

# 0479S 0479SA:

## Inclusion of email as a valid UNC communication

At what stage is this document in the process?

01 Modification

02 Workgroup Report

03 Draft Modification Report

04 Final Modification Report

These Modification Proposals would allow email as a valid form of UNC communication in specific circumstances.



The Workgroup recommends that these self-governance modifications should be issued to consultation.



High Impact: [\[Should this be High\]](#)



Medium Impact:



Low Impact:  
DNOs, Users

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## About this document:

This report will be presented to the Panel on **[18 September 2014]**.

The Panel will consider whether the modification should proceed to consultation or be returned to the workgroup for further assessment.



Any questions?

Contact:

**Code Administrator**



[enquiries@gasgovernance.co.uk](mailto:enquiries@gasgovernance.co.uk)



0121 288 2107

Proposer:

**Alex Ross-Shaw**



[aross@northerngas.co.uk](mailto:aross@northerngas.co.uk)



0113 397 5326

Transporter:

**Northern Gas Networks**



[aross@northerngas.co.uk](mailto:aross@northerngas.co.uk)



0113 397 5326

Systems Provider:

**Xoserve**



[commercial.enquiries@xoserve.com](mailto:commercial.enquiries@xoserve.com)

Additional contacts:

**Joanna Ferguson**



[jferguson@northerngas.co.uk](mailto:jferguson@northerngas.co.uk)



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# 1 Summary

## Is this a Self-Governance Modification?

The Modification Panel determined that the criteria for Self-Governance are met, as these modifications are not expected to have a material impact on competition, consumers, the operation of gas networks or the Modification Rules.

## Why Change?

At the time of the implementation of the original Network Code in 1995, fax was a more common form of business communication while email was in its infancy. Since then email has superseded fax as a more efficient and common form of business communication but remains disallowed as an official form of UNC communication in most circumstances, despite all relevant parties using it across other aspects of their business.

A number of modification both in the Gas and Electricity markets have allowed limited use of email communications in specific circumstances, specifically UNC Modification Proposal 033, 'Notification to Users of Emergency Incidents – Impacts on Code Communications' and Balancing and Settlement Code Modification Proposals P113, 'Email Communication under the Code' and P159, 'Extending the Scope of E-mail Communications under the Code'.

Since these proposals there has been little expansion of the use of email as an allowable code communication in the Gas Industry despite its widespread use in daily communication both with internal and external parties.

Given the prevalence of email communication today there is no reason why such communications should not be allowed via email in suitable circumstances. It is time to update the industry arrangements to reflect the technology changes and put in place mechanisms to update agreed communication channels between parties.

## Solution

Both modifications propose to amend the UNC to allow e-mail as a valid communication notice alongside post and facsimile. Additional minor changes to the UNC regarding contact details have been identified and amended to include e-mail and these have been included in the legal text. Changes to UK Link and Contingency arrangements are not within the scope. However, [Modification 0479SA proposes that email only be allowed where there is prior election/agreement by both parties to email communication for specific communication and that business rules are included to ensure that appropriate assurance is in place to be satisfied that communication between parties has been successfully achieved.](#)

## Relevant Objectives

Modification 0479S proposes that this modification would further Special Condition A11.1 (f), the promotion of efficiency in the implementation and administration of the Code as it implements existing best practise regarding the inclusion of email as a communication format across the industry.

## Implementation

As self-governance procedures are proposed, implementation could be 16 business days after a Modification Panel decision to implement. As the modification is not likely to be implemented until mid-October, this will allow the UK Link Committee to meet and update the UK Link manual in preparation for the implementation of this modification.

[Appendix 5B of the UK Link manual needs to be reviewed and updated to reflect the new communication options available, and Xoserve will need to hold User specific information on agreed communication options for each of the items within the UK Link Appendix. Implementation timeframes will be dependent up a system assessment once the business rules have been agreed by the workgroup.](#)

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## Do these modifications affect the Nexus delivery, if so, how?

No

## 2 Why Change?

Email has superseded fax as a more efficient and common form of business communication but remains disallowed as an official form of UNC communication, despite all relevant parties using it across other aspects of their business.

