



OPENTRAVEL ALLIANCE, INC.

MEMBERSHIP AGREEMENT

This MEMBERSHIP AGREEMENT is entered into and takes effect as specified in Section 8.1 below among OpenTravel Alliance, Inc., a Delaware membership corporation (“the Corporation”) and each entity that becomes party to this Agreement by executing and delivering a Confirmation and Acknowledgment in the form attached hereto as Exhibit A (the “Membership Confirmation”). All such parties are hereinafter collectively referred to as the “Member Companies.” Definitions for additional capitalized terms appearing in this Agreement appear in Section 7.

WHEREAS, the Corporation is a forum for the development, promotion and maintenance of electronic commerce communication protocols for the travel industry; and

WHEREAS, the Corporation and the Member Companies wish to set forth herein certain of the respective rights and responsibilities of the Corporation and the Member Companies.

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

1. MEMBERSHIP

1.1. Eligibility and Identity of Member Companies

1.1.1 Only companies that provide services in the travel industry and travel industry associations are eligible to become Member Companies.

1.1.2 The Corporation’s Member Companies shall be those entities that have become parties to this Membership Agreement (by executing and delivering a Membership Confirmation) and whose membership has not terminated.

1.2. Affiliates of Member Companies

There shall be no limit on an Affiliate or Affiliates of a Member Company becoming a Member Company or Member Companies. However, no



person shall be eligible to be a director of the Corporation who is an employee or officer of (i) any entity one of whose other employees or officers is a director or has been elected to be a director of the Corporation, or (ii) any Affiliate of any such entity.

1.3. Membership Classes

Each Member Company shall be classified as an Air Carrier Member, a Hotel Company Member, a Leisure Company Member, a Non Supplier Member, an Other Industry Participant Member, a Rental Car Company Member or a member of another membership class that has been created by the Corporation's board of directors in accordance with Section 2.1(e) of the Corporation's bylaws, as provided in this Agreement and the bylaws of the Corporation. In the event of any inconsistency between the classification of a Member Company under this Agreement and its classification under the Corporation's Bylaws, the latter classification shall govern.

1.4 Membership Classification Issues

Any question or dispute concerning the classification of any Member Company shall be determined by the directors of the Corporation (excepting any director employed by or otherwise associated with any Member Company (or any Affiliate of a Member Company) affected by such determination), and such determination by the directors of the Corporation shall be conclusive and binding on all parties.

2. MEMBERSHIP RIGHTS AND DUTIES

2.1 Rights of Member Companies

Each Member Company of the Corporation shall enjoy (i) the membership rights and privileges set forth in this Agreement, as amended from time to time in accordance with Section 4 below, and (ii) any membership rights set forth in the Corporation's Certificate of Incorporation or Bylaws, as amended from time to time. The initial period of membership for any Member Company shall be for the 12 months following the date on which the Corporation receives from the Member Company the appropriate membership fee described in Schedule 1 to this Agreement. After the initial period of membership for a Member Company, the Member Company's membership shall renew for successive 12-month periods upon



the expiration of each preceding period, subject to termination under Section 3 of this Agreement.

2.2 Designated Representatives

Each Member Company of the Corporation shall designate a full time employee of such Member Company to represent it, as its “Designated Representative,” in non-Board of Directors activities of the Corporation, including representing and voting for the Member Company at working group and Interoperability Committee meetings. Each Member Company may also designate one person to serve as an alternate Designated Representative.

2.3 Transferability of Membership Rights

Except as otherwise expressly provided by law, the rights of any Member Company shall not be assignable or transferable in any manner, and any purported assignment or transfer of such rights shall be null and void and shall have no force or effect.

2.4 Member Payment Obligations

Each Member Company shall make the required membership payments to the Corporation, including Membership Fee payments as specified in Schedule 1 to this Agreement, as such schedule may be amended from time to time in accordance with Section 4 below. The membership fee of an Affiliate of an entity that is not a Member Company and which non-Member Company has greater annual company revenues than the Affiliate shall be calculated based upon that non-Member Company’s revenues.

