

**Version 10-11-2021**

Next Generation Mobile Networks Alliance e.V.

(NGMN Alliance e.V.)

Constitution

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**Date: 10 November 2021**

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## 1. General Terms, Objects and Definitions

- 1.1. The Association is named “Next Generation Mobile Networks Alliance (NGMN Alliance e.V.)”.
- 1.2. The Association is to be registered with the register of associations at the Court in Frankfurt am Main/Germany. Following its registration, the suffix “e.V.” (registered association) will be added to its name.
- 1.3. NGMN Alliance is an association in the sense of Section 21 Bürgerliches Gesetzbuch (BGB).
- 1.4. NGMN Alliance has its seat in Frankfurt am Main.
- 1.5. The business year is the calendar year.
- 1.6. Bodies of the Association are the Members’ Assembly and the Board of Directors.
- 1.7. The objects for which the Association is established (“the Objects”) are:
  - To provide a platform for innovation by moving towards an integrated network for each individual mobile network operator for the seamless introduction of mobile broadband services;
  - To develop a set of recommendations to enhance the ability of mobile operators in offering cost-effective wireless broadband services for the benefit of their customers by:
    - guiding the activities of equipment developers, standardisation bodies and industry forums;
    - establishing clear performance targets, fundamental requirements, deployment and migration scenarios; and
    - involving new partners from suppliers, technology providers, standards bodies, industry forums, research institutes, universities and mobile operators.
- 1.8. In this Constitution:

**“Advisor”**

means a person qualifying as academic institution, non-industry affiliated research institute or, at the NGMN Alliance Board’s discretion, other non-profit making organisations;

**"Affiliate"**

means in relation to any person any Association which is a direct or indirect subsidiary or holding Association of that person and any Association which is a direct or indirect subsidiary of such holding Association (“holding Association” and “subsidiary Association” as

	defined in section § 271 Handelsgesetzbuch (HGB);
<b>"Constitution"</b>	means this Constitution of the Association as amended from time to time;
<b>"Board" or "Board of Directors"</b>	means the board of Directors of the Association from time to time;
<b>"Chief Executive Officer"</b>	means the Chief Executive Officer of the Association appointed in accordance with Article 17;
<b>"Content Related Matter"</b>	shall bear the meaning as described in Article 15.7;
<b>"Contributor"</b>	means a person qualifying as manufacturer or vendor of mobile technology, including network infrastructure, chipset, component, handset and device makers, software companies, as well as a person representing industry sectors such as automotive, healthcare, media, internet or transport with an interest in contributing to the advancement of next generation mobile technology and to service or media delivery;
<b>"Contributor/Advisor Application Form"</b>	means the application form to be delivered by a proposed Contributor or Advisor pursuant to Article 2.12 and which shall be in such form and contain such obligations as the Board of Directors may, in their absolute discretion, from time to time require or determine;
<b>"Control"</b>	as defined in § 37 des Gesetzes gegen Wettbewerbsbeschränkungen (GWB) and "controlled" shall be construed accordingly;
<b>"Corporate Representative"</b>	means a person appointed by a Member to represent that Member at any meeting of the Members in accordance with Article 10;
<b>"Director"</b>	means any person appointed from time to time as a director of the Association;
<b>"electronic"</b>	means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy and "by electronic

means" means by any manner only capable of being so actuated;

**"Founder Member"**

means any one of the following:

- (1) ATT
- (2) BELL
- (3) British Telecommunications plc
- (4) China Mobile Communications Corporation
- (5) Chunghwa Telecom
- (6) Deutsche Telekom AG
- (7) Hong Kong Telecom
- (8) KPN NV
- (9) KT Group
- (10) Ligado Networks
- (11) MTN
- (12) NTT DOCOMO Inc.
- (13) Orange S.A.
- (14) SingTel
- (15) SK Telecom Co. Ltd.
- (16) Sprint Corporation
- (17) T-Mobile
- (18) Tele2
- (19) Telecom Italia S.p.A.
- (20) Telefonica S.A.
- (21) Telekom Austria
- (22) Telus
- (23) Turkcell
- (24) US Cellular
- (25) VEON
- (26) Verizon Communications Inc.
- (27) Vodafone Group Plc.

**"Member"**

means any member of the Association, including but not limited to the Founder Members;

**"Member Application Form"**

means the application form to be delivered by a proposed Member pursuant to Article 2.3 or 2.4 (as may be appropriate) and which shall be in such form and contain such obligations as the Board of Directors may, in their absolute discretion, from time to time require or determine;

**"Membership Fee"**

means the annual membership fee payable by Members in respect of each financial year of the Association in accordance with Constitution 2.5 and 19;

**“Mobile Network Operator”**

means a person providing mobile telecommunication services to the public owning or controlling all the elements necessary to sell and to deliver services to the end-user including in particular radio spectrum allocation and wireless network infrastructure and owning a spectrum license to operate and deliver services to end-users through the use of mobile network infrastructure;

**“NGMN Alliance Process Document”**

means the document owned by the Association which details, *inter alia*, the process and procedures for the initiation and development of the deliverables aimed at the achievement of NGMN Alliance’s objectives as defined by the Board from time to time;

**"Office"**

means the office of the Association from time to time;

**“Participant”**

means any person qualifying as Contributor or Advisor and for the time being appearing in the register of Participants’ of the Association;

**“Participation Fee”**

means the annual participation fee payable by Participants in respect of each financial year of the Association in accordance with Constitution 2.15 and 19;

**"person"**

includes any partnership, firm, company, organisation or other entity whether incorporated or not;

**“Project”**

means any project of the Association, which the Board of Directors may initiate from time to time in pursuance of the objects of the Association in accordance with such rules, as the Board of Directors shall in its absolute discretion determine;

**1.9.** The Association has power to do anything within the law that may promote or may help to promote the Objects or any of them.