There can also be issues concerning the reliability of faxes and a follow up phone call to confirm receipt is often required. Emails avoid this scenario with reliable notification systems and a 'bounce back' system if the email fails to send correctly. Emails are also quicker to receive, create and send. Cost effective storage systems exist to efficiently archive emails for quick recovery, which many businesses have in place already, while faxes have to be stored manually at extra cost both in terms of storage space and the time taken to manually recover any necessary documents.

UNC Modification Proposal 033, 'Notification to Users of Emergency Incidents – Impacts on Code Communications', extended allowable forms of communication to include internet and email to aid Transporters in complying with the provisions detailed within the Shipper Incident Communication Procedure (SICP) and was implemented in 2005.

Arguments in favour of allowing internet and email communication included 'improved operational efficiencies', 'real-time updates to Users' and 'improved quality of information'. These arguments could apply to other scenarios where email communication may be of benefit.

Ofgem's decision letter stated their support for 'the use of internet and email facilities where they bring efficient gains'. They also stated their expectation that appropriate levels of security would be put in place regarding internet and email security and it is expected for this to apply wherever email communications were allowed as a result of this proposal being implemented.

In the Electricity Market, Modification Proposal P113, 'Email Communication under the Code'<sup>1</sup> allowed general communication given by the Balancing and Settlement Code Committee (BSCCo) to all parties simultaneously to be sent by email.

Ofgem's decision letter stated that where it is used for general notices, email had 'demonstrated itself to be as reliable as postal or facsimile distribution methods, while delivering significant gains in administrative efficiency' and the proposal was implemented in 2003.

In 2004 a further e-mail Modification Proposal was raised, P159, 'Extending the Scope of E-mail Communications under the Code'<sup>2</sup>. This extended the use of email to all code communications except where explicitly stated and introduced further deeming rules on the sending and receiving of emails.

Ofgem's decision letter supported the use of deemed receipt, referring to the existing deemed receipt rules for communication sent by first class post. It also stated that implementation of the proposal would permit 'the use of an efficient and cost-effective method of communication'.

In recent times, several situations that have arisen where the use of email as an allowable code communication would have resulted in better processes.

At the 6 October 2011 Transmission Workgroup, Force Majeure and payment of Exit Charges was discussed as a Workgroup Issue. The use of fax as a code communication was questioned due to its reliability and the potential use of email was raised as an alternative.

A number of sections of the UNC have been identified that could be improved by the inclusion of email as an allowable form of communication, specifically UNC TPD S3.4.5 and V3.4.7. These are detailed further below.

Where formal communication grants rights or imposes obligations on parties, the deemed sending/receipt for email communication is not sufficient to bind the parties contractually and it is important that the network code reflects the necessary safeguards needed to

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<sup>1</sup> <http://www.elexon.co.uk/mod-proposal/p113-email-communications-under-the-code/> 21 August 2014

<sup>2</sup> <http://www.elexon.co.uk/mod-proposal/p159-extending-the-scope-of-e-mail-communications-under-the-code/>

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ensure that there is the “meeting of minds” in the evolution of that contractual relationship between the parties.

The rules need to reflect the ability of the parties to communicate and recognise that there are some technical challenges that interrupt the instantaneous communication that emails offer, for example some email systems are set up such that they automatically return emails if they detect what they believe to be a virus/Trojan horse/spyware.

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### 3 Solution

Both modifications propose to allow the use of email as a valid form of UNC communications in particular scenarios and to put in place arrangements to govern to use of such email. Modification 0479S allows email in such circumstances where the UK Link Committee and UNCC agree to the method. However, Modification 0479SA has rules which only allow email to be used where both parties agree and where this does not impact a parties commercial/contractual position.

#### **Modification 0479S**

It is proposed to amend General Terms B of the UNC to allow e-mail as a valid communication notice alongside post and facsimile. This includes amending 5.1.1 (c) to allow e-mail to be defined in paragraph 5.2, a 'deeming' rule to determine when an e-mail is deemed received and the mirroring of UNC General Terms B5.2.6 (a), which refers to notices sent by facsimile being re-sent upon request by the recipient Party, for e-mail.

