

# MOBILE NUMBER PORTABILITY OPERATOR STEERING GROUP

## AN UNINCORPORATED ASSOCIATION

### CONSTITUTION

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## PREAMBLE

- (i) Ofcom is the regulator for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services. Under section 3(1) of the Communications Act, 2003 (“the Act”) Ofcom’s principle duty in carrying out its functions, is to (a) to further the interests of citizens in relation to communications matters; and (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- (ii) Pursuant to Article 30 of the Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services, Ofcom is required to ensure that all subscribers of publicly available telephone services are able to retain their number through the process of number portability. On 22 July 2003, Ofcom’s predecessor Oftel therefore imposed General Condition 18 on communications providers which requires them to provide number portability to subscribers upon request and to provide portability to other communications providers.
- (iii) Under the Act, Ofcom has the powers to investigate complaints about breaches of General Condition 18 and, may in certain circumstances as set out in the Act, have a duty to resolve disputes relating to General Condition 18. As sectoral regulator for the communications sector, Ofcom also has concurrent powers under the Competition Act 1998 to deal with anti-competitive behaviour in telecommunications. Ofcom also has the power to apply Article 81 and Article 82 of the EC Treaty.
- (iv) The operation of the OSG is subject to Ofcom’s powers of enforcement under the Act and to general competition law including that set out in the Competition Act 1998 and the EC Treaty.

## ARTICLE 1 PURPOSE AND PRINCIPLES

- 1.1.1 Background to the development of Operator Steering Group (“OSG”) and this Constitution
- 1.1.2 Following meetings with mobile number range holders, Ofcom initiated a review of the arrangements originally put in place by mobile network operators for the purpose of achieving Mobile Number Portability (“MNP”).
- 1.1.3 As a consequence of this process the following constitution has been adopted by the current Members of the OSG, and supersedes all previous versions of any OSG constitution or terms of reference.
- 1.1.4 A full statement of the background of the arrangements for MNP in the UK, and the OSG, is set out in documentation published by Ofcom on their website.

## 1.2 Constitution and Mission

1.2.1 This Constitution governs the rights and obligations of the Members of the OSG, an independent, unincorporated association, accountable to its members.

1.2.2 The OSG's mission is to act as a forum for Members to meet and agree the arrangements necessary to ensure that, at a practical, technological and procedural level, Members are able to provide MNP that at least meets their obligations as set out under General Condition 18.

## 1.3 Guiding Principles of Operation and Behaviour

1.3.1 The guiding principles for the operation of the OSG and the behaviour of Members in carrying out its objectives are as follows:

- (A) The OSG will ensure sufficient investment and innovation in the System in order to satisfy the practical and technological needs of Members in respect of MNP;
- (B) Members recognise the desirability of an aligned approach to achieving the provision of an effective System;
- (C) Members will actively cooperate to ensure the functioning or development of the System, the OSG and its Working Groups. Any policy related concerns relating to the provision of the System or the operation of the OSG and its Working Groups will be raised with Ofcom or otherwise as Members shall consider appropriate;
- (D) Members will ensure their compliance with relevant competition law and regulation and, subject to Article 2.2.2 and Schedule 4, will at all times be open in discussions on any and all issues;
- (E) The OSG shall act in a transparent and proportionate manner;
- (F) Subject to (G) below, Members shall seek to resolve any disputes regarding the functioning of the OSG using the dispute resolution procedure provided for in Article 24 of this Constitution;
- (G) Members may escalate irresolvable regulatory issues to Ofcom for resolution in accordance with the relevant provisions of the Act or take such other action as they may consider appropriate; and
- (H) In providing portability on reasonable terms as soon as reasonably practicable following a request, members shall comply with prevailing regulatory requirements set out in General Condition 18 or its equivalent, as amended from time to time. Notwithstanding Article 24.2, and for the avoidance of any doubt, any dispute as to compliance with the regulatory obligations in relation to portability shall be addressed solely and exclusively under the relevant statutory provisions.

## ARTICLE 2 TERMS OF REFERENCE

- 2.1 The objectives for the OSG ("Terms of Reference") are to:
- (A) ensure the availability of the System to Members in order, at a minimum, to facilitate Members' satisfaction of their MNP obligations;
  - (B) facilitate the discussion of matters affecting the MNP service offered by each Member;
  - (C) administer the meetings of the OSG Administrative Committee and its Working Groups, and ensure that the OSG Administrative Committee acts as a point of escalation on matters that are unable to be resolved by the Working Groups;
  - (D) manage the suppliers that provide goods or services directly related to the System;
  - (E) discuss and arrange funding for any suppliers;
  - (F) ensure that the necessary agreements are in place such that the System is maintained in good working order; and
  - (G) while the OSG is not empowered to make decisions relating to MNP policy, the OSG shall act as a forum for Members to discuss the practical and technical implementation of Ofcom's prevailing MNP policy.

### **2.2 Open Competition Between Members**

- 2.2.1 Members of the OSG are individually and collectively committed to open competition in the development of products, Intellectual Property Rights, technology, and services, and Members are not restricted in any way from designing, developing, marketing, and/or procuring any hardware, software, systems, Intellectual Property Rights, technology or services for their own benefit.
- 2.2.2 Notwithstanding the foregoing, Members shall not be obliged in any manner to disclose any Confidential Information or permit the use of any Intellectual Property Rights (other than in accordance with Article 12 and/or is necessary to ensure access to, and use of, the System) or to share any capacities (technical, operational, marketing, sales or otherwise). Members shall not 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 relevant jurisdiction.
- 2.2.3 Members agree to observe and respect the competition guidelines set out at Schedule 4.

## 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 set out at Schedule 3 may become a Member of the OSG.

3.2 There are 2 classes of membership:

- (A) Executive Members; and
- (B) Participating Members.

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

### **3.3 Executive Members**

3.3.1 The Executive Members own the System and OSG Intellectual Property in equal shares. They are committed to active participation in the activities of the OSG in order to achieve the Terms of Reference.

3.3.2 The Executive Members are, in alphabetical order:

- (A) Everything Everywhere Limited;
- (B) Hutchison 3G UK Limited;
- (C) O2 (UK) Limited;
- (D) Vodafone Limited.

3.3.3 Executive Membership shall be open to Communications Providers that meet the membership criteria set out at Schedule 3.

3.3.4 Accession of Executive Members shall be in accordance with Article 6.

3.3.5 Each Executive Member is entitled to:

- (A) nominate one Executive Member Representative;
- (B) attend and participate in all Working Groups in accordance with Article 8.2.
- (C) have access to all Working Groups' working documents, meeting minutes and written contributions;
- (D) attend and participate in the activities and events of the OSG as may be determined by the OSG Administrative Committee from time to time in accordance with this Constitution; and
- (E) have access to and participate in the use of the System for the purposes of achieving MNP.

3.3.6 The entitlements of an Executive Member under Article 3.3.5 shall cease upon that Executive Member ceasing to be a Member in accordance with this Constitution.

3.3.7 For the avoidance of doubt, an Executive Member may not become a Participating Member.



### **3.4 Participating Members**

3.4.1 Participating Membership shall be open to Communications Providers that meet the Membership criteria set out at Schedule 3.

3.4.2 Accession of Participating Members shall be in accordance with Article 8.

3.4.3 Each Participating Member is entitled to:

- (A) access to all minutes of meetings of the OSG Administrative Committee;
- (B) access to all Working Groups' working documents, meeting minutes and written contributions;
- (C) attend and participate in Working Groups in accordance with Article 8; and
- (D) have access to and participate in the use of the System for the purposes of achieving MNP.

3.4.4 Other than in respect of the provisions of Article 3.5 below, a Participating Member shall not be entitled to:

- (A) appoint an Executive Member Representative;
- (B) vote at any OSG Administrative Committee meeting; or
- (C) attend any OSG Administrative Committee meeting unless invited by the OSG Chair to present on a specific issue to the OSG Administrative Committee.

3.4.5 The entitlements of a Participating Member under Article 3.4.3 shall cease upon that Participating Member ceasing to be a Member in accordance with this Constitution.

3.4.6 A Participating Member may become an Executive Member under the terms of Schedules 2 and 3. For the avoidance of doubt, once a Participating Member has become an Executive Member it may not revert to the status of a Participating Member.

### **3.5 Delegated Representatives**

3.5.1 Participating Members shall elect a number of representatives not exceeding the Delegated Representatives Quota (“**Delegated Representatives**”). Delegated Representatives shall be elected in the Participating Member Working Group (as set out at Article 6.4.3 below).

3.5.2 The duty of Delegated Representatives is to represent the collective interests of Participating Members in meetings of the OSG Administrative Committee.

