form shall be in such form as the Directors may from time to time specify.
- 12.9. After the closing date for receipt of nominations specified on the nomination form (the "Closing Date"), the Association shall confirm that each person nominated satisfies the requirements set out in Article 12.6. The Executive Board will inform immediately after the Closing Date the Members of all nominations received and the Association will compile a list of the persons nominated in accordance with the nomination procedure set out above in such form as the Directors may from time to time specify

(“Nominees’ List”). A final copy of the Nominees List shall be sent to each Member no later than 7 days after the Closing Date.

**12.10.** The nominees receiving the highest number of votes shall be appointed as Directors to the vacant positions on the Board.

**12.11.** If two or more persons have received an equal number of votes and the appointment of both persons as Directors would result in a breach of the maximum number of Directors set out in Article 11.7. the Directors at that time shall call a general meeting in order to cast a vote only for those persons.

### **13. RESIGNATION OF DIRECTORS**

A Director shall cease to be a Director if:

- he delivers a signed, written resignation to the Office or if he offers in writing to resign and the Directors resolve to accept such resignation;
- he ceases to be a Director if he becomes prohibited by law from being a Director; or
- he ceases to be an employee or officer or director of a Member or of an Affiliate of a Member or otherwise contractually obliged to a Member or to an Affiliate of a Member.

### **14. POWERS AND DUTIES OF THE EXECUTIVE BOARD**

**14.1.** Subject to the provisions of this Constitution and to any directions given by law, the business of the Association shall be managed by the Executive Board who may exercise all the powers of the Association, which are not, by law or by this Constitution required to be exercised by the Association in a general meeting. No alteration of this Constitution shall invalidate any prior act of the Board of Directors which would have been valid if that alteration had not been made. The powers given by this Article shall not be limited or restricted by any special power given to the Executive Board by any other Article.

**14.2.** All cheques, promissory notes, drafts, bills of exchange, and other negotiable or transferable instruments, and all receipts for moneys paid to the Association, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the the Executive Board shall from time to time by resolution determine.

**14.3.** Subject to Article 8, the the Executive Board may exercise all the powers of the Association to borrow money, and to mortgage or charge all or any part or parts of its undertaking, property, assets (present or future) and to issue any debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of the Association or of any third party.

**14.4.** If the Executive Board does not meet the requirements set out in Section 11.10, the Executive Board may only carry out transactions relating to

technical issues (internally) if it is permitted to do so by a majority resolution of the Extended Board. The Executive Board may be present at the corresponding meeting in which the measure is voted on. However, the Executive Board has no voting rights and is not taken into account when determining the quorum.

### **Delegation of Powers**

- 14.5.** The Executive Board may from time to time, by power of attorney or otherwise as admitted by law, appoint any Director to be the attorney or agent of the Association for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Executive Board under this Constitution) and for such period and subject to such conditions as they may think fit. The Executive Board may also authorise any such attorney or agent to sub-delegate all or any of the powers, authorities and discretions vested in him.
- 14.6.** The Executive Board may delegate any of its powers to any committee consisting of three or more Directors, provided that no Project shall constitute such a committee. Any such delegation may be made subject to any conditions the Board of Directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with three or more Directors shall be governed by this Constitution regulating the proceedings of the Board of Directors so far as they are capable of applying.
- 14.7.** The Extended Board is responsible for all matters of the association, as long as they do not fall within the competence of the Executive Board or the special representative.
- 14.8.** The Extended Board supports and advises the Executive Board. He takes over association tasks and relieves the Executive Board of its business activities.
- 14.9.** The Extended Board represents the Board.

### **15. PROCEEDINGS OF THE EXECUTIVE BOARD**

- 15.1.** Subject to the provisions of this Constitution, the Executive Board may meet together and regulate their proceedings as they think fit. At any time a Director of the Executive Board may call a Executive Board meeting by giving notice of the meeting to the Executive Board Directors. Reasonable notice (being at least one month or such shorter period as all Executive Board Directors may agree at the time) of a meeting of Executive Board Directors must be given to all Executive Board Directors (including those resident outside and/or absent from Germany). Any Executive Board Director may waive notice of any meeting and any such waiver may be retroactive.

## **Quorum**

- 15.2.** The quorum necessary for the transaction of business shall be such number of Executive Board Directors as shall collectively represent a majority of all Executive Board Directors, in each case present throughout the meeting. A person who holds office only as a proxy Executive Board director shall, if his appointer is not present, be counted in the quorum.
- 15.3.** A meeting of the Executive Board Directors at which a quorum is present shall be competent to exercise all the powers and discretions for the time being exercisable by the Executive Board Directors. Unless a quorum is present, no proposal is to be voted on, except a proposal to call another meeting.

