

UNIFORM NETWORK CODE – MODIFICATION RULES

Indicative amendments to show possible impacts of Ofgem's Code Governance Review. (Cross references have not been updated.)

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 [this list is taken from the GT Licence and will need updating to reflect any revised obligations. However, it serves no purpose and could be deleted?]:

- (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) 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;
- (g) the seeking of the Views of the Authority on any matter connected with any such proposals;
- (h) the consideration of any representations relating to such proposals made (and not withdrawn) by a Transporter, a User, the Users or any other person likely to be materially affected were the proposals to be implemented; and
- (i) 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.

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).

1.2 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 a Code Administrator established pursuant to Standard Special Condition A12.

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;

"**Casting Vote**": [Chair is required to vote when Panel would otherwise fail to make a determination and so prevent any further progress.] [NB to introduce concept of casting vote, voting rules may need reconsidering such that votes both for and against are introduced]

"**Code Administrator**":

"**Code of Practice**": ...

"**Consumers' Representative(s)**": the individuals (if any) for the time being appointed by the National Consumer Council and/or 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;

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

"**Assessment Work**": in respect of each Workgroup, the work detailed and the matters (if any) specified, pursuant to paragraphs 11.9.1(b) and 11.9.1(c), in the Terms of Reference of that Workgroup as the same may be changed pursuant to paragraph 1.1.1(a);

"**Implementation Costs**": the costs of analysis, development and/or operation of a Modification;

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"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 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;

"Significant Code Review":

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

"Modification": any proposal to modify or, following implementation, modification of the Uniform Network Code or, as the case may be, an Individual Network Code, made pursuant to these Rules, and **"Modifications"** shall be construed accordingly, and shall include User Pays Modifications and Third Party Modifications;

"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 set out in these Rules and, as the context may require, any of those provisions;

"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 make available a copy of a Modification, a Third Party Modification or a Modification Report, or from whom the Code Administrator shall invite representations pursuant to paragraph 7.6;

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

"Panel Chairman": the person appointed as chairman of the Modification Panel by the Transporters following approval by the Authority and, as the context may require, shall include a deputy chairman as nominated by the Panel Chairman from time to time;

"Panel Majority": in relation to any matter to be determined at a quorate and duly convened meeting of the Modification Panel, a majority (in number) of the votes exercisable by the Voting Members present at that meeting and voting in favour of such matter; [Consider changing to be the excess of votes in favour over votes against]

"Proposer": the person or organisation who shall have initiated the relevant Modification or Third Party Modification pursuant to paragraph 6.1.1 or 6.1.2, as the case may be;

"Relevant Objectives": means:

- (a) [Replace with definitions from, or cross refer to, revised Licence condition].

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

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relates;

"Relevant Transporter": for the purposes of these Rules only in relation to an Individual Network Code Modification 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 or alternative Modification in respect of an Individual Network Code) a DNO User;

"Report of Determinations": a report produced by the Secretary setting out each of the determinations made by Voting Members at each meeting of the Modification Panel;

"these Rules": these Modification Rules;

the **"Secretary"**:

- (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":

"Suggested Text": means indicative legal text, in respect of a Modification, which has been provided by the Proposer other than legal text which is prepared under 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) a Workgroup finalised by the Code Administrator, pursuant to paragraph 1.1.1(a), or paragraph 7.5;
- (b) or
- (c) the assessment of a Modification referred to a Workgroup, determined by the Code Administrator pursuant to paragraph 7.4,

(in each case as may be amended pursuant to paragraph 11.9.3);

"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;

"Third Party Modification": a proposal to modify or, following implementation, modification of, Annex V1 ("Table of Operational and Market Data") of the Uniform Network Code made by a recognised Third Party Participant;

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

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Transporter";

"**Transporter Modification**": any Modification made by a Transporter pursuant to paragraph 6.1.1 or 6.1.2, or, as the case may be, paragraph 6.4 as the same may be varied pursuant to paragraph 11.4;

"**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 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 in the context of an Individual Network Code Modification includes "Relevant Shipper" and in all contexts excludes "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;

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

"**User Modification**": any Modification made by a User pursuant to paragraph 6.1.1 or 6.1.2;

"**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);

"**Views**": the views of the Authority referred to in Standard Special Condition A11(9)(e); and "**View**" shall be construed accordingly;

"**Voting Member**": any Transporters' Representative (other than the Panel Chairman and deputy chairman), any Users' Representative and any Consumers' Representative; and

"**Workgroup**": a group comprised of representatives of Users and Transporters and other interested parties, 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 the Uniform Network Code, an Individual Network Code or a Modification in accordance with paragraph 1.1 or 8.1 in accordance with its Terms of Reference (which group shall have no power or authority to bind any User or any Transporter).

