

## UNIFORM NETWORK CODE – MODIFICATION RULES

### 1 INTRODUCTION

#### 1.1 Status

Each of the Transporters is required, together with the other Transporters, to establish and operate procedures for the Modification of the Uniform Network Code and each Individual Network Code, so as to better facilitate, consistently with the duties imposed on each Transporter under Section 9(1) and (2) of the Act, the achievement of the Relevant Objectives. The procedures are to provide for:

- (a) a mechanism by which the Uniform Network Code and each Individual Network Code may be modified and/or reviewed;
- (b) the making of proposals for the modification of the Uniform Network Code either by a Transporter, a User or a Third Party Participant;
- (c) the making of proposals for the modification of each Individual Network Code by a Relevant Transporter, a Relevant Shipper or a Third Party Participant;
- (d) where a proposal is made for the modification of the Uniform Network Code the making of an alternative proposal for the modification of the Uniform Network Code by any Transporter, User, or Third Party Participant, other than the person who raised the original modification proposal;
- (e) where a proposal is made for the modification of an Individual Network Code the making of an alternative proposal for the modification of that Individual Network Code by a Relevant Transporter a Relevant Shipper or a Third Party Participant, other than the person who raised the original modification proposal;
- (f) determination by the Modification Panel whether a proposal for modification of the Uniform Network Code or an Individual Network Code is a Self-Governance Modification Proposal;
- (g) a right of appeal in respect of any determination by the Modification Panel to implement or not to implement a Self-Governance Modification Proposal;
- (h) the giving of adequate publicity to any such proposals including, in particular, drawing them to the attention of Transporters and Users and sending a copy of the proposal to any other person who asks for one;
- (i) the seeking of the View of the Authority on any matter connected with any such proposals other than Self-Governance Modification Proposals;
- (j) the consideration of any representations relating to such proposals made (and not withdrawn) by a Transporter, a User, the Users or any other person likely to be materially affected were the proposals to be implemented; and
- (k) where the Authority accepts that the Uniform Network Code or an Individual Network Code may require modification as a matter of urgency, the exclusion, acceleration or other variation, subject to the Authority's approval, of any particular procedural steps which would otherwise be applicable,

and may include provisions which differ as between proposed modifications to the Uniform Network Code and proposed modifications to an Individual Network Code.

## **1.2 Application**

These Rules do not apply to any Modification which a Transporter may, from time to time, be required to make pursuant to Standard Special Condition A11(16).

## **1.3 Transporters' obligations**

Where for the purposes of these Rules the Transporters are required to undertake any obligation, it is acknowledged they may discharge the performance of that obligation through the Code Administrator.

## **1.4 Materially Affected Party**

The Transporters shall provide, to the extent that is reasonably practicable, information and assistance reasonably required by a Materially Affected Party for the purpose of preparing a Modification Proposal that includes a proposed modification to a NTS Charging Methodology or a DN Charging Methodology.

## **1.5 Code of Practice**

- 1.5.1 The Code Administrator shall in conjunction with other code administrators, maintain, publish, review and (where appropriate) amend the Code of Practice.
- 1.5.2 Where the Code Administrator undertakes any obligation for the purposes of these Rules, the Code Administrator shall do so in compliance with the Code of Practice unless it conflicts with these Rules.

## **1.6 Assistance**

- 1.6.1 In carrying out its obligations including under these Rules and in compliance with the Code of Practice, the Code Administrator shall provide such assistance as a User (and in particular Small Participants) or Consumer Representatives may reasonably require, which shall include but not be limited to assistance in relation to:
- (a) the drafting of a Modification Proposal;
  - (b) the provision of advice in relation to the operation and effect of the Uniform Network Code or an Individual Network Code;
  - (c) the User's participation, involvement and representation in the Modification Procedures; and
  - (d) access to information relating to a Modification Proposal, Modifications and the Modification Procedures.

## **2 INTERPRETATION**

### **2.1 Defined terms**

In addition to terms defined elsewhere in the Uniform Network Code, the following terms and expressions are used with the following meanings in these Rules:

**"Agenda"**: an agenda detailing (amongst other things) the nature of the matters and materials to be discussed at the meeting of the Modification Panel to which the agenda relates;

**"Appeal"**: an appeal made by an Appealing Party to the Modification Panel of a determination by the Modification Panel under paragraph 9.3.10(a) in respect of a Self-Governance Modification Proposal;

**"Appeal Criteria"**: the following criteria in respect of an Authority Appeal:

- (a) the Authority Appeal has been made within the time specified in these Rules;
- (b) in the opinion of the Authority:
  - (i) the Appealing Party is, or is likely to be, unfairly prejudiced by the implementation or non-implementation of the Self-Governance Modification Proposal;
  - (ii) the Authority Appeal has been made on the grounds that the Appealing Party reasonably believes that:
    - (1) where the Modification Panel has made the determination to implement the proposal, the proposal does not better facilitate the achievement of at least one of the Relevant Objectives; or
    - (2) where the Modification Panel has made the determination not to implement the proposal, the proposal does better facilitate the achievement of at least one of the Relevant Objectives; and
  - (iii) the Authority Appeal has not been made for reasons that are trivial, frivolous or vexatious; and
  - (iv) the Authority Appeal has a reasonable prospect of success;

**"Appeal Procedures"**: the procedures for the making of an Appeal and an Authority Appeal as set out in paragraph 13;

**"Appealing Party"**: in relation to an Appeal or an Authority Appeal, a User, a Materially Affected Party, Transporter or Third Party Participant making such appeal;

**"Authority Appeal"**: an appeal to the Authority made by the Appealing Party under paragraph 13.5;

**"Authority Decision Date"**: the date on which the Authority gives notice to the Secretary in accordance with paragraph 9.3.5(b) of its determination to implement the Modification;

**"Backstop Lead Time"**: where the Authority Decision Date is later than the last Proposed Authority Decision Date, the proposed period of time (commencing on the Authority Decision Date) required to enable the Modification to be implemented;

**"Carbon Costs Guidance"**: guidance published by the Authority from time to time on the treatment of carbon costs and the evaluation of Greenhouse Gas Emissions including the document entitled 'Guidance on the treatment of carbon costs under the current industry code objectives';

**"Casting Vote"**: a vote exercisable by the Panel Chairman in favour of or against any matter to be determined by the Modification Panel except the making of a recommendation under paragraph 9.3.3(a);

**"Code Administrator"**: is the joint office established by the Transporters pursuant to Standard Special Condition A12;

**"Code of Practice"**: is the 'Code Administration Code of Practice' approved by the Authority and developed, maintained and published by the Code Administrator and other code administrators, as may be amended with the Authority's approval;

**"Consultation"**: those provisions of the Modification Procedures set out in paragraphs 7.3 and 9 and, as the context may require, any of those provisions;

**"Consumers' Representative(s)"**:

- (a) the representative (if any) for the time being appointed by the National Consumer Council; and
- (b) the representative (if any) of consumers for the time being appointed by the Authority,

to the Modification Panel in accordance with these Rules;

**"Designated Person"**:

- (a) subject to (b) below, the individual for the time being appointed as the company secretary of the Gas Forum (a company incorporated in England and Wales, with company registration number 2941152); or
- (b) any other individual of whose identity the Panel Chairman may be notified by the Authority;

**"DN Charging Methodology"**: means the methodology in relation to charging in respect of a transportation arrangement established pursuant to paragraph 5 of Standard Special Condition A4;

**"DN Charging Methodology Forum"**: means a Workgroup chaired by a representative of the Code Administrator and operating within the Code of Practice, which is convened for the general purposes of consideration and discussion of matters relating to a DN Charging Methodology in accordance with its Terms of Reference (which group shall have no power or authority to bind any Materially Affected Party, User or Transporter) and which may not be dissolved by the Modification Panel;

**"Emissions"**: has the meaning given in section 97 of the Climate Change Act 2008;

**"Fixed Implementation Date"**: the proposed implementation date of a Modification, such date being included in accordance with paragraph 6.2.1(e)(i) and, except where the Proposal is a Self Governance Modification Proposal, paragraph 9.4.1(g)(i);

**"Greenhouse Gas"**: has the meaning given in section 24(1) of the Climate Change Act 2008 to the term 'targeted greenhouse gas';

**"Implementation Costs"**:

- (a) in respect of a Modification Proposal other than a User Pays Modification Proposal, the costs of analysis, development and/or operation of a Modification proposed by a Modification Proposal; or
- (b) in respect of a User Pays Modification Proposal, the User Pays Implementation Costs;

**"Independent Suppliers' Representative"**: the individual (if any) for the time being appointed by the Designated Person to represent independent supplier organisations (and not affiliated to a User who has a representative on the Modification Panel) in accordance with these Rules;

**"Independent Transporters' Representative"**: the individual (if any) for the time being appointed by the Association of Independent Gas Transporters (a company

incorporated in England and Wales, with company registration number 3591677) in accordance with these Rules;

**"Individual Network Code"**: for the purposes of these Rules, a Transporter's Network Code, excluding the terms of the Uniform Network Code incorporated within it;

**"Materially Affected Party"**: has the meaning given in Standard Special Condition A11(24)(a) of the Transporter's Licence;

**"Member"**: any individual for the time being appointed to the Modification Panel;

**"Modification"**: any modification of the Uniform Network Code or, as the case may be, an Individual Network Code, made pursuant to these Rules and in accordance with Standard Special Condition A11, and "Modifications" shall be construed accordingly;

**"Modification Panel"**: the modification panel established and constituted from time to time pursuant to and in accordance with these Rules;

**"Modification Procedures"**: the provisions relating to Modifications and Modification Proposals set out in these Rules and, as the context may require, any of those provisions;

**"Modification Proposal"** means:

- (a) a Modification proposal in respect of the Uniform Network Code; or
- (b) a Modification proposal in respect of an Individual Network Code, (including a proposal to modify Annex V-1 ("Table of Operational and Market Data") in the Uniform Network Code made by a Third Party Participant);

**"Modification Report"**: a draft, final or amended final report prepared in accordance with paragraph 9 or paragraph 10.1.2(c);

**"Non-Code Party"**: any person to whom the Code Administrator shall send a copy of a Modification Proposal or a Modification Report, or from whom the Code Administrator shall invite representations pursuant to paragraph 7.6;

**"NTS Charging Methodology"**: means the methodology in relation to charging in respect of a transportation arrangement established pursuant to paragraph 5 of Standard Special Condition A4 and the methodology in relation to charging in respect of a connection pursuant to paragraph 3 of Standard Condition 4B;

**"NTS Charging Methodology Forum"**: means a Workgroup chaired by a representative of the Code Administrator and operating within the Code of Practice, which is convened for the general purposes of consideration and discussion of matters relating to a NTS Charging Methodology in accordance with its Terms of Reference (which group shall have no power or authority to bind any Materially Affected Party, User or Transporter) and which may not be dissolved by the Modification Panel;

**"Ofgem Representative"**: the individual (if any) for the time being appointed by the Authority as their representative to the Modification Panel in accordance with these Rules;

**"Panel Chairman"**: the person appointed as chairman of the Modification Panel by the Transporters with the approval of the Authority, and as the context may require, a deputy Panel Chairman;

**"Panel Majority"**: in relation to

- (a) a Modification Panel recommendation made pursuant to paragraph 9.3.3(a) to be determined at a quorate and duly convened meeting of the Modification Panel means:
- a majority (in number) of the votes exercisable by the Voting Members present at that meeting and voting in favour of such matter; and
- (b) any other Modification Panel determination to be determined at a quorate and duly convened meeting of the Modification Panel means:
- (i) a majority (in number) of the votes exercised by the Voting Members present at that meeting and voting in favour of such matter; or
- (ii) if there is an equal number of votes by the Voting Members present at that meeting in favour of and against such matter, where the Panel Chairman has exercised a Casting Vote in favour of such matter;

**"Proposed Authority Decision Date"**: the proposed date by which the Authority shall give notice to the Secretary in accordance with paragraph 9.3.5(b) of its determination to implement the Modification, such date being included in accordance with paragraph 6.2.1(e)(ii) and, except where the Proposal is a Self Governance Modification Proposal, paragraph 9.4.1(g)(ii);

**"Proposed Self-Governance Modification Proposal Determination Date"**: the proposed date on which the Modification Panel is to make a determination whether to implement or not to implement a Self-Governance Modification Proposal;

**"Proposer"**: the person who shall have made the relevant Modification Proposal pursuant to paragraph 6.1.1 or 6.1.2 or the relevant Request under paragraph 11.1;

**"Relevant Objectives"**: has the meaning given in Standard Special Condition A11(24)(a) of the Transporter's Licence;

**"Relevant Shipper"**: for the purposes of these Rules only in relation to an Individual Network Code Modification Proposal means a User who has a transportation arrangement with the Transporter in respect of the System(s) to which the Individual Network Code relates;

**"Relevant Transporter"**: for the purposes of these Rules only in relation to an Individual Network Code Modification Proposal means:

- (a) a Transporter which is the owner or operator of the System(s) to which the Individual Network Code relates; and
- (b) (in the context of making, and submitting representations on, a Modification Proposal or alternative Modification Proposal in respect of an Individual Network Code) a DNO User;

**"Request"**: has the meaning given in paragraph 11.1;

**"Request Procedures"**: means the procedures set out in paragraph 11;

**"Rules"**: these Modification Rules;

**"Secretary"**: means:

- (a) the individual for the time being appointed as secretary; or
- (b) as the case may be, any individual for the time being appointed as a deputy secretary,

of the Modification Panel pursuant to paragraph 3.5;

**"Self-Governance Criteria"**: has the meaning given to "self-governance criteria" in Standard Special Condition A11(24)(a) of the Transporter's Licence;