**1.10.** The Association is liable for the damage to a third party that the Board, a member of the Board or another constitutionally appointed representative causes through an act committed by it or him in carrying out the business with which it or he is entrusted, where the act gives rise to

a liability in damages. There are no obligations whatsoever, including under either this Constitution or any other agreement between the Association and any Member of the Association, which could lead to any liability of the Members.

**1.11.** The income and capital of the Association and the contribution of each Member to the Association must be applied solely towards the promotion of the Objects. No part of the Associations' income or capital or contribution of Members of the Association may be paid or transferred, directly or indirectly, to the members of the Association, whether by way of dividend or bonus or in any other way that amounts to a distribution of profit or surplus. This does not prevent the payment of:

- 1.11.1. reasonable and proper remuneration to any employee or member of the Association in return for any services provided to the Association;
- 1.11.2. a reasonable rate of interest on money lent to the Association;
- 1.11.3. reasonable rent for property let to the Association;
- 1.11.4. reasonable expenses to any officer, employee or member of the Association; or
- 1.11.5. premiums on the indemnity insurance referred to in clause 23.2.

## **2. MEMBERSHIP AND PARTICIPATION IN THE ASSOCIATION**

**2.1.** The Association shall admit any person as a Member who has applied to become a Member (in accordance with Article 2.3) and satisfies the membership criteria set out in Article 2.2.

**2.2.** No person shall be admissible as a Member if:

- 2.2.1. neither that person nor one or more of its Affiliates qualifies as a Mobile Network Operator; or
- 2.2.2. it is an Affiliate of an existing Member.

### **Application**

**2.3.** Each proposed Member not being a Founder Member shall execute and deliver to the Association a Member Application Form thereby agreeing to observe and perform the obligations contained in such Member Application Form (including the payment of fees). Upon receipt by the Association of the duly completed and signed Member Application Form, the Association shall notify the proposed Member of acceptance of the Member Application Form and the proposed Member shall, within 45 days of such notification, transfer the applicable Membership Fee in cleared funds to the Association.

**2.4.** No amendments shall be made to any section of the Member Application Form unless the Directors resolve to approve such amendments by a majority of not less than two thirds of those Directors present and entitled to vote on such a resolution.

- 2.5. Every Member shall pay an annual Membership Fee to the Association of such amount(s) and on such date(s) as shall be determined by the Board of Directors pursuant to Article 19 and such Membership Fee shall not be refundable in the event of the resignation or expulsion of a Member.
- 2.6. Membership of the Association and the privileges, rights and obligations of such membership shall be personal and not transferable.
- 2.7. Any Member shall be entitled to participate in any Project but, for the avoidance of doubt, participation at any level within a Project shall not result in a Member becoming liable to pay a fee in addition to payment of the annual Membership Fee.

### **Change of Control of Members**

- 2.8. Any Member which is subject to a change of Control shall notify the Association in writing of such change of Control within 7 days of the change of Control taking effect.

### **Cessation**

- 2.9. A Member may give written notice to the Board of Directors that it wishes to resign or withdraw from the Association with a deadline of 14 days. In addition, a member ceases to be a Member of the Association if.
  - 2.9.1 the relevant Member is wound up or dissolved, deleted or any part of its undertaking or otherwise ceases to exist;
  - 2.9.2 insolvency proceedings are opened on the Member's assets or the opening is rejected due to lack of mass;
  - 2.9.3. the relevant Member ceases to meet the criteria for membership set out in Article 2.1.
- 2.10. The Board of Directors shall be entitled to suspend or expel a Member from its membership due to misconduct in connection with the Association, its property or its members, or on the basis of conduct that adversely affects the reputation of the Association or the fulfilment of its Purpose. A Member whose suspension or exclusion is decided at a board meeting is entitled to have at least 7 full days (except for the days on which the notice is delivered or deemed to have been delivered and for which it is deemed to be delivered) before that meeting a written Notice as to which the allegation made against this member must be disclosed. This Member has the right to attend this meeting and speak when his membership is discussed but must withdraw before the vote. A resolution under this Article will not take effect unless it is taken by a majority of no less than two-thirds of the members of the Board of Directors present and voting.

Reasons justifying a suspension or exclusion – but not exclusively – are in particular:



- 2.10.1 the relevant Member fails to pay any amounts to which the Member has to pay to the Association within two months of their due date;
- 2.10.2 the relevant Member significantly violates any of the provisions of this Constitution or the Membership application and fails to remedy this violation within 30 days of receiving notification from the Association regarding the resolution of this violation; the notification of the association must determine whether a breach is considered to be significant; or
- 2.10.3 the relevant Member violates its obligations to the Association, a Member or third party in connection with regards to the confidentiality of information received from any person in connection with the activities of the association.