"**Workgroup Report**": the report of a Workgroup prepared in relation to any Modification referred to it by the Modification Panel;

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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.

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, ~~who shall have a Casting Vote;~~
- (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.

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

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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

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. 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.

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3.6 The Panel Chairman

The Transporters shall appoint by notice to the Secretary (and as the case may be, remove and reappoint) one (1) person, from time to time, as the Panel Chairman, [no need to say subject to Authority approval as Transporters will take account of the Licence obligation before notifying the Secretary of an appointment]

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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 may, from time to time, by notice to the Secretary identify any individual to be appointed (and revoke that appointment) as a "**Consumers' Representative**".

4.1.4 The Authority may, from time to time, by notice to the Secretary identify any individual to be appointed (and revoke that appointment) as a "Consumers' Representative".

4.1.5 The Designated Person may, from time to time, by notice to the Secretary, appoint (and revoke that appointment) an individual as the "**Suppliers Representative**".

4.1.6 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 Transporters' Representative**".

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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 paragraph 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 ~~or equal to~~ 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 paragraph 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 paragraph 4.1.3, ~~4.1.5, 4.1.6,~~ 4.2.6 or 4.4.2, the appointment to which such notice relates shall take effect in accordance with such notice.

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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, the National Consumer Council or the Authority may, by notice to the Secretary, identify another individual to be appointed as the 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 affect 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.

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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 Modifications and Third Party Modifications can be discussed pursuant to and in accordance with the Modification Procedures. Those functions of the Modification Panel expressly provided in these Rules relating to the Modification 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 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.

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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. All relevant materials in respect of a meeting of the Modification Panel will be **made available** not less than five (5) Business Days prior to the meeting to which they relate or, subject to 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 11.6.7) be entitled to receive each notice and the relevant materials. At the same time as any notice is **made available** to Members a copy of such notice shall (subject to paragraph 11.6.7) be **made available** to each User and each Transporter. There may be circumstances where materials to be **made available** with a notice have, pursuant to these Rules, already been **made available** to Users or Transporters. In any such circumstance the relevant materials may be, but do not have to be, **made available** 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** Voting Members shall 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.

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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 chairman, shall preside at meetings of the Modification Panel.

5.6.2 The Chairman shall conduct all meetings of the Modification Panel in accordance 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

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 4.5.2 and 4.5.4) be entitled to exercise one (1) vote.

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

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vote will take place and shall make available copies of any such written resolutions to all non-voting Members, all Users and all Transporters.

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5.10 Observers and Invitees

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Any individual may attend meetings of the Modification Panel. In respect of any such individual, the Modification Panel may, from time to time, determine that such individual be excluded from all or part of a meeting of the Modification Panel.

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5.11 Minutes

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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. -
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 ... [3]

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) make available 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.

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5.11.2 The Secretary shall, within five (5) Business Days following the date of the relevant meeting, make available to each Member, each Transporter and each User a copy of any minutes of that meeting made pursuant to paragraph 5.11.1.

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5.11.3 The Secretary shall in respect of each meeting of the Modification Panel record the individuals who attend that meeting.

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5.12 Provision of information

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5.12.1 The Modification Panel may, from time to time, determine to make available (subject to paragraph 11.6.7) 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.

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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 made available to such person.

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5.13 User Pays Guidance Document

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The production of a User Pays Modification (including the provision of cost estimates and other information in respect of a User Pays Modification) 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).

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6 MODIFICATIONS

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6.1 Relevant persons

6.1.1 Without prejudice to paragraph 6.4 or paragraph 11.4, a Modification in respect of the Uniform Network Code may be proposed from time to time by:

- (a) a Transporter; and/or
- (b) any User,

and any Third Party Participant may propose a Third Party Modification,

6.1.2 Without prejudice to paragraph 6.4 or paragraph 11.4, a Modification in respect of an Individual Network Code may be proposed from time to time by:

- (a) a Relevant Transporter; and/or
- (b) any Relevant Shipper.