We have also included a stipulation in UNC TPD U1.2 that the UK Link Committee must notify the UNC Committee when an entry to the UK Link Manual is inserted or the allowed communication method is amended.

As a consequence the Terms of Reference for the UK Link Committee (UKLC) will require updating and we have included a proposed amended version in the Appendix for reference. This will be sent to the UNC Committee for discussion if this Modification Proposal is implemented.

Additional minor changes to the UNC regarding contact details have been identified and amended to include e-mail, including the addition of an e-mail address as part of the requested contact details in UNC TPD S3.4, V2.1 and V3.4. These have been included in the legal text.

Included in the Appendix for discussion and context are proposed changes to the allowed communications of entries in the UK Link Manual Appendix 5B to take to the UKLC for discussion and implementation.

For clarification, changes to communications made by UK Link and for Contingency arrangements are not within the scope of this proposal. Changes to the UK Link Manual are made by the UKLC are not within the scope of this Modification Proposal and the proposed changes in the Appendix are included for clarity and to aid discussion.

For information, the UNC defines a 'Conventional' notice as the communications defined under UNC General Terms B5.2. The legal text outlines changes to this section to include e-mail as a valid code communication. To avoid a situation whereby upon implementation all notices listed in the UK Link Manual as 'Conventional' allow e-mail, the UK Link Committee will prepare the UK Link Manual for implementation of this proposal.

In the UK Link Manual, wherever the 'Means' column in Appendix 5b of the UK Link manual states 'C' for Conventional notice, the 'Form' column should list the specific type of Conventional notice to be allowed. This allows the UKLC greater granularity in determining appropriate communications for notices, even within the Conventional definition. For instance, you could have a Conventional notice that the 'Form' column allows as Delivery/Post or a Conventional notice that the 'Form' column allows as Post/Fax. Once this is done and this Modification Proposal is implemented, it will allow the UKLC to add 'E' for e-mail to the 'Form' column of any notice they consider suitable for e-mail.

As an example, V2.1.2 (a), 'Submit application to become a User', is currently listed as a 'Conventional' notice in the 'Means' column in the UK Link manual (cf Appendix 2). If the Modification is approved, the UKLC should update the 'Form' column to specific what type of conventional notice is allowed, e.g. 'D/P/F' for Delivery/Post/Fax. When the Modification Proposal is implemented the UK Link Committee can then meet and include 'E' for e-mail if they believe that it would be an appropriate communication for e-mail.

This approach will allow the UK Link Committee to judge each notice on its merits when deciding whether e-mail should be an allowable communication for that notice and provide for further discussion in that committee.

For information, we will also propose the UK Link Committee considers publishing Appendix 5b separate from the rest of the UK Link Manual to make it easier to maintain and update.

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## Modification 0479SA

In light of Ofgem's comments in their former decision documents, we propose therefore to amend General Terms B of the UNC to allow e-mail as a valid communication notice alongside post and facsimile and that appropriate business rules are developed that address:

- What can be communicated by email and how that is agreed
- How consent to receive and send email communication is established and maintained
- Determining whether communication has been achieved and setting out obligations to manage "Non-delivery" notices
- How UK Link manages changes to Appendix 5B

## Draft Business Rules

### Agree what may be communicated by email

1. One Party to have the right to propose the use of email for specific purposes. Email will only be applicable if the other party agrees to the proposal.
2. Email will apply to notices which are informative and not time critical
3. Transporters to request confirmation of valid relevant email addresses from Registered Users on implementation and in future as new Users accede to the code
4. Transporters to create and update a register of Registered Users email preferences and valid email addresses.

### Maintain communication options data

1. Gas Transporters to request confirmation at least annually for communication preferences and relevant addresses, fax numbers or email addresses for each category/type of code communication from all Registered Users
2. Registered Users to provide 20 days' notice of any changes of email address to the Gas Transporters which will be updated by the Transporter within 5 business days of receipt.
3. Transporters to provide 20 days' notice of any changes of email address to the Registered Users which will then be updated by the User within 5 business days of receipt.

