

Articles of Association

of

Open Telematics Alliance

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Version 1.0, 05.05.2009

0 Preamble

WHEREAS, the Association under the name “Open Telematics Alliance” established under this Articles (“*OPTA*”) is an international association for the definition, development, promotion, and maintenance of the standardized interfaces for telematics applications, which are summarized under the synonym “open telematics interface (opti)”, for the travel and transport industry (“*Specifications*”). *OPTA* creates a platform and community for all future enhancements and maintenance to ensure interoperability by means of an open industry standard of the sets of standardized interfaces for telematics applications called open telematics interfaces (opti).

WHEREAS, *OPTA* is a non-profit association, founded in 2008 by the ICT Innovation and Evaluation Center of DB Systel GmbH (Germany) along with the market leaders FELA Management AG (Switzerland) and Saphymo S.A. (France) for telematics systems in the rail cargo industry.

WHEREAS, *OPTA* and the Members wish to set forth herein certain of the respective rights and responsibilities of *OPTA* and the Members.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1 Purpose and Activities of Association

1.1 Purpose

The purpose of OPTA is to define, develop, promote, and maintain standardized interfaces for telematics applications, which are summarized under the synonym “open telematics interface (opti)”, for the travel and transport industry.

1.2 No Endorsements of Services or Products – No Testing

OPTA shall not endorse the use of any service or product. Notwithstanding the foregoing prohibition, OPTA may identify in its recommended Specifications or other materials applications that users may wish to consider using if they choose to use Specifications recommended by OPTA. OPTA shall not test any service or product to determine if it conforms to OPTA's recommended Specifications, or otherwise evaluate the usefulness of any service or product that uses or seeks to use OPTA's recommended Specifications.

1.3 Specifications

1.3.1 Development

The Board of Directors shall ensure that proper procedures are followed in developing the Specifications and that the Members have the opportunity to provide their comments. After all comments have been resolved to the satisfaction of the Board of Directors, the Board of Directors shall approve a final form of the recommended Specifications in accordance with Section 1.3.2.

1.3.2 Adoption

If the Board of Directors determines that Specifications are necessary or desirable for the orderly, consistent functioning of OPTA services, the Board of Directors may, adopt Specifications applicable generally to OPTA services or applicable to specific services. Any such Specifications, applying uniformly to all affected Members and Affiliates, shall take effect on not less than thirty (30) days prior notice to the affected parties, and have prospective effect only.

1.3.3 Dissemination

The Board of Directors shall take such steps as are appropriate to disseminate to the public the recommended Specifications that it develops. The Board of Directors, consistent with the objective of making recommended Specifications available as widely as possible, may protect the intellectual property rights of such Specifications.

1.3.4 Use of Specifications by Members

OPTA shall not require Members or their Affiliates to use OPTA's recommended Specifications. Members shall decide individually whether to use the Specifications recommended by OPTA.

2 Membership

2.1 Eligibility to Membership

The membership in OPTA (“Membership”) is in principle open to any individual or entity. However, OPTA – and the Board of Directors, respectively, within the process of decisions on Membership Confirmations (Section 2.4) – shall seek to have only companies and organisations that are travel and transport suppliers, incorporated industry associations that provide products and services to the travel and transport industry, research institution as well as universities with a research focus on the travel and transport industry and inter-trade organizations as Members. There shall be no limit on Affiliates of Members becoming a Member itself.

2.2 Membership Classes and Allied Partners

2.2.1 Ordinary and Preferred Members

All Members are ordinary Members (*“Ordinary Members”*) unless and as long as the status of a preferred Member (*“Preferred Member”*) is granted to them in accordance with Section 2.2.3 or 2.2.4.

2.2.2 Allied Partners

From time to time, in order to facilitate assistance from or relationship with organizations that will facilitate the work and goals of OPTA, individuals or entities that are not Members may be invited to participate in OPTA sanctioned committees or groups on terms that may vary from membership rules as allied members (*“Allied Partners”*) by conclusion of alliance agreements. Allied Partner will be allowed to participate in OPTA activities at the discretion of the Board of Directors. Allied Partners have limited rights within OPTA as specified in the respective alliance agreement.