3.5.3 Each Delegated Representative shall attend and participate in meetings of the OSG Administrative Committee

- 3.5.4 Delegated Representatives shall be elected for a term of one year according to the terms of the Participating Member Working Group set out at Article 6.4.3.
- 3.5.5 Delegated Representatives shall be nominated and elected by Participating Members only, according to the terms of Article 6.4.3.
- 3.5.6 Each Delegated Representative shall attend meetings of the Participating Member Working Group. Delegated Representatives shall be responsible for providing feedback to Participating Members attending the Participating Member Working Group on matters addressed in meetings of the OSG Administrative Committee.
- 3.5.7 Each appointment or removal of a Delegated Representative shall be in writing and shall be delivered to the OSG Chair.
- 3.5.8 A Delegated Representative shall be entitled, on limited occasions, to appoint a suitably senior person from within their organisation to act as his or her alternate for the purposes of attending and participating in meetings of the OSG Administrative Committee and attend any Working Groups in respect of which the Delegated Representative is a Working Group Representative, and to terminate the appointment of such person.
- 3.5.9 The entitlement of a Delegated Representative to attend meetings of the OSG Administrative Committee shall cease at such time as the relevant Participating Member ceases to be a Member in accordance with this Constitution.

## ARTICLE 4 MEMBERSHIP PARTICIPATION AND OBLIGATIONS

### **4.1 Member Representatives**

- 4.1.1 Subject to the other provisions of this Constitution, each Executive Member and each Participating Member shall be responsible for designating a single person who has operational 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 ("Executive Member Representative" and "Participating Member Representative", respectively). In each case, the representative designated shall be of senior executive level within the appointing Member.

### **4.2 Members' Obligations**

- 4.2.1 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 and Contributions in accordance with Schedule 2 and Article 10.3 respectively; and
- (C) (subject to the other provisions of this Constitution) use its commercially reasonable efforts to participate in activities and events organised by the OSG from time to time.

## ARTICLE 5 THE OSG ADMINISTRATIVE COMMITTEE

5.1 There shall be an OSG Administrative Committee which shall be constituted by:

- (A) the OSG Chair, who shall act as an independent non-voting chair; and
- (B) each Executive Member Representative; and
- (C) each Delegated Representative.

5.2 The OSG Administrative Committee shall be the primary decision-making body of the OSG.

### **5.3 Chair of the OSG Administrative Committee**

5.3.1 The OSG Chair shall preside as chair at every meeting of the OSG Administrative Committee. The OSG Chair shall be entitled, on limited occasions, to appoint a suitably qualified alternate for the purposes of attending meetings of the OSG Administrative Committee.

### **5.4 Executive Member Representatives**

5.4.1 Executive Member Representatives shall serve without remuneration by the OSG.

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

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

5.4.3 Each appointment or removal of an Executive Member Representative shall be in writing and shall be delivered to the Secretariat.

5.4.4 An Executive Member 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 meetings of the OSG Administrative Committee and attend any Working Groups in respect of which the Executive Member Representative is a Working Group Representative, and to terminate the appointment of such person.

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

## **5.5 Meetings of the OSG Administrative Committee**

- 5.5.1 Meetings of the OSG Administrative Committee shall be called by the Secretariat on a monthly basis, 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 Executive Member Representatives and Delegate Representatives). The meeting may be held at such place(s), date(s) and time(s) as the Secretariat shall determine. Minutes of the meetings of the OSG Administrative Committee will be circulated to Members and published on the OSG Website.

- 5.5.2 *Quorum* The quorum necessary for the transaction of any business scheduled on the agenda shall be two-thirds of the total number of Executive Member Representatives and Delegated Representatives (rounded up or down to the nearest whole number, with a fraction of exactly one-half to be rounded up to a whole number).

### *5.5.3 Voting*

(A) Other than in respect of decisions adopted under Articles 5.5.4 and 5.5.5 below, each Executive Member Representative and each Delegated Representative shall have 1 (one) vote.

(B) Members unable to attend a vote in person or via electronic means shall be able to vote by proxy. Proxy votes may be submitted to the OSG Chair in writing no later than 3 calendar days before the vote is scheduled to take place. The Chair shall not disclose the proxy vote until the vote is taken.

(C) Subject to this Constitution, resolutions and decisions of the OSG Administrative Committee shall be adopted by a three quarters majority of all attending representatives (rounded up or down to the nearest whole number of Representatives, with a fraction of exactly one-half to be rounded up to a whole number), whether in a meeting or by way of written resolution.

- 5.5.4 *Changes to the Constitution* Decisions to change the terms of this Constitution shall only be made by decision of the OSG Administrative Committee. Decisions

under this article shall be adopted by a three quarters majority of all Executive Member Representatives and Delegated Representatives. The quorum necessary for the adoption of such a decision shall be three quarters of the total number of Executive Member Representatives and Delegated Representatives (rounded up or down to the nearest whole number, with a fraction of exactly one-half to be rounded up to a whole number).

5.5.5 *Decisions to Require Significant Expenditure* In respect of any decision or resolution which require a Member to make a Contribution exceeding £5,000 (five thousand pounds) in any Financial Year (or an equivalent figure to be recouped via an increase in Membership Fees) (“**Significant Expenditure**”), the OSG Administrative Committee shall be required to adopt the decision or resolution on a unanimous basis. If unanimous agreement cannot be reached then Members shall seek to resolve the matter under Article 24. For the avoidance of doubt, no unanimity will be required in respect of a decision or resolution requiring Significant Expenditure in order to effect changes to the System required by Ofcom’s prevailing MNP policy.

5.5.6 *Chair* For the avoidance of doubt, the presence of the OSG Chair shall not count in any quorum, nor will the OSG Chair be eligible to vote on any decision or resolution of the OSG Administrative Committee.

## **5.6 Conduct of a Meeting**

5.6.1 No business shall be conducted at the OSG Administrative Committee other than that referred to in the agenda circulated to all Members in advance of the meeting as required by Article 7.3.1. In particular, no decision or resolution requiring Significant Expenditure or a change to the Constitution shall be passed unless the substance of the decision or resolution was contained in the agenda.

5.6.2 In exceptional circumstances, an Executive Member Representative or Delegated Representative may participate in a meeting of the OSG Administrative Committee 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 that representative to be in the physical presence of other representatives and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.

5.6.3 The Executive Member Representatives or Delegated Representative participating in any such meeting in accordance with Article 5.6.1 shall be counted in the quorum for, and entitled to vote at, such meeting and, subject to there being a requisite quorum, any resolutions or decisions agreed by the OSG Administrative Committee in such meeting shall be deemed to be as effective as a resolution or decision passed at a meeting in at which all attending Executive Member Representatives and Delegated Representatives were present in person.

## **5.7 Action Without a Meeting**

- 5.7.1 Subject to the other provisions of this Constitution, a resolution or decision in writing which: (i) has been circulated to all Executive Member Representatives and Delegated Representatives; and (ii) signed by the required majority of the Executive Member Representatives and Delegated Representatives (three quarters of the same unless the decision is under Articles 5.5.4 or 5.5.5), shall be valid and effective as if it had been a resolution or decision passed at a meeting of the OSG Administrative Committee 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 post, electronic mail or facsimile transmission.

## ARTICLE 6 WORKING GROUPS

- 6.1.1 The OSG Administrative Committee may create one or more working groups (the "**Working Groups**") to address specific issues or topics relevant to MNP, under the delegated authority of the OSG Administrative Committee. The initial scope, objectives and timescales for each Working Group will be defined by the OSG Administrative Committee. Working Groups may recommend changes to scope and objectives for agreement by the OSG Administrative Committee. Such groups shall only be formed to the extent that the Constitutional Working Groups are not already competent to deal with the relevant issue or topic.
- 6.1.2 Meetings of Working Groups shall be chaired by an independent person (the "**Working Group Chair**"). In the absence of an alternative appointment, the Working Group Chair shall be the OSG Chair.

## **6.2 Working Group Representatives**

- 6.2.1 Subject to any specific term to the contrary Working Groups will be open to representatives of Executive Members and representatives of Participating Members (together the "Working Group Representatives") and to members of the Secretariat.
- 6.2.2 Working Group Representatives shall be of management level within their respective Member organisations and shall be able to make binding decisions on behalf of the Member which they represent.
- 6.2.3 Each Working Group Representative shall be responsible for ensuring that decisions are made in a timely manner on behalf of the Member which they represent.

