

**MEMORANDUM OF ASSOCIATION**

On this day, +, there appeared before me, Gijsbertha Hendrika Everdina Bergman-Klaasen LL M, notary at Stadskanaal:

1. Mr **Franciscus Gerardus Maria Campfens**, domiciled at 6662 RN Elst, Rozenkamp 58, born at Amsterdam on the twenty-fourth of June nineteen hundred and fifty-eight, establishing his identity by means of his + numbered +, married.
2. Mr. **Roel Derks**,
3. Mr. **Johannes Alte-Teigeler**
4. Mr **Markus Borgert Maria Ossel**, domiciled at 9502 WS Stadskanaal, Tammingaborg 16, born at Wildervank on the eighteenth of February nineteen hundred and fifty-five, establishing his identity by means of his passport numbered ND5528677, married;

The appearing persons declared their wish to hereby establish an association, to which the following Bylaws shall apply:

**NAME, SEAT AND DURATION**Article 1.

1. The association shall be named: **Energy Services Network Association**; it shall also be known under the abbreviated name of: **ESNA**.
2. It shall have its statutory seat at Amsterdam.
3. The association is established for an unlimited duration.

**PURPOSE**Article 2.

The purpose of ESNA is to promote and advance the capabilities of innovative solutions for utilities based the open, multi-vendor Networked Energy System (NES), developed on the basis of the Echelon technology, as well as their market acceptance.

**MEMBERS**Article 3.

1. The association may consist of members and supporters.
2. Members of the association may be firms or corporations (corporate members) engaged in the development, distribution, installation, maintenance, and use of open systems consistent with the purpose of ESNA.

The members shall be divided into the following three categories:

**a. Sponsor Members.**

Sponsor membership in ESNA is extended to companies, mainly Utilities, committed to the success of ESNA by providing leadership and strong financial support, according to standards as specified by the Board. Sponsor Members shall have the right to vote at the General Meeting and the opportunity to participate in task groups and committees established by the Board of Directors. Sponsor Members shall further be entitled to jointly nominate one or more persons from their midst, with a maximum of five (5), to the General Meeting for appointment as members of the Board of Directors; this nomination shall be binding.

**b. Partner Members.**

Partner membership in ESNA is extended to a firm or corporation that integrates or manufactures products or systems consistent with the purpose of ESNA. Partner Members shall have the right to vote at the General Meeting and the opportunity to participate in task groups and committees established

by the Board of Directors. Partner Members shall further be entitled to jointly propose one or more persons from their midst, with a maximum of two (2) to the General Meeting for appointment as members of the Board of Directors; this proposal shall be binding.

**c. Ordinary Members.**

Ordinary membership in ESNA is extended to a firm or corporation that is committed to actively supporting the purpose of the association. Ordinary Members shall have the right to vote at the General Meeting and the opportunity to participate in task groups and committees established by the Board of Directors. Ordinary Members are not entitled to serve on the Board of Directors.

3. A person seeking membership must file a membership application with the Board, stating the membership category in which he wishes to be included. A member who is a juristic person shall by means of a written statement to the secretary or treasurer of ESNA:
  - a. appoint one person as his voting representative at the General Meeting; and
  - b. appoint one alternate in case of impediment of the representative referred to above under a.
4. Within one month following receipt of his application, the Board shall inform the prospective member in writing whether or not he has been accepted as a member.
5. The Board is only entitled to accept a member with the express written consent of the Executive Committee as referred to below in Article 8 of these Bylaws.
6. If acceptance has not taken place, than the reason/reasons for the refusal shall also be indicated in the aforementioned communication. The person concerned shall have no right of appeal to the General Meeting against such refusal.
7. The Board maintains a register in which the names and addresses of the members are recorded.
8. Supporters shall be those engaged in the development, distribution, installation, maintenance, and use of open systems consistent with the purpose of ESNA. Supporters may not vote or serve on the Board of Directors. Supporters shall have the opportunity to participate in task groups and committees established by the Board of Directors, if the Board so requests.
9. Supporters shall be entitled to attend the annual General Meeting.
10. The provisions of the foregoing paragraphs 2 through 7 apply accordingly to the acceptance of supporters.

