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#### **ARTICLE 10. DISTRIBUTION OF ASSETS UPON DISSOLUTION**

Upon dissolution or liquidation of the Association, and after all known debts and liabilities of the Association have been paid or adequately settled, the Board of Directors shall transfer the remaining assets and/or intellectual property rights, which are not appropriate for transfer to the general public, such as trademarks or logos, to another organization, as determined by the Board of Directors, whose purpose is similar to the Association's.

#### **PART FIVE - INTERNAL ORGANISATION OF THE ASSOCIATION**

#### **ARTICLE 11. GENERAL MEETING**

The General Meeting shall have full powers to realize the objectives of the Association, in particular the following exclusive powers:

- a) ratification of the termination of membership in accordance with Article 8.1.3;
- b) ratification of the appointment of members of the Board of Directors, and where applicable, the determination of their remuneration;
- c) discharge of members of the Board of Directors;
- d) approval of the accounts and preliminary budget;
- e) dissolution of the Association; and
- f) amendment of these Articles of Association.

General Meetings of all Members that are entitled to attend the General Meeting (including all Principal Members and Regular Members) shall be scheduled from time to time pursuant to a resolution of the Board of Directors, which shall specify the time, place and agenda of the meeting.

At the discretion of the Board of Directors, General Meetings may be held physically or by auditory, documentary or videoconferencing techniques, or any combination thereof, as long as the selected means allow all Members to attend. The General Meeting attended by video- or teleconference is organized via electronic means of communication made available by the Association. The notice contains the data required to participate in the video- or teleconference as well as a description of the procedure to be followed for remote participation.

The chosen means of communication allows the participants to :

- a) Verify the identity and status of the other participants ;
- b) Take direct, simultaneous and uninterrupted cognizance of the discussions during the meeting ;
- c) Participate in the deliberations and ask questions;
- d) Exercise their right to vote on all points on which the meeting is required to take a resolution.



Any technical difficulties which have prevented or disrupted participation by electronic means shall be mentioned in the minutes of the General Meeting.

As far as the quorum and majority requirements are concerned, members who participate in this way at the General Meeting shall be deemed to be present at the place where the General Meeting is held.

### **11.1 Meetings**

Each year, an annual General Meeting of all Members shall be held for the purpose of approving the annual accounts for the past financial year and the budget for the coming financial year. The following items can be added to the agenda of this Meeting: release from liability of the directors and, if applicable, the auditor(s) and, if necessary, the appointment of the auditor(s).

A special/extraordinary General Meeting can be called by the Board of Directors. In addition a special/extraordinary General Meeting must be called at the request of seventy-five percent (75%) of the Principal Members and/or Regular Members. The

written request shall specify the items to be added to the agenda of the General Meeting.

The General Meeting cannot take decisions on items that are not on the agenda set forth in the notice of the meeting, unless all Members are present or represented at the General Meeting and unanimously decide to vote on such items.

### **11.2 Notice requirements for General Meetings**

#### **11.2.1 Notice requirements for General Meetings.**

When the Members are required or permitted to take a decision at a Meeting, written notice of the Meeting shall be given to each Member.

The President of the Board of Directors shall ensure that the notice is promptly sent or provided to the Members. The notice shall state that a General Meeting is to be held at a specified time and place and on a date fixed by the Board of Directors, provided, however, that the General Meeting must be held at least thirty (30) days but no more than ninety (90) days from receipt of the notice (in accordance with Article 11.2.3). The notice shall also specify the agenda for the General Meeting.

#### **11.2.2 Notification of certain agenda items**

Approval by the Members of any of the following proposals is valid only if the notice or written waiver of notice mentions the general nature of the proposal(s):

- a) decision to liquidate and dissolve the Association;
- b) approval of a plan to distribute the Association's assets when the Association is in the process of liquidating.

### 11.2.3 Notification formalities

The notice of any General Meeting of Members shall be sent by the President of the Board of Directors or the latter's representative, such as the General Secretary. The notice must be in writing and sent/provided at least thirty (30) but no more than ninety (90) days before the scheduled date of the General Meeting. The notice shall be delivered in person, sent by first-class registered or certified mail, fax or electronic means, or provided by any other written means, with charges prepaid, to the Representative (and alternate Representative, if the Board of Directors so decides) of each Member, to the address of the Member on file with the Association or to the address indicated by the Member to the Association for this purpose. Each Member is entitled to request that notices only be sent by a specific means (such as registered mail), to the exclusion of all others. Such a request by a Member shall be sent by registered mail to all other Members and shall, unless the Member indicates otherwise, be valid for the duration of that Member's membership.

## **11.3 Quorum**

### **11.3.1 Required percentage**

Unless otherwise provided herein, fifty percent (50%) of the Principal Members shall constitute a quorum to take decisions at a General Meeting of Members.

Each Member shall be represented either by its main Representative or by one (1) alternate Representative, whose names shall be notified to the Chairman of the Board of Directors, the General Secretary or the Secretary of the Association.

### **11.3.2 Loss of quorum**

The Regular Members or Principal Members, as the case may be, present at a duly called or held General Meeting for which the abovementioned quorum is initially met may continue to take decisions until adjournment, even if the quorum is no longer met due to the departure of Members, if the decision (other than adjournment) is approved by at least seventy-five percent (75%) of the Members required to form a quorum.

### **11.3.3 Adjournment and notice of an adjourned meeting**

Any General Meeting, regardless of whether the quorum is met, may be adjourned from time to time by a vote of seventy five percent (75%) of the Members represented at the Meeting, either in person or by proxy.

No Meeting may be adjourned for more than forty-five (45) days. In the event of an adjournment, a new notice will be sent to each Member authorized to vote (at the Meeting) on the record date of the new Meeting.

At the adjourned Meeting, the Association may transact any business that could have been transacted at the original Meeting.

## **11.4 Voting**

If the required quorum is met, decisions shall be approved by an affirmative vote of seventy five percent (75%) of the votes represented at the Meeting.

## **11.5 Member decisions**

### **11.5.1 Member decisions at Meetings**

Each Principal Member and Regular Member shall have one (1) vote on each matter submitted to the Members for a vote.

In the absence of other requirements, voting at General Meetings shall be by a show of

hands, if the Meeting is held in person, or by oral ballot, if held by audio conference, video conference or teleconference. The results shall be duly distributed to all Members by the President within thirty (30) days of the ballot. Written confirmation of any and all ballots shall be kept with the Association's minutes.

#### 11.5.2 Decisions in writing

Except for amendments to the Articles of Association and as otherwise provided in these Articles of Association, any decision that may be taken at a General Meeting may be taken without a Meeting or in conjunction with a General Meeting if the Association distributes a written ballot to each Member authorized to vote.

The ballot shall:

- a) set forth the proposed decision and/or list of candidates;
- b) provide an opportunity to select individuals or specify approval or disapproval of each proposal or vote on the candidates, as appropriate;
- c) indicate the number of votes and approval percentage needed to pass the measure; and
- d) specify the date by which the ballot must be received by the Association in order to be counted. The date set shall give the Members a reasonable period of time within which to return the ballots to the Association.

Ballots shall be mailed or otherwise provided in the manner required to give notice of a General Meeting, as specified in these Articles.

Approval of a decision by written ballot shall be valid only if the number of votes cast within the specified time period equals or exceeds the quorum (if it was necessary to be present at the Meeting that would have taken the decision) and if the number of affirmative votes is equal to or greater than the number of votes that would have been necessary to approve the decision at a meeting at which the total number of votes cast is the same as the number of votes cast by ballot.

#### **11.6 Leadership of General Meetings**

General Meetings of Members shall be presided over by the President of the Board of Directors or, in the latter's absence, the (longest serving) Vice-President or, in the absence of both these persons, a chairperson appointed by the Board of Directors.

The Secretary or the General Secretary of the Association shall act as secretary of all General Meetings of Members, although, in his or her absence, the chairperson shall appoint another person to act as secretary.

General Meetings shall be governed by the rules approved from time to time by the Board of Directors, insofar as such rules are not inconsistent and do not conflict with these Articles of Association or with any applicable statutory provisions.

The resolutions passed will be brought to the attention of the Members by posting them on the private section of the Association's website within a period of one month following the General Meeting.