## **6.3 Working Group Activities**

- 6.3.1 The Working Groups must at all times operate in accordance with this Constitution and the reasonable directions of the OSG Administrative Committee. Subject to any specific provision to the contrary, Working Groups shall be: (i) accountable to the OSG Administrative Committee; and (ii) responsible for reporting their progress to the OSG Administrative Committee.
- 6.3.2 The Working Groups shall be responsible for generating any documentation considered appropriate by it relating to the activities being pursued by the relevant Working Group.
- 6.3.3 Upon completion of a Working Group activity, the results will be submitted by the Working Group Chair in the form of a written report to the OSG Administrative Committee. Upon completion of the review of such results the OSG Administrative Committee will release the results to all Members, and the Secretariat will publish them as OSG Output Documents on the OSG Website or otherwise circulate them.
- 6.3.4 Where deemed appropriate by either the relevant Working Group, or the OSG Administrative Committee, the Working Group will provide the OSG Administrative Committee with a draft resolution or decision for adoption, together with any appropriate OSG Output Documents. In all other circumstances the relevant Working Group shall adopt such resolution or decision (if any) as it deems appropriate, subject always to the scope of its delegated authority provided pursuant to Article 6.1.1.
- 6.3.5 Working Groups shall meet on a monthly basis unless otherwise agreed. Meetings shall be face to face unless Working Group Representatives agree to hold such meetings by conference call.
- 6.3.6 Communication on specific issues may be done outside scheduled meetings via the circulation of emails to all the Working Group Representatives of the relevant Working Group.
- 6.3.7 All matters of a commercial nature or to require budgetary approval shall be passed to the OSG Administrative Committee together with appropriate documentation. The Working Group shall request the opinion of the OSG Administrative Committee where it is unsure of the commercial nature or otherwise of the matter.
- 6.3.8 If the Working Group is unable to reach agreement within a reasonable timescale, in accordance with any terms of reference imposed by the OSG Administrative Committee or agreed by the Working Group, the Working Group Chair shall escalate the matter to the OSG Administrative Committee for its consideration and the decision of the OSG Administrative Committee shall be binding on the Working Group.

## 6.4 Constitutional Working Groups

### 6.4.1 Operational Review Group (ORG)

6.4.1.1 The ORG shall be responsible for MNP operational matters including the following specific activities:

- (A) resolve any disputes that may arise in relation to the operation of the System;
- (B) identify and discuss any instances where it is claimed that the System is not performing to the system requirements, in terms of both functionality, response time and capacity (and where necessary escalate these issues to the OSG Administrative Committee);
- (C) identify and discuss any issues that Members may have with the System or System Provider and where necessary escalate these issues to the OSG Administrative Committee or directly to the System Provider where appropriate;
- (D) agree on matters relating to system usage that require a unified stance from Members;
- (E) agree on periods of scheduled maintenance and necessary system downtime;
- (F) agree porting schedules over bank holidays;
- (G) provide input to the OSG Administrative Committee on any matters requested by it;
- (H) identify any problems with the MNP process and identify solutions. Where this results in any changes to the MNP Process Manual, the ORG shall seek authorisation from the OSG Administrative Committee;
- (I) pass any technical issues to the Operational Technical Group;
- (J) discuss any other aspects of the System as need be to ensure the System operates as required;
- (K) identify and discuss any instances where Members or any third parties do not follow the correct porting process. Where such instances are identified and are unable to be resolved, the matter shall be escalated to the OSG Administrative Committee;
- (L) ensure that the OSG Website is up-to-date, accurate and able to be used for its intended purpose;
- (M) publish such output documents as necessary to inform Members of the ORG's activities;
- (N) put forward Change Request Proposals to the OSG Administrative Committee;
- (O) review any System Provider and independent reports on the System;
- (P) produce and send communications for any issues that may have an impact on the industry; and
- (Q) maintain a list of Service Providers which have been authorised to resell the services of a Member (the "**Service Provider Directory**").

- 6.4.1.2 Attendance at ORG meetings is open to Working Group Representatives, representatives of the Secretariat and representatives of Service Providers that are included in the Service Provider Directory. Service Provider representatives shall meet the same standards required of Working Group Representatives under Articles 6.2.2 and 6.2.3.
- 6.4.1.3 The ORG shall report to the OSG Administrative Committee and follow any directives given by the OSG Administrative Committee.
- 6.4.2 Operational Technical Group (OTG)
- 6.4.2.1 The OTG shall be responsible for investigating and resolving technical issues, as highlighted through the ORG or OSG Administrative Committee, to ensure the effective and efficient transfer of mobile numbers between Members. In particular, the OTG shall:
- (A) maintain the MNP Operator IS Interface Spec manual;
  - (B) address any technical issues passed to it by the ORG or OSG Administrative Committee;
  - (C) seek means to improve processes and procedures;
  - (D) provide input to the ORG and OSG Administrative Committee on any matters requested by them;
  - (E) ensure that Working Group Representatives communicate any faults that may impact the rest of the industry in line with the agreed “Fault Communication” process (as defined under the agreement with the System Provider).
- 6.4.2.2 The OTG is a sub-group of the OSG Administrative Committee. As such, the OTG shall follow any directives given by the OSG Administrative Committee.
- 6.4.2.3 Each Executive Member and each Participating Member shall ensure that an appropriate Working Group Representative attends OTG meetings.
- 6.4.2.4 The Working Group Chair shall
- (A) be responsible for maintaining an up-to-date e-mail distribution list of Technical Group representatives;
  - (B) maintain a list of OTG representative contact details (the “**Network Directory**”);
  - (C) attend the ORG on behalf of the OTG and provide updates on the activities being undertaken by the OTG;
  - (D) update the OTG on any actions to be addressed by the OTG coming from the ORG; and
  - (E) distribute accurate minutes from each meeting to all OTG Working Group Representatives.

- 6.4.2.5 Each Working Group Representative attending meetings of the OTG shall act as the central communication interface between all technology departments within their own Member organisation and the OTG Working Group Representatives of other Members.
- 6.4.3 Participating Member Working Group (PMWG)
- 6.4.3.1 The PMWG shall be responsible for the coordination of Participating Members for the purposes of the election and accountability of Delegated Representatives, and for providing Delegated Representatives with appropriate information and authority to carry out their responsibilities.
- 6.4.3.2 Each Participating Member shall ensure that a Working Group Representative attends meetings of the PMWG on its behalf. No representative of an Executive Member may attend meetings of the PMWG, unless invited by a resolution of the PMWG.
- 6.4.3.3 The Working Group Chair shall invite Participating Members to nominate Working Group Representatives attending the PMWG for election as Delegated Representatives. Delegated Representatives shall be elected from these nominees. Delegated Representatives shall then be selected in descending order by votes gained up to the number of the Delegated Representatives Quota.
- 6.4.3.4 The PMWG may, following the procedure set out at 6.4.3.3, elect deputies who shall be available to take the place of Delegated Representatives unable to attend a meeting of the OSG Administrative Committee. For the avoidance of doubt, a duly elected deputy that takes the place of a Delegated Representative unable to attend a meeting of the OSG Administrative Committee shall have the same rights and obligations as a Delegated Representative.
- 6.4.3.5 Meetings of the PMWG shall be held monthly, during the week prior to the next OSG meeting of the Administrative Committee. The PMWG shall discuss each item on the agenda for the next meeting of the OSG Administrative Committee. Where necessary, Working Group Representatives shall agree, by simple majority vote, any mandate that may be required by a Delegated Representative.
- 6.4.3.6 In respect of each Delegated Representative each Participating Member shall:
- (A) be jointly and severally responsible for all acts and omissions of each Delegated Representative during the course of the performance of his or her duties as a Delegated Representative; and
  - (B) take all necessary steps to ensure that such Delegated Representative is fully indemnified (on a joint and severable basis) by it against any and all risks and liabilities, in properly performing his or her duties as a Delegated Representative.

6.4.3.7 For the avoidance of doubt:

- (A) no Participating Member that disagrees with the mandate agreed by the PMWG for a Delegated Representative shall hold that Delegated Representative responsible for acting in accordance with the relevant mandate.
- (B) article 6.4.3.6 shall not apply to a given Participating Member if that Participating Member has clearly stated on record to the PMWG its disagreement with the mandate agreed by the PMWG for a Delegated Representative.

6.4.3.8 Delegated Representatives shall pay all remuneration, and travel, hotel and other expenses incurred by them.

## ARTICLE 7 SECRETARIAT

### 7.1 General

7.1.1 The OSG Administrative Committee shall appoint:

- (A) the OSG Chair; and
- (B) such other officers as deemed appropriate and necessary by the OSG Administrative Committee for the operation and functioning of the OSG, (collectively and together with the OSG Chair, the "**Secretariat**").