**"Self-Governance Modification Proposal"**: a Modification Proposal or an alternative to such proposal which:

- (a) the Modification Panel has determined satisfies the Self-Governance Criteria under paragraph 7.2.3(b)(i) (including after any variation of such proposal under paragraph 6.5) and in respect of which the Code Administrator on behalf of the Modification Panel has submitted to the Authority a Self-Governance Statement (which has not been withdrawn by the Code Administrator on behalf of the Modification Panel or rejected by the Authority by the Self-Governance Modification Proposal Determination Date); or
- (b) the Authority has determined satisfies the Self-Governance Criteria under paragraph 6.6.5;

**"Self-Governance Modification Proposal Determination Date"**: the date on which the Modification Panel:

- (a) makes a determination to implement or not to implement a Self-Governance Modification Proposal under paragraph 9.3.10(a);
- (b) for the purpose of paragraph 13.5, decides, under paragraph 13.4(a), to confirm its determination under paragraph 9.3.10(a);

**"Self-Governance Statement"**: has the meaning given to "self-governance statement" in Standard Special Condition A11(24)(a) of the Transporter's Licence and which identifies the Proposed Self-Governance Modification Proposal Determination Date in respect of the relevant proposal;

**"Significant Code Review"**: has the meaning given in Standard Special Condition A11(24)(a);

**"Significant Code Review Modification Proposal"**: a Modification Proposal made by a Transporter pursuant to a direction of the Authority which is made further to a Significant Code Review;

**"Significant Code Review Suspended Modification Proposal"**: unless 6.7.3 applies a Modification Proposal in respect of which the application of the Modification Procedures is suspended pursuant to paragraph 6.7.2 until the end of the Significant Code Review Phase;

**"Significant Code Review Phase"**: has the meaning given in Standard Special Condition A11(24)(a);

**"Small Participant"**: means

- (a) any User that can demonstrate to the Code Administrator's reasonable satisfaction that it is resource constrained and therefore in particular need of assistance;
- (b) any other User which the Code Administrator considers to be in particular need of assistance; and
- (c) any other person (or class of person) which the Authority has notified the Code Administrator as being in particular need of assistance,

in relation to the application of these Rules and such person's participation in the Modification Procedures;

**"Suggested Text"**: means indicative legal text, in respect of a Modification Proposal, which has been provided by the Proposer or a Transporter other than legal text which is prepared under paragraph 9.6.1;

**"Terminal Operator"**: a person who is for the time being the operator of a terminal the address of which is specified in the schedule to the Gas Transporters Exemption Order 1996 or any later order of like effect;

**"Terminal Operators' Representative"**: the individual (if any) for the time being appointed by Terminal Operators to the Modification Panel in accordance with these Rules (and not affiliated to a User who has a representative on the Panel);

**"Terms of Reference"**: means those terms of reference in relation to a Modification Proposal referred to a Workgroup by the Modification Panel, pursuant to paragraph 7.2.3(a)(ii), finalised by the Code Administrator under paragraphs 7.5 and 12.9 and as may be amended pursuant to paragraph 12.9.3;

**"Third Party Participant"**: (as required by Standard Special Condition A11(11)(a)(iv)) any person or body who is not a User but who is representative of interested third parties, as may be designated in writing for this purpose by the Authority, from time to time, and maintained on a register held by the Authority;

**"Transporter"**: for the purposes of these Rules, references to a Transporter in the context of an Individual Network Code Modification Proposal includes a Relevant Transporter;

**"Transporters' Representative"**: any individual for the time being appointed (or, as the case may be, re-appointed) by the Transporters as a Member;

**"Unanimously"**: in respect of a meeting of the Modification Panel, a determination made with the agreement of all Voting Members participating in the meeting;

**"Urgent Modification"**: a Modification made pursuant to an Urgent Modification Proposal;

**"Urgent Modification Proposal"**: a Modification Proposal in respect of which it is to be submitted to the Authority that the Modification is required as a matter of urgency as described in Standard Special Condition A11(9)(g);

**"User"**: for the purposes of these Rules, references to a User:

- (a) in the context of an Individual Network Code Modification Proposal, includes
  - (i) a Relevant Shipper;
  - (ii) in the context of the definition of Relevant Transporter, sub paragraph (b), a DNO User;
- (b) in the context of a User Pays Modification Proposal that includes a proposal for payment of the User Pays Implementation Costs, or a proportion of them, to be made by a DNO User, includes a DNO User; and
- (c) in all other contexts excludes a DNO User;

**"User Pays Guidance Document"**: the guidance document produced and published by the Transporters which contains guidance in respect of the provision of cost estimates pursuant to these Rules and the content of cost analysis documents and cost allocation decisions in respect of a User Pays Modification Proposal;

**"User Pays Implementation Costs"**: the costs of analysis, development and/or operation of the User Pays Service as proposed by the User Pays Modification Proposal;



**"User Pays Modification Proposal"**: a Modification Proposal which contains a proposal for a User Pays Service;

**"Users' Representative"**: each of those individuals for the time being appointed (or, as the case may be, re-appointed) pursuant to paragraph 4.2.4, re-appointed pursuant to paragraph 4.2.6 or appointed pursuant to paragraph 4.4.2(d);

**"View"**: the view of the Authority referred to in Standard Special Condition A11(9)(e);

**"Voting Member"**: any Transporters' Representative, any Users' Representative and any Consumers' Representative and shall not include the Panel Chairman except where the Panel Chairman exercises a Casting Vote under paragraph 5.8.2;

**"Workgroup"**:

- (a) a group constituted in accordance with paragraph 8.1 (which may include but shall not be limited to Users, Transporters, Third Party Participants and Non-Code Parties), chaired by a representative of the Code Administrator and operating in compliance with the Code of Practice, which is convened for the general purposes of consideration and discussion of matters relating to the Uniform Network Code, an Individual Network Code or a Modification Proposal in accordance with its Terms of Reference (which group shall have no power or authority to bind any member of such group);
- (b) the NTS Charging Methodology Forum, in respect of a Modification Proposal which proposes a modification to a NTS Charging Methodology;
- (c) the DN Charging Methodology Forum, in respect of a Modification Proposal which proposes a modification to a NTS Charging Methodology;

**"Workgroup Assessment"**: those provisions of the Modification Procedures set out in paragraph 8 and, as the context may require, any of those provisions; and

**"Workgroup Report"**: the report of a Workgroup in relation to a Modification Proposal referred to it by the Modification Panel prepared pursuant to paragraph 8.3.

## 2.2 References to a Transporter's Licence

The references in these Rules to a Transporter's Licence are for the purposes of interpretation and reference only and no provision in a Transporter's Licence shall (whether in whole or in part) form any part of or otherwise be incorporated howsoever into these Rules.

## 2.3 References to notices

The references in these Rules to a **"Notice"** shall unless the context shall otherwise require be treated as including references to the Agenda of the meeting and to the materials to be considered at the meeting to which the notice relates.

## 2.4 Electronic Publication

Where pursuant to these Rules the Code Administrator or Secretary is required to send, provide or make available any information to another person, the Code Administrator shall be treated as having satisfied such obligation where the Code Administrator:

- (a) publishes such information on the website [www.gasgovernance.co.uk](http://www.gasgovernance.co.uk); and

- (b) sends confirmation of such publication to the email address of those persons who have provided them to the Code Administrator before the time of such publication.

### **3 THE MODIFICATION PANEL**

#### **3.1 Establishment**

The Modification Panel is established with effect from the UNC Implementation Date.

#### **3.2 Members**

3.2.1 The Modification Panel shall be composed of:

- (a) the Panel Chairman, being (without prejudice to paragraph 5.8.2) a non-voting Member;
- (b) up to five (5) other Transporters' Representatives, being Voting Members;
- (c) if appointed (or, as the case may be, re-appointed), up to five (5) Users' Representatives, being Voting Members;
- (d) if appointed, the Ofgem Representative, being a non-voting Member;
- (e) if appointed, the Terminal Operators' Representative, being a non-voting Member;
- (f) if appointed, up to two (2) Consumers' Representative(s), being Voting Members;
- (g) if appointed, the Independent Suppliers' Representative, being a non-voting Member; and
- (h) if appointed, the Independent Transporters' Representative, being a non-voting Member.

3.2.2 It is expected that each Voting Member shall, as appropriate, represent and inform the Modification Panel of the views of that Member's appointor (or appointors) in relation to Modification Proposals and Requests.

3.2.3 It is expected that the Terminal Operators' Representative, Independent Suppliers' Representative and Independent Transporters' Representative shall, as appropriate, inform the Modification Panel of the views of those persons which they represent.

#### **3.3 Transporters' Representatives**

The Transporters shall appoint (and as the case may be re-appoint) up to five (5) representatives to the Modification Panel.

#### **3.4 Users' Representatives**

The Designated Person shall have the right to appoint (and as may be the case re-appoint) on behalf of Users up to five (5) Users' Representatives.

#### **3.5 Secretary**

- 3.5.1 The Code Administrator shall, from time to time, appoint an individual (being an individual other than a Member) as the Secretary (and may remove and replace any individual so appointed). The Code Administrator may, from time to time, appoint (and may revoke the appointment of) any individual (being an individual other than a Member) as deputy Secretary.
- 3.5.2 The Secretary or, as the case may be, deputy Secretary (if any), shall attend meetings of the Modification Panel, and any deputy Secretary may attend any meeting of the Modification Panel at which the Secretary is also in attendance.

### **3.6 The Panel Chairman**

The Transporters shall appoint by notice to the Secretary (and as the case may be, remove and reappoint):

where such appointment or reappointment has been approved by the Authority, one (1) person, from time to time, as the Panel Chairman; and

one (1) person, from time to time, as the deputy Panel Chairman.

### **3.7 Notice of Changes**

The Secretary shall notify the Authority of any changes in the composition of the Modification Panel.

### **3.8 Consumers' Representatives**

The Consumers' Representative appointed by:

- (a) the National Consumer Council to be a Voting Member shall be an individual who is an employee, representative, officer or contractor of the National Consumer Council;
- (b) the Authority to be a Voting Member, shall be an individual, or an employee, representative or officer of a corporate entity or other organisation (other than the Authority);

and the Modification Panel may ask the Consumers' representative to provide evidence that such is the case (and in the event such is not the case the Consumers' Representative shall not be a Voting Member).

## **4 MEMBERSHIP OF THE MODIFICATION PANEL**

### **4.1 Appointment**

- 4.1.1 The Authority may, from time to time, by notice to the Secretary identify any individual to be appointed (and revoke that appointment) as the "**Ofgem Representative**".
- 4.1.2 The Terminal Operators may, from time to time, by notice to the Secretary signed by all the Terminal Operators, unanimously identify any individual to be appointed (and revoke that appointment) as the "**Terminal Operators' Representative**".
- 4.1.3 The National Consumer Council and the Authority may, from time to time, by notice to the Secretary each identify one (1) individual to be appointed

(and revoke any such appointment) as a "**Consumers' Representative**".

- 4.1.4 The Designated Person may, from time to time, by notice to the Secretary, appoint (and revoke that appointment) an individual as the "**Suppliers Representative**".
- 4.1.5 The Association of Independent Gas Transporters may, from time to time by notice to the Secretary, appoint (and revoke that appointment) an individual as the "**Independent Transporter's Representative**".

## 4.2 Retirement

- 4.2.1 Each Member who is a Users' Representative and each Member who is a Transporters' Representative shall retire at the 1st of October next following the appointment (or, as the case may be, re-appointment) of that Member. Each retiring Member shall be eligible for re-appointment.
- 4.2.2 Any Member who is, pursuant to paragraph 4.2.1, to retire and who is not to be re-appointed (and consequently in respect of whom no notice shall have been received pursuant to paragraphs 4.2.3 or paragraph 4.2.4) shall not be entitled to receive notice of any meeting of the Modification Panel which is to take place after the relevant 1st October.
- 4.2.3 In respect of each individual who is a Transporters' Representative, the Transporters shall, not later than 1st September in each Gas Year, notify the Secretary:
- (a) that such individual is to be re-appointed as a Transporters' Representative; or
  - (b) that such individual is not to be so re-appointed and the identity of the individual to be appointed as a Transporters' Representative.
- 4.2.4 In respect of each individual who is a Users' Representative, the Designated Person may, not later than 1st September in each Gas Year, notify the Secretary (copying the notice to the Authority):
- (a) that such individual is to be re-appointed as a Users' Representative; or
  - (b) that such individual is not to be so re-appointed at the relevant meeting and the identity of the individual to be appointed as a Users' Representative.
- 4.2.5 If notices shall be received in accordance with paragraph 4.2.4 in respect of less than five (5) individuals to be appointed (or, as the case may be, re-appointed) as Users' Representatives all individuals identified in such notices shall, pursuant to paragraph 4.2.4 be appointed (or, as the case may be, re-appointed) and the individuals who are, pursuant to paragraph 4.2.1, to retire and in respect of whom no notice shall have been received pursuant to paragraph 4.2.4(a), shall retire.
- 4.2.6 If less than five (5) individuals are appointed (or, as the case may be, re-appointed) as Users' Representatives the Designated Person may in respect of any Gas Year at any time during such Gas Year by notice to the Secretary identify any individual as a Users' Representative for filling any vacancy which arose by reason of paragraph 4.2.5.
- 4.2.7 If no notice is received by the Secretary in accordance with paragraph 4.2.3

or paragraph 4.2.4 then the Secretary shall be treated as having received notice pursuant to paragraph 4.2.3(a) or 4.2.4(a) in respect of each Transporters' Representative or Users' Representative.

### **4.3 Appointment and re-appointment**

- 4.3.1 Where any notice is received pursuant to paragraphs 4.1.1, 4.1.2, 4.2.3 or 4.2.4, the appointment or, as the case may be, the re-appointment to which such notice relates shall take effect at the relevant 1st October. Each individual who is to be appointed or, as the case may be, re-appointed as a Member at that meeting shall be entitled to receive notice of any meeting of the Modification Panel which is to take place after such 1st October.
- 4.3.2 Where any notice is received by the Secretary pursuant to paragraphs 4.1.3, 4.1.4, 4.1.5, 4.2.6 or 4.4.2, the appointment to which such notice relates shall take effect in accordance with such notice.

