

## MODIFICATION 0323 Annex - Suggested Text

### CODE GOVERNANCE REVIEW: SELF GOVERNANCE

#### 1 INTRODUCTION

##### 1.1 Status

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

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- (j) ~~(j)~~—the consideration of any representations relating to such proposals made (and not withdrawn) by a Transporter, a User, the Users or any other person likely to be materially affected were the proposals to be implemented; and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

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

## 1.2 Application

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

## 1.3 Transporters' obligations

Where for the purposes of these Rules the Transporters are required to undertake any obligation, it is acknowledged they may discharge the performance of that obligation through a joint office 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;

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

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

(a) the Appeal has been made within the time specified in these Rules;

(b) the Appealing Party is, or is likely to be, unfairly prejudiced by the implementation or non-implementation of the Self-Governance Modification Proposal;

(c) the Appeal has been made on the grounds that the Appealing Party reasonably believes that:

(i) where the Modification Panel has made the determination to implement the proposal, the proposal does not better facilitate the achievement of at least one of the Relevant Objectives;

(ii) where the Modification Panel has made the determination not to implement the proposal, the proposal does better facilitate the achievement of at least one of the Relevant Objectives;

(d) the Appeal has not been made for reasons that are trivial, frivolous or vexatious; and

(e) the Appeal has a reasonable prospect of success;

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

**"Appealing Party"**: a User, Transporter or Third Party Participant;

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

**"Chairman's Guidelines"**: a set of standing guidelines issued by the Transporters governing the conduct of meetings of the Modification Panel, Workstreams, Development Work Groups and Review Groups, as amended from time to time by Panel Majority.

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

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

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

**"Development Work"**: in respect of each Development Work Group, the work detailed and the matters (if any) specified, pursuant to paragraphs 12.9.1(c) and 12.9.1(d), in the Terms of Reference of that Development Work Group as the same may be changed pursuant to paragraph 12.9.3(a);

**"Development Work Group"**: any Development Work Group constituted pursuant to paragraph 8.1;

**"Development Work Group Report"**: the final report of a Development Work Group prepared pursuant to paragraph 8.6;

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

**"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;

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

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

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

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

**"Modification Proposal"**: means:

- (a) a Modification proposal in respect of the Uniform Network Code; or

(b) a Modification proposal in respect of an Individual Network Code;

**"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 Transporters shall send a copy of a Modification Proposal, a Third Party Modification Proposal or a Modification Report, or from whom the Transporters shall invite representations pursuant to paragraph 7.7;

**"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 and, as the context may require, shall include a deputy chairman;

**"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;

**"Proposer"**: the person who shall have made the relevant Modification Proposal or Third Party Modification Proposal pursuant to paragraph 6.1.1 or 6.1.2 or the relevant Review Proposal pursuant to paragraph 11.2.3 or, as the case may be, paragraph 11.2.4;

**"Relevant Objectives"**: means:

- (a) the relevant objectives in Standard Special Condition A11(1); and
- (b) in relation to a proposed Modification of these Rules, the requirements in Standard Special Conditions A11(9) and (12) (to the extent that they do not conflict with the relevant objectives referred to in (a) above);

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

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

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

**"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;

**"Review Group"**: a group comprised of representatives of Users and Transporters convened by the Transporters for the purpose of the consideration and discussion of any matter in accordance with paragraph 11 (which group shall have no power or authority to bind any User and/or any Transporter);

**"Review Proposal"**: any matter or any Modification Proposal which the Modification Panel determines pursuant to paragraph 11 should be subject to review;

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

"Self-Governance Modification Proposal": a Modification Proposal or Third Party Modification Proposal or an alternative to such a Modification Proposal or Third Party Modification Proposal;

(a) the Modification Panel has determined meets the Self-Governance Criteria and in respect of which the Modification Panel has submitted to the Authority a Self-Governance Statement (which has not been withdrawn by the Modification Panel or rejected by the Authority); or

(b) the Authority has determined is such under paragraph 6.6.5;

"Self-Governance Modification Proposal Variation Request": means a request to vary a Self-Governance Modification Proposal made under paragraph 6.5.7;

"Self-Governance Modification Proposal Determination Date": the date on which the Modification Panel makes a determination whether to implement or not to implement a Self-Governance Modification Proposal;

"Self-Governance Statement": has the meaning given to "self-governance statement" in Standard Special Condition A11(24) of the Transporter's Licence and may include the proposed Self-Governance Modification Proposal Determination Date in respect of the Modification Proposal or Third Party Modification Proposal to which it relates;

**"Suggested Text"**: means indicative legal text, in respect of a Modification Proposal, 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 Development Work Group finalised by the Transporters, pursuant to paragraph 7.2.3(b)(i) or paragraph 7.6;
- (b) a Review Group determined by the Transporters, pursuant to paragraph 11.4; or
- (c) the consideration of a Modification Proposal referred to a Workstream determined by the Transporters pursuant to paragraph 7.4,

(in each case as may be amended pursuant to paragraph 12.9.3);

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

**"Third Party Modification Proposal"**: a proposal to modify 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 Proposal includes "Relevant Transporter";

**"Transporter Proposal"**: any Modification Proposal 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 12.4;

**"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 made pursuant to an Urgent Modification Proposal;

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

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

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

**"User Proposal"**: any Modification Proposal 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 appointed as a Voting Member; and

**"Workstream"**: a group comprised of representatives of Users and Transporters, chaired by a representative of the Transporters and operating within the Chairman's Guidelines, which is convened for the general purposes of consideration and discussion of matters relating to the Uniform Network Code, an Individual Network Code or a Modification Proposal in accordance with paragraph 7.4 in accordance with its Terms of Reference (which group shall have no power or authority to bind any User or any Transporter).

## **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, being a non-voting Member;
- (b) up to five (5) other Transporters' Representatives, being Voting Members;
- (c) if appointed (or, as the case may be, re-appointed), up to five (5) Users' Representatives, being Voting Members;
- (d) if appointed, the Ofgem Representative, being a non-voting Member;
- (e) if appointed, the Terminal Operators' Representative, being a non-voting Member;
- (f) if appointed, up to two (2) Consumers' Representative(s), one being a Voting Member and the other being a non-Voting Member, provided that if only one (1) Consumer Representative is appointed such Consumer Representative shall be a Voting Member;
- (g) if appointed, the Independent Suppliers' Representative, being a non-voting Member; and
- (h) if appointed, the Independent Transporters' Representative, being a non-voting Member.

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

### **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 Transporters 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

Transporters 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.

### **3.6 The Panel Chairman**

The Transporters shall appoint by notice to the Secretary (and as the case may be, remove and reappoint) a one (1) person, from time to time, as the Panel Chairman and one (1) person, from time to time, as the deputy Panel Chairman.

### **3.7 Notice of changes**

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

### **3.8 Consumers' Representatives**

3.8.1 The Consumers' Representative appointed by the National Consumer Council to be a Voting Member shall:

- (a) be an individual who is an employee, representative, officer or contractor of the National Consumer Council and the Modification Panel may ask the Consumers' representative to provide evidence that such is the case (and in the event such is not the case the Consumers' Representative shall not be a Voting Member); and
- (b) notwithstanding appointment as a Voting Member, not have the right to exercise a vote in respect of any decision by the Modification Panel in relation to a Modification Proposal which may be implemented in accordance with the Modification Procedures and if permitted under the Transporter's Licence, without the written consent of the Authority.

## **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 up to two (2) individuals to be appointed (and revoke those appointments) as "**Consumers' Representative(s)**".
- 4.1.4 The Designated Person may, from time to time, by notice to the Secretary, appoint (and revoke that appointment) an individual as the "**Suppliers Representative**".
- 4.1.5 The Association of Independent Gas Transporters may, from time to time by notice to the Secretary, appoint (and revoke that appointment) an individual as the "**Independent Transporters' Representative**".

### **4.2 Retirement**

- 4.2.1 Each Member who is a Users' Representative and each Member who is a Transporters' Representative shall retire at the 1st of October next following the appointment (or, as the case

may be, re-appointment) of that Member. Each retiring Member shall be eligible for re-appointment.

- 4.2.2 Any Member who is, pursuant to paragraph 4.2.1, to retire and who is not to be re-appointed (and consequently in respect of whom no notice shall have been received pursuant to 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 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, 4.1.4, 4.1.5, 4.2.6 or 4.4.2, the appointment to which such notice relates shall take effect in accordance with such notice.

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

- 4.4.1 If any individual (being a Voting Member) shall for whatever reason (other than retirement pursuant to paragraph 4.2.1) notify the Secretary that he wishes to cease to be a Member, he shall cease to be a Member in accordance with the notice (and the Secretary shall send a copy of such notice to the Designated Person and inform, in due course, any other relevant persons determined by the Secretary).