2.2.3 Preferred Member by Statutes

DB Systel GmbH, Fela Management AG, and Saphymo S.A. are granted the status of Preferred Members by this Articles.

2.2.4 Preferred Member by Grant of Directors

The status of a Preferred Member can be granted by the Board of Directors. Such grant shall become effective upon receipt of the respective declaration of OPTA. The status of a Preferred Member granted under this Section can be revoked for cause at any time by the Board of Directors, in particular upon a relevant adjustment of the Preferred Member’s business activity with regard to the defined qualifications for a Membership (Section 2.1). At the decision of the Board of Directors on the revocation, the Directors delegated by the concerned Members shall not participate. Such revocation shall become effective upon receipt of the respective declaration of OPTA. Any Director delegated by a Preferred Member shall resign from the Board of Directors upon effectiveness of such revocation.

2.3 Membership Rights and Duties

2.3.1 Members' Rights

Each Member shall enjoy the membership rights and privileges set forth in this Article, as amended from time to time in accordance with Section 5.1 below.

2.3.2 Designated Representatives

Each Member shall designate one of his staff members (directors, officers, or employees) to represent him vis-à-vis OPTA and the other Members ("*Designated Representative*"), e.g. in non-Board of Directors activities of OPTA, including representing the Member at working group and Interoperability Committee meetings. Each Member may also designate one further person to serve as an alternate Designated Representative. Such Designated Representative does not need to participate or represent the Member in any of OPTA's committees, user boards or – if for a Preferred Member – the Board of Directors.

2.3.3 Delegation of Directors

Each Preferred Member shall be entitled to delegate one (1) Director and to remove the Directors delegated by him.

2.3.4 No Membership Fees or other Contributions

OPTA does not collect any admission fee, annual subscription fee or any other membership fee. Any obligations to pay costs (e.g. under Section 2.3.5) remain unaffected hereof. § 716 BGB (German Civil Code) shall only apply to Preferred Members.

2.3.5 General Assumption of Costs

All costs arising from or in connection with this Article and OPTA's performance of its rights, duties and tasks under this Article, which are not explicitly allocated in this Article (e.g. Section 3.7 or Section 4.2.10) shall be borne by all Preferred Members pro rata. The Board of Directors can allocate such costs otherwise to the extent the respective Member, such costs are allocated to, has agreed.

2.3.6 No further contribution or liability

Except as stated in Section 0, no Member shall be liable for any liabilities, costs or other duties and obligations of OPTA.

2.3.7 Prohibition of Endorsement

No Member shall state or imply in any advertisement or other public communication that OPTA endorses, recommends or supports the use of its product, or state or imply that OPTA has determined that its product or service meets OPTA recommended specifications.

2.4 Accession as Member

To accede to OPTA as new Member, this Article shall be executed by the new Member by means of a membership application and a confirmation by OPTA (*"Membership Confirmation"*). The Membership Confirmation can be executed electronically. Upon execution of the Membership Confirmation, the applicant shall become Member of OPTA. The new Member shall be bound by and shall be entitled to the benefits as set forth in this Article.

2.5 Transferability of Membership or Membership Rights

Except as otherwise expressly provided by law, neither individual rights of any Member nor the Membership itself shall not be assignable or transferable in any manner, and any purported assignment or transfer of such rights shall be null and void and shall have no force or effect.

2.6 Term and Termination of Membership

2.6.1 Term

Any Membership shall be for an indefinite period of time.

2.6.2 Ordinary Termination by Member

A Member may terminate its Membership upon written notice to OPTA, represented by the Chairman. Such termination shall become effective upon the date that OPTA receives the notice unless the Member specifies a later date in the notice.