### Has Communication Happened?

1. An e-mail must "reach" the addressee. This means it must have been delivered and accepted on to the addressee's server. For the avoidance of doubt, this does not require the addressee to have retrieved or read the communication – unless that express requirement is agreed in advance by both parties; it does mean the sender must have used the valid email address as provided by the Registered User for that communication type. (It is within the addressee's "sphere of influence" to provide for adequate means to ensure that their internal communication functions satisfactorily).
2. The email communication shall be deemed to have been received one hour after being sent in the absence of any non-delivery return receipt received by the sender during that period.
3. Any non-delivery notification received by the Sender must be acted upon by the Sender within 1 hour. For the avoidance of doubt, non-delivery notifications will invalidate the deemed communication. If the communication attempts to confer rights or obligations, the Sender will contact the Registered User to resolve the non-delivery before resending.
4. If the time at which any notice or communication sent by e-mail is deemed to have been received falls after 1700 hours on a day, the notice or communication shall be deemed to have been received at the start of the next Business Day.
5. Where a notice is sent by e-mail, the Party giving the notice shall if requested by the recipient Party, resend as soon as reasonably practicable the notice by e-mail.
6. In the event of non-delivery notification being unresolved, deemed receipt (and any consequential actions) will only result from the 'official' post or fax versions of the communications. Since these exceptions should represent 'one-off' or rare communications, any inefficiency in continuing to issue these by post or fax will be minimal.

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7. All of the message content subject to emails shall be in pdf or equivalent form In order to ensure that the content is fully legible to the recipient.

#### UK Link Communication Appendix 5B Impacts

1. UK Link Appendix 5B is to be brought up to date by the UK Link Committee to reflect current code communication channels within three months of the implementation of this modification.
2. The UK Link Committee is required to publish Appendix 5B separately from the rest of the UK Link Manual to make it easier to maintain and update.
3. The UK Link Committee must notify the UNC Committee when any proposed changes are raised, either to insert a new entry or change an existing allowed communication method in to Appendix 5B.
4. The Terms of Reference for the UK Link Committee (UKLC) will require updating to reflect this changed requirement.

User Pays
Classification of the modification as User Pays, or not, and the justification for such classification.
There are no anticipated costs to the implementation or operation of this proposal. No User Pays service would be created or amended by implementation of this modification and it is not, therefore, classified as a User Pays Modification.
Identification of Users of the service, the proposed split of the recovery between Gas Transporters and Users for User Pays costs and the justification for such view.
N/A
Proposed charge(s) for application of User Pays charges to Shippers.
N/A
Proposed charge for inclusion in the Agency Charging Statement (ACS) – to be completed upon receipt of a cost estimate from Xoserve.
N/A



## 4 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	None
d) Securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	None
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	Positive/Impacted
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	None

### Impacts to Relevant Objectives

Some participants consider implementation of this Modification Proposal would further Special Condition A11.1 (f), the promotion of efficiency in the implementation and administration of the Code as it implements existing best practise regarding email use across the industry.

Others were concerned that this modification would be detrimental to the administration of Code as it may introduce inconsistencies in communication methods between parties, as some may adopt email and other not. There were also concerns raised that the deemed receipt of email communications could be considered detrimental to good governance as it may impact a parties contractual position without their knowledge that the communication has not been received.

## 5 Implementation

There are no anticipated costs to the implementation of this Modification.

As self-governance procedures are proposed, implementation could be 16 business days after a Modification Panel decision to implement. As the proposal will not be implemented until mid-October at the earliest, this will allow the UK Link Committee to meet and update the UK Link manual in preparation for the implementation.

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## 6 Legal Text

### Text

The following text was provided by Northern Gas Networks at the request of the Modification Panel. The Workgroup raised no issues regarding its content.