7.1.2 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, if any, may also be appointed to carry out the functions of the treasurer, if any.

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

- (A) the OSG Administrative Committee may remove the OSG Chair by notice in writing to the OSG Chair, which notice may only be served following the passing of the required resolution pursuant to Article 5.5;
- (B) any other appointee may be removed by the OSG Chair or OSG Administrative Committee by notice in writing to the appointee; and
- (C) a member of the Secretariat may resign on no less than three months' notice in writing to the OSG Administrative Committee (subject to any other term specified in their contract of employment).

### 7.2 The OSG Chair

7.2.1 The Production Manager is appointed as the interim OSG Chair ("Interim OSG Chair") until such time as the OSG Administrative Committee appoints a new OSG and that person assumes that position.

7.2.2

7.2.3 The OSG Administrative Committee will appoint the permanent OSG Chair, in accordance with Article 5.5, for a renewable term not exceeding 2 years.

7.2.4

7.2.5 The OSG Chair shall be a person who has credibility in the industry have leadership and chairing skills and be independent of any Member, non-voting, and accountable to the OSG Administrative Committee.

### **7.3 The Role Of The OSG Chair**

7.3.1 The OSG Chair shall be the chair the OSG Administrative Committee with responsibility for monitoring the activities of the OSG Administrative Committee and the Members and ensure that the activities of the Working Groups and the OSG generally are consistent with the Terms of Reference;

7.3.2 The Production Manager/Secretariat shall be responsible for the day-to-day running of the OSG and shall, in particular:

(A) ensure that the OSG collects all Membership Fees and Contributions from Members and that such Fees and Contributions are banked;

(B) pay all bills in connection with the activities of the OSG, and shall have access to the bank account of the OSG for such purposes subject to the Articles of this Constitution;

(C) act as the custodian of the records and official documentation of the OSG;

(D) act as Working Group Chair for each Working Group, unless otherwise decided by the relevant Working Group; and

(E) circulate an agenda for meetings of the OSG Administrative Committee and for any meeting of a Working Group for which the OSG Chair is the Working Group Chair. The agenda for meetings the OSG Administrative Committee shall be circulated to Executive Members and Participating Members at least 10 days ahead of the relevant meeting.

7.3.3 Without prejudice to the foregoing, the Production Manager/Secretariat shall keep or cause to be kept:

(A) a record of the Members of the OSG, showing each Member's name, contact particulars and class of membership;

(B) minutes of all meetings of the OSG Administrative Committee and OSG Working Groups;

(C) proposals, reports and other documents submitted by the Working Groups to the OSG Administrative Committee;

(D) adequate and correct books and accounts of financial transactions relating to the activities of the OSG; and

(E) Such records and statistics as are required to administer and inform the eligibility of Participating Members to become Executive Members, and for the election of Delegated Representatives.

- 7.3.4 Subject to the remainder of this Constitution, the Production Manager/Secretariat shall refer all significant questions arising out of this Constitution to the OSG Administrative Committee for final determination.
- 7.3.5 Excluding the sums payable under 7.4 below, and subject to the requirement of prior written notification of the OSG chair on behalf of to the OSG Administrative Committee, the Production Manager/Secretariat shall have authority to pay sums owed by the OSG from the OSG bank account of an amount up to and including the sum of £1000 (one thousand pounds). Above this amount, the OSG Chair shall require a written resolution of the OSG Administrative Committee. The OSG Bank Account Holder shall ensure that the OSG Chair presents it with the written notification or resolution, as relevant, before authorising or instructing a sum to be paid from the OSG bank account. The OSG chair shall have the authority, on behalf of the OSG Administrative Committee, to authorise payments to the Production Manager/Secretariat.
- 7.3.6 Neither the OSG Chair specifically, nor (for the avoidance of doubt) the Secretariat generally, shall have authority to pay sums in respect of any expense to the OSG arising under 7.4 below. The payment of any sum in respect of 7.4 below shall require the prior written authority of an Executive Member or Delegated Representative formally appointed by the OSG Administrative Committee for this purpose.
- 7.3.7 The OSG Bank Account Holder shall ensure that the OSG Chair presents it with the relevant authority under either 7.3.4 or 7.3.5 above before authorising or instructing to be paid a sum from the OSG bank account.

#### **7.4 Compensation**

- 7.4.1 The Secretariat shall be remunerated by the OSG, 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 attendance at any meeting or otherwise incurred in connection with the activities of the OSG shall be borne by the OSG, such expenses to be paid from the Membership Fees and Contributions.

#### **7.5 Handing Over**

- 7.5.1 Upon the expiry of the office of the OSG Chair or of any office of a member 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 OSG Chair and the OSG Administrative Committee.
- 7.5.2 New members of the Secretariat may be required to enter in to a non-disclosure agreement.

## ARTICLE 8 APPLICATIONS FOR MEMBERSHIP

- 8.1 Applications for membership (including an application to change membership category from Participating Member to Executive Member), shall be submitted to the Secretariat. The Secretariat shall inform the OSG Administrative Committee of all applications.
- 8.2 The Secretariat shall verify the completeness of each application, the eligibility of the applicant according to the terms of Schedule 3, and shall determine into which membership category 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 eligibility for membership or for membership as a particular type of Member.
- 8.3 The OSG Chair shall, within one month of the completion of the process in Article 6.2, make a recommendation to the OSG Administrative Committee as to whether the applicant meets the membership criteria set out at Schedule 3.
- 8.4 Within one month of the receipt of the OSG Chair's recommendation, the OSG Administrative Committee shall pass a resolution or decision on the application for membership. For the avoidance of doubt, the only considerations which may inform any such resolution or decision shall be the membership criteria set out at Schedule 3.
- 8.5 An application for membership (whether as a Participating Member or Executive Member) shall become effective on the later of: (i) the first day following notification of acceptance by the OSG Administrative Committee; (ii) the receipt of the relevant Membership Fee from the applicant; (iii) the applicant's execution and return of any required documentation evidencing accession to membership; and (iv) the applicant's execution and return of any required documentation evidencing satisfaction of the membership criteria set out at Schedule 3.
- 8.6 Members shall act in good faith and shall use all reasonable endeavours in making arrangements with the System Provider necessary to admit a new Member to the OSG or facilitate a Member's change of membership status from Participating Member to Executive Member.

## ARTICLE 9 WITHDRAWAL, TERMINATION OR SUSPENSION OF MEMBERSHIP

### 9.1 **Withdrawal**

- 9.1.1 No Member may withdraw from membership of the OSG and participation in the System until such time as a modified System is implemented which enables MNP to operate independently of that Member as the Mobile Number Range Holder

and the OSG Administrative Committee adopts a decision recognising that the withdrawal of that Member will not impinge on the ability of either that Member or any continuing Members to satisfy their obligations in respect of MNP.

- 9.1.2 Following such date on which a modified System is implemented which enables MNP to operate independently of the Mobile Number Range Holder, any Member may withdraw from membership of the OSG by giving 3 months 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 at which the withdrawal becomes effective.
- 9.1.3 Members undertake to make all reasonable efforts to ensure that the withdrawal does not negatively affect the operation of the System or the MNP service offered by remaining Members. Where the withdrawal of a Member arises as a consequence of financial constraints which prevent the relevant Member from adequately satisfying its contractual and regulatory obligations (i.e. insolvency), then the OSG Administrative Committee shall inform Ofcom of any adverse consequences of this withdrawal on the System and the ability of Members to satisfy the MNP obligations.
- 9.1.4 The Secretariat will notify each Executive Member of any notice (or purported notice) of withdrawal from membership of the OSG and participation in the System.

## **9.2 Termination or Suspension of Participation**

- 9.2.1 The OSG Administrative Committee may, adopt a decision to terminate or suspend, the Participation 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 this following notice in accordance with 9.2.2) would be detrimental to satisfying the Terms of Reference or is in violation of this Constitution;
  - (E) where, having been granted access to the System for the purposes of Testing, that Testing has not been completed satisfactorily in respect of the System and each existing Member; and/or

(F) a change in control results in multiple Members for the same Group Company.

9.2.2 The OSG Administrative Committee may only adopt a decision to terminate or suspend membership on the grounds in Article 9.2.1 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 OSG Administrative Committee within 14 calendar days of receiving such notice.

9.2.3 The OSG Administrative Committee may terminate the membership of a suspended Member if that Member does not or cannot remedy the original reason for suspension within 42 calendar days of receiving a notice to suspend its membership under 9.2.2 above.

### **9.3 Loss of Membership Rights**

9.3.1 If a Member withdraws from membership in the OSG 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, and have no right or interest in the OSG.

