



NEXT GENERATION NETWORKS UK

CONSTITUTION

As of 1 September 2009

CONSTITUTION OF NGNUK

AN UNINCORPORATED ASSOCIATION

ARTICLE 1 PURPOSE AND PRINCIPLES

1.1 Background to the development of Next Generation Networks UK ("NGNuk")

- 1.1.1 Following industry consultation, Ofcom proposed in its report, "Next Generation Networks: Developing the Regulatory Framework", dated 7 March 2006 ("**Ofcom Report**"), a number of policies and processes to support the development of next generation networks ("NGNs") in the UK.
- 1.1.2 One of the proposals was the development of NGNuk as an independent NGN industry body, with a view to creating an improved framework for industry engagement.
- 1.1.3 NGNuk will have a two-way relationship with other industry bodies, such as Consult21 and NICC, with input from those other bodies to enable the commercial work of NGNuk to succeed and output from NGNuk to assist in the carrying out of their functions.

1.2 Constitution and Mission

- 1.2.1 This Constitution governs the rights and obligations of the members of NGNuk, an independent, unincorporated association, accountable only to its members.
- 1.2.2 NGNuk's mission is to act as a co-ordination forum to ensure that there is a clear commercial vision led by industry for competition based on interconnected NGNs so that regulation can follow the market rather than leading it

1.3 Guiding Principles of Operation and Behaviour

- 1.3.1 The guiding principles for the operation of NGNuk, as an industry body and forum, and the behaviour of all of its members in carrying out its objectives are as follows:
 - (A) NGNuk will promote investment and innovation in NGNs through open communication amongst those involved in the telecoms industry in the UK;
 - (B) NGNuk is about the future and it belongs to the industry. It is not BT centric and should not be an extrapolation of the past.
 - (C) NGNuk is committed to working towards creating and implementing a common vision of interconnection for NGNs in the UK, through seeking to achieve industry-wide decisions;
 - (D) NGNuk Members recognise the desirability of an aligned vision for access and interconnection arrangements for NGNs in the UK;
 - (E) NGNuk will adopt a strategic top-down and principle-driven perspective;

- (F) NGNuk Members and Associates will ensure compliance with relevant competition law and regulation and, subject to Article 2.2.2, will at all times be open and honest in discussions on any and all issues;
- (G) NGNuk Members will engage in an appropriate manner with those operators, providers and other parties who are not directly represented on the NGNuk Executive or Working Groups, but who have a vested interest in the future of NGNs, striving to make decisions in a manner that respects their interests;
- (H) NGNuk will seek Ofcom concurrence with respect to decisions about any changes in membership criteria but will otherwise be independent of Ofcom; and
- (I) NGNuk Members will escalate irresolvable regulatory issues to Ofcom for resolution.

ARTICLE 2 TERMS OF REFERENCE

2.1 The objectives for NGNuk ("**Terms of Reference**") are:

- 2.1.1 to provide a forum where the guiding principles, vision and issues associated with an interconnected NGN future for the UK, including interconnection between PSTN replacement NGNs, IP-based mobile networks, VOIP operators, and other relevant future developments in communications networks and services, can be reviewed, debated and, wherever practical, agreed across industry;
- 2.1.2 for the NGNuk Executive to ensure that the wider community of NGNuk Members and other stakeholders in NGNs are proactively consulted, and a transparent process is in place to ensure their views are input to any Work Streams and NGNuk's decision making processes;
- 2.1.3 to fully understand and define issues and options for resolution where NGNuk cannot achieve substantial agreement within the membership; and
- 2.1.4 to endeavour to ensure work is completed as soon as reasonably practicable in the light of the need for NGNuk Members and other stakeholders in NGNs to make substantial NGN investment decisions.

2.2 Open Competition Between the Members

- 2.2.1 The Members of NGNuk are individually and collectively committed to open competition in the development of products, Intellectual Property Rights, technology, and services, and the Members are not restricted in any way from designing, developing, marketing, and/or procuring any hardware, software, systems, Intellectual Property, technology or services for their own benefit.
- 2.2.2 Notwithstanding the foregoing, the Members shall not be obliged in any manner to disclose any Confidential Information or Intellectual Property, to share any capacities (technical, operational, marketing, sales or otherwise) or to engage in any behaviour or conduct which may be anti-competitive under, or in violation of, any applicable law,

regulation, rule or judicial proceedings of any governmental or regulatory authority in the UK or any other jurisdiction.

ARTICLE 3 MEMBERSHIP

3.1 Subject to the Articles of this Constitution, any company that is committed to satisfying the Terms of Reference and meets the applicable membership criteria may become a Member of NGNuk.

3.2 There are 2 classes of membership:

3.2.1 Executive Members; and

3.2.2 Participating Members.

The term "**Members**" refers to Executive Members and Participating Members, collectively.

3.3 Executive Members

3.3.1 The Executive Members are committed to active participation in the activities of NGNuk in order to achieve the aim and the Terms of Reference.

The current Executive Members are, in alphabetical order: ;

- (A) BT plc (comprising OF Openreach, BT Retail and BT Wholesale)
- (B) Cable & Wireless UK;
- (C) Carphone Warehouse Group plc
- (D) Colt Telecommunications Ltd
- (E) Easynet Telecommunications Limited;
- (F) Gamma Communications Ltd
- (G) Kingston Communications (Hull) plc;
- (H) Orange Personal Communications Services Limited;
- (I) T-Mobile (UK) Limited; and
- (J) Virgin Media Limited
- (K) Vodafone Limited.