2.6.3 Termination for cause by OPTA

Any Membership may be involuntarily terminated for cause by OPTA. Such termination requires a resolution of the Board of Directors. As such cause shall be considered, in particular, any action of a Member materially harmful to the collective interests of OPTA and its Members in developing, maintaining and promoting electronic commerce communication protocols for the travel industry. Any Member whose Membership is terminated for cause shall be entitled to request, that the Board of Directors reviews such termination, provided that the expelled Member must make such request within three months of its expulsion. In such a review proceeding, the expelled Member shall be entitled to present to the Board of Directors, orally or in writing, its reasons for seeking reinstatement of its Membership.

2.6.4 Effect of Termination

Any termination of Membership shall not relieve the respective Member or any of its Affiliates, or OPTA or any of its other Members or their Affiliates, of any obligations incurred under or on the grounds of this Article prior to the effectiveness of the termination.

2.7 General Consent on Accessions and Resignations

Besides the resolution of the Board of Directors, if applicable, no further consent of any other Member shall be required for any accession of new Members to OPTA or for any resignation of Members from OPTA.

2.8 Members' Meetings

2.8.1 Annual and Special Meetings

OPTA shall hold meetings of its Members (*"Members' Meetings"*) annually, commencing with the calendar year. Date and time of Members' Meetings shall be designated from time to time by the Board of Directors. The purpose of Members' Meetings shall be stated in the notice of the meeting. Special Members' Meetings, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Board of Directors or the Chairperson. All Members' Meetings shall be held at such place as may be fixed from time to time by the Board of Directors or the Chairperson.

2.8.2 Notice of Meetings

Notice of any Member's Meeting, stating the place, date and hour of the meeting, and (for special meetings) the purpose for which the meeting is called, shall be given to each member not less than 30 nor more than 60 days before the date of the meeting (except to the extent that such notice is waived or is not required as provided in these Articles).

2.8.3 Duties and Authorities of Members' Meeting

The Members' Meeting shall not have the power of decision for any matter. Business transacted at any special meeting of members shall be limited to the purposes stated in the notice, except to the extent that such notice is waived or is not required as provided by these Articles.

2.9 Use of Member Data

2.9.1 Members' List

OPTA may produce and keep a regularly updated list of all Members (*"Members' List"*). Such Members' List may include all relevant data on the Members, e.g. name, status and address of Members, name and contact details of the Designated Representatives, name and contact details of Directors. The Members' List may be distributed to all members or made available to them in other ways, e.g. on OPTA's homepage. Each Member agrees with any collection, storage, processing and usage of data in this connection.

2.9.2 Usage of Members' Brands

OPTA may publish the Members' names and/or their brands/logos in context to their membership in in- and/or external media of OPTA, in particular on OPTA's homepage. All Members will provide OPTA with necessary masters.

3 Directors

3.1 Powers and Responsibilities

3.1.1 General Management and Administration

The business and affairs of OPTA shall be managed by or under the direction of OPTA's board of directors ("*Board of Directors*"), which may exercise all such powers of OPTA and do all such lawful acts and things, subject to any limitation set forth in these Articles or mandatory law. The Board of Directors shall, among other things, be responsible (i.e. resolving and executing, if applicable) for

- (a) granting and revoking Preferred Membership status (Section 2.2.4),
- (b) Accession of Members/Membership Confirmations (Section 2.4),
- (c) termination of Membership for cause (Section 2.6.3),
- (d) creation of special committees of directors (Section 3.3.8)
- (e) appointment of chairpersons of working groups (Section 4.1.5)
- (f) Amendments to this Articles (Section 5.1.1).

3.1.2 Duties on OPTA's Purpose and Business

The Board of Directors shall provide the leadership to encourage the development of recommended Specifications and, in doing so, shall

- (a) establish the procedures appropriate for the efficient operation of the industry working groups and the project teams (Section 4.1) as well as the Interoperability Committee (Section 4.2);
- (b) establish the responsibilities of the chairs of the industry working groups and the Interoperability Committee;
- (c) resolve any disputes between working groups;
- (d) organize OPTA events, such as Advisory Forum meetings;
- (e) adopt and disseminate the Specifications (Sections 1.3.2 and 1.3.3)
- (f) ensure the integrity and the long-term viability of the OPTA recommended specifications and the process to develop those specifications; and
- (g) do such other things as are reasonable and appropriate to advance the purposes of OPTA.

