

**MODIFICATION 0674**

**PERFORMANCE ASSURANCE TECHNIQUES AND CONTROLS**

Proposed legal text

**TRANSPORTATION PRINCIPAL DOCUMENT**

*Amend paragraph 12.1 to read as follows:*

**12 GENERAL PROVISIONS RELATING TO UNC RELATED DOCUMENTS**

**12.1 Purpose**

The purpose of this Section is to establish generic governance arrangements in respect of the following UNC Related Documents (each a "**Document**" and collectively the "**Documents**"):

- (a) Network Code Operations Reporting Manual as referenced in Section V9.4;
- (b) Network Code Validation Rules referenced in Section M5.3.3;
- (c) ECQ Methodology as referenced in Section Q6.1.1(c);
- (d) Measurement Error Notification Guidelines for NTS to LDZ and LDZ to LDZ Measurement Installations as referenced in OAD Section D3.1.5.
- (e) the Class 1 Ratchet Charge Guidance Document referred to in Section B4.7; and
- (f) the Customer Settlement Error Claims Process Guidance Document referenced in Section E1.3.10;
- ~~(g) the Performance Assurance Framework Document referenced in paragraph 16.1.1(d); and~~
- ~~(h) the Performance Assurance Report Registers referenced in paragraph 16.5.1.~~

*Delete all existing text in paragraph 16 and insert new text to read as follows:*

**16 PERFORMANCE ASSURANCE**

**16.1 Performance Assurance Objective**

16.1.1 For the purposes of this paragraph 16:

- (a) "**Performance Assurance Party**" means each Party, the CDSP and each Relevant Third Party;
- (b) the "**Performance Assurance Objective**" means the objective of achieving accurate and timely Settlement for each Day in accordance with the provisions of the Code, and the "**Performance Assurance Framework**" is the framework described in this

paragraph 16 for the purposes of facilitating achievement of the Performance Assurance Objective;

- (c) **"Relevant Third Party"** means in relation to a Party to the Code, a person (other than another Party to the Code or the CDSP):
  - (i) undertaking an activity as agent or contractor of a Party for the purposes of Settlement ("**relevant activity**"); and
  - (ii) in respect of which the Performance Assurance Committee has determined the standard of performance of the relevant activity is likely to have a material impact, either positively or negatively, on the achievement of the Performance Assurance Objective;
- (d) **"Settlement"** means in relation to a Day the determination and settlement of amounts payable in respect of Energy Balancing Charges in accordance with the Code.

#### 16.1.2 Each Party:

- (a) acknowledges the manner in which it conducts its business (pursuant to the Code and in respect of any business ancillary to Code ("**relevant business**")) can have a material impact, positively or negatively, on the achievement of the Performance Assurance Objective;
- (b) acknowledges the standard of performance of a Relevant Third Party in undertaking a relevant activity can have a material impact, positively or negatively, on the achievement of the Performance Assurance Objective;
- (c) agrees to conduct its relevant business at all times in a manner which facilitates the achievement of the Performance Assurance Objective;
- (d) agrees to take all reasonable steps available to it to ensure a Relevant Third Party undertakes the relevant activity so as to facilitate achievement of the Performance Assurance Objective and complies with any Performance Assurance Technique applied to it;
- (e) acknowledges the acts and omissions of each other Party to the Code in relation to the Performance Assurance Objective are not relevant for the purposes of such Party complying with the requirements of this paragraph 16.1.2;
- (f) acknowledges it is for the Performance Assurance Committee to determine whether or not a Party's conduct or performance under the Code is (or is likely to be) prejudicial to the achievement of the Performance Assurance Objective;
- (g) acknowledges it may be required to comply with such Performance Assurance Techniques as the Performance Assurance Committee may determine in accordance with the Performance Assurance Framework Document; and
- (h) agrees to make available to the Performance Assurance Committee such records, data and other information as the Performance Assurance Committee may reasonably require for the performance of PAC Functions and further acknowledges that such records, data and information (and the processes for making such available) shall not be limited to the records, data and information (and processes) specified in the Performance Assurance Framework Document.

