

Constitution
of
The Association
for
The Promotion of an Open Travel Data Standard
(OTDS e.V.)

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Section 1 - Name, Registered Office, Legal Structure, Fiscal Year, and Bodies

1. The name of the Association shall be the Association for the Promotion of an Open Travel Data Standard (OTDS e.V.) – hereinafter referred to as “OTDS.”
2. The OTDS is entered in the register of associations at the Administrative Court of Berlin-Charlottenburg.
3. The OTDS shall be an association within the meaning of Section 21 of the German Civil Code.
4. The registered office of the OTDS shall be located in Berlin.
5. The fiscal year shall be the calendar year.
6. The bodies of the OTDS shall be the General Meeting and the Executive Committee.

Section 2 - Object and Functions

1. The object of the OTDS is to create and specify an open travel data format on the basis of open and non-discriminatory, standardized technologies. The data format will be freely accessible to everyone, in particular, to businesses from the tourism sector, in accordance with the provisions of Section 16.
2. In particular, the objects shall be:
 - a. to define and further develop a data format between operator and distribution systems to display product data relevant to distribution;
 - b. to define a data format containing all the necessary information for correct price calculation, checking of availability, booking inquiry and reservation, and product display;
 - c. to ensure independence from proprietary data standards or formats for operator and distribution systems by providing an open, non-proprietary standard;
 - d. to define a data format that is independent of operator and distribution systems;
 - e. to prepare an OTDS standard through recognized European or international organizations for standardization; and
 - f. to create acceptance of the data format and spread its use.

Section 3 - Definitions

Unless expressly given another meaning by the context, the following terms and expressions shall have the meanings assigned to them below:

- “*Working Group*” refers to a working group established in accordance with the provisions of Section 13 of this Constitution.
- “*Membership Application*” refers to the application to be properly signed by a third party in the form described in Annex B.
- “*Contributions*” refers to any proposal introduced by a member for additions and changes to an OTDS data format or a certain part thereof, made on any medium or orally conveyed,

whereby the oral remarks are subsequently recorded on any medium and sent to the contributing member and without the member having raised objections within thirty (30) days of receiving the medium.

- *“Existing Intellectual Property”* refers to intellectual property (without *“New Intellectual Property”*) developed on or prior to the effective date by a member and/or his group companies independent of his activities as a member within the meaning of the Constitution which will become his property or is otherwise already in his possession.
- *“FRAND Conditions”* are fair, reasonable, and non-discriminatory conditions.
- *“Intellectual Property”* and *“Intellectual Property Rights”* refers to rights to intellectual property, including patents, copyrights, trademarks, property rights relating to trade secrets, inventions, know-how, target and source codes, algorithms, semiconductor and topography property rights, utility models, and all improved and altered versions thereof, as well as their entries, registrations, retentions, extensions, extrapolations, spin-offs, and redistributions currently or in future in effect (including all rights to the above).
- *“Initiators”* are Bewotec GmbH, TravelTainment GmbH, and Traffics Softwaresysteme für den Tourismus GmbH;
- *“General Meeting”* refers to the meeting of all the members of the OTDS specified under Section 10 of the Constitution.
- *“New Intellectual Property”* is new intellectual property (without *“Existing Intellectual Property”*) developed, invented, discovered, produced, or created in relation to the OTDS data format over the course of the activities as a member and/or members within the meaning of the Constitution.
- *“OTDS Data Format”* refers to the specifications to be developed as technical solutions for OTDS data formats and for the purpose of defining an open OTDS standard (also parts thereof) by the members within the context of their activities in the OTDS. The OTDS data format intended to be developed by the members is described in Annex A.
- *“Majority Decision”* refers to a decision supported by more than fifty (50) percent of the members participating in the vote. For the purposes of the aforementioned provision, an abstention shall not be deemed a vote.
- *“Member(s)”* refers to a member and/or members of the OTDS who has(have) joined the OTDS in accordance with the guidelines of this Constitution and has (have) neither withdrawn nor otherwise lost his/their membership since then.
- *“Qualified Majority Decision”* refers to a decision supported by more than seventy-five (75) percent of the members participating in the vote. For the purposes of the aforementioned provision, an abstention shall not be deemed a vote.
- *“Effective Date”* is the date after adoption of the OTDS Constitution by the inaugural meeting.