#### Modification 0479S

#### GENERAL TERMS

#### SECTION B – GENERAL

### 5 NOTICES AND COMMUNICATIONS

#### 5.1 General

5.1.1 The Code contemplates that Code Communications and Offtake Communications (collectively "Communications") may be given by the following means:

- (a) (in the case of Code Communications) by UK Link Communication, in accordance with TPD Section U;
- (b) (in the case of Offtake Communications) by the relevant means specified in the Offtake Communications Document;
- (c) by delivery or by post or facsimile or (in certain cases) by telephone in accordance with in the circumstances and manner proscribed in paragraphs 5.2 and 5.3;
- (d) for the purposes of TPD Section V5.14.3 only, by such methods as set out in the Shipper Incident Communication Procedure; or
- (e) for the purposes of TPD Section G5.1.12 only, by such methods as set out therein.

#### 5.2 Notices by delivery, post, e-mail or facsimile

5.2.1 References in this paragraph 5.2 to "a notice" are to any Communication or other notice or communication to be given by one Party to another under the Code, a Framework Agreement or an Ancillary Agreement or a Supplemental Agreement, other than one which is given as a UK Link Communication or by telephone or (as the case may be) by other means provided for in the Offtake Communications Document.

5.2.2 Any notice shall be in writing and shall be addressed to the recipient Party at the recipient Party's address, ~~or~~ facsimile number or e-mail address referred to in paragraph 5.2.3, and marked for the attention of the representative (identified by name or title) referred to in that paragraph, or to such other address, facsimile number or e-mail address and/or marked for the attention of such other representative as the recipient Party may from time to time specify by notice given in accordance with this paragraph 5.2 to the Party giving the notice.

5.2.3 The initial address, ~~or~~ facsimile number, or e-mail address of a Party and representative for whose attention notices are to be marked, shall be as specified by a User pursuant to TPD Section V2.1.2(a)(iii) or by the Transporter pursuant to TPD Section V2.2.2(a)(i).

5.2.4 Any notice given by delivery shall be given by letter delivered by hand, and any notice given by post shall be sent by first class prepaid post (airmail if overseas).

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5.2.5 Any notice shall be deemed to have been received:

- (a) in the case of delivery by hand, when delivered; or
- (b) in the case of first class prepaid post, on the second Day following the Day of posting (or, if sent airmail overseas or from overseas, on the fifth Day following the Day of posting); or
- (c) in the case of facsimile, on acknowledgement by the recipient Party's facsimile receiving equipment; or
- (d) in the case of e-mail, subject to 5.2.8, shall be deemed to have been received one hour after being sent in the absence of any undeliverable return receipt received by the sender during that period.

5.2.6 Where a notice is sent by facsimile:

- (a) the Party giving the notice shall (but without prejudice to paragraph 5.2.5(c)) if requested by the recipient Party, resend as soon as reasonably practicable the notice by facsimile; and
- (b) in the case of a Termination Notice, the Transporter will in any event, within 2 Days following the sending of such facsimile, send to the recipient Party a copy of the notice by first class prepaid post (airmail if overseas).

5.2.7 A Party may specify different addresses or facsimile numbers and representatives pursuant to paragraph 5.2.2 for the purposes of notices of different kinds or relating to different matters.

5.2.8 If the time at which any notice or communication sent by e-mail is deemed to have been received falls after 1700 hours on a day, the notice or communication shall be deemed to have been received at the start of the next Business Day.

5.2.9 Where a notice is sent by e-mail, the Party giving the notice shall (but without prejudice to paragraph 5.2.5(d)) if requested by the recipient Party, resend as soon as reasonably practicable the notice by e-mail.

## TRANSPORTATION PRINCIPAL DOCUMENT

### SECTION S – INVOICING AND PAYMENT

#### 3.4 Invoice and Payment

3.4.5 Where the Invoice Document number is not quoted (in accordance with paragraph 3.4.4) with any remittance made by or on behalf of a User, and no Invoice Remittance Advice corresponding to the remittance is submitted, the Transporter will endeavour to obtain the User's instructions (by telephone ~~or~~, facsimile or e-mail) as to the application thereof; but if it has not (by the Business Day following the Day of the remittance) obtained such instructions, the Transporter will apply the amount remitted to or towards Invoice Amount(s) in order of Invoice Due Date (the earliest first) and proportionately as between Invoice Amounts with the same Invoice Due Date, but applying such amount last to any Invoice Amounts which are subject to an Invoice Query.