6.1.3 If:

- (a) a Transporter or the Transporters shall in respect of any Modification consider that such Modification should be treated as an Urgent Modification; 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,

that Modification shall be subject to paragraph 10.

6.2 Form of Modification

6.2.1 Each Modification proposed pursuant to paragraph 6.1.1 or 6.1.2 shall be produced in accordance with, and in the form stipulated within, the Code of Practice; and

- (a) shall, if the Proposer considers that the Modification should be treated as an Urgent Modification, identify the Modification as such and indicate the Proposer's justification for such belief; and
- (b) shall state whether or not it is a User Pays Modification.

6.2.2 Each Modification shall be sent to the Secretary who shall ensure that the Modification has been completed in accordance with the Code of practice before accepting such Modification.

6.2.3 Where a Modification does not comply with paragraph 6.2 the Secretary may reject such Modification,

6.2.4 Where in accordance with paragraph 6.2.1(h) the Proposer requests that the Modification should proceed direct to the Consultation Phase then the Proposer shall ensure that the Modification contains all the information required in a Workgroup Report as set out in the Code of Practice, except where information is not relevant to the Modification or is being provided pursuant to paragraph 6.2.1.

6.2.5 A User Pays Modification shall additionally:

- (a) state the reasons why it should be a User Pays Modification;

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- (b) contain:
 - (i) 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.

6.3 Proposer's representative

- 6.3.1 Subject to paragraph 10, each Proposer shall ensure the attendance of a representative of the Proposer at the meeting of the Modification Panel at which the Modification is to be discussed initially; at such meeting the Proposer's representative may give a presentation in respect of the Modification and shall endeavour to answer any questions which the Modification Panel may have in respect of the Modification or the presentation.
- 6.3.2 If a representative of the Proposer does not for whatever reason attend the meeting of the Modification Panel at which the relevant Modification is to be discussed initially the Modification Panel may determine that, notwithstanding such non-attendance of the Proposer's representative, the Modification Panel shall proceed to discuss the Modification.
- 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 further unless and until the Proposer's representative 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 further.

6.4 Alternative Modification [Provisions to be rewritten to be consistent with the proposed Licence drafting, Code of Practice and to match the process in other codes]

- 6.4.1 In respect of any Modification which is an Urgent Modification, or which is, pursuant to paragraph 7.2.3, to proceed to the Assessment Phase or to which paragraph 7.3 applies, any of the parties listed (except for the Proposer):
 - (a) in paragraph 6.1.1 including a Third Party Participant in relation to a Third Party Modification only (where such Modification is made pursuant to paragraph 6.1.1); or
 - (b) in paragraph 6.1.2 (where such Modification is made pursuant to paragraph 6.1.2),
 - (c) may, but shall not be required to, propose an alternative Modification in accordance with paragraph 6.2. The Secretary shall within five (5) Business Days following receipt of each alternative Modification made pursuant to this paragraph 6.4 make available a copy of that Modification to each Transporter, each User, each Member and each

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- Non-Code Party (if any). The alternative **Modification** and the **Modification** shall proceed through the Modification Procedures together.
- 6.4.2 In respect of any **Modification** 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 including a Third Party Participant in relation to a Third Party Modification **only** (where such **Modification** is made pursuant to paragraph 6.1.1); or
 - (b) in paragraph 6.1.2 (where such **Modification** is made pursuant to paragraph 6.1.2),
- may, but shall not be required to, either raise an alternative **Modification** in accordance with paragraph 6.2) or adopt the withdrawn **Modification** (in which case the adopted **Modification** shall continue through the Modification Procedures from the point at which it was withdrawn).
- 6.5 Withdrawal or variation of Modifications** Is this consistent with the common process? Need to find a common way to deal with change? Is this consistent with the common process? Ought to find a common way to deal with change as Mods progress.
- 6.5.1 A Proposer may:
- (a) withdraw a **Modification** of that Proposer, at any time before the final Modification Report is circulated to the Authority pursuant to paragraph 9.3.4, by notice to the Secretary, and subject to paragraphs 6.4 and **11.4**, any **Modification** so withdrawn shall lapse; or
 - (b) vary a **Modification** of that Proposer, at any time before the Modification Panel has determined to proceed to the Consultation Phase pursuant to paragraph **7.2.3(a)(iv)** or **1.1.1**, by notice to the Secretary, and subject to paragraph 6.4, and to paragraph **11.4**, any **Modification** so varied shall replace the original **Modification**.
 - (c) subject to paragraph 6.4, and to paragraph **11.4**, request a variation to a **Modification** of that Proposer (“**variation request**”), at any time after the Modification Panel has determined to proceed to the Consultation Phase pursuant to paragraph **7.2.3(a)(iv)** or **1.1.1**, and before the Modification Panel has made a determination in respect of such **Modification** 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 to paragraph **11.4**, the **Modification** shall be
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- varied where the Modification Panel:
- (a) determines by a unanimous vote that the variation request is immaterial, and in such case the varied Modification shall continue through the Modification Procedures;
 - (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 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 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.