- *“Adopted OTDS Data Format”* refers to every OTDS data format (and/or parts of an OTDS data format) adopted by the Executive Committee.
- *“Confidential Information”* is information one member (*“Disclosing Party”*) conveys to another member (*“Receiving Party”*) in any form (incl. written, oral, or in the form of samples, models, computer programs, etc.) within the scope of this Constitution, whereby information passed on in writing by the Disclosing Party is to be designated as confidential when it is passed on; information passed on orally by the Disclosing Party is to be designated as confidential when it is passed on and is furthermore to be summarized in writing and designated as confidential and submitted to the Receiving Party within thirty (30) days of the oral notification; or information otherwise passed on is to be designated in writing as confidential when it is passed on. The expression “confidential information” shall, however, not refer to any information passed on by the Disclosing Party to the Receiving Party a) which is or has been publicly disclosed on or after the effective date in a manner other than through an action or inaction by the Receiving Party; b) which can be proven to have been developed independently by the Receiving Party without the use of the Confidential Information; or c) which, without soliciting in bad faith, the Receiving Party legally acquires from third parties, without there being restrictions regarding the passing on or use thereof.
- *“Administration”* refers to a person, business, or body entrusted by the Executive Committee with the conduct of administrative aspects of the OTDS activities in accordance with Section 14 of the Constitution;
- *“Executive Committee”* refers to the Executive Committee functioning as the highest administrative body of the OTDS as specified under Section 11.
- *“Executive Committee Member”* indicates an (Association) member belonging to the Executive Committee.
- *“Major Patent(s)”* are patents and patent applications worldwide containing one or several patent claims which are “Necessary Claims.”
- *“Aims”* refers to the OTDS aims described in Section 2 of this Constitution.

Section 4 - Membership

1. The founding members are the following companies:
 - a. ABC Holiday Plus GmbH, Munich
 - b. activate communication systems GmbH, Leipzig
 - c. Amadeus Germany GmbH, Bad Homburg
 - d. Ameropa-Reisen GmbH, Bad Homburg
 - e. Bewotec GmbH, Rösrath
 - f. eMind AG, Aschaffenburg
 - g. FTI Touristik GmbH, Frankfurt
 - h. Galileo Deutschland GmbH, Frankfurt
 - i. GIATA GmbH, Berlin
 - j. GTI Travel GmbH, Berlin
 - k. Hitchhiker GmbH, Frankfurt
 - l. InterHome GmbH, Düren
 - m. JT Touristik GmbH, Berlin
 - n. Partners Solution GmbH, Bremen
 - o. Ropardo AG, Leverkusen
 - p. Sabre Deutschland marketing GmbH, Hamburg
 - q. Schauinsland Reisen GmbH, Duisburg
 - r. Schmetterling Reisen GmbH & Co KG, Geschwand-Obertrubach
 - s. Traffics Software Systeme GmbH, Berlin
 - t. Travel-IT GmbH & Co. KG, Mülheim an der Ruhr
 - u. TravelTainment GmbH, Würselen
 - v. Verband Internet Reise Vertrieb e.V., Oberhaching
 - w. znt Travel GmbH, Grünwald
2. Participation in the OTDS shall be open to all external legal entities that agree with the Association Aims listed under Section 2, feel committed to the Aims, and can reasonably prove they are willing and able to make an active and sufficient contribution to the Aims.
3. The number of Members shall not be limited.
4. Subject to compliance with the aforementioned conditions, membership in the OTDS shall be open and non-discriminatory.

Section 5 – Application for Membership

1. An external legal entity wishing to become a Member of the OTDS (“Applicant”) must meet all the requirements cited as follows:
 - a. The Applicant shall meet the requirements cited in Section 4 Para. 2 in conjunction with Section 2 of this Constitution,
 - b. the Applicant shall submit the signed Membership Application form contained in Annex B in writing to the Administrator,
 - c. the Executive Committee shall consent to the Applicant’s membership, and

- d. the OTDS has received the Applicant's Membership Dues applicable at that time.
2. The Applicant shall be deemed a member if all the requirements cited in Section 5 Para. 1 have been met. The Membership Application shall be signed by a person appointed by the Executive Committee on behalf of the OTDS. The original of the issued membership agreement shall be kept by the Administrator and/or the Chairman of the Executive Committee for the Members. Each Member shall, on request to the Administrator and/or Chairman of the Executive Committee, receive a copy of the membership agreement.
3. The OTDS shall document all third-party membership applications and the reasons why membership was granted or refused. Only applications of those Applicants who do not meet the requirements cited in Section 4 Para. 2 in conjunction with Section 2 of this Constitution may be refused. The reasons for the decision to refuse membership are to be stated in writing to the affected Applicant.
4. Candidates for OTDS membership whose applications are not successful may ask the Executive Committee for renewed consideration of their application within a reasonable period.