3.3.2 Executive Membership shall be open to Electronic Communications Network providers with a demonstrable, substantial, network investment (whether existing or committed) in NGNs in the UK and intention to interconnect with other Electronic Communications Networks whose participation as Executive Members will materially contribute to the achievement of the Terms of Reference.

3.3.3 In order to facilitate the effective working of NGNuk and the achievement of the Terms of Reference, it is desirable to maintain the

number of Executive Members at a manageable level. Accordingly, the Secretariat will, in consultation with the NGNuk Executive, consider the appropriate means of accommodating potential additional Executive Members. The final decision on accession of new Members will be made in accordance with Article 7.

3.3.4 Accession and expulsion of Executive Members shall be in accordance with Article 7.

3.3.5 Each Executive Member with the exception of BT plc is entitled to:

- (A) nominate one representative for the NGNuk Executive;
- (B) attend and participate (subject to membership selection in accordance with Article 9.2) in all Working Groups. Each Working Group will have an independent chair;
- (C) have access to all Working Groups' working documents, meeting minutes and written contributions;
- (D) subject to Article 14, use the NGNuk Brand for the purposes of identifying itself as a Member of NGNuk; and
- (E) attend and participate in activities, events and conferences of NGNuk as may be determined by the NGNuk Executive from time to time in accordance with this Constitution.

3.3.6 BT plc, given its size, scale and diversity is entitled to:

- (A) nominate one representative for the NGNuk Executive for each of its UK customer facing businesses (Openreach , Retail and Wholesale);
- (B) attend and participate (subject to membership selection in accordance with Article 9.2) in all Working Groups. Each Working Group will have an independent chair;
- (C) have access to all Working Groups' working documents, meeting minutes and written contributions;
- (D) subject to Article 14, use the NGNuk Brand for the purposes of identifying itself as a Member of NGNuk; and
- (E) attend and participate in activities, events and conferences of NGNuk as may be determined by the NGNuk Executive from time to time in accordance with this Constitution.

3.4 Participating Members

3.4.1 Participating Membership shall be open to any company that is an Electronic Communications Network or Service provider that has a bona fide and demonstrable intention to interconnect, use or invest in NGN in the UK.

3.4.2 Accession and expulsion of Participating Members shall be in accordance with Article 7.

3.4.3 Each Participating Members is entitled to:

- (A) propose and present agenda items for the NGNuk Executive meetings and suggest work items
- (B) access to all Working Groups' working documents, meeting minutes and written contributions; and
- (C) attend and participate in select Working Groups in accordance with Article 9.2.

3.4.4 A Participating Member shall not be entitled to:

- (A) appoint a representative for the NGNuk Executive;
- (B) vote at any NGNuk Executive Meeting; or
- (C) attend any NGNuk Executive Meeting unless invited by the NGNuk Chair to present on a specific issue by the NGNuk Executive.

ARTICLE 4 OTHER FORMS OF PARTICIPATION IN NGNUK

4.1 Associates

4.1.1 Any company or body that is a recognised association or group representing the interests of a number of Electronic Communications Network providers, Electronic Communications Service providers, or other stakeholders in NGNs in the UK may participate in the activities of NGNuk as an Associate.

4.1.2 Each Associate, or its representative:

- (A) will be offered a communication channel with the NGNuk Executive and/or the Secretariat; and
- (B) may be invited by the NGNuk Executive to present reasoned arguments at Working Groups, and in exceptional circumstances, to the NGNuk Executive Meetings.

4.1.3 Neither an Associate nor its representative is entitled to:

- (A) representation on the NGNuk Executive;
- (B) attend or participate in any Working Groups, other than by invitation;
- (C) attend any NGNuk Executive Meeting (except as contemplated in Article 4.1.2 (B)) access Working Groups' working documents, meeting minutes or written contributions.

4.1.4 Accession and expulsion of Associates shall be in accordance with Article 7.

4.2 Non-Members

4.2.1 A person or body interested in the activities of NGNuk (including users of and suppliers to Electronic Communications Network and Service Providers), but not qualifying as a Member or an Associate,

will be able to access completed documents produced by Working Groups via the NGNuk Website.

ARTICLE 5 MEMBERSHIP PARTICIPATION AND OBLIGATIONS

5.1 Member Representatives

5.1.1 Subject to the other provisions of this Constitution, each Executive Member and Participating Member (subject to membership selection) shall be responsible for designating a single person who has operation business responsibilities in their company (and may designate one additional person for covering absences) who shall be authorised to act as the representative of that Member ("**NGN Executive Representative**" and "**Participating Member Representative**", respectively). The NGN Executive Representative shall be of senior executive level within the appointing Executive Member.

5.2 Members' Obligations

5.2.1 Each Member shall:

- (A) at all times comply with the Articles of this Constitution and the reasonable guidelines and policies of the Secretariat;
- (B) pay its Membership Fees each Financial Year in advance; and
- (C) (subject to the other provisions of this Constitution) use its commercially reasonable efforts to participate in activities, events and conferences organised by NGNuk from time to time.

ARTICLE 6 BUDGET AND FUNDING

6.1 Budget

6.1.1 The budget for NGNuk for each Financial Year will be agreed by the NGNuk Executive.

6.2 Funding

6.2.1 Funding for the operation and activities of NGNuk will be from the Membership Fees and any ad hoc funding collected in accordance with Article 6.3.3. All funds collected by NGNuk shall be held on behalf of NGNuk in a separate account in the name of Ofcom.