- 16.1.3 Each Party and the CDSP shall co-operate with each other to facilitate achievement of the Performance Assurance Objective.
- 16.1.4 The standard of performance of a Party and the CDSP in facilitating the achievement of the Performance Assurance Objective shall be determined by the Performance Assurance Committee in accordance with (and in the manner described in) the Performance Assurance Framework Document to the extent applicable to such Party and the CDSP.
- 16.1.5 Each Party and the CDSP shall provide the Performance Assurance Committee with information relating to its own business and affairs as may be reasonably required by the Performance Assurance Committee to enable it to determine:
- (a) the standard of performance by such Party or the CDSP in relation to facilitating the achievement of the Performance Assurance Objective;
  - (b) the impact of such performance, whether positive or negative, on the achievement of the Performance Assurance Objective;
  - (c) where required, the appropriate Performance Assurance Technique to be applied in accordance with the Performance Assurance Framework Document.

## **16.2 Performance Assurance Committee**

- 16.2.1 There is hereby established for the purposes of this paragraph 16 a Network Code Sub-Committee ("**Performance Assurance Committee**").
- 16.2.2 The Performance Assurance Committee shall perform the functions and have the powers and duties provided in this paragraph 16.
- 16.2.3 The Performance Assurance Committee may establish a sub-committee for such purposes (within the scope of its functions, powers and duties) and comprising such members and on such terms as it decides; and references to the Performance Assurance Committee shall include any such committee.
- 16.2.4 The Performance Assurance Committee is autonomous and the UNC Committee has no power to overrule a decision of the Performance Assurance Committee or reduce or qualify the scope of its functions and powers.
- 16.2.5 No decision of the Performance Assurance Committee may be made or (if made) shall be effective if the decision would cause any Party or the CDSP to be in breach of the Code or the DSC.

## **16.3 Constitution of the Performance Assurance Committee**

- 16.3.1 The Performance Assurance Committee shall comprise representatives ("**PAC Representatives**") as follows:
- (a) nine (9) individuals appointed as representatives of Shipper Users ("**Shipper User Representatives**");
  - (b) three (3) individuals appointed as representatives of DN Operators and IGTs, of which:
    - (i) two (2) shall be appointed by DN Operators ("**DNO Representatives**");

- (ii) one (1) shall be appointed by the Independent Gas Transporters ("**IGT Representative**")

(together the "**Transporter Representatives**").

16.3.2 The basis for the appointment (and from time to time the removal and/or replacement) of:

- (a) Shipper User Representatives shall be in accordance with the procedures set out in the document entitled 'Uniform Network Code Panel, Uniform Network Code Committee, Sub-Committees and DSC Committees – Guidelines for the User Representative Appointment Process';
- (b) the Transporter Representatives shall be as agreed by the DN Operators and the Independent Gas Transporters.

16.3.3 Each meeting of the Performance Assurance Committee shall be chaired by a person (not being a PAC Representative) nominated by the Code Administrator ("**PAC Chairperson**").

16.3.4 The Code Administrator shall nominate and may from time to time remove and replace a person (not being a PAC Representative) as secretary ("**PAC Secretary**") to the Performance Assurance Committee.

#### **16.4 Functions of the Performance Assurance Committee**

16.4.1 The functions of the Performance Assurance Committee ("**PAC Functions**") are:

- (a) to establish, maintain and publish a document ("**Performance Assurance Framework Document**") in accordance with paragraph 16.7;
- (b) to investigate whether or not a Performance Assurance Party is acting in a manner which facilitates the achievement of the Performance Assurance Objective;
- (c) to monitor the performance of a Performance Assurance Party in facilitating the achievement of the Performance Assurance Objective;
- (d) to determine whether or not the acts or omissions of a Performance Assurance Party are having a material impact, whether positively or negatively, on the achievement of the Performance Assurance Objective;
- (e) in respect of Performance Assurance Techniques;
  - (i) to administer the application and administration of the Performance Assurance Techniques regime;
  - (ii) to determine which Performance Assurance Techniques should be applied (and from when and for how long they should be applied) in relation to a Performance Assurance Party where the Performance Assurance Committee has determined the Performance Assurance Party is conducting its business in a manner which negatively impacts on the achievement of the Performance Assurance Objective;
  - (iii) to determine when further escalated Performance Assurance Techniques should be applied in relation to a Performance Assurance Party;

- (iv) to determine when a Performance Assurance Technique should cease to apply to a Performance Assurance Party; and
- (v) to assess the effectiveness of the Performance Assurance Techniques in improving a Performance Assurance Party's performance in respect of facilitating the achievement of the Performance Assurance Objective;
- (f) to determine the scope and content of the services required from PAFA and to approve the terms on which the CDSP proposes for the PAFA Contract;
- (g) to prepare and publish the Performance Assurance Reports Register;
- (h) to determine the form of (and revise from time to time) the statements and undertaking referred to in paragraph 16.6.7;
- (i) to undertake such other activities as are specified in the Performance Assurance Framework Document; and
- (j) to undertake the Annual PAF Review and publish the Annual PAF Report and Delivery Plan.

