



## **ARTICLES OF ASSOCIATION**

**Version 2017-12-07**

## ARTICLE 1 – NAME AND REGISTERED OFFICE

1. AENEAS (the “Association”) is an association governed by the Law of July 1<sup>st</sup> 1901 and the Decree of August 16<sup>th</sup> 1901.
2. The Association has its registered office in Paris - France.

## ARTICLE 2 – OBJECT

1. The object of the Association is to promote research, development and innovation (“R&D&I”) in the field of micro- and nano-electronics-enabled components and systems (the “Field”) in order to strengthen the competitiveness of European industry across the electronics value chain.
2. The Association will endeavour to achieve this object by:
  - a. Developing and keeping up to date the strategic R&D&I agenda in the Field (the “Agenda”), as a pan-European guideline for public-private partnership programmes at European Union, intergovernmental, national and regional level;
  - b. Advising on all structural and regulatory matters relevant to creating and maintaining a climate in Europe favourable to education and R&D&I in the Field and to the economic growth of the corresponding sectors of industry;
  - c. Participating, together with the European Commission and ECSEL Participating States, in the ECSEL Joint Undertaking established under Council Regulation (EU) No 561/2014 of May 6<sup>th</sup> 2014 (“ECSEL”);
  - d. Participating, together with EUREKA member and associated countries, in the EUREKA cluster PENTA endorsed by EUREKA under E!9911 on July 1<sup>st</sup> 2015 (“PENTA”);
  - e. Representing and looking after the interests of the respective R&D&I actors in ECSEL;
  - f. Stimulating, organising, and coordinating R&D&I activities executed by the respective R&D&I actors within the goals of the PENTA Programme;
  - g. Fostering inclusivity and openness to all relevant participants, in particular small and medium-size enterprises;
  - h. Gathering and contributing the financial resources necessary for the operation and organisation of the Association, and for meeting its financial obligations towards ECSEL;
  - i. Doing all that which is related to what is stated above or may be conducive thereto all this in the broadest sense of these words.
3. The Association is a non-profit organisation.

## ARTICLE 3 – ACTIVE MEMBERS

1. Active Members must conduct or have conducted research and development activities in the Field in ECSEL Participating States or EUREKA member and associated countries or third countries which are party to an international agreement with the European Union under the conditions or on the basis of which these third countries make a financial

contribution to the Horizon 2020 Programme of the European Commission, or which have a demonstrable intention to perform said activities.

2. The Association has 3 (three) categories of Active Members: “A”, “B” and “C”. Where reference is made in these articles of association (the “Articles of Association”) or in the internal regulations (the “Internal Regulations”) or in resolutions adopted under the Articles of Association, to “Active Member” or “Active Members”, this will be understood to include Active Members A, Active Members B and Active Members C, unless specifically stated otherwise or obviously intended otherwise.
3. Active Members A, hereinafter also referred to as “SME-Active Members”, must maintain an enterprise of micro, small or medium size as defined in recommendation 2003/361/EC of the European Commission dated May 6<sup>th</sup> 2003.
4. Active Members B, hereinafter also referred to as “Research organisations-Active Members”, must be a nationally recognised university or a research institute with a non-profit objective.
5. Active Members C, hereinafter also referred to as “Corporate-Active Members”, must maintain an enterprise which does not belong to the enterprises as referred to in paragraph 3 here above.
6. The Supervisory Board must keep at all times a register containing:
  - a. The name, address and occupation of each person in charge of the administration and management of the Association, and subsequent modifications;
  - b. The Articles of Association, and subsequent modifications;
  - c. The changes of address of the registered office of the Association;
  - d. Information on purchase or sale of the premises used for the administration and/or the meeting of the Active Members;
  - e. The date of the receipt delivered by the prefecture at the occasion of the filing of declarations of modifications above mentioned.
7. The Supervisory Board must keep a register containing the names and addresses of all Active Members.

Each Active Member is obliged to communicate in writing to the Association his address and any change thereto; the Association will regard this address as the valid address so long as the member has not communicated another address to the association in writing.

All consequences of failure to notify the Association of his address and changes thereto are for the account and risk of the member.