Article 4.

1. Membership ends:
  - a. whenever a member ceases to exist; his bankruptcy or application for a moratorium;
  - b. through termination by the member or by the Board;
  - c. through removal by the Board.
2. Termination by the Board may take place whenever a member has ceased to comply with the requirements for membership as set forth in these Bylaws, whenever he does not perform his obligations towards the association, as well as whenever the association cannot reasonably be expected to allow his membership to continue, including at least the following situations:
  - a. failure of a member to pay dues, fees, or assessments in accordance with rules adopted by the Board, or
  - b. occurrence of any event that renders a member either ineligible for membership or incapable of satisfying membership qualifications.
 Membership may also be terminated if the Executive Committee so demands.

Whenever the Board receives a demand as referred to in the preceding sentence, the Board shall be obliged to terminate membership.

3. Termination of membership by the member or by the Board may only take place against the end of a reporting year and subject to a notice period of at least two months.
4. Any termination in violation of the provisions of the foregoing paragraph shall cause the membership to end on the earliest admissible date following the date as specified in the notice of termination.
5. A member may be removed from membership by the Board if such member violates the Bylaws, Regulations or decisions of the association or causes unreasonable harm to the association.
6. A termination as referred to above in paragraph 2 of this Article 4, or a removal from membership as referred to in paragraph 5 of this Article 4, shall be notified in writing to the member concerned without delay, stating the reasons. Such member shall not have a right of appeal to the General Meeting.
7. The Board may only decide to terminate or remove a member as referred to above after:
  - a. the member concerned has been previously informed in writing of the intent to terminate or remove him; or
  - b. has been given an opportunity to be heard in person by the Board.
8. The provisions of this Article 4 shall apply accordingly to termination of the status of supporter.

#### **PECUNIARY MEANS**

##### Article 5.

1. The members shall be obliged to pay an annual membership fee, to be determined by the Board for each separate category of members. The supporters shall be obliged to pay an annual donation, to be determined by the Board.  
In addition, the Board may set assessments and fees for the different categories of members.
2. In exceptional circumstances, the Board may grant complete or partial exemption from the obligation to pay membership fees or otherwise.
3. A person who is a member for only part of a reporting year shall be required to pay the full membership fee for that year, save for an exemption for exceptional reasons, granted by the Board in its exclusive discretion.
4. In addition to the aforementioned membership fees, the pecuniary means of the association consist of:
  - a. government grants;
  - b. inheritances, bequests and gifts; and/or
  - c. all other legally admissible pecuniary means.

#### **BOARD OF DIRECTORS**

##### Article 6.

1. The Board of Directors, referred to below and above as the Board, shall be composed of a number of no less than three (3) members and no more than seven (8) members to be determined by the General Meeting.
2.
  - a. The members of the Board shall be appointed by the General Meeting based on one or more binding nominations as referred to above in Article 3, paragraph 2; the secretary of the Board shall however be appointed by the Executive Committee as set forth in paragraph 4 below, without prejudice to the provisions of Article 9, paragraph 2.
  - b. A binding nomination as referred to above under a may be overridden by a decision of the General Meeting, provided such decision is taken by a