16.4.2 Each year the Performance Assurance Committee shall conduct a review ("**Annual PAF Review**") of the operation of, and the effectiveness of, the Performance Assurance Framework for the purposes of reporting on:

- (a) the activities of the Performance Assurance Committee and the performance of the Performance Assurance Committee's responsibilities;
- (b) the activities of the Performance Assurance Framework Administrator and the performance of the Performance Assurance Framework Administrator's responsibilities;
- (c) the achievement of the Performance Assurance Objective;
- (d) the implementation and effectiveness of the procedures and processes provided for in the Performance Assurance Framework Document including in relation to Performance Assurance Techniques;
- (e) the operation of the provisions of this paragraph 16; and
- (f) any proposed modifications to the Performance Assurance Framework,

and the Performance Assurance Committee shall consult with Parties when undertaking the Annual PAF Review.

16.4.3 The Performance Assurance Committee shall undertake and complete the Annual PAF Review in July and August each year and shall prepare and publish its findings and proposals in relation to the Gas Year commencing on the following 1 October ("**Annual PAF Report and Delivery Plan**") by no later than the preceding 31 August.

16.4.4 The Performance Assurance Committee may (at any time and on such terms as the Performance Assurance Committee may determine) delegate all or any part of the PAC Functions (except for those under paragraph 16.4.1.(e)(ii), (iii) and (iv), (f) and (h)) to the PAFA.

16.4.5 The Performance Assurance Committee shall not be entitled to recover any cost or expense incurred by the Performance Assurance Committee in connection with this paragraph 16 from any Party.

## **16.5 Voting arrangements of the Performance Assurance Committee**

16.5.1 The discharge of all of the functions of the Performance Assurance Committee which require or allow for a determination of the Performance Assurance Committee shall be determined by a vote conducted on a show of hands or other such demonstration of affirmation or consent as may be appropriate; and each PAC Representative (whether in person or by its alternate) present at the meeting shall be entitled to exercise one (1) vote.

16.5.2 A decision of the Performance Assurance Committee shall require a simple majority of the votes of both:

- (a) the Shipper User Representatives; and
- (b) the Transporter Representatives

who in each case are present at the relevant meeting and who vote in respect of the matter to be decided; and in the event a simple majority is not obtained amongst the Shipper User Representatives or the Transporter Representatives the Performance Assurance Committee shall be treated as having made a decision against the relevant matter.

16.5.3 Where a vote is conducted and there is an equal number of votes in favour and against the matter to be decided amongst the Shipper User Representatives or the Transporter Representatives no person shall have a casting vote (including for the purposes of paragraph 16.8 in respect of an appeal of a decision of the Performance Assurance Committee) and the Shipper User Representatives or the Transporter Representatives shall be treated as having made a decision against the relevant matter.

## **16.6 Proceedings of the Performance Assurance Committee**

16.6.1 Unless in conflict with any provision of this paragraph 16, the provisions of MR Sections 4.5 and 5 (excluding MR Sections 5.1, 5.2, 5.5, 5.6, 5.7.1, 5.8 and 5.10) shall apply (mutatis mutandis, and disregarding references to other sections in the Modification Rules) in relation to the Performance Assurance Committee and for which purpose:

- (a) references to the 'Member', 'Modification Panel', 'Panel Chairperson' and 'Secretary' shall be deemed to be references to respectively a PAC Representative, the Performance Assurance Committee, the PAC Chairperson and the PAC Secretary;
- (b) a PAC Representative shall not be required to appoint an alternate (and where appointing an alternate shall not be required to appoint two (2) alternates);
- (c) the same individual may not act as an alternate for more than one (1) PAC Representative;
- (d) in respect of MR Section 5.9 any such written resolution that is determined by the Performance Assurance Committee to be confidential and shall not be circulated to all Parties to the Code.