### **Contributors and Advisors of the Association**

- 2.11. Any Contributor and Advisor shall be entitled to receive and comment on any documents produced by a Project subject to the NGMN Alliance Membership and Participation Guidelines, which guidelines will be drafted and subject to amendment by the Board of Directors from time to time by a majority of not less than two thirds of those Directors present and entitled to vote on such resolution.
- 2.12. Each person willing to be a Contributor or Advisor shall execute and deliver to the Association an Application Form thereby agreeing to observe and perform the obligations contained in such Application Form (including the payment of fees). Upon receipt by the Association of the duly completed and signed Application Form, the Association shall notify the proposed Contributor or Advisor of acceptance of the Application Form and the proposed Contributor or Advisor shall, within 45 days of such notification, transfer the applicable Participation Fee in cleared funds to the Association. The Board of Directors shall then enter the details of such Contributor or Advisor in the Association's register of Participants.
- 2.13. The Association shall at all times maintain a register of Participants.
- 2.14. No amendments shall be made to any section of the Participant Application Form (including any Schedule to the Application Form) unless the Board of Directors resolves to approve such amendments by a majority of not less than two thirds of those Directors present and entitled to vote on such resolution.
- 2.15. Every Contributor and Advisor shall pay an annual Participation Fee to the Association of such amount(s) and on such date(s) as shall be determined by the Board of Directors and such Participation Fee shall not be refundable in the event the Contributor or Advisor ceases to be a Participant or to participate in any Project.
- 2.16. The Board of Directors shall be entitled to suspend or expel from participation of the Association any Contributor or Advisor on the grounds of misconduct, in relation either to the Association, its property or its Members, or of conduct likely to prove prejudicial to the good standing of the

Association or to the attainment of its objects. A Contributor or Advisor whose suspension or expulsion is to be decided upon at a meeting of the Board of Directors shall be entitled to not less than 7 clear days' notice (excluding the days on which the notice is served or is deemed to be served and for which it is given) of that meeting, stating the case made against such Contributor or Advisor. Such Contributor or Advisor shall be entitled to attend and speak at that meeting at any time during which its participation is discussed but shall withdraw prior to voting. A resolution under this Article shall not be effective unless passed by a majority of not less than two thirds of the Directors present and voting.

### **3. GENERAL MEETINGS**

The Association shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it. The annual general meeting of the Association shall be held at such time and place as the Board of Directors shall appoint provided that each annual general meeting shall be held not more than four months after the Association's end of business year in each year. Meetings may be held in person, or by any combination of audio conferencing or video conferencing.

An extraordinary general meeting shall be convened by the Board of Directors if the interest of the Association requires it. The General Assembly shall also be convened on request - stating the purpose and reasons - of at least 10% of the Members.

Similarly, a minority of at least 10% of Members can demand that items be put on the agenda and published. Each new item must be accompanied by a reasoning or a draft resolution. The request for supplementary items must be sent to the Association at least 14 days before the meeting; the day of access is not to be counted.

### **4. NOTICE OF GENERAL MEETINGS**

**4.1.** An annual general meeting or a general meeting shall be called by at least one month's notice but may be called by shorter notice if it is so agreed by all the Members entitled to attend and vote at that meeting. The period can be shortened to up to 14 days in urgent proceedings if the interests of the Association require short-term decision-making. Compliance with the deadline can be waived if all Members agree.

**4.2.** The invitation must be made by written notice. In the event of urgent cases in accordance with Article 4.1. above, the invitation will be sent electronically or by fax in advance. The invitation letter must be sent to all Members, Board Directors and auditors of the Association and must include:

4.2.1. the date, time and place of the meeting;

4.2.2. in the case of an annual general meeting, that it is such a meeting;

- 4.2.3. the agenda of the meeting and the proposed resolutions; and
- 4.2.4. in a reasonably prominent position on the notice, that a Member entitled to attend and vote is entitled to appoint a proxy or proxies (who need not be a Member) to attend and, on a poll, to vote instead of that Member.

## **5. PROCEEDINGS AT GENERAL MEETINGS**

### **Chairperson**

- 5.1. The Chief Executive Officer shall chair each general meeting and shall have the right to speak at such meetings.
- 5.2. Where the Chief Executive Officer is not present within fifteen minutes after the time appointed for holding the meeting or is otherwise unable to act as the chairperson of any general meeting, the Members present and entitled to vote (whether in person or by proxy) shall choose one of their number (by simple majority vote) to be the chairperson of the meeting.

### **Quorum**

- 5.3. No business shall be transacted in any general meeting unless a quorum of Members, which shall be a majority of Members in number, is present in person or by proxy at the time when the meeting proceeds to business, save the appointment of a chairperson of the meeting.

### **Adjournment**

- 5.4. If within half an hour from the time appointed for a meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the Board of Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
- 5.5. With the consent of each meeting, where a quorum number of Members is present (and has to do so at the request of the Assembly), the Chairman may adjourn the meeting one time on a different date, which may not be 14 days later at most, and to another place.
- 5.6. No business shall be transacted at any adjourned meeting other than business which might lawfully have been transacted at the meeting from which the adjournment took place. Other items on the agenda are not to be dealt within this meeting.