- majority of at least two thirds of the votes cast at a meeting where at least three fourths of the members are present.
3. The Board of Directors shall be the governing body of the corporation. Membership of the Board shall be extended to those who have been appointed as representatives as set forth in Article 3, paragraph 3, under a, above; this condition shall however not apply to the secretary. Membership of the Board shall therefore not be extended to Ordinary Members as referred to above in Article 3 paragraph 2 under c, nor for alternate representatives. A Director may not designate an alternate to represent the Director at meetings or otherwise.
  4. a. The Board appoints from among its members a Chair, a treasurer, an alternate Chair, and an alternate treasurer. One person may be the alternate for more than one officer.  
b. The secretary of the Board shall be appointed by the Executive Committee, without prejudice to Article 9, paragraph 2 of these Bylaws. In case the Executive Committee consists of less than three (3) members due to the absence of a secretary, and the other members of the Executive Committee are unable to reach an agreement on an appointment for this position, then the secretary shall be appointed by Echelon Inc..
  5. Each Director elected by the General Meeting shall serve a term of one year, which shall be extended for any period during which a successor has not been appointed; the aforementioned term of one year shall begin immediately following the annual meeting at which Directors are appointed. In addition to the termination at regular intervals, membership of the Board shall end upon an earlier resignation or death of the relevant Board member. The resigning board member/members shall be eligible for immediate re-election; a person appointed to an office ad interim shall be included in the roster in place of his predecessor.
  6. Board membership of the Board members appointed by the General Meeting shall moreover end:
    - a. when the member for whom the relevant Board member was appointed as representative, ceases to be a member of the association;
    - b. when a member resigns his membership in writing.
  7. In case the Board has been incompletely filled, the Board shall consist of the Board members then in office, and the Board shall retain its full powers.
  8. Interim vacancies shall be filled without delay.
  9. Directors may only participate in Board meetings in person or by telephone.
  10. The Board shall establish working groups and task groups to develop recommendations on specific technical and marketing issues.
  11. The Board shall be the governing body of the association; it may delegate the daily management of the activities of ESNA, provided that the management of any and all activities and affairs of the association, as well as the exercise of any and all powers, shall take place under the ultimate responsibility of the Board. The Board shall:
    - a. approve the budget of ESNA;
    - b. approve the annual plan for marketing activities to be conducted by ESNA; and
    - c. provide periodic reports to the members regarding the activities of the association.

## **BOARD MEETINGS AND BOARD DECISIONS**

### Article 7.

1. The Board shall hold meetings at least twice a year, at times and places

designated by the Board. The Board shall keep a record of its proceedings and shall report on its activities at each General Meeting.

2. A Board meeting shall also be held upon a request by the secretary or the treasurer, or upon a joint request from three of the other Board members.
3. a. Board meetings may only be held with a notice period of four (4) days if the invitation is sent by ordinary post, and forty-eight (48) hours if the invitation is transferred to the board member in person or by telephone, fax or e-mail, not including the day of the convocation and of the meeting, stating time and place of such meetings.  
In all cases notices shall specify in reasonable detail the business to be transacted.
- b. Except where a Board meeting is held in accordance with paragraph 2, the convocation for a Board meeting is performed by the secretary.
4. Except in cases where these Bylaws provide for a larger majority, all decisions of the Board shall be taken by absolute majority of the votes cast. Each member of the Board shall have one vote.
5. Board decisions may only be taken regarding subjects which were notified in the convocation. Notwithstanding the foregoing, whenever all Board members currently in office are present at a meeting, decisions may be taken with unanimity on any issue tabled, even where the provisions of these Bylaws for convening and holding meetings were not complied with.
6. The Board shall obtain the prior written consent of the Executive Committee for decisions for:
  - a. hiring, letting and otherwise obtaining or granting the use or usufruct of real property;
  - b. conducting and concluding court proceedings, not including recovery of claims in court, attachment of goods and litigation in summary proceedings;
  - c. referring the resolution of disputes to arbiters and concluding extrajudicial settlements and compromises;
  - d. concluding credit agreements with banking institutions;
  - e. concluding pecuniary loans, not including the withdrawal of monies from the association's banker within the limits of a credit agreement consented to as aforementioned;
  - f. concluding and modifying employment contracts;
  - g. in general all transactions whose object or value exceeds a specified limit to be determined in the Regulations.

Any absence of the aforementioned consent may not be invoked by third parties or against them.