### **4.4 Ceasing to be a Member**

- 4.4.1 If any individual (being a Voting Member) shall for whatever reason (other than retirement pursuant to paragraph 4.2.1) notify the Secretary that he wishes to cease to be a Member, he shall cease to be a Member in accordance with the notice (and the Secretary shall send a copy of such notice to the Designated Person and inform, in due course, any other relevant persons determined by the Secretary).
- 4.4.2 Where pursuant to paragraph 4.4.1 or otherwise a vacancy shall arise, in the case of:
- (a) a Transporters' Representative, the Transporters shall, by notice to the Secretary, identify another individual to be appointed as a Transporters' Representative;
  - (b) the Ofgem Representative, the Authority may identify another individual to be appointed as the Ofgem Representative;
  - (c) the Terminal Operators' Representative, the Terminal Operators may identify another individual to be appointed as the Terminal Operators' Representative;
  - (d) a Users' Representative, the Designated Person may notify the Secretary of the identity of a replacement to be appointed as a Users' Representative;
  - (e) a Consumers' Representative:
    - (i) where appointed by the National Consumer Council, the National Consumer Council may, by notice to the Secretary, identify another individual to be appointed as the National Consumer Council's appointed Consumers' Representative;
    - (ii) where appointed by the Authority, the Authority may, by notice to the Secretary, identify another individual to be appointed as the Authority's appointed Consumers' Representative;
  - (f) the Independent Suppliers' Representative, the Designated Person may, by notice to the Secretary, identify another individual to be

- appointed as the Independent Suppliers' Representative; and
- (g) the Independent Transporters' Representative, the Association of Independent Gas Transporters may, by notice to the Secretary, identify another individual to be appointed as the Independent Transporters' Representative.
- 4.4.3 No notice under paragraph 4.4.2 may effect an appointment after 30th September in the Gas Year in which the notice is given or (where paragraph 4.4.1 applies) before the relevant retirement pursuant to the notice under that paragraph.
- 4.4.4 An individual shall cease to be a Users' Representative in accordance with any notice to that effect given by the Designated Person to the Secretary.

## **4.5 Alternates**

- 4.5.1 Each Member may, from time to time, by notice to the Secretary appoint (or revoke the appointment of) an individual (including, but without limitation, another Member other than the Panel Chairman) to be such Member's alternate. The appointment (and revocation of the appointment) of any individual as an alternate shall be conditional upon and shall only be effective upon receipt of notice by the Secretary.
- 4.5.2 A Member who is, by reason of also being an alternate of a Voting Member, entitled to exercise more than one (1) vote shall not be required to exercise all the votes which that Member is entitled to exercise, or to exercise all of the votes which that Member is entitled to exercise in the same way.
- 4.5.3 In addition to notices sent to Members, each alternate for the time being shall be entitled to be sent notices.
- 4.5.4 An alternate may attend any meeting of the Modification Panel which is not also attended by the Member (in his capacity as a Member) who appointed him. If that alternate is the alternate of a Voting Member, he may also vote and generally at any such meeting shall have and shall be able to exercise and discharge any and all of the functions, powers and duties of the Member who shall have appointed that alternate. Alternates of Voting Members may sign written resolutions pursuant to paragraph 5.9, provided that if an alternate of a Voting Member and the Voting Member who appointed him shall sign a written resolution the signature of the Voting Member shall be effective and the signature of the alternate shall be disregarded.
- 4.5.5 If a Member ceases, for whatever reason, to be a Member the appointment of any alternate of the Member shall determine; provided that if any Member retires but is reappointed at 1st October in any Gas Year, any appointment made by that Member pursuant to paragraph 4.5.1 which is, and continues to be, effective prior to the retirement of that Member shall continue to be effective after that Member's re-appointment as if that Member had not so retired.

## **5 MEETINGS OF THE MODIFICATION PANEL**

### **5.1 Purpose**

- 5.1.1 Meetings of the Modification Panel will provide a forum in which Modification Proposals and Requests can be discussed pursuant to and in

accordance with the Modification Procedures and the Request Procedures. Those functions of the Modification Panel expressly provided in these Rules relating to the Modification Procedures and the Request Procedures shall be discharged in accordance with these Rules.

5.1.2 Except as otherwise permitted in these Rules:

- (a) determinations of the Modification Panel shall be made by Panel Majority; and
- (b) Workgroups (other than a NTS Charging Methodology Forum and a DN Charging Methodology Forum) may be created or dissolved by Panel Majority.

5.1.3 Other than as expressly provided in these Rules, the Modification Panel shall have no ability to determine any matter and no competence to discharge any function or to exercise any power.

## **5.2 Frequency of meetings**

5.2.1 Subject to paragraphs 5.4.1, 5.4.2 and 10, the Secretary shall convene meetings of the Modification Panel by notice to the Members not less frequently than once each month unless there is no matter as an Agenda item for the Modification Panel to discuss. In any event, a meeting of the Modification Panel will be convened once every three calendar months.

## **5.3 Notice convening meetings**

5.3.1 Subject to paragraphs 5.4.1, 5.4.2 and 10, meetings of the Modification Panel will be convened on not less than ten (10) Business Days' notice.

5.3.2 Every notice convening a meeting of the Modification Panel shall specify the place, day and time of the meeting and enclose an Agenda. All relevant materials in respect of a meeting of the Modification Panel will be circulated not less than five (5) Business Days prior to the meeting to which they relate, subject to paragraph 10 or paragraph 5.3.3 where in the opinion of the Secretary a shorter period would better facilitate the exercise by the Modification Panel of its powers, within such shorter period as the Secretary shall determine. Each Member shall (subject to paragraph 12.6.7) be entitled to receive each notice and the relevant materials. At the same time as any notice is despatched to Members a copy of such notice shall (subject to paragraph 12.6.7) be despatched by the Secretary to each User and each Transporter. There may be circumstances where materials to be despatched with a notice have, pursuant to these Rules, already been sent to Users or Transporters. In any such circumstance the relevant materials may be, but do not have to be, sent with the notice.

5.3.3 Notwithstanding where the Secretary has determined a shorter period to circulate the relevant materials in respect of a meeting of the Modification Panel pursuant to paragraph 5.3.2, no new items to the Agenda shall be considered except by determination of the Modification Panel.

## **5.4 Short Notice**

5.4.1 The Modification Panel may at any meeting of the Modification Panel determine that the next following meeting of the Modification Panel be

convened on shorter notice than specified in paragraph 5.3.1 and where the Modification Panel shall so determine the Secretary shall convene a meeting of the Modification Panel in accordance with that determination.

- 5.4.2 Without prejudice to paragraph 5.4.1, if a majority of the Voting Members agree in writing the Secretary shall convene a meeting of the Modification Panel on shorter notice than specified in paragraph 5.3.1.
- 5.4.3 Any meeting of the Modification Panel convened pursuant to paragraph 5.4.1 or paragraph 5.4.2 shall, notwithstanding that such meeting is convened on shorter notice than that specified in paragraph 5.3.1, be duly convened.

## **5.5 Quorum**

- 5.5.1 Members (of whom two (2) shall be Transporters' Representatives and two (2) shall be Users' Representatives (excluding the Panel Chairman)) present at a meeting of the Modification Panel who can exercise six (6) votes shall be a quorum.
- 5.5.2 If a quorum is not present at the time for the holding of a meeting (specified in the notice convening the meeting) or at any time during the hour following that time or shall at any time during the meeting cease to be present for more than fifteen (15) minutes, the meeting shall stand adjourned to the same place and at the time specified in the notice convening the meeting five (5) Business Days later and the Secretary shall notify each Member and (for information purposes only) each User and each Transporter that such is the case. If at such place and time the meeting so adjourned shall not be quorate in accordance with paragraph 5.5.1 the Voting Members (if any) present shall be a quorum.
- 5.5.3 Any meeting of the Modification Panel at which a quorum is and remains present shall be competent to discharge any and all of the functions within the competence of the Modification Panel.

## **5.6 Panel Chairman**

- 5.6.1 The Panel Chairman or, in the absence of the Panel Chairman, the deputy Panel Chairman, shall preside at meetings of the Modification Panel.
- 5.6.2 The Panel Chairman shall conduct all meetings of the Modification Panel in compliance with the Code of Practice.

## **5.7 Location and form of meetings**

- 5.7.1 Unless the Modification Panel shall in respect of any meeting of the Modification Panel otherwise determine, meetings of the Modification Panel will take place in London.
- 5.7.2 Meetings of the Modification Panel may take place by means of telephone, conference telephone, video link or any other audio, audio-visual or interactive communication notwithstanding that the Members treated as being present (pursuant to paragraph 5.7.3) by any such means of communication may not all be meeting in the same place provided that each Member shall be able to communicate to each of the other Members and be heard by each of the other Members simultaneously.
- 5.7.3 Any Member who shall be able to participate in the manner envisaged by



paragraph 5.7.2 in any meeting of the Modification Panel shall be treated as being present at such meeting and accordingly shall, if such Member is a voting Member, be entitled to vote and shall count towards a quorum.

## **5.8 Voting**

- 5.8.1 Subject to paragraph 5.9, the discharge of all of the functions within the competence of the Modification Panel and expressed to require a determination of the Modification Panel shall be determined by a vote conducted on a show of hands or, if the meeting takes place pursuant to paragraph 5.7.2, on a show of hands or such other demonstration of affirmation or consent as may be appropriate. On any vote each Voting Member present shall (subject to paragraphs 3.8, 4.5.2 and 4.5.4) be entitled to exercise one (1) vote.
- 5.8.2 The Panel Chairman may exercise a Casting Vote, where on a vote conducted under paragraph 5.8.1, there is an equal number of votes in favour of and against making a determination.

## **5.9 Written resolutions**

A resolution in writing signed by Voting Members, including any alternates appointed by such Members in accordance with paragraph 4.5, shall be valid and effective for the purposes of discharging any function requiring a determination of the Modification Panel as if such vote were conducted in accordance with paragraph 5.8 at a duly convened meeting of the Modification Panel provided that votes are received by the Secretary from such Members as would, if present, form a quorum in accordance with paragraph 5.5 not later than three (3) Business Days (or such shorter period as the Secretary may reasonably notify) following receipt by Voting Members of such documents as are necessary for the purposes of such written resolution. Such determinations may consist of several documents in the same form each such document being signed by one (1) (or more) of the Voting Members or alternates. The Secretary shall, where reasonably practicable, notify Members in advance that such vote will take place and shall send copies of any such written resolutions to all non-voting Members, all Users and all Transporters.

## **5.10 Observers and Invitees**

- 5.10.1 Any individual (who is not a Member) may attend a meeting of the Modification Panel as an observer on behalf of a User, Transporter or a Non-Code Party and may participate in the business of the meeting unless the Panel Chairman determines otherwise.
- 5.10.2 The Modification Panel may, from time to time, determine to invite any individual to attend all or part of a meeting of the Modification Panel.
- 5.10.3 The Secretary may, at the written request of the Authority, invite any individual to a meeting or meetings of the Modification Panel as an observer. Where such an invitation is made, the Secretary shall give as much notice as reasonably practicable to Members of the Modification Panel of the name of the individual invited, the organisation that the individual represents and the date of the relevant meeting(s). Where the Authority requests the Secretary to invite any individual, the Secretary shall set out in writing to the Authority details of any objections that the Transporters or Users may have to such attendance.

- 5.10.4 Any invitee to a meeting of the Modification Panel pursuant to paragraph 5.10.3 shall be entitled to receive copies of any relevant minutes, Agendas, notices and Modification Proposals due to be discussed at that meeting (but shall not be entitled to participate in the business of the meeting).

## **5.11 Minutes**

- 5.11.1 The Secretary shall:
- (a) ensure that all meetings of the Modification Panel and all determinations of the Modification Panel (at meetings of the Modification Panel) are minuted and, as regards such determinations, that the minutes record the manner in which each Voting Member cast his vote in respect of each matter determined by the Modification Panel); and
  - (b) issue a report of determinations of the Modification Panel to each Member, each Transporter and each User within three (3) Business Days of the meeting of the Modification Panel at which such determinations were made.
- 5.11.2 The Secretary shall, within five (5) Business Days following the date of the relevant meeting, send each Member, each Transporter and each User:
- (a) a copy of any minutes of that meeting made pursuant to paragraph 5.11.1; and
  - (b) notification of any determination made pursuant to paragraph 7.4.
- 5.11.3 The Secretary shall in respect of each meeting of the Modification Panel make a record of the individuals who attended the meeting and show such record in the minutes prepared in accordance with the paragraph 5.11.2.

## **5.12 Provision of information**

- 5.12.1 The Modification Panel may, from time to time, determine to provide (subject to paragraph 12.6.7) to any person a document derived from the application of these Rules (including, but without limitation, any minutes made pursuant to paragraph 5.11.1), or considered in accordance with these Rules.
- 5.12.2 If the Modification Panel shall so determine the Secretary shall ensure that within a reasonable period of time the document which is the subject of such determination shall be sent to such person.

## **5.13 User Pays Guidance Document**

The making of a User Pays Modification Proposal (including the provision of cost estimates and other information in respect of a User Pays Modification Proposal) pursuant to these Rules shall have regard to the User Pays Guidance Document which may be amended only by a determination of the Modification Panel in accordance with paragraph 5.1.2(a).