- 5.7. The same formal rules of the invitation apply to the postponement of the meeting as in the case of the original meeting.

### **Amendment to Resolutions**

- 5.8. An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if

(a) notice of the proposed amendment is given to the Association in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairperson of the meeting may determine), and

(b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

### **Written Resolutions of Members**

- 5.9. A resolution in writing signed by the required majority of eligible Members for the time being entitled to receive notice of and to attend and vote at general meetings shall be as valid and effective as if it had been duly passed at a general meeting of the Association duly convened and held.

A proposed written resolution lapses if it is not passed before the end of the period of 28 days beginning with the date of circulation of the resolution to the Members. The agreement of a Member to a written resolution is ineffective if signified after the expiry of that period. A Member's agreement to a written resolution, once signified, may not be revoked.

## **6. DECISION-MAKING OF THE GENERAL MEETING**

- 6.1. Resolutions of the Members shall be passed at a general meeting if in excess of 50% respectively of the votes are in favour of these resolutions.

### **Demand for Poll**

- 6.2. At any general meeting a resolution put to the vote of the meeting shall be decided by a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
- 6.2.1. the chairperson of the meeting; or
  - 6.2.2. at least three Members present in person or by proxy and having the right to vote at the meeting; or
  - 6.2.3. a Member or Members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting.
- 6.3. A demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairperson.

## **Procedure on a Poll**

- 6.4. A poll shall be taken in such manner (including the use of ballot or voting papers or tickets) as the chairperson of the meeting may direct. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The chairperson of the meeting may (and if so directed by the meeting shall) appoint scrutineers (who need not be Members) and may adjourn the meeting to some place and time fixed by him for the purpose of declaring the result of the poll.
- 6.5. On a poll, votes may be given either personally or by proxy. A person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.
- 6.6. A poll demanded on the choice of a chairperson or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such subsequent time (within a period of 30 days from the date of the meeting) and place as the chairperson may direct. No notice need be given of a poll not taken immediately. The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

## **7. VOTES OF MEMBERS**

- 7.1. On a show of hands every Member who is present in person or by proxy shall have one vote and, on a poll, every Member who is present in person or by proxy shall have one vote.

### **Restriction on Voting etc. in Particular Circumstances**

- 7.2. If any monies payable by a Member to the Association (whether pursuant to this Constitution or to the conditions on which such Member agreed to become a Member of the Association or otherwise) shall be outstanding and overdue, such Member shall not, unless the Directors otherwise determine, be entitled to:
  - 7.2.1. vote either personally or by proxy at a Members' meeting;
  - 7.2.2. exercise any rights or powers conferred by this Constitution on such Member to nominate, elect or appoint any Director;  
or
  - 7.2.3. exercise any other right or privilege conferred by membership as may be determined by the Directors in their absolute discretion.

### **Validity and Result of Vote**

- 7.3. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered. Every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.

- 7.4.** Unless a poll is taken, a declaration by the chairperson of the meeting that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book, shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded for or against such resolution.

### **Minutes of Resolutions**

- 7.5.** Minutes must be drawn up on each meeting and the decisions taken therein. In the minutes are to be indicated:

- the place and day of the meeting,
- the person of the chairman,
- the nature and outcome of votes,
- the chairman's determination of the quorum, and
- the chairman's findings on the decision-making process.

The minutes must be signed by the chairman of the meeting. Members will receive a transcript without delay.

## **8. QUALIFIED MAJORITIES AND RESERVED MATTERS**

- 8.1.** The following matters shall be reserved to the Members for decision by not less than 75% of all votes received:

- 8.1.1. Amending the Constitution of the Association including without limitation amendments to the process of election of Directors;
- 8.1.2. Winding-up the Association;
- 8.1.3. Imposition of or charging any extraordinary levies on Members, including but not limited to any additional funding, other than Membership Fees, or the request of any loan, advance, or the granting of any guarantee or indemnity in favour of the Association;
- 8.1.4. Creation of any security, charge, lien or other encumbrances whatsoever over any Association's assets; and
- 8.1.5. Sale of any part of the business of the Association or the acquisition of any part of the business of any other Association.

## **9. PROXIES**

- 9.1.** Any Member may appoint another person as his proxy to attend any general meeting and exercise all or any of his rights to attend and to speak and vote at general meetings. A proxy need not be a Member of the Association.
- 9.2.** The document appointing a proxy shall be in writing in any usual or common form or in any other form which the Directors may approve. The form of proxy shall be either sealed with that Member's common seal or signed on its behalf by an attorney or a duly authorised officer of the

Member. The signature on any such form of proxy need not be witnessed.

**9.3.** A form of proxy (together with the original or a certified copy of any letter of power of attorney, if the form of proxy has been signed by an attorney) must:

9.3.1. for the general meeting or adjourned meeting at which it is to be used, be delivered:

9.3.1.1. either to the place specified in (or in a note to) the notice convening the meeting for the delivery of forms of proxy, at least one hour before the time fixed for the start of that meeting; or

9.3.1.2. to the chairperson of the meeting at the place where the meeting is to be held, on the day of, and before the time fixed for the start of, the meeting; and

9.3.2. in the case of a poll which is not to be taken at or on the same day as the general meeting or adjourned meeting at which the relevant resolution has been proposed, be delivered:

9.3.2.1. either to the place specified in (or in a note to) the notice convening the meeting for the delivery of forms of proxy, at least one hour before the time fixed for taking the poll; or

9.3.2.2. to the chairperson of the meeting at the place where the poll is to be taken, on the day, and before the time, fixed for taking the poll.