3.2 Delegation and Removal

Directors are delegated and removed by the respective Preferred Member (Section 2.3.3). This delegation right shall be exercised by written notice to OPTA, represented by the Board of Directors. Each director nominated shall hold office until such director's successor is elected or appointed and qualified or until the director's earlier resignation or removal. There shall be no limit on the number of terms that a director may serve. Any Director may also be removed for cause, if all other Directors vote for such removal.

3.3 Meetings of the Board of Directors

3.3.1 Regular and Special Meetings

Regular meetings of the Board of Directors ("*Board Meetings*") may be held upon at least ten (10) days' written notice to all Directors at such times as shall from time to time be determined by the Board of Directors. Special Board Meetings may be called by the Chairperson upon the written request of at least two (2) Directors on not less than three (3) business days notice to each Director.

3.3.2 Organisation and Holding

All Preferred Members shall be sequentially in charge for the organization and holding of Board Meetings. The sequential order among the Preferred Members shall be alphabetical unless determined otherwise – in general or in particular – by the Board of Directors. The place of the Board Meeting shall be determined by the respective Member in charge.

3.3.3 Notice and Waiver

Any notice may be provided by letter, facsimile, or electronic mail. The notice for a special meeting need not describe the purpose of such meeting. Each Director may waive any notice required by statutory law or these Articles before or after the date and time stated in the notice. Except as set forth below, the waiver must be in writing, signed by the Director entitled to the notice, and delivered to OPTA for inclusion in the minute book. Notwithstanding the foregoing, a Director's attendance at or participation in a Board Meeting waives any required notice to the Director of the meeting unless the Director at the beginning of the meeting objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

3.3.4 Participation by Means of Communication

Directors may participate in Board Meetings by any communication by means of which all participating directors can simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

3.3.5 Observance

The Board of Directors may grant industry individuals or entities observer status at meetings of the Board of Directors. Such observers shall not have the right to vote at the meetings.

3.3.6 Resolutions

For all resolutions of the Board of Directors, a quorum consists of the majority of the total number of Directors nominated. Resolutions are taken with the simple majority of all Directors participating at the vote, except as may be otherwise specifically provided by mandatory law or these Articles.

3.3.7 Action without Meeting

Any action required or permitted to be taken at any Board Meeting may be taken without a meeting if the action is taken by all Directors. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and delivered to OPTA for inclusion in the minute book.

3.3.8 Committees of Directors

The Board of Directors may by resolution create one or more committees and appoint members of the Board of Directors to serve on the committees at its own discretion. To the extent specified in a resolution adopted by the Board of Directors with the consent of all Directors, each committee may exercise in part or in full the authority of the Board of Directors, except for amendments to this Articles (Section 5.1.1) and for delegation of authorities under this section. To the extent decisive authorities are transferred to committees, all statutory provisions and provisions of these Articles relating to meetings, action without meetings, notice and waiver thereof, quorum and voting requirements of the Board of Directors apply, as well, to such committees and their members.

3.4 Chairpersons

3.4.1 Election

The Board of Directors shall have a Chairperson and two Vice Chairpersons (1st and 2nd Vice Chairperson), to be elected annually among the Directors. The first Chairpersons shall be elected for a two year term. The Chairpersons shall exercise such powers and perform such duties as shall be set forth below and such other powers and duties as from time to time may be specified by the Board of Directors.

3.4.2 Vice Chairperson

The Vice Chairpersons – in elected order – shall, in the absence of the Chairperson or in the event of the Chairperson's inability or refusal to act, perform the duties and exercise the powers of the Chairperson.