## **Chairperson**

- 15.4.** The Directors shall appoint the Chairman of the Executive Board as chairperson for any Board meeting.

## **Voting**

- 15.5.** Except as otherwise provided in this Constitution, resolutions proposed for consideration or other questions arising at any meeting of the Executive Board Directors shall be determined by a majority of votes. In the case of a deadlocked resolution, the chairman shall not have a second, casting vote.

## **Resolutions of Directors in Writing**

- 15.6.** A resolution in writing signed by all the Executive Board Directors entitled to receive notice of a meeting of the Executive Board or of a committee of Directors shall be as valid and effectual as if it had been passed at a meeting of the Executive Board or (as the case may be) a committee of Executive Board Directors duly convened and held and may consist of several documents in the like form each signed by one or more Executive Board Directors; but a resolution signed by a proxy director need not also be signed by his appointer and, if it is signed by a Executive Board Director who has appointed a proxy director, it need not be signed by the proxy.

## **Meetings Using Electronic Means or Other Forms of Telecommunication**

- 15.7.** Meetings of the Executive Board may also be held by audio or video conference or by the use of such other communications facilities as permit each person participating in the meeting to speak to and hear all other persons participating therein. A person in communication by electronic means with the chairperson and with all other parties to a meeting of the Executive Board or of a committee of the Executive Board shall be regarded for all purposes as personally attending such a meeting but only

for so long as at such meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending the meeting by electronic means. Such meeting shall be deemed to have been held at the place (and time) where the chairperson of the meeting is located.

- 15.8.** Participation in a meeting of the Executive Board or of a committee of the Board of Directors in accordance with Article 15.7. shall be deemed to constitute presence in person at such meeting.

### **Minutes**

- 15.9.** The Executive Board shall cause minutes to be made in books kept for the purpose of recording:

- all appointments of officers made by the Executive Board; and
- all proceedings at meetings of the Association and of the Executive Board, and of committees of the Executive Board, including the names of the Directors present at each such meeting.

- 15.10.** The Executive Board Directors must ensure that the Association keeps a record in writing, for at least ten years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.

- 15.11.** Insofar as the Extended Board has been granted tasks and powers according to these statutes, for the fulfilment of which the holding of meetings and/or a resolution of the Extended Board are necessary or expedient, the above regulations apply accordingly to the meetings of the Extended Board.

## **16. REMUNERATION OF DIRECTORS**

- 16.1.** The Directors shall not be entitled to any reasonable and ordinary remuneration or fees, unless and until determined by the Association by Qualified Majority of the general meeting.

- 16.2.** No gratuities, pensions or other retirement, superannuation, death or disability benefits shall be payable to (or to any person in respect of) any Director or ex-Director unless and until determined by Qualified Majority of the general meeting. If any such gratuities, pension or other benefits are so approved, the Directors shall have the power to pay and agree to pay the same and, for the purpose of providing any such gratuities, pensions or other benefits, to contribute to any scheme or fund or to pay premiums.

- 16.3.** The Members may agree by Qualified Majority to repay to any Director all such reasonable and actually occurred and proven expenses as he may incur in attending and returning from meetings of the Directors or of any committee of the Directors or Members' meetings or otherwise in connection with or about the business of the Association.

## **17. SPECIAL REPRESENTATIVE**

- 17.1.** The Executive Board may from time to time appoint a Special Representative on such terms and for such period as they may determine. The Board of Directors may, without limiting or prejudicing in any way the terms of any contract entered into in any particular case, at any time revoke or vary the terms of any such appointment.
- 17.2.** The Executive Board is authorised to decide to remunerate the Special Representative by way of reasonable salary, commission or other means or may provide such other benefits as they may determine by a simple majority of the Directors present and voting at that meeting. For the avoidance of doubt, the Special Representative (if appointed at the time) shall be entitled to attend any meeting of the Board of Directors at which such matters are to be discussed but shall not be entitled to count in the quorum, or vote on the matters to be decided by the Board, unless such Operations Officer also is a Director at the time of the relevant meeting.
- 17.3.** The Executive Board may entrust to and confer upon the Special Representative any of the powers exercisable by them as Directors upon such terms and conditions and with such restrictions as they think fit, and either collaterally with or to the exclusion of their own powers. The Board of Directors may from time to time revoke, withdraw, alter or vary all or any of such powers.