6.3 Annual Membership Fees and Ad-Hoc Funding

6.3.1 Annual Membership Fees are set out in Schedule 2, as amended annually by the NGNuk Executive, and shall be due prior to accession to membership of NGNuk in respect of the first year of membership and on the first day of each subsequent Financial Year of membership thereafter.

6.3.2 The NGNuk Executive may direct that any unused surplus Membership Fees collected in a Financial Year shall be set-off against the Members' annual Membership Fees on a pro rata basis in the following Financial Year.

6.3.3 The NGNuk Executive with concurrence from Ofcom may:

- (A) increase the Membership Fee for the next Financial Year above that established when NGNuk was founded , and in accordance with Article 12.7; or
- (B) levy special ad-hoc contributions upon the Members to cover any extraordinary, unusual, or unanticipated operating expenses or operating deficits of NGNuk ("**Contributions**").

6.3.4 The amount of such Contributions shall be pro rata to the amount of the then current Membership Fees and equal for all participants of a given membership class. For the avoidance of doubt, the amount for BT shall be pro rata to the then current Executive Membership fee, rather than the pro rata to the agreed increased membership fee set out in Schedule 2. The Secretariat will provide written explanation to the Members for the amounts to be charged at the time the Contributions are levied.

6.4 The membership of a Member which fails to pay its Membership Fee or Contributions within ninety (90) days of the due date may, after it has been reminded to do so, be terminated pursuant to Article 8.2.1(A). A Member terminated on these grounds may be reinstated on payment of the amount due. Subject to Article 8.2.3, the Secretariat shall have full power to decide all questions relating to any dispute relating to payments of Membership Fees and Contributions and such decision shall be final.

6.5 **Member, Associate and Non-Member expenses**

6.5.1 All time, travel, hotel and other expenses incurred by a Member, Associate or Non-Member in connection with the activities of NGNuk, shall in all cases be borne by the relevant Member, Associate or Non-Member.

ARTICLE 7 APPLICATIONS FOR MEMBERSHIP

7.1 Applications for membership (including an application to change Membership category from Executive Member to Participating Member or vice versa), or to participate as an Associate, shall be submitted to the Secretariat. The Secretariat shall inform the NGNuk Executive and Ofcom of all applications.

7.2 The Secretariat shall verify the completeness of each application and shall determine into which membership category (where the application is for membership) the applicant shall be classified, in accordance with this Constitution. The Secretariat may call for any additional information or clarification from the applicant to determine the applicant's suitability for membership, or to participate as an Associate.

7.3 The Secretariat shall, following completion of the process in Article 7.2, make a recommendation to the NGNuk Executive as to whether the applicant is suitable for membership, change of membership category or participation as an Associate.

7.4 New memberships shall become effective on the later of: (i) the first day following notification of acceptance by the Secretariat; (ii) the receipt of the required Membership Fee from the applicant; and (iii) the applicant's execution and return of the required documentation evidencing accession to membership. An accepted Associate may participate from the date notified by the Secretariat.

ARTICLE 8 WITHDRAWAL AND TERMINATION OF MEMBERSHIP

8.1 Withdrawal

8.1.1 Any Member may withdraw from membership of NGNuk by giving notice in writing to the Secretariat at any time; provided, however, that no withdrawal shall:

- (A) affect the accrued obligations and liabilities up to and including the date of withdrawal of the withdrawing Member under this Constitution; or
- (B) relieve the withdrawing Member from full payment of any and all Membership Fees or Contributions payable by that Member which remain unpaid on the date of tender of the withdrawal.

8.2 Termination of Membership

8.2.1 The Secretariat may terminate, in consultation with Ofcom on notice, with immediate effect, the membership of any Member on the occurrence of any of the following events:

- (A) the failure of a Member to pay its Membership Fee or other Contributions;
- (B) the occurrence of any event that renders a Member ineligible for membership, or failure to satisfy membership qualifications;
- (C) the insolvency, bankruptcy, winding-up or withdrawal from or cessation of business of the Member;
- (D) if, in its reasonable opinion, the Member's continued membership or the conduct of the Member (where the Member fails or refuses to remedy on notice) would be detrimental to satisfying the Terms of Reference or is in violation of this Constitution; and/or
- (E) a change in control results in multiple Members for the same group of companies.

8.2.2 The Secretariat may only terminate membership on the grounds in Article 8.2.1 after having notified the Member in writing and considered the matter in the light of any written representations which the Member puts forward to the NGNuk Executive within 14 days of receiving such notice.

8.2.3 A Member may appeal any termination by the Secretariat under article 8.2.1 to Ofcom, whose decision on the matter will be final.

8.3 Loss of Membership Rights

8.3.1 If a Member withdraws from membership in NGNuk or its membership is terminated, all Membership Fees or Contributions paid during membership shall be forfeited and it shall take no part in any of the activities of Members and have no right, or interest in NGNuk.

8.4 Survival of Obligations and Rights

8.4.1 Any withdrawal or termination of membership in NGNuk shall not affect any accrued rights or liabilities of that member nor the coming

into or continuance in force of any provision herein which is expressly or by implication intended to continue to apply to the relevant member.

ARTICLE 9 WORKING GROUPS

9.1 The NGNuk Executive may create one or more working groups (the "**Working Groups**") to address specific issues or topics relevant to NGNs. The initial scope, objectives and timescales for each Working Group will be defined by the NGNuk Executive. Working Groups may recommend changes to scope and objectives for agreement by the NGNuk Executive.

9.2 Working Group Representatives

9.2.1 The Working Groups will be open to members of the Secretariat, representatives of Executive Members, representatives of Participating Members and Ofcom. The Secretariat will be responsible for ensuring that the full range of interests is represented on each Working Group. The secretariat will be responsible for appointing an appropriate chair ("**Working Group Chair**").