9.3.2 A suspended Member shall continue to be entitled to attend any meeting that such Member would have been entitled to attend but for its suspension pursuant to this Article 9, except that such Member shall have no right to speak or vote at such a meeting, and accordingly shall not count in the quorum. For the avoidance of doubt, any resolution requiring unanimity shall not be frustrated by the withdrawal of a suspended Member's voting rights and accordingly shall not require the affirmative vote of any suspended Member to be validly passed.

### **9.4 Survival of Obligations and Rights**

9.4.1 Any withdrawal or termination of membership in the OSG 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 10 BUDGET AND FUNDING**

### **10.1 Budget**

10.1.1 The budget for the OSG for each Financial Year will be agreed by the OSG Administrative Committee.

10.1.2 The Secretariat shall prepare a draft budget for the forthcoming Financial Year and shall present it to a meeting of the OSG Administrative Committee no later than two months prior to the beginning of the relevant Financial Year.

## **10.2 Funding**

10.2.1 Funding for the operation and activities of the OSG will be from the Membership Fees and any ad hoc funding collected in accordance with Article 10.3.3. All funds collected by the OSG shall be held on behalf of the OSG in a separate trust account in the name of OSG Bank Account Holder.

## **10.3 Annual Membership Fees and Ad-Hoc Funding**

10.3.1 Membership Fees are set out in Schedule 2, as may be amended from time to time, and shall be payable according to the terms set out in that Schedule.

10.3.2 The OSG Administrative Committee may direct that any unused surplus Membership Fees collected in a Financial Year shall be accounted for in the setting of Membership Fees in the following Financial Year.

10.3.3 The OSG Administrative Committee may levy demands for special ad-hoc contributions upon the Members to cover any extraordinary, unusual, or unanticipated operating expenses or operating deficits of the OSG ("**Contributions**").

10.3.4 The amount of such Contributions shall be pro rata to the amount of Ports carried out by each Member during the previous Financial Year. Members that have joined since the last Financial Year shall pay an amount based on their number of Ports since the last financial year, grossed up on a pro rata basis to a figure that would represent an annual number of Ports.

10.3.5 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 suspended or terminated pursuant to Article 9.2. A Member suspended on these grounds may be reinstated as soon as reasonably possible following payment of the amount due.

## **10.4 Member and Delegate Representative Expenses**

10.4.1 All time, travel, hotel and other expenses incurred by a Member or Member Representative in connection with the activities of the OSG, shall in all cases be borne by the relevant Member.

## **ARTICLE 11 RECORDS AND ACCOUNTS**

11.1 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 OSG Website.

11.2 The Secretariat shall keep a copy of this Constitution, as amended to date, and a non-confidential version will be published on the OSG Website.

### **11.3 Financial Year and Annual Report**

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

11.3.2 Subject to any requirements of confidentiality, the Secretariat shall prepare an annual report ("**Annual Report**") within one hundred and twenty (120) days after 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 OSG for the Financial Year; and
- (B) a list of the Members' names, contact particulars and class of membership.

11.3.3 When the Annual Report is completed and approved by the OSG Administrative Committee, the Secretariat shall provide each Member with a copy of the Annual Report.

11.3.4 A copy of the Annual Report may be published on the OSG Website.

## **ARTICLE 12 INTELLECTUAL PROPERTY RIGHTS**

12.1 Save where Articles 12.2.3, 12.2.4 and 12.3 apply, the Executive Members collectively are the owner of all right, title and interest in and to OSG Intellectual Property.

12.2 Subject to this Article 12 and save to the extent that other specific formal agreements exist:

12.2.1 no Participating Member shall acquire or claim any right, title or interest in or to the OSG Intellectual Property other than the rights to use such Intellectual Property as part of its membership of the OSG;

12.2.2 all right, title and interest in or to the OSG Intellectual Property shall vest in the Executive Members in equal shares as set out above which shall hold such rights for the OSG on the terms of this Constitution and, to the extent required, each Member shall do all things to effect such vesting, including obtaining required assignments and waivers from its representatives; and

12.2.3 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 relevant 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.

12.2.4 For the avoidance of doubt, where, under Article 12.2.3, a Member (or in the case of the ORG, a Member or a Service Provider) creates Intellectual Property Rights which form part of its contribution to the activities of the Working Group, the relevant Working Group may recognise that such Intellectual Property Right should be attributed to that Member. In such circumstances, the relevant Member shall agree to grant a licence to the OSG in respect of that Intellectual Property Right on fair, reasonable and non-discriminatory terms and to consider in good faith whether, in order to further the objectives of the OSG, such licence should fairly be perpetual and royalty free.

### **12.3 Member and other Third Party Intellectual Property Rights**

12.3.1 Save as set out in this Article 12, nothing in this Constitution, or the involvement in the activities of the OSG, shall confer or be deemed to confer on any Member or other party any right, title or interest in another Member's or other party's Intellectual Property Rights (save as otherwise may be agreed between the relevant parties).

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

### **12.4 Rights on Termination**

12.4.1 On termination of this Constitution the Executive Members will hold their shares of the OSG Intellectual Property unencumbered by any rights of any other Member.

## ARTICLE 13 NO PARTNERSHIP

- 13.1 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 the OSG, any other Member or participant. A Member has no authority or power to bind, to contract in the name of, or to create a liability of the OSG to any other Member or participant in way or for any purpose.

## ARTICLE 14 CONFIDENTIALITY

- 14.1 All communications between a Member and the Secretariat and all information and other materials supplied by a Member (“the **Owner**”) 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. The Secretariat shall not communicate, disclose or divulge any Confidential Information without giving the Owner prior notice.
- 14.2 the restrictions in Article 14.1 shall cease to apply to communications, information and/or material which fall(s) within the definition of Confidential Information:
- 14.2.1 to the extent only of the same coming into the public domain otherwise than through the fault of or unauthorised disclosure by the Secretariat; or
- 14.2.2 which can be shown by the Secretariat, to the reasonable satisfaction of the Owner, to be known to the Secretariat prior to the Secretariat receiving the information from the Owner; or
- 14.2.3 which is required to be disclosed by law, an order of court or tribunal, an order or directive of any governmental/regulatory body.
- 14.3 The obligations contained in Articles 14.1 shall continue for a period of three (3) years from the date of receipt of that Confidential Information (even if the Owner ceases to be a Member).
- 14.4 The terms of this Article 14 shall be without prejudice to the terms of the common law.

## ARTICLE 15 DISSOLUTION

- 15.1 The OSG may be dissolved at any time by the OSG Administrative Committee. A decision to dissolve the OSG must be made according to the terms of Article 5.5.4.

15.2 In taking any decision on the dissolution of the OSG, the OSG Administrative Committee shall consider the interests of all Members and shall ensure so far as possible that such decision does not inevitably result in a Member being unable to meet their obligations under General Condition 18.

15.3 If the OSG Administrative Committee decides to dissolve the OSG, the Secretariat will remain in office and will be responsible for the orderly winding up of the OSG's affairs. After making provision for all outstanding liabilities of the OSG and the expenses of winding up, the Secretariat shall distribute any remaining funds to the Members pro rata to their total Membership Fees paid during the last full financial year.

#### ARTICLE 16 INDEMNITY AND RELEASE

16.1 The OSG shall indemnify the OSG Chair and each of the OSG Officers in respect any losses, reasonable costs, reasonable expenses, claims, damages or liabilities incurred by such persons in the proper performance or discharge of any duty, obligation, or other function exercised in the capacity as a member of the Secretariat.

16.2 Each Member will indemnify its Representatives in respect of any losses, reasonable costs, reasonable expenses, claims or liabilities incurred by such persons in the proper performance or discharge of any duty, obligation, or other function in respect of their involvement in the activities of the OSG. Subject to the terms of Article 6.4.3.8, Delegate Representatives shall be indemnified by all Participating Members equally.

16.3 Each Member hereby agrees not to take any action against the OSG Chair or any of the OSG 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 OSG Chair or OSG Officer, as the case may be.

#### ARTICLE 17 LIMITATION OF LIABILITY

17.1 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.

17.2 The Secretariat is not liable to any Member for any acts or omissions of the OSG, its Members, the OSG Chair or any of the other officers of the Secretariat in respect of the performance or discharge of any duty, obligation or otherwise.

17.3 For the avoidance of doubt, under this Constitution Members shall be severally and not jointly liable between themselves, save as provided under Article 6.4.3.6.