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7 MODIFICATION PROCEDURES - PRELIMINARY PHASE

7.1 Circulation of Modification

- 7.1.1 The Secretary shall:
- (a) on receipt of a Modification allocate a unique reference number to that Modification;
 - (b) by the later of:
 - (i) the end of the third Business Day following receipt of a Modification raised 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 should be treated as an Urgent Modification.
- make available a copy of that Modification to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any);
- (c) subject to that Modification being received at least eight (8) Business Days prior to a Modification Panel meeting, put initial discussion of the Modification or on the Agenda for 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; and
 - (d) notify the Proposer of the meeting of the Modification Panel at which the Modification is to be discussed, and request the attendance of the Proposer's representative.
- 7.1.2 Where:
- (a) the Authority decides that a Modification should not be treated as an Urgent Modification; and

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- (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 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,

7.2 Discussion of **Modifications**,

- 7.2.1 Subject to paragraph 6.4 and paragraph 10, the Modification Panel shall discuss each new Modification, at a meeting of the Modification Panel.
- 7.2.2 The Modification Panel shall make a determination under paragraph 7.2.3:
 - (a) Having:
 - (i) discussed the Modification, and, subject to paragraph 6.3.2;
 - (ii) heard the presentation of the Proposer's representative;
 - (iii) had an opportunity to ask the Proposer's representative questions in respect of the Modification and the presentation of the Proposer's representative; and
 - (iv) considered whether there are any persons from whom representations should, pursuant to paragraph 7.6, be invited; or
 - (b) where it has received a referral pursuant to paragraph 9.6.3.
- 7.2.3 Subject to paragraph 7.2.2, the Modification Panel may, without prejudice to paragraph 7.2.4, determine that:
 - (a) a Modification:
 - (i) should be subject to Self Governance and all the subsequent documentation should make it clear whether or not this is the case
 - (ii) has arisen from a Significant Code Review and so ????
 - (iii) should proceed to the Assessment Phase (in which case the Modification Panel shall discuss, and may (in accordance with paragraph 7.5) request the Code Administrator to finalise, the Terms of Reference, if any, to be applicable and shall determine which Workgroup the Modification should be referred to; or
 - (iv) should proceed to the Consultation Phase in accordance with paragraph 7.3; or
 - (b) a Modification should be deferred to a subsequent meeting of the Modification Panel for further discussion; and
 - (c) at any time before the Modification proceeds to the Consultation Phase 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 a cost estimate(s), and in the case of a User Pays Modification an indicative User Pays Charge(s) and, having

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- regard to the User Pays Guidance Document a commentary in respect of this; and
- (ii) request from the Authority a View on whether any proposed cost apportionment and User Pays Charges are appropriate and following receipt of such View circulate it to the next meeting of the Modification Panel.
 - (d) at any time before the Modification proceeds to the Consultation Phase in accordance with paragraph 7.3 the Transporters shall:
 - (i) in accordance with a period determined by the Modification Panel, provide text.
- 7.2.4 Where the Modification Panel discusses a Modification together with a Workgroup report, the Modification Panel may:
- (a) make a determination in accordance with paragraph 7.2.3(a); or
 - (b) determine that:
 - (i) the Modification should be referred back to a Workgroup for further discussion and consideration in accordance with paragraph 7.4; or
 - (ii) any further discussion of the Modification 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 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 assessment concludes that such analysis and estimate is satisfactory, make a determination in accordance with paragraph 7.2.3(a)(iv).
- 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 is withdrawn pursuant to paragraph 6.5.1(a) or varied pursuant to paragraph 6.5.1(b).
- 7.3 **Modification to proceed to Consultation**
- 7.3.1 If the Modification Panel determines pursuant to paragraph 7.2.3(a)(iv) or 1.1.1, that a Modification should proceed to the Consultation Phase;
- (a) the Modification Panel shall:

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- (i) inform the Code Administrator if it determines that the time periods set out in paragraph 9 for the Consultation Phase should, in its opinion, be deviated from in relation to the relevant Modification;
- (ii) 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 the Code Administrator shall include within the Draft Modification Report:
 - (1) the text;
 - (2) the most accurate cost estimate, covering development, implementation and operating costs, which is available at such time; and
 - (3) any associated indicative User Pays Charge;
- (iii) where the Transporters fail to comply with paragraph (ii) 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 text or most recent cost estimate to be prepared;
 - (3) a date by which the text or cost estimate will be provided, having regard to the explanation provided.

7.4 Determination

If the Modification Panel does not, at the meeting, make a determination pursuant to paragraph 7.2.3(a), 1.1.1(a), 7.2.4(a), 7.2.4(b) or 1.1.1, the Code Administrator may refer the Modification to a new or relevant Workgroup.

7.5 Assessment process

7.5.1 If the Modification Panel determines pursuant to paragraph 7.2.3(a)(iii), that the Modification should proceed to the Assessment Phase the Code Administrator shall:

- (a) within ten (10) Business Days of such determination finalise the Terms of Reference and place the Modification on the agenda of an existing Workgroup or constitute a new Workgroup in accordance with paragraph 8.

7.6 Non-Code Parties

7.6.1 The Code Administrator shall, in accordance with the Transporter's Licence and for the purpose referred in Standard Special Condition A11(9)(d) and (f):

- (a) make available copies of any Modification and any Modification

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Report prepared in respect of such Modification to; and

(b) invite representations in respect thereof from, other persons.

8 MODIFICATION PROCEDURES – ASSESSMENT PHASE

8.1 Composition of Workgroups

8.1.1 All Workgroups shall (subject to paragraph 8.1.2) be open to all parties to attend and contribute. To be quadrate, any meeting should include not less than two (2) representatives of Users and not less than two (2) representatives of the Transporters. ▾

8.1.2 The Modification Panel may at the meeting referred to at paragraph 7.2 determine or approve the composition of the Workgroup; or

8.1.3 Failing any determination by the Panel in respect of the Workgroup the Code Administrator shall proceed to finalise the composition and shall constitute the Workgroup within ten (10) Business Days of the meeting referred to in paragraph 7.2.

8.2 Proceedings of Workgroups

8.2.1 The Code Administrator, Users and Transporter shall ensure all requirements for Workgroups as set out in the Code of Practice are met. ▾

8.3 Workgroup Report

8.3.1 Subject to paragraph 1.1.1, the Code Administrator shall, together with the Workgroup, prepare a Workgroup Report in accordance with the Code of Practice.

8.3.2 If two (2) or more Modifications shall have been considered together by the Workgroup and no determination shall have been made pursuant to paragraph 1.1.1, the Workgroup Report shall report on each Modification. ▾

8.4 Circulation of Workgroup Reports

Each Workgroup Report shall (subject to paragraphs 5.4.1 and 5.4.2) be made available to all Members as soon as reasonably practicable but in any event not less than five (5) 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 attendee of 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 by the Workgroup, the Modification Panel may determine:

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- (i) to refer the Workgroup Report back to the Workgroup for revision or further work;
- (ii) to continue to consider or to consider further the Workgroup Report at a subsequent meeting of the Modification Panel; or
- (iii) that the Modification shall proceed to the Consultation Phase in accordance with paragraph 7.3.

9 MODIFICATION PROCEDURES - CONSULTATION PHASE

9.1 Consultation - draft Modification Report

9.1.1 The Code Administrator shall prepare a draft Modification Report in accordance with paragraph 9.4 and shall provide such report to the Secretary:

- (a) Within fifteen (15) Business Days; or
- (b) Within three (3) Business Days, where the Modification Panel has determined that text is not required; or
- (c) Within such other time period as the Modification Panel shall determine;

following the determination of the Modification Panel that the Modification shall proceed to the Consultation Phase under paragraph 7.3.

9.1.2 Where the Modification Panel has not determined that text is not 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 make it available 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.