2.5 Endorsement Prohibition

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

3. TERMINATION OF MEMBERSHIP

3.1. Voluntary Termination by a Member Company

A Member Company may terminate its membership upon written notice to the Secretary of the Corporation. Such termination shall be effective upon

the date that the Corporation receives the notice unless the Member Company specifies a later date in the notice. Upon the effectiveness of any such termination, the terminating Member Company shall cease to participate as a Member Company. Termination of membership shall not relieve the terminating Member Company from obligations it has to the Corporation for dues, fee assessments, or charges for goods or services incurred before termination of membership. Any Member Company that terminates its membership during any year (or other time interval) for which it has made an advance dues payment or other payment to the Corporation shall not be entitled to any refund of such payment; provided, however, that if a terminating Member Company has an Affiliate that becomes a Member Company within 30 days of such Member Company's termination of membership, any unamortized dues payment made by the terminating Member Company may be credited against the dues otherwise payable by such Affiliate of the terminating Member Company.

3.2. Involuntary Termination of Membership

3.2.1 Termination for Failure to Timely Pay Application Fees, Annual Fees and Meeting Fees. Membership shall be conditioned upon timely payment of any application fee that the Board of Directors may establish, and the annual membership fee and meeting fees that the Board of Directors shall establish. A Member Company's membership in the Corporation shall be automatically terminated for failure to pay the annual membership fee or meeting fee within 90 days of the date of the applicable fee invoice.

3.2.2 Termination for Other Cause. A Member Company's membership in the Corporation may be involuntarily terminated by the vote of seven members of the Board of Directors, for cause, including action by the terminated Member Company materially harmful to the collective interests of the Corporation and its Member Companies in developing, maintaining and promoting electronic commerce communication protocols for the travel industry.

3.2.3 Review of Termination for Other Cause. Any Member Company who is expelled from membership pursuant to Section 3.2.2 shall be entitled to request that the Board of Directors review the involuntary termination of Member Company's membership; *provided, however*, that the expelled Member Company must make such request within three months of its expulsion. In such a review proceeding, the expelled member shall be entitled to present to the Board of Directors, orally or in writing, its reasons for seeking reinstatement of its membership.

3.2.4 Payment of Dues, Fee Assessments and other Charges. Involuntary termination of a Member Company's membership shall not relieve the Member Company from obligations that it has to the Corporation for dues, fee assessments, or other charges for goods or services incurred before expulsion.

3.3. Termination of Membership by the Corporation

Except as provided in Section 3.2 above, the Corporation may terminate the membership of any Member Company only if (i) the Corporation makes a determination to terminate this Membership Agreement as it relates to all Member Companies, and (ii) the Corporation gives all Member Companies not less than sixty (60) days' prior written notice of such termination.

3.4. Effect of Termination of Membership

Termination of any Member Company's membership in the Corporation shall not relieve such Member Company or any of its Affiliates (or the Corporation or any of its other Member Companies or their Affiliates) of any obligations incurred under this Agreement prior to the effectiveness of such termination. Following termination of any Member Company's Membership in the Corporation, the Corporation shall cease to identify such Member Company as part of the membership of the Corporation.

4. AMENDMENTS

This Agreement, including, without limitation, Schedule 1 hereto, may be amended with prospective effect only, by vote of at least eight members of the Board of Directors of the Corporation, provided that each Member Company is given notice of any approved amendment not less than sixty (60) days prior to its scheduled effective date. Notwithstanding the foregoing, if the effect of an amendment of Schedule 1 is solely to reduce any of the fees then specified in Schedule 1 or the effect of an amendment of Exhibit A is solely to add additional working groups as permitted by Section 7.3 of the Corporation's bylaws, such amendment may (subject to applicable resolutions of the Board of Directors) be approved by action of the officers of the Corporation and take effect immediately upon the giving of notice of such amendment to all of the Member Companies. Except as otherwise expressly provided in this Section, this Agreement may be amended only by vote of three-fourths of all of the Member Companies. If a definition contained in Section 7 of this Agreement also appears in substantially

identical form in the Corporation's Bylaws and such definition, as it appears in the Bylaws, is amended in accordance with the Bylaws and the Corporation's Certificate of Incorporation, the corresponding definition contained in Section 7 of the Agreement shall automatically be amended, effective concurrently with the amendment of the corresponding Bylaw definition, to conform to the amended Bylaw definition. Following any amendment of this Agreement, the Board of Directors may approve issuance of a restated text of this Agreement, incorporating all applicable amendments not previously incorporated, and upon its issuance any such restated text shall automatically supersede prior versions of this Agreement and shall constitute the Membership Agreement.