Section 6 – Member Obligations

1. In keeping with the target criteria occasionally prescribed by the Executive Committee for participation, the Members shall be expected to actively participate in OTDS activities, in particular, to actively support the development and spread of the OTDS Data Format in accordance with OTDS Aims.
2. The Members themselves shall be responsible for organizing their own work in respect of exercising and meeting their relevant rights and obligations within the scope of the Constitution.
3. The Members shall accordingly appoint qualified and experienced staff for their respective share of the OTDS activities.
4. The Members shall always treat each other in accordance with good faith principles in meeting their obligations under this Constitution.

Section 7 – Right to Use Subcontractors

The Members shall be entitled to use subcontractors to meet the obligations incumbent on them as Members, but:

- a. the Executive Committee must have been duly informed in advance and in writing about the relevant subcontractor and have approved his participation on an individual basis;
- b. the relevant subcontractor must have expressly stated in writing prior to commencing the work assigned to him that he is obliged to observe secrecy to a comparable or higher degree than that described in Section 18, but that the Member who retains the subcontractor may pass on to the other Members the confidential information that the Member receives from the

subcontractor as deemed necessary (according to the Member's discretion) or the information relating to the Contributions of a Member within the scope of this Constitution;

- c. the Member who retains the relevant subcontractor has, in compliance with Sections 15-20, agreed in writing with that subcontractor that, as soon as rights to intellectual property occur or arise, either the Member will acquire a claim to the unlimited right to the intellectual property arising in connection with or as a result of the retention, created or developed by the relevant subcontractor for the Member, or acquired by the subcontractor on behalf of the Member or the Member will acquire a claim to the unlimited, exclusive right, free of charge, to exercise, alter, or sublease the rights to said intellectual property; and
- d. the Member – irrespective of the fact that he has retained the subcontractor – shall be and remain liable to the OTDS and all the remaining Members in respect to his obligations under this Constitution as well as to all the remaining Members for the actions and inactions of the subcontractor retained by him.

For purposes of clarification, it shall be noted that Member liability under Section 7 shall be subject to the limitation of liability in Section 24.

Section 8 – Withdrawal and Exclusion

1. Any Member may, at his own discretion, give written notice to the Executive Committee of his withdrawal from membership in the OTDS by the end of the calendar year. The withdrawal has to be declared at least three (3) months before the end of the calendar year.
2. If a Member seriously breaches his obligations as a Member under Section 6 of this Constitution or no longer meets the requirements for membership cited in Section 4 Para. 2 in conjunction with Section 2 of this Constitution and does not correct the breach or failure to meet the requirements within thirty (30) days of receiving written notification from the Executive Committee or if a Member becomes insolvent or bankrupt, the Executive Committee shall be entitled to exclude that Member from membership in the OTDS by a Qualified Majority Decision of the Executive Committee. The reasons for the decision are to be stated in writing to the affected Member.
3. After withdrawing or being excluded from membership in the OTDS pursuant to Section 8 Para. 1 or 2, the former Member's rights under the Constitution and his obligations arising as a Member prior to the withdrawal or exclusion shall expire, with the exception of the obligations arising from Sections 15 and 16, which remain in force beyond the withdrawal or exclusion. A refund of the Membership Due is declared not possible.
4. A Member who has withdrawn or was excluded from membership in the OTDS within the meaning of the Constitution shall have no claim to reimbursement of the costs and expenses which the Member had in meeting his obligations and exercising his rights under the Constitution prior to his withdrawal or exclusion.