- 4.4.2 Where pursuant to paragraph 4.4.1 or otherwise a vacancy shall arise, in the case of:
- (a) a Transporters' Representative, the Transporters shall, by notice to the Secretary, identify another individual to be appointed as a Transporters' Representative;
  - (b) the Ofgem representative, the Authority may identify another individual to be appointed as the Ofgem representative;
  - (c) the Terminal Operators' Representative, the Terminal Operators may identify another individual to be appointed as the Terminal Operators' Representative;
  - (d) a Users' Representative, the Designated Person may notify the Secretary of the identity of a replacement to be appointed as a Users' Representative;
  - (e) a Consumers' Representative, the National Consumer Council 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 effect an appointment after 30th September in the Gas Year in which the notice is given or (where paragraph 4.4.1 applies) before the relevant retirement pursuant to the notice under that paragraph.

4.4.4 An individual shall cease to be a Users' Representative in accordance with any notice to that effect given by the Designated Person to the Secretary.

#### **4.5 Alternates**

4.5.1 Each Member may, from time to time, by notice to the Secretary appoint (or revoke the appointment of) an individual (including, but without limitation, another Member other than the Panel Chairman) to be such Member's alternate. The appointment (and revocation of the appointment) of any individual as an alternate shall be conditional upon and shall only be effective upon receipt of notice by the Secretary.

4.5.2 A Member who is, by reason of also being an alternate of a Voting Member, entitled to exercise more than one (1) vote shall not be required to exercise all the votes which that Member is entitled to exercise, or to exercise all of the votes which that Member is entitled to exercise in the same way.

4.5.3 In addition to notices sent to Members, each alternate for the time being shall be entitled to be sent notices.

4.5.4 An alternate may attend any meeting of the Modification Panel which is not also attended by the Member (in his capacity as a Member) who appointed him. If that alternate is the alternate of a Voting Member, he may also vote and generally at any such meeting shall have and shall be able to exercise and discharge any and all of the functions, powers and duties of the Member who shall have appointed that alternate. Alternates of Voting Members may sign written resolutions pursuant to paragraph 5.9, provided that if an alternate of a Voting Member and the Voting Member who appointed him shall sign a written resolution the signature of the Voting Member shall be effective and the signature of the alternate shall be disregarded.

4.5.5 If a Member ceases, for whatever reason, to be a Member the appointment of any alternate of the Member shall determine; provided that if any Member retires but is reappointed at 1st

October in any Gas Year, any appointment made by that Member pursuant to paragraph 4.5.1 which is, and continues to be, effective prior to the retirement of that Member shall continue to be effective after that Member's re-appointment as if that Member had not so retired.

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

### **5.1 Purpose**

5.1.1 Meetings of the Modification Panel will provide a forum in which Modification Proposals, Third Party Modification Proposals and Review Proposals can be discussed pursuant to and in accordance with the Modification Procedures and review procedures. Those functions of the Modification Panel expressly provided in these Rules relating to the Modification Procedures and review 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) Workstreams may be created or dissolved by Panel Majority.

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

### **5.2 Frequency of meetings**

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

### **5.3 Notice convening meetings**

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

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

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

### **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 all 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.

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 Chairman's Guidelines.

5.6.3 Members may propose amendments to the Chairman's Guidelines from time to time by notice in writing to the Secretary who shall place such proposed amendments on the Agenda for the next following meeting of the Modification Panel. If such proposed amendments are approved by determination of the Modification Panel, the Secretary shall amend the Chairman's Guidelines as appropriate and circulate to Members, each Transporter and Users the Chairman's Guidelines within ten (10) Business Days of such meeting.

## **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 3.8, 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 vote will take place and shall send copies of any such written resolutions to all non-voting Members, all Users and all Transporters.

## **5.10 Observers and Invitees**

- 5.10.1 Each User and each Transporter shall be entitled to appoint an individual to act as an observer at meetings of the Modification Panel (and any observer so appointed shall not be entitled to participate in the business of the meeting). 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.
- 5.10.2 The Modification Panel may, from time to time, determine to invite any individual to attend all or part of a meeting of the Modification Panel.
- 5.10.3 The Secretary may, at the written request of the Authority, invite any individual to a meeting or meetings of the Modification Panel as an observer. Where such an invitation is made, the Secretary shall give as much notice as reasonably practicable to Members of the Modification Panel of the name of the individual invited, the organisation that the individual represents and the date of the relevant meeting(s). Where the Authority requests the Secretary to invite any individual, the Secretary shall set out in writing to the Authority details of any objections that the Transporters or Users may have to such attendance.
- 5.10.4 Any invitee to a meeting of the Modification Panel pursuant to paragraph 5.10.3 shall be entitled to receive copies of any relevant minutes, Agendas, notices and Modification Proposals due to be discussed at that meeting (but shall not be entitled to participate in the business of the meeting).

## **5.11 Minutes**

- 5.11.1 The Secretary shall:
- (a) ensure that all meetings of the Modification Panel and all determinations of the Modification Panel (at meetings of the Modification Panel) are minuted and, as regards such determinations, that the minutes record the manner in which each Voting Member cast his vote in respect of each matter determined by the Modification Panel); and

- (b) issue a report of determinations of the Modification Panel to each Member, each Transporter and each User within three (3) Business Days of the meeting of the Modification Panel at which such determinations were made.

5.11.2 The Secretary shall, within ten (10) Business Days following the date of the relevant meeting, send each Member, each Transporter and each User:

- (a) a copy of any minutes of that meeting made pursuant to paragraph 5.11.1; and
- (b) notification of any determination made pursuant to paragraph 7.5.

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

## **5.12 Provision of information**

5.12.1 The Modification Panel may, from time to time, determine to provide (subject to paragraph 12.6.7) to any person a document derived from the application of these Rules (including, but without limitation, any minutes made pursuant to paragraph 5.11.1), or considered in accordance with these Rules.

5.12.2 If the Modification Panel shall so determine the Secretary shall ensure that within a reasonable period of time the document which is the subject of such determination shall be sent to such person.

## **5.13 User Pays Guidance Document**

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

# **6 MODIFICATION PROPOSALS AND THIRD PARTY MODIFICATION PROPOSALS**

## **6.1 Relevant persons**

6.1.1 Without prejudice to paragraph 6.4 or paragraph 12.4 a Modification Proposal in respect of the Uniform Network Code may be made from time to time by:

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

and any Third Party Participant may make a Third Party Modification Proposal.

6.1.2 Without prejudice to paragraph 6.4 or paragraph 12.4 a Modification Proposal in respect of an Individual Network Code may be made 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 Proposal ([if paragraph 6.2.1\(m\) does not apply to such proposal](#)), consider that such Modification Proposal should be treated as an Urgent Modification Proposal; or

- (b) the Proposer shall in accordance with paragraph 6.2.1(e) have identified the proposal as one which the Proposer considers should be treated as an Urgent Modification Proposal,

that Modification Proposal shall be subject to paragraph 10.

## **6.2 Form of Modification Proposals**

6.2.1 Each Modification Proposal made pursuant to paragraph 6.1.1 or 6.1.2:

- (a) shall be in writing and shall specify whether it relates to the Uniform Network Code or an Individual Network Code;
- (b) shall set out in reasonable but not excessive detail the nature and purpose of the Modification Proposal;
- (c) shall set out the basis upon which the Proposer considers that it would better facilitate the achievement of the Relevant Objectives;
- (d) shall detail the sections and paragraphs of the Uniform Network Code or the Individual Network Code which are to be amended or otherwise affected by the Modification Proposal;
- (e) shall, if the Proposer considers that the Modification Proposal [\(if paragraph 6.2.1\(m\) does not apply to the Modification Proposal\)](#) should be treated as an Urgent Modification Proposal, identify the Modification Proposal as such and indicate the Proposer's justification for such belief;
- (f) shall, where it is made by a Transporter pursuant to Standard Special Condition A11(14), state that it is so made;
- (g) shall state the name of the Proposer and the Proposer's representative;
- (h) shall, without prejudice to the Modification Panel's right of determination pursuant to paragraph 7.2, [if paragraph 6.2.1\(m\) does not apply to such proposal](#), state the Proposer's preference as to whether the Modification Proposal should:
  - (i) be subject to the review procedures;
  - (ii) proceed to the Development Phase;
  - (iii) proceed to the Consultation Phase; or
  - (iv) be referred to a Workstream in accordance with paragraph 7.4 for discussion;
- (i) may state the Proposer's opinion of the likely impact of the implementation of the Modification Proposal upon Users' computer systems and/or manual processes and procedures;
- (j) may state the Proposer's view of possible implementation timescales for the Modification Proposal; and
- (k) may include the Proposer's Suggested Text, including that prepared for consideration by the Transporters when preparing the text of the Modification pursuant to paragraph 9.6;
- (l) shall state whether or not it is a User Pays Modification Proposal; [and](#)
- (m) [shall state the Proposer's view as to whether it should be a Self-Governance Modification Proposal and the Proposer's reasons for such view.](#)