## **18. DEPUTY BOARD MEMBERS**

- 18.1.** Each Director of the Board (with the exception of a deputy director of the Board) may appoint another Director of the Board or another person to act as his deputy member of the Board of Directors and may substitute a Deputy Director already appointed by him. The number of Deputy Board members is limited to one representative per Board Director.
- 18.2.** A deputy Board member is entitled to receive notification of all meetings of the Board of Directors and to attend any meeting in which the member of the Board who appointed him is not personally present, and in general to carry out all the functions appointer in absence; however, there is no right to remuneration on the part of the Association for his activity as Deputy Board member.
- 18.3.** The Office of a Deputy Board member ends when the office of his/her appointer ends as a Board Director.
- 18.4.** Any appointment or dismissal of a Deputy Board member shall be made by notice to the Association, signed by the Director of the Board who has carried out the appointment or dismissal, or to another manner approved by the Board.

## **19. MEMBERS' CONTRIBUTIONS**

- 19.1.** On the basis of the budget of the Association for the relevant financial year, the Board of Directors shall, by resolution adopted with a simple

majority, determine the Membership Fee payable by each Member (which contribution shall be identical for all Members) and the Participation Fee payable by each member of each category of Participant. The Membership Fees and Participation Fees for the forthcoming financial year shall be reflective of the costs and requirements of the Association for that year, as determined in the budget, and shall be notified to the Members and Participants prior to the annual general meeting.

- 19.2.** If the Board of Directors determines at any time during a financial year that additional funds in excess of the Membership Fees and Participation Fees, are required by the Association, it may call a general meeting of the Members at which a resolution shall be proposed. If the aforementioned resolution is adopted with a Qualified Majority by the Members, the requirement to provide the approved additional funding shall be apportioned equally between all Members.
- 19.3** The Membership Fees, Participation Fees and any additional funds requested and duly approved in accordance with this Constitution shall be paid by each Member and each Participant, as appropriate, within 45 days of receipt of notification thereof from the Board of Directors.
- 19.4.** Non-compliance with its payment obligation within the period referred to above shall constitute a material breach of the relevant Member's or Participant's obligations, and in such case all rights pertaining to membership or participation of the Association shall be suspended in respect of such Member or Participant.
- 19.5.** The Membership Fee, Participation Fee and any amounts payable by the Members and the Participants shall be applied by the Association for the purposes specified in the budget of the Association, as the same is annually approved by a resolution of the Board of Directors.

## **20. ACCOUNTS**

A Member shall have the right to inspect the accounts or other books or documents of the Association only if and to the extent that it can present a legitimate interest, to which no overriding interest of confidentiality of the Association or legitimate concerns of other Members exist.

## **21. AUDITOR**

- 21.1.** The Members appoint an auditor of the Association for each calendar year.
- 21.2.** The auditor shall be entitled to attend any general meeting and to receive notice of, and other communications relating to, any general meeting which any Member is entitled to receive, and to be heard at any general meeting on any part of the business of the meeting which concerns him as auditor.



## **22. DISSOLUTION; WINDING UP**

- 22.1.** The Members resolve on dissolution or winding-up of the Association by Qualified Majority.
- 22.2.** The Executive Board shall have the power, in the name and on behalf of the Association, to apply by the Court for the winding up of the Association.
- 22.3.** On winding up, any surplus of assets shall be distributed between the Members and Participants in proportion to their overall financial contributions to the Association since incorporation of the Association.

## **23. INDEMNITY**

- 23.1.** Subject to the provisions of and only in case if any damage was not caused by wilful misconduct or gross negligence, but without prejudice to any indemnity to which a Director may otherwise be entitled, every Director or other officer or auditor of the Association shall be indemnified by the Association out of its own funds against, and/or exempted by the Association from, all costs, charges, losses, expenses and liabilities incurred by him in the actual or purported execution and/or discharge of his duties and/or the exercise or purported exercise of his powers and/or otherwise in relation to or in connection with his duties, powers or office. Such indemnity or exemption may relate (without limitation) to any liability incurred by him in defending any proceedings, whether civil or criminal, which relate to anything done or omitted by him as officer or employee of the Association and in which in which judgment is given in his favour (or otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application in which relief is granted to him by the court.
- 23.2.** Without restricting or reducing in any way the scope of this Article 23, the Board of Directors shall have the power to purchase and maintain insurance for, or for the benefit of, any persons who are or were at any time Directors, officers, employees or auditors of the Association or who are or were at any time trustee of any pension fund or employees' share scheme in which employees of the Association are interested, (including, without limitation, insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported exercise of their powers and/or otherwise in relation to their duties, powers or offices in relation to the Association, or any such pension fund or employees' share scheme).