16.6.2 Where six (6) PAC Representatives (of whom at least four (4) shall be Shipper User Representatives and two (2) of whom shall be Transporter Representatives) are present at a meeting of the Performance Assurance Committee the meeting shall be quorate.

16.6.3 If required by the Performance Assurance Committee the CDSP will attend (by one (1) or more representatives) a meeting of the Performance Assurance Committee.

16.6.4 Subject to paragraphs 16.6.5 and 16.6.6, only PAC Representatives, PAFA representatives, the PAC Chairperson, the PAC Secretary (and, where invited by PAC, representatives of CDSP and any Party), may attend a meeting of the Performance Assurance Committee.

16.6.5 Matters for discussion at a meeting of the Performance Assurance Committee may be:

- (a) designated "**Confidential**" and only:
  - (i) those persons referred to in paragraph 16.6.4; and
  - (ii) those individuals (not being an individual appointed to the Performance Assurance Committee) which a PAC Representative chooses to invite and the PAC Chairperson agrees may attend (subject to such individual signing a confidentiality agreement if required by the PAC Chairperson)

may attend the meeting while Confidential matters are discussed;

- (b) designated "**Non-Confidential**" and those individuals (not be an individual appointed to the Performance Assurance Committee) which either:
  - (i) the Performance Assurance Committee chooses to invite;
  - (ii) the PAC Chairperson agrees may attend (provided the attendee has given notice of attendance to the PAC Chairperson no later than one (1) Business Day prior to the meeting or as the PAC Chairperson may otherwise agree),

may also attend the meeting while Non-Confidential matters are discussed.

16.6.6 Up to three (3) representatives of the Authority may attend a meeting of the Performance Assurance Committee as observers.

16.6.7 A PAC Representative shall not be entitled to receive any papers or working papers, opinions, reports or other documentation relating to the proceedings of the Performance Assurance Committee or attend a meeting of the Performance Assurance Committee until such time as:

- (a) the PAC Representative's employer has signed a statement of release;
- (b) the PAC Representative has signed:
  - (i) a statement of impartiality;
  - (ii) a confidentiality undertaking; and
  - (iii) a statement of confirmation of no conflict of interest

in each case on such terms as the Performance Assurance Committee may require and provided such to the PAC Secretary (and where a PAC Representative fails to return a signed

copy of any such document within thirty (30) Business Days of being provided with such document by the PAC Secretary the PAC Representative shall cease to be PAC Representative with immediate effect (and the PAC Secretary shall so notify the PAC Chairperson and other PAC Representatives).

16.6.8 For the purposes of paragraph 16.6.9 the following are "**relevant matters**" in relation to a PAC Representative:

- (a) the performance of the member's employer of any Affiliate of the member's employer;
- (b) the application of any Performance Assurance Technique to the member's employer of any Affiliate of the member's employer.

16.6.9 A member of the Performance Assurance Committee shall not:

- (a) participate as a member of the Performance Assurance Committee in the consideration of any relevant matter (including for the avoidance of doubt, participating in any relevant matter to be voted on); or
- (b) be counted in ascertaining whether a quorum is present at a meeting of the Performance Assurance Committee convened to consider any relevant matter.

16.6.10 A PAC Representative shall not disclose to its employer or any Affiliate of its employer confidential information which it has received in its capacity as a member of the Performance Assurance Committee unless required to do so:

- (a) by any Legal Requirement;
- (b) in order for its employer or any such Affiliate to comply with the conditions of any licence with which its employer or any such Affiliate, as the case may be, is required to comply;
- (c) by any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
- (d) pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to it or its employer or any such Affiliate, as the case may be,

in any of which events the member of the Performance Assurance Committee shall first be required to give written notice of the required disclosure to the Performance Assurance Committee.

16.6.11 All minutes, working papers, opinions, reports or other documentation relating to the proceedings of the Performance Assurance Committee in relation to Confidential matters (and the related proceedings themselves) shall be treated as confidential by all persons participating in any such proceedings.