- 6.2.2 Each Third Party Modification Proposal shall:
- (a) be in writing;
  - (b) clearly identify the data item(s) which it is proposed should be added or removed from those set out in the Uniform Network Code, Annex V1;
  - (c) state the basis upon which the Proposer considers that it would better facilitate the achievement of the Relevant Objectives; and
  - (d) state the name of the Proposer and the Proposer's representative.
- 6.2.3 The Modification Panel may, from time to time, stipulate the form which Modification Proposals and Third Party Modification Proposals should take.
- 6.2.4 Each Modification Proposal and Third Party Modification Proposal shall be given to the Secretary who shall ensure that the information required in 6.2.1 or 6.2.2 (or pursuant to paragraph 6.2.3 as the case may be), has been provided before accepting such Modification Proposal.
- 6.2.5 Where a Modification Proposal or Third Party Modification Proposal does not comply with paragraph 6.2 the Secretary may reject such Modification Proposal.
- 6.2.6 Where in accordance with paragraph 6.2.1(h) the Proposer requests that the Proposal should proceed direct to the Consultation Phase then the Proposer shall ensure that the Proposal contains all the information required by a Development Work Group Report in accordance with paragraph 8.6, except where such information is not relevant to the Proposal or is being provided pursuant to paragraph 6.2.1.
- 6.2.7 A User Pays Modification Proposal shall:
- (a) state the reasons why it should be a User Pays Modification Proposal;
  - (b) contain:
    - (i) an estimate of the Implementation Costs; and
    - (ii) 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; ~~and~~
- (d) \_\_\_\_\_ for the avoidance of doubt, not be a Self-Governance Modification Proposal.

### **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 Proposal or Third Party Modification Proposal is to be discussed initially; at such meeting the Proposer's representative shall give a presentation in respect of the Modification Proposal and endeavour to answer any questions which the Modification Panel may have in respect of the Modification Proposal 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 Proposal or Third Party Modification Proposal 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 Proposal or Third Party Modification Proposal.
- 6.3.3 If the Modification Panel shall not make a determination pursuant to paragraph 6.3.2, the Modification Panel will not discuss the Modification Proposal or Third Party Modification Proposal 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 proposal further.

#### **6.4 Alternative proposals**

- 6.4.1 In respect of any Modification Proposal or Third Party Modification Proposal which is an Urgent Modification Proposal, or which is, pursuant to paragraph 7.2.3, to proceed to the Development 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 Proposal only (where such proposal is made pursuant to paragraph 6.1.1); or
  - (b) in paragraph 6.1.2 (where such proposal is made pursuant to paragraph 6.1.2),
  - (c) may, but shall not be required to, within five (5) Business Days following the date upon which such proposal is to proceed, make an alternative Modification Proposal in accordance with paragraph 6.2. Any Modification Proposal so made may (so as to be subject to paragraph 12.4) be, with any necessary Modifications, the same as the Modification Proposal or Third Party Modification Proposal. The Secretary shall within five (5) Business Days following receipt of each alternative proposal made pursuant to this paragraph 6.4 send a copy of that proposal to each Transporter, each User, each Member and each Non-Code Party (if any). The alternative proposal and the Modification Proposal or Third Party Modification Proposal shall proceed through the Modification Procedures together.
- 6.4.2 In respect of any Modification Proposal or Third Party Modification Proposal which is withdrawn pursuant to paragraph 6.5.1, or deemed withdrawn pursuant to paragraph 6.5.4 or 6.5.6, any of the parties (except for the Proposer):
- (a) in paragraph 6.1.1 including a Third Party Participant in relation to a Third Party Modification Proposal only (where such proposal is made pursuant to paragraph 6.1.1); or
  - (b) in paragraph 6.1.2 (where such proposal is made pursuant to paragraph 6.1.2),
- may, but shall not be required to, either raise an alternative Modification Proposal in accordance with paragraph 6.2) or adopt the withdrawn proposal (in which case the adopted proposal shall continue through the Modification Procedures from the point at which it was withdrawn).

## 6.5 Withdrawal or variation of Modification Proposals

6.5.1 A Proposer may:

- (a) withdraw a Modification Proposal or Third Party Modification Proposal of that Proposer, at any time before the final Modification Report is circulated to the Authority pursuant to paragraph ~~9.3.4~~9.3.4 or in respect of a Self-Governance Modification Proposal at any time before the Modification Panel makes a determination under paragraph 9.3.9, by notice to the Secretary, and subject to paragraphs 6.4 and 12.4, any Modification Proposal or Third Party Modification Proposal so withdrawn shall lapse; or
- (b) ~~subject to paragraph 6.5.7~~, vary a Modification Proposal or Third Party Modification Proposal 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)(iii) or 7.2.5(b), by notice to the Secretary, and subject to paragraph 6.4, and to paragraph 12.4, any Modification Proposal or Third Party Modification Proposal so varied shall replace the original Proposal.
- (c) subject to ~~paragraph~~paragraphs 6.4, 6.5.7 and ~~to paragraph~~ 12.4, request a variation to a Modification Proposal or Third Party Modification Proposal 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)(iii) or 7.2.5(b) and before the Modification Panel has made a determination in respect of such Modification Proposal or Third Party Modification Proposal pursuant to paragraph 9.3.3(a), by notice to the Secretary, and any such variation request shall contain a description of the nature of the variation.

6.5.2 The Secretary shall, within a reasonable period of time following any withdrawal, variation or variation request (except where such variation request is made at the Modification Panel meeting) notify each Transporter, each Member, each User, each Third Party Participant and each Non-Code Party of such withdrawal, variation or variation request (as the case may be).

6.5.3 Following receipt of the notice given pursuant to paragraph 6.5.1(c) the Secretary shall submit such variation request to the appropriate Modification Panel which the Proposer shall attend for the purpose of explaining the variation request.

6.5.4 Subject to paragraph 6.4, paragraph 6.5.7 and ~~to~~ paragraph 12.4, the Modification Proposal or Third Party Modification Proposal shall be varied to replace the original Proposal which shall be deemed withdrawn where the Modification Panel:

- (a) determines by a unanimous vote that the variation request is immaterial, and in such case the varied Modification Proposal or Third Party Modification Proposal shall continue through the Modification Procedures from the point at which the original Proposal was deemed withdrawn;
- (b) does not so determine in accordance with (a), and in such case the Modification Panel shall make a determination in respect of the varied Modification Proposal or Third Party Modification Proposal in accordance with paragraph 7.2.3.

6.5.5 The Proposer of a variation request may withdraw it at any time before the Modification Panel votes in accordance with paragraph 6.5.4.

6.5.6 A Modification Proposal made by a User shall be deemed withdrawn:

- (a) on the User Discontinuance Date in accordance with TPD Section V4.2 or 4.3 where the User ceases to be a User of the Total System; or
- (b) on the date upon which the Proposer ceases to hold a Shipper's Licence or Transporter's Licence.

6.5.7 Where a Proposer wishes to vary a Self-Governance Modification Proposal:

- (a) it shall make a Self-Governance Modification Proposal Variation Request;
- (b) the Secretary shall notify each Transporter, each Member, each User, each Third Party Participant and each Non-Code Party of such request (except where the request is made at a Modification Panel meeting) and submit the request to the appropriate Modification Panel which the Proposer shall attend for the purpose of explaining the request; and
- (c) paragraphs 6.5.8 and 6.5.9 shall apply to such request.

6.5.8 Where a Self-Governance Modification Proposal Variation Request is made under paragraph 6.5.7 before the Modification Panel has determined the Self-Governance Modification Proposal (in respect of which such request is made) should proceed to the Consultation Phase pursuant to paragraph 7.2.3(a)(iii) or 7.2.5(b), the Modification Panel may determine Unanimously that the variation of the Self-Governance Modification Proposal would:

- (a) not result in the Self-Governance Modification Proposal ceasing to meet the Self-Governance Criteria and where the Modification Panel so determines:
  - (i) the Self-Governance Modification Proposal shall be varied to replace the original Self-Governance Modification Proposal which shall be deemed withdrawn; and
  - (ii) the Modification Panel shall make a determination in respect of such varied proposal in accordance with paragraph 7.2.3; or
- (b) result in the Self-Governance Modification Proposal ceasing to meet the Self-Governance Criteria and where the Modification Panel so determines:
  - (i) the Modification Panel shall withdraw any Self-Governance Statement it has submitted under paragraph 6.6.1 in respect of such proposal by giving notice of such withdrawal to the Authority; and
  - (ii) the Self-Governance Modification Proposal shall be deemed withdrawn and replaced by a Modification Proposal which shall contain the variation made in the Self-Governance Modification Proposal Variation Request and the Modification Procedures shall apply to such proposal.