### **11.7 Conflict of interests within the General Assembly**

Whenever a member or its representative of the General Assembly finds himself or herself in a situation that gives rise or is reasonably likely to give rise to a Conflict of Interest, he or she must declare his or her interest to the members unless, or except to the extent that, the other members are or ought reasonably to be aware of it already. If any question arises as to whether a member has a Conflict of Interest, the question shall be decided by a simple majority decision of the General Assembly. Whenever a matter is to be discussed or decided at a meeting and a member or its representative has a Conflict of Interest in respect of that matter then, he or she must:

- a) remain only for such part of the meeting as in the view of the other members is necessary to inform the debate;
- b) not be counted in the quorum for that part of the meeting; and
- c) have no vote on the matter.

Whenever a decision at a meeting has been taken and the Conflict of Interest has not been raised by the member or its Representative concerned, the General Assembly decision can be challenged and become invalid once the Conflict of Interest is revealed.

Where Conflict of Interest means : “any direct or indirect interest of a member or its representative or of a member of the Board of Directors that conflicts, or might conflict with the interests of the Association, that might influenced a particular decision-making process affecting the integrity or the reliability of the outcome.

## **ARTICLE 12. BOARD OF DIRECTORS**

### **12.1 Powers**

Without prejudice to the restrictions set forth in these Articles of Association and to the duties of Directors described herein, all corporate powers shall be exercised by, or under the authority of, and the business and affairs of the Association controlled by, the Board of Directors.

The Board of Directors shall have the power to select and remove all officers, agents and contracting parties and to fix their reasonable compensation, authorize and empower officers or agents to enter into contracts and other commitments on behalf of the Association, and appoint and delegate responsibilities and authority to committees, officers and agents.

The Association shall be validly represented in all acts towards third parties, including before the courts, by two Directors acting jointly, who shall not be obliged to submit proof to third parties of a prior board decision on the matter. However, internally, the two Directors should obtain the prior consent of the Board of Directors for actions with respect

to third parties. The General Secretary of the Association can certify the adoption of decisions by the Board of Directors.

The Board of Directors is entrusted with the management of the Association and has all administrative powers, without prejudice to the General Meeting's exclusive powers, including without limitation:

- a) general policy and management of the Association, including approval of the policy of the Working Groups,
- b) supervision of the Association's activities,
- c) support of the Working Groups and ensuring that their activities coincide with the interests of the Association,
- d) the collection of funds,
- e) preparation of the annual report, budget and accounts to be presented to the General Meeting,
- f) appointment of the President, Secretary, General Secretary, CFO/Treasurer and Vice-President(s).
- g) the development of internal rules of procedure.

The Association is for the opening of the official bank account of the Association validly represented towards third parties by the President of the Association.

## **12.2 Composition of the Board of Directors**

### **12.2.1 Number of Directors, appointment and elections**

a) The Board of Directors shall be composed of a minimum of three (3) Directors up to a maximum of nineteen (19) Directors, who must be Representatives of Principal Members. The Board of Directors shall determine the number of available Director seats, taking into account that each Founder Member has the right to appoint one (1) Representative as Director for so long as any such Founder Member remains as a Principal Member.

b) Each Founder Member that is a Principal Member has the right to appoint one (1) Representative as Director, which shall serve a renewable two-year term.

The remainder of the available seats in the Board of Directors are available to the Representatives of the other Principal Members who are not Founder Members.

When Director seats become available, the Board of Directors shall notify all Principal Members (other than the Founder Members) hereof. The latter shall then send to the President its proposed candidate Director for appointment, indicating the full name, domicile address, phone and email information, citizenship and a copy of the passport of the candidate Director.

The Board of Directors shall then decide at its next meeting who shall be appointed as Director in accordance with Article 12.3 of these Articles of Association. The appointments shall be for a term equal to the remaining term of office of the Directors representing the Founder Members. In the event of a tie between two (2) or more candidate-Directors, the President of the Board of Directors shall have the tie-breaking

vote.

Upon the election of a Director to the Board of Directors, each represented Principal Member may designate one (1) Alternate Director for the same term as the Director.

- c) A Principal Member can replace its Representative serving as Director or Alternate Director by notification to the President and Secretary. Such replacement Representative shall end the term of office of the Director or Alternate Director he or she replaces.
- d) When a legal entity is appointed as a member of the Board of Directors, it shall be required to appoint a permanent representative, a natural person, who is responsible for carrying out this mission on behalf of the corporate entity.

The identity of the permanent representative shall be notified to the Board of Directors in writing, by post or electronically, together with a copy of the minutes of the appointment. The mandate of the permanent representative appointed may be terminated by the corporate entity concerned, by written notification to the President of the Board of Directors confirming: (i) the termination of the mandate of the permanent representative and (ii) the appointment of a new permanent representative. Such notification shall also be requested in the event of the end of the mandate of the of the permanent representative on expiry or for any other reason.

#### 12.2.2 Alternate Directors

The following provisions shall apply to Alternate Directors.

##### 12.2.2.1 Voting

Each Director shall have an alternate to serve as Director in the event of the death, resignation, removal or absence of the Director; this person shall be referred to as the **“Alternate Director.”**

When serving as Director, the Alternate Director shall have all the rights, privileges and responsibilities of the Director. Alternate Directors shall be entitled to attend all regular and special meetings of the Board of Directors and shall exercise all rights (including voting rights) of the Director, in the latter's absence.

#### 12.2.2.2 Role of the Alternate Director

If an Alternate Director is filling in for an absent Director, the regular Director shall regain all of his or her rights, privileges and responsibilities at the end of his or her absence. If the Alternate Director is serving as Director due to the death, resignation or removal of the Director, the Alternate Director shall immediately become a Director, and the corresponding position of Alternate Director shall become vacant.

#### 12.2.2.3 Application of these Articles

Unless provided otherwise, all provisions of these Articles shall apply in the same way to both Directors and Alternate Directors.

#### 12.2.3 Vacancies

The following events shall result in automatic termination of an individual's Director or Alternate Director status:

- a) termination of the Director's / Alternate Director's employment with or authority to represent the Principal Member by which s/he was employed or as whose authorized Representative s/he served; and/or
- b) a resolution by the Board of Directors terminating the Director / Alternate Director for cause, as defined in Article 12.7; and/or
- c) termination of the membership, in accordance with Article 8, of the Principal Member that appointed the Director / Alternate Director.

Any vacancy on the Board of Directors shall be filled pursuant to this Article 12.2.

If there is a Director vacancy which is not filled by an Alternate Director and/or upon the vacancy of an Alternate Director, the Principal Member concerned shall have sixty (60) calendar days from the date of notification of the vacancy by the Association to appoint a replacement Director and/or Alternate Director to the Board of Directors for the remaining term. If the Principal Member fails or refuses to make such an appointment within the abovementioned period of sixty (60) calendar days, the Board of Directors may fill the vacancy for the remainder of the term.

Any vacancies created by failure of a Principal Member to renew its membership may be filled by the Board of Directors.

### **12.3 Meetings**

#### 12.3.1 Place of meetings

Meetings of the Board of Directors may be held at any place indicated at any time by the Board of Directors or in the notice from the President.



### 12.3.2 Calling of meetings

Meetings of the Board of Directors, for any purpose or purposes, may be called at any time by the President of the Board of Directors, the Secretary or General Secretary of the Association, or by 50% of the Directors.

### 12.3.3 Notice of meetings and attendance

A notice indicating the time and place of each meeting of the Board of Directors, as well as the agenda for the meeting, not fixed by an express provision of these Articles or by a resolution of the Board of Directors, shall be provided to each Director at least seven (7) calendar days before the meeting.

### 12.3.4 Consent to meetings

The acts of the Board of Directors at any meeting, however requested and called and wherever held, shall have the same validity as if they had been accomplished at a meeting duly held after a request and notification if a quorum is present and if, either before or after the meeting, each Director not present: (a) signs a waiver of notice, (b) consents in writing to the holding of the meeting, or (c) approves the minutes of the meeting.

A Director who attends the meeting without objection prior thereto or at the start thereof shall be conclusively deemed to have consented to the holding of the meeting and to have waived his or her right to raise the lack of notice issue. Any such written waiver, consent or approval shall be kept by the company and mentioned in the minutes of the meeting.

### 12.3.5 Approval procedure

All decisions to be adopted by the Board of Directors must be approved by at least seventy-five percent (75%) of the Directors present at the meeting, unless these Articles provide otherwise and except with regard to decisions on admission of new Regular Members which shall require the approval of at least fifty percent (50%) of the Directors present at the meeting.