5. PROPRIETARY RIGHTS

5.1 Contributions

Each Member Company understands that any data elements, specifications, other potential protocol components or other information or material provided in accordance with this Membership Agreement or the Corporation's bylaws by such Member Company directly or through a Designated Representative, for itself or on behalf of any of its Affiliates, to any working group, the Interoperability Committee, the Advisory Forum, the Board of Directors, or otherwise to the Corporation may be incorporated into OpenTravel Specifications that are developed, promoted or maintained by the Corporation and shall be immediately available for use by the Corporation. Accordingly, each Member Company hereby grants to the Corporation a non-exclusive, irrevocable, non-transferable, royalty-free, worldwide license, with the right to sublicense to other Member Companies, their Affiliates, and End Users, to use, copy, modify, distribute, disclose and otherwise exploit such data elements, specifications, other potential protocol components and other information and materials it shall have provided to the Corporation hereunder or under the terms of the Corporation's bylaws.

5.2 Patent License

Effective upon the adoption by the Corporation of an OpenTravel Specification, each Member Company and its Affiliates hereby grant to the Corporation a non-exclusive, irrevocable, non-transferable, royalty-free, worldwide license under the Member Company's and its Affiliates' Necessary Claims to make, have made, use, import, offer to sell, and otherwise distribute and dispose of Compliant Portions, with the right to sublicense to other Member Companies, their Affiliates, and End Users.

5.3 Further Assurances

Each Member Company further agrees, promptly upon request by the Corporation, to execute such specific licenses or instruments and take any action necessary to enable the Corporation to secure and perfect the rights licensed herein..

6. MEMBER COMPANY REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1. Agreement Concerning Contributions

Each Member Company agrees that it will not knowingly, directly or through its Designated Representative, provide to the Corporation any data elements, specifications, other potential protocol components or any other information or material which such Member Company does not have the right or authority to so license to the Corporation as required pursuant to Article 5 hereof.

6.2 No Warranty.

All parties acknowledge that the OpenTravel Specifications and all data elements, specifications, protocol components, and other information and other material provided in, as part of, or in connection with the promulgation of an OpenTravel Specification and all licenses hereunder are provided “*AS-IS*” WITHOUT ANY WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE REGARDING ANY SUBJECT MATTER THEREOF. THE PARTIES EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, THE PARTIES DO NOT WARRANT THAT THE OpenTravel SPECIFICATIONS OR ANY DATA ELEMENTS, SPECIFICATIONS, PROTOCOL COMPONENTS, OR OTHER INFORMATION OR MATERIAL PROVIDED IN CONNECTION WITH THE PROMULGATION OF THE OpenTravel SPECIFICATIONS WILL BE FREE FROM ERRORS OR THAT USE THEREOF WILL BE UNINTERRUPTED.

6.3 Limitations on Liability.

TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, OTHER THAN WITH RESPECT TO ANY INDEMNIFICATION OBLIGATION ARISING UNDER SECTION 6.4, NO PARTY SHALL BE RESPONSIBLE OR LIABLE TO THE CORPORATION OR OTHER MEMBER COMPANIES OR THEIR AFFILIATES WITH



RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR BUSINESS INTERRUPTION, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) ANY AMOUNT OF DAMAGES UNDER ANY CAUSE OF ACTION IN EXCESS OF THE ANNUAL MEMBERSHIP DUES PAID HEREUNDER BY THE DAMAGED MEMBER COMPANY FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE EVENT GIVING RISE TO SUCH CAUSE OF ACTION OCCURRED. THE FOREGOING LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

6.4 Indemnification.

Each Member Company agrees to indemnify the Corporation and hold it harmless from and against any and all liabilities, losses, costs, claims, demands, actions, causes of action (including, without limitation, costs of investigating claims, costs of litigation and reasonable attorneys fees and disbursements) attributable to any breach of Section 6.1 of this Agreement by such Member Company or any of its Affiliates.