6.5.9 Where a Self-Governance Modification Proposal Variation Request is made under paragraph 6.5.7 at any time after the Modification Panel has determined the Self-Governance Modification Proposal (in respect of which such request is made) should proceed to the Consultation Phase pursuant to paragraph 7.2.3(a)(iii) or 7.2.5(b) and before the Modification Panel has made a determination in respect of such Self-Governance Modification Proposal pursuant to paragraph 9.3.3(a) the Modification Panel may determine Unanimously that the variation of the Self-Governance Modification Proposal would:

- (a) not result in the Self-Governance Modification Proposal ceasing to meet the Self-Governance Criteria; or
- (b) result in the Self-Governance Modification Proposal ceasing to meet the Self-Governance Criteria, and where the Modification Panel so determines:
  - (i) the Modification Panel shall withdraw any Self-Governance Statement it has submitted under paragraph 6.6.1 in respect of such proposal by giving notice of such withdrawal to the Authority; and

- (ii) the Self-Governance Modification Proposal shall be deemed to be withdrawn and replaced by a Modification Proposal and the Modification Procedures shall apply to such proposal; and the Self-Governance Modification Proposal Variation Request shall be deemed to be a variation request for the purposes of paragraph 6.5.1(c) and paragraphs 6.5.2 to 6.5.5 (inclusive) shall apply to such request.

## 6.6 Self-Governance Modification Proposals

6.6.1 Where the Modification Panel determines that a Modification Proposal or a Third Party Modification Proposal is a Self-Governance Modification Proposal under paragraph 7.2.3(c), the Modification Panel shall before such proposal proceeds to the Consultation Phase, submit to the Authority a Self-Governance Statement in respect of such proposal as soon as reasonably practicable.

6.6.2 The Authority may until the Self-Governance Modification Proposal Determination Date:

- (a) reject the Self-Governance Statement ; or
- (b) accept the Self-Governance Statement;

by giving notice in writing to the Modification Panel and where the Authority does not give notice in writing rejecting or accepting the Self-Governance Modification Statement by the Self-Governance Modification Proposal Determination Date, it will be deemed to have accepted the Self-Governance Statement.

6.6.3 Where the Authority rejects a Self-Governance Statement under paragraph 6.6.2(a) the Modification Proposal or Third Party Modification Proposal which is the subject of such Self-Governance Statement:

- (a) shall not be a Self-Governance Modification Proposal;
- (b) shall be a Modification Proposal or Third Party Modification Proposal (as the case may be) and for the avoidance of doubt, the Modification Procedures shall apply to such proposal.

6.6.4 The Modification Panel may withdraw or vary a Self-Governance Statement that it submits under paragraph 6.6.1 by written notice to the Authority at any time before the Self-Governance Modification Proposal Determination Date.

6.6.5 If the Modification Panel, in respect of a Modification Proposal or a Third Party Modification Proposal:

- (a) does not submit a Self-Governance Statement under paragraph 6.6.1; or
- (b) withdraws a Self-Governance Statement under paragraph 6.6.4;

the Authority may, at any time before the Modification Panel determines that such proposal should proceed to the Consultation Phase under paragraph 7.2.3(a) or paragraph 7.2.5(b), determine that the proposal meets the Self-Governance Criteria and is a Self-Governance Modification Proposal and shall notify the Modification Panel of any such determination.

6.6.6 The Authority may, at any time before the Modification Panel makes a determination under paragraph 9.3.9 in respect of a Self-Governance Modification Proposal, direct that its approval is required in respect of such proposal.

## **7 MODIFICATION PROCEDURES - PRELIMINARY PHASE**

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

7.1.1 The Secretary shall:

- (a) on receipt of a Modification Proposal or a Third Party Modification Proposal allocate a unique reference number to that proposal;
- (b) by the later of:
  - (i) the end of the third Business Day following receipt of a Modification Proposal or a Third Party Modification Proposal made pursuant to paragraph 6.1.1 or 6.4 (as the case may be); and
  - (ii) the end of the first Business Day following the date on which the Secretary receives notification of any decision of the Authority pursuant to paragraph 10.1.2 or 10.1.3 as to whether the Modification Proposal should be treated as an Urgent Modification Proposal,

send a copy of that proposal to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any);

- (c) subject to paragraph 10, put initial discussion of the Modification Proposal or Third Party Modification Proposal 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 Proposal or Third Party Modification Proposal is to be discussed, and request the attendance of the Proposer's representative.

7.1.2 Where:

- (a) the Authority decides that a Modification Proposal should not be treated as an Urgent Modification Proposal; and
- (b) at the date on which the Secretary receives notification of such decision, no meeting of the Modification Panel will, in accordance with paragraph 5.2, take place within 10 Business Days of such date,

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

### **7.2 Discussion of Modification Proposals**

7.2.1 Subject to paragraph 6.4 and paragraph 10, the Modification Panel shall discuss each new Modification Proposal and Third Party Modification Proposal 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 Proposal or Third Party Modification Proposal 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 Proposal or Third Party Modification Proposal and the presentation of the Proposer's representative; and
  - (iv) considered whether there are any persons from whom representations should, pursuant to paragraph 7.7, 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 Proposal:
    - (i) [that is a not a Self-Governance Modification Proposal](#) should be subject to the review procedures under paragraph 11;
    - (ii) should proceed to the Development Phase (in which case the Modification Panel shall discuss, and shall (in accordance with paragraph 7.6) request the Transporters to finalise, the Terms of Reference to be applicable); or
    - (iii) should proceed to the Consultation Phase in accordance with paragraph 7.3; or
  - (b) a Modification Proposal or Third Party Modification Proposal:
    - (i) should be referred to a Workstream in accordance with paragraph 7.4 for discussion (and the Modification Panel may determine the Terms of Reference for such work (including terms as to the identity of any third parties to be consulted) and the date upon which it requires the Workstream to submit its report); or
    - (ii) should be deferred to a subsequent meeting of the Modification Panel for further discussion; and
  - (c) [a Modification Proposal or Third Party Modification Proposal:](#)
    - (i) [meets the Self-Governance Criteria and is a Self-Governance Modification Proposal, and](#)
    - (ii) [paragraph 7.2.3\(a\) or \(b\) will apply to such proposal; and](#)
  - (d) ~~(e)~~ where Modification Proposal is a User Pays Modification Proposal, at any time before it proceeds to the Consultation Phase in accordance with paragraph 7.3 the Transporter 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) for the User Pays Service, an indicative User Pays Charge(s) and, having regard to the User Pays Guidance Document a commentary in respect of these; and
    - (ii) request from the Authority a View on whether the proposed cost apportionment and User Pays Charges are appropriate and following receipt of such View circulate it to the next meeting of the Modification Panel.
- 7.2.4 Where the Modification Panel discusses a Modification Proposal together with a report prepared by a Workstream (following a previous determination of the Modification Panel to refer the Modification Proposal to the Workstream under paragraph 7.2.3(b)) or a Modification Proposal which has been discussed and considered by a Workstream but has not been previously discussed by the Modification Panel, the Modification Panel may:

- (a) make a determination in accordance with paragraph 7.2.3(a); or
- (b) determine that:
  - (i) the Modification Proposal should be referred back to the Workstream for further discussion and consideration in accordance with paragraph 7.4; or
  - (ii) any further discussion of the Modification Proposal should be deferred to a subsequent meeting of the Modification Panel.

7.2.5 Where the Modification Panel discusses a Third Party Modification Proposal together with a report prepared by a Workstream (following a previous determination of the Modification Panel to refer the Third Party Modification Proposal to the Workstream under paragraph 7.2.3(b)) the Modification Panel may determine that:

- (a) the Third Party Modification Proposal should be referred back to the Workstream for further discussion and consideration in accordance with paragraph 7.4; or
- (b) the Third Party Modification Proposal should proceed to the Consultation Phase in accordance with paragraph 7.3; or
- (c) any further discussion of the Third Party Modification Proposal should be deferred to a subsequent meeting of the Modification Panel.

7.2.6 Where the Modification Panel considers that a more detailed analysis and cost estimate is required in respect of a User Pays Modification Proposal it may:

- (a) determine that the Transporters prepare and submit to the Modification Panel (within a period determined by it) such an analysis and estimate; and
- (b) where its assessment concludes that such analysis and estimate is satisfactory, make a determination in accordance with paragraph 7.2.3(a)(iii).