Nevertheless, any decision requested or permitted to be taken by the Board of Directors may be adopted without a meeting if all Directors individually or collectively approve the decision in writing. The written consent forms shall be kept with the minutes of the meeting. This type of decision-making in writing shall have the same force and effect as a unanimous vote of the Directors.

### 12.3.6 Teleconferencing

Directors may participate in a meeting through teleconferencing or similar means, provided all Directors participating in the meeting can hear one another. Participation in a meeting by telephone or through similar communications equipment shall

constitute physical presence at the meeting.

#### 12.3.7 Quorum

A majority of seventy-five percent (75%) of the Directors in office shall be necessary to constitute a quorum to take decisions, except to adjourn as indicated below.

#### 12.3.8 Adjournment

A majority of the Directors present, regardless of whether a quorum is met, may adjourn any meeting in order to meet again at another time or place. If a meeting of the Board of Directors is adjourned for more than forty-eight (48) hours, those Directors who were not present at the first meeting shall be notified of the adjournment.

#### 12.3.9 Making public of resolutions to Members

The resolutions will be brought to the attention of the Members by posting them on the private section of the Association's website within one month from the meeting of the Board of Directors.

### **12.4 Fees and compensation**

Directors shall serve without compensation but may, further to a resolution of the Board of Directors, be reimbursed for reasonable expenses incurred while acting on behalf of the Association.

No provision of these Articles shall be construed as precluding any Director from serving the Association in any other capacity as officer, agent, employee or otherwise and receiving remuneration to this end, provided the remuneration is approved by the Board of Directors.

### **12.5 Standard of conduct**

A Director (and Alternate Director, if applicable) shall perform the duties of Director, including duties as a member of any Working Group on which the Director may serve, in good faith, in the manner that the Director believes to be in the best interest of the Association and with the degree of care, including a reasonable duty to inquire, expected of a similarly situated reasonably prudent person under the circumstances.

In performing these duties, a Director or Alternate Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- a) one or more officers or employees of the Association whom the Director believes to be reliable and competent in the matters presented;
- b) a legal advisor, independent accountant or other professional, for matters which

the Director believes to be within that person's professional skills or expertise.

## **12.6 Self-dealing contracts and transactions**

For the purposes of this article, a “self-dealing contract” shall mean any contract or transaction:

- a) between the Association and one or more of its Directors, or between the Association and any company, firm or association in which one or more of its Directors has a material financial interest; or
- b) between the Association and a company, firm or association of which one or more directors are also Directors of the Association (collectively, “**Interested Director(s)**”).

No self-dealing contract shall be void or voidable simply because the Interested Director(s) or related company, firm or association is a party thereto or because the Interested Director(s) is present at the meeting of the Board of Directors authorizing, approving or ratifying the contract if:

- a) all material facts were fully disclosed or otherwise known to the Principal Members and the self-dealing contract was approved in good faith by the Principal Members, implying, amongst other things that the Interested Director(s) abstained from voting;
- b) all material facts were fully disclosed or otherwise known to the Board of Directors and the Board of Directors authorized, approved, or ratified the self-dealing contract in good faith (implying that the Interested Director(s) abstained from voting) and, for a self-dealing contract such as that described above, the Board or committee resolves and finds that the contract is just and reasonable at the time it is authorized, approved or ratified; or
- c) the person claiming the validity of the self-dealing contract bears the burden of proving that the contract was just and reasonable for the Association at the time it was authorized, approved or ratified.

Interested Director(s) may be counted in determining the existence of a quorum at a Meeting of the Board of Directors which authorizes, approves or ratifies a contract or transaction.

## **12.7 Resignation and removal**

A Director or Alternate Director may resign at any time by giving written notice to this effect to the Board of Directors, the President or Secretary of the Association.

A Director and/or Alternate Director may be removed from office further to a resolution of the Board of Directors terminating the Director for any of the following, all of which justify removal for cause:

- a) four (4) or more unexcused absences from Board meetings during the course of any year;
- b) conviction or entry of a guilty plea by the Director or Alternate Director for a crime;
- c) intentional breach of fiduciary duties by the Director or Alternate Director;
- d) public disparagement or ridicule of the Association by the Director or Alternate Director;
- e) gross mismanagement or waste by the Director or Alternate Director; or
- f) Being in a situation of Conflict of Interests as defined in Article 12.8.

Upon termination of a Director or Alternate Director or if there is otherwise a vacancy on the Board of Directors, the vacancy may be filled pursuant to Article 12.2.3.

### **12.8 Conflict of Interests within the Board of Directors**

Whenever a member of the Board of Directors finds itself in a situation that gives rise or is reasonably likely to give rise to a Conflict of Interest, it must declare its interest to the other members of the Board unless, or except to the extent that, the other members of the Board are or ought reasonably to be aware of it already. If any question arises as to whether a member of the Board of Directors has a Conflict of Interest, the question shall be decided by a simple majority decision of the Board of Directors. Whenever a matter is to be discussed or decided at a meeting and a member of the Board of Directors has a Conflict of Interest in respect of that matter then, it must:

- a) remain only for such part of the meeting as in the view of the other members of the Board is necessary to inform the debate;
- b) not be counted in the quorum for that part of the meeting; and
- c) have no vote on the matter.

### **12.9 Liability**

The directors and, where applicable, the persons delegated to day-to-day management are not personally bound to carry out the commitments of the Association.

Their liability vis-à-vis the Association and third parties is limited to the fulfilment of their mission in accordance with the provisions of general law, the law and the Articles of Association.

Directors shall be liable only for decisions, acts or behaviour which manifestly exceed the margin within which normally prudent and diligent directors in the same circumstances could reasonably be expected to differ. Directors are only liable for faults which can be attributed to them personally, committed in the performance of their management duties. Directors are jointly and severally liable, but are relieved of their liability if they did not take part in the fault and have reported the alleged fault to all other members of the Board of Directors. Such denunciation and the discussions to which it gives rise shall be recorded in the minutes.

## **ARTICLE 13. OFFICERS**

### **13.1 Officers**

The main officers of the Association are the President, Vice President, Chief Financial Officer/Treasurer, Secretary and such other officers as the Board of Directors may appoint. One person may hold two or more offices.

Officers of the Association shall be any person appointed by the Board of Directors and, except for the office of President, there is no provision of these Articles requiring such individuals to be a Director, employee or duly authorized Representative of any Member of the Association.

### **13.2 Election**

The officers of the Association shall be appointed by the Board of Directors in accordance with this clause. Each officer shall remain in office for a term of one (1) year, or until he or she resigns, is removed or his or her successor is elected and empowered to serve.

### **13.3 Removal and resignation**

An officer may be removed from office at any time, either with or without cause, by the Board of Directors or by any officer upon whom such power may be conferred by the Board of Directors, within the limits and in accordance with the provisions of applicable law.

An officer may resign at any time by giving written notice to the Board of Directors or to the Secretary of the Association. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein and, unless specified otherwise therein, acceptance of the resignation shall not be necessary to make it effective. The resignation shall not prejudice the rights of the Association under any contract to which the officer is a party.

### **13.4 Vacancies**

A vacancy in any office due to death, resignation, removal, disqualification or any other cause shall be filled by the Board of Directors for the remainder of the term.

### **13.5 President/CEO**

The President of the Board of Directors shall also serve as Chief Executive Officer.

Subject to oversight by the Board of Directors, the President is responsible for daily management and shall be entrusted with general supervision, management and oversight of the Association's business and affairs. The President shall have such other powers and duties as may be designated from time to time by the Board of Directors. The President shall be a member of the Board of Directors and chair all meetings of the Board of Directors.

With respect to daily management, the Association shall be validly represented in all actions towards third parties, including before the courts, by the President.

In particular, the President shall:

- a) schedule and set up meetings;
- b) facilitate communication between Members, including the provision of timely notices of meetings;
- c) liaise with other consortia or associations with which the Association may choose to enter into contact;
- d) provide Members in a timely manner with copies of minutes, summaries and other reports regarding the Association's activities;
- e) receive and process Participation Agreements and execute them on behalf of the Association; and
- f) in general, perform all duties related to the office of executive director and any other duties that may be assigned to him or her from time to time by the Board of Directors.

The President of the Board of Directors shall vote during the meetings of the Board of Directors as the Representative of the Member s/he represents and will have no other vote as President, unless specified otherwise in these Articles.