8. An Active Member-legal entity is represented by its legal representative or by 1 (one) person that had been granted the power to represent such Active Member by a power of attorney.
9. Membership is personal and therefore may not be transferred except for legal entities in case of merger. In this case, membership of the legal entity absorbed passes to the absorbing legal entity. The absorbing legal entity party must ensure that within 3 (three) months after the merger it entered in the register as referred to in paragraph 7 here above.

10. If an Active Member ceases to meet the requirements of membership, he is obliged to communicate this as quickly as possible to the Supervisory Board.

#### **ARTICLE 4 – ASSOCIATED MEMBERS**

1. Associated Members must be natural persons who are active in the Field, or organisations maintaining an organisation of enterprises and/or nationally recognized universities and/or research institutes with a non-profit objective active in the Field, not being a Group as defined in article 5 paragraph 3.
2. The provisions of article 3, paragraphs 7, 8, 9 and 10, and articles 5 and 6 are applicable to the Associated Members as far as possible. In those articles, where reference is made to “Active Member” or “Active Members”, this shall be read as “Associated Member” or “Associated Members”.
3. Associated Members are obliged to make each year a monetary contribution to the Association, the minimum amount of which is determined by the General Assembly.
4. An Associated Member is entitled, either in person or by someone appointed as a proxy, to attend the meetings of the General Assembly of Active Members and to address those meetings.
5. An Associated Member (organisation, not a natural person) can receive from an Active Member a power of attorney (including the right to vote), provided the said Active Member is a member of the Associated Member’s organisation.
6. An Associated Member is also entitled to inspect the written records of meetings and/or resolutions of the Supervisory Board and the General Assembly.
7. Associated Members have no rights and obligations other than those granted to them or imposed on them by or by virtue of the Articles of Association.

#### **ARTICLE 5 – ADMISSION**

1. Active Members are those who have applied for membership with the Supervisory Board in the prescribed manner and meet 1 (one) of the requirements of article 3, paragraphs 3, 4 or 5, and, having regard to the provisions of paragraph 3 hereafter, have been admitted as such to the Association by the Supervisory Board.
2. The Supervisory Board decides on admission of Active Members within 2 (two) months from the date of receipt of the relevant written application and notifies the applicant of the decision in writing, stating the type of membership of the respective Active Member. The Supervisory Board will take into account the principles of fairness, openness, transparency and non-discrimination.
3. In deciding the admission of an Active Member, the Supervisory Board will take into account the fact that in principle only 1 (one) legal entity from a Group may become an Active Member. “Group” shall mean a group of legal entities under the same common Control and the controlling entity, and “Control” shall mean the power to direct the management of another legal entity, directly or indirectly, whether through ownership of voting rights, by contract or otherwise. In the case of a corporation, the direct or

indirect ownership of more than 50% (fifty per cent) of its outstanding share capital shall in any case be deemed to confer control.

## **ARTICLE 6 – END OF MEMBERSHIP**

1. Membership ends:
  - a. On the death of an individual Active Member or on the winding-up of an Active Member-legal entity;
  - b. By notice of termination by the Active Member;
  - c. Upon exclusion of an Active Member in accordance with the provisions of paragraph 3 below.
2. Notice of termination of membership by an Active Member may only be given in writing, by registered letter with acknowledgement of receipt requested, with effect from the end of the financial year following the year in which notice is given. Notwithstanding, immediate termination of membership by notice would occur:
  - a. In the event mentioned in paragraph 1 point a here above; and
  - b. If it cannot reasonably be demanded to the member that membership continues.
3. Exclusion of an Active Member may be decided by the Supervisory Board in the following cases:
  - a. If an Active Member does not meet his obligations to the Association and – after having been requested to do so by the Supervisory Board – fails to meet his obligations within 30 (thirty) days from the date of such request;
  - b. If an Active Member has ceased to comply with the requirements as contained in one of the paragraphs 1, 3, 4 or 5 of article 3 or in the Internal Regulations;
  - c. If an Active Member is declared bankrupt or is granted a moratorium of payments to creditors;
  - d. If a debt rescheduling agreement is applicable to an Active Member;
  - e. If an Active Member is placed under guardianship;
  - f. For legal entities, in case of liquidation.

The provisions of this paragraph 3 from points c to f will apply, accordingly, to situations under a legal system other than that of France that are comparable with the situations as referred to from points c to f.

The exclusion shall be notified to the Active Member upon 30 (thirty) days prior notice sent by the Supervisory Board with registered letter with acknowledgment of receipt.