7.2.7 Where the Transporters fail to comply with paragraph 7.2.6, 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.

7.2.8 The obligation on the Transporters pursuant to paragraph 7.2.3(ed) shall cease:

- (a) in accordance with a determination by the Modification Panel; or
- (b) where the User Pays Modification Proposal is withdrawn pursuant to paragraph 6.5.1(a) or varied pursuant to paragraph 6.5.1(b).

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

7.3.1 If the Modification Panel determines pursuant to paragraph 7.2.3(a)(iii) or 7.2.5(b) that a Modification Proposal or Third Party Modification Proposal should proceed to the Consultation Phase;

- (a) the Modification Panel shall:
  - (i) determine whether the preparation of text is required with the Draft Modification Report;

- (ii) inform the Transporters 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 Proposal or the Third Party Modification Proposal;
- (b) where the Modification Proposal is a User Pays Modification Proposal:
- (i) unless the Modification Panel determines otherwise, the Transporters shall prepare and submit to the Modification Panel (within a period determined by the Modification Panel) and include within the Draft Modification Report:
    - (1) the most accurate cost estimate for the User Pays Service which is available at such time; and
    - (2) the associated indicative User Pays Charge;
  - (ii) where the Transporters fail to comply with paragraph (b)(i)(1) and/or (b)(i)(2) by the final date for such submission, the Transporters shall provide to the Modification Panel:
    - (1) a written explanation as to reasons for such failure at the earliest opportunity and in any event no later than two (2) Business Days after the final date for such submission;
    - (2) a list of information required to enable the most recent cost estimate to be prepared;
    - (3) a date by which the cost estimate will be provided, having regard to the explanation provided.

#### **7.4 Modification Proposal discussed by Workstream**

7.4.1 If the Modification Panel shall determine pursuant to paragraph 7.2.4(b)(i) or 7.2.5 that a Modification Proposal or Third Party Modification Proposal should be discussed within a Workstream the Transporters shall:

- (a) within ten (10) Business Days following the date of the meeting and, where reasonably practicable, in sufficient time for consideration at the next following meeting of the relevant Workstream, finalise the Terms of Reference and refer the Modification Proposal or Third Party Modification Proposal to the relevant Workstream; and
- (b) within the period set by the Modification Panel or, if the Modification Panel shall not have set a date, within six (6) months following the date of the meeting where the proposal was initially discussed, having considered the representations (if any) received and the discussions of the relevant Workstream:
  - (i) prepare a report on the issues discussed and conclusions (if any) reached by the Workstream;
  - (ii) request the Secretary to put discussion of the report on the Agenda for the next following meeting of the Modification Panel which will be convened pursuant to paragraph 5.3.1; and
  - (iii) invite a representative of the Proposer, and such other persons who have contributed to the report as the Transporters shall determine, to attend the meeting of the Modification Panel at which the report is to be discussed.

## **7.5 Determination**

If the Modification Panel does not, at the meeting, make a determination pursuant to paragraph 7.2.3(a), 7.2.3(b), 7.2.4(a), 7.2.4(b) or 7.2.5 the Transporters may refer the Modification Proposal or Third Party Modification Proposal to a new or relevant Workstream in accordance with paragraph 7.4 or determine that the Modification Proposal should proceed to the Development Phase subject to the existence of a relevant Development Work Group.

## **7.6 Development process**

7.6.1 If the Modification Panel determines pursuant to paragraph 7.2.3(a)(ii) that the Modification Proposal should proceed to the Development Phase the Transporters shall:

- (a) within ten (10) Business Days of such determination finalise the Terms of Reference and constitute a Development Work Group in accordance with paragraph 8; and
- (b) notify each Transporter and each User of the composition of the Development Work Group and invite each Transporter, each User and Non-Code Party (if any) to make representations in respect of the Modification Proposal within fifteen (15) Business Days following the date of invitation.

## **7.7 Non-Code Parties**

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

- (a) send copies of any Modification Proposal, Third Party Modification Proposal and any Modification Report prepared in respect of such proposal to; and
- (b) invite representations in respect thereof from,  
  
other persons.

# **8 MODIFICATION PROCEDURES - DEVELOPMENT PHASE**

## **8.1 Composition of Development Work Groups**

8.1.1 Each Development Work Group shall (subject to paragraph 8.1.2(a)) include not less than two (2) representatives of Users and not less than two (2) representatives of the Transporters. In respect of each User Proposal, the Proposer shall be entitled to appoint one individual to the Development Work Group constituted in respect of that User Proposal.

8.1.2 The Modification Panel may at the meeting referred to at paragraph 7.2 determine or approve:

- (a) the composition of the Development Work Group; or
- (b) that the Users or, as the case may be, Non-Code Parties be invited to make representations at a meeting of the Users, Non-Code Parties and Transporters (and the Transporters shall cause a record of the representations made at such meeting to be made and shall send a copy of that record to each Transporter, each User, and for information purposes only, each Member); or
- (c) to invite any Non-Code Party to nominate a representative to act as a member of a Development Work Group or to attend a meeting of, the Development Work Group to express any view which such Non-Code Party may have in respect of the relevant Modification Proposal, but this shall not require the Transporters to engage or remunerate any person so invited or nominated.

- 8.1.3 Failing any determination by the Panel in respect of the Development Work Group the Transporters shall proceed to finalise the composition and shall constitute the Development Work Group within ten (10) Business Days of the meeting referred to in paragraph 7.2.

## **8.2 Proceedings of Development Work Groups**

- 8.2.1 The Transporters shall ensure that the Authority is notified of all meetings of each Development Work Group. The Authority (or any representative of the Authority (including, but without limitation, the Ofgem Representative)) shall be invited to all meetings of all Development Work Groups.
- 8.2.2 Each Development Work Group may, from time to time, and at any time in addition to the persons (if any) specified in the Terms of Reference of the Development Work Group, consult with any person for the purposes of the Development Work but this shall not require the Transporters to engage or remunerate any person so consulted.
- 8.2.3 Each Development Work Group shall be chaired by a representative of the Transporters. Each such representative of the Transporters shall co-ordinate the Development Work undertaken and the monthly reports and the Development Work Group Report to be prepared by the relevant Development Work Group and liaise with the Modification Panel in relation to any matter (including, but without limitation, any matter referred to in paragraph 8.3.1).
- 8.2.4 Where in respect of any matter any Development Work Group does not reach a consensus, the chairman of such Development Work Group shall determine such matter with any contrary view to such determination being recorded in the Development Work Group Report. Any individual on the Development Work Group may in circumstances where consensus is not so reached and on the basis that such individual considers the relevant matter is material request the chairman of the Development Work Group to refer such matter to the Modification Panel. The chairman of the Development Work Group shall (whether or not he refers the matter) notify the Modification Panel of each such request. If the chairman so refers the matter the Modification Panel may, as provided in paragraph 8.3.3, give guidance, clarification or instructions in respect thereof or it may not. If the Modification Panel shall not so give guidance, clarification or instructions the chairman of the Development Work Group shall determine the matter so referred and any contrary view to such determination shall, if the relevant individual requires, be recorded in the Development Work Group Report. If the chairman does not so refer the matter, the Modification Panel may, pursuant to paragraph 8.3.3, nevertheless determine to give guidance, clarification or instructions in respect of the matter.
- 8.2.5 The Development Work Group may decide to invite a legal adviser or legal advisers to attend meetings of the group, and members of the group may nominate legal advisers for this purpose (but this shall not require the Transporters to engage or remunerate any person so invited).
- 8.2.6 The chairman of the Development Work Group shall be entitled, at his sole discretion, to:
- (a) accept an alternate Development Work Group member if the original member is unable to attend any meeting of the Development Work Group; and/or
  - (b) exclude any person other than a Development Work Group member from all or any part of the proceedings of the Development Work Group which exclusion shall be detailed in the following report submitted in accordance with paragraph 8.5.

## **8.3 Liaison with the Modification Panel**

- 8.3.1 Each Development Work Group may, from time to time, and at any time:
- (a) seek guidance or clarification from the Modification Panel in relation to any matter arising in connection with the Development Work;
  - (b) seek instructions from the Modification Panel as to whether the Development Work Group should continue or discontinue all or any of the Development Work;

- (c) propose to the Modification Panel that the Modification Panel should hear the views of any person whom the Development Work Group consults pursuant to the Terms of Reference of the Development Work Group or pursuant to paragraph 8.2.2;
- (d) request an extension to the time (prescribed in the timetable referred to in paragraph 12.9.1(e) within which the Development Work is to be done or the Development Work Group Report prepared; and
- (e) propose any change to the Terms of Reference of the Development Work Group to reflect any change arising by reason of the application of any of paragraph 8.3.1(a) to (d).

8.3.2 The Modification Panel may determine to accede in respect of any request or proposal made pursuant to paragraphs 8.3.1(c) to (e) or otherwise to give instructions in respect thereof.