# **6 MODIFICATION PROPOSALS**

## **6.1 Relevant persons**

- 6.1.1 Without prejudice to paragraph 6.4 or paragraph 12.4 and subject to

paragraph 6.1.4, a Modification Proposal in respect of the Uniform Network Code may be made from time to time by:

- (a) a Transporter;
- (b) a User;
- (c) only insofar as such Modification Proposal relates to a proposal to modify Annex V-1 (“Table of Operational and Market Data”) in the Uniform Network Code, a Third Party Participant;
- (d) a Materially Affected Party (but only in respect of a Modification Proposal which proposes a modification to a NTS Charging Methodology or a DN Charging Methodology).

6.1.2 Without prejudice to paragraph 6.4 or paragraph 12.4, and subject to paragraph 6.1.5, a Modification Proposal in respect of an Individual Network Code may be made from time to time by:

- (a) a Relevant Transporter;
- (b) any Relevant Shipper; and/or
- (c) a Materially Affected Party (but only in respect of a Modification Proposal which proposes a modification to a NTS Charging Methodology or a DN Charging Methodology).

6.1.3 The Authority may direct a Transporter to make a Significant Code Review Modification Proposal in respect of the Uniform Network Code and/or the Individual Network Code and without prejudice to paragraph 6.4 or paragraph 12.4, the Transporter shall make a proposal in accordance with that direction and such a proposal shall proceed in accordance with the Modification Procedures.

6.1.4 If:

- (a) the Code Administrator in respect of any Modification Proposal considers that such Modification Proposal should be treated as an Urgent Modification Proposal; or
- (b) the Proposer shall in accordance with paragraph 6.2.1(e) have identified the proposal as one which the Proposer considers should be treated as an Urgent Modification Proposal,

that Modification Proposal shall be subject to paragraph 10.

6.1.5 A Transporter, a User, a Third Party Participant or a Materially Affected Party may not make a Modification Proposal in respect of the Uniform Network Code during the relevant Significant Code Review Phase if the subject matter of such proposal relates to a matter which is the subject of a Significant Code Review, unless:

- (a) the Authority directs that it may do so, having taken into account, among other things, the urgency of the subject matter of such proposal; or
- (b) the Modification is made by the Transporter in accordance with Standard Special Condition A11(15A)(b).

6.1.6 A Relevant Transporter, a Relevant Shipper or a Materially Affected Party may not make a Modification Proposal in respect of an Individual Network Code during the relevant Significant Code Review Phase if the subject matter

of such proposal relates to a matter which is the subject of a Significant Code Review unless:

- (a) the Authority directs that it may do so, having taken into account, among other things, the urgency of the subject matter of such proposal; or
- (b) the Modification is made by the Transporter in accordance with Standard Special Condition A11(15A)(b).

## **6.2 Content of Modification Proposal**

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:

- (a) in the case of a Modification Proposal which proposes a modification to a NTS Charging Methodology, shall state the Proposer's opinion why the Modification Proposal does not conflict with:
  - (i) paragraphs 8, 9, 10 and 11 of Standard Condition 4B of the Transporter's Licence; or
  - (ii) paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Transporter's Licence;
- (b) in the case of a Modification Proposal which proposes a modification to a DN Charging Methodology, shall state the Proposer's opinion why the Modification Proposal does not conflict with paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Transporter's Licence;
- (c) shall state the Proposer's view as to whether it should be a Self-Governance Modification Proposal and the Proposer's reasons for such a view;
- (d) shall where it is made pursuant to a direction of the Authority state that it is so made;
- (e) in the case of a Modification which proposes a timescale for the implementation of the Modification (for the purposes of enabling the Authority and any persons, including but not limited to Users, Transporters, Third Party Participants and Non Code Parties to be aware of the potential benefits or constraints associated with such timing), shall include:
  - (i) two or more Fixed Implementation Dates;
  - (ii) a Proposed Authority Decision Date in respect of each Fixed Implementation Date, for the purposes of enabling the Modification to be implemented by the Fixed Implementation Date;
  - (iii) a Backstop Lead Time;
  - (iv) the reasons why it is proposing each date under paragraph (i), (ii) and (iii).
- (f) shall be in writing and shall specify whether it relates to the Uniform Network Code or an Individual Network Code;

- (g) shall set out in reasonable but not excessive detail the case for change and the solution proposed;
  - (h) shall set out on the basis upon which the Proposer considers that it would better facilitate the achievement of the Relevant Objectives;
  - (i) shall detail the sections and paragraphs of the Uniform Network Code or the Individual Network Code which are potentially impacted by the Modification Proposal;
  - (j) shall, if the Proposer considers that the Modification Proposal should be treated as an Urgent Modification Proposal, identify the Modification Proposal as such and indicate the Proposer's justification for such belief;
  - (k) shall, where it is made by a Transporter pursuant to Standard Special Condition A11(14), state it is so made;
  - (l) shall state the name of the Proposing User and contact details;
  - (m) shall, without prejudice to the Modification Panel's right of determination pursuant to paragraph 7.2, state the Proposer's preference as to whether the Modification Proposal should;
    - (i) be subject to the Request Procedures;
    - (ii) proceed to Workgroup Assessment; or
    - (iii) proceed to the Consultation,
  - (n) may state the Proposer's opinion of the likely impact of the implementation of the Modification Proposal upon User's computer systems and/or manual processes and procedures;
  - (o) may include the Proposer's Suggested Text. This Suggested Text will be considered by the Transporters when preparing the text of the Modification pursuant to paragraph 9.6; and
  - (p) shall state whether or not it is a User Pays Modification Proposal.
- 6.2.2 Each Modification Proposal shall be given to the Secretary who shall ensure that the information required pursuant to the Code of Practice has been provided, and the form of the Modification is as specified in the Code of Practice, before accepting such Modification Proposal.
- 6.2.3 Where a Modification Proposal does not comply with paragraph 6.2.2 the Secretary may reject such Modification Proposal.
- 6.2.4 Where the Proposer requests that the Modification Proposal should proceed direct to Consultation then the Proposer shall ensure that the Modification Proposal contains all the information required by a Workgroup Report in accordance with paragraph 8.3, except where such information is not relevant to the Modification Proposal.
- 6.2.5 A User Pays Modification Proposal shall, in addition to the requirements in paragraph 6.2.1:
- (a) state the reasons why it should be a User Pays Modification Proposal;
  - (b) contain an indicative User Pays Charge;
  - (c) where it proposes that Users pay a proportion of the Implementation Costs, contain:

- (i) an apportionment of the Implementation Costs between Users and Transporters; and
  - (ii) an apportionment of the Implementation Costs between Users;
- in each case, together with the reasons for such apportionment; and
- (iii) the period in which the Implementation Costs are to be recovered.

6.2.6 Where in the opinion of the Proposer, the impact (if any) of the Modification proposed in a Modification Proposal on Greenhouse Gas Emissions is likely to be material, the Proposer shall assess the quantifiable impact of such Modification (if any) on Greenhouse Gas Emissions (in accordance with Carbon Costs Guidance) for the purposes of information to be submitted in respect of the Modification Proposal as required by the Code of Practice.

### **6.3 Proposer's representative**

- 6.3.1 Subject to paragraph 10, each Proposer or party making a Request (as the case may be) shall ensure the attendance of its representative at the meeting of the Modification Panel at which a Modification Proposal or Request is to be discussed initially; at such meeting the representative may give a presentation in respect of the Modification Proposal or Request and shall endeavour to answer any questions which the Modification Panel may have in respect of the Modification Proposal or Request and any presentation given.
- 6.3.2 If a representative of the Proposer or party making a Request does not for whatever reason attend the meeting of the Modification Panel at which the relevant Modification Proposal or Request is to be discussed initially the Modification Panel may determine that, notwithstanding such non-attendance of the representative, the Modification Panel shall proceed to discuss the Modification Proposal or Request.
- 6.3.3 If the Modification Panel shall not make a determination pursuant to paragraph 6.3.2, the Modification Panel will not discuss the Modification Proposal or Request further unless and until the representative of the Proposer or party making a Request shall have attended a meeting of the Modification Panel pursuant to paragraph 6.3.1 or the Modification Panel shall determine to discuss the Modification Proposal or Request further.

### **6.4 Alternative Proposals**

- 6.4.1 In respect of a Modification Proposal which the Modification Panel pursuant to paragraph 7.2.3 has determined should be referred to a Workgroup:
- (a) where the Modification Proposal is made in respect of the Uniform Network Code, any person who is eligible to make an alternative Modification Proposal under paragraph 6.4.1;
  - (b) where the Modification Proposal is made in respect of an Individual Network Code, any person who is eligible to make an alternative Modification Proposal under paragraph 6.4.2;

being a person other than the Proposer, may make an alternative Modification Proposal in accordance with paragraph 6.2 and the Workgroup shall only consider an alternative Modification Proposal made under this paragraph

6.4.1 if it is made no less than five (5) Business Days before the next meeting of the Workgroup. Where there are fewer than five (5) Business Days before such Workgroup meeting the alternative Modification Proposal will be included on the agenda for the following Workgroup meeting.

6.4.2 Where a Modification Proposal has been referred to a Workgroup and the Workgroup requests that the Modification Proposal should be amended but the Proposer of the Modification Proposal does not agree to amend the Modification Proposal, any person (other than the Proposer) who is eligible to make an alternative Modification Proposal under paragraph 6.4.1 may, in accordance with paragraph 6.2, make an alternative Modification Proposal under this paragraph 6.4.2 which shall include the amendment.

6.4.3 Where the Modification Panel has determined a Modification Proposal should be referred to a Workgroup and:

- (a) the Workgroup Report in respect of such Modification Proposal has been sent to all Members in accordance with paragraph 8.4; or
- (b) the Modification Panel has made a determination to refer the Workgroup Report in respect of such Modification Proposal back to the Workgroup for revision or further work under paragraph 8.5.1(b)(ii) and such Workgroup Report has been sent to all Members in accordance with paragraph 8.4 after such revision or further work;

an alternative Modification Proposal shall not be made in respect of Modification Proposal or be considered by the Workgroup under paragraph 6.4.1.

6.4.4 Where the Modification Panel has determined a Modification Proposal should be referred to a Workgroup under paragraph 7.2.3(a)(ii) and the Workgroup Report in respect of such Modification Proposal has been sent to the Modification Panel an alternative Modification Proposal shall not be made in respect of such Modification Proposal or be considered by the Workgroup under paragraph 6.4.1.

6.4.5 An alternative Modification Proposal may not be made in respect of a Modification Proposal after the Modification Panel pursuant to paragraph 7.2.3(a) has determined such Modification Proposal should proceed to Consultation.

6.4.6 In respect of any Modification Proposal which is withdrawn pursuant to paragraph 6.5.1, or deemed withdrawn pursuant to paragraph 6.5.4 or 6.5.6, any of the parties (except for the Proposer):

- (a) in paragraph 6.1.1 (where such proposal is made pursuant to paragraph 6.1.1); or
- (b) in paragraph 6.1.2 (where such proposal is made pursuant to paragraph 6.1.2),

may, but shall not be required to, either raise an alternative Modification Proposal in accordance with paragraph 6.2) or adopt the withdrawn proposal (in which case the adopted proposal shall continue through the Modification Procedures from the point at which it was withdrawn).

## **6.5 Withdrawal or variation of Modification Proposals**

6.5.1 A Proposer may:

- (a) subject to paragraph 6.5.7, withdraw a Modification Proposal, at any time before the final Modification Report is circulated to the Authority pursuant to paragraph 9.3.4 or in respect of a Self-Governance Modification Proposal at any time before the Modification Panel makes a determination under paragraph 9.3.10(a), by notice to the Secretary, and subject to paragraphs 6.4 and 12.4, any Modification Proposal so withdrawn shall lapse; or
  - (b) subject to paragraph 6.5.7, vary a Modification Proposal, at any time before the Modification Panel has determined to proceed to Consultation pursuant to paragraph 7.2.3(a)(i), by notice to the Secretary, and subject to paragraph 6.4, and to paragraph 12.4, any Modification Proposal so varied shall replace the original Proposal;
  - (c) subject to paragraphs 6.4, 6.5.7 and 12.4, request a variation to a Modification Proposal ("variation request"), at any time after the Modification Panel has determined to proceed to Consultation pursuant to paragraph 7.2.3(a)(i) and before the Modification Panel has made a determination in respect of such Modification Proposal pursuant to paragraph 9.3.3(a), by notice to the Secretary, and any such variation request shall contain a description of the nature of the variation.
- 6.5.2 The Secretary shall, within a reasonable period of time following any withdrawal, variation or variation request (except where such variation request is made at the Modification Panel meeting) notify each Transporter, each Member, each User, each Third Party Participant and each Non-Code Party of such withdrawal, variation or variation request (as the case may be).
- 6.5.3 Following receipt of the notice given pursuant to paragraph 6.5.1(c) the Secretary shall submit such variation request to the appropriate Modification Panel which the Proposer may attend for the purpose of explaining the variation request.
- 6.5.4 Subject to paragraph 6.4, and paragraph 12.4, the Modification Proposal shall be varied to replace the original Proposal which shall be deemed withdrawn where the Modification Panel:
- (a) determines by a unanimous vote that the variation request is immaterial, and in such case the varied Modification Proposal shall continue through the Modification Procedures from the point at which the original Proposal was deemed withdrawn;
  - (b) does not so determine in accordance with (a), and in such case the Modification Panel shall make a determination in respect of the varied Modification Proposal in accordance with paragraph 7.2.3.
- 6.5.5 The Proposer of a variation request may withdraw it at any time before the Modification Panel votes in accordance with paragraph 6.5.4.
- 6.5.6 A Modification Proposal made by a User shall be deemed withdrawn:
- (a) on the User Discontinuance Date in accordance with TPD Section V4.2 or 4.3 where the User ceases to be a User of the Total System; or
  - (b) on the date upon which the Proposer ceases to hold a Shipper's Licence or Transporter's Licence.
- 6.5.7 The Authority, upon request by a Proposer of a Significant Code Review



Modification Proposal may direct:

- (a) that the Proposer may vary, withdraw or make a variation request in respect of the relevant Significant Code Review Modification Proposal in accordance with paragraph 6.5; or
- (b) that the Proposer may not vary, withdraw or make a variation request in respect of the relevant Significant Code Review Modification Proposal and that such proposal shall proceed in accordance with the Modification Procedures.

