

16 PERFORMANCE ASSURANCE

16.1 Interpretation

16.1 Performance Assurance Objective

16.1.1 For the purposes of ~~the Code~~this paragraph 16:

- (a) "LDZ Performance Assurance Party" means each Party, the CDSP and each Relevant Third Party;
- (b) the "Performance Assurance Objective" is in relation to a Day the objective of achieving accurate and timely Settlement ~~Related Obligations" means obligations under for the Day;~~
- (c) "Relevant Third Party" means in relation to a Party to the Code, a person (other than another Party to the Code, including obligations undertaken by the CDSP by way of Direct Functions on behalf or the CDSP):
 - (i) undertaking an activity for a Party which is required for the purposes of the DNOs, undertaking Settlement ("relevant activity"); and
 - (ii) in respect of which the Performance Assurance Committee has determined the standard of performance of which (including 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 delays or failures in the business ancillary to Code ("relevant business")) can have a material impact, positively or negatively, on the achievement of the Performance Assurance Objective;
- ~~(a)~~(b) acknowledges the standard of performance of which) has, or may a Relevant Third Party in undertaking a relevant activity can have, a material impact, positively or negatively, on the following matters: achievement of the Performance Assurance Objective;
 - (i) the quantities of gas treated as offtaken from Local Distribution Zones;
 - (ii) the quantities of gas treated as delivered at LDZ System Entry Points; or
 - (iii) reconciliations and adjustments in respect of gas offtaken from Local Distribution Zones and/or delivered agrees to LDZ System Entry Points.

~~For the avoidance of doubt, LDZ Settlement Related Obligations shall not include any obligations~~conduct its relevant to the determination of the quantities of gas delivered or treated as delivered to the NTS or from the NTS to any LDZ;

14 August 2020 14 August 2020

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(c) ~~“business at all times in a manner which facilitates the achievement of the Performance Assurance Scheme” means a scheme for monitoring and reporting on the Objective;~~

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(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; and~~

(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;~~

16.1.3 Each Party and the CDSP shall co-operate with each other to facilitate achievement of the Performance Assurance Objective.

~~(b) The standard of performance of a Party and the CDSP in facilitating the achievement of the Performance Assurance Objective shall be determined by Shipper Users, DNOs and the CDSP, of LDZ Settlement Related Obligations;~~

~~(c) 16.1.4 “the Performance Assurance Committee in accordance with (and in the manner described in) the Performance Assurance Framework Administrator” or “PAFA” means the person from time to time appointed and engaged to act as such pursuant to paragraph 16.3; and Document to the extent applicable to such Party.~~

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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;~~

~~(d) where required, the appropriate Performance Assurance Technique to be applied in accordance with the Performance Assurance Framework Document” or “PAF Document” means the document entitled “Guidelines for Energy Settlement Performance Assurance Regime” published by the DNOs, as such document is amended from time to time pursuant to paragraph V12, setting out:~~

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~~(i) the scope of the Performance Assurance Scheme, including requirements with respect to the establishment and maintenance of a register of risks associated with LDZ Settlement Related Obligations, and a registry of reports on the standards of performance of DNOs, the CDSP and Shipper Users’ collectively and individually with respect to specific LDZ Settlement Related Obligations;~~

~~(ii) the procedure for appointment of the PAFA and for the establishment by the Performance Assurance Committee of:~~

~~(A) the qualifications and competencies required of any person to be appointed as the PAFA;~~

- (B) ~~the criteria for selection of a person to act as PAFA;~~
- (C) ~~certain terms of appointment of the PAFA, including with respect to the duration of the appointment of the PAFA, the scope of services to be provided by the PAFA and the basis on which such appointment may be extended in terms of duration and/or scope; and~~
- (D) ~~requirements as to re-tendering the appointment of the PAFA from time to time; and~~

(iii) ~~any other matters (consistent with paragraph 16.1.1(d)(i) the Performance Assurance Committee decides and the DNOs agree should be included.~~

(e) ~~“PAFA Contract” means the contract of engagement of a person as PAFA as provided in paragraph 16.3.1;~~

(f) ~~subject to paragraph 16.2.1, the “Performance Assurance Committee” or “PAC” is the Uniform Network Code Committee or any relevant sub-committee.~~

16.1.2(c) ~~In the event of any inconsistency between the provisions of this paragraph 16 and the terms of the PAF Document or any terms of reference for the PAC, the terms of this paragraph 16 shall prevail.~~

16.2 Performance Assurance Committee

16.2.1 ~~Where paragraph 12, There is hereby established for the purposes of this paragraph 16 or the PAF Document provides for 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 the Performance Assurance Committee shall include any such committee.~~

16.2.4 ~~The Performance Assurance Committee is autonomous and (without prejudice to paragraph 16.8.7(c)(ii) the UNC Committee has no power to overrule a decision to be taken by the PAC such 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 taken by the affirmative 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 (failing which by a person employed or engaged by the PAFA and appointed as chairman by the Performance Assurance Committee) ("**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 (failing which the Performance Assurance Committee may nominate a person employed or engaged by the PAFA to act as PAC Secretary).