## **16.7 Performance Assurance Framework Document**

16.7.1 The Performance Assurance Framework Document shall specify:

- (a) performance assurance procedures and the basis on which a Party will be required to participate in such procedures;



- (b) the records, data and other information (whether described in general or specific terms) which a Party is required to give the Performance Assurance Committee and the Performance Assurance Framework Administrator access to for the purposes of performance assurance;
- (c) the process by which, and the time by which, a Party is to respond to a request for records, data and other information from the Performance Assurance Committee and the Performance Assurance Framework Administrator;
- (d) the scope and contents of the registers to be maintained by, and the reports to be prepared and published by, the Performance Assurance Committee relating to the performance of each Party in relation to the requirement in paragraph 16.1.3 ("**Performance Assurance Reports Register**");
- (e) the Performance Assurance Techniques available to the Performance Assurance Committee and:
  - (i) the procedures whereby a Performance Assurance Party will be required to implement, follow and report on a Performance Assurance Technique;
  - (ii) the procedures by which the Performance Assurance Committee and the Performance Assurance Framework Administrator will administer and monitor a Performance Assurance Party's implementation of a Performance Assurance Technique;
- (f) the procedure for the appointment of the Performance Assurance Framework Administrator, and the terms of any such appointment;
- (g) the functions of the Performance Assurance Framework Administrator; and
- (h) the form of templates for each of the statements and undertaking referred to in paragraph 16.6.7.

16.7.2 The Performance Assurance Framework Document may be modified, for which purpose:

- (a) the Performance Assurance Committee, PAC Representatives, and each Performance Assurance Party may propose a modification;
- (b) the Performance Assurance Committee shall report to Performance Assurance Parties on the nature of any modification it proposes to make to the Performance Assurance Framework Document;
- (c) any proposed modification to the Performance Assurance Framework Document shall be a Non-Confidential matter (for the purposes of paragraph 16.6.5) and to which all Performance Assurance Parties shall be invited;
- (d) any such modification to the Performance Assurance Framework Document shall be at the sole discretion of the Performance Assurance Committee and shall be effective from a date no earlier than three (3) months following notice to Performance Assurance Parties of the modification; and
- (e) the Code Administrator will ensure all Performance Assurance Parties are given notice of any such modification and shall arrange for publication of the Performance Assurance Framework Document as modified.

16.7.3 The Performance Assurance Committee shall:

- (a) develop and keep under review the techniques and processes ("**Performance Assurance Techniques**") which the Performance Assurance Committee may require a Performance Assurance Party to follow to facilitate the better achievement of the Performance Assurance Objective (and the Performance Assurance Committee may modify and/or develop new Performance Assurance Techniques as it may determine from time to time);
- (b) make any determination to apply a Performance Assurance Technique:
  - (i) on the basis only of the evidence available to it and following prior discussion (and the sharing of such evidence) with the Performance Assurance Party;
  - (ii) which is proportionate to the impact of the Performance Assurance Party's failure on achievement of the Performance Assurance Objective.

16.7.4 Each Party shall comply with the requirements of the Performance Assurance Framework Document to the extent applicable to such Party.

16.7.5 Each Party shall be responsible for all costs and expenses incurred by the Party in complying with the requirements of this paragraph 16 (including for the avoidance of doubt those incurred by the Party in connection with the implementation of Performance Assurance Techniques).

## **16.8 Appeal**

16.8.1 A Party may, subject to and in accordance with this paragraph 16.8, appeal a decision of the Performance Assurance Committee to apply any Performance Assurance Technique which involves:

- (a) referring the Party to the Authority; or
- (b) requiring the Party to submit to a performance audit (as such audit is more particularly described in the Performance Assurance Framework Document).

16.8.2 The only grounds on which such an appeal may be made are:

- (a) the information available to the Performance Assurance Committee when it made the decision was in the opinion of the Appellant Party:
  - (i) incomplete, inaccurate or misleading;
  - (ii) misinterpreted by the Performance Assurance Committee

and the Appellant Party believes the Performance Assurance Committee would not have referred it to the Authority if complete, accurate and explicit information had been available or that the Performance Assurance Committee has not misinterpreted the information used by it in reaching a decision; or

- (b) the Performance Assurance Committee did not follow the procedures set out in the Performance Assurance Framework Document.

16.8.3 A Party appealing a decision of the Performance Assurance Committee ("**Appellant Party**") must give notice to the PAC Secretary of the appeal within one (1) month of notification of the decision, specifying the decision in question and the grounds (as provided in paragraph 16.8.2) on which the appeal is made.