### **13.6 Vice President**

In the absence of the President, or in the event the President is unable or refuses to act, the Vice President shall perform the duties of the President and, in doing so, shall have all the powers of, and be subject to the same restrictions as, the President.

The Vice President shall have any other such powers and duties as may be indicated from time to time by the Board of Directors or the President. There shall be no limit on the number of Vice Presidents that may be appointed by the Board of Directors.

### **13.7 Chief Financial Officer/Treasurer**

When applicable under applicable law, the duties of the Treasurer shall be the following:

- a) take charge and custody of, and be responsible for, all funds and securities of the Association and deposit all such funds in the name of the Association in such banks, trust companies, or other depository institutions selected by the Board of Directors;
- b) receive, and give receipt for, monies due and payable to the Association from any source whatsoever;
- c) disburse, or cause to be disbursed, the funds of the Association as instructed by the Board of Directors, receiving proper vouchers for such disbursements;
- d) keep and maintain adequate and correct accounts of the Association's business transactions, including its assets, liabilities, receipts, disbursements, profits and losses;
- e) present at all reasonable times the books of account and financial records to any Director, or to his or her agent or attorney, upon request;
- f) render to the President and Directors, when so requested, an account of any or all of his or her transactions as Treasurer and of the Association's financial situation;
- g) prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports; and
- h) in general, perform all duties incident to the office of Treasurer and other such duties as may be assigned to him or her from time to time by the Board of Directors.

### **13.8 Secretary**

The Secretary shall:

- a) certify and keep the original, or a copy, of these Articles of Association, as amended or otherwise altered to date;
- b) keep a file containing the minutes of all meetings of the Board of Directors and General Meetings and, if applicable, meetings of Working Groups, recording therein the time and place of the meeting, whether it was a regular or special meeting, how the meeting was called, how notice was given, the names of those present or represented at the meeting, and the proceedings thereof, including all ballots and proxies;
- c) ensure that all notices are duly given in accordance with the provisions of these Articles of Association;
- d) keep a membership book containing the name and address of each Member and, if a membership has been terminated, record this fact in the membership book

- together with the date on which membership ceased;
- e) present at all reasonable times to any Member, or to the Member's agent or attorney, upon request, the Articles of Association, membership book, and minutes of the Association's General Meetings; and
  - f) in general, perform all duties incident to the office of Secretary and other such duties as may be required by law or that may be assigned to him or her from time to time by the Board of Directors.

#### **ARTICLE 14. GENERAL SECRETARY**

While not considered an Officer of the Association, the General Secretary of the Association shall, in order to assist the President or Vice President(s), perform such undertakings as are necessary to manage the day-to-day needs of the Association, including:

- (1) schedule and set up meetings;
- (2) facilitate communication between Members, including provide timely notices of meetings;
- (3) liaise with other consortia or associations with which the Association may choose to associate, as instructed by the Board of Directors;
- (4) provide Members with timely minutes, summaries and other reports with respect to the activities of the Association, as may be prepared by the Secretary or the General Secretary;
- (5) receive and process Participation Agreements and execute them on behalf of the Association; and
- (6) perform all duties incident to the office of General Secretary and other such duties as may be required by law or these Articles of Association, or which may be assigned to him or her from time to time by the Board of Directors.

The General Secretary may call upon third parties to carry out the activities described in this Article 14, provided the General Secretary enters into appropriate agreements protecting the Association and ensures compliance with the terms and conditions of these Articles, including confidentiality obligations.

Articles 13.2, 13.3 and 13.4 of these Articles of Association shall apply to the General Secretary *mutatis mutandis*.

#### **ARTICLE 15. WORKING GROUPS**

##### **15.1 Creation of Working Groups**

The Association shall set up issue- and task-specific Working Groups as indicated at any time by the Board of Directors (“**Working Groups**”).

The Association shall at least have a permanent Technical Working Group and a permanent Promotion Working Group.



The Board of Directors may create new Working Groups. In this regard, the Board of Directors shall:

- a) approve or disapprove the formation of each Working Group;
- b) approve or disapprove the charter of these Working Groups; and
- c) appoint the first chairperson and any replacement chairperson of each Working Group from amongst the Representatives of the Principal Members or, if no Principal Member volunteers, from amongst the Representatives of the Regular Members.

The Board of Directors shall appoint the chairperson of each Working Group, including replacements, provided however that Principal Members are given preference if they express an interest in having their Representatives chair the various Working Groups.

### **15.2 Composition of the Working Groups**

All individual participants in the Working Groups must be Representatives of Principal or Regular Members. The Working Groups are open to all Representatives of Principal or Regular Members.

### **15.3 Meetings of the Working Groups**

Notices of meetings and activities of the Working Groups shall be given, held and taken in accordance with written Working Groups procedures, applicable to all Working Groups, to be adopted by the Board of Directors and amended from time to time.

Upon the establishment of a Working Group, that Working Group may, through its chairperson, propose specific procedures to govern its activities. These specific procedures shall be subject to ratification and modification by the Board of Directors.

Specific procedures of the Working Group that are not otherwise incorporated into the general Working Group procedures adopted by the Board of Directors shall apply only to the Working Groups that propose such procedures.

Notwithstanding the possibility of each Working Group to establish its own internal procedure, notice of the time and place of each meeting of a Working Group, as well as the agenda for the meeting, shall be given to each Member at least three (3) working days before the date of the meeting, if given in person, by telephone or by electronic means including email, and at least four (4) working days before the date of the meeting if sent by priority mail.

### **15.4 Approval of Working Group Deliverables**

When a Working Group agrees that a Proposed Specification is ready for final approval, it may request the Board of Directors to approve the Proposed Specification as a final deliverable or Adopted Specification in accordance with the Association's IPR Policy. If a Proposed Specification is not approved by the Board of Directors, then it is

returned to the proposing Working Group with comments for resolution within the proposing Working Group.

## **PART SIX - EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

### **ARTICLE 16. EXECUTION OF INSTRUMENTS**

The Board of Directors, except as otherwise provided in these Articles, may, by resolution, authorize any officer or person to enter into any contract or execute and deliver any instrument in the name and on behalf of the Association; such authority may be general or restricted to specific matters.

Unless so authorized or indicated otherwise in these Articles, no officer shall have any power or authority to bind the Association by any contract or engagement or to pledge the Association's credit or render the Association monetarily liable for any purpose or any amount.

The Association is for the opening of the official bank account of the Association validly represented towards third parties by the President of the Association.

The Board of Directors may grant special powers to one or more persons, whether members or not, to represent the Association in legal proceedings or specific and delimited acts.

### **ARTICLE 17. CHECKS AND NOTES**

Notwithstanding the provisions of Article 12.1 and except as otherwise specifically determined by a resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money and other evidence of indebtedness of the Association with an aggregate value of less than twenty thousand euros (€20,000) over any quarter may be approved for payment by the President, the General Secretary or the Treasurer.

Notwithstanding the provisions of Article 12.1, checks, drafts, promissory notes, orders for the payment of money and other evidence of indebtedness with an aggregate value of more than twenty thousand euros (€20,000) shall be approved for payment by of two (2) or more of the abovementioned officers and in accordance with the financial policy of the Association as approved by the Board of Directors.

### **ARTICLE 18. DEPOSITS**

All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depository institutions as the Board of Directors may select.

## **PART SEVEN - RECORDS AND REPORTS**

### **ARTICLE 19. RECORDS**

The Association shall keep:

- a) minutes of all meetings of the Board of Directors, all meetings of Working Groups and all General Meetings or meetings of Members, indicating the time and place of the meeting, whether the meeting is regular or special, how the meeting was called, the notice given, the names of those present and the proceedings thereof including all proxies;
- b) adequate and correct books and records of account, including accounts of its properties and business transactions, its assets, liabilities, receipts, disbursements, profit and losses;
- c) a record of its Members, if any, indicating their names and addresses and, if applicable, the category of membership of each Member and the termination date of any membership; and
- d) a copy of the Articles of Association, as amended to date, which shall be made available to inspection by the Members.

### **ARTICLE 20. INSPECTION RIGHTS**

Subject to any confidentiality and nondisclosure requirements the Board of Directors may reasonably deem appropriate, or restrictions imposed by any confidentiality or nondisclosure agreement concerning any particular record, book or document, all Members shall have an absolute right at any reasonable time to inspect and copy all of the Association's books, records and documents of any kind and to inspect the Association's real property.