9.2.2 The Secretariat will invite nominations for Working Group Representatives. Each Member must only nominate participants who will be active, add value and adhere to the provisions of this Constitution in particular, the Guiding Principles of Operation and Behaviour, and provide qualified representatives to further the work of various Working Groups.

9.3 Working Group Activities

9.4 The Working Groups must at all times operate in accordance with this Constitution and the reasonable directions of the NGNuk Executive. The Working Groups shall be: (i) accountable to the NGNuk Executive; and (ii) responsible for reporting their progress to the NGNuk Executive.

9.5 The Working Groups shall be responsible for generating the documentation related to the activities being pursued by the relevant Working Group.

9.6 Upon completion of a Working Group activity and the review of such results, and subject to the NGNuk Executive reaching a consensus as to the proposal or outcome in such report, the NGNuk Executive will release the results to all Members, and the Secretariat will publish them as NGNuk Output Documents on the NGNuk Website.

ARTICLE 10 GENERAL NGNUK MEETINGS

10.1 The Secretariat will call General NGNuk Meetings when requested to do so by the NGNuk Executive.

10.2 General NGNuk Meetings are intended to be a forum for Members to discuss the affairs and objectives of NGNuk and the progress thereof, and to solicit views and contributions. There shall be no voting at the NGNuk Meetings.

10.3 General NGNuk Meetings (if any) will be held at such date, place and time as may be determined by the NGNuk Executive and as stated in the notice of the meeting, such notice to be published on the NGNuk Website normally not less than four (4) weeks prior to the General NGNuk Meeting.

ARTICLE 11 SECRETARIAT

11.1 Ofcom shall appoint one or more representative(s) to act as and carry out the functions of:

11.1.1 NGNuk Chair (the person appointed to this role will also exercise the role of non-voting chair of the NGNuk Executive); and

11.1.2 such other officers as deemed appropriate and necessary by the NGNuk Executive for the operation and function of NGNuk,

(collectively, the "**Secretariat**"). No appointee to the Secretariat may be an officer or employee of a Member, and any such appointee who becomes an officer or employee of a Member shall promptly resign from the Secretariat. For the avoidance of doubt, the representative(s) appointed to carry out the functions of the secretary may also be appointed to carry out the functions of the treasurer.

11.2 An appointee to the Secretariat may be removed or resign as follows:

11.2.1 the NGNuk Executive may remove the NGNuk Chair by notice in writing to the NGNuk Chair, which notice may only be served following the passing of the required resolution pursuant to Article 12.7.3;

11.2.2 any other appointee may be removed by the NGNuk Chair by notice in writing to the appointee; and

11.2.3 the appointee may resign on no less than three months' notice in writing to the NGNuk Executive.

11.3 NGNuk Chair

11.3.1 Rod Smith is the current NGNuk Chair

11.3.2 Any future chair shall be appointed by the NGNuk Executive, in accordance with Article 12.7.3

11.3.3 The NGNuk Chair shall be independent and accountable to the NGNuk Executive.

11.4 Role of the Secretariat

11.4.1 The Secretariat shall be responsible for the day-to-day running of NGNuk and shall, in particular:

(A) monitor the activities of the NGNuk Executive and the Members and ensure that the activities of the Working Groups and NGNuk generally are consistent with the Terms of Reference;

(B) establish and maintain an up to date NGNuk website reflecting the activities, meetings and decisions of the organisation

(C) ensure that Ofcom as an agent of NGNuk collects all Membership Fees and Contributions from Members;

- (D) pay all bills in connection with the activities of NGNuk, subject to the Articles of this Constitution; and
- (E) act as the custodian of the records and official documentation of NGNuk. Without prejudice to the foregoing, the Secretariat shall keep or cause to be kept, at the Office of NGNuk:
 - (1) a record of the Members of NGNuk, showing each Member's name, contact particulars and class of membership;
 - (2) minutes of all NGNuk Executive Meetings and all NGNuk Meetings;
 - (3) proposals, reports and other documents submitted by the Working Groups to the NGNuk Executive; and
 - (4) adequate and correct books and accounts of financial transactions relating to the activities of NGNuk. The books of account shall be open to inspection by Ofcom on behalf of Executive Members, provided that there are material grounds for such inspection.

11.4.2 Subject to the remainder of this Constitution, the Secretariat shall refer all significant questions arising out of this Constitution to the NGNuk Executive for final determination.

11.5 Compensation

11.5.1 The Secretariat shall be remunerated by NGNuk, such remuneration to be paid from the Membership Fees and Contributions. All reasonable travel, hotel and other expenses incurred by the Secretariat in connection with their representative(s)' attendance at any meeting or otherwise incurred in connection with the activities of NGNuk shall be borne by NGNuk, such expenses to be paid from the Membership Fees and Contributions.

11.6 Handing Over

11.6.1 Upon the expiry of the office of any of the Secretariat, the retiring officer shall promptly hand over all records, accounts, books, moneys and valuables kept by them by virtue of their office(s), to the incoming member of the Secretariat, subject to the directions, in ascending order of priority, of the Secretariat, Ofcom and the NGNuk Executive.

ARTICLE 12 NGNUK EXECUTIVE

12.1 There shall be an NGNuk Executive which shall be constituted by:

- 12.1.1 the NGNuk Chair, who shall act as an independent non-voting chair; and
- 12.1.2 each NGNuk Executive Representative; and
- 12.1.3 one senior representative from Ofcom as a non-voting observer.