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SECTION U – UK LINK

1.2 Code Communications

- 1.2.1 A UK Link Communication given in accordance with this Section U shall be treated as an effective and valid Code Communication, and the Transporter and each User confirms that it intends and agrees that UK Link Communications shall have legal effect for the purposes of the Code.
- 1.2.2 The UK Link Manual specifies in respect of each Code Communication therein listed whether it is to be given as a UK Link Communication, by Conventional Notice, **by e-mail**, by facsimile or by telephone, and in some cases alternative such means by which it may be given; and (subject to paragraph 1.2.4 and GT Section B5.1.2) a Code Communication may only be given by the means so specified or (where alternative such means are specified) by one of such alternative means.
- 1.2.3 Where the Code or the UK Link Manual specifies the form and/or format of UK Link Communication by which a particular Code Communication is required to be given, that Code Communication may be given only in that form and/or that format.
- 1.2.4 In the event of certain failures (referred to in paragraph 6) of UK Link, Code Communications shall be (and are permitted to be) given in accordance with paragraph 6.
- 1.2.5 Where a Code Communication which is required to be given as a UK Link Communication (and is not permitted to be given by another means except pursuant to paragraph 1.2.4) is not given in accordance with the requirements of this Section U and the UK Link Manual, and as a result is not properly received by the intended recipient, it shall be deemed not to have been given and shall be of no effect.
- 1.2.6 The failure of a UK Link User or the Transporter to comply with a requirement that a Code Communication be given as a UK Link Communication, or as to the form or format in which such UK Link Communication is to be given, shall not of itself be a breach of the Code (but without prejudice to paragraph 1.2.5 or to any breach which may result from the failure to give the Code Communication).
- 1.2.7 Where the UK Link Committee considers and revises from time to time the means by which a Code Communication may be given as set out in the UK Link Manual it shall notify the UNC Committee within a reasonable period of those changes.

SECTION V – GENERAL

2.1 Admission Requirements

- 2.1.2 The requirements referred to in paragraph 2.1.1(a) are as follows:
  - (a) the Applicant User shall have applied to the Transporter, in such form as the Transporters may from time to time prescribe, giving the following details:
    - (i) the name of the Applicant User;
    - (ii) the legal nature of the Applicant User, and where the Applicant User is not a company incorporated under the Companies Act 1985 (as amended), such further information concerning the constitution of the Applicant User as the Transporter may reasonably require;
    - (iii) the **postal and e-mail** address and telephone and facsimile numbers of the Applicant User, and the individual for whose

attention notice is to be marked, for the purposes of notice under GT Section B5.2.3 and B5.3.1;

- (iv) where the Applicant User is not a company incorporated under the Companies Act 1985 (as amended), an address for service in accordance with paragraph GT Section B6.6.3;

### 3.4 Surety or Security under Code

3.4.7 Each User shall provide to the Transporter:

- (a) a single telephone number, a single address, a single e-mail address and a single facsimile number by means of which the Transporter may contact a representative of the User for any purpose pursuant to Transportation Charges in connection with Section V3 and/or V4; and
- (b) the name(s) or title(s) of the User's representatives who may be contacted at such numbers and address; and
- (c) such User shall inform the Transporter where there are any amendments to the details provided pursuant to this section V3.4.7.

## 7 Recommendation

The Workgroup invites the Panel to:

- [Consider the self-governances status of this modification as it may have a material impact on a parties contractual position and therefore detrimental to competition; and
- AGREE that these [self-governance] modifications should be issued to consultation

## 8 Appendix 1

**The following documents are published alongside this report and support Modification [0479S?]:**

1. Proposed amended version of the UK Link Committee's Terms of Reference; and
2. Proposed notices within the UK Link Manual to consider for the inclusion of e-mail in the 'Forms' column for future discussion at the UK Link Committee, have been published alongside this modification