## ARTICLE 18 NO WAIVER

- 18.1 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 19 SEVERANCE

- 19.1 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 20 NOTICES

- 20.1 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.
- 20.2 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 given or made by letter 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 21 TRANSFER

- 21.1 Membership is transferable to any Group Company of a Member (including any enlarged group following a change of control), provided that there is a transfer of substantially all of the Member's UK MNP activities to that Group Company and provided that the transferee continues to meet the requirements for membership as set out in this Constitution.
- 21.2 Following a change of an Executive Member's company name, the name appearing in Article 3.3.2 will be deemed to have been amended accordingly.
- 21.3 Save as set out in Article 21.1, 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 22 NO THIRD PARTY RIGHTS

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

## ARTICLE 23 GOVERNING LAW

- 23.1 This Constitution shall be governed by and construed in accordance with English laws. Members submit to the exclusive jurisdiction of the English courts with respect to any disputes arising out of or in connection with this Constitution or any acts or omissions of the OSG.

## ARTICLE 24 DISPUTE RESOLUTION

- 24.1 Any Member may require by notice to all other relevant Members that any decision in respect of Significant Expenditure or any dispute between Members or regarding the adherence of a Member to the Constitution be dealt with in accordance with this Article.
- 24.2 For the avoidance of doubt, this Article shall not restrict the right of any Member to make a complaint to or raise a dispute with Ofcom (with respect to a breach of General Condition 18 or otherwise) nor prevent any Member taking such other action as it deems appropriate including, without limitation, the commencement of litigation.
- 24.3 Where a dispute or decision falls to be addressed under this Article, Executive Member Representatives and Delegated Representatives shall ensure that directors or other senior representatives of the relevant Members with authority to settle the dispute will, within 10 working days of the date of any notice given in accordance with Article 24.1, meet in a good faith effort to resolve the matter.
- 24.4 If the matter is not resolved at the meeting held in accordance with Article 24.3, the parties will attempt to settle it by mediation. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR who shall follow the CEDR Model Mediation Procedure. To initiate the mediation the dissenting Members shall give notice in writing (an “**ADR Notice**”) to the other Members requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 20 working days after the date of the ADR Notice.

## SCHEDULE 1 DEFINITIONS AND INTERPRETATION

### ARTICLE 1 DEFINITIONS

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

**“The Act”** means the Communications Act 2003.

**“ADR Notice”** has the meaning set out at Article 24.3.

**"Annual Report"** has the meaning set out in Article 11.3.2.

**“Communications Provider”** has the same meaning as in General Condition 18.

**"Confidential Information"** has the meaning set out in Article 14.1.

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

**"Contributions"** has the meaning set out in Article 10.3.3.

**"Delegated Representative”** has the meaning set out in Article 3.5

**“Delegated Representatives Quota”** means a number no less than two that shall be equal to the nearest whole number representing a proportion of votes at meetings of the OSG Administrative Committee equivalent to the number of Participating Members’ Ports as a percentage of the total number of all Executive Members’ and Participating Members’ Ports made during the preceding calendar year. The Delegated Representatives Quota shall be established by the OSG Chair on a quarterly basis and each time a Participating Member becomes an Executive Member.

**"Executive Member"** means the Communications Provider listed at Article 3.3.2, together with any Communications Provider that has met the relevant membership criteria set out at Schedule 3.

**"Executive Member Representative"** means the person appointed by an Executive Member to represent it in accordance with Article 4.1.

**"Financial Year"** means the Financial Year as defined in Article 11.3.1.

**“General Condition 18”** means the General Condition 18 imposed by Ofcom with effect from 25 July 2003 as subsequently varied.

**"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 Section 1159 of the Companies Act 2006).

**"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.

**"Interim OSG Chair"** has the meaning set out at Article 7.2.1.

**"Member"** means any and all persons who are accepted as Executive Members or Participating Members.

**"Membership Fees"** means the amount of the membership fees as set out in Schedule 2 and payable by all Members under this Constitution.

**"Membership List"** has the meaning set out in Article 11.1.

**"MNP Operator IS Interface Spec"** means the specification adopted by the OTG Working Group that defines how Mobile Numbers are deactivated and activated during the port process.

**"MNP Process Manual"** means the "MNP OSG Porting Process Manual" adopted by the OSG and updated from time to time.

**"Mobile Communications Services"** has the same meaning as in General Condition 18.

**"Mobile Number"** means a number allocated by Ofcom under the National Telephone Numbering Plan for use with Mobile Communications Services.

**"Mobile Number Range Holder"** means the Communications Provider to which the relevant Mobile Number was allocated as part of a range of Mobile Numbers originally allocated by Ofcom directly to that Communications Provider.

**"Network Directory"** has the meaning set out in Article 6.4.2.4.

**"Operator"** means a Communications Provider.

**"OSG Bank Account Holder"** means the independent third party, appointed from time to time by the OSG Administrative Committee, which holds the OSG bank account in trust for the OSG.

**"OSG Chair"** means the person appointed in accordance with Article 7.2.

**"OSG Administrative Committee"** means the OSG Administrative Committee as constituted in accordance with Article 5.

**"OSG Intellectual Property"** means the OSG Website and associated domain name, 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 OSG activities (including, without limitation any OSG Output Document), but not, for the avoidance of doubt, any underlying Intellectual Property Rights.

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

**"OSG Output Document"** means a final output document released by the OSG or any of its Working Groups.

**"OSG Website"** means the website to be established and maintained by the OSG following the adoption of this constitution and the accession of the first new Members, which shall be accessible to all Members of the OSG.

**"Ofcom"** means the Office of Communications.

**"Participating Member"** means any Communications Provider that has met the relevant membership criteria set out at Schedule 3.

**"Participating Member Representative"** means any representative appointed by a Participating Member in accordance with Article 4.1.1, or otherwise in accordance with the Constitution.

**"Participating Member Working Group"** or **"PMWG"** is a Working Group constituted entirely of Participating Members and members of the Secretariat, as referred to in Article 6.4.3.

**"Participation"** means right of a Member to attend and vote in OSG meetings and the ability of a Member to benefit from the transfer of numbers from other Members by the System. For the avoidance of doubt, any suspension of a Member's Participation must be implemented so as to ensure the continued ability of holders of ported numbers to use their Mobile Numbers.

**"Port"** means the transfer of a number from one Member to another Member. For the avoidance of doubt, this shall include both the process of porting the number "out" and the process of porting the number "in".

**"Production Manager"** means Alex McKillop.

**"Secretariat"** has the meaning set out in Article 7.

**“Significant Expenditure”** has the meaning set out at Article 5.5.5.

**“System”** means the operational infrastructure administered by the OSG and used by Members to achieve MNP, together with any associated Intellectual Property Rights.

**“System Provider”** means the third party contracted by the OSG to provide the System.

**“Service Provider Directory”** has the meaning set out at Article 6.4.1.1.

**“Terms of Reference”** means the objectives and scope of the OSG, as set out in Article 2.

**“Testing”** means the training and technical and procedural requirements to establish that the applicant is able to undertake mobile number portability using the System.

**“Working Group”** has the meaning set out in Article 6.1.1 For the avoidance of doubt, Working Groups shall include the Constitutional Working Groups set out at Article 6.4.

**“Working Group Chair”** has the meaning set out in Article 6.1.2.

**“Working Group Representatives”** has the meaning set out in Article 6.2.1.

## **ARTICLE 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.

## **ARTICLE 3 HEADINGS**

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

## **SCHEDULE 2 MEMBERSHIP FEES**

### **ARTICLE 1 EXECUTIVE MEMBERS**

1.1 The Membership Fees payable to be and/or become an Executive Member shall be the System Provider Administrative Charge, the Share of OSG Costs and the Share of OSG Equity.

#### **1.2 System Provider Administrative Charge**

1.2.1 Executive Members shall each pay a share of the total System Provider Administrative Charge. The amount payable by each Executive Member shall be equal to the total System Provider Administrative Charge divided by the total number of Executive Members.

1.2.2 Where a Member becomes an Executive Member at a time not coinciding with a payment period for the System Provider Administrative Charge, the new and existing Executive Members shall agree that the new Member shall pay costs for the remainder of the relevant payment period on a pro rata basis, unless otherwise agreed.

#### **1.3 Share of OSG Costs**

1.3.1 Executive Members shall each pay a share of the total OSG Costs. The amount payable by each Executive Member shall be:

$$\left( \frac{\text{Total OSG Costs}}{(\text{Number of Executive Members}) + (\text{Delegated Representatives})} \right)$$

1.3.2 Where a Member becomes an Executive Member at a time not coinciding with a payment period for the OSG Costs, the new and existing Executive Members shall agree that the new Member shall pay costs for the remainder of the relevant payment period on a pro rata basis, unless otherwise agreed.