12.2 The NGNuk Executive shall be the decision-making body of NGNuk.

12.3 Chair of the NGNuk Executive

12.3.1 The NGNuk Chair shall preside as chair at every NGNuk Executive Meeting. The NGNuk Chair shall be entitled, on limited occasions, to appoint a suitably qualified senior person who meets the requirements of Article to act as his alternate for the purposes of attending and voting at NGNuk Executive Meetings.

12.4 NGNuk Executive Representatives

12.4.1 The NGNuk Executive Representatives shall serve without remuneration by NGNuk.

12.4.2 Each NGNuk Executive Representative must be an employee and/or authorised representative of the relevant Executive Member. Each Executive Member shall:

- (A) be responsible for all acts and omissions of the NGNuk Executive Representative appointed by it;
- (B) take all necessary steps to ensure that such NGNuk Executive Representative is fully indemnified by it against any and all risk and liabilities, in properly performing his or her duties as an NGNuk Executive Representative; and
- (C) pay all remuneration, and travel, hotel and other expenses incurred by an NGNuk Executive Representative.

12.4.3 Each appointment or removal of an NGNuk Executive Representative shall be in writing submitted by a senior representative of the Executive Member concerned and shall be delivered to the Secretariat.

12.4.4 An NGNuk Executive Representative shall be entitled, on limited occasions, to appoint a suitably senior person who meets the requirements of Article 12.4.2 to act as his alternate for the purposes of attending and voting at NGNuk Executive Meetings and attend any Working Groups in respect of which the NGNuk Executive Representative is a Working Group Representative, and to terminate the appointment of such person.

12.4.5 The entitlement of an Executive Member to appoint an NGNuk Executive Representative shall cease upon that Executive Member ceasing to be a member in accordance with this Constitution.

12.5 Role of Ofcom

12.5.1 Ofcom supports the objectives and activities of NGNuk and will participate in the NGNuk Executive as a non-voting observer at NGNuk Executive Meetings.

12.5.2 The Members and Associates recognise that notwithstanding the foregoing, nothing contained in this Constitution or Ofcom's

participation in NGNuk, will affect or impact on the carrying out of Ofcom's regulatory functions.

12.6 Office of the NGNuk Executive

12.6.1 The office of NGNuk shall be located at the principal office of the NGNuk Chair or such other location as the Secretariat may determine with the approval of the NGNuk Executive.

12.7 NGNuk Executive Meetings

12.7.1 The NGNuk Executive Meetings shall be called by the Secretariat or any two (2) NGNuk Executive Representatives, normally giving not less than four (4) weeks notice (or such shorter period of notice in respect of any particular meeting as may be agreed by all NGNuk Executive Representatives). The NGNuk Executive Meetings may be held at such place(s), date(s) and time(s) as the Secretariat shall determine. The minutes of the NGNuk Executive Meetings will be published on the NGNuk Website.

12.7.2 *Quorum*

The quorum at an NGNuk Executive Meeting necessary for the transaction of any business scheduled on the agenda issued per Article 12.7.1 shall be two-thirds of all NGNuk Executive Representatives (rounded up or down to the nearest whole number of NGNuk Executive Representatives, with a fraction of exactly one-half to be rounded up to one).

12.7.3 *Voting*

Each NGNuk Executive Representative shall have 1 (one) vote. Subject to this Constitution, resolutions and decisions of the NGNuk Executive Representatives at an NGNuk Executive Meeting shall be adopted by a two-thirds majority of all NGNuk Executive Representatives (rounded up or down to the nearest whole number of NGNuk Executive Representatives, with a fraction of exactly one-half to be rounded up to one), whether in a meeting or by way of written resolution.

12.8 Conduct of a Meeting

12.8.1 In exceptional circumstances, an NGNuk Executive Representative may participate in an NGNuk Executive Meeting by means of a telephone or video conference or similar communications equipment by which all persons participating in the meeting are able to hear and to be heard by all other participants without the need for an NGNuk Executive Representative to be in the physical presence of another NGNuk Executive Representative(s) and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.

12.8.2 The NGNuk Executive Representatives participating in any such meeting in accordance with Article 12.8.1 shall be counted in the

quorum for, and entitled to vote at, such meeting and, subject to there being a requisite quorum, any resolutions agreed by the NGNuk Executive Representatives in such meeting shall be deemed to be as effective as a resolution passed at a meeting in person of the NGNuk Executive Representatives duly convened and held.

12.9 **Action Without a Meeting**

12.9.1 Subject to the other provisions of this Constitution, a resolution in writing which: (i) has been circulated to all NGNuk Executive Representatives; and (ii) signed by the required majority of the NGNuk Executive Representatives, shall be valid and effective as if it had been a resolution passed at a meeting of the NGNuk Executive duly convened and held and may consist of several documents in the like form each signed by one or more persons. The expressions "in writing" and "signed" include approval by telex, cable, telegram, wireless, electronic mail or facsimile transmission.

ARTICLE 13 RECORDS AND ACCOUNTS

13.1 A list of the Members' names and class of membership (the "**Membership List**") will be held by the Secretariat and a copy published on the NGNuk Website.

13.2 The Secretariat shall keep at the Office of the Secretariat (or such other place as the NGNuk Executive may determine) a copy of this Constitution, as amended to-date, and a copy will be published on the NGNuk Website.

13.3 **Financial Year and Annual Report**

13.3.1 NGNuk's financial year shall be a calendar year commencing on 1 April and ending on 31 March ("**Financial Year**").