3.4.3 Duties

The Chairperson shall have overall responsibility and authority for management of the operations of OPTA (subject to the authority of the Board of Directors) and preside meetings of the Board of Directors and Members' Meetings, and shall ensure that all orders and resolutions of the Board of Directors and members are carried into effect. The Chairperson shall be responsible for such administrative duties as the board assigns to him or her. The Chairperson shall have responsibility for preparation of minutes of meetings of the Board of Directors and of the Members and for authenticating records of OPTA. The Chairperson shall give, or cause to be given, notice of all Members' Meetings and Board Meetings.

3.4.4 Power of Agency

OPTA shall be legally represented only by the Chairperson and the Vice-Chairpersons vis-à-vis its Members and third parties. Their power of representation for any declaration or other action in the name and on behalf of OPTA shall require the joint action of at least two of the Chairpersons. § 714 BGB (German Civil Code) shall not apply.

3.5 Specifications Manager

The Board of Directors shall designate a specification Manager who shall be responsible for facilitating the development of a sound technical specification. The specifications Manager can be an employee of a firm that provides such services or such a firm.

3.6 Compensation

Directors shall serve without salary or compensation for ordinary and reasonable expenses for their services. The Board of Directors shall have the authority, to be exercised in its sole discretion, to contract for and to pay to any Director rendering unusual or exceptional services to OPTA special compensation appropriate to the value of those services. It shall also have the power to compensate any Director that serves OPTA in any other capacity. The Board of Directors may reimburse Directors for the extraordinary expenses that they incur while performing their duties as Directors.

3.7 Assumption of Costs

All costs arising from the organization and holding of meetings of the Board of Directors shall be borne by the Member that is in charge for the organization of the respective meeting (Section 3.3.2), whereas each Director shall bear his own costs and expenses (e.g. travel expenses). All other costs arising from or in connection with the performance of the Directors' tasks and duties shall be borne by all Preferred Members pro rata.

3.8 Shares in Loss and Profits

Profits of OPTA – if any – shall be distributed only after termination of OPTA in accordance with Section 5.2. § 722 BGB (German Civil Code) shall not apply.

4 Other internal bodies of the Association

4.1 Industry working groups (user boards) and project teams

4.1.1 Responsibility

Working groups and project teams shall develop proposed data elements applicable to the industry segments for which they are responsible.

4.1.2 Designation

There shall be a Transport Working Group, an Architecture Working Group and such additional working groups as the Board of Directors deems appropriate to establish. To the extent practicable, each such additional working group shall be composed of representatives from the same industry segment.

4.1.3 Participation

Any Member may send one or more persons (not necessarily directors or employees) to participate in any working group activity. Participation in a working group shall be limited to representatives of members from that industry segment or those industry segments for which the working group is responsible. A Member shall only be represented on one working group. The Board of Directors shall resolve questions about which working group a Member shall send participants to.

4.1.4 Agenda

Working groups and project teams shall follow a formal agenda and facilitated meeting structure and process, to assure procedural fairness and efficient conduct of meetings. Each working group and project team shall establish and document its own meeting quorum requirements.

4.1.5 Chair and Vice-Chair

Each working group shall have a chairperson and a Vice-Chairperson. Each Preferred Member and each Ordinary Member, that is entitled to send representatives to a working group in accordance with Section 4.1.3, may nominate persons to act as Chairperson and/or Vice-Chairperson for such working group. The chairpersons for each working group are appointed by the Board of Directors from among the nominated persons.

4.1.6 Proposals

Project teams shall submit proposals as business needs arise, and submit the proposal to the appropriate working group. When a simple majority of the attending participants of such working group agrees to a proposal, the working group shall submit that proposal and an explanation thereof to the Interoperability Committee. Each working group shall review the proposed specification(s) that the Interoperability Committee prepares, and shall provide its comments about the proposed specification(s) to the Interoperability Committee.

4.2 Interoperability Committee

4.2.1 Responsibility

The Interoperability Committee shall establish the priorities, and coordinate and integrate the recommendations of, working groups into a proposed Association recommended specification and subsequent revisions. It shall also develop common data elements that can be applicable to all travel industry transactions. The Interoperability Committee shall review and approve or disapprove draft recommended specifications and revisions developed according to the procedures described in these bylaws.