#### **1.4 Share of OSG Equity**

1.4.1 In consideration for an equal share in the OSG Equity, a Participating Member that wishes to become an Executive Member shall make a one off payment of an amount equal to:

$$\left( \frac{\text{total value of OSG Equity}}{(\text{number of existing Executive Members}) + 1} \right)$$

The sum of that payment shall be divided equally between the existing Executive Members.

- 1.4.2 The total value of OSG Equity shall be published in advance by the OSG Chair, showing the total value of OSG Equity for the current and forthcoming Financial Year, as amended from time to time to reflect changes to the System.

ARTICLE 2 PARTICIPATING MEMBERS

- 2.1 The Membership Fees payable to be and/or become a Participating Member shall be the Pay Per Port Charge, the Share of OSG Costs, and the System Accession Charge.

**2.2 Pay Per Port Charge**

- 2.2.1 Participating Members shall each pay the Pay Per Port Charge in respect of each number that is ported to them via the System on their behalf. For the avoidance of doubt, this charge shall include both the process of porting the number “out” from the previous Communications Provider and the process of porting the number “in” to the Participating Member.

**2.3 Share of OSG Costs**

- 2.3.1 Participating Members shall each pay a share of the total OSG Costs. The amount payable by each Participating Member shall be:

$$\frac{\left( \frac{\text{Delegate Representative Quota x Total OSG Cost}}{\text{Number of Participating Members}} \right)}{\text{Number of Participating Members}}$$

- 2.3.2 Where a Communications Provider becomes a Member at a time not coinciding with a payment period for the OSG Costs, the new and existing Participating Members shall agree that the new Member shall pay costs for the remainder of the relevant payment period on a pro rata basis, unless otherwise agreed.

**2.4 System Accession Charge**

- 2.4.1 Each new member shall pay the System Accession Charge.

### ARTICLE 3 EXECUTIVE MEMBERS AND PARTICIPATING MEMBERS

- 3.1 Executive Members and Participating Members shall each pay an equal share of All Members' Capital Expenditure.
- 3.2 In consideration for an equal share in the All Members' Capital Expenditure, a new Member shall make a one off payment of an amount equal to:

$$\left( \frac{\text{total value of All Members' Capital Expenditure}}{(\text{number of existing Members}) + 1} \right)$$

The sum of that payment shall be divided equally between the existing Members.

- 3.3 The total value of All Members' Capital Expenditure shall be published in advance by the OSG Chair, showing the total value of All Members' Capital Expenditure for the current and forthcoming Financial Year, as amended from time to time to reflect changes to the System.

### ARTICLE 4 DEFINITIONS

- 4.1 In this section the following definitions shall apply:

**“All Members' Capital Expenditure”** means any capital expenditure on the system which allows new Members to join, depreciated 15% annually from the time of their being incurred.

**“OSG Equity”** means the initial cost of the System depreciated 15% annually, together with the costs of any capital expenditure on the System depreciated 15% annually from the time of their being incurred, excluding All Members' Capital Expenditure.

**“Pay Per Port Charge”** means the charge payable to the System Provider in respect of each number ported on behalf of a Participating Member. A proportion (£0.075) of the charge payable to System Provider shall be passed on to Executive Members to cover their historical investment in the System.

**“Share of OSG Costs”** means the total amount of costs of the Secretariat (including but not limited to salaries, fees, and expenses) and any expenses incurred on behalf of Members and the OSG (including but not limited to the costs of contracting a third party to monitor the performance of the System and/or System Provider). For the avoidance of doubt this shall not include the Pay Per Port Charge or the System Provider Administrative Charge.

**“System Accession Charge”** means the cost payable to the System Provider in respect of adding the member to the System. This shall include both the technical

processes undertaken by the System Provider and any training provided by the System Provider to the new member. For the avoidance of doubt the System Accession Charge shall not include the costs of CR38.

**“System Provider Administrative Charge”** means the total amount payable to the System Provider by Executive Members in respect of the ongoing provision of the System to Executive Members.

## **SCHEDULE 3 - MEMBERSHIP CRITERIA**

### ARTICLE 1 MEMBERSHIP CRITERIA

- 1.1 In order to be eligible to be a Member of the OSG, a Communications Provider must demonstrate that:
  - 1.1.1 it holds a range of Telephone Numbers allocated by Ofcom for use for Mobile Communications Services in the UK; and
  - 1.1.2 it provides a Mobile Communications Service to customers in the UK; and
  - 1.1.3 it has paid the relevant Membership Fees; and
  - 1.1.4 it has a regulatory requirement to perform Mobile Number Portability.
- 1.2 In order for a Participating Member to become an Executive Member it must have exceeded the Porting Threshold during a previous quarter.
- 1.3 The determination of whether an applicant has met the Porting Threshold shall be made by the OSG Chair. In making his determination, the OSG Chair shall ensure that no Confidential Information is disclosed.
- 1.4 For the avoidance of doubt, the Membership Criteria set out at 1.1 above are cumulative and must be satisfied at all times.

### ARTICLE 2 DEFINITIONS

In this section, the following definitions shall apply:

“**Communications Provider**” has the meaning given to it in General Condition 18.

“**Mobile Communications Services**” has the meaning given to it in General Condition 18.

“**Porting Threshold**” means 10 per cent of the average number of Ports performed by the Executive Members during the relevant quarter.

“**Telephone Number**” has the meaning given to it in the General Conditions.

## SCHEDULE 4 – COMPETITION LAW GUIDELINES

### ARTICLE 1 INTRODUCTION AND POLICY STATEMENT

- 1.1 Through the adoption and issuance of the OSG Constitution, including this Schedule (the "**Competition Guidelines**"), Members affirm their commitment to abide by the spirit and the letter of all applicable competition laws. All Members and their Representatives must follow the policy and guidelines contained herein as part of their ongoing obligations as Members of the OSG. These Competition Guidelines apply both to activities within the OSG Administrative Committee and its various working groups (the "**OSG**") and to any joint activities by one or more Members, under the aegis of OSG, with any other entity, association, or other third party.
- 1.2 It is the individual responsibility of each Member to ensure compliance with these Competition Guidelines and with underlying applicable competition laws. It is also the individual responsibility of each Member to comply with any regulatory obligations relating to MNP to which they are subject, where relevant taking into account any rules and instructions issued by Ofcom in relation to mobile number portability. If in any doubt on an issue relating to compliance, Members should seek their own legal counsel.
- 1.3 Definitions

The following definitions apply within this Schedule:

- "**Competition Guidelines**" means this Schedule of the OSG Constitution.
- "**OSG**" means the OSG Administrative Committee and its various standing and ad hoc working groups.
- "**Specifications**" means the various documents produced by the MNP including specification of the processes and technical matters required to be adopted by Members and/or the System Provider for the practical implementation and operation of MNP.
- "**Meetings**" means all meetings of the OSG, including the OSG Administrative Committee meetings and the meetings of its various standing and ad hoc working groups

### ARTICLE 2 COMPETITION LAWS - SUMMARY

- 2.1 The activities and decisions the OSG, including the related conduct of Members, are in principle subject to applicable competition laws in the UK, including the laws of the European Community ("**EC**"). These competition laws prohibit three broad categories of conduct:

- agreements, understandings, conspiracies and/or concerted practices (“**Agreements**”) amongst competitors that reduce competition between themselves or shut out competition from third parties;
  - agreements between a supplier and customer which threaten to exclude third parties from the market; and
  - unilateral behaviour by companies which have a very strong market position which “abuse” that position or seek to monopolise markets.
- 2.2 In relation to the first two categories of conduct, the agreements in question need not be contractual or formal and can include informal, unwritten and even tacit agreements or understandings.

## ARTICLE 3 SPECIFIC ORGANISATIONAL AND PROCEDURAL MATTERS

In order to minimise any risk of OSG activities, including the conduct of the individual Members involved, breaching competition laws, the following guidelines should be followed in the course of OSG related activities:

### **3.1 Membership**

- 3.1.1 Membership should be available on fair, reasonable and non-discriminatory terms to all companies meeting the criteria specified in Schedule 3. No applicant for membership who meets these criteria should be rejected for any anticompetitive purpose or solely for the purpose of denying such applicant the benefits of membership.
- 3.1.2 The reasonable terms referred to in Article 3.3.1 above will include payment of the Membership Fees, as specified in Schedule 2.
- 3.1.3 The Members should endeavour to ensure that non-members that may be affected by any matter covered in the OSG Constitution or an OSG Output Document (as amended or supplemented from time to time), or by any proposed OSG action, have a reasonable opportunity – on request - to make their views and concerns known to the OSG and, where the relevant Members deem appropriate, to attend a meeting of the OSG in order to present and/or discuss such views or concerns (provided that such opportunity need not be afforded to any non-member clearly acting in a vexatious or frivolous manner). In considering any such requests, Members shall act in an objectively justifiable and non-discriminatory manner.