4. The Supervisory Board may suspend for a maximum period of 6 (six) months an Active Member who acts in breach of the Articles of Association or who prejudices the Association in an unreasonable manner.

## **ARTICLE 7 – FINANCIAL RESOURCES**

1. The financial resources of the Association consist of:
  - a. Annual contributions of the Active Members and the Associated Members;

- b. Subsidies paid by public authorities;
  - c. Fees and other income related to services provided by the Association.
2. Each Active Member is also liable to pay during each financial year additional amounts set by the General Assembly on proposal of the Supervisory Board, as specified in the Internal Regulations.
  3. As long as the General Assembly has not set a new contribution for a subsequent financial year, the contributions set at the last meeting of the General Assembly remains fully valid for the subsequent year(s).
  4. The Supervisory Board has the power to grant in special cases full or partial exemption from the obligation to pay a contribution.
  5. The financial resources of the Association are fully and exclusively devoted to activities directly aimed at the fulfilment of the Association's object as defined in article 2.
  6. The General Assembly determines the amount of the contributions and any modifications thereof by a resolution passed with the majority set forth in article 18.

#### **ARTICLE 8 – SUPERVISORY BOARD: COMPOSITION AND APPOINTMENT**

1. The Supervisory Board shall consist of 20 (twenty) natural persons (the "SB members").  
SB members shall, within their own organisations, hold senior executive level management responsibility in the Field. Collectively, the SB members shall be a high-level representation from across the European electronics value chain.
2. The SB members are appointed by the General Assembly for 1 (one) financial year and may be re-appointed immediately.
3. Appointment of a SB member is made from lists of nominees drawn up by the assembly of SME-Active Members, the assembly of non-profit Research organisation-Active Members and the assembly of Corporate-Active Members, hereinafter referred to as "Chamber A", "Chamber B" and "Chamber C", respectively.

The General Assembly will appoint:

- a. 4 (four) persons from the list drawn up by Chamber A;
  - b. 4 (four) persons from the list drawn up by Chamber B;
  - c. 12 (twelve) persons from the list drawn up by Chamber C.
4. Each list of nominees shall be filed at the Association's registered office at least 22 (twenty-two) days prior to the date of the General Assembly meeting to be held.
  5. If the number of SB members has fallen below 20 (twenty) but remains greater or equal to 10 (ten), the remaining SB members will appoint temporary SB members necessary to complete the whole number of SB members taking into account as far as possible, for the substitution of a SB member, the Active Members category which has proposed the substituted SB member. These temporary SB members will remain in charge until the following General Assembly.

In case of vacancies of more than 10 (ten) of the SB members, the remaining SB members shall call within 22 (twenty-two) days a General Assembly meeting to fill in said vacancies.

6. The SB members do not receive any remuneration for their position and are not entitled to the reimbursement of expenses which have been incurred by them in fulfilling their position, unless the General Assembly decides otherwise.

#### **ARTICLE 9 – FUNCTIONS OF THE SUPERVISORY BOARD**

1. The Supervisory Board appoints from its members a president (the “President”). The Supervisory Board also appoints a secretary (the “Secretary”) and a treasurer (the “Treasurer”) who do not need to be SB members.
2. None of the positions mentioned in paragraph 1 of this article can be combined by 1 (one) natural person.

#### **ARTICLE 10 – DECISION-MAKING BY THE SUPERVISORY BOARD**

1. The President, or jointly 6 (six) other SB members, have the power to convene meetings of the Supervisory Board.
2. At least 2 (two) meetings must be held each financial year.
3. The meetings of the Supervisory Board are convened by means of notice to be sent to all SB members via registered letter, email or fax, containing the agenda, the supporting documentation and the place and time of the meeting.
4. The meetings of the Supervisory Board are held in a European Union member state.
5. Meetings of the Supervisory Board can be organised and attended by means of telecommunications and/or any other electronic communication system that permits to all attendees to be identified, to participate in the meeting and to obtain information on an equal basis. Such meetings of the Supervisory Board shall be considered as held at the place in which the President resides.
6. A SB member may be represented at a meeting by another SB member holding a written proxy.
7. A SB member may represent up to 2 (two) other SB members at a meeting.
8. The President chairs the meetings of the Supervisory Board. If the President is absent, 1 (one) of the other members of the Supervisory Board, who has been designated for the purpose by the Supervisory Board, shall act as chairperson.
9. Except for the resolution of appointment of the temporary SB members according to article 8 paragraph 5, resolutions of the Supervisory Board shall only be valid if adopted with the participation of the majority of SB members and by majority vote. In the event of a tied vote, the chairperson of the meeting shall hold the casting vote.
10. If all currently appointed SB members are present at a meeting, resolutions may be adopted on all subjects dealt with, provided this is done unanimously, even if the requirements contained in the Articles of Association regarding the convening and holding of meetings have not been complied with.
11. Each SB member is entitled to cast 1 (one) vote.