4.2.2 Composition

The Interoperability Committee shall consist of seven (7) members. Each Member may nominate one person, which shall belong to its workforce (directors, officers, or employees) to become member of the Interoperability Committee. The members of the Interoperability Committee are appointed by the Board of Directors from among the nominated persons. The Board of Directors, at its sole discretion, may furthermore create one additional seat on each Interoperability Committee. The term for such seat may not exceed 12 months. Creation of and appointment to fill such seat shall occur for purposes of specifications integration.

4.2.3 Chair and Vice-Chairs

The Interoperability Committee shall annually elect, from among its members, a chairperson and two vice-chairpersons.

4.2.4 Working Group Representatives

Each working group shall appoint among the members of the committee its representative to represent the working group on the Interoperability Committee.

4.2.5 Meetings

All Members represented in the Interoperability Committee shall be sequentially in charge for the organization and holding of Board Meetings. The sequential order among the Preferred Members shall be alphabetical unless determined otherwise – in general or in particular – by the Board of Directors. The place of the meetings shall be determined by the respective Member in charge.

4.2.6 Resolutions

Unless otherwise indicated in these Articles, votes at any meeting of the Interoperability Committee shall require a simple majority of a quorum present. Unless otherwise indicated in these Articles, a quorum shall consist of a majority of the members serving on the Interoperability Committee.

4.2.7 Procedures

When a majority of the Interoperability Committee agrees to a proposed recommended Specification, it shall forward that proposal to all working groups for comment. The Committee can revise the proposal based upon the comments that it receives. The Interoperability Committee shall present the proposed recommended Specification to the Board of Directors for comment or approval.

4.2.8 Advisory Forum

OPTA shall hold an advisory forum (*"Advisory Forum"*) at least once per year. Members and non-members shall be entitled to participate in the Advisory Forum. Any participant at the Advisory Forum can recommend the creation or modification of a Specification or changing the Specification development process. Written submissions, electronic submissions, or meetings, or any combination of the foregoing, may be used to enable interested persons to submit, describe, and advocate the adoption of their proposals. The Interoperability Committee shall review and adopt or decline to adopt the recommendations that are made at the Advisory Forum. The Interoperability Committee may appoint a review panel or panels to assist in evaluating such submissions, or it may forward such submission to the appropriate working group for evaluation and processing.

4.2.9 Annual Report

The Board of Directors may provide to the Members an annual report of OPTA's Activities during the previous calendar year in printed form or during a verbal presentation at the annual Advisory Forum.

4.2.10 Assumption of Committee's Costs

All costs arising from the organization and holding of meetings of the Interoperability Committee shall be borne by the Member that is in charge for the organization of the respective meeting (Section 4.2.5), whereas each participant shall bear his own costs and expenses (e.g. travel expenses). All other costs arising from or in connection with the performance of the Committee's tasks and duties shall be borne by all Directors pro rata.

5 Amendments and Termination

5.1 Amendments

5.1.1 Amendments by the Board of Directors

This Articles may be amended, with prospective effect only, by unanimous vote of all Directors. Any amendment shall become effective one (1) month after the amended Articles have been distributed to all Members.

5.1.2 Amendments by the Members

Except as provided in Section 5.1.1, this Articles may be amended by consent of all Members. Following any amendment of this Articles, the Board of Directors may approve issuance of a restated text of this Articles, incorporating all applicable amendments not previously incorporated, and upon its issuance any such restated text shall supersede prior versions of this Articles and shall constitute the Articles.

5.2 Termination

5.2.1 Resolution of the Board of Directors

OPTA may be terminated by resolution of the Board of Directors only. Such resolution requires the consent of all Directors. §§ 723, 725, 727 and 788 BGB (German Civil Code) shall not apply.