### **3.2 Technical Specifications and Processes**

- 3.2.1 The OSG Constitution, OSG Output Documents and any terms of the System Provider involve the need for Members to develop, agree and keep under review the Specifications. In this regard, for the reasons explained in Article 4 of these Competition Guidelines:

- (A) All Specifications should be based and selected on their technological and practical attributes and ability to address the desired levels of interoperability and operational efficiency for mobile number portability. Any selection processes will be based on objective, relevant, qualitative and verifiable criteria to achieve these aims. Equal treatment will be afforded regardless of the origin of the technology.
- (B) The purpose of any Specification must be legitimate, reasonable and consistent with the regulation of mobile number portability in the UK. The OSG should limit its proposals and investigations to technical matters that facilitate mobile number portability (including the necessary interoperability).
- (C) The OSG should not seek to promote standardisation of Members' other sale, license or other commercial terms with third parties.
- (D) Summary, non-confidential details of any Specifications adopted by OSG will be made available on request, as soon as reasonably possible, on fair, reasonable and non-discriminatory terms to non-members showing to the satisfaction of the OSG Chair a genuine interest in becoming a Member of the OSG.

### **3.3 Meetings and discussions**

3.3.1 Discussions in all OSG meetings (including the OSG Working Group meetings) should relate solely to the legitimate purposes of the OSG and those working groups, as summarised in the OSG Constitution. Care should be taken to avoid even the appearance of discussing competitively sensitive information, as such discussions may lead to the inference of an illegal agreement or concerted practice regarding prohibited topics. To this end, there should be no discussion, communication or other exchange between Members of the OSG and/or their representatives at OSG and related working group meetings and events regarding any of the following categories of information:

- (A) Product prices or pricing strategy. This requirement is to be interpreted broadly, to include, for example: current or projected prices; price changes or differentials; mark-ups; discounts; allowances; terms and conditions of sale, including credit terms, warranty provisions, etc.; or other information that might comprise an element of a product's market price, including profits, margins or cost. For the avoidance of doubt, this also applies to discussion of the mobile termination rates of individual Operators;
- (B) Production levels, production capacity, or product inventories. This requirement is to be interpreted broadly to include network and transmission capacity and what standards and telecommunication products can be supported by a Member
- (C) Current bids or potential bids for particular products, and procedures for responding to bid invitations;

- (D) Plans pertaining to the capacity for, and production, distribution, marketing, or introduction dates of, specific products, including proposed marketing territories and potential customers;
- (E) Terms on which any Members will or will not deal with particular competitors, suppliers, distributors, or customers;
- (F) Matters relating to actual or potential individual suppliers or customers that might have the effect of influencing the business conduct of other companies toward such suppliers or customers;
- (G) Current or projected cost of procurement, development, or manufacture of any specific product by one or more Members (save for the contract for the supply of the MNP System and related matters involved in the practical implementation of the Specifications referred to in Article 3.2 above); and
- (H) Non-public information regarding any company's market share for any product or for all products.

3.3.2 Members should not discuss or exchange information bearing on a refusal to deal with any third party (or to deal only with certain third parties), or enter into agreements or understandings about refusing to purchase, sell to, or otherwise deal with competitors, customers or suppliers. For example, Members shall not discuss the degree to which Members will or will not do business with third parties that do not participate in the OSG or share the OSG's objectives.

3.3.3 From time to time, it may be appropriate for the agenda of OSG and related working group meetings to include issues raised by consultations, recommendations or other action by Ofcom, where relevant to the purposes and activities summarised in the OSG Constitution. For the avoidance of doubt, however, each Member shall retain the right and, where relevant, the obligation to submit its own individual views to Ofcom in relation to any such issues.

### **3.4 Procedures for meetings**

Special care should be taken to ensure that Meetings are not used as a means of engaging in anticompetitive conduct in violation of the terms of these Competition Guidelines. Accordingly, the following practices should be followed:

3.4.1 *Agenda* All meetings should follow a written agenda, which should be circulated in advance by the Chair whenever possible.

3.4.2 *Minutes* Minutes should be prepared promptly after the Meeting, should briefly summarise all matters discussed and conclusions, if any, reached. Only minutes approved by the Chair should be distributed (even in preliminary form) and only minutes as approved need be retained. The purpose of this is to avoid the preservation of misstatements, ambiguities, fragmentary reports and similar items that may, years later, create misperceptions of the Meeting.

- 3.4.3 *Copies of presentation materials* Any Member making a presentation or distributing written materials at a Meeting will make an additional copy of any materials to available the Chair. The Chair will ensure that a copy of each relevant item is retained along with the minutes of the Meeting for OSG records.
- 3.4.4 *Consult Counsel* At appropriate meetings and with the prior agreement of the relevant chair, one or more Members may instruct counsel to provide compliance reminders concerning these Competition Guidelines, current competition developments and, if necessary, specific compliance issues. Unless otherwise agreed by the OSG Administrative Committee, or relevant Working Group, the cost of such counsel will be met by the instructing Member(s).
- 3.4.5 *No Informal Meetings* Informal meetings should not be held and informal discussions should comply with the standards of these Competition Guidelines. Informal meetings are of particular concern to law enforcement agencies, which may take the view that formal association activities merely provide a cover for improper agreements that were reached in a hotel room, restaurant or similar setting.

### **3.5 Availability of Information**

- 3.5.1 Any information, materials, or reports created for the purpose of OSG and made available by one or more Members for the use of other Members should also be made available (at least in summary, non-confidential form) to non-members on reasonable terms, if non-availability of those materials is likely to impose a significant economic disadvantage or cost to non-members and this significantly limits their ability to compete against Members.

## **ARTICLE 4 DEVELOPMENT OF SPECIFICATIONS AND COMMON PROCESSES**

- 4.1 The development of Specifications can promote competition and economic efficiency, for example by facilitating interoperability across different technologies, networks and related products. As a result, joint development activity of this type is normally subject to treatment under the competition laws that focuses on whether or not the activity is reasonably necessary to achieve legitimate pro-competitive ends, and, if so, whether the benefits of the Specifications outweigh any “costs” (for example in terms of a reduction or actual or potential competition).
- 4.2 The benefits of formulating Specifications and the corresponding promotion of those Specifications are often considerable, and the vast majority of Specification development activities, when conducted properly, have little competition risk. In the context of the OSG, Ofcom and subsequently Ofcom have recognised the need for a practical forum and industry-agreed rules and processes to facilitate the implementation of mobile number portability in the UK (including compliance with General Condition 18 of the Act), ultimately to the benefit of consumers.

4.3 Competition problems can arise, however, in the development of a Specification as well as the implementation of that Specification. The following are some illustrative examples:

- (A) When the members of a body such as the OSG misuse the process to facilitate agreements to restrain trade, such as when product specifications have the effect of stabilising prices and/or restricting competition on non-price service features;
- (B) When a Member fails to disclose intellectual property rights in the technology selected and then seeks to assert its rights against those who adopt the Specification;
- (C) When a body such as OSG adopts a Specification that non-members are not able to meet, and that gives the members of the Specifications development group a competitive advantage in marketing and/or commercialisation;
- (D) When a body such as OSG adopts a Specification that excludes or treats unfavourably one technology over another, unless there are strong, clear, objective and technically rigorous reasons for doing so in order to achieve legitimate goals; and
- (E) When the rules and procedures of a body such as OSG are used to exclude unreasonably some competitors or tip the process in favour of one or more competitor's technology.

4.4 The OSG shall not engage in any of the foregoing activities and no Member, or employee of a Member, shall take any action that would tend to promote such activities or create the impression that such activities are occurring. This applies equally to the activities of the Operational Review Group and Operational Technical Group (and any other working groups that may be established from time to time).

## ARTICLE 5 CONCLUSION

5.1 These Competition Guidelines are designed as a general statement of the most relevant competition principles. Of course, it is not possible to anticipate each issue that could arise in the course of the OSG's activities; that is why the Members must remain vigilant and continually conscious of potential competition concerns. When and if those concerns arise, prompt consultation with counsel is always appropriate and is the responsibility of each Member.

## DOCUMENT HISTORY

Issue	Date	Details
1.0	20/8/07	Initial version
1.1	tba	Draft changes to include proxy voting
1.2	24/6/11	Changes to reflect single membership of Everything Everywhere