12. Blank and invalid votes will be deemed not to have been cast.
13. The Supervisory Board may also adopt resolutions other than in a meeting, provided that all SB members are given the opportunity to cast their vote and none of them objects to this manner of adopting resolutions. A resolution will then have been adopted if the unanimity of SB members is in favour of it. Every resolution adopted outside a meeting will be announced at the following meeting, which announcement must be recorded in the minutes of that meeting.
14. Minutes of the agenda of the meetings of the Supervisory Board must be kept by the Secretary or by the person designated for this purpose by the chairperson of the meeting. The minutes are adopted at the following meeting and, in evidence thereof, are signed by the chairperson and the Secretary.

#### **ARTICLE 11 – TASKS OF THE SUPERVISORY BOARD**

1. Subject to the restrictions imposed by the Articles of Association, the Supervisory Board shall conduct the administration and management of the Association and is accordingly vested with the broadest powers of management, except for those remitted by law or by the Articles of Association to the authority of the General Assembly.
2. The Supervisory Board has the power to have certain of its tasks carried out under its own responsibility by committees and working groups that are appointed by the Supervisory Board, as mentioned in article 21.
3. The President is entrusted with the execution of the day-to-day affairs of the Association, and in particular, with the execution of the decisions of the Supervisory Board. In case of urgency he may decide to take, under his responsibility, the necessary measures for all matters, subject to ratification by the Supervisory Board at their next meeting.

#### **ARTICLE 12 – REPRESENTATION**

1. The Supervisory Board collectively represents the Association.
2. The representative authority also vests in the President.
3. The Supervisory Board may grant a temporary power of attorney to any person.

#### **ARTICLE 13 – GENERAL ASSEMBLY**

1. Meetings of the General Assembly are convened by the President:
  - a. On behalf of the Supervisory Board;
  - b. On a date no later than 4 (four) weeks after submission of a written request to convene a meeting, sent to the President by a number of Active Members entitled to cast at least 10% (ten per cent) of the votes.
2. The meetings are convened by 1 (one) or several of the following ways, at the sole discretion of the President:



- a. Written notice sent by post to the address of the members as registered according to article 3 paragraph 7;
- b. Notice sent by email to the electronic address of the members or of the member's representative appointed according to article 3 paragraph 8.

The period for convening the meeting is at least 30 (thirty) days, not counting the date on which the notice or publication is issued and the date of the meeting.

3. The notice convening the meeting must state the agenda, the draft of resolution, the place and time of the meeting.
4. The meetings of the General Assembly will be held in a European Union member state.
5. Meetings of the General Assembly can be organised and attended by means of telecommunications and/or any other electronic communication system that permits to all attendees to be identified, to participate in the meeting and to obtain information on an equal basis. Such meetings of the General Assembly shall be considered as held at the place in which the President resides.
6. The General Assembly is exclusively competent to resolve on:
  - a. Any undertakings and commitments (including but not limited to contracts and agreements) with unlimited amount;
  - b. Any undertakings and commitments, irrespective of their amount, related to a loan or borrowing of money;
  - c. Settlement agreements and representation of the Association at courts, including the conducting of arbitration proceedings, with the exception of the fill in of conservatory measures that could be resolved by the Supervisory Board in case of urgency;
  - d. The matters listed in paragraph 7 hereafter.
7. Each year, at least one General Assembly must be convened. The General Assembly resolves on the following matters:
  - a. Approval of the annual report as referred to in article 20 with the report of the committee referred to there, within 6 (six) months after the end of the financial year;
  - b. Discharging the Supervisory Board from liability for the performance of their management tasks in the preceding financial year, within 6 (six) months after the end of the financial year;
  - c. Filling of vacancies within the Supervisory Board;
  - d. Approving the contributions and the budget;
  - e. Resolutions proposed by the Supervisory Board, which have been announced in the notice convening the meeting.