5.2.2 Distribution of Assets (winding-up)

After a termination under Section 5.2.1 has become effective, OPTA shall be liquidated in accordance with §§ 729 to 735 BGB (German Civil Code). For any subsequent contributions in case of losses (§ 735 BGB) only the Preferred Members shall be obliged to make up the deficit. Surplus – if any – shall be distributed pro rata among all current Preferred Members unless the Board of Directors unanimously decides otherwise. Any intellectual property rights of OPTA and/or Members are subject to customized contractual provisions between the concerned parties and shall not be affected by the provisions of this Articles.

6 Miscellaneous

6.1 Notices

6.1.1 Traditional Means

Except as explicitly provided otherwise in this Articles, all notices, demands, requests or other communications which may be or are required to be given or made by any party to any other party pursuant to this Articles shall be in writing (whether or not otherwise expressly required to be in writing) and shall be mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile, or hand delivered, or sent by overnight or express delivery service, addressed as follows:

- (i) If to OPTA: Open Telematics Alliance (OPTA)
 c/o DB Systel GmbH
 Kleyerstraße 27
 D-60326 Frankfurt am Main
 electronic mail: michael.baranek@deutschebahn.com

(ii) If to a Member, to the address of such Member as it appears in the Members' List maintained by OPTA pursuant to Section 2.9.1 or such other address as the addressee may indicate by written notice in accordance with this Section; and each notice, demand, request or communication which shall be given or made in the manner described above shall be deemed sufficiently given or made for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, the affidavit of messenger or (with respect to a telecopy) the answer-back being deemed conclusive but not exclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

6.1.2 Electronic Notices

Insofar as applicable law recognizes and gives effect to electronic mail as a means for giving and receiving formal notices, demands, requests and other communications between contract parties, such communications may be made by electronic mail and may, where applicable, direct the recipient's attention to material available to the recipient and posted at an Internet web site maintained by OPTA. Any communication made in such manner shall be deemed effective when accessed by the recipient, with a printed electronic mail receipt constituting conclusive (but not exclusive) evidence of its receipt and effectiveness.

6.2 Waiver

No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Articles or under any other instrument or document given in connection with or pursuant to this Articles shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by the party against whom enforcement or such waiver is sought and then only to the extent expressly specified.

6.3 Benefit of Agreement

This Article shall be binding upon and shall inure to the benefit of OPTA, the Members and their respective successors. No other person or entity is or shall be entitled to bring any action to enforce any provision of this Article against any of the parties hereto, and the agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto and their respective successors.

6.4 Entire Agreement

This Article, including the Exhibits hereto and other instruments and documents referred to herein or delivered pursuant hereto, contains the entire agreement among the parties with the respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments or understandings with respect to such matters.

6.5 Severability

If any part of any provision of this Article or any other agreement, document or writing given pursuant to or in connection with this Article shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provision or the remaining provisions of said agreement, document or writing.

6.6 Governing Law

This Article, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with German law.

6.7 Dispute Resolution and Arbitration Clause

In the event of differences of opinion arising either from cooperation between Members or Members and OPTA, the Member and OPTA shall consent to a mutually acceptable arrangement being reached at level of the Board of Directors in the first instance. Should this not be possible within a reasonable time, any of the respective parties may initiate arbitration proceedings as provided for in the International Arbitration Code of the Zurich Chamber of Commerce.

7 Definitions

For purposes of this Articles, the following terms shall have the following meanings:

7.1 “Affiliate”

The term “Affiliate” shall mean, with respect to any entity, any other entity which, directly or indirectly, is in control of, is controlled by, or is under common control with, such entity. Any dispute concerning the existence of an Affiliate relationship between a Member Company and any other entity shall be determined by the directors of OPTA (excepting any director employed by or otherwise associated with any Member Company (or any Affiliate of a Member Company) affected by such determination), and such determination by the directors of OPTA shall be conclusive and binding on all parties.

7.2 “Control”

The term “Control” (including, with correlative meanings, “controlled by” and “under common control with”) shall mean, with respect to any entity, possession, directly or indirectly, of power to direct or cause the direction of management or policies of such entity, whether through ownership of more than fifty percent (50%) of the voting securities, voting partnership interests, or other voting ownership interests in such entity, by contract, or otherwise.