If no place is specified in (or in a note to) the notice convening the meeting for the delivery of forms of proxy, then such forms may be delivered instead to the Office. A form of proxy will be valid for any adjournment of a meeting in addition to the meeting to which it relates, unless it is stated on the relevant form that the form of proxy cannot be used at any such adjournment. If a form of proxy relates to more than one meeting (including any adjournment of any such meetings) and has been delivered as required by this Article for or in respect of one of those meetings, it will be valid for all subsequent meetings to which it relates and need not be re-delivered.

**9.4.** A form appointing a proxy shall be deemed to include the right to speak at the meeting.

**9.5** A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment to it, even though a valid proxy notice has been delivered to the Association by or on behalf of that person.

**9.6** An appointment under a proxy notice may be revoked by delivering to the Association a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

- 9.7** If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it on the appointor's behalf,
- 9.8.** A vote cast or demand for a poll made by a proxy shall not be invalidated by the previous death or insanity of the Member or by the revocation of the appointment of the proxy or of the authority under which the appointment was made unless written notice of such death, insanity or revocation has been received by the Association at the Office at least one hour before the commencement of the meeting or adjourned meeting or (in the case of a poll which is not taken at or on the same day as the meeting or adjourned meeting) the time appointed for the taking of the poll at which the vote is cast.

## **10. CORPORATIONS ACTING BY REPRESENTATIVES**

- 10.1.** Any corporation which is a Member of the Association may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its "Corporate Representative" at any Members' meeting.
- 10.2.** The person so authorised shall be entitled to exercise the same powers on behalf of such corporation as the corporation could exercise if it were an individual Member of the Association.
- 10.3.** Such corporation shall, for the purposes of this Constitution, be deemed to be present in person at any such meeting if a person so authorised is present at that meeting.

## **11. BOARD OF DIRECTORS**

- 11.1.** The Association shall be managed by a Board of Directors that shall be responsible for the management and administration of the Association. If the Board consists of several persons, the Association is represented by the majority of the members of the Board of Directors. The General Meeting may grant individual representation power to all or individual members of the Board of Directors and exempt all or individual members of the Board of Directors from the restrictions of § 181 of the Civil Code.
- 11.2** If, in accordance with Article 17, a Chief Executive Officer has been appointed from the Board of Directors, he is always entitled to individual representation and is exempt from the restrictions of § 181 of the Civil Code.
- 11.3.** By way of simple majority resolution, the Board of Directors may adopt regulations governing its decision-making process, any internal division of its duties among the Directors, guidelines for conflict of interests and the formation and operation of any Project.
- 11.4.** The Board of Directors shall keep a written record of all resolutions of the Board. Such records will be held available for inspection by the Directors at the Office of the Association.



- 11.5. To the extent permitted by law, the personal liability of Board Directors is limited to wilful misconduct and gross negligence.

#### **Directors of the Board: Number of Directors**

- 11.6. The Board shall have a maximum number of Directors corresponding to the number of Members at the time of their appointment plus the Chief Executive Officer.
- 11.7. The Association may by special resolution from time to time set and/or vary the number of Directors.
- 11.8. The Board shall elect a Chairman of the Board on a bi-yearly basis out of the confirmed Board Directors.

#### **Director's Qualification**

- 11.9. Except as provided in Article 11.10., no person shall be appointed as a Director unless he is an employee or officer or director of a Member or of an Affiliate of a Member.
- 11.10. Notwithstanding Article 11.8. (but subject to Article 13 regarding the removal and resignation of Directors), the Chief Executive Officer for the time being shall be appointed as a Director of the Association until the next annual general meeting at which the Directors are appointed and any subsequent periods for which he is elected to office pursuant to Article 12.

### **12. APPOINTMENT OF DIRECTORS**

- 12.1. All Members of the Association have the right to nominate a Director to the Board. The nomination and appointment process described in this Article 12 will be applied for each new Member joining the Association and wishing to nominate a Director.
- 12.2. At a general meeting of the Association to be held every two years, the Members shall on proposal of the Board confirm the appointment of the nominated Directors on the Board.
- 12.3. No Director may be appointed unless he has been nominated or otherwise appointed in accordance with the procedure set out in the following provisions of this Article 12. A Director must be a technical decision maker at senior management level.
- 12.4. Any such nomination shall be made on a nomination form supplied by the Association. Such form must be lodged at the Office by the time specified on the relevant form (which, in any event, shall be no later than 14 days following expiry of each successive 24-month period) and, if not so returned, shall not be valid. Such form must also include or be accompanied by a notice in writing signed by the person so nominated indicating his willingness to be appointed as Director and the particulars which would, if such person were to be so appointed, be required to be included in the Association's register of directors. If the nomination form does not

include or is not accompanied by such consent and/or particulars, the nomination will not be treated as valid.