16.4 Functions of the Performance Assurance Committee

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

(a) to establish and maintain 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 a Performance Assurance Party acts or omissions 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 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 16.6.6; and

(i) to undertake such other activities as specified in the Performance Assurance Framework Document.

16.4.2 The Performance Assurance Committee may (at any time and from time to time) delegate all or any part of the PAC Functions (except for those under paragraph 16.4.1.(e, (f) and (h)) to the PAFA.

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 ~~of~~ 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 ~~members~~votes of both:

(a) the ~~committee~~ Shipper User Representatives; and

(b) the Transporter Representatives

who are appointed to represent DNOs and Shipper Users (and subject to such other procedures as the committee may establish) and the representatives of National Grid NTS who are members of the UNC Committee or any in each case are present at the relevant ~~sub-committee~~ meeting and who vote in respect of the matter to be decided; and in the event a simple majority is not obtained for 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 Chairman' 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) in respect of MR Section 5.9 any such written resolution that is determined by the Performance Assurance Committee to be confidential 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 a quorum.

~~16.2.1~~16.6.3 If required by the Performance Assurance Committee the CDSP will not vote on any such matter attend (by one or more representatives) the relevant meeting of the Performance Assurance Committee.

~~16.2.2 The PAC shall have the functions set out in this paragraph 16 and the PAF Document and shall conduct itself in accordance with such terms of reference as may be adopted by the UNC Committee.~~

16.6.4 No 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 The Performance Assurance Committee may, from time to time, determine to invite any individual to attend all or part of a meeting of the Performance Assurance Committee and may, or may not depending on the circumstances, request such individual to sign a confidentiality undertaking before attending such meeting.

16.6.6 Up to three (3) representatives of the Authority may attend any 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:

14 August 2020/14 August 2020

- (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 Chairman 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 ~~be liable (whether not:~~

- (a) participate as a member of the Performance Assurance Committee ~~in contract or tort~~the consideration of any relevant matter (including negligence or otherwise) to any DNO or any Shipper User or any Trader User for anything done when acting properly in or in connection with ~~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 ~~his office under the Code, or anything done~~employer or any Affiliate of his employer confidential information which he has received ~~in what such member~~his capacity as a member of the Performance Assurance Committee unless required to do so:

- (a) by any Legal Requirement;
- (b) in good faith ~~believes to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance~~order for his employer or any such Affiliate to comply with the Code; and each Transporter, Shipper User and Trader User ~~waives~~conditions of any licence with which his employer or any such liability ~~that~~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 him or his employer or any such ~~member~~Affiliate, as the case may have and any claim ~~be~~.

~~16.2.3~~ in respect thereof.

14 August 2020 14 August 2020

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~~16.2.4 Nothing contained in paragraph 16.2.3 shall exercise or limit the liability of 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.~~

~~(a) for death or personal injury resulting from the negligence of such member; or~~

~~(b) in any case where such member has in the exercise and discharge of its powers, duties, functions and discretions acted in bad faith or fraudulently.~~

16.3 Appointment of PAFA

16.7 A person shall be appointed by the CDSP, 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 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 Committee may revise the Performance Assurance Framework Document, and the Code Administrator will ensure all Parties are notified of any such revision and shall arrange for publication of the Performance Assurance Framework Document as revised from time to time.

16.7.3 The Performance Assurance Committee shall prepare and maintain (and may from time to time revise) the techniques ("Performance Assurance Techniques") which the Performance Assurance Committee may require a Performance Assurance Party to implement and follow to facilitate the better 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.

16.8 Appeal

16.8.1 A Party may, subject to and in accordance with this paragraph 16.38, appeal a decision of the Performance Assurance Committee to apply any Performance Assurance Technique which involves referring the Party to the Authority (and for the avoidance of doubt no other decision of the Performance Assurance Committee may be appealed).

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

- (a) the information used by the Performance Assurance Committee when it made the decision was not complete or was inaccurate or misleading; and the Appellant Party believes the Performance Assurance Committee would not have referred it to the Authority if complete, accurate or appropriate information had been available; 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 after publication 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 ten (10) 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 are met in respect of the Performance Assurance Committee's decision in respect of the appeal 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 UNCC 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; and
- (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. 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.
- (c) the UNCC is requested to determine the matter, by reference to the grounds of appeal in paragraph 16.8.2, in one of the following ways:

 - (i) by agreeing with the appeal decision of the Performance Assurance Committee to refer the Appellant Party to the Authority;

- (ii) by remitting the matter to the Performance Assurance Committee for their further consideration with such guidance as the UNC Committee deems appropriate.