9.1.3 Where the Modification has been referred to the Modification Panel in accordance with paragraph 9.6.3 it may make a determination pursuant to paragraph 7.2.3(a)(i) or (ii), or 7.2.3(b)(i), or notwithstanding paragraph 7.3.1(a) determine that text is not required with the draft Modification Report.

9.1.4 Where the Modification Panel has determined that 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 Business Day of such determination;

the Secretary shall make available 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 Transporters within fifteen (15) Business Days following the date of that invitation.

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Impact on UK Link System -
If the Modification Proposal or Third Party Modification Proposal has been identified as having an impact on the UK Link System, the Transporters shall request the Transporter Agency in accordance with paragraph 9.2.2 to:
- conduct an initial assessment of the potential impact of the Modification Proposal or Third Party Modification Proposal on the UK Link System; and
- prepare an initial report of its findings and to send a copy of that report to the Transporters.
-
The initial impact assessment report pursuant to paragraph 9.2.1 shall set out an overview of the implications (... [51])

9.2 Consultation - final Modification Report

9.2.1 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 make available a copy of that final Modification Report to:
 - (i) each Third Party Participant, each Transporter, each User and each Non-Code Party; and
 - (ii) each Member,
 and shall make available all representations (if any) so received (and not so withdrawn); and
- (c) the Code Administrator shall request the Secretary to add the Modification as an Agenda item for the Modification Panel to discuss;
- (d) Where the Code Administrator consider that any representation made pursuant to paragraph 9.4.1 (i) or 9.4.1(j) identifies issues that may arise through implementation of the Modification which have not been identified in other responses to the same Modification 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.

9.2.2 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 3 Business Days following receipt of such report the Secretary shall make available a copy of the 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 make available 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 as an Agenda item for the Modification Panel to discuss.

9.2.3 Upon receipt of the final Modification Report under paragraph 9.3.1 or 9.3.2 the Modification Panel shall:

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- (a) Having regard only to the Relevant Objectives, determine whether or not to recommend the implementation of the Modification; and
- (b) instruct the Secretary to record its recommendation in the final Modification Report, setting out its determination under paragraph 9.3.3(a) and the detailed factors which (in its opinion) justify its determination with respect to the Relevant Objectives.
- 9.2.4 If the Modification is not subject to self governance, the Code Administrator shall, within one (1) Business Day of receipt from the Secretary of the final Modification Report:
- (a) make available to the Authority and each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) a copy of the final Modification Report and any other attachments; and
- (b) seek a determination of the Authority as to whether the Modification should be implemented or not.
- 9.2.5 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 make available 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 make available to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) an implementation notice.
- 9.2.6 Where a Modification is subject to Self Governance
- (a) if the Modification Panel did not recommend implementation, the Authority shall be deemed to have issued a determination not to implement the proposed Modification and the Secretary shall make available 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 Modification Panel did recommend implementation, the Authority shall be deemed to have issued a determination to implement the Modification, and the Secretary shall make available to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) an implementation notice.
- 9.2.7 Where the Modification Panel has recommended that a Self Governance Modification should be implemented, any party may appeal to the Authority which shall then determine whether or not the Modification should be implemented. If the Code Administrator is not made aware of a notice of appeal being made within five (5) Business Days of the implementation notice being issued, the Modification shall be implemented. If notice of an appeal is received, implementation shall be delayed until a direction is

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- received from the Authority as to whether or not the Modification should be implemented.
- 9.2.8 Where the Panel has recommended that a Self Governance Modification should not be implemented, any party may appeal to the Authority which shall then determine whether or not the Modification should be implemented.
- 9.2.9 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 were that Modification to be implemented; or
 - (b) representations made (and not withdrawn) pursuant to these Rules in relation to a Modification have been properly considered by the Code Administrator.
- shall be determined by the Authority.
- 9.2.10 Where the Modification is a User Pays Modification, Ofgem 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 Form of Modification Report**
- 9.3.1 Modification Reports shall be in the format prescribed in the Code of practice.
- 9.3.2 Where two or more Modifications have proceeded through the Modification Procedures together (and neither Modification has been withdrawn and all work has not been discontinued pursuant to paragraph 1.1.1 in respect of either Modification) 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 Modifications would in the opinion of the Modification Panel better facilitate the achievement of the Relevant Objectives. Where two or more Modifications were proceeding through the Modification Procedures together and the Modification Panel shall, pursuant to paragraph 1.1.1, have determined that any Modification should not proceed, the Modification Report shall provide a commentary as to the circumstances in which the Modification Panel so determined (not applicable to Third Party Modifications).
- 9.3.3 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.
- 9.3.4 In preparing any Modification Report, the Code Administrator shall:
- (a) do so on the basis set out in these Rules and the Code of Practice; 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.
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9.4 Further Consultation

9.4.1 If, in respect of a Modification, 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 Modifications), or four (4) calendar months (in the case of non-Urgent Modifications) 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, [is this sufficient for the proposed Ofgem send back powers?]