## **6.6 Self-Governance Modification Proposals**

- 6.6.1 Where the Modification Panel under paragraph 7.2.3(b)(i) determines that a Modification Proposal satisfies the Self-Governance Criteria, the Code Administrator shall on behalf of the Modification Panel submit to the Authority a Self-Governance Statement in respect of such proposal as soon as reasonably practicable and set a Proposed Self-Governance Modification Proposal Determination Date.
- 6.6.2 The Authority may until the Self-Governance Modification Proposal Determination Date, reject the Self-Governance Statement.
- 6.6.3 Where the Authority rejects a Self-Governance Statement the Modification Proposal which is the subject of such Self-Governance Statement shall:
  - (a) not be a Self-Governance Modification Proposal; and
  - (b) be subject to the Modification Procedures.
- 6.6.4 The Modification Panel may withdraw a Self-Governance Statement that it submits under paragraph 6.6.1 at any time before the Self-Governance Modification Proposal Determination Date in respect of the related Self-Governance Modification Proposal.
- 6.6.5 If the Code Administrator, in respect of a Modification Proposal:
  - (a) does not submit a Self-Governance Statement under paragraph 6.6.1; or
  - (b) withdraws a Self-Governance Statement under paragraph 6.6.4;the Authority may determine that the proposal satisfies the Self-Governance Criteria and is a Self-Governance Modification Proposal and such determination shall be effective upon the giving of notice of such determination to the Secretary.
- 6.6.6 The Authority may, at any time before the Self-Governance Modification Proposal Determination Date in respect of a Self-Governance Modification Proposal, direct that its approval is required in respect of the implementation of such proposal.

## **6.7 Modification Proposals made during a Significant Code Review Phase**

- 6.7.1 Where the Authority has received a written assessment of the Modification Panel under paragraph 7.2.8 in respect of a Modification Proposal, the Secretary shall inform the Proposer and each Transporter, User, Third Party Participant, and Non-Code Party (if any) of the direction or re-direction it has received from the Authority.

- 6.7.2 Where the direction or re-direction received by the Secretary from the Authority is not to proceed with the Modification Proposal that Modification Proposal shall become a Significant Code Review Suspended Modification Proposal and shall continue to be so until either the end of the Significant Code Review Phase or unless the Authority directs otherwise (having taken into account, among other things not limited to, the urgency of the subject matter of such a proposal).
- 6.7.3 Where the Authority:
- (a) has not made a direction or has not made a re-direction not to proceed with the Modification Proposal; or
  - (b) directs that Standard Special Condition A11(15A)(a) or (b) of the Transporter's Licence applies to such proposal;
- such proposal shall not be or shall cease to be a Significant Code Review Suspended Modification Proposal and that Modification Proposal shall proceed in accordance with the Modification Procedures.

## **7 MODIFICATION PROCEDURES**

### **7.1 Circulation of Modification Proposals**

- 7.1.1 The Secretary shall:
- (a) on receipt of a Modification Proposal allocate a unique reference number to that proposal;
  - (b) by the later of:
    - (i) the end of the third Business Day following receipt of a Modification Proposal made pursuant to paragraph 6.1.1 or 6.4 (as the case may be); and
    - (ii) the end of the first Business Day following the date on which the Secretary receives notification of any decision of the Authority pursuant to paragraph 10.1.2 or 10.1.3 as to whether the Modification Proposal should be treated as an Urgent Modification Proposal,send a copy of that proposal to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any);
  - (c) subject to paragraph 10, put initial discussion of the Modification Proposal on the Agenda for the next meeting of the Modification Panel (provided the Modification Proposal is received no later than eight (8) Business Days prior to the date of the next meeting of the Modification Panel) and the next meeting of the Modification Panel shall (subject to paragraphs 5.4.1 and 5.4.2) be convened pursuant to paragraph 5.3.1; and
  - (d) notify the Proposer of the meeting of the Modification Panel at which the Modification Proposal is to be discussed, and request the attendance of the Proposer's representative.
- 7.1.2 Where:
- (a) the Authority decides that a Modification Proposal should not be

treated as an Urgent Modification Proposal; and

- (b) at the date on which the Secretary receives notification of such decision, no meeting of the Modification Panel will, in accordance with paragraph 5.2, take place within ten (10) Business Days of such date,

the Secretary shall seek in writing, from Members in accordance with paragraph 5.9, a determination of the Modification Panel as to which of the procedures set out in paragraph 7.2.3 should apply to the Modification Proposal.

## **7.2 Discussion of Modification Proposals**

7.2.1 Subject to paragraph 6.4 and paragraph 10, the Modification Panel shall discuss each new Modification Proposal at a meeting of the Modification Panel.

7.2.2 The Modification Panel shall make a determination under paragraph 7.2.3 having:

- (a) discussed the Modification Proposal and, subject to paragraph 6.3.2;
- (b) heard the presentation of the Proposer's representative;
- (c) had an opportunity to ask the Proposer's representative questions in respect of the Modification Proposal and the presentation of the Proposer's representative;
- (d) considered whether there are any persons from whom representations should, pursuant to paragraph 7.6, be invited;
- (e) considered whether a Modification Proposal in respect of a NTS Charging Methodology conflicts with:
  - (i) paragraphs 8, 9, 10 and 11 of Standard Condition 4B of the Transporter's Licence; or
  - (ii) paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Transporter's Licence; and
- (f) considered whether a Modification Proposal in respect of a DN Charging Methodology conflicts with paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Transporter's Licence;

or where it has received a referral pursuant to paragraph 9.6.3.

7.2.3 Subject to paragraph 7.2.2 and paragraph 7.2.8, the Modification Panel may, without prejudice to paragraph 7.2.4, determine that:

- (a) a Modification Proposal:
  - (i) subject to paragraph 7.2.3(d), should proceed to Consultation in accordance with paragraph 7.3; or
  - (ii) should be referred to a Workgroup for Workgroup Assessment in accordance with paragraph 7.5 (and the Modification Panel may determine the Terms of Reference for such work (including terms as to the identity of any third parties to be consulted) and the date upon which it requires the Workgroup to submit its Workgroup Report); or

- (iii) should be deferred to a subsequent meeting of the Modification Panel for further discussion;
  - (b) a Modification Proposal:
    - (i) satisfies the Self-Governance Criteria; and
    - (ii) paragraph 7.2.3(a) will apply to such proposal; and
  - (c) at any time before a Modification Proposal made by a Transporter or (provided it is a User Pays Modification Proposal a User proceeds to Consultation in accordance with paragraph 7.3 the Transporters shall:
    - (i) in accordance with a period determined by the Modification Panel, provide a rough order of magnitude assessment, which will include cost estimate(s) for any User Pays Service, any indicative User Pays Charge(s) and, having regard to the User Pays Guidance Document a commentary in respect of these; and
    - (ii) request from the Authority a View on whether the proposed cost apportionment and any User Pays Charges are appropriate and following receipt of such View circulate it to the next meeting of the Modification Panel; and
  - (d) the impact (if any) of the Modification proposed in a Modification Proposal on Greenhouse Gas Emissions is likely to be material (after considering any assessment by the Proposer under paragraph 6.2.6 of the quantifiable impact of the Modification proposed in a Modification Proposal on Greenhouse Gas Emissions) and shall have regard to such determination (if any) in determining whether the Modification Proposal should proceed to Consultation under paragraph 7.2.3(a)(i) (provided that where the Modification Panel determines the likely impact will be material and the Proposer provided no assessment in respect of such impact under paragraph 6.2.6 the Modification Proposal shall not proceed to Consultation).
- 7.2.4 Where the Modification Panel discusses a Modification Proposal together with the relevant Workgroup Report the Modification Panel may:
- (a) make a determination in accordance with paragraph 7.2.3(a); or
  - (b) determine that any further discussion of the Modification Proposal should be deferred to a subsequent meeting of the Modification Panel.
- 7.2.5 Where the Modification Panel considers that a more detailed analysis and cost estimate is required in respect of a Modification Proposal it may:
- (a) determine that the Transporters prepare and submit to the Modification Panel (within a period determined by it) such an analysis and estimate; and
  - (b) where its Workgroup Assessment concludes that such analysis and estimate is satisfactory, make a determination in accordance with paragraph 7.2.3(a)(i).
- 7.2.6 Where the Transporters fail to comply with paragraph 7.2.5, the Transporters shall provide to the Modification Panel:
- (a) a written explanation as to reasons for such failure at the earliest

- opportunity and in any event no later than two (2) Business Days after the final date for such submission; and
- (b) a date by which the detailed analysis and cost estimate will be provided, having regard to the explanation provided.
- 7.2.7 The obligation on the Transporters pursuant to paragraph 7.2.3(c) shall cease:
- (a) in accordance with a determination by the Modification Panel; or
  - (b) where the Modification Proposal is withdrawn pursuant to paragraph 6.5.1(a) or varied pursuant to paragraph 6.5.1(b).
- 7.2.8 The Modification Panel shall assess whether the subject matter of a Modification Proposal made during a Significant Code Review Phase relates to a matter that is the subject of an ongoing Significant Code Review and instruct the Secretary to submit to the Authority as soon as is reasonably practicable a written assessment including:
- (a) representations received as to whether such proposal relates to the matter which is the subject of a Significant Code Review;
  - (b) its determination as to whether such proposal relates to the matter which is the subject of Significant Code Review;
  - (c) its reasons for making such determination;
  - (d) a copy of the relevant Modification Proposal;
  - (e) its assessment of whether the exceptions under Standard Special Condition A11(15A)(a) or (b) of the Transporter's Licence may be applicable.

### **7.3 Modification Proposal to proceed to Consultation**

- 7.3.1 If the Modification Panel determines pursuant to paragraph 7.2.3(a)(i) that a Modification Proposal should proceed to Consultation:
- (a) the Modification Panel shall be deemed to have requested that the Transporters provide legal text unless the Modification Panel determines that legal text is not required for the purposes of the Modification Report (which may be the case where Suggested Text has been provided by the Proposer and is sufficient in the view of the Modification Panel);
  - (b) the Modification Panel shall inform the Code Administrator if it determines that the time periods set out in paragraph 9 for Consultation should, in its opinion, be deviated from in relation to the relevant Modification Proposal;
  - (c) in respect of such Modification Proposal:
    - (i) unless the Modification Panel determines otherwise, the Transporters shall prepare and submit to the Modification Panel (within a period determined by the Modification Panel) and include within the Modification Report:
      - (1) the most accurate cost estimate including all forecast, development, implementation and operational costs associated with the Modification Proposal) which is available at such time; and

- (2) if the proposal is a User Pays Modification Proposal, any associated indicative User Pays Charge;
- (ii) where the Transporters fail to comply with paragraph (c)(i)(1) or, if the proposal is a User Pays Modification Proposal, (c)(i)(2), by the final date for such submission, the Transporters shall provide to the Modification Panel:
  - (1) a written explanation as to reasons for such failure at the earliest opportunity and in any event no later than two (2) Business Days after the final date for such submission;
  - (2) a list of information required to enable the most recent cost estimate to be prepared;
  - (3) a date by which the cost estimate will be provided, having regard to the explanation provided;
- (d) where the Modification Proposal is a Self-Governance Modification Proposal, the Code Administrator may invite each Transporter, each User, Non-Code Party (if any) to make representations in respect of whether such Modification Proposal should be a Self-Governance Modification Proposal.

#### **7.4 Determination**

If the Modification Panel does not, at the meeting, make a determination pursuant to paragraph 7.2.3(a), 7.2.4(a) or 7.2.4(b) the Code Administrator may refer the Modification Proposal to the relevant, or a new, Workgroup.

#### **7.5 Workgroup Assessment**

If the Modification Panel determines pursuant to paragraph 7.2.3(a)(ii) that the Modification Proposal should proceed to Workgroup Assessment or determines pursuant to paragraph 11.4.4(b) that a Request should proceed to Workgroup Assessment the Code Administrator shall within ten (10) Business Days of such determination finalise the Terms of Reference in accordance with paragraph 12.9 and notify each Transporter and each User of the composition of the Workgroup and invite each Transporter, each User and Non-Code Party (if any) to make representations in respect of the Modification Proposal within fifteen (15) Business Days following the date of the invitation.

#### **7.6 Non-Code Parties**

7.6.1 The Code Administrators shall:

- (a) for the purposes of compliance with the Transporter's Licence and for the purpose referred in Standard Special Condition A11(9)(d) and (f) send copies of any Modification Proposal and any Modification Report prepared in respect of such proposal to and invite representations in respect thereof from, other persons;
- (b) send copies of any Request or report prepared in respect of such Request to and invite representations in respect thereof from, other persons.

## **8 MODIFICATION PROCEDURES - WORKGROUP ASSESSMENT**

### **8.1 Composition of Workgroups**

8.1.1 Each Workgroup shall conduct its business in such manner as to allow any person to attend and participate in meetings of the Workgroup.

### **8.2 Proceedings of Workgroups**

8.2.1 The Code Administrator shall ensure that the Authority is notified of all meetings of each Workgroup. The Authority (or any representative of the Authority (including, but without limitation, the Ofgem Representative) shall be invited to all the meetings of all Workgroups.

8.2.2 The proceedings of Workgroups shall be conducted in accordance with the Code of Practice.

### **8.3 Workgroup Report**

8.3.1 Without prejudice to paragraph 8.3.3, the Code Administrator shall, prepare a Workgroup Report which shall set out the information, and be in the form, specified in the Code of Practice.