Section 9 - Costs and Membership Dues

1. Unless otherwise prescribed under this Constitution or determined by the Executive Committee, every Member shall bear his own expenses for meeting his obligations and duties as a Member within the meaning of the Constitution.
2. The Members shall pay annual Membership Dues to be set by the Executive Committee by a Qualified Majority Decision. The amount of the Membership Dues shall be neither prohibitively high nor exclusionary. They shall be composed of the following joint expenses relating to the OTDS activities:
 - a. Administration fees and remuneration
 - b. Costs relating to meetings and conferences organized by the OTDS
 - c. Expenses for consultants, experts, and other third parties engaged for the purpose of achieving the Aims
 - d. Any other expenses to be included in the Member Dues according to a Qualified Majority Decision of the Executive Committee
3. Expenditures of the Executive Committee Members shall not be assumed by the OTDS.
4. If the Membership Dues are insufficient to cover the above expenses, the Executive Committee may decide by a qualified majority that the Members must provide additional funds, which are to be paid in accordance with the Executive Committee instructions.
5. The Membership Dues shall be reset annually for the duration of one (1) calendar year. If a new Member joins the OTDS, he shall pay depending on the date of entry the proportionate annual Membership Dues calculated for the remaining full months for the relevant year .
6. The Executive Committee may stipulate further details regarding the Membership Dues in a membership dues scale.

Section 10 – General Meeting

1. The General Meeting shall be responsible for electing the Executive Committee Members, appointing the Treasurer, altering the Constitution, dissolving the OTDS, and discharging the Executive Committee in respect to the statement of accounts for the previous fiscal year.
2. The General Meeting shall be held at least once per fiscal year and whenever at least 30 percent of the Members has requested that a meeting be convened. In such a case, the meeting shall be called with advance notice of eight weeks; the request by the Members to convene a General Meeting is to be directed in writing to the Executive Committee Chairman, citing the purpose and reasons for the meeting.
3. Notice to convene the General Meeting must be made in writing or electronically at least four weeks in advance and include the agenda.

4. The General Meeting shall be convened and led by the Chairman of the Executive Committee or, if he is prevented from attending, by his deputy. A quorum is present if at least 50 percent of all Members are present.
5. Each Member shall have one vote at the General Meeting. Proxy voting conducted by an authorized member shall be permitted provided the relevant authorization in text form has been submitted to the Chairman or the Administrator prior to voting.
6. The General Meeting shall take its decisions by a simple majority. In departure from the aforementioned, decisions of the General Meeting concerning alterations to the Constitution, dissolution of the OTDS, as well as alterations to this Section 10, Para. 6 and alterations concerning the Executive Committee (Section 11 Para. 1), Intellectual Property (Section 15), Licensing – Rights of Use (Section 16), or Trademarks (Section 17) shall require a Qualified Majority Decision by the General Meeting.
7. The elections and decisions of the General Meeting are to be documented in a written record, which is to be signed by the Chairman, or if he is prevented, by his deputy.

Section 11 - Executive Committee

1. The Executive Committee shall be the highest administrative body of the OTDS. It shall comprise seven (7) members, who are each elected by the General Meeting from among the Members for three (3) years. The General Meeting shall establish the election procedure on proposal by the Executive Committee.
2. In departure from Para. 1, during the initial three (3) years following establishment of the OTDS, the Executive Committee shall consist of the representatives of the three (3) Initiators appointed by the other Initiators and four further Members elected by the General Meeting. The Members shall be represented by their respective legal representatives or by persons appointed by them, who may be non-Members.
3. The Association Chairman and the two Deputy Chairmen shall be the Executive Committee within the meaning of Section 26 of the German Civil Code.
4. If, in application of Section 8 of this Constitution, an Executive Committee Member withdraws or is excluded from membership in the OTDS or voluntarily resigns from the Executive Committee, he shall be replaced on the Executive Committee through the election of another Member.
5. Any Executive Committee member prevented from participating in a meeting may send a representative to act on his behalf; representatives may be changed at any time through written notification to the other Executive Committee Members; the change shall take effect on the date on which the notification is received by the Executive Committee Chairman.
6. Executive Committee meetings shall be held not less than on a quarterly basis. The Executive Committee shall determine the date and place of each meeting. The agenda for

each meeting shall be sent to the Executive Committee Members one calendar week in advance. Executive Committee meetings may be conducted with the Members personally attending or by audio and/or video conference. Each Executive Committee Member shall have one vote in respect to taking decisions at the Executive Committee meetings.