8.3.3 The Modification Panel may give the guidance, clarification or instructions sought pursuant to paragraphs 8.3.1(a) and (b) or otherwise give such other guidance, clarification or instructions as the Modification Panel may determine.

8.3.4 Subject to paragraph 8.3.6, the Modification Panel may (whether pursuant to an instruction sought pursuant to paragraph 8.3.1 or otherwise) determine to instruct any Development Work Group to cease all or any part of the Development Work. Any Development Work Group which is so instructed to cease all Development Work in respect of any Modification Proposal shall at the same time as it is so instructed be instructed to prepare the Development Work Group Report in respect of such Modification Proposal.

8.3.5 In general it is anticipated that Modification Proposals will proceed through the development phase in the time order in which those Modification Proposals proceed to the Development Phase. However, where a number of Modification Proposals are being considered within the Development Phase at the same time, the Modification Panel may, from time to time and subject to paragraph 8.3.6, determine to re-order and/or defer the consideration of all or any of such Modification Proposals.

8.3.6 If, pursuant to paragraph 6.4.1, two (2) Modification Proposals (relating (in whole or in part) to the same subject matter) are proceeding through the Development Phase together the Modification Panel may at any time during the Development Phase determine Unanimously that only one (1) of the Modification Proposals should proceed. On any such determination the Modification Proposal which is not to proceed shall lapse and accordingly the Development Work Group shall not prepare a Development Work Group Report in respect of that Modification Proposal.

8.3.7 No Modification Proposal shall, without the consent of the Authority, be in the Development Phase for more than twelve (12) months. If no consent is received from the Authority paragraph 8.6 will apply.

#### **8.4 Consideration of representations**

8.4.1 Each Development Work Group shall consider all representations:

- (a) received (in accordance with paragraph 7.6.1(b) and not withdrawn in accordance with paragraph 12.3.2) by that Development Work Group from Users;
- (b) received by that Development Work Group from Non-Code Parties pursuant to (and in accordance with) any invitation made pursuant to paragraph 7.7.1(b); and
- (c) all other representations which the Transporters may request the Development Work Group to consider.

## **8.5 Monthly reports**

- 8.5.1 Each Development Work Group shall each month report to the Modification Panel as to the progress of that Development Work Group.
- 8.5.2 The Modification Panel shall, as appropriate, discuss reports received from Development Work Groups pursuant to paragraph 8.5.1.

## **8.6 Development Work Group Report**

- 8.6.1 Subject to paragraph 8.3.4, the Transporters shall, together with the Development Work Group, prepare a Development Work Group Report in accordance with the Terms of Reference which, unless the Terms of Reference shall (pursuant to paragraph 12.9.1(b)(ii)) specify additional matters, shall:
- (a) provide an analysis of whether and if so the extent to which the Modification would better facilitate the achievement (for the purposes of each Transporter's Licence) of the Relevant Objectives; and
  - (b) so far as is consistent with (a) above:
    - (i) address the implications (if any) (to the extent only that the Development Work Group shall have been informed by the Transporters or becomes aware during the course of the Development Work in the context of the application of the Modification Procedures in relation to the Modification Proposal or Third Party Modification Proposal) of the implications of the proposal for the Transporters, including:
      - (1) the implications for the operation of the Systems;
      - (2) the development and capital cost and operating cost implications (if any) for each Transporter of implementing the Modification Proposal or Third Party Modification Proposal; and
      - (3) whether it is appropriate for each Transporter and/or the Transporters to recover all or any of the costs and, if so, a proposal as to the most appropriate way for those costs to be recovered; and
      - (4) the consequence (if any) of implementing the Modification Proposal or Third Party Modification Proposal on the level of contractual risk of each Transporter under the Uniform Network Code or the Individual Network Code proposed to be modified by the Modification Proposal or Third Party Modification Proposal;
    - (ii) address the development implications and other implications for the UK Link System of the Transporters, related computer systems of each Transporter and related computer systems of Users;
    - (iii) address the implications (if any) (to the extent only that the Development Work Group shall have been informed (whether pursuant to representations received pursuant to paragraph 7.7.1(b) or otherwise) or becomes aware of during the course of the Development Work in the context of the application of the Modification procedures in relation to the Modification Proposal or Third Party Modification Proposal) of the implementation of the proposal for Users, including the:
      - (1) administrative and operational implications (if any) of the implementation of the Modification Proposal or Third Party Modification Proposal on Users;

- (2) development and capital cost and operating cost implications (if any) for Users of implementing the Modification Proposal or Third Party Modification Proposal; and
  - (3) consequence (if any) of implementing the Modification Proposal or Third Party Modification Proposal on the level of the contractual risk of Users under the Uniform Network Code or the Individual Network Code proposed to be modified by the Modification Proposal;
- (iv) address the implications (if any) (to the extent only that the Development Work Group shall have been informed (whether pursuant to representations received pursuant to paragraph 7.7.1(b) or otherwise) or becomes aware of during the course of the Development Work in the context of the application of the Modification procedures in relation to the Modification Proposal or Third Party Modification Proposal) of the implementation for other relevant persons (including, but without limitation, Users, Connected System Operators, Consumers, Terminal Operators, Storage Operators, Suppliers and producers and, to the extent not so otherwise addressed, any Non-Code Party) of implementing the proposal;
- (v) address the consequences of the legislative and regulatory obligations and contractual relationships of the Transporters:
  - (1) if (and to that extent only) the Development Work Group shall have been informed by the Transporters or becomes aware of during the course of the Development Work Group in respect thereof in the context of the application of the Modification procedures in relation to the Modification Proposal or Third Party Modification Proposal; and
  - (2) if (and to that extent only) the Development Work Group shall have been informed (whether pursuant to representations pursuant to paragraph 7.7.1(b) or otherwise) or becomes aware of during the course of the Development Work in respect thereof in the context of the application of the Modification procedures in relation to the Modification Proposal or Third Party Modification Proposal, Users and any Non-Code Party, of the implementation of the proposal;
- (vi) provide an analysis of any advantages and disadvantages of which (and to the extent only that) the Development Work Group shall have been informed (whether pursuant to representations received pursuant to paragraph 7.7.1(b) or otherwise) or becomes aware of during the course of the Development Work in the context of the application of the Modification procedures in relation to the Modification Proposal or Third Party Modification Proposal and not otherwise identified pursuant to paragraphs 8.6.1(a) to (v) as such of the implementation of the proposal;
- (vii) provide a summary of the representations (to the extent that the import of those representations are not reflected elsewhere in the Development Work Group Report) of those persons (if any) which the Development Work Group shall have consulted pursuant to the Terms of Reference or paragraph 8.2.2;
- (viii) detail the representations which the Development Work Group shall have considered pursuant to paragraph 8.4; and comment, in the context of the report as a whole, on such representations;
- (ix) detail any matter (not otherwise identified as such elsewhere in the report) which the Development Work Group considers shall need to be addressed or otherwise dealt with so as to enable the preparation of the Modification Report; and

- (x) as appropriate, comment upon:
  - (1) and make recommendations as to, the time scale for the implementation of the whole or any part of the Modification Proposal or Third Party Modification Proposal; and
  - (2) the Suggested Text provided pursuant to paragraph 6.2.1(k).

8.6.2 If two (2) or more Modification Proposals shall have been considered together by the Development Work Group and no determination shall have been made pursuant to paragraph 8.3.6 the Development Work Group Report shall report on each Modification Proposal.

### **8.7 Circulation of Development Work Group Reports**

Each Development Work Group Report shall (subject to paragraphs 5.4.1 and 5.4.2) be sent to all Members as soon as reasonably practicable but in any event not less than five (5) Business Days prior to the meeting of the Modification Panel at which that report is to be discussed.

### **8.8 Discussion of Development Work Group Report**

8.8.1 Having:

- (a) discussed the Development Work Group Report; and
- (b) allowed any Members of the relevant Development Work Group (in attendance at the meeting of the Modification Panel) to express any views on the substance of the Development Work Group Report or the conduct of the consideration of the Modification Proposal by the Development Work Group, the Modification Panel may determine:
  - (i) to refer the Development Work Group Report back to the Development Work Group for revision or further work;
  - (ii) to continue to consider or to consider further the Development Work Group Report at a subsequent meeting of the Modification Panel; or
  - (iii) that the Modification Proposal 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 Transporters 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, where the Modification Panel has determined that text is required; or
- (b) Within three (3) Business Days, where the Modification Panel has not determined that text is required; or
- (c) Within such other time period as the Modification Panel shall determine;

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

9.1.2 Where the Modification Panel has determined that text is required, then within one Business Day of receiving such Draft Modification Report the Secretary shall circulate the Draft

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

9.1.3 Where the Modification Proposal or Third Party Modification Proposal 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 not determined that text is 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 circulate the Draft Modification Report to each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) inviting them to make (or withdraw earlier) representations to the Transporters within fifteen (15) Business Days following the date of that invitation.