### **ARTICLE 21. AMENDMENT OF THE ARTICLES OF ASSOCIATION**

Unless otherwise provided herein, these Articles may only be altered, amended, or repealed, and new articles adopted, with the approval of a 75% majority of all Members present or represented at a General Meeting at which a 75% quorum is met, except for a change of the registered office within the Brussels region with regard to which the general quorum and voting requirements shall apply. The Association must provide notice of any General Meeting at which an amendment is to be approved. The notice must be in accordance with the provisions of Article 11.2 of these Articles. The notice must also state that the (or a) purpose of the meeting is to consider a proposed amendment to these Articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

### **ARTICLE 22. INTERNAL REGULATIONS**

The Board of Directors may adopt internal rules which do not conflict with these Articles of Association in order to ensure the proper functioning and administration of the Association. Their amendments are of the sole competence of the Board of Directors.

Each year the Board of Directors shall re-examine the Internal Regulations in force and shall proceed with any amendment it deems appropriate or necessary.

The latest version of the internal rules of procedure is dated 12 March 2012.

## **PART EIGHT - FINANCIAL YEAR AND ACCOUNTS**

### **ARTICLE 23. FINANCIAL YEAR**

The financial year starts to run on 1 January and ends on 31 December of each year.

### **ARTICLE 24. ANNUAL ACCOUNTS AND BUDGET - AUDIT**

The Board of Directors shall prepare the annual accounts at the close of each financial year and draw up the budget for the coming financial year.

The annual accounts shall be submitted to the General Meeting for approval within six months following the close of the financial year to which they relate. Within thirty days of their approval by the General Meeting, the Board of Directors shall file the annual accounts with the clerk's office of the competent commercial court.

If so required by law, supervision of the Association's financial situation, annual accounts and the regularity of the transactions mentioned therein shall be entrusted to one or more auditors (*commissaires*) appointed by the General Meeting from amongst the members of the Institute of Company Auditors (*Institut des Réviseurs d'Entreprises*).

The auditors, jointly or severally, shall have an unlimited right to inspect and audit all transactions of the Association. They may inspect the books, correspondence, minutes and, in general, all other documents and papers of the Association at the latter's premises.

The auditor shall provide the Board of Directors with a report on the annual accounts, which the Board of Directors shall submit to the General Meeting called to approve the same.

## **PART NINE - MISCELLANEOUS**

### **ARTICLE 25. LANGUAGE**

The official language of the Association is French.

The working language of the Association shall be English. If decisions or documents of the Association must be published in the annexes to the *Belgian State Gazette*, filed with the clerk's office of the competent commercial court or made public in any other way, the Board of Directors shall have the authority to make a French translation of the relevant decision or document for administrative purposes.

## **ARTICLE 26. GOVERNING LAW**

Any matter not dealt with in these Articles of Association shall be governed by the applicable provisions of the BCCA or if not dealt with in the BCCA, other applicable provisions of Belgian law.

## ANNEX 4 IPR POLICY

### PRIME ALLIANCE INTELLECTUAL PROPERTY RIGHTS POLICY

From and after the date that this intellectual property rights policy ("**IPR Policy**") is adopted, the IPR of the Association and its Members shall be governed prospectively by this IPR Policy, all in accordance with the terms of the Association's Articles of Association (the "**Articles of Association**").

Recognizing that the Association is an open participation organization whose activities are focused on developing a new public, open and non-proprietary telecommunications architecture that shall support the new AMM functionality and enable the building of the electricity networks of the future, or Smart Grids, this IPR Policy is designed to maximize the widespread adoption of PRIME specifications and standards. In furtherance of the objective of widespread adoption, the Association and its Members agree that barriers to industry use of Adopted Specifications should be limited as much as possible. Hence the Association wishes to make the IPR under its control available to the Members and non Members on a fair reasonable and non discriminatory (FRAND) basis, pursuant to the terms of the present IPR Policy. Capitalized terms used in this Addendum are defined in Section 14 of this Addendum or the applicable Participation Agreement.

#### 1. IPR Categories.

IPR shall be categorized as follows:

- (a) Background;
- (b) Necessary IPRs; and
- (c) Foreground.

with each category subject to the further terms set forth in this IPR Policy.

#### 2. Submission of Proposed Specifications and disclosure of Necessary IPRs by Submitters

Members jointly or singly are entitled to submit (the "**Submitter**") to the Technical Working Group one or more Proposed Specifications.

Proposed Specifications can be submitted to the Technical Working Group through a written statement in the form requested by the Association, detailing:

- (i) a list of the Necessary IPRs; being agreed that such list shall be provided together with the express statement of the Submitter(s) that (i) as a result of a Reasonable and Good Faith Inquiry such list is exhaustive and that (ii) to the knowledge of Submitter, implementation of the Proposed Specification would not infringe third parties' IPRs; and
- (ii) the (proof of) ownership of the listed Necessary IPRs.

Submissions can also be submitted orally during meetings of the Technical Working Group. Such submissions shall be listed in the minutes of the Technical Working Group where after the Submitter shall within forty-five (45) days after distribution of the minutes confirm his

submission and provide to the Association a filled in form as provided under the second paragraph of the present Section 2.

### **3. Disclosure of Necessary IPRs by Members**

Each Member shall, in the form requested by the Association, as soon as Proposed Specifications have been disclosed, as a result of a Reasonable and Good Faith Inquiry disclose, within sixty (60) days of this disclosure, whether such Member or non Member has any Necessary IPRs (but only to the extent determined by such Reasonable and Good Faith Inquiry) with regard to Proposed Specifications submitted by a Member and/or any Adopted Specifications (the "**Review Period**"). If any Necessary IPRs of a Member are identified, the Member shall upon written request grant a FRAND license to such Necessary IPRs and any Necessary IPRs which would be identified thereafter, to the Members and non Members pursuant to Section 4 below but subject to the exceptions provided in Section 5 of this IPR Policy.

For the sake of clarity, the Members and non Members acknowledge and agree that the present IPR Policy does not affect the actual ownership of the Background of each Member, unless a different written agreement is entered into among the Members, non Members and/or the Association. Nothing contained in this IPR Policy will be construed as granting or conferring any rights by licence, expressly, impliedly or otherwise, concerning each Member's Background other than Necessary IPRs, unless differently provided in this IPR Policy.

### **4. License from the Members for Necessary IPRs to Members and non-Members**

#### 4.1

##### a)

As a general rule, for Necessary IPRs owned by a Member, in case and as soon as the Proposed Specifications are adopted by the Board of Directors in accordance with Section 8 of the present IPR Policy and Section 15.4 of the Articles of Association, such Member is obligated to grant to the other Members and non Members, who are willing licensees acting in good faith, (hereafter "**Licensees**"), upon request in writing, a worldwide, non-exclusive, non transferable license under reasonable terms and conditions and on a non-discriminatory basis, for the duration of the Necessary IPRs, to make, use and sell the implementations of the Adopted Specifications under the FRAND Scope and of any ISO standard, ITU-T or ITU-R recommendation or IEC Deliverable covering Adopted Specifications. The obligation to license and each such license shall be conditional upon the Licensee granting to the Licensor a reciprocal license on this Licensee's Necessary IPR under the same terms. (together referred to as "**FRAND Licensing Obligations**")

b) In the event Necessary IPRs are identified which are not owned by a Member, the Board of Directors shall define the best solution, including the possible rejection with due reasons of the Proposed Specification.

### **5. New Member Reviews**

If a person applies to become a Member in the Association, then subject to the execution of such confidentiality agreement based on the principles provided in Section 12 below, as the Association may determine necessary, such prospective member shall be permitted not less than sixty (60) days to review the Proposed Specification then under review and any previously Adopted Specifications of the Association for any and all Necessary IPRs and to agree in separate affirmative writing to be committed to the licensing provisions of Section

4.1 above, as to any Adopted Specifications or Proposed Specifications for which the Review Period has been completed. Failure to provide such written affirmation shall be deemed a withdrawal of the prospective Member's application for participation. No Members shall be admitted during a Review Period.

## **6. Foreground**

The Association may carry out through any of its Members or through third parties research and development activities in relation to Specifications, upon the approval of the Board of Directors or of the General Meeting.

### **6.1. Foreground developed by Members**

If one or more Members have been commissioned by the Association to carry out, the activities set forth in Section 6 above, whether individually or in collaboration with the Association, the relevant collaboration agreement shall provide that the Foreground of the research and development activities shall be licensed to the Members and non Members upon request in accordance with Section 4.1 above as soon as reasonably possible, unless the Association and the Member(s) concerned otherwise agree in writing.