- 12.5. The nomination form shall be in such form as the Directors may from time to time specify.
- 12.6. After the closing date for receipt of nominations specified on the nomination form (the "Closing Date"), the Association shall confirm that each person nominated satisfies the requirements set out in Article 12.3. The Chairperson of the Board and the Chief Executive Officer will inform immediately after the Closing Date the Members of all nominations received and the Association will compile a list of the persons nominated in accordance with the nomination procedure set out above in such form as the Directors may from time to time specify ("Nominees' List"). A final copy of the Nominees List shall be sent to each Member no later than 7 days after the Closing Date.
- 12.7. Each Member shall be entitled to confirm or reject the proposed Nominees' List. The confirmation or rejection of the Nominees List must be returned by or on behalf of the relevant Member to the Chairperson and Chief Executive Officer no later than 14 days after the Closing Date and, if not so returned, shall not be treated as valid.
- 12.8. The Nominees' List is confirmed with simple majority of all Members and the nominees shall be appointed as Directors to the Board.

### **13. REMOVAL AND RESIGNATION OF DIRECTORS**

- 13.1. A Board Director may resign as a Board Director with a period of one month by written statement to the Association. With a shorter period of time, the resignation is only possible for good reason in agreement with the Association.

A Director of the Board may be recalled at any time by a resolution of the General Meeting in accordance with paragraph 13.2 of these statutes. An immediate dismissal for good cause should take place if

- 13.1.1. he is prohibited from being a Board Director under legal provisions;
- 13.1.2. in Germany or elsewhere an order is made by any court having the right so to do, on grounds (however formulated) of mental disorder, for his detention or for the appointment of a guardian or for the appointment of a receiver or other person (by whatever name called) to exercise powers with respect to his property or affairs; or
- 13.1.3. (with the exception of the Chief Executive Officer) he ceases to be an employee or officer or director of a Member or of an Affiliate of a Member or otherwise contractually obliged to a Member or to an Affiliate of a Member; or
- 13.1.4. he violated his duties as a Director of the Board of substantially or, through either his person or his conduct, further cooperation with him is unreasonable.

- 13.2.** Notwithstanding any agreement between the Association and the relevant Director (but without limiting or restricting any claim he may have for damages for breach of any such agreement), the Association may in accordance with and subject to the provisions of the Statutes by a special resolution of the Members remove any Director from office.

#### **14. POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

- 14.1.** Subject to the provisions of this Constitution and to any directions given by law, the business of the Association shall be managed by the Board of Directors who may exercise all the powers of the Association, which are not, by law or by this Constitution required to be exercised by the Association in a general meeting. No alteration of this Constitution shall invalidate any prior act of the Board of Directors which would have been valid if that alteration had not been made. The powers given by this Article shall not be limited or restricted by any special power given to Board of Directors by any other Article.
- 14.2.** All cheques, promissory notes, drafts, bills of exchange, and other negotiable or transferable instruments, and all receipts for moneys paid to the Association, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board of Directors shall from time to time by resolution determine.
- 14.3.** Subject to Article 8, the Board of Directors may exercise all the powers of the Association to borrow money, and to mortgage or charge all or any part or parts of its undertaking, property, assets (present or future) and to issue any debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of the Association or of any third party.

#### **Delegation of Powers**

- 14.4.** The Board of Directors may from time to time, by power of attorney or otherwise as admitted by law, appoint any Director or the Chief Executive Officer to be the attorney or agent of the Association for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board of Directors under this Constitution) and for such period and subject to such conditions as they may think fit. The Board of Directors may also authorise any such attorney or agent to sub-delegate all or any of the powers, authorities and discretions vested in him.
- 14.5.** The Board of Directors may delegate any of its powers to any committee consisting of three or more Directors, provided that no Project shall constitute such a committee. Any such delegation may be made subject to any conditions the Board of Directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee

with three or more Directors shall be governed by this Constitution regulating the proceedings of the Board of Directors so far as they are capable of applying.

## **15. PROCEEDINGS OF THE BOARD OF DIRECTORS**

- 15.1.** Subject to the provisions of this Constitution, the Directors may meet together and regulate their proceedings as they think fit. At any time a Director may call a Directors' meeting by giving notice of the meeting to the Directors. Reasonable notice (being at least one month or such shorter period as all Directors may agree at the time) of a meeting of Directors must be given to all Directors (including those resident outside and/or absent from Germany). Any Director may waive notice of any meeting and any such waiver may be retroactive.

### **Quorum**

- 15.2.** The quorum necessary for the transaction of business shall be such number of Directors as shall collectively represent a majority of all Directors, in each case present throughout the meeting. A person who holds office only as a proxy director shall, if his appointer is not present, be counted in the quorum.

- 15.3.** A meeting of the Directors at which a quorum is present shall be competent to exercise all the powers and discretions for the time being exercisable by the Directors. Unless a quorum is present, no proposal is to be voted on, except a proposal to call another meeting.

### **Chairperson**

- 15.4.** The Directors shall appoint the Chairman of the Board as chairperson for any Board meeting.

### **Voting**

- 15.5.** Except as otherwise provided in this Constitution, resolutions proposed for consideration or other questions arising at any meeting of the Directors shall be determined by a majority of votes. In the case of a deadlocked resolution, the chairman shall not have a second, casting vote.

- 15.6.** Before the Board proceeds to vote on any resolution, it shall determine whether such resolution constitutes a Content Related Matter in accordance with Article 15.7.