16.8.4 Where notice of appeal of a decision of the Performance Assurance Committee is given in accordance with paragraph 16.8.3:

- (a) the PAC Secretary shall send the notice to the Performance Assurance Committee and the PAFA;
- (b) the application of any Performance Assurance Techniques in respect of the Appellant Party shall be suspended until the outcome of the appeal is decided;
- (c) the Performance Assurance Committee and the PAFA may request further information from the Appellant Party or the CDSP in connection with the appeal;
- (d) prior to the meeting of the Performance Assurance Committee at which the appeal is considered:
  - (i) the PAFA will report to the Performance Assurance Committee on the PAFA's views of the validity of the appeal;
  - (ii) the Appellant Party may submit to the Performance Assurance Committee and PAFA further information in support of the appeal;
  - (iii) the Appellant Party may be invited by the Performance Assurance Committee (on not less than fourteen (14) Business Days' notice) to attend a meeting of the Performance Assurance Committee to make representations in support of the appeal (but shall not be entitled to attend);
- (e) the Performance Assurance Committee shall not be required, nor entitled, to publish any reports, materials or representations submitted to it pursuant to paragraph (d); such information will remain confidential to the Performance Assurance Committee and subject to each PAC Representatives' non-disclosure agreements;
- (f) the Performance Assurance Committee shall decide the matter, by reference to the grounds of appeal in paragraph 16.8.2 (and consistent with the provisions of the Performance Assurance Framework Document in respect of the decision in question), in one of the following ways:
  - (i) by upholding the Performance Assurance Committee's initial decision; or
  - (ii) by making a different decision in substitution for the Performance Assurance Committee's initial decision
- (g) the Performance Assurance Committee will notify the Appellant Party of its decision (and the reasons for its decision) under paragraph (f) within five (5) Business Days of the meeting at which is considered the appeal.

16.8.5 Subject to paragraphs 16.8.6, 16.8.7 and 16.8.8 the decision of the Performance Assurance Committee in respect of the appeal is final and binding.

16.8.6 Where, following the decision of the Performance Assurance Committee in respect of an appeal the Appellant Party considers that the grounds of appeal in paragraph 16.8.2 continue to be satisfied the Appellant Party may, within five (5) Business Days after the publication of the Performance Assurance Committee's appeal decision, appeal to the UNC Committee, by notice given to the PAC Secretary setting out the basis on which it considers the grounds of appeal in paragraph 16.8.2 are met.

16.8.7 Where an Appellant Party gives notice of appeal to the UNC Committee of the Performance Assurance Committee's appeal decision, the matter shall be referred to the UNC Committee as follows:

- (a) the PAC Secretary shall send to the UNC Committee a statement of the decision subject to appeal together with relevant papers which were considered by the Performance Assurance Committee in reaching its appeal decision;
- (b) a single PAC Representative will present the Performance Assurance Committee findings and the basis for its decision to refer the Appellant Party to the Authority;
- (c) the Appellant Party will be invited, but is not obliged (or entitled), to attend this UNC Committee hearing, and may, but is not obliged to, present a short summary of its case (and shall otherwise not be entitled to be present at the hearing while the UNC Committee deliberates);
- (d) the UNC Committee shall be requested to consider the matter and thereafter to notify the Performance Assurance Committee whether the UNC Committee:
  - (i) agrees with the appeal decision of the Performance Assurance Committee to refer the Appellant Party to the Authority;
  - (ii) dis-agrees with the appeal decision of the Performance Assurance Committee, and in which case it will give notice of the basis on which the Performance Assurance Committee may wish to reconsider its decision.

16.8.8 Any decision of UNC Committee under paragraph 16.8.7(d)(ii) shall not be binding on the Performance Assurance Committee.

16.8.9 The Performance Assurance Committee will detail its final and binding decision in writing to the Appellant, copied to the UNC Committee chairperson, within fifteen (15) Business Days of the UNC Committee's decision in accordance with paragraph 16.8.7(d).

16.8.10 All communications to be sent to an Appellant Party concerning an appeal shall be sent to both the company secretary and the PA Representative of the Appellant Party.

## **16.9 Appointment of the Performance Assurance Framework Administrator**

16.9.1 The "**Performance Assurance Framework Administrator**" or "**PAFA**" means the person from time to time appointed and engaged to act as such pursuant to this paragraph 16.9.

16.9.2 A person shall be appointed by the CDSP, in accordance with this paragraph 16.9, for the purposes of conducting the functions ascribed to the PAFA by the Performance Assurance Framework Document (as it applies at the time of such appointment).