## **9.2 Impact on UK Link System**

9.2.1 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:

(a) conduct an initial assessment of the potential impact of the Modification Proposal or Third Party Modification Proposal on the UK Link System; and

(b) prepare an initial report of its findings and to send a copy of that report to the Transporters.

9.2.2 The initial impact assessment report pursuant to paragraph 9.2.1 shall set out an overview of the implications (if any) of the Modification Proposal or Third Party Modification Proposal (as the case may be) on the UK Link System or any part of the UK Link System, including:

(a) the implications for the operation of the UK Link System or any part of the UK Link System;

(b) the development implications for the UK Link System or any part of the UK Link System, including the changes likely to be required; and

(c) if the Transporter Agency determines that the Modification Proposal or Third Party Modification Proposal has no potential impact on the UK Link System, the reasons for such determination.

## **9.3 Consultation - final Modification Report**

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

(a) subject to (d), the Transporters shall prepare a final Modification Report in accordance with paragraph 9.4 for approval of the Modification Panel;

(b) the Secretary shall submit a copy of that final Modification Report to:

(i) each Third Party Participant, each Transporter, each User and each Non-Code Party (if any) that submitted (and did not so withdraw) a representation with regard to the draft Modification Report pursuant to paragraph 9.1.2 or 9.1.4; and

(ii) each Member,

and shall attach to that report all representations (if any) so received (and not so withdrawn); and

(c) the Transporters shall request the Secretary to add the Modification Proposal or Third Party Modification Proposal as an Agenda item for the Modification Panel to discuss;

(d) Where the Transporters 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 proposal which have not been identified in other responses to the same proposal then the Transporters shall record such issues and include them in the final Modification Report and the Secretary shall submit it to the next Modification Panel for determination pursuant to paragraph 9.3.2.

9.3.2 Where the Modification Panel determines that views on such issues should be obtained by the relevant Development Work Group or Workstream then:

(a) the Transporters shall request the Secretary to submit the final Modification Report to the relevant Development Work Group or Workstream and to obtain a report containing their views; and

(b) within 3 Business Days following receipt of such report the Secretary shall submit a copy of the final Modification Report to:

(i) each Third Party Participant, each Transporter, each User and each Non-Code Party (if any) that submitted (and did not so withdraw) a representation with regard to the draft Modification Report pursuant to paragraph 9.1.2 or 9.1.4; and

(ii) each Member;

and shall attach to that report all representations (if any) so received (and not so withdrawn) and the report (if any) received pursuant to (b); and

(c) the Transporter shall request the Secretary to add the Modification Proposal or Third Party Modification Proposal as an Agenda item for the Modification Panel to discuss.

9.3.3 Upon receipt of the final Modification Report under paragraph 9.3.1 or 9.3.2 the Modification Panel shall assess whether the final Modification Report complies with paragraph 9.4, and if it is compliant, shall:

(a) determine whether or not to recommend the implementation of the Modification Proposal or Third Party Modification Proposal to the Authority;

(b) submit its recommendation to the Authority, setting out its determination under paragraph 9.3.3(a) and the factors which (in its opinion) justify its determination; and

(c) instruct the Secretary to send the final Modification Report, together with its recommendation to the Authority, to the Transporters.

9.3.4 The Transporters shall, within one (1) Business Day of receipt from the Secretary of the final Modification Report, circulate to the Authority and each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) the following:

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

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

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

9.3.6 Any question arising under these Rules as to whether:

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

shall be determined by the Authority.

9.3.7 Where the Modification Proposal is a User Pays Modification Proposal, 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.

9.3.8 Where the Authority in respect of:

- (a) a Self-Governance Modification Proposal has accepted or been deemed to accept a Self-Governance Statement under paragraph 6.6.2; or
- (b) a Modification Proposal or Third Party Modification Proposal has determined that such proposal is a Self-Governance Modification Proposal under paragraph 6.6.5; and
- (c) a Self-Governance Modification Proposal has not directed that its approval is required under paragraph 6.6.6.

the Modification Panel shall, unless the Authority directs otherwise, submit all representations received in respect of such proposal during the Consultation Phase to the Authority at least seven (7) days before the Self-Governance Modification Proposal Determination Date for such proposal and paragraphs 9.3.3 to 9.3.6 (inclusive), paragraph 9.4.3 and paragraph 9.5 shall not apply to such proposal.

9.3.9 The Modification Panel shall upon receipt of the final Modification Report under paragraph 9.3.1 or 9.3.2 in respect of a Self-Governance Modification Proposal:

- (a) assess whether the final Modification Report complies with paragraph 9.4, and if it is compliant, shall make a determination by the Self-Governance Modification Proposal

Determination Date as to whether or not the Self-Governance Modification Proposal should be implemented;

(b) include such determination in the Final Modification Report; and

(c) instruct the Secretary to send the Final Modification Report to the Transporters.

9.3.10 The Transporters shall, within one (1) Business Day of receipt from the Secretary of the final Modification Report under paragraph 9.3.9, circulate to 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.

9.3.11 Subject to paragraph 9.3.12, where the Modification Panel makes a determination in respect of a Self-Governance Modification Proposal under paragraph 9.3.9, an Appealing Party may appeal such determination in accordance with the Appeal Procedures.

9.3.12 For the avoidance of doubt, an Appealing Party may not submit more than one Appeal or Authority Appeal in respect of a Self-Governance Modification Proposal.

## **9.4 Form of Modification Report**

9.4.1 In addition to identifying which paragraph of these Rules the Modification Report is made pursuant to, each Modification Report shall, subject to paragraphs 9.4.5 and 10.2 and to the extent relevant and that the Transporters have been made aware:

(a) set out:

(i) or append in full the relevant Modification Proposal (or Third Party Modification Proposal) including, in the case of a Modification Proposal, any Suggested Text provided by the Proposer pursuant to paragraph 6.2.1(k); and

(ii) the text, if provided pursuant to paragraph 9.6;

(b) provide an analysis of whether and if so the extent to which the Modification would better facilitate the achievement (for the purposes of each Transporter's Licence) of the Relevant Objectives;

(c) address the implications (if any) in the context of the application of the Modification procedures in relation to the Modification Proposal or Third Party Modification Proposal of the implementation of such Modification Proposal or Third Party Modification Proposal:

(i) on security of supply, operation of the Total System and industry fragmentation;

(ii) for the Transporters and each Transporter, including:

(1) the implications for the operation of the Systems;

(2) the development and capital cost and operating cost implications (if any) for each Transporter of implementing the Modification Proposal (not applicable to Third Party Modification Proposals); and

(aa) if there are any such cost implications, the extent to which it is appropriate for each Transporter and/or the Transporters to recover the costs, and (to such extent) a proposal for the most appropriate way for the costs to be recovered; and

- (bb) where any such proposal is made (whether or not the impact of such a proposal is addressed by the text of the Modification), an analysis of the consequences (if any) such proposal would have (if implemented) on the price regulation to which each Transporter is subject; and
- (iii) the consequence (if any) of implementing the Proposal on the level of contractual risk of each Transporter under the Uniform Network Code or the Individual Network Code to be modified by the Proposal;
- (d) provide the Transporters' reasonable high level indication, based upon such information as is reasonably available to them at the relevant time pursuant to paragraph 9.2, of the areas of the UK Link System likely to be affected, and address the development implications and other implications for the UK Link System for the Transporters, related computer systems of each Transporter and related computer systems of Users (not applicable to Third Party Modification Proposals);
- (e) address the implications (if any) (to the extent only that the Transporters shall have been informed (whether pursuant to representations or otherwise) in the context of the application of the Modification procedures in relation to the proposal) of the implementation of the Modification for Users, including:
  - (i) the administrative and operational implications (if any) of the implementation of the proposal on Users;
  - (ii) the capital cost and operating cost implications (if any) for Users of implementing the Modification Proposal (not applicable to Third Party Modification Proposals); and
  - (iii) the consequence (if any) of implementing the proposal on the level of the contractual risk of Users under the Uniform Network Code or the Individual Network Code proposed to be modified by the proposal;
- (f) address the implications (if any) (to the extent only that the Transporters shall have been informed (whether pursuant to representations or otherwise) in the context of the application of the Modification procedures in relation to the proposal) for other relevant persons (including, but without limitation, Users, Connected System Operators, Consumers, Terminal Operators, Storage Operators, Suppliers and producers and, to the extent not otherwise addressed, any Non-Code Party) of implementing the proposal;
- (g) address the consequences of the legislative and regulatory obligations and contractual relationships of:
  - (i) each Transporter; and
  - (ii) if (and to that extent only) the Transporters shall have been informed (whether pursuant to representations or otherwise) in respect thereof in the context of the application of the Modification procedures in relation to the proposal, each User and each Non-Code Party (if any),
 of the implementation of the proposal;
- (h) provide an analysis of any advantages or disadvantages if and to the extent only that the Transporters shall have been informed (whether pursuant to representations or otherwise in respect thereof in the context of the application of the Modification procedures in relation to the Proposal and (not otherwise identified as such pursuant to paragraphs 9.4.1(b) to (g)) of the implementation of the proposal;