### **6.2. Foreground developed by the Association or by third parties**

All right, title and interest in and to any and all Foreground created or developed by persons employed or retained by the Association shall vest in the Association and where this is not possible due to a legal or contractual restriction, the latter shall be licensed on a royalty free basis to the greatest extent possible, to the Association as soon as reasonably possible.

### **6.3. Joint Foreground**

Foreground developed jointly by the Association and a Member (hereinafter referred to as the "**Contributors**") pursuant to a separate agreement with the Association defining the scope of the work to be performed by such Member shall be jointly owned by the Association and the applicable Member ("**Joint Foreground**"). For the purposes of the foregoing, the term "jointly" shall mean that at least one Member employee or contractor and one Association employee or contractor qualify as co-inventors or where applicable co-authors pursuant to the applicable law.

The Contributors might establish an agreement regarding the allocation and terms of exercise of their joint ownership provided that such agreement shall require that the Joint Foreground shall be licensed on FRAND terms.

However, where no joint ownership agreement has yet been concluded, each of the Contributors (as "Grantor") shall be entitled to use the Joint Foreground and to grant non-exclusive licenses to third parties on a FRAND basis, without any right to sub-license (other than to Grantor's affiliates), subject to giving at least forty-five (45) calendar days prior notice to the other joint owners, but without requiring the consent of the other joint owners.

The Members acknowledge and agree that the Members and the Association will make Joint Foreground available to all Members and non-Members pursuant to terms and conditions of respectively Section 4.1 for Members above and Section 7 below for the Association.

Within a reasonable period following creation of any Joint Foreground, the Contributors shall enter into good faith discussions in order to agree on an appropriate course of action for filing applications for IPR protection, including the decision as to which of the Contributors is to be entrusted with the preparation, filing and prosecution of such applications and in which



countries or territories such applications are to be filed. Except for any priority applications, the filing of any applications for Joint Foreground shall require mutual agreement between the Contributors (but excluding any Contributors who choose pursuant to the paragraph below not to contribute to the cost of such application). All external costs related to applications for patent protection or other protection resulting from such applications and the fees for maintaining such protection shall be shared equally between the Contributors, subject to the paragraph below.

If and when a Contributor decides not to contribute, or not to continue its contribution, as the case may be, to the costs of application for or maintenance of IPR protection for the Joint Foreground, for one or more countries or territories, it shall be entitled not to contribute, or to discontinue its contribution, provided however that:

- (a) it shall promptly notify the other Contributor(s) in writing of its decision;
- (b) it shall forthwith relinquish all its rights to participate in the prosecution and maintenance of such IPR Protection for the Joint Foreground for the countries or territories concerned to the other owner(s) who contribute or continue their contribution, as the case may be, to such costs in accordance with the paragraph above; and
- (c) it shall lose its rights under the present Section with respect to such Joint Foreground for the countries or territories concerned as of the moment of notification, but subject, however, to the retention of a non-transferable, non-exclusive, royalty-free and fully paid-up licence, without the right to grant sub-licences (other than to its affiliates), for the lifetime of such Joint Foreground for the countries or territories concerned in favour of, and for the use by, the relinquishing Contributor and until such license is terminated for breach.

Each joint owner of Joint Foreground shall have the right to bring an action for infringement of any such Joint Foreground only with the consent of the other owner(s), which shall not be unreasonably withheld. The foregoing is not intended to require such other owner(s) to engage in litigation. Thus, if such other owner is required, or would be required, to become a party to the action (such as, without limitation, if the court rules that such other owner is a necessary party to the action), then such other owner may elect that the action be terminated. Upon receiving written notice of such election, the joint owner bringing the action shall withdraw, dismiss, or otherwise terminate the action.

## **7. License from the Association to the Members & non Members**

The Members agree that any Necessary IPRs or (Joint) Foreground owned by the Association shall be automatically licensed by the Association to the Members and non Members in accordance with the provisions set out below.

Necessary IPRs and (Joint) Foreground (co-)owned by the Association shall be automatically licensed to Members and non Members in accordance with Section 4.1 of the present IPR Policy(which shall apply *mutatis mutandis*), for the duration of the Necessary IPRs / IPRs on the Foreground.

## **8. Approval of Specifications / compliance of products with Adopted Specifications.**

Proposed Specifications submitted to the Board of Directors for adoption in accordance with Section 15.4 of the Articles of Association shall require a seventy-five percent (75%) vote for final approval, and upon such approval shall become "**Adopted Specifications**". The Adopted Specifications constitute together the PRIME Specifications.

The use of the trademark "PRIME alliance" or any other applicable trademark of the Association by standardization organizations for referential purposes, is exempted from any

certification or licensing obligation. Such exemption does not cover use by non-Members which requires an explicit license from the Association.

Each Member may submit its products to a Test Provider to evaluate the compliance of each such product with the Adopted Specifications. The Board of Directors shall take the decision to recognize products as Fully Certified products on the basis of the results of the evaluation carried out by the Test Provider. Such decision of the Board of Directors shall consist of a certification (the “**Certification**”) necessary for the Member concerned to market its Fully Certified products under the trademark “PRIME alliance” or any other applicable trademark of the Association. The Certification procedure shall be described more in detail in a separate document which may be updated from time to time by the Board of Directors.

An *ad hoc* agreement shall be entered into between the Test Provider and the Member concerned in order to lay down the relevant terms and conditions, including *inter alia* the definition of the relevant test compensation (the “**Test Compensation**”), to be determined on fair, reasonable and non discriminatory basis. Such Test Compensation shall include all costs and expenses (including administrative and general expenses) borne by the Test Provider in respect of the specific test process activity.

The Board of Directors shall appoint the Test Providers by means of a written document and shall impose to them specific rules to be respected in their test process activity, including the determination of their compensation in compliance with the provisions set forth in the present article; such written document shall be accepted in writing by each appointed Test Provider.

## **9. Consequences of resignation, termination or liquidation**

In case of resignation of any Member, pursuant to Section 8 of the Articles of Association, the resigning Member maintains its Background in accordance with the provision set forth in Section 3 of the present IPR Policy; Resignation of any Member shall not affect any licenses (to be) granted (in the future) by that Member under the current IPR Policy.

In case of termination of any Member, pursuant to Section 8 of the Articles of Association, the terminated Member maintains its Background in accordance with the provision set forth in Section 3 of the present IPR Policy;

Termination of any Member shall not affect any licenses (to be) granted (in the future) by that Member under the current IPR Policy or to rights granted to or to which that Member is entitled at the time of resignation or other termination. For avoidance of doubt, such Member is not entitled to receive and not required to grant licenses for any Proposed Specification adopted after termination, except that: (i) unless such Member is terminated under Section 8.1.3 of the Articles of Association because of a material breach by such Member that is not cured under Section 8.2 of the Articles of Association, such Member shall be entitled to receive rights that may be available to any non-Member; and, (ii) such Member shall be required to grant licenses under any of its Necessary IPRs but only to the extent that such Necessary IPRs qualify as such by virtue of a contribution made by such Member to such Proposed Specification prior to such termination. In case of dissolution or liquidation of the Association, pursuant to Section 10 of the Articles of Association above, the General Meeting shall consider how best to deal with any IPRs owned by the Association or received by the Association by means of a license and shall, unless otherwise provided in the template of the license agreement with regard to IPR's licensed to the Association, have the option to require an assignment of such IPRs to another party to enable maintenance of such IPRs by that other party at its own cost.

Non execution of obligations contained herein by party (member or non member) towards another party allows the latter to suspend its obligations towards the other.

## **10. Trademarks**

The Members are entitled to list the name, logo and other trademarks of the Association on the Members' website and on advertising in accordance with guidelines to be set by the Board of Directors. As long as such guidelines have not been established, the Association shall, upon written request, grant the Members licenses to use such name and logo or other trademarks of the Association, without any specific conditions except that such use shall not harm the reputation of the Association or its Members. The Association shall be entitled to list each Member's name and logo on the Association web site and on advertising materials.

## **11. Modifications to the IPR Policy**

The IPR Policy may be modified from time to time by the General Meeting upon proposal of the Board of Directors, in accordance with Section 11 of the Articles of Association provided that such modifications do not adversely affect a Member's obligations, rights and/or protections (including but not limited to Background) under the current IPR Policy. The agenda of the meeting shall include the modified IPR Policy.