16.8.8 The opinion of the UNC Committee in respect of an appeal is a recommendation only and is in no way binding on the Performance Assurance Committee.

16.8.9 The Performance 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 hearing of the appeal.

16.8.10 The provisions of this paragraph 16.8 for appeal of a decision of the Performance Assurance Committee 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.

16.9 Appointment of the Performance Assurance Framework Administrator

16.9.1 "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;

~~16.3.1~~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 PAFPerformance Assurance Framework Document (as at the time of such appointment), including the preparation, maintenance and management of the registers referred to in paragraph 16.1.1(d)(i) and the determination of DNOs', the CDSP's and Shipper Users' levels of performance of specific LDZ Settlement Related Obligations.

~~16.3.2~~16.9.3 The CDSP shall, subject to and in accordance with the PAFPerformance Assurance Framework Document and (where consistent with the provisions of this paragraph 16 and the PAF Document, 9) the requirements of the PACPerformance 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 ~~and~~ selection criteria and participation by the Performance Assurance Committee as may be ~~specified~~determined by the PACPerformance 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 ~~an~~ a contract with the PAFA ("PAFA Contract") with the person selected 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 ~~duties~~functions thereunder and in so far as reasonably practicable to act equitably as between Shipper Users, DNOs ~~and the CDSP in identifying,~~ [monitoring and

reporting on material risks in connection with ~~specific LDZ Settlement-Related Obligations with respect to the matters specified at paragraph 16.1.1(a)(i) to (iii);~~];

- (f) notify ~~Shipper Users and Transporters~~ all Parties to the Code of the appointment of the PAFA; and
- (g) ~~perform~~ 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 bona 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 PAF Performance Assurance Framework Document, the CDSP-;

(a) shall only enter into a PAFA Contract on terms approved by the Performance Assurance Committee;

~~16.3.3~~(b) _____ may seek guidance from the PAC Performance Assurance Committee in relation to anything they propose to do or any other matter arising in connection with their activities under paragraph 16.~~36~~.2, and may act in accordance with such guidance.

~~16.3.4~~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.

~~16.3.5~~16.9.6 This paragraph 16.~~39~~ shall apply where the PAC requires the PAFA to be appointed by the DNOs or, on expiry or termination of a PAFA Contract, replaced.

16.416.10 **Terms of engagement of PAFA and cost recovery**

~~16.4.1~~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.

~~16.4.2~~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 information ~~as he reasonably requires for the purpose of performing his functions under the PAF Contract (and such other assistance) as he may~~ the Performance Assurance Committee reasonably require in interpreting requires to enable the PAFA to comply with the PAFA Contract.

~~16.4.3~~16.10.4 The CDSP shall ensure the PAFA Contract will permit the disclosure to the PAFA of such information as the Performance Assurance Committee may reasonably require for the purposes of PAFA performing its functions.

16.5 — Monthly Reports

14 August 2020 14 August 2020

DBT/7343718073473272.1

Page 12

- ~~16.5.1 For the purposes of the Code the Performance Assurance Report Registers is the document so entitled, published by the DNOs, as amended pursuant to paragraph 16.5.2.~~
- ~~16.5.2 Any amendment to the Performance Assurance Report Registers shall be made in accordance with paragraph 12.3 of this Section V.~~
- ~~16.5.3 The DNOs shall publish such reports in accordance with their implementation dates and at the timeframes and intervals as are specified in the Performance Assurance Report Registers Schedules 1A, 1B, 2A and 2B. Reports produced pursuant to Schedules 1A and 2A will be made available to, Shipper Users. Where reports produced pursuant to Schedules 1A and 2A relate to the performance of individual Shipper Users the identity of individual Shipper Users shall be not be disclosed. Reports pursuant to Schedules 1B and 2B shall be made available only to a relevant sub-committee of the Uniform Network Code Committee. Where reports produced pursuant to Schedules 1B and 2B relate to the performance of individual Shipper Users such Shipper Users shall be identified using only the Shipper User's short codes assigned to them by the CDSP.~~
- ~~16.5.4 When the CDSP confirms that it can provide all the reports in the Performance Assurance Report Registers Schedules 2A and 2B, it shall no longer be required to produce the reports in Schedules 1A and 1B. When the CDSP produces the reports in Schedules 2A and 2B it shall produce them, as required by 16.5.3 using data from the Project Nexus Implementation Date.~~

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 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 which performance assurance matters may be escalated if required by the Performance Assurance Committee, and each Party shall ensure a more senior representative (or a suitable alternate) to the PA Representative is available to discuss performance assurance matters with the Performance Assurance Committee at all times.
- 16.11.3 The performance Assurance Committee is entitled to assume that each PA Representative is 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.
- 16.11.4 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.

16.12 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.

16.13 Performance Assurance Reports

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

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 information as it may reasonably require for the purposes of the Performance Assurance Committee undertaking its functions under this paragraph 16.

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