8.3.2 The Code Administrator and the Workgroup shall together use their reasonable endeavours to complete the Workgroup Report in the timescale determined in accordance with paragraph 12.9.2.

8.3.3 If two (2) or more Modification Proposals shall have been considered together by the Workgroup, the Workgroup Report shall report on each Modification Proposal.

### **8.4 Circulation of Workgroup Reports**

Each Workgroup Report shall (subject to paragraphs 5.4.1 and 5.4.2) be sent to all Members as soon as reasonably practicable but in any event not less than eight (8) Business Days prior to the meeting of the Modification Panel at which that report is to be discussed.

### **8.5 Discussion of Workgroup Report**

8.5.1 Having:

- (a) discussed the Workgroup Report; and
- (b) allowed any person who attended and participated in the relevant Workgroup (in attendance at the meeting of the Modification Panel) to express any views on the substance of the Workgroup Report or the conduct of the consideration of the Modification Proposal by the Workgroup, the Modification Panel shall determine:
  - (i) that the Modification Proposal shall proceed to Consultation in accordance with paragraph 7.3; or
  - (ii) to refer the Workgroup Report back to the Workgroup for revision or further work; or
  - (iii) to continue to consider or to consider further the Workgroup

Report at a subsequent meeting of the Modification Panel.

## **9 MODIFICATION PROCEDURES - CONSULTATION**

### **9.1 Consultation - Draft Modification Report**

9.1.1 Following determination of the Modification Panel that a Modification Proposal should proceed to Consultation under paragraph 7.3, the Code Administrator shall prepare a draft Modification Report in accordance with paragraph 9.4 and shall provide such report to the Secretary within:

- (a) fifteen (15) Business Days, where the Modification Panel has determined that legal text is required;
- (b) three (3) Business Days, where the Modification Panel has determined that legal text is not required,

or such other time period as the Modification Panel shall determine.

9.1.2 Where the Modification Panel has determined that legal text is required, then within one Business Day of receiving such Draft Modification Report the Secretary shall circulate the Draft Modification Report to the next meeting of the Modification Panel and subject to paragraph 9.1.3, within one Business Day following date upon which the panel meeting is convened, the Secretary shall circulate it to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) inviting them to make (or withdraw earlier) representations to the Transporters within fifteen (15) Business Days following the date of that invitation.

9.1.3 Where the Modification Proposal has been referred to the Modification Panel in accordance with paragraph 9.6.3 it may determine legal text is not required with the Draft Modification Report.

9.1.4 Where the Modification Panel has determined that legal text is not required:

- (a) pursuant to paragraph 7.3.1(a), within one (1) Business Day of receiving the Draft Modification Report;
- (b) pursuant to paragraph 9.1.3, within one (1) Business Day of such determination;

the Secretary shall circulate the Draft Modification Report to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) inviting them to make (or withdraw earlier) representations to the Code Administrator within fifteen (15) Business Days following the date of that invitation.

### **9.2 Not used**

### **9.3 Consultation - Final Modification Report**

9.3.1 Within five (5) Business Days following the last day for representations to the draft Modification Report in accordance with paragraph 9.1.2 or 9.1.4;

- (a) subject to (d), the Code Administrator shall prepare a final Modification Report in accordance with paragraph 9.4 for approval of the Modification Panel;
- (b) the Secretary shall submit a copy of that final Modification Report to:



- (i) each Third Party Participant, each Transporter, each User and each Non-Code Party (if any) that submitted (and did not so withdraw) a representation with regard to the draft Modification Report pursuant to paragraph 9.1.2 or 9.1.4; and
  - (ii) each Member,
- and shall attach to that report all representations (if any) so received (and not so withdrawn); and
- (c) the Code Administrator shall request the Secretary to add the Modification Proposal as an Agenda item for the Modification Panel to discuss;
  - (d) where the Code Administrator considers that any representation made identifies issues that may arise through implementation of the proposal then the Code Administrator shall record such issues and include them in the final Modification Report and the Secretary shall submit it to the next Modification Panel for determination pursuant to paragraph 9.3.2.
- 9.3.2 Where the Modification Panel determines that views on such issues should be obtained by the relevant Workgroup then:
- (a) the Code Administrator shall request the Secretary to submit the final Modification Report to the relevant Workgroup and to obtain a report containing their views; and
  - (b) within three (3) Business Days following receipt of such report the Secretary shall submit a copy of the final Modification Report to:
    - (i) each Third Party Participant, each Transporter, each User and each Non-Code Party (if any); and
    - (ii) each Member;

and shall attach to that report all representations (if any) so received (and not so withdrawn) and the report (if any) received pursuant to (b); and
  - (c) the Code Administrator shall request the Secretary to add the Modification Proposal as an Agenda item for the Modification Panel to discuss.
- 9.3.3 Upon receipt of the final Modification Report under paragraph 9.3.1 or 9.3.2 the Modification Panel shall assess whether the final Modification Report complies with paragraph 9.4, and if it is compliant, shall:
- (a) determine whether or not to recommend the implementation of the Modification Proposal to the Authority; and
  - (b) submit to the Authority its determination under paragraph 9.3.3(a) and the factors which (in its opinion), justify its determination and which shall include details of the Modification Panel's reasoning for determining whether or not the Modification Proposal better facilitates achievement of the Relevant Objectives or not; and
- instruct the Secretary to send the final Modification Report, together with its recommendation to the Authority, to the Code Administrator.
- 9.3.4 The Code Administrator shall, within one (1) Business Day of receipt from

the Secretary of the final Modification Report, circulate to the Authority and each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) the following:

- (a) a copy of the final Modification Report and any other attachments; and
- (b) a copy of the Modification Panel's recommendation to the Authority seeking a determination of the Authority as to whether the Modification should be implemented or not.

9.3.5 Where a final Modification Report is received by the Authority pursuant to paragraph 9.3.4, the Authority may determine whether the proposed Modification shall be implemented and may give notice of its decision to the Secretary, in which case on receipt of such notice from the Authority:

- (a) if the notice confirms the Authority's determination not to implement the proposed Modification, the Secretary shall circulate to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) a non-implementation notice; and
- (b) if the notice confirms the Authority's determination to implement the Modification, the Secretary shall circulate to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) an implementation notice.

9.3.6 Any question arising under these Rules as to whether:

- (a) (in the context of representations) a User or other person is likely to be materially affected by a Modification Proposal were that proposal to be implemented; or
- (b) representations made (and not withdrawn) pursuant to these Rules in relation to a Modification Proposal or Request have been properly considered by the Code Administrator or the Modification Panel;

shall be determined by the Authority.

9.3.7 Where the Modification Proposal is a User Pays Modification Proposal, the Authority may request the Transporters to prepare and submit a cost estimate for the User Pays Service where the Modification Panel has not done so.

9.3.8 Where a Modification Report is received by the Authority, the Authority, pursuant to Standard Special Condition A11, may direct that the Modification Report, including any legal text, should be amended and resubmitted and where it makes such a direction:

- (a) the Secretary shall notify each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) that the Authority is of such opinion (and the Authority's reasons for making such direction);
- (b) the Modification Panel shall discuss the Modification Report at the next meeting of the Modification Panel, shall instruct the Code Administrator to amend the Modification Report (including in respect of the legal text, the timetable, analysis or supporting information) in accordance with the direction of the Authority and decide on what steps to take, in accordance with paragraph 7.2 and shall send the Authority a revised Modification Report as soon as reasonably practicable (taking into account the complexity, importance and

urgency of the Modification Proposal).

- 9.3.9 Where the Modification Proposal is a Self-Governance Modification Proposal:
- (a) the Code Administrator shall submit all representations received in respect of such proposal during Consultation to the Authority (unless the Authority directs otherwise) at least seven (7) days before the Proposed Self-Governance Modification Proposal Determination Date for such proposal; and
  - (b) paragraphs 9.3.3 to 9.3.5 (inclusive), paragraph 9.4.3 and paragraph 9.5 shall not apply to such proposal.
- 9.3.10 The Modification Panel shall upon receipt of the final Modification Report under paragraph 9.3.1 or 9.3.2 in respect of a Self-Governance Modification Proposal:
- (a) assess whether the final Modification Report complies with paragraph 9.4, and if it is compliant, shall make a determination as to whether or not the Self-Governance Modification Proposal should be implemented (having regard to whether or not the Self-Governance Modification Proposal better facilitates the achievement of the Relevant Objectives) no earlier than the Proposed Self-Governance Modification Proposal Determination Date;
  - (b) instruct the Code Administrator to include such determination and the Modification Panel's reasoning for such determination in the Final Modification Report; and
  - (c) instruct the Secretary to circulate an implementation notice or a non-implementation notice (as the case may be) in respect of such proposal to each Transporter, each User, each Member, each Third Party Participant, each Non-Code Party (if any) and the Authority.
- 9.3.11 The Code Administrator shall, within one (1) Business Day of receipt from the Secretary of the final Modification Report circulate to each Transporter, each User, each Member, each Third Party Participant, each Non-Code Party (if any) and the Authority a copy of the final Modification Report and any other attachments.
- 9.3.12 Subject to paragraph 9.3.13, where the Modification Panel makes a determination in respect of a Self-Governance Modification Proposal under paragraph 9.3.10(a), an Appealing Party may appeal such determination in accordance with the Appeal Procedures and the Self-Governance Modification Proposal shall not be implemented until:
- (a) the Panel has made a determination in respect of an appeal made under paragraph 13.1 and (where no subsequent appeal is made to the Authority under paragraph 13.5) and implementation notice has been sent in accordance with paragraph 13.4; or
  - (b) the Authority has made a determination in respect of an appeal made under paragraph 13.5 and an implementation notice had been sent in accordance with paragraph 3.11.
- 9.3.13 For the avoidance of doubt, an Appealing Party may not submit more than one Appeal and one Authority Appeal in respect of the same Self-Governance Modification Proposal.

- 9.3.14 Paragraphs 9.3.9 to 9.3.13 (inclusive) shall not apply to a Self-Governance Modification Proposal where the Authority has directed under paragraph 6.6.6 that its approval is required in respect of the implementation of such Proposal.
- 9.3.15 Following any change made to the final Modification Report after a determination under paragraph 9.3.3(a) or 9.3.10(a) the Modification Panel shall discuss the Modification Report at the next meeting of the Modification Panel and determine by Majority Vote to reconsult in accordance with paragraph 9.5.2(b).

#### **9.4 Content of Modification Report**

- 9.4.1 Each Modification Report shall set out the information, and be in the form, specified in the Code of Practice and:
- (a) shall in relation to a recommendation of the Modification Panel under paragraph 9.3.3(b), include details of the Modification Panel's reasoning for determining whether or not the Modification Proposal better facilitates achievement of the Relevant Objectives:
  - (b) state whether or not a determination has been made by the Modification Panel under paragraph 9.3.3(a) and the number of Voting Members in favour of, and the number of Voting Members present and not voting in favour of, the implementation of the Modification Proposal;
  - (c) where it relates to a Modification Proposal in respect of a NTS Charging Methodology, state the view of the Modification Panel as to whether the Modification Proposal conflicts with:
    - (i) with paragraphs 8, 9, 10 and 11 of Standard Condition 4B of the Transporter's Licence; or
    - (ii) paragraphs 1, 2A and 3 of Standard Special Condition A4 of the Transporter's Licence;
  - (d) where it relates to a Modification Proposal in respect of a DN Charging Methodology, shall state the view of the Modification Panel as to whether the Modification Proposal conflicts with paragraphs 2, 2A and 3 of Standard Special Condition A4 of the Transporter's Licence.
  - (e) where it relates to a Self-Governance Modification Proposal, state that fact and whether the Modification Panel or the Authority determined that such proposal satisfied the Self-Governance Criteria; or
  - (f) state whether the proposal is made pursuant to a direction of the Authority in respect of a Significant Code Review; and
  - (g) where it relates to a Modification Proposal other than a Self Governance Modification Proposal and where the Proposer has proposed a timescale for the implementation of the Modification in accordance with paragraph 6.2.1(e), shall include:
    - (i) two or more Fixed Implementation Dates;
    - (ii) a Proposed Authority Decision Date in respect of each Fixed

Implementation Date, for the purposes of enabling the Modification to be implemented by the Fixed Implementation Date;

- (iii) a Backstop Lead Time; and
- (iv) the reasons why it is proposing each date under paragraph (i), (ii) and (iii).

9.4.2 Where two or more Modification Proposals have proceeded through the Modification Procedures together (and neither proposal has been withdrawn and all work has not been discontinued following a decision of the Modification Panel in respect of either proposal) the Modification Report shall, in addition to the analysis referred to in paragraph 9.4.1(b), provide an analysis as to which of the Modification Proposals would in the opinion of the Modification Panel better facilitate the achievement of the Relevant Objectives. Where two (2) Modification Proposals were proceeding through the Modification Procedures together and the Modification Panel shall have determined that only one (1) of the Modification Proposals should proceed, the Modification Report shall provide a commentary as to the circumstances in which the Modification Panel so determined.

9.4.3 Each Modification Report shall be addressed and furnished (as the notice required by Standard Special Condition A11(15)(a)) to the Authority and none of the facts contained or opinions stated in any Modification Report should be relied upon by any other person.

9.4.4 In preparing any Modification Report, the Code Administrator shall:

- (a) do so on the basis set out in these Rules; and
- (b) not be required to have regard (other than as expressly provided in these Rules) to the consequences of any Modification on any person or persons.

9.4.5 Where a Workgroup Report has been prepared in accordance with paragraph 8.3 the Modification Panel may determine that it shall constitute the Draft Modification Report.