7. An Executive Committee meeting shall be held if requested in writing by an Executive Committee Member to all the remaining Executive Committee Members and approved by the Executive Committee Chairman.
8. The Executive Committee shall take its decisions by simple majority, unless otherwise prescribed by this Constitution, and shall reasonably endeavor to reach unanimous decisions.
9. The following matters may be decided only by a majority of all the Executive Committee Members:
 - a) Exclusion of Members
 - b) Approval of a roadmap and timetable for the development work of the OTDS Data Format
 - c) Approval and publication of the OTDS Data Format and new versions thereof
 - d) Selection of standardization organizations for the purpose of accepting the OTDS Data Format as the OTDS standard
 - e) Creation and/or dissolution of the Standing Technical Committee
 - f) Creation and/or dissolution of Working Groups, including determination of their aims, work procedures, chairmen, and deputy chairmen
 - g) Setting and/or change of the Membership Dues and other financial matters
 - h) External publications and announcements relating to the OTDS Data Format
 - i) Decisions to send a written notice to a Member informing him that he has committed a serious breach of duty or procedure and to exclude a Member from membership in the OTDS pursuant to Section 8 Para. 3
 - j) Appointment of the Executive Committee Chairman and Deputy Executive Committee chairmen
 - k) Appointment of consultants, experts, and other third parties
 - l) Decisions to initiate legal action against Members, former Members, or third parties
10. The Executive Committee shall have a quorum when not less than 50 percent of all Executive Committee Members are present (incl. by telephone or video conference).
11. Decisions taken without an Executive Committee meeting by circular letter must be put into writing and are to be presented to and signed by all representatives of the Executive Committee Members (or deputy representatives). They shall have the same effect as decisions taken at a properly held Executive Committee meeting. A written decision shall be deemed as taken on the date on which that last signature of the representatives or deputy representatives of all signing Executive Committee Members has been provided.
12. The Executive Committee Members shall reasonably endeavor to participate in all Executive Committee meetings. If an Executive Committee Member misses three consecutive Executive Committee meetings, that Executive Committee Member shall not count towards the quorum at the third meeting. The same shall apply for all subsequent Executive Committee meetings so long as the relevant Executive Committee Member

continues to be absent from the Executive Committee meetings at least three times in succession.

13. The Executive Committee shall appoint a Chairman and two Deputy Chairmen from among the Executive Committee Members. The tenure of the Chairman and Deputy Chairmen shall be three years starting from their appointment. A Deputy Chairman shall assume the function of the Chairman when the Chairman is absent. The Executive Committee may remove the Chairman and/or Deputy Chairmen from office during his/their tenure by a Qualified Majority Decision if, in the opinion of the Executive Committee, he/they does/do not properly perform his/their function(s) as Chairman/Deputy Chairmen.
14. The Chairman shall take down minutes at all Executive Committee meetings. The Executive Committee Members shall promptly receive a copy of the minutes from the Chairman. The Members may request to examine the Executive Committee minutes.

Section 12 – Standing Technical Committee

1. The Executive Committee shall establish a Standing Technical Committee to perform the tasks of technical coordination and further development of the OTDS Data Format. It shall be incumbent on the Standing Technical Committee in particular to develop draft proposals on which the Executive Committee can take decisions and to advise the Executive Committee on technical issues.
2. The Standing Technical Committee shall consist of no more than 10 members. The Executive Committee shall appoint the members of the Technical Committee, who may be representatives of the Members or other experts.
3. The committee members shall elect the committee chairman from their midst. One Executive Committee Member shall serve on the Standing Technical Committee.
4. The Standing Technical Committee shall be obliged to reach a consensus on issues in its consultations.

Section 13 – Working Groups

1. A Working Group may be established only by decision of the Executive Committee for a specific task and shall be dissolved by decision of the Executive Committee. The purpose of the Working Groups shall consist of preparing the OTDS Data Format and contributing to its development through technical meetings, analyses, and other activities. The Working Groups shall be open to all Members, and every Member shall be entitled to participate in the Working Groups.
2. When setting up a Working Group, the Executive Committee shall define the specific aims and work procedures (in particular road map and timetable) and appoint the Working Group's chairman and deputy chairman, who will be installed in office for a duration of two (2) years and, on expiry of their tenure, will either be replaced or reappointed chairman and deputy chairman by the Executive Committee. The chairman must be the representative of a Member participating in the Working Group. The chairman shall organize the meetings by drawing up a written agenda to be sent out prior to the meeting,

determining the meeting place, scheduling the time and date, taking down the minutes, and distributing the minutes as well as any other relevant documents. The deputy chairman shall assume the function of the chairman when the chairman is absent. The Executive Committee may remove a Working Group chairman and/or deputy chairman from office during his/their two-year tenure by a Qualified Majority Decision if, in the opinion of the Executive Committee, he/they does/do not properly perform his/their function(s) as chairman/deputy chairman.