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

9.4.2 Having considered the circumstances relating to the Modification, 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 final Modification Report be amended to reflect the new circumstances and be resubmitted to the Authority;
- (c) the Modification be referred to a Workgroup [and make the same determinations as for a new Modification, such that the Assessment Phase is restarted]; or
- (d) the Code Administrator should within five (5) days of the date of the meeting prepare and make available 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
- (e) the Secretary should place the Modification on the Agenda for further consideration at a future meeting of the Modification Panel as determined by the Modification Panel.

9.4.3 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 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.

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

9.4.5 Any Report submitted to the Authority under paragraph 9.5.4 shall be

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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.

9.5 Text of Modification

9.5.1 The text of each Modification shall be prepared as follows:

- (a) in relation to a User Modification or a Third Party Modification, the Transporters shall prepare the text of the Modification:
 - (i) where not directed otherwise by the Modification Panel, for inclusion in the draft Modification Report prepared pursuant to paragraph 9.1.1; or
 - (ii) if requested or directed to do so by the Authority;
- (b) in relation to a Transporter Modification the Transporter who is the Proposer shall prepare the text of the Modification:
 - (i) where not directed otherwise by the Modification Panel, for inclusion in the draft Modification Report prepared under paragraph 9.1.1; or
 - (ii) if requested or directed to do so by the Authority.

9.5.2 Subject to paragraph 10, the Suggested Text of each Modification shall be considered by the relevant Workgroup to which such Modification has been referred in accordance with these Rules. If the Suggested Text 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 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 upon that text.

9.5.3 If it is considered that the Modification is not sufficiently clear or complete to enable the preparation of text, a written report setting out the reasons for this will be prepared by the Transporters (in the case of a User Modification or Third Party Modification) and by the Transporter who is the Proposer (in the case of a Transporter Modification) and the Transporters or such Transporter shall refer the Modification to the next Modification Panel for determination pursuant to paragraph 9.1.3.

9.5.4 Where the Modification is a User Pays Modification, the request or direction pursuant to paragraph 9.5.1(a)(ii) or (b)(ii) will be deemed to be a request for text in respect of a proposed amendment to the Agency Charging Statement and such text will be prepared at the same time as the text prepared pursuant to paragraph 9.5.1(a)(ii) or (b)(ii).

9.6 Modification

9.6.1 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 or deemed to have been made by the Authority.

9.6.2 The Code Administrator shall, as soon as reasonably practicable, make

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available to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) notice of each Modification. Each such notice shall specify the 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 made such notice available to 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 Authority, make available to all Users, all Transporters, Members, each Third Party Participant and Non-Code Parties (if any) notice 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.

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10 URGENT MODIFICATIONS

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10.1 Procedure

10.1.1 If a Modification has been considered or identified pursuant to paragraph 6.1.3(b) as one which should be treated as an Urgent Modification the Secretary shall as soon as possible make available a copy of the Modification to the Authority and the Code Administrator shall seek the views of the Modification Panel which shall recommend the procedure and timetable to be followed in respect of each Urgent Modification. The Code Administrator shall inform the Authority of the Panel recommendation so made.

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

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

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

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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

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the matters referred to in paragraph 9.3.1, detail:

- (a) the reasons why it is an Urgent Modification; 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 the 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 make available a copy of each such report to each Transporter, each User, each Member and each Non-Code Party (if any).

10.3 Modification

10.3.1 The Code Administrator shall modify the Uniform Network Code and the Relevant Transporter shall modify an Individual Network Code in accordance with each direction made and consent given by the Authority.

10.3.2 The Code Administrator shall as soon as possible make available to each Transporter, each User, each Non-Code Party (if any) and each Member notice of the urgent Modification. Each such notice shall specify the text of the Modification and the date upon which the Modification is to become effective.