- 15.7.** A resolution will constitute a "Content Related Matter" if, *inter alia*, it concerns the approval of any matter which arises from the work programme of the Association (as described in the then current version of the NGMN Alliance Process Document) and is stated to require the approval of the Board, and shall include (but not be limited to) the approval of:

- 15.7.1. a resolution proposed pursuant to or in connection with Article 22.1 or 22.2;

- 15.7.2. the admission of a new Member or Participant pursuant to Article 2.3 or 2.12 respectively;
- 15.7.3. the execution by the Association of a co-operation agreement or co-operation framework agreement or other similar agreement or document, or any amendment to any such agreement or document;
- 15.7.4. the appointment or removal of any senior officer of the Association, including the Chief Executive Officer (and, for the avoidance of doubt, the term “senior officer” shall not refer to an individual in his or her capacity as a Director of the Association, whose appointment and removal as a Director shall be governed by the Sections 11.7 and 13);
- 15.7.5. a proposal to the Members to amend the Constitution; or
- 15.7.6. amendment of the NGMN Alliance Process Document.

The Board may also determine by simple majority vote that a proposed resolution not appearing in the above non-exhaustive list should be considered to constitute a Content Related Matter.

- 15.8.** Notwithstanding anything to the contrary in this Constitution, if the Chief Executive Officer is a Director, he shall be precluded from voting on board resolutions, which constitute Content Related Matters (as determined in accordance with Article 15.8) inter alia due to his extensive involvement in the formulation and development of the Technical Work Programme of the Association. The Chief Executive Officer may not be counted in the quorum present at a meeting of the Directors in relation to a resolution on which he is not entitled to vote, but he shall be entitled to attend (or remain in attendance at) a meeting whilst such resolutions are being considered and speak in relation thereto.

### **Resolutions of Directors in Writing**

- 15.9.** A resolution in writing signed by all the Directors entitled to receive notice of a meeting of the Board of Directors or of a committee of Directors shall be as valid and effectual as if it had been passed at a meeting of the Board of Directors or (as the case may be) a committee of Directors duly convened and held and may consist of several documents in the like form each signed by one or more Directors; but a resolution signed by a proxy director need not also be signed by his appointer and, if it is signed by a Director who has appointed a proxy director, it need not be signed by the proxy.

### **Meetings Using Electronic Means or Other Forms of Telecommunication**

- 15.10.** Meetings of the Board of Directors may also be held by audio or video conference or by the use of such other communications facilities as permit each person participating in the meeting to speak to and hear all other persons participating therein. A person in communication by electronic means with the chairperson and with all other parties to a meeting of the Board of Directors or of a committee of the Board of Directors shall be regarded for all purposes as personally attending such a meeting but

only for so long as at such meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending the meeting by electronic means. Such meeting shall be deemed to have been held at the place (and time) where the chairperson of the meeting is located.

- 15.11.** Participation in a meeting of the Board of Directors or of a committee of the Board of Directors in accordance with Article 14.5 shall be deemed to constitute presence in person at such meeting.

### **Validity of Proceedings**

- 15.12.** All acts carried out at a meeting by the Board of Directors, a committee of the Board of Directors or a person acting as a member of the Board of Directors are, regardless of whether it is subsequently established that when a Director of the Board is appointed, there were errors, or that one of them was barred or vacated from office or was not entitled to vote, are valid to the same extent as if each of these individuals had been duly appointed and qualified to be in office as a Board Director and entitled to vote.

### **Minutes**

- 15.13.** The Board of Directors shall cause minutes to be made in books kept for the purpose of recording:

- 15.13.1. all appointments of officers made by the Board of Directors;  
and
- 15.13.2. all proceedings at meetings of the Association and of the Board of Directors, and of committees of the Board of Directors, including the names of the Directors present at each such meeting.

- 15.14.** The Directors must ensure that the Association keeps a record, in writing, for at least ten years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.

## **16. REMUNERATION OF DIRECTORS**

- 16.1.** The Directors shall not be entitled to any reasonable and ordinary remuneration or fees, unless and until determined by the Association by resolution of the general meeting by not less than 75% of Members present.

- 16.2.** No gratuities, pensions or other retirement, superannuation, death or disability benefits shall be payable to (or to any person in respect of) any Director or ex-Director unless and until determined by qualified majority of the general meeting. If any such gratuities, pension or other benefits are so approved, the Directors shall have the power to pay and agree to pay the same and, for the purpose of providing any such gratuities, pensions or other benefits, to contribute to any scheme or fund or to pay premiums.

**16.3.** The Directors may agree to repay to any Director all such reasonable and actually occurred and proven expenses as he may incur in attending and returning from meetings of the Directors or of any committee of the Directors or Members' meetings or otherwise in connection with or about the business of the Association.

## **17. CHIEF EXECUTIVE OFFICER**

**17.1.** The Board of Directors may from time to time appoint a Chief Executive Officer on such terms and for such period as they may (subject to the provisions of the Statutes) determine. The Board of Directors may, without limiting or prejudicing in any way the terms of any contract entered into in any particular case, at any time revoke or vary the terms of any such appointment.