## **9.5 Further Consultation**

9.5.1 If, in respect of a Modification Proposal which is the subject of a Modification Report previously submitted to the Authority by the Code Administrator in accordance with paragraph 9.3.4 or 10.2:

- (a) the Authority has not given notice of its decision in respect of that Modification Report within two (2) calendar months (in the case of Urgent Proposals), or four (4) calendar months (in the case of non-Urgent proposals) from the date upon which the relevant Modification Report was submitted to it; or
- (b) the Authority, or any Voting Member, by notice to the Secretary expresses the reasonable opinion that the circumstances relating to that Modification have materially changed,

the Secretary shall place that Modification Proposal on the Agenda for consideration at the next Modification Panel meeting.

9.5.2 Having considered the circumstances relating to the Modification Proposal

which is subject to paragraph 9.5.1, the Modification Panel may determine that:

- (a) the Secretary should request the Authority to give an indication of the likely date by which the Authority's decision shall be made; or
- (b) the Code Administrator should within five (5) days of the date of the meeting prepare and circulate a notice to each Transporter, Users and Non-Code Parties outlining the change in circumstances or reasons for delay and inviting further representations within ten (10) days of the date of the notice; or
- (c) the Secretary should place the Modification Proposal on the Agenda for further consideration at a future meeting of the Modification Panel as determined by the Modification Panel.

9.5.3 If the Modification Panel makes a determination in accordance with 9.5.2(a) then the Secretary shall within five (5) Business Days formally request a response from the Authority and place the Modification Proposal on the Agenda for further consideration at the next Modification Panel meeting, it being recognised at all times that the Authority is not obliged, as a result of a request pursuant to 9.5.2(a), to provide any response or indication.

9.5.4 If the Modification Panel makes a determination in accordance with 9.5.2(b) the Secretary shall within five (5) Business Days of the date upon which the invitation for representations closed prepare, and submit a supplemental report (which need not be in the form of a Modification Report) and also procure that the Code Administrator submits that report and copies of any representations received to the Authority and circulates a copy to each Transporter, Users and Non-Code Parties.

9.5.5 Any Report submitted to the Authority under paragraph 9.5.4 shall be supplemental to the Modification Report. Supplemental reports may, but need not, express a view and recommendation which confirms those expressed in the Modification Report to which it refers.

## **9.6 Legal Text for Modification**

9.6.1 In relation to each Modification Proposal, the Transporters shall prepare the legal text of the Modification:

- (a) where requested by the Modification Panel by way of Panel Majority vote at any time prior to a determination under paragraph 9.3.3(a) or paragraph 9.3.10(a) or where directed by the Modification Panel, for inclusion in the draft Modification Report prepared pursuant to paragraph 9.1.1 (unless the Modification Panel has determined that legal text is not required pursuant to paragraph 7.3.1(a) or 9.1.3); or
- (b) if requested or directed to do so by the Authority:

in the case of paragraph (a) the Transporters shall provide the legal text within 15 Business Days of such request unless the Transporters confirm at that meeting of the Modification Panel that existing legal text provided is suitable for inclusion in the draft Modification Report.

9.6.2 Subject to paragraph 10, the Suggested Text and/or any legal text provided by the Transporters pursuant to paragraph 9.6.1 prior to a determination under 7.3.1 of each Modification shall be considered by the relevant Workgroup to

which such Modification Proposal has been referred in accordance with these Rules. If the Suggested Text and/or any legal text provided by the Transporters pursuant to paragraph 9.6.1 prior to a determination under 7.3.1 of a Modification is not considered by a Workgroup prior to that Workgroup's report being discussed by the Modification Panel pursuant to paragraph 8.5.1, the Workgroup shall, where requested by the Modification Panel, having considered the legal text of a Modification and prior to the preparation of the draft Modification Report pursuant to paragraph 9.1.1, prepare a supplemental report commenting as appropriate on the legal text.

- 9.6.3 If it is considered that the Modification Proposal is not sufficiently clear or complete to enable the preparation of the legal text, a written report setting out the reasons for this will be prepared by the Code Administrator and the Code Administrator shall refer the Modification Proposal to the next Modification Panel for determination pursuant to paragraph 9.1.3.
- 9.6.4 Where the Modification Proposal is a User Pays Modification Proposal, the request or direction pursuant to paragraph 9.6.1(a) or (b) will be deemed to be a request for legal text in respect of a proposed amendment to the Agency Charging Statement and such legal text will be prepared at the same time the legal text prepared pursuant to paragraph 9.6.1(a) or (b).
- 9.6.5 At any time following a request for legal text pursuant to paragraph 9.6.1(a) and prior to a determination under paragraph 9.3.3(a) or paragraph 9.3.10(a) the Transporters may provide revised legal text in relation to a Modification Proposal and such legal text shall replace all earlier versions of legal text provided by the Transporters.

## 9.7 Modification

- 9.7.1 Subject to paragraph 9.7.2, the Code Administrator shall modify the Uniform Network Code or, as the case may be, the Relevant Transporter shall modify the relevant Individual Network Code in accordance with each consent given and each direction made by the Authority.
- 9.7.2 The Code Administrator shall modify the Uniform Network Code or, as the case may be, the Relevant Transporter shall modify the relevant Individual Network Code without the consent of the Authority in accordance with a determination made by the Modification Panel in respect of a Self-Governance Modification Proposal under paragraph 9.3.10(a) no less than fifteen (15) Business Days after the date of such determination provided that:
  - (a) either:
    - (i) paragraph 6.6.1 applies and the Modification Panel has not instructed the Code Administrator to withdraw the Self-Governance Statement submitted to the Authority under paragraph 6.6.4; or
    - (ii) paragraph 6.6.5 applies;
  - (b) the Authority has not directed that its approval is required in respect of such proposal under paragraph 6.6.6;
  - (c) subject to (d), no Appeal has been made in accordance with paragraph 13.1 which is still outstanding in respect of such proposal;
  - (d) where an Appeal has been made, the Secretary has sent an

implementation notice under paragraph 13.4(a) or (b) and the Appealing Party has not made an Authority Appeal in respect of such proposal by the end of period specified in paragraph 13.5.

- 9.7.3 The Code Administrator shall, as soon as reasonably practicable, notify each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) of each Modification. Each such notice shall specify the legal text of the Modification and the date upon which the Modification shall become effective and may provide (for the purposes of information only) an explanatory note (which note should not be relied upon) in respect of the Modification. Each Modification shall become effective upon the date specified in the relevant notice. Having so notified each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any), the Code Administrator may, with the agreement of the Transporters and the Authority, notify all Users, all Transporters, Members, each Third Party Participant and Non-Code Parties (if any) of any amendment to the date specified in the earlier notice, and the date specified in any such notice shall be the date upon which the relevant Modification shall become effective.

## **10 URGENT MODIFICATION PROPOSALS**

### **10.1 Procedure**

10.1.1 If a Modification Proposal has been considered or identified pursuant to paragraph 6.1.3(b) as one which should be treated as an Urgent Modification Proposal the Secretary shall as soon as possible send a copy of the Modification Proposal to the Authority, and:

- (a) following consultation with the Authority the Code Administrator shall recommend the procedure and timetable to be followed in respect of each Urgent Modification Proposal
- (b) where the Authority requests the Modification Panel to provide the Authority with the opinion of the Modification Panel on whether or not the Modification Proposal should be considered as an Urgent Modification:
  - (i) the Secretary shall convene a meeting of the Modification Panel within five (5) Business Days of the Authority requesting the opinion of the Modification Panel and place such request on the Agenda for that meeting; and
  - (ii) the Modification Panel shall provide the Authority with its opinion.

10.1.2 If the Authority considers it appropriate that the Modification Proposal referred to in paragraph 10.1.1 should be treated as an Urgent Modification Proposal:

- (a) the Secretary shall notify each Transporter, each User, each Member and each Non-Code Party (if any);
- (b) to the extent that the Authority agrees with the recommendation made in the procedure and timetable submitted by the Code Administrator, all or any of the Modification Rules (including, but without limitation, consulting with the Modification Panel and seeking representations from each Transporter, Users and any Non-



Code Party), may be deviated from or any other procedure accepted by the Authority may be followed;

- (c) the Secretary shall prepare and submit to the Code Administrator, a Modification Report in a format and in accordance with a timetable accepted by the Authority; and
- (d) the Code Administrator shall send the Modification Report to the Authority.

10.1.3 If the Authority does not accept that the Modification Proposal should be treated as an Urgent Modification Proposal the Secretary shall notify the Proposer and paragraphs 7, 8 (if applicable) and 9 shall apply in respect of the Modification Proposal.

## **10.2 Modification Report**

10.2.1 Each Modification Report and attachments (if any) prepared pursuant to paragraph 10.1.2(c) shall, in addition to reporting to the extent relevant upon the matters referred to in paragraph 9.4.1, detail:

- (a) the reasons why it is an Urgent Modification Proposal; and
- (b) the procedures that the Code Administrator has followed pursuant to paragraph 10.1.2(b) where these differ from the Modification Procedures.

10.2.2 The Code Administrator may submit a Modification Report (in whole or in part) orally and/or in writing. The Code Administrator shall in respect of any Modification Report (or any part thereof) submitted orally as soon as possible confirm that oral submission in writing. The Code Administrator shall as soon as reasonably practicable send a copy of each such report to each Transporter, each User, each Member and each Non-Code Party (if any).

## **10.3 Report on Modification**

Where an urgent Modification is implemented, the Secretary shall at the next following meeting of the Modification Panel report to the Modification Panel in respect of the urgent Modification. The Modification Panel may determine at that meeting that the subject matter of the urgent Modification so made shall be referred to a Workgroup. If the Modification Panel shall so determine, the Code Administrator shall refer such proposal to the relevant Workgroup together with the Terms of Reference to be applicable.

## **11 REQUESTS**

### **11.1 Purpose**

These Request Procedures provide a means by which a person who is eligible to be a Proposer may submit a request for consideration of a matter that may be (but is not as at the date such request is made) the subject of a Modification Proposal in respect of the Uniform Network Code or an Individual Network Code (as the case may be) for consideration by the Modification Panel (a "Request").

### **11.2 Requests**

- 11.2.1 The Modification Panel may determine that any matter or a Request discussed at a meeting of the Modification Panel should be subject to the Request Procedures.
- 11.2.2 A Request may be withdrawn at any time before a Modification Proposal is deemed to have been made in respect of the Request under paragraph 11.4.4(a).
- 11.2.3 The Code Administrator shall allocate to each Request a unique reference number.

### **11.3 Form of Request**

- 11.3.1 Each Request shall:
- (a) be in writing;
  - (b) be in the form set out at the website [www.gasgovernance.co.uk](http://www.gasgovernance.co.uk); and
  - (c) set out in reasonable detail the nature of the matter which is the subject of the Request.
- 11.3.2 The Code Administrator may, from time to time, stipulate the form which a Request should take.

### **11.4 Request Procedures**

- 11.4.1 Following the submission of a Request, the Modification Panel may determine:
- (a) that such Request be subject to consideration by a Workgroup with such Terms of Reference, procedures and such timetable as the Modification Panel shall determine; or
  - (b) subject to paragraphs 11.4.4 (a) and (b), the Request shall lapse and in such case the Code Administrator shall notify the person making the Request.
- 11.4.2 Following review by a Workgroup, the Workgroup shall submit a report to the Modification Panel which shall set out or append in full any draft form of Modification Proposal developed by the Workgroup in relation to the Request.
- 11.4.3 Following submission of a report under paragraph 11.4.2, the Modification Panel shall consider the report, and in the event that the Modification Panel does not determine that a further assessment be undertaken by the Workgroup, the Code Administrator shall circulate the report to the person making the Request, all Transporters and all Users.
- 11.4.4 Where the report submitted in accordance with paragraph 11.4.2 contains a recommendation in the form of a draft Modification Proposal and the Modification Panel:
- (a) determines to support such recommendation, a Modification Proposal shall be deemed to have been made by person making the Request and such Modification Proposal shall be dealt with in accordance with paragraph 7.3; or
  - (b) makes no determination, the Workgroup may reconsider and resubmit the report (whether or not containing a new

recommendation) for reconsideration by the Modification Panel and paragraph 11.4.3 shall apply.

## **12 GENERAL**

### **12.1 Notices**

Unless otherwise expressly provided, any document, notice or other communication to be given to or made by any person pursuant to or in accordance with these Rules shall be made in accordance with GT Section B5.2.

### **12.2 Non-receipt**

No accidental omission or neglect in sending any document or notice or other communication to, or (other than in the case of any document or notice or other communication submitted by the Transporters or the Code Administrator to the Authority) non-receipt of any document or notice or other communication by, any person shall be capable of invalidating any act or thing done pursuant to these Rules.

### **12.3 Representations**

12.3.1 All representations (and any withdrawal of the same) made by each User or any Transporter pursuant to these Rules shall be readily identifiable as representations (or, as the case may be, a withdrawal thereof), shall identify the unique reference designation on the Modification Proposal or Request to which they relate and shall be sent to the Secretary at the address of the Code Administrator, for the time being, notified to Users for the purposes of paragraph 12.1.

12.3.2 Any Transporter, User, Third Party Participant or Non-Code Party may at any time prior to the submission of the Modification Report by notice to the Secretary withdraw any representation made by it, whether made in writing or at a meeting of Users or Non-Code Parties.

12.3.3 The Code Administrator shall send to the Authority copies of all representations, but the Code Administrator shall not be required to take account of representations received after the expiry of the period established in accordance with these Rules, or of any representations which in the Code Administrator's reasonable opinion are of no relevance to the subject matter to which they are intended to relate, or from persons who are not likely to be materially affected.

12.3.4 In submitting representations pursuant to any provision of these Rules, the person making such submission consents to the publication and circulation of such representations by the Code Administrator for the purposes of these Rules.