10.4 Report on Modification

Where an urgent Modification is implemented, the Code Administrator 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 Modification to the relevant Workgroup together with the Terms of Reference to be applicable.

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11 GENERAL

11.1 Notices

11.1.1 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.

11.2 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 to the Authority) non-receipt of any

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document or notice or other communication by, any person shall be capable of invalidating any act or thing done pursuant to these Rules.

11.3 Representations

11.3.1 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, 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 11.1.

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11.3.2 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.

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11.3.3 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 Administrators' 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.

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11.3.4 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.

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11.4 Variation of Modification

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

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(a) Transporter(s) or User(s) adopting the Modification (where that Modification made is in respect of the Uniform Network Code); or

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(b) Relevant Transporter or Relevant Shipper adopting the Modification (where that Modification made is in respect of an Individual Network Code),

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shall (as the case may be) as it considers appropriate modify that adopted Modification 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.

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11.5 Time periods

Notwithstanding any time periods specified in these Rules, in respect of any Modification 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 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, the

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Code of Practice 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.

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11.6 Consequences of the Rules and Confidentiality

11.6.1 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.

11.6.2 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.

11.6.3 Without prejudice to the generality of paragraph 11.6.2, 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.

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11.6.4 Without prejudice to the generality of paragraph 11.6.2, no act or thing done or omitted to be done by a Transporter, the Transporters, the Code Administrator or any User (or any employee, director or agent of a Transporter, the Transporters, 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 Transporters (or any such employee, director or agent of a Transporter, the Transporters), the Code Administrator or by any other User, Non-Code Party or a Transporter, the Transporters, or the Code Administrator against such User (or any such employee, director or agent of such User).

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11.6.5 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 or Transporter 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.

11.6.6 Nothing in these Rules shall oblige or impose any duty (whether expressly or impliedly) on any User or Transporter to provide or make available any information.

11.6.7 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.

11.7 Disapplication of these Rules

In respect of any Modification, if the Code Administrator considers that it would be appropriate to misapply any of these Rules the Secretary shall make available to each Member, each Transporter and each User, each Third Party Participant and each Non-Code Party (if any) a notice specifying which paragraphs of these Rules the Code Administrator considers it would be appropriate to disapply and explaining why and invite Transporters, 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 make available to each Member and the Authority copies of all representations (if any) so received. 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 11.7) 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 disappplied.

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11.8 View

11.8.1 The Transporters may decide to seek a View from the Authority:

- (a) on any matter arising (under these Rules or otherwise) from a Modification at any stage prior to the date on which the Transporters finalises the Modification Report; and
- (b) in respect of the proposed funding arrangements for a User Pays Modification, at any stage prior to a determination under paragraph 7.2.3(a)(iv).

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11.8.2 If the Transporters decides to seek a View pursuant to paragraph 11.8.1, the Secretary shall:

- (a) forward an application to the Authority setting out the Transporters' own 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 by any Workgroup; and
- (c) make available to Transporters, Users and Non-Code Parties (if any) notice of such decision to seek a View.

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11.8.3 If, in respect of a View sought pursuant to this paragraph 11.8, the Authority expresses the View that the Modification should not proceed, the Modification shall lapse and the Code Administrator shall within the five (5) Business Days following receipt of the View prepare and make available notification of such lapse.

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11.8.4 If, in respect of a View sought pursuant to this paragraph 11.8, the Authority shall not express any View as to how the Modification should proceed or expresses the View that the Modification should proceed to the Assessment Phase, the Modification shall proceed to the Assessment Phase.

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11.8.5 If the Authority expresses any other view, the Modification shall proceed in accordance with such view.

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11.9 Terms of reference

11.9.1 The Terms of Reference for each Workgroup shall:

- (a) detail the Modification;
 - (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 paragraph 1.1.1, 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 Transporters to engage or remunerate any person so consulted;
- (d) set a timetable, which may only be amended if the Authority so approve, in accordance with which the work of the Workgroup is to be done and its report prepared; and
- (e) specify when the Workgroup is to comment upon the text of the Modification, provided to the Workgroup pursuant to paragraph 9.5.

11.9.2 Unless the Modification Panel shall otherwise determine, the timetable referred to in paragraph 11.9.1(d) shall not exceed a period of six (6) months.

11.9.3 The Modification Panel may, from time to time, determine:

- (a) to change the Terms of Reference of any Workgroup;
- (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).

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