16.9.3 The CDSP shall, subject to and in accordance with the Performance Assurance Framework Document and (where consistent with the provisions of this paragraph 16.9) the requirements of the Performance Assurance Committee, as soon as reasonably practicable:

- (a) prepare arrangements and documentation for a competitive tender for the appointment of a person as PAFA in accordance with relevant Legal Requirements;
- (b) conduct such tender on the basis of such arrangements and documentation, including with respect to any such pre-qualification, selection criteria and participation by the Performance Assurance Committee as may be determined by the Performance Assurance Committee;
- (c) review and assess the proposals made by persons tendering for appointment as the PAFA pursuant to the tender;
- (d) where appropriate for the purposes of determining which of such persons to appoint as PAFA, enter into discussions with one or more of them;
- (e) use reasonable endeavours to enter into a contract ("**PAFA Contract**") with the person selected as the PAFA on the basis of the competitive tender process, such contract to commence as soon as reasonably practicable and to provide for the PAFA to act with all due skill, care and diligence and impartiality when performing of its functions thereunder and in so far as reasonably practicable to act equitably as between Shipper Users and Transporters when monitoring and reporting on material risks in connection with Settlement;
- (f) notify all Parties to the Code of the appointment of the PAFA; and
- (g) commence performance of the CDSP's obligations and exercise the CDSP's rights under the PAFA Contract for the benefit, and in accordance with the lawful instructions (including for the avoidance of doubt entering into bone fide discussions with the PAFA for such variations to the PAFA Contract as may be required to comply with PAC instructions) of the Performance Assurance Committee.

16.9.4 Without prejudice to the requirements of the Performance Assurance Framework Document, the CDSP:

- (a) shall only enter into a PAFA Contract on terms approved by the Performance Assurance Committee;
- (b) may seek guidance from the Performance Assurance Committee in relation to anything they propose to do or any other matter arising in connection with their activities under paragraph 16.9.2, and may act in accordance with such guidance.

16.9.5 Nothing in this paragraph 16 shall require the CDSP to enter into a PAFA Contract where in the CDSP's reasonable opinion:

- (a) it would be unlawful to do so; or
- (b) the contract could give rise to the CDSP incurring any liability, other than in respect of their own wilful misconduct, gross negligence or fraud.

16.9.6 This paragraph 16.9 shall apply where the PAC requires the PAFA to be appointed by the DNOs or, on expiry or termination of a PAFA Contract, replaced.

## **16.10 Terms of engagement of PAFA**

16.10.1 The CDSP may enter into a PAFA Contract on terms which limit or exclude the liability (as to such matters as may be provided in such contract) of the PAFA.

16.10.2 For the avoidance of doubt, the CDSP shall not be the agent or trustee of any Party for the purposes of the PAFA Contract, and the CDSP shall owe no duties or responsibilities to any Party in respect of the PAFA Contract other than as provided in this paragraph 16.

16.10.3 The CDSP shall provide the PAFA with such un-anonymised information (and such other assistance) as the Performance Assurance Committee reasonably requires to enable the PAFA to comply with the PAFA Contract.

16.10.4 The CDSP shall ensure the PAFA Contract will permit the disclosure to the PAFA of such un-anonymised information as the Performance Assurance Committee may reasonably require for the purposes of PAFA performing its functions.

## **16.11 Appointment of PA Representative**

16.11.1 Each Party shall nominate (and may from time to time remove and replace) a representative ("**PA Representative**") of appropriate seniority and with suitable knowledge and authority, to act as an initial point of contact and represent the Party in relation to performance assurance matters, to attend meetings of the Performance Assurance Committee where requested to do so.

16.11.2 Each Party shall in addition to the requirement in paragraph 16.11.1 identify more senior representatives (including up to board director level) to whom performance assurance matters may be escalated if required by the Performance Assurance Committee.

16.11.3 Each Party shall ensure a suitable alternate to the PA Representative is available to discuss performance assurance matters with the Performance Assurance Committee at all times should the PA Representative be unavailable.

16.11.4 The Performance Assurance Committee is entitled to assume that each PA Representative and alternate is suitably knowledgeable and authorised to take any decision (on matters relating to performance assurance) on behalf of the Party unless such representative gives advance notice to the contrary.