## **EXECUTIVE COMMITTEE**

### Article 8.

1. The Executive Committee shall consist of the following three members:
  - a. the Chair, being the Chair of the Board;
  - b. the secretary, being the secretary of the Board, and
  - c. a representative of Echelon Inc.
2. The Executive Committee shall have the right to:
  - a. review and reject membership applications proposed by the Board.
  - b. give or withhold its consent to the decisions of the Board as referred to above in Article 7 paragraph 6;
  - c. give or withhold its consent to the decisions of the Board to modify the Bylaws or dissolve the association as referred to below in Article 19;
3. All decisions of the Executive Committee shall be taken with an absolute majority

of the votes cast.

## **SECRETARY**

### Article 9.

1. The secretary of ESNA shall be in charge of daily management and shall supervise and monitor all of the affairs of the association. The secretary ensures and is responsible for the application of the guidelines and procedures set by the Board.
2. The first secretary of the Board shall be appointed by the aforementioned Echelon Inc. The latter shall be requested to bear the cost for the secretary for the duration of only the first six (6) months of the first reporting year of the association. Subsequent secretaries will be appointed by the Executive Committee.

## **GENERAL MEETING**

### Article 10.

Any powers in relation to the association which are not granted by law or by these Bylaws to any other agency, shall accrue to the General Meeting.

### Article 11.

Each year a General Meeting shall be held, which shall be convened by or on behalf of the Board, within six months following the end of the financial year, for discussion of the annual reports in accordance with the provisions of Article 16.

### Article 12.

1. The Board shall also convene the General Meeting whenever it considers this necessary, or whenever a number of members possessing the power to cast at least one-tenth of the votes in the General Meeting requests this in writing, stating the subjects to be discussed at the meeting.
2. If, following the submission of such request, the Board does not convene the members to a meeting within fourteen days, setting a date which is no later than four weeks following the submission of the request, the convocation may be effected by the requesting members.

### Article 13.

1. The convocation to a General Meeting shall be in writing and shall include the agenda for the meeting. The notice period for the convocation shall be at least fourteen days.
2. The agenda shall contain all those subjects which must be discussed in accordance with the Bylaws, or which the Board wishes to have discussed.

### Article 14.

1. General Meetings shall be chaired by the Chair of the Board, and in his absence by the Vice-Chair.
2. Minutes are drawn up of the discussions held and the decisions taken. These minutes shall be approved by the Chair or the Vice-Chair and in evidence of this shall be signed both by him and by another member of the General Meeting who was present at the meeting concerned.
3. The General Meetings may be attended by:
  - a. members as referred to in Article 3, paragraph 2, of these Bylaws;
  - b. supporters;
  - c. members of the Board; and
  - d. members of the Executive Committee.

### Article 15.

1. Each member shall have exactly one vote in the General Meeting.
2. Unless provided otherwise in these Bylaws, all decisions of both the General Meeting and the Board of directors, as well as decisions for binding nominations by the respective categories of members, shall be taken by absolute majority of

- the votes cast.
3. Voting shall take place orally, unless a number of members together possessing the power to cast at least one-tenth of the votes in the General Meeting requests voting to take place in writing, and unless the vote concerns the election of a person or persons.
  4. When voting on persons, he who receives the greatest number of votes is elected. When voting takes place for more than one position simultaneously, those persons who receive the greatest number of votes are elected. When two or more persons receive an equal number of votes, the case shall be decided by lot.
  5. A judgment pronounced by the Chair at the meeting regarding either the outcome of a vote or the content of a decision taken - to the extent that the proposal voted upon was not laid down in writing - shall be conclusive. If, however, the correctness of the Chair's judgment is contested immediately following its pronouncement, then a new vote shall take place if the majority of the meeting, or if the initial vote did not take place by call or in writing, if a member of the Board so desires. Such new vote shall invalidate any legal consequences of the earlier vote.