## **ARTICLE 14 – ADMISSION TO GENERAL ASSEMBLY AND VOTING RIGHTS**

1. All Active Members and Associated Members, the SB members and those persons who are invited to attend by the chairperson, the Supervisory Board and/or the General Assembly are admitted to the General Assembly. Excluded or suspended Active Members and suspended SB members are not admitted to the General Assembly. Suspended Active Members are entitled to attend and address the meeting on their suspension.
2. The General Assembly decides on admission of persons other than those referred to in paragraph 1 here above.
3. Each Active Member who is not suspended has at least one vote.  
In calculating the total number of votes for each Active Member:
  - a. Each Active Member will always have a whole number of votes; and
  - b. The number of votes per Active Member is one vote for each 1,000 (one thousand) euros payable by the Active Member as contribution as referred to in article 7, paragraph 2, in the financial year in question.
4. Every Active Member who is entitled to vote may appoint as his proxy another Active Member who is entitled to vote. An Active Member who is entitled to vote can act as proxy for up to 5 (five) other Active Members.
5. An Active Member can give power of attorney (including the right to vote) to an Associated Member provided that the said Active Member is a member of the Associated Member's organisation.

## **ARTICLE 15 – GENERAL ASSEMBLY CHAIRING AND MINUTES**

1. Meetings of the General Assembly shall be chaired by the President. If the President is absent, a person elected with the favourable vote of the majority of the Active Members present and represented at the meeting shall act as chairperson and chair the meeting.
2. The chairperson shall be assisted by the Secretary. If the Secretary is absent, a person elected with the favourable vote of the majority of the Active Members present and represented at the meeting shall act as Secretary.
3. The chairperson of the General Assembly shall preside over the meeting and govern its proceedings in compliance with the law and the Articles of Association. To this end, the chairperson shall, amongst other things: verify that the meeting is duly constituted; ascertain the identity of those present and their right to attend, including by power of attorney; ascertain the legal quorum for passing resolutions; direct the agenda and discussions. The chairperson shall also take appropriate measures to ensure the orderly conduct of discussions and votes and shall establish the procedures and ascertain the results thereof.
4. Minutes will be taken of the discussions and resolutions addressed at each meeting by the Secretary and these minutes will be adopted and signed by the President and the Secretary.

#### **ARTICLE 16 – DECISION-MAKING BY THE GENERAL ASSEMBLY**

1. Except for the resolutions mentioned in article 18, paragraph 1 and 2, all resolutions of the General Assembly shall be passed by 50% (fifty per cent) plus 1 (one) vote validly cast.
2. Blank votes and invalid votes will be deemed not to have been cast.
3. All the resolutions that may be passed at a General Assembly meeting may also be passed without a meeting, provided that the majority required for such resolution, if taken in the General Assembly, is met and all casted votes have been cast in writing and provided that it is done with the prior knowledge of the Supervisory Board. Such a resolution shall have the same effect as a resolution of the General Assembly.
4. As long as all Active Members are present or are represented at a General Assembly, valid resolutions may be adopted on all subjects dealt with provided that the relevant motion to resolve upon a subject that was not in the agenda is proposed with unanimous vote.

#### **ARTICLE 17 – MEETINGS OF ACTIVE MEMBERS**

1. Chamber A, Chamber B and Chamber C may hold meetings whenever they deem that such meeting is necessary.
2. Each Chamber shall assign a chairperson (natural person, not an organisation) from their members.
3. The Chambers may draw up processes to rule their own meetings.

#### **ARTICLE 18 – AMENDMENT OF ARTICLES OF ASSOCIATION AND MERGER**

1. Amendments to the Articles of Association are made upon a resolution of the General Assembly taken in a meeting with a majority of at least 50% (fifty per cent) plus 1 (one) vote of the total number of votes that can be cast by all Active Members together, present and not present at the meeting.
2. The provisions in paragraph 1 of this article shall apply mutatis mutandis to the resolution on legal merger or legal demerger.