13.3.2 The NGNuk Secretariat shall provide an update against the budget at each Executive meeting and a brief annual report ("**Annual Report**") for the next Executive meeting following the end of the Financial Year. The Annual Report shall contain the following information in appropriate detail:

(A) a balance sheet as of the end of the Financial Year, and an income statement of changes in the financial position of NGNuk for the Financial Year; and

(B) a list of the Members' names and class of membership.

13.3.3 When the Annual Report is completed and approved by the NGNuk Executive, the Secretariat shall notify each Member of its right to receive the Annual Report. On written request by a Member, the Secretariat shall promptly cause the Annual Report to be sent to the requesting Member.

13.3.4 A copy of the Annual Report may be published on the NGNuk Website.

ARTICLE 14 INTELLECTUAL PROPERTY RIGHTS

14.1 Save where Article 14.3 applies in respect of underlying Members' or third party's Intellectual Property Rights, Ofcom is the owner of all right, title and interest in and to NGNuk Intellectual Property.

14.1 Subject to this Article 14 and save to the extent that other formal agreements exist:

14.1.1 no Member, Associate or Non-Member shall acquire or claim any right, title or interest in or to the NGNuk Intellectual Property;

14.1.2 all right, title and interest in or to the NGNuk Intellectual Property shall vest in Ofcom and to the extent required, each Member, Associate or Non-Member shall do all things to effect such vesting, including obtaining required assignments and waivers from its representatives; and

14.1.3 where the work product of any Working Group is likely to give rise to the creation of patentable or other registrable Intellectual Property Rights, the participants in that Working Group shall agree in good faith whether or not to patent or otherwise register that work product and, if so, the ownership and terms of use of any registered Intellectual Property Rights created thereby.

14.2 Licence

14.2.1 Ofcom, grants a non-exclusive, royalty free licence to each Executive Member to use the NGNuk Brand in the UK for the limited purpose of identifying itself as a member of NGNuk, subject to this Constitution and any directions of the Secretariat from time to time. [this licence should also extend to any NGNuk Output document.]

14.2.2 Ofcom grants the licence in Article 14.2.1 on an "as is" basis and does not represent or warrant that the use of the NGNuk Brand will not infringe Intellectual Property Rights or other rights of any third party.

14.3 Member and other Third Party Intellectual Property Rights

14.3.1 Nothing in this Constitution, or the involvement in the activities of NGNuk, shall confer or be deemed to confer on any Member, Associate, or other party any right, title or interest in another Member's, Associate's, or other party's Intellectual Property Rights (save as otherwise may be agreed between the relevant parties).

14.3.2 Members and others preparing documents in connection with their participation in Working Groups, or otherwise howsoever in connection with the activities of NGNuk, shall declare any of their granted patents or other Intellectual Property Rights which they are prepared to have referred to or included in any NGNuk Output Document that has been ratified by them and that are beyond what has already been declared under ETSI or ITU IPR policy principles, at the earliest opportunity. Furthermore, when submitting material such participants shall, on a bona fide basis, draw the attention of fellow participants to any other additional Intellectual Property Rights owned by them, or of which they are otherwise aware, which might be essential should that material be referred to or included in an

NGNuk Output Document. For the avoidance of doubt, this Article 14.3.2 does not oblige any Member to conduct a search or consideration of all its Intellectual Property Rights that might be essential or relevant to the NGNuk Output Document.

14.3.3 Where the Intellectual Property Rights of any Member, Associate or other participant have been declared and it is agreed by the relevant Member, Associate or other participant that such material is to be included and separately identifiable in an NGNuk Output Document, save as otherwise agreed and subject to the extant rules and provisions of any independent standards organisation a Member may be subject to from time to time, that Member, Associate or other participant shall license the relevant Intellectual Property Rights solely for the purpose of publication and use of NGNuk Output Document on terms to be agreed prior to publication or use.

14.3.4 Acknowledgement shall be given to declared patent or other Intellectual Property Rights owned by a Member or third parties that are identifiable in NGNuk documents.

ARTICLE 15 NO PARTNERSHIP

Unless otherwise stated in this Constitution or agreed in writing, nothing in this Constitution shall operate so to constitute any Member an agent, partner or employee of NGNuk, any other Members or participant. A Member has no authority or power to bind, to contract in the name of, or to create a liability of NGNuk any other Member or participant in way or for any purpose.

ARTICLE 16 CONFIDENTIALITY

16.1 All communications between a Member or an Associate and the Secretariat and all information and other materials supplied by a Member or an Associate to the Secretariat that is either marked "confidential" or is by its nature intended to be for the knowledge of the Secretariat alone (collectively, the "**Confidential Information**") shall be kept confidential by the Secretariat, and the Secretariat shall not directly or indirectly use, communicate, disclose or divulge any such Confidential Information, other than in furtherance of satisfying the Terms of Reference where appropriate:

16.1.1 the Secretariat will prepare an issues list based on the Confidential Information and remove all identifiers of the disclosing Member or Associate ("**Anonymised Information**"); and

16.1.2 the Secretariat shall provide a copy of such Anonymised Information to the Working Group to which the issues list relates.

16.2 The restrictions in Article 16.1 shall cease to apply to communications, information and/or material which fall(s) within the definition of Confidential Information:

16.2.1 to the extent only of the same coming into the public domain otherwise than through the fault of or unauthorised disclosure by the recipient; or

16.2.2 which can be shown by the recipient, to the reasonable satisfaction of the sender, to be known to the recipient prior to the recipient receiving the information; or

16.2.3 which is required to be disclosed by law, an order of court or tribunal, an order or directive of any governmental/regulatory body or by any relevant stock exchange.