7. DEFINITIONS

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

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

7.2 The term “Air Carrier Member” shall mean a Member Company whose primary activity in the travel industry is the direct provision of air transportation services.

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

7.4 “Compliant Portions” means those specific portions of products (hardware, software, or combinations thereof) that implement and are compliant with the OpenTravel Specifications.

7.5 “End User” means a person or entity that has downloaded OpenTravel Specifications and accepted the terms and conditions of the OpenTravel Specifications License Agreement pursuant to the downloading process on the OpenTravel website or otherwise.

7.6 The term “Hotel Company Member” shall mean a Member Company whose primary activity in the travel industry is the provision of hotel or resort accommodations.

7.7 The term “Leisure Company Member” shall mean a Member Company whose primary activity in the travel industry is to provide services to travel suppliers that facilitate discretionary travel as well as to discretionary travelers (i.e., non-corporate travelers), such as tours or cruises.

7.8 “Necessary Claims” means claims of a patent, patent application, or provisional patent application that (a) are owned or controlled by a Member Company and/or its Affiliates during the duration of a Member Company’s membership in OpenTravel and one (1) year thereafter, including, without limitation, any patent or patent application that claims the benefit of the filing date of such patents, patent applications, or provisional patent applications, and (b) are necessarily infringed by implementing all or portions of an OpenTravel Specification. A claim is necessarily infringed only when it is not possible to avoid infringing such claim because there is no technically and commercially reasonable alternative for implementing those portions of the OpenTravel Specification within the bounds of the Scope. Notwithstanding the foregoing, necessary claims do not include any claims that if licensed would require a payment of royalties by the licensing Member Company to an unaffiliated third party unless the licensed Member Company agrees to pay any and all of such royalties.

7.9 The term “Non Supplier Member” shall mean a Member Company whose primary activity in the travel industry is to provide services to travelers and travel suppliers and that does not belong to any other membership class established under or in accordance with the Corporation’s bylaws.



7.10 “OpenTravel Specification” means any adopted draft specification promulgated by the Corporation.

7.11 The term “Other Industry Participant Member” shall mean a Member Company that does not belong to any other membership class established under or in accordance with the Corporation’s bylaws.

7.12 The term “Rental Car Company Member” shall mean a Member Company whose primary activity in the travel industry is the short-term rental of automobiles.

7.13 “Scope” means the protocols, data formats, schema, and electrical signaling characteristics disclosed in or required by an OpenTravel Specification, excluding those specifications merely referenced in an OpenTravel Specification that were developed and publicized outside of the Corporation.

8. MISCELLANEOUS

8.1. Effectiveness of Agreement; Listing of Member Companies

As to the Corporation and each of the Member Companies executing a Membership Confirmation on or prior to _____, this Agreement is effective as of _____. As to any other Member Company, this Agreement shall be effective as of the date of such Member Company’s execution of the Membership Confirmation, as specified in the Membership Confirmation. The Corporation shall maintain, and shall make available to any Member Company upon request, a listing of all Member Companies, including for each Member Company (i) the date that this Agreement became effective as to such Member Company, (ii) such Member Company’s membership class, as determined pursuant to the Corporation’s Bylaws and (iii) the address and telecommunications information for such Member Company as set forth in its Membership Confirmation or as subsequently changed by notice to the Corporation in accordance with Section 8.2 below.