16.11.5 Where the Performance Assurance Committee or the Performance Assurance Framework Administrator wish to raise or discuss any matter with a Party relating to that Party's performance in relation to performance assurance the Performance Assurance Committee or the Performance Assurance Framework Administrator shall in the first instance contact the Party's PA Representative and provide the PA Representative with appropriate details of the matter(s) to be raised or discussed.

16.11.6 Where requested to attend a meeting of the Performance Assurance Committee each Party shall ensure its PA Representative or alternate is suitably prepared for the purposes of answering the Performance Assurance Committee's questions in respect of the Party's performance in relation to Performance Assurance.

## **16.12 Miscellaneous**

16.12.1 No member of the Performance Assurance Committee shall be liable (whether in contract or tort including negligence or otherwise) to any Party for anything done when acting properly in

or in connection with such persons office under the Code, or anything done in what such member in good faith believes to be the proper exercise and discharge of the powers and functions and discretions of that office in accordance with the Code; and each Party waives any such liability that any such member may have and any claim in respect thereof.

16.12.2 The provisions of this paragraph 16 are without prejudice to a Party's rights to assert that a purported decision of the Performance Assurance Committee is outside its scope of authority pursuant to this paragraph 16 and so is without effect.

### **16.13 Performance Assurance Reports**

16.13.1 The CDSP shall publish such reports as are in accordance with the requirements (including as regards content, timing, frequency, format and medium) of the Performance Assurance Report Registers.

16.13.2 The CDSP shall ensure it makes available such data and information in such manner as the Performance Assurance Committee may reasonably require for the purposes of it performing its functions in accordance with this paragraph 16.

### **16.14 Disclosure for the purposes of Performance Assurance**

16.14.1 Each Party agrees that, subject to paragraph 16.14.2, each other Party and the CDSP may disclose to the Performance Assurance Committee and the PAFA, Protected Information on an un-anonymised basis to the extent such disclosure is required by the Performance Assurance Committee or the PAFA for the purposes of the Performance Assurance Committee undertaking its functions under this paragraph 16 or by the PAFA for the purposes of performing the PAFA Contract.

16.14.2 No Party shall be required to disclose any Protected Information under paragraph 16.14.1 in the absence of all members of the Performance Assurance Committee, the PAC Chairperson and the PAC Secretary and all employees and representatives of the PAFA engaged at any time on the PAF Contract being party to a confidentiality undertaking on the terms provided for in the Performance Assurance Framework Document.

16.14.3 The Performance Assurance Committee shall be entitled to have disclosed to it such un-anonymised information as it may reasonably require for the purposes of the Performance Assurance Committee undertaking its functions under this paragraph 16.

### **MODIFICATION RULES**

*Amend paragraph 6.2.1 to read as follows:*

6.2.1 Each Modification Proposal made pursuant to paragraphs 6.1.1 or 6.1.2 shall set out the information and be in the form specified in the Code of Practice, and:

...

(q) .....; ~~and~~

(r) shall have regard to the Modification Proposal Guidelines Document which may be amended only by a determination of the Modification Panel in accordance with paragraph 5.1.2(a); and

(s) may state, in relation to a Modification Proposal which relates to the performance assurance requirements in TPD Section V16, whether or not the Modification Proposal is supported by the Performance Assurance Committee.

## GENERAL TERMS

### SECTION B – GENERAL

*Amend paragraph 4.3.1 to read as follows:*

4.3.1 The Uniform Network Code Committee may by panel majority establish sub-committees (each a “**Network Code Sub-committee**” or, for the purposes of this paragraph 4, a “**Sub-committee**”) for the purposes of doing or assisting in doing anything to be done by the Uniform Network Code Committee; and the Uniform Network Code Committee may by panel majority decide that a Sub-committee (other than the Performance Assurance Committee) shall cease to be established.

*Amend paragraph 4.4.2 to read as follows:*

4.4.2 Without prejudice to any requirement under the Code for a Transporter to consult with the Uniform Network Code Committee or any Sub-committee in respect of any matter, no Party may be required to provide to the Uniform Network Code Committee or any Sub-committee any information which such person is not willing so to provide (other than information reasonably required by the Performance Assurance Committee for the purposes of undertaking its functions under TPD Section V16; and for the avoidance of doubt where a Party does not provide such information the Party shall be deemed to be in breach of the obligation in TPD Section V16.1.5).