The modified IPR Policy will apply to all Members in lieu of the previous IPR Policy, from the date the modified IPR Policy is approved by the General Meeting.

## **12. Non-disclosure of information**

### **12.1 Confidential Information**

For the purpose of this clause, "**Confidential Information**" means all and any information, analyses, compilations, studies and documents, idea, concept, know-how, data, process, technique, algorithm, program, design, drawing, formula or test development, engineering, manufacturing, marketing, business

plan, servicing, financial or legal matter with regard to the PRIME specification standard setting which shall be disclosed in words, in writing or by any other mean of transmission to a Member under this Agreement (hereinafter referred to as the "**Receiving Party**") or any of its directors, officers, employees, or Affiliates, representatives, including, without limitation, its attorneys, accountants and financial and other advisers, agents, or authorized subcontractors, as well as its third parties and subcontractors (collectively, the "**Representatives**"), by or on behalf of another Member (hereinafter referred to as the "**Disclosing Party**") or any of its Representatives.

It is not included within the scope of Confidential Information, if and in so far as the Receiving Party can show that:

- a) The Confidential Information becomes publicly available by means other than a breach of the Receiving Party's confidentiality obligations;
- b) The Confidential Information is communicated to the Receiving Party without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- c) The Confidential Information, at any time, was or is subsequently developed by or for the Receiving Party completely independently of any such disclosure by the Disclosing Party; or
- d) The Confidential Information was already known to the Receiving Party prior to disclosure.

### **12.2 Confidentiality obligations**

The Receiving Party and its Representatives undertake to:

- a) Keep the Confidential Information strictly confidential, ensuring all necessary measures aimed at properly safeguarding such Confidential Information; and
- b) Not to disclose to any third parties such Confidential Information as well as the fact that the Confidential Information exists or has been provided to the Receiving Party and/or its Representatives, unless they have obtained prior written consent from the Disclosing Party; and
- c) Use the Confidential Information exclusively for and within the purpose defined in this IPR Policy and not to use such Confidential Information in any way not authorized by this IPR Policy; and

- d) Restrict the disclosure of the Confidential Information to the Representatives that need to know it because of their involvement in the purpose for which such Confidential Information is disclosed and cause its Representatives to strictly comply with the confidentiality obligations; and
- e) Enter with its Affiliates, third parties and subcontractors into a confidentiality agreement containing no less stringent obligations than the confidentiality obligations set forth in this confidentiality undertaking; and
- f) Be responsible for any action or inaction of its Representatives resulting in a breach of such confidentiality obligations.

### **12.3 Exceptions to the confidentiality obligations**

In the case the Receiving Party is required to disclose the Confidential Information to comply with applicable laws or pursuant to an order from a judicial, governmental or other competent authority, (a) the Receiving Party shall, to the extent permitted by law, give the Disclosing Party prompt written notice of any such requirement, as far in advance of disclosure as is reasonably practical, (b) the Receiving Party shall, to the extent permitted by law, consult with the Disclosing Party on the form, timing, nature and purpose of the disclosure, (c) the Receiving Party shall, to the extent permitted by law, use reasonable efforts to limit or prevent any further disclosure or dissemination of Confidential Information so required to be disclosed under this clause 12.3, and (d) the Disclosing Party shall, to the extent permitted by law, be allowed a reasonable opportunity to pursue legal remedies to maintain the confidentiality or limit the dissemination of such Confidential Information.

The Parties acknowledge that: (i) nothing in this Agreement limits the professional development of the Parties' employees (or those of any of their affiliated entities) and the ability of either Party (or any of its affiliated entities) to assign its employees (or contractors) to other projects; and (ii) during the course of the relationship between the Parties, each Party's employees (or contractors) (and those of its affiliated entities) who are authorized to access and use the Confidential Information will acquire experience retained in their unaided memories. Accordingly, notwithstanding anything to the contrary in this Agreement, the Parties (and their affiliated entities) may utilize such acquired experience in their respective business activities.

### **12.4 Use and accuracy of the Confidential Information**

Each Member acknowledges that the Confidential Information is and shall remain the sole and exclusive property of the Disclosing Party. Except if otherwise provided, nothing contained in this IPR Policy shall be construed as granting or conferring any rights by licence or otherwise, expressly, impliedly, or otherwise for any intellectual property of the Disclosing Party, including but not limited to the Disclosing Party's rights in patent, copyright, invention, discovery or improvement made, conceived or acquired prior to or after the execution of this IPR Policy.

The Disclosing Party shall endeavour to include in its Confidential Information, information which it believes to be relevant for the purpose of the Receiving Party; nevertheless, the Receiving Party understands and agrees that neither the Disclosing Party, nor any of Disclosing Party's Representatives have made or make any representation or warranty as to the accuracy or completeness of the Confidential Information. Each Party agrees that neither the Disclosing Party, nor any of its Representatives shall have any liability to the Receiving Party or any of its Representatives resulting from or arising out of the use of the Confidential Information by the Receiving Party and/or the Receiving Party's Representatives.

The Disclosing Party shall be responsible for export license controls or any other licenses with regard to the Confidential Information it submits.

The Confidential Information shall be used by the Receiving Party, its Affiliates and Representatives exclusively and solely for the purpose for which such Confidential Information was disclosed.

The Receiving Party shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Association as with its own confidential and/or proprietary information, but in no case less than reasonable care.

#### **12.5 Return of Confidential Information**

The Receiving Party shall promptly deliver to the Disclosing Party any documents or other materials containing or reflecting any Confidential Information and any copies thereof which the Receiving Party may have made, have control of, or may receive or possess during the period of the discussions and/or business relationship between the Members within five (5) working days after requested by the Disclosing Party.

If the Confidential Information has been destroyed, each Member shall be required to provide a certificate for such destruction.

Save the destruction of such Confidential Information is prohibited by laws, the Receiving Party shall, and shall cause its Affiliates and Representatives to, redeliver to the Disclosing Party all copies of the written or other tangible Confidential Information in its possession or in possession of its Representatives and any related electronically held data.

Despite the return or destruction of Confidential Information, the Receiving Party, its Affiliates and Representatives shall remain bound to the obligations set forth in this IPR Policy until the dissolution of the Association and for a period of 5 (five) years thereafter.

This clause 12.5, shall not apply to Confidential Information which pursuant to applicable law, order, decree, regulation or rule may not be returned or destroyed or Confidential Information contained in any

material prepared for or by the supervisory bodies of the Receiving Party or its Affiliates, provided, however, that the Receiving Party, its Affiliates and their representatives shall remain bound to the obligations set forth in this IPR Policy until the dissolution of the Association and for a period of 5 (five)

years thereafter. The obligations of the Receiving Party set out in this Clause 12.5 shall further not apply

to routine backup copies created by electronic data processing systems/programs provided, however, that

the Receiving Party, its Affiliates and their representatives shall remain bound to the obligations set forth

in this IPR Policy until the dissolution of the Association and for a period of 5 (five) years thereafter.

#### **12.6 Responsibility**

Each Member hereby acknowledges and agrees that, in the event of any breach of this clause, the Disclosing Party shall suffer irreparable injury, such that no remedy at law shall afford it adequate protection against, or appropriate compensation for, such injury.

Accordingly, each Member hereby agrees that the other shall be entitled to specific performance under this clause, as well as such further injunctive or other relief as may be granted by a court of competent jurisdiction.

The Receiving Party shall indemnify the Disclosing Party from and hold it harmless against losses and liabilities arising out of any of its and/or its Representatives' and Affiliates' breach of the confidentiality obligations.

Additionally, and with the character of a penalty clause different from the indemnification referred in the previous paragraphs, if the Receiving Party discloses Confidential Information without the previous written consent from the Disclosing Party or willingly or gross negligently breaches its confidential obligations, it shall pay to the Disclosing Party an amount of fifty thousands (50,000) Euros. In the event one breach of the present IPR Policy directly causes multiple subsequent breaches the total amount to be paid under this paragraph shall be limited to fifty thousands (50,000) Euros.

### **13. Third Party Infringement Proceedings**

The Association recognizes that (i) companies that are non-practicing entities (entities whose main business is licensing IPR but who do not themselves develop, manufacture or sell products) and/or (ii) companies that are not members of the Association, may claim IPR that is essential to comply with the Adopted Specifications. PRIME or Members may seek an assurance from non-Members as to whether they will agree to license their Necessary IPRs on a FRAND basis.