#### **ARTICLE 19 – DISSOLUTION AND LIQUIDATION**

1. The Association may be dissolved by a resolution of the General Assembly adopted within the same conditions as described in article 18 paragraph 1.
2. Liquidation is effected by the Supervisory Board, unless the General Assembly decides otherwise.
3. After settling with the creditors, the liquidator(s) will transfer the remaining Association's assets to the Active Members, subject that these Active Members has

previously put such assets at the disposal of the Association. However, in the resolution on dissolution, the General Assembly may also give another destination to the balance.

#### **ARTICLE 20 – FINANCIAL YEAR: ANNUAL REPORTS AND ACCOUNTS**

1. The financial year of the Association coincides with the calendar year.

Within 6 (six) months after the end of the financial year, unless this period is extended by the General Assembly, the Supervisory Board must submit to the General Assembly for approval:

- a. Its annual report on the course of events in the Association and on the policy that has been pursued;
- b. The balance sheet and the statement of income and expenditure, with explanatory notes.

All the documents provided for in this paragraph 1 shall be sent to the auditor mentioned in paragraph 2 hereafter, 30 (thirty) days before the date of the General Assembly meeting called for the approval of such documents.

2. The General Assembly shall appoint an auditor according to, and for the tasks detailed in, articles L.823-1 to L.823-18 of the French commercial code.
3. The Supervisory Board is obliged to keep the documents referred to in paragraphs 1 and 2 here above for the period prescribed by law.

#### **ARTICLE 21 – COMMITTEES AND WORKING GROUPS**

The Supervisory Board has the power to establish 1 (one) or more committees and/or working groups, the tasks and powers of which will be regulated then by standing rules. The committee(s) and/or working group(s) is/are accountable for the performance of its/their tasks to the Supervisory Board.

#### **ARTICLE 22 – INTERNAL REGULATIONS**

1. The General Assembly will adopt internal regulations (the “Internal Regulations”) regulating subjects that are not dealt with, or not fully dealt with, by the Articles of Association.
2. The provisions in article 18 paragraph 1 shall apply mutatis mutandis to resolutions on definition and amendment of the Internal Regulations.

**ARTICLE 23 – MISCELLANEOUS**

1. The Association does not claim any ownership on intellectual property rights generated inside projects of ECSEL or PENTA.
2. The financial liability of the Active Members and Associated Members for the debts of the Association shall be limited to the contribution they already made.
3. Should the Articles of Association or the Internal Regulations contain provisions that are in conflict with the resolution of the Council of the European Union establishing the ECSEL Joint Undertaking, Active Members shall enter into good faith discussions on appropriate amendments to the Articles of Association or the Internal Regulations in order to avoid or eliminate such conflict.
4. The rights and obligations arising from the Articles of Association and the Internal Regulations cannot be assigned to any third party other than an Affiliated Company of the Active Member that wishes to assign such right and obligations, without the prior written consent of the Supervisory Board, which consent shall not be unreasonably withheld. "Affiliated Company" shall mean any corporation or other legal entity in respect to each of the Active Members that directly or indirectly Controls, is controlled by, or is under common Control with such Active Member, but only with respect to the period said Control continues. Joint ventures will be deemed as Affiliated Companies for the purposes of the Articles of Association and the Internal Regulations, as long as an Active Member or an Affiliated Company continues to Control this joint venture.
5. Any dispute of whatever nature in respect of or arising out of the Articles of Association or the Internal Regulations, even those which arise after its termination, shall be settled amicably. If such a settlement fails, this dispute shall be finally settled by arbitration in accordance with the rules of arbitration of the International Chamber of Commerce ("the Rules") by 3 (three) arbitrators, in which case the chairman shall be of juridical education, or less if the Active Members and/or Associated Members being party to the dispute agree on in writing, appointed in accordance with said Rules. Such arbitration shall be held in Paris, and shall be conducted in the English language.
6. The Articles of Association and the Internal Regulations shall be construed, governed and interpreted in accordance with the laws of France.
7. In the event that any provision/clause of these Articles of Association or the Internal Regulations by whatever reason is or will be found to be legally unenforceable or in any case of a loophole in these Articles of Association or the Internal Regulations that needs to be filled in, the enforcement of the Articles of Association or the Internal Regulations shall not be effected. The legally unenforceable provision/clause or the loophole to be filled in shall be substituted by mutual agreement between the Active Members and/or Associated Members hereto by a provision/clause which within the legal possibilities is nearest to that what the Active Members and/or Associated Members would have intended if they had known the non-enforceability or if they had envisaged the missing point in question.