### **12.4 Variation of Modification Proposal**

12.4.1 In the case of a Modification Proposal adopted pursuant to paragraph 6.4, the:

- (a) Transporter(s) or User(s) adopting the proposal (where that proposal made is in respect of the Uniform Network Code); or
- (b) Relevant Transporter or Relevant Shipper adopting the proposal (where that proposal made is in respect of an Individual Network

Code),

shall (as the case may be) as it considers appropriate modify that adopted Modification Proposal having regard to better facilitating the achievement of the Relevant Objectives and having had regard to any other matter (including, but without limitation, representations (if any) received (in accordance with these Rules) from each Transporter, Users, Non-Code Parties, Third Party Participants and otherwise and the report of the relevant Workgroup and discussions at meetings of the Modification Panel) as appropriate.

## **12.5 Time periods**

Notwithstanding any time periods specified in these Rules, in respect of any Modification Proposal or Request the Modification Panel may, from time to time, determine to shorten or lengthen the time period within which any (or all) of the Modification Procedures, Request Procedures or any other procedures is (or are) to be undertaken. If the Modification Panel shall so determine, the Code Administrator shall, so far as consistent with these Rules and the Transporter's Licence, do all acts and things which these Rules specify as acts and things to be done by the Code Administrator within such shorter or longer period of time so as to give effect to such determination.

## **12.6 Consequences of the Rules and Confidentiality**

- 12.6.1 These Rules shall not give rise to or impose any duty, obligations or rights (whether in contract, tort, trust or otherwise) pursuant to, in relation to, in respect of or in connection with the Uniform Network Code or an Individual Network Code on any person that is treated as being, for the time being, a User and shall not give rise to any action or claim or liability (whether in contract, tort (including, but without limitation, negligence), for breach of trust or otherwise) against any such person pursuant to, in relation to, in respect of or in connection with the Uniform Network Code or an Individual Network Code.
- 12.6.2 These Rules shall not give rise to or impose any duty, obligation (other than pursuant to a Transporter's Licence) or right (whether in contract, tort, trust or otherwise) and consequently shall not give rise to any action or claim or liability pursuant to, in relation to, in respect of or in connection with these Rules.
- 12.6.3 Without prejudice to the generality of paragraph 12.6.2, no Member, individual in any Workgroup shall be liable (in whatever capacity) and no employer of any such person shall be vicariously liable for any act or thing done or omitted to be done pursuant to, in relation to, in respect of or in connection with these Rules.
- 12.6.4 Without prejudice to the generality of paragraph 12.6.2, no act or thing done or omitted to be done by a Transporter, the Code Administrator or any User (or any employee, director or agent of a Transporter, the Code Administrator or any User) pursuant to, in relation to, in respect of or in connection with these Rules shall give rise to any action or claim or liability by any User or Non-Code Party against a Transporter, the Code Administrator (or any such employee, director or agent of a Transporter, the Code Administrator) or by any other User, Non-Code Party or a Transporter, the Code Administrator against such User (or any such employee, director or agent of such User).

- 12.6.5 Nothing in or arising as a consequence of these Rules is intended in any way to limit or negate the ability for the time being of any User, Transporter or the Code Administrator to seek to discuss any issue or matter with the Authority or to give rise to any consequence in respect of any contractual relationship (other than pursuant to a Modification) which may, from time to time, exist between any User and Transporter.
- 12.6.6 Save where expressly stated otherwise, nothing in these Rules shall oblige or impose any duty on any User, Transporter or the Code Administrator to provide or make available any information.
- 12.6.7 Any person who provides any information for the purposes of or pursuant to these Rules may require that such information may only be made available subject to such confidentiality undertakings as such person may require.

## **12.7 Disapplication of these Rules**

- 12.7.1 In respect of any Modification Proposal or Request if the Code Administrator considers it would be appropriate to disapply any of these Rules the Secretary shall notify each Member, each Transporter and each User, each Third Party Participant and each Non-Code Party (if any) and in that notice specify which paragraphs of these Rules the Code Administrator considers it would be appropriate to disapply and explaining why and invite each Transporter, Users, Third Party Participants and Non-Code Parties (if any) to make representations within ten (10) Business Days following the date of such invitation in respect of the proposed disapplication. The Code Administrator shall within the three (3) Business Days following the expiry of such ten (10) Business Days send to each Member and the Authority copies of all representations (if any) so received.
- 12.7.2 The Modification Panel shall, subject to paragraph 5.3.1, at the next following meeting of the Modification Panel consider the representations (if any) received (in accordance with this paragraph 12.7.1) from Transporters, Users, Third Party Participants and Non-Code Parties (if any), and the Modification Panel may determine that it is appropriate to disapply any of the paragraphs of these Rules specified in the relevant notice. If the Modification Panel shall so determine the paragraphs of these Rules specified in the relevant notice shall, if the Authority agrees, be disapplied.

## **12.8 View**

- 12.8.1 The Code Administrator may decide to seek a View from the Authority:
- (a) on any matter arising (under these Rules or otherwise) from a Modification Proposal that is not a Self-Governance Modification Proposal at any stage prior to the date on which the Code Administrator finalises the Modification Report; and
  - (b) in respect of the proposed funding arrangements for a User Pays Modification Proposal, at any stage prior to a determination under paragraph 7.2.3(a).
- 12.8.2 If the Code Administrator decides to seek a View pursuant to paragraph 12.8.1, the Secretary shall:
- (a) forward an application to the Authority setting out the Code Administrator's views and reasons for seeking a View from the

Authority;

- (b) if the Modification Panel shall so determine, suspend (in whole or in part) the consideration of the Modification Proposal by any Workgroup; and
  - (c) notify each Transporter, each User and each Non-Code Party (if any) of such decision to seek a View.
- 12.8.3 If, in respect of a View sought pursuant to this paragraph 12.8, the Authority expresses the View that the Modification Proposal should not proceed, the Modification Proposal shall lapse and the Code Administrator shall within the five (5) Business Days following receipt by the Code Administrator of the View prepare and circulate notification of such lapse.
- 12.8.4 If, in respect of a View sought pursuant to this paragraph 12.8, the Authority shall not express any View as to how the Modification Proposal should proceed or expresses the View that the Modification Proposal should proceed to Workgroup Assessment, the Modification Proposal shall proceed to Workgroup Assessment.
- 12.8.5 If the Authority expresses any other view, the Modification Proposal shall proceed in accordance with such view.

## **12.9 Terms of reference**

- 12.9.1 The Terms of Reference for each Modification Proposal referred to a Workgroup shall:
- (a) detail the Modification Proposal;
    - (i) detail the work to be undertaken by the Workgroup, to enable the Workgroup to prepare its report; and
    - (ii) specify any matters, in addition to those referred to in the Code of Practice, which the Workgroup, should address in its report;
  - (b) detail other matters (if any) to be considered or reviewed by the Workgroup;
  - (c) state whether the Workgroup, should consult with any other person for the purposes of its report, and if so, detail the extent to which and identify which person (or persons) it should consult with, but this shall not require the Code Administrator to engage or remunerate any person so consulted;
  - (d) set a timetable in accordance with which the work of the Workgroup is to be done and its report prepared; and
  - (e) specify that the Workgroup, is to comment upon any legal text of the Modification, provided to the Workgroup pursuant to paragraph 9.6.
- 12.9.2 Unless the Modification Panel shall otherwise determine, the timetable referred to in paragraph 12.9.1(d) shall consist of a period of up to six (6) months. Where the Modification Panel determines that such timetable should be extended so that it exceeds a period of six (6) months in aggregate, it shall notify the Authority and the timetable shall be so extended unless the Authority objects. Where the Authority objects to such extension, the Modification Panel shall make a determination under paragraph 7.2.3 in

respect of the relevant Modification Proposal at the next meeting of the Modification Panel.

- 12.9.3 The Modification Panel may, from time to time, determine:
- (a) to change the Terms of Reference of any Workgroup; or
  - (b) if the Terms of Reference of the relevant Workgroup so anticipate, that the Workgroup should undertake new or further work or consider new matters (whether or not related to any earlier work undertaken by that Workgroup).

#### **12.10 NTS Charging Methodology Forum**

The Transporters shall ensure the NTS Charging Methodology Forum meets on a regular basis, for which purpose the Transporters shall convene a meeting of such forum by notice to its representatives at least once every three (3) months unless there is no matter for the NTS Charging Methodology Forum to discuss.

#### **12.11 DN Charging Methodology Forum**

The Transporters shall ensure the DN Charging Methodology Forum meets on a regular basis, for which purpose the Transporters shall convene a meeting of such forum by notice to its representatives at least once every three (3) months unless there is no matter for the DN Charging Methodology Forum to discuss.

### **13 APPEAL PROCEDURES**

- 13.1 No later than fifteen (15) Business Days after the Self-Governance Modification Proposal Determination Date, a User, Transporter, Materially Affected Party (if any) or Third Party Participant may make an Appeal by giving written notice of the Appeal to the Secretary, such notice to identify the Self-Governance Modification Proposal which is the subject of the Appeal, any representations which the Appealing Party wishes to make in support of the Appeal and evidence supporting the Appealing Party's view that it will be unfairly prejudiced by the modification proposed in the relevant Self-Governance Modification Proposal.
- 13.2 Subject to the Appeal being made within the period referred to in paragraph 13.1, the Secretary shall, on receipt of a notice under paragraph 13.1 notify each Transporter, User, Member, Third Party Participant and Non-Code Party (if any) and the Authority that an Appeal has been made and the Secretary shall put discussion of the Appeal on the Agenda of the next meeting of the Modification Panel which shall (subject to paragraphs 5.4.1 and 5.4.2) be convened pursuant to paragraph 5.3.1.
- 13.3 The Modification Panel shall decide, at the meeting referred to in paragraph 13.2, whether to confirm or reverse its determination under paragraph 9.3.10(a) having regard to any representations made by the Appealing Party in support of the Appeal.
- 13.4 The Modification Panel shall, upon deciding whether to confirm or reverse its determination under paragraph 9.3.10(a), notify the Secretary and the Appealing Party of its decision as soon as reasonably practicable following receipt of the Appeal, and where the Modification Panel:

- (a) confirms its determination under paragraph 9.3.10(a), the Code Administrator shall notify each Transporter, User, Member, Third Party Participant and Non-Code Party (if any) and the Authority of the Modification Panel's confirmation of its determination and send each such person an implementation or (as the case may be) non-implementation notice under paragraph 9.3.10(a) confirming the implementation or (as the case may be) non-implementation of the proposal;
  - (b) reverses its determination under paragraph 9.3.10(a), the Code Administrator shall notify each Transporter, User, Member, Third Party Participant and Non-Code Party (if any) and the Authority of the Modification Panel's determination and send each such person an implementation or (as the case may be) non-implementation notice, which shall have effect in place of the implementation or (as the case may be) non-implementation notice issued pursuant to the Modification Panel's initial determination under paragraph 9.3.10(a).
- 13.5 The Appealing Party may no later than fifteen (15) Business Days after the Self-Governance Modification Proposal Determination Date make an appeal to the Authority; such appeal to identify the Self-Governance Modification Proposal which is the subject of the appeal and include any representations which the Appealing Party wishes to make in support of the appeal.
- 13.6 If the Authority determines the Authority Appeal satisfies the Appeal Criteria, the Authority may consider the Authority Appeal having regard (without limitation) to:
- (a) the Self-Governance Modification Proposal;
  - (b) the final Modification Report in respect of the Self-Governance Modification Proposal;
  - (c) any representations made by the Appealing Party in support of the Authority Appeal; and
  - (d) the determination made by the Modification Panel under paragraph 13.4(a).
- 13.7 Following such determination in accordance with paragraph 13.6, the Authority may:
- (a) confirm the Modification Panel's determination under paragraph 13.4(a); or
  - (b) quash the Modification Panel's determination under paragraph 13.4(a) and rule that the Modification Panel's determination should have no further effect for the purposes of these Modification Rules.
- 13.8 The Authority shall notify the Secretary and the Appealing Party of its decision under paragraph 13.7 in respect of the Authority Appeal as soon as reasonably practicable following receipt of the Authority Appeal, and the decision of the Authority shall be final and binding.
- 13.9 Where paragraph 13.7(b) applies the Authority may:
- (a) remit the Self-Governance Modification Proposal which is the subject of the Modification Panel's quashed determination under paragraph 13.4(a) back to the Modification Panel for reconsideration and re-determination; or



- (b) determine that the proposed modification to the Uniform Network Code and/or Individual Network Code should be made; or
- (c) determine that the proposed modification to the Uniform Network Code and/or Individual Network Code should not be made; and

in the case of paragraphs 13.9(b) and (c), for the purposes of Standard Licence Condition A11(15F)(b), the Modification Panel's determination under paragraph 13.4(a) shall be treated as the final Modification Report submitted to the Authority under paragraphs 9.3.3 and 9.3.4 and as a recommendation as to whether or not a Modification Proposal should be implemented.

13.10 Where the Authority:

- (a) confirms the Modification Panel's determination under paragraph 13.4(a), the Secretary shall notify each Transporter, User, Member, Third Party Participant and Non-Code Party (if any) of the Authority's confirmation of the Modification Panel's determination under paragraph 13.4(a) confirming the implementation or (as the case may be) non-implementation of the proposal;
- (b) quashes the Modification Panel's determination under paragraph 13.4(a), the Secretary shall notify each Transporter, User, Member, Third Party Participant and Non-Code Party (if any) of the Authority's decision and send each such person an implementation notice or (as the case may be) non-implementation notice, which shall have effect in place of the Modification Panel's determination under paragraph 13.4(a);

13.11 Where the Secretary, under paragraph 13.9(a) gives notice of the Authority's confirmation of the Modification Panel's determination under paragraph 13.4(a) confirming the implementation of a proposal or under paragraph 13.9(b) sends an implementation notice, paragraph 9.7.1 shall apply.