3. The Executive Committee shall duly inform all Members of the establishment of a Working Group, as well as of its aims, work procedures, and who its chairman will be.
4. The members of a Working Group shall regularly meet in person and as frequently as necessary to carry out the Working Group aims and work procedures. The Working Group shall determine the dates and places of the meetings. No more than two (2) representatives of a member (not including the Working Group chairman and deputy chairman) may be present at a Working Group meeting, unless the Working Group chairman has approved otherwise.
5. The Working Group participants shall reasonably endeavor to take all decisions on the basis of a general consensus. If it is not possible to reach a consensus within a reasonable time span, the Working Group chairman may forward the relevant matter to the Executive Committee for a decision.
6. The Working Groups shall report to the Executive Committee on the current status and results of their activities.

Section 14 – Administration

1. The Executive Committee shall appoint a person, company, or body to serve as Administrator of the OTDS.
2. The Administration shall, as stipulated by the Executive Committee, manage the general administrative aspects of the OTDS activities and be responsible for the OTDS accounting, as well as for all other tasks assigned to it by the Executive Committee. It shall support the Executive Committee and the Executive Committee Chairman in performing its tasks pursuant to this Constitution.
3. The Administration shall not be a body of the OTDS and shall not be entitled to be represented therein.
4. The fees, costs, and expenditures associated with the work of the Administrator shall be equally allocated among the members in accordance with Section 9 Para. 2.

Section 15 – Intellectual Property

1. No Member shall transfer exclusive rights to use Existing Intellectual Property through his membership. If a Member has provided the Association with nonexclusive rights to use Existing Intellectual Property to develop the OTDS Data Format, this nonexclusive right of use shall continue to exist even if the (licensing) Member ends his membership. The

Association shall generally be entitled to sublicense this Existing Intellectual Property to the other Members, however, only to the extent necessary to use the OTDS Data Format. These sublicenses shall also continue to exist if the licensing Member leaves the Association. Licensing agreements shall be signed for the granting of rights of use of any kind. Membership in this Association shall require Members to enter into the necessary licensing agreements (see Section 16).

2. Members who create New Intellectual Property during their membership and during the development and/or further development of the OTDS Data Format shall grant the Association a nonexclusive right of use thereto, enabling the Association to likewise grant nonexclusive rights of use to the other members. The members and the Association shall enter into the licensing agreements necessary to this end (see Section 16).

Section 16 - Licensing - Right of Use

1. A Member shall grant all other Members (and their group companies) a nonexclusive, global license which is nontransferable (except to a legal successor for the entire or relevant part of the business of those other Members or group companies) to use the intellectual property at FRAND Conditions to develop and use the OTDS data standard. The aforementioned license shall be granted only if all other Members (incl. their group companies) and/or third parties undertake in return to grant the first Member (including his group companies) a license to use the Existing or New Intellectual Property belonging to those other Members or third parties now or in the future, over which they may dispose now or in the future and/or under which they may now or in the future grant licenses (without owing patent license fees or any other remuneration to third parties) at comparable FRAND Conditions.
2. The Members shall grant the OTDS a nonexclusive, global, nontransferable license, through which they have contributed to the development and further development of the OTDS Data Format, for all developments subject to rights of use and other content. This shall include, in particular, the right to copy, publish, and spread the Adopted OTDS Data Format, as well as to propose it to standardization organizations.
3. The OTDS shall grant the Members a license for the use of the copyrighted, protected Adopted OTDS Data Format. This shall apply, in particular, to the development, design, production, sale, use, or any other deployment of the Adopted OTDS Data Format for hardware and/or software products and any other applications and services. The aforementioned license shall not apply to Major Patents of the Members, to which the provisions of Section 16 Para. 1 shall apply. If a Member is active within a group association, it shall also be entitled to permit the other group companies of the group association to use the OTDS Data Format. The Member shall be entitled to grant the relevant group companies an unlimited, global, nontransferable, irrevocable right of use, including the right to further develop, further process, and connect the OTDS Data Format to other products.
4. The OTDS shall furthermore also offer a license to everyone, and in particular to companies active in the tourism sector who are not Members of the OTDS, to use the copyrighted, protected Adopted OTDS Data Format at FRAND Conditions. The aforementioned provisions of Section 16 Paras. 1 and 3 shall apply accordingly to this license with respect to non-Members.