16.3 The obligations contained in Articles 16.1 shall continue for a period of three (3) years from the date of receipt of that Confidential Information (even if the providing or receiving party ceases to be a Member or an Associate), except and until the provisions of Article 16.2 apply.

ARTICLE 17 DISSOLUTION

17.1 The intention of the Members is to dissolve NGNuk pursuant to the remainder of this Article 17 as soon as reasonably practicable following the achievement of the Terms of Reference, or a determination that NGNuk no longer serves a useful purpose in achieving the Terms of Reference

17.2 A review of the effectiveness of and necessity for NGNuk will be undertaken by the NGNuk Executive prior to the start of any new financial year, which will then determine whether to: (i) continue the activities of NGNuk; or (ii) direct the Secretariat to take such steps as are necessary to dissolve NGNuk. The NGNuk Executive may invite the comments of Participating Members and Associates as part of its decision-making.

17.3 NGNuk may be dissolved at any other time by the Executive Members in consultation with Ofcom.

17.4 If the NGNuk Executive in consultation with Ofcom decides to dissolve NGNuk, the Secretariat will remain in office and will be responsible for the orderly winding up of NGNuk's affairs. After making provision for all outstanding liabilities of NGNuk and the expenses of winding up, the Secretariat shall distribute any remaining funds to the Members pro rata to their total Membership Fees paid.

ARTICLE 18 INDEMNITY AND RELEASE

18.1 Ofcom has assumed responsibility for indemnifying the NGNuk Chair and each of the NGNuk Officers in respect of the performance or discharge of any duty, obligation, or otherwise in respect of the holding of the office of Secretariat.

18.2 Each Member will indemnify its representatives in respect of the performance or discharge of any duty, obligation, or otherwise in respect of their involvement in the activities of NGNuk.

18.3 Each Member hereby agrees not to take any action against the NGNuk Chair or any of the NGNuk Officers in respect of any liability incurred by that Member arising out of the proper performance or discharge of any duty, obligation, or other function by the NGNuk Chair or NGNuk Officer, as the case may be.

ARTICLE 19 LIMITATION OF LIABILITY

19.1 Nothing in this Constitution shall be construed as excluding or limiting the liability of any member or the Secretariat for death, personal injury to any person resulting from the negligence of such persons, or fraud.

19.2 The Secretariat is not liable to any Member or Associate for the acts of NGNuk, its Members or Associates or any acts of the NGNuk Chair or any of the NGNuk Officers in respect of the performance or discharge of any duty, obligation or otherwise.

ARTICLE 20 NO WAIVER

No failure on the part of any Member to exercise and no delay on the part of any Member in exercising any right herein will operate as a release or waiver thereof, nor will any single or partial exercise of any right under this Constitution preclude any other or further exercise of it.

ARTICLE 21 SEVERANCE

If any provision of this Constitution or part thereof is rendered void, illegal or unenforceable by any law, court or tribunal, it shall be rendered void, illegal or unenforceable to that extent and it shall in no way affect or prejudice the enforceability of the remainder of such provision or the other provisions of this Constitution.

ARTICLE 22 NOTICES

- 22.1 A notice shall be in the English language and in writing and may be given personally or by sending it by post, facsimile or electronic mail to the address of the addressee as recorded in the Secretariat's records.
- 22.2 A Notice shall be deemed to have been duly served (if delivered personally or given or made by facsimile or electronic transmission) immediately or (if given or made by letter) forty-eight (48) hours after posting or (if made or given to or from an address outside the country of the sender) ten days (10) days after posting and in proving the same it shall be sufficient to show that personal delivery was made or that the envelope containing the Notice was properly addressed as a prepaid registered letter or that the facsimile or electronic transmission was properly addressed and despatched.

ARTICLE 23 NO TRANSFER

- 23.1 Membership is transferable to any company within the Member's Group Companies (including any enlarged group following a change of control), provided that there is a transfer of substantially all of the Member's UK NGN activities to that Group Company and provided that the transferee continues to meet the requirements for Membership as set out in this Constitution.
- 23.2 Following a change of an NGNuk Executive Member's company name, the name appearing in Clause 3.3.1 will be deemed to have been amended accordingly.
- 23.3 Save as set out in Article 23.1, each Member shall be solely responsible for complying with this Constitution and shall not be permitted to assign, transfer or otherwise dispose of any or all of its rights or obligations under this Constitution to any person.

ARTICLE 24 NO THIRD PARTY RIGHTS

A party who is not a Member of NGNuk shall have no right to enforce the provisions of this Constitution.

ARTICLE 25 GOVERNING LAW AND DISPUTE RESOLUTION

- 25.1 This Constitution shall be governed by and construed in accordance with English laws.
- 25.2 Any Member may refer any dispute in connection with adherence to the Terms of Reference, results of the Working Groups, or otherwise in connection with the activities of NGNuk, to the NGNuk Chair. Where the dispute is in connection with, or relates to the NGNuk Chair or

the Secretariat, the matter shall be referred to the NGNuk Executive in consultation with Ofcom.

- 25.3 Where the dispute cannot be resolved by the NGNuk Chair or the NGNuk Executive pursuant to Article 25.2, any Member may refer the matter to Ofcom or a court of competent jurisdiction.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1 The following definitions apply to capitalised words and phrases used in this Constitution unless the content otherwise requires:

"**Annual Report**" has the meaning set out in Article 13.3.2.

"**Anonymised Information**" has the meaning set out in Article 16.1.1.