## **FINANCIAL YEAR, ANNUAL REPORTS AND BUDGET**

### Article 16.

1. The financial year shall be equal to the calendar year.
2. Each year before the first of December, the Board shall approve the budget of the association for the following year.
3. Each year before the first of July, the report on the activities of the association in the previous financial year, the balance sheet and the statement of revenue and expenditure for that year shall be drawn up by the Board.
4. Copies of the budget, balance sheet and statement of revenue and expenditure referred to in this Article, as well as the report regarding the activities of the association, shall be sent to each member together with the report drawn up by the committee referred to in paragraph 5.
5. The annual accounts shall be audited by a committee consisting of three persons, to be appointed each year for the following year by the General Meeting from among the members; following this audit, the annual accounts shall be discussed and approved by a General Meeting held before the first of May. At this meeting, the aforementioned committee shall report on its findings.
6. The Board shall not approve the documents referred to in paragraph 3 before it has been informed of the findings of the aforementioned committee.
7. The documents referred to in paragraph 3 shall be approved by the Board and signed by the individual Board members. If the signature of any Board member is absent, then this shall be duly recorded, stating the reasons therefore.
8. Within six months after the end of the financial year, the Board shall present its annual report regarding the affairs of the association and regarding the policies pursued to a General Meeting. The Board shall present the balance sheet and the statement of revenue and expenditure, together with an explanatory memorandum, to the General Meeting for approval.

## **REPRESENTATION**

### Article 17.

Without prejudice to the provisions of Article 7, paragraph 6 of these Bylaws, the association shall be represented both in and outside of the courts by the Board, by the Chair and secretary together, or in case of impediment or absence by their alternates, provided these offices are not both held by a single person at such time.

## **REPORTING YEAR**

### Article 18.

The reporting year shall be equal to the calendar year.

## **AMENDMENT OF BYLAWS, DISSOLUTION, GENERAL PROVISIONS**

### Article 19.

1. The General Meeting may take a decision for amendment of the Bylaws or for dissolution of the association only with the prior written approval of the Executive Committee and provided the decision is taken by a majority of at least two thirds of the votes cast at a meeting where at least three fourths of the members are present.  
The convocation for the meeting at which an amendment of the Bylaws will be decided upon shall include the full text of the proposed amendment.
2. If at a meeting where a proposal for amendment of the Bylaws or for dissolution of the association is to be decided upon, the required number of members are not present, then a second meeting shall be held within ninety days, but not earlier than fourteen days after the first meeting, at which the proposal may be decided upon regardless of the number of members present, provided the majority of the votes as referred to in paragraph 1 is obtained.
3. An amendment of the Bylaws may not result in higher liabilities being imposed on the members with regard to the obligations of the association, nor in any increase of the obligations of the members towards the association.
4. An amendment of the Bylaws shall not take effect until after it has been duly notarized. The power to execute the notarial deed shall be vested in two Board members acting jointly.

### Article 20.

1. In case of dissolution, the liquidation of the association's assets shall be carried out by the Board, unless the General Meeting decides otherwise.
2. The Bylaws shall remain in effect to the fullest extent possible.
3. Any proceeds from the liquidation shall be used for a purpose to be determined by the General Meeting.

## **REGULATIONS**

### Article 21.

1. The General Meeting may establish Regulations as proposed by the Board.
2. The Regulations may not contain any provisions which violate the law or these Bylaws.

## **FINAL PROVISION**

### Article 22.

In cases which are not foreseen by or by virtue of the Bylaws, the law or the Regulations, the Board shall decide.

## **TRANSITIONAL CLAUSE**

### Article 23.

1. The first reporting year of the association shall run from the date of the present deed to the thirty-first of December two thousand and six.
2. Contrary to the provisions of Article 6, the initial composition of the Board upon the coming into force of these Bylaws shall be as follows:
  - + as Chair;
  - +, as secretary;
  - +, as treasurer.

**DULY EXECUTED** at Stadskanaal on the date as above first written.

The appearing persons are known to me.

The substantive content of the deed was indicated and explained to them. The

appearing persons waived their right to hear a full reading of this deed, declared that they had received a draft of the present deed in sufficient time before its execution and were familiar with the contents of the deed, and the consequences arising from the deed for the parties thereto were pointed out to them.

Following this, the present deed was partially read and then signed immediately thereafter, first by the appearing persons and then by me.