8.2. Notices

8.2.1. Traditional Means

Except as otherwise provided in Section 8.2.2, all notices, demands, requests or other communications which may be or are required to be given or made by any party to any other party pursuant to this Agreement shall be in writing (whether or not otherwise expressly required to be in writing) and shall be mailed



by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile, or hand delivered, or sent by overnight or express delivery service, addressed as follows:

- (i) If to the Corporation:

OpenTravel Alliance, Inc.
1740 Massachusetts Avenue
Boxborough, MA 01719
Attention: CEO
Telephone: +1 978 263 7606
Facsimile: + 1 978 263 0696
email: membership@opentravel.org

- (ii) If to a Member Company, to the address of such Member Company as it appears in the listing of Member Companies maintained by the Corporation pursuant to Section 8.1 of this Agreement.

or such other address as the addressee may indicate by written notice in accordance with this Section 8.2; and

Each notice, demand, request or communication which shall be given or made in the manner described above shall be deemed sufficiently given or made for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, the affidavit of messenger or (with respect to a telecopy) the answer-back being deemed conclusive but not exclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

8.2.2. Electronic Notices

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

its receipt and effectiveness.

8.3. Waiver

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

8.4. Benefit of Agreement

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

8.5. Entire Agreement

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

8.6. Severability

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

8.7. Governing Law



This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of Delaware, not including its choice-of-law rules.

8.8. Operating Rules, Technical Specifications

If the Board of Directors of the Corporation determines that such rules or specifications are necessary or desirable for the orderly, consistent functioning of the Corporation's services, the Board of Directors may, by majority vote, adopt operating rules and/or technical specifications applicable generally to the Corporation's services or applicable to specific services. Any such operating rules or technical specifications shall (i) apply uniformly to all affected Member Companies and Affiliates; (ii) take effect on not less than thirty (30) days prior notice to the affected parties; and (iii) have prospective effect only.

8.9. Execution

To facilitate execution, this Agreement shall be executed by each Member Company by means of the Membership Confirmation. The Membership Confirmation can be executed electronically. Upon its execution of a Membership Confirmation, each Member Company shall be bound by and shall be entitled to the benefits of this Agreement to the same extent and in the same manner as if such Member Company, together with all other Member Companies and the Corporation, had executed one and the same counterpart of this Agreement. In making proof of this Agreement, as it relates to any Member Company, it shall only be necessary to produce or account for (i) a Membership Confirmation executed by or on behalf of such Member Company, and (ii) this Agreement as executed on behalf of the Corporation. The Corporation shall at all times maintain in its records, and make available for inspection and copying by any Member Company upon request, originals of this Agreement, as executed on behalf of the Corporation, and the Membership Confirmations executed by or on behalf of each of the Member Companies.

IN WITNESS WHEREOF, each of the parties hereto has executed and delivered this Agreement, or has caused this Agreement to be duly executed and delivered on its behalf, in the manner set forth above.

OPENTRAVEL ALLIANCE, INC.



By:

Name: Valyn Perini

Title: CEO, OpenTravel Alliance



Exhibit A

CONFIRMATION AND ACKNOWLEDGMENT

The undersigned hereby confirms, acknowledges, adopts and agrees to be bound by, and for all purposes to be party to, the Membership Agreement (the “Membership Agreement”) of OPENTRAVEL ALLIANCE, Inc. (the “Corporation”) among the Corporation and its Member Companies.

The undersigned Member Company also certifies that under the Membership Agreement and the Corporation’s Bylaws such Member Company is classified as:

- ☐ an Air Carrier Member,
- ☐ a Hotel Company Member,
- ☐ a Leisure Company Member,
- ☐ a Non Supplier Member,
- ☐ a Rental Car Company Member,
- ☐ an Other Industry Participant Member, or
- ☐ a _____ Member (specify other Board-approved membership class),

and that the working group, as the same are described in the Corporation’s bylaws, in which such Member Company shall initially participate in a voting capacity shall be:

- ☐ the Airline Working Group,
- ☐ the Hotel Working Group,
- ☐ the Leisure Company Working Group,
- ☐ the Rental Car Working Group,
- ☐ the Non Supplier Working Group, or
- ☐ the _____ Working Group (specify other Board-approved working group).



Legal Name of Member Company

By:_____

Name (printed): _____

Title:_____

Date of Execution:_____

Name, address, and telephone number of officer or other responsible employee to whom all notices to the Member Company should be directed:

Name:_____

Title:_____

Address:_____

City:_____

State or Province: _____ Zip Code:_____

Country: _____

Telecommunications:

Telephone No: ()_____

Facsimile No: ()_____

email:_____