The Association recognizes and understands that such claims may create unexpected financial and legal burdens on companies which are developing and selling products compliant with the Adopted Specifications, and such claims thereby undermine the attractiveness of the Adopted Specification and undermine the purposes and goals of the Association. Accordingly, in the event such a claim is made, the Association agrees and commits to assess ways to minimize the effects of such claim, including but not limited to considering ways to modify the Adopted Specifications to work around or eliminate the feature on which the claim is targeted.

### **14. Definitions.**

**"Adopted Specifications"** means the Specifications that have been approved or adopted by the Association pursuant to the procedures set forth in Section 8 of the present IPR Policy.

**"Affiliate"** shall mean, with respect to a Member of the Association, any entity controlling, controlled by or under common control with such Member, where "control" means direct or indirect ownership of or the right to exercise: (i) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make decisions for the subject entity.

**"Background"** shall mean: (i) Works and IPRs thereon which are owned by a Member prior to its accession to the Association and IPRs, the application for which has been filed by a Member before its accession to the Association; and (ii) Works and IPRs thereon which are developed or otherwise acquired by a Member after its accession to the Association and out of the framework or execution of the activities of the Association.

**"Certification"** is defined in Section 8 of the present IPR Policy.

**"Certification Compensation"** is defined in Section 8 of the present IPR Policy.

**"Contributor"** is defined in Section 6.3 of the present IPR Policy.

**"Foreground"** means the Works and the IPRs thereon which are generated by research and development activities carried out by the Association and/or Members in the framework of executing the activities of the Association and/or in the execution by a Member of a license from another Member, with the exclusion of the Background.

**"FRAND Licensing Obligation"** is defined in Section 4 of the present IPR Policy.

**"Fully Certified"** means products or technology that meet all mandatory portions of the applicable Adopted Specifications and are accordingly Certified in accordance with Section 8. If the Adopted Specifications contain optional components, and the product or technology incorporates the optional components, then the products or technology must also meet the optional specifications of such Adopted Specifications.

**"IPR"** means any intellectual property rights, anywhere in the world, whether they can be registered or not, including but not limited to rights to know-how and trade secrets, copyrights, neighboring rights, sui generis database rights, design rights, patents, semiconductor topography rights and trademarks as well as all applications for the same anywhere in the world.

**"Joint Foreground"** is defined in Section 6.3 of the present IPR Policy.

**"Licensee"** is defined in Section 4 of the present IPR Policy.

**"Licensor"** means a Member granting a license on Necessary IPRs or where applicable Foreground.

**"Member"** means a general reference to all Principal Members and Regular Members, and their Affiliates as identified in Annex I to the present Articles of Association, who have so qualified for such classifications pursuant to the provision of the Articles of Association.

**"Necessary IPRs"** means those IPRs, including but not limited to claims of all patents and patent applications throughout the world, existing now or hereafter issued or filed, that a Member, as applicable, owns or otherwise has a right to license, and that: (a) cover or directly relate to one or more of the Proposed Specifications and/or the Adopted Specifications within the FRAND Scope, as applicable; and (b) would be infringed by an implementation of any Proposed Specifications and/or Adopted Specifications within the FRAND Scope, as applicable, where such infringement could not have been avoided by another commercially reasonable non-infringing implementation of such Proposed Specifications and/or Adopted Specifications, as applicable, and such infringement is necessary to meet the implementation requirements of the Proposed Specifications and/or Adopted Specifications, as applicable. Necessary IPRs shall not include any IPRs covering any enabling technologies that are used in the manufacture of products that comply with the Proposed Specifications and/or Adopted Specifications, but are not expressly designated in the Proposed Specifications and/or Adopted Specifications (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, etc.). If a Member asserts that any IPR is not a Necessary IPR on the basis that there is a commercially reasonable alternative to the infringing implementation of the Adopted Specification, such Member shall provide the Technical Working Group with sufficient documentation evidencing the availability of such a commercially reasonable alternative.

**"Principal Member"** means any Participant in the Association which has executed the Articles of Association and those who, after the date of execution of these Articles of Association, adhere to a Participation Agreement

**"Proposed Specifications"** means proposals of Specifications and/or any additions and/or modifications to existing Adopted Specifications (but not the underlying Adopted Specifications) submitted for review by the Members to the Working Groups or by the Working Groups to the Board of Directors of the Association.

**"Reasonable and Good Faith Inquiry"** includes, but is not limited to, a Submitter using reasonable efforts to identify and contact those individuals who are from, employed by, or otherwise represent the Submitter and who are known to the Submitter to be current or past participants in the development process of the Proposed / Adopted Specification. If the Submitter did not or does not have any participants, then a Reasonable and Good Faith Inquiry shall mean that the Submitter shall use reasonable efforts to contact individuals who are from, employed by, or represent the Submitter and who the Submitter believes are most

likely to have knowledge about the technology covered by the Proposed / Adopted Specification.

**"Regular Member"** means any Member in the Association which has executed the PRIME Regular Member Participation Agreement.

**"Review Period"** is defined in Section 3 of the present IPR Policy.

**"FRAND Scope"** means the following items:

- 1) Physical layer (PHY, corresponding to the seven layer ISO-OSI model of networking stack) narrowband power line communication technology.
- 2) Media access protocol (MAC) that uses services of PHY layer to enable network formation, maintenance and scaling to facilitate data transport and other functionalities typical of the ISO-OSI model for this layer.
- 3) Logical link control (LLC) protocol or an adaptation layer for the same in order to facilitate use of an existing standard LLC, that makes use of underlying MAC layer. The technology in its present version includes the LLC and LLC-adaptation layers given below. The scope of PRIME technology, as defined here, leaves scope for future inclusion of additional LLC or LLC-adaptation layers (e.g. IPv6).
  - a. LLC-adaptation layer for IEC 61334-4-32
  - b. LLC definition, enabling convergence of IPv4 protocol stack on top of PRIME technology
- 4) Management plane which interfaces with all, PHY layer, MAC layer and LLC/LLC-adaptation layer for administrative and control functions.
- 5) Device management protocol (MGMT-Protocol). The technology in its present version specifies MGMT-Protocol that is designed to perform management within a PRIME network. The scope of technology, as defined here, leaves scope for future specification of MGMT-Protocol (or derivative adaptation to use an existing standard MGMT-Protocol) designed to perform PRIME device management from outside a PRIME network.
- 6) Data aggregation protocol (e.g webservices with relevant xml schema), reference architectures (e.g. DLMS) and data-schema (e.g. DLMS country specific companion specifications) for specific use in meter-reading applications that define aggregation services offered by a PRIME based data-concentrator.

with the exclusion of the following items:

- 1) any particular implementation of the specification such as Integrated Circuit Design (ICD) design, software code, reference design, schematics, circuitry; and
- 2) application extensions and internal device implementation algorithms that do not amount to any change to the specification but build on concepts/interfaces laid down in the specification

**"Specification"** means a technical and functional complete definition, and a complementary compliance test definition, of telecommunications architecture, protocols, messages and associated parameters, but with the specific exclusion of (i) any particular implementation of the specification such as IC design, SW code, reference design, schematics, circuitry, etc.



and (ii) application extensions that do not amount to any change to the Specification but build on concepts/interfaces laid down in Specification.

"**Submitter**" shall mean the person defined in Section 2 of the present IPR Policy.

"**Technical Working Group**" shall mean a working group as defined in Section 15 of the Articles of Association responsible for evaluating specifications.

"**Test Compensation**" shall have the meaning in Section 8 of the present IPR Policy.

"**Test Provider**" means (a) Member(s) appointed by the Board of Directors to carry out the tests provided in Section 8 of the present IPR Policy to evaluate the compliance of other Members' products with the Adopted Specifications.

"**Work**" means all intellectual creations including, without being limited to, literary and artistic works, including works of art, computer programs and databases, artistic and industrial performances of performers, phonogram, film and database producers and broadcasting organisations, designs and models, inventions, know-how, trade secrets, trademarks, statutory and commercial denominations, domain names and any other intellectual creation, and including, without being limited thereto, all underlying information, data and intellectual creations, including, without being limited thereto, preparations, calculations, codes, specifications, formulae, composites of materials, research procedures, reports, preparatory design materials, prototypes, processes, drafts, pieces of work, studies, research results, experiments, trials, inventions, discoveries, data, know-how and software, on whatever medium.