5. On proposal by the Executive Committee, the General Meeting may define details of the licensing requirements and procedures.

Section 17 - Trademark

1. The Members shall endeavor to develop a trademark for the Adopted OTDS Data Format. The OTDS shall become the owner of the trademark.
2. The OTDS shall grant its Members a global, unlimited, irrevocable, nonexclusive license at no charge to use the trademark.
3. The OTDS shall furthermore also offer a license to everyone, and in particular to companies active in the tourism sector who are not Members of the OTDS, to use the trademark at FRAND Conditions.

Section 18 - Confidentiality

1. The Receiving Party may neither directly nor indirectly pass on confidential information to third parties. The Receiving Party shall furthermore be liable for the loss, theft, or otherwise unintended disclosure of confidential information and for any unauthorized passing on of confidential information by individuals (incl. current and former employees) or legal entities to whom the Receiving Party may pass on confidential information in accordance with the Constitution; however, the Receiving Party shall not be liable for the unintended or unauthorized disclosure if he has exercised the same care to protect the confidential information as for his own confidential information of comparable importance. However, the Receiving Party must have definitely exercised at least appropriate care and, once having gained knowledge of the unintended or unauthorized disclosure, informed the Disclosing Party thereof and taken appropriate measures to contain the consequences of the disclosure and prevent further disclosure.
2. Unless otherwise expressly granted in this Constitution, the Receiving Party may use the confidential information only to meet his obligations under this Constitution (hereinafter "Purpose"). Within this scope, the Receiving Party may pass on the confidential information to employees whom he hires or employs exclusively for this Purpose.
3. The Receiving Party shall limit the passing on of the confidential information to employees of the Receiving Party, of other Members, and/or of his group companies who must have knowledge of the confidential information to carry out the Purpose. The Members furthermore confirm that the Receiving Party may pass on confidential information to his suppliers, subcontractors, consultants, agents, or similar individuals or legal entities only with the prior written consent of the Disclosing Party, which may not be denied or delayed without statement of reasonable grounds. If the Disclosing Party gives his consent to the passing on of the information, the Receiving Party shall give assurances that the suppliers, subcontractors, consultants, agents, or similar individuals or legal entities to whom the confidential information is disclosed shall be bound by and comply with the provisions of the Constitution.

4. In departure from Section 18 Para. 1, the Receiving Party shall not be prevented from disclosing confidential information if
 - a. such disclosure occurs on the basis of a valid order by a court or other government agency to which jurisdiction over this Constitution falls;
 - b. such information is part of the Adopted OTDS Data Format being made generally accessible; or
 - c. a legal disclosure requirement otherwise exists, provided the Receiving Party, to the extent possible, informs the Disclosing Party thereof in writing in advance in order to give the Disclosing Party the opportunity to obtain legal protection to preserve the confidentiality of the confidential information and provided the Receiving Party has, in connection with the disclosure, reasonably endeavored to protect the confidential information.
5. All samples, models, computer programs, drawings, documents and other documents, devices, and data made available within the scope of this Constitution and containing confidential information shall remain the property of the Disclosing Party. Such devices, documents, and copies thereof are to be returned or destroyed immediately by the Receiving Party at his own expense on demand by the Disclosing Party.