"**Associate**" has the meaning set out in Article 4.1.1.

"**Confidential Information**" has the meaning set out in Article 16.1.

"**Constitution**" means this constitution of NGNuk comprising each of the Articles, together with the Schedules.

"**Consult 21**" means the BT plc vehicle for industry consultation on its NGN.

"**Contributions**" has the meaning set out in Article 6.3.3(B).

"**Electronic Communications**", "**Electronic Communications Network**" and "**Electronic Communications Service**" have the same meaning as set out in the Communications Act 2003.

"**Executive Member**" has the meaning set out in Article 3.3.

"**Financial Year**" means the Financial Year as defined in Article 13.3.1.

"**General NGNuk Meeting**" has the meaning set out in Article 10.

"**Group Company**" means in the case of a Member, any subsidiary, the ultimate holding company and any subsidiary of such holding company of that Member (in each case whether directly or indirectly) (as such terms are defined in Sections 736 and 736A of the Companies Act 1985).

"**Intellectual Property Rights**" means any patent, patent application, know-how, trade mark or name, service mark, design right, registered or unregistered designs, copyright, moral right, database right, trade or business names, rights in commercial or technical information or any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.

"**IP Interconnect Commercial Model**" has the meaning attributed to it in the Ofcom Report.

"**IP Network**" has the meaning attributed to it in the Ofcom Report.

"**IP Technical Interconnect**" has the meaning attributed to it in the Ofcom Report.

"**Member**" means any and all persons who are accepted as Executive Members and Participating Members, but excludes Associates.

"**Membership Fees**" means the amount of the membership fees as set out in Schedule 1 and payable by all Members under this Constitution.

"Membership List" has the meaning set out in Article 13.1.

"Network Access" has the meaning given to it in Section 151(3) of the Communications Act 2003.

"NGN" means Next Generation Networks.

"NGNuk" means Next Generation Networks UK, an unincorporated association.

"NGNuk Brand" means the NGNuk logo and associated get-up, including goodwill, and all other logos, devices and branding of NGNuk in any form whatsoever.

"NGNuk Chair" means the NGNuk Chair of the NGNuk Executive, as appointed in accordance with Article 11.3.

"NGNuk Executive" means the NGNuk Executive as constituted in accordance with Article 12.

"NGNuk Executive Meeting" means a meeting of the NGNuk Executive in accordance with Article 12.7.

"NGNuk Executive Representative" means the person appointed by the Executive Member to represent it on the NGNuk Executive in accordance with Article 5.1.

"NGNuk Intellectual Property" means the NGNuk Brand, the domain name "ngnuk.org.uk", and all copyright in and to any document, paper or minutes published or produced by a Working Group or any other Member as part of NGNuk activities (including, without limitation any NGNuk Output Document), but not, for the avoidance of doubt, any underlying Intellectual Property Rights which may be licensed pursuant to Article 14.3.

"NGNuk Officers" means any of the NGNuk Chair, the NGNuk Interim Chair, the Secretariat or other person appointed by the NGNuk Chair to act as an independent officer of NGNuk.

"NGNuk Output Document" means a final output documents released by NGNuk pursuant to Article 9.6.

"NGNuk Website" means the website located at URL www.ngnuk.org.uk

"NICC" means Network Interoperability Consultative Committee which is responsible for agreeing the technical interoperability standards used by UK operators

"Non-Members" has the meaning set out in Article 4.2.

"Ofcom" means the Office of Communications.

"Ofcom Report" means the report entitled "Next Generation Networks: Developing the Regulatory Framework", issued by Ofcom on 7 March 2006

"Participating Member" has the meaning set out in Article 3.4.

"Participating Member Representative" means any representative appointed by a Participating Member in accordance with Article 5.1.1, or otherwise in accordance with the Constitution.

"Secretariat" has the meaning as set out in Article 11.1.

"Terms of Reference" means the objectives and scope for NGNuk, as set out in Article 2.

"Working Groups" has the meaning set out in Article 9.1.

"Working Group Chair" has the meaning set out in Article 9.2.1.

"Working Group Representatives" has the meaning set out in Article 9.2.1.

2. INTERPRETATION

2.1 In this Constitution, unless the context otherwise requires:

- 2.1.1 the singular includes the plural and vice versa;
- 2.1.2 words which are gender neutral or gender specific include each gender;
- 2.1.3 other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- 2.1.4 an expression importing a person includes a company, partnership, joint venture, association, corporation or other body corporate;
- 2.1.5 a reference to a thing (including, but not limited to, a chose-in-action or other right) includes a part of that thing;
- 2.1.6 a reference to this Constitution includes a Schedule to this Constitution;
- 2.1.7 a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable regulatory authority or stock exchange and is a reference to that as amended, consolidated or replaced;
- 2.1.8 a reference to a document includes all amendments or supplements to that document, or replacements or novations of it;
- 2.1.9 a reference to a party to a document includes that party's successors and permitted assigns; and
- 2.1.10 a reference to an agreement, other than this Constitution, includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing.

3. HEADINGS

3.1 Headings are for convenience only and do not affect the interpretation of this Constitution.

SCHEDULE 2
MEMBERSHIP FEES FOR 2009/10

Executive Member:

Membership fees are £9,000 per annum (payable in advance) If a new applicant applies for membership after the start of the Financial Year fees are reduced on a pro rata basis, as determined by the NGNuk Secretariat.

BT plc (Agreed Increased Membership Fee) - £70,000 per annum (payable in advance)

Participating Member:

Participating membership for 2009/10 is free of charge.