**17.2.** The Board of Directors is authorised to decide to remunerate the Chief Executive Officer by way of reasonable salary, commission or other means or may provide such other benefits as they may determine by a simple majority of the Directors present and voting at that meeting. For the avoidance of doubt, the Chief Executive Officer (if appointed at the time) shall be entitled to attend any meeting of the Board of Directors at which such matters are to be discussed but shall not be entitled to count in the quorum with respect to, or vote on, Content Related Matters.

**17.3.** The Board of Directors may entrust to and confer upon the Chief Executive Officer any of the powers exercisable by them as Directors upon such terms and conditions and with such restrictions as they think fit, and either collaterally with or to the exclusion of their own powers. The Board of Directors may from time to time revoke, withdraw, alter or vary all or any of such powers.

## **18. PROXY DIRECTORS**

**18.1.** Any Director may appoint any other Director, or any other person willing to act, to be his proxy and may remove a proxy appointed by him from his office. The number of proxy directors shall be limited to one per director; the Chairman of the Board may appoint up to two proxies.

**18.2.** A proxy director is entitled to receive notification for all meetings of the Board of Directors and to attend any meeting at which the member of the Board of Directors who has appointed him is not present in person, and in general, executing all the functions of his appointer in his absence; however, he has no right to his remuneration from the Association for his work as a proxy director of the Board of Management.

**18.3.** The office of a proxy director ends when the office of its appointer ends as a Director the Board.

**18.4.** Any appointment or removal of a proxy director shall be by notice to the Association signed by the Director making or revoking the appointment or in any other manner approved by the Board of Directors.

## **19. MEMBERS' CONTRIBUTIONS**

- 19.1.** On the basis of the budget of the Association for the relevant financial year, the Board of Directors shall, by resolution adopted with a simple majority, determine the Membership Fee payable by each Member (which contribution shall be identical for all Members) and the Participation Fee payable by each member of each category of Participant. The Membership Fees and Participation Fees for the forthcoming financial year shall be reflective of the costs and requirements of the Association for that year, as determined in the budget, and shall be notified to the Members and Participants prior to the annual general meeting.
- 19.2.** If the Board of Directors determines at any time during a financial year that additional funds in excess of the Membership Fees and Participation Fees, are required by the Association, it may call a general meeting of the Members at which a resolution shall be proposed. If the aforementioned resolution is adopted with a qualified majority by the Members, the requirement to provide the approved additional funding shall be apportioned equally between all Members.
- 19.3.** The Membership Fees, Participation Fees and any additional funds requested and duly approved in accordance with this Constitution shall be paid by each Member and each Participant, as appropriate, within 45 days of receipt of notification thereof from the Board of Directors.
- 19.4.** Non-compliance with its payment obligation within the period referred to above shall constitute a material breach of the relevant Member's or Participant's obligations, and in such case all rights pertaining to membership or participation of the Association shall be suspended in respect of such Member or Participant.
- 19.5.** The Membership Fee, Participation Fee and any amounts payable by the Members and the Participants shall be applied by the Association for the purposes specified in the budget of the Association, as the same is annually approved by a resolution of the Board of Directors.

## **20. ACCOUNTS**

A Member shall only have the right to inspect the accounting records or other books or documents of the Association if and to the extent that it can indicate a legitimate interest to which no overriding secrecy interests of the Association or legitimate interests of the Members of the Association are contrary to.

## **21. AUDITOR**

- 21.1.** The Members appoint an auditor of the Association for each calendar year.
- 21.2.** The auditor shall be entitled to attend any general meeting and to receive notice of, and other communications relating to, any general meeting which any Member is entitled to receive, and to be heard at any general



meeting on any part of the business of the meeting which concerns him as auditor.

## **22. DISSOLUTION; WINDING UP**

- 22.1.** The Members resolve on dissolution or winding-up of the Association by qualified majority.
- 22.2.** The Board of Directors shall have the power, in the name and on behalf of the Association, to apply by the Court for the winding up of the Association.
- 22.3.** On winding up, any surplus of assets shall be distributed between the Members and Participants in proportion to their overall financial contributions to the Association since incorporation of the Association.

## **23. INDEMNITY**

- 23.1.** Subject to the provisions of and only in case if any damage was not caused by wilful misconduct or gross negligence, but without prejudice to any indemnity to which a Director may otherwise be entitled, every Director or other officer or auditor of the Association shall be indemnified by the Association out of its own funds against, and/or exempted by the Association from, all costs, charges, losses, expenses and liabilities incurred by him in the actual or purported execution and/or discharge of his duties and/or the exercise or purported exercise of his powers and/or otherwise in relation to or in connection with his duties, powers or office. Such indemnity or exemption may relate (without limitation) to any liability incurred by him in defending any proceedings, whether civil or criminal, which relate to anything done or omitted by him as officer or employee of the Association and in which judgment is given in his favour (or otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application in which relief is granted to him by the court.
- 23.2.** Without restricting or reducing in any way the scope of this Article 23, the Board of Directors shall have the power to purchase and maintain insurance for, or for the benefit of, any persons who are or were at any time Directors, officers, employees or auditors of the Association or who are or were at any time trustee of any pension fund or employees' share scheme in which employees of the Association are interested, (including, without limitation, insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported exercise of their powers and/or otherwise in relation to their duties, powers or offices in relation to the Association, or any such pension fund or employees' share scheme).