Section 19 - Competition Provisions

1. The Members undertake to comply with the applicable antitrust and competition rules.
2. In regard to the joint Aims pursued with the OTDS, the Members, in particular,
 - a. shall not enter into any agreement whose object or effect is anticompetitive or abuses a dominant position;
 - b. shall not exchange any competition-relevant information, that is, data which reduce strategic uncertainty on the market, in particular, prices for their products or services, the costs of their products or services, or the terms and conditions at which they are sold;
 - c. shall not participate in types of conduct which lead to price fixing, market sharing, or exclusion from the market;
 - d. shall ensure equal-opportunity, reasonable, and nondiscriminatory access to the Adopted OTDS Data Format; and
 - e. shall remain committed to the Aims formulated in the relevant written agenda of the meetings of the OTDS, of the Executive Committee, of the Standing Technical Committee, and of the Working Groups in which they participate while adhering to all applicable competition and antitrust laws and the provisions of this Section.
3. The Members hereby expressly acknowledge that their mutual relations within the scope of this Constitution are not exclusive and that no provision of the Constitution prevents the Members from participating in similar associations or ties with third parties.

Section 20 - Publication

1. Irrespective of the obligation of the Members to act through the Executive Committee in regard to publication of the Adopted OTDS Data Format, the Members undertake not to publish
 - a. the OTDS Data Format,
 - b. the Adopted OTDS Data Format, or
 - c. issues relating to the OTDS Data Format or versions thereofprior to publication of the Adopted OTDS Data Format until after they have received prior approval to be granted by the Executive Committee by a Qualified Majority Decision.
2. For purposes of clarification, it shall be noted that the Members and the Executive Committee may not publish any OTDS Data Format or parts thereof which have not been approved.

Section 21 - Dissolution

This Constitution shall apply as of the Effective Date for an indefinite period, until the General Meeting dissolves the OTDS by a Qualified Majority Decision. In the event of a dissolution, the following provisions shall continue to apply: Section 21 Paras.1, 15, 16, 17, 18, 19, 20, 22, 23, and 24.

Section 22 – Arbitration

1. All disputes arising from or in connection with this Constitution shall be definitively decided pursuant to the ICC Rules of Arbitration by three (3) arbitrators appointed in accordance therewith. The arbitration shall take place in Frankfurt am Main, Germany, and be conducted in the German language.
2. Arbitration awards may, if necessary, be enforced by any competent court exactly as would be a judgment of this court.
3. The Members undertake to treat confidentially all arbitration conducted in connection with this Constitution and to use all information, documents, and material disclosed during the arbitration exclusively for the purposes of the proceeding.

Section 23 – No Warranties between the Members

Unless established or expressly agreed between the Members in departure from Section 16 Para. 1, all rights and licenses granted by the Members as part of this Constitution shall be granted on an “as-is” basis and without any warranty in regard to aspects such as (legal/license) infringement, functionality, or suitability for a special purpose. However, this shall not apply to products, technologies, or services acquired by one Member from another Member as part of separate agreements, nor shall the warranty or indemnity provisions thus in any way be rescinded in such other agreements between Members.

Section 24 – Limitation of Liability between the Members

Except in case of willful misconduct, gross negligence, breach of confidentiality under Section 18 and unless mandatory regulations of applicable law apply, but irrespective of contrary provisions of the agreement or legal provisions (incl. those as pertain to breach of contract, negligence, wrongful acts, no-fault liability, or legal obligations), no Member shall be liable to the other Members for loss of use, lost profits, loss of data, loss of communications, loss of revenue, contractual losses, loss of business, or for expenses, damages, losses, or liabilities in connection with an interruption in business activity or for concrete, incidental, indirect, punitive, or consequential damages, not even if the possibility of costs, losses, or damages normally could have been foreseen.

Annex A – Brief Description of the OTDS Data Format

- Data format for the general exchange of product data in the tourism sector, for example, between operator and distribution systems
- Data format containing all necessary information
 - to calculate prices correctly
 - to check availability
 - to perform booking inquiries and reservations
 - and to display products (e.g. product attributes on the basis of global types)
- Definition of a data format that is independent of operator and distribution systems
 - All operators create the same format
 - All distribution systems process the same format

Annex B – OTDS e.V. Membership Application

DATE:

[Company Name]

with registered office in

[Address]

("Applicant")

on and as of *[date]* 2011

1. the Applicant applies for membership in the OTDS e.V.
2. the Applicant states that he will meet the OTDS e.V. member requirements and obligations stipulated in the OTDS e.V. Constitution.

SIGNS ON BEHALF OF AND FOR [NAME OF THE NEW MEMBER]

SIGNATURE: _____
NAME: _____
FUNCTION: _____
Date: _____