- (i) provide a summary of the representations and/or responses (to the extent that those representations and/or responses are not reflected elsewhere in the Modification Report) of those persons (if any) which the Development Work Group consulted, pursuant to the Terms of Reference and paragraph 8.2.2 (not applicable to Third Party Modification Proposals);
- (j)
  - (i) detail the representations which the Development Work Group considered pursuant to paragraph 8.2.2 (not applicable to Third Party Modification Proposals) and the representations (if any) received in accordance with paragraph 8.4; and
  - (ii) (to the extent that representations are not addressed or otherwise commented upon in the Modification Report) comment, in the context of the Modification Report as a whole, on such representations;
- (k) state whether and if so the extent to which the implementation of the Modification Proposal (not applicable to Third Party Modification Proposals) is requisite:
  - (i) to enable each Transporter to facilitate compliance with safety or other legislation; and
  - (ii) having regard to any proposed change in the methodology established under Standard Special Condition A4(5) or the statement furnished by each Transporter Standard Special Condition A4(1) of the Transporter's Licence;
- (l) detail the programme for works (if any) required as a consequence of the implementation of the Modification Proposal (not applicable to Third Party Modification Proposals);
- (m) set out a proposed timetable to be followed in respect of the implementation of the Modification (including, but without limitation, the date upon which the Modification should become effective);
- (n) if it is the opinion of the Transporters that a Modification should be implemented:
  - (i) [if such Modification is in respect of a proposal which is not a Self-Governance Modification Proposal](#), set out either:
    - (1) a request of the Transporters or the Relevant Transporter for consent of the Authority to the Modification; or
    - (2) a proposal that the Authority should direct that the Modification be implemented;
  - (ii) comment upon, and make recommendations as to, the time scale for the implementation of the whole or any part of the Modification; and
- (o) address the implications (if any) of the Modification Proposal upon the existing Uniform Network Code Standards of Service (not applicable to Third Party Modification Proposals);
- (p) state whether or not any matter detailed in the Development Work Group Report (pursuant to paragraph 8.6) has been addressed or otherwise dealt with (not applicable to Third Party Modification Proposals) and:
  - (i) if such matter has been so addressed or dealt with, the result; or

- (ii) if such matter has not been so addressed or dealt with, an explanation as to why such matter has not been addressed or dealt with;
- (q) state the number of Voting Members in favour of, and the number of Voting Members present and not voting in favour of, the implementation of the Modification Proposal (or Third Party Modification Proposal) pursuant to the determination made under paragraph 9.3.3(a); and
- (r) have attached to it copies of all the representations received (and not withdrawn in accordance with paragraph 12.3.2) by the Secretary;
- (s) set out a high level summary of views expressed in the representations, which may be satisfied by stating the number of representatives in favour of, and the number of representatives against the implementation of the Modification Proposal (or Third Party Modification Proposal);
- (t) where it is a User Pays Modification Proposal, contain the most accurate cost estimate for the User Pays Service which is available at such time and the associated indicative User Pays Charge;
- (u) [where it is a Self-Governance Modification Proposal, state whether the Modification Panel determined that such proposal is a Self-Governance Modification Proposal under paragraph 7.2.3\(c\) and submitted a Self-Governance Statement to the Authority in respect of such proposal or whether the Authority has determined such proposal is a Self-Governance Modification Proposal under paragraph 6.6.5.](#)

9.4.2 Where two or more (2) Modification Proposals have proceeded through the Modification Procedures together (and neither proposal has been withdrawn and all work has not been discontinued pursuant to paragraph 8.3.6 in respect of either proposal) the Modification Report shall, in addition to the analysis referred to in paragraph 9.4.1(b), provide an analysis as to which of the Modification Proposals would in the opinion of the Modification Panel better facilitate the achievement of the Relevant Objectives. Where two (2) Modification Proposals were proceeding through the Modification Procedures together and the Modification Panel shall, pursuant to paragraph 8.3.6, have determined that only one (1) of the Modification Proposals should proceed, the Modification Report shall provide a commentary as to the circumstances in which the Modification Panel so determined (not applicable to Third Party Modification Proposals).

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

9.4.4 In preparing any Modification Report, the Transporters shall:

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

9.4.5 Where a Development Work Group Report has been prepared in accordance with paragraph 8.6 the Modification Panel may determine that it shall constitute the Draft Modification Report.

## **9.5 Further Consultation**

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

- (a) the Authority has not given notice of its decision in respect of that Modification Report within two (2) calendar months (in the case of Urgent Proposals), or four (4) calendar

months (in the case of non-Urgent proposals) from the date upon which the relevant Modification Report was submitted to it; or

- (b) the Authority, or any Voting Member, by notice to the Secretary expresses the reasonable opinion that the circumstances relating to that Modification have materially changed,

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

9.5.2 Having considered the circumstances relating to the Modification Proposal which is subject to paragraph 9.5.1, the Modification Panel may determine that:

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

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

9.5.4 If the Modification Panel makes a determination in accordance with 9.5.2(b) the Transporters 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 submits that report and copies of any representations received to the Authority and circulates a copy to each Transporter, Users and Non-Code Parties.

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

## **9.6 Text of Modification**

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

- (a) in relation to a User Proposal or a Third Party Modification Proposal, the Transporters shall prepare the text of the Modification:
  - (i) where directed 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 Proposal the Transporter who is the Proposer shall:
  - (i) where directed by the Modification Panel, prepare the text of the Modification (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.

9.6.2 Subject to paragraph 10, the Suggested Text of each Modification shall be considered by the relevant Development Work Group or (as the case may be) Workstream to which such Modification Proposal has been referred in accordance with these Rules. If the Suggested Text of a Modification is not considered by a Development Work Group prior to that Development Work Group's report being discussed by the Modification Panel pursuant to paragraph 8.8.1, the Development Work Group 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.

9.6.3 If it is considered that the Modification Proposal or Third Party Modification Proposal 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 Proposal or Third Party Modification Proposal) and by the Transporter who is the Proposer (in the case of a Transporter Proposal) and the Transporters or such Transporter shall refer the Modification Proposal or Third Party Modification Proposal to the next Modification Panel for determination pursuant to paragraph 9.1.3.

9.6.4 Where the Modification Proposal is a User Pays Modification Proposal, the request or direction pursuant to paragraph 9.6.1(a)(ii) or (b)(iii) 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 the text prepared pursuant to paragraph 9.6.1(a)(ii) or (b)(iii).

## 9.7 Modification

9.7.1 ~~The Subject to paragraph 9.7.2, the~~ Transporters shall modify the Uniform Network Code or, as the case may be, the Relevant Transporter shall modify the relevant Individual Network Code in accordance with each consent given and each direction made by the Authority.

9.7.2 The Transporters shall modify the Uniform Network Code or, as the case may be, the Relevant Transporter shall modify the relevant Individual Network Code without the consent of the Authority in accordance with a determination made by the Modification Panel in respect of a Self-Governance Modification Proposal under paragraph 9.3.9 no less than fifteen (15) Business Days after the date of such determination provided that:

(a) either:

(i) paragraph 6.6.1 applies and the Modification Panel has not withdrawn the Self-Governance Statement submitted to the Authority under paragraph 6.6.4;  
or

(ii) paragraph 6.6.5 applies;

(b) the Authority has not directed that its approval is required in respect of such proposal under paragraph 6.6.6;

(c) no Appeal has been made in accordance with paragraph 13 which is still outstanding in respect of such proposal;

(d) where an Appeal has been made the Modification Panel have given notice that the proposal should be implemented under paragraph 13.4(b) or (c); and

(e) no Authority Appeal has been made in accordance with paragraph 13 in respect of such proposal.

9.7.3 ~~9.7.2~~ The Transporters shall, as soon as reasonably practicable, notify each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) of each Modification. Each such notice shall specify the text of the Modification and the date upon

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

## **10 URGENT MODIFICATION PROPOSALS**

### **10.1 Procedure**

10.1.1 If a Modification Proposal has been considered or identified pursuant to paragraph 6.1.3(b) as one which should be treated as an Urgent Modification Proposal the Secretary shall as soon as possible send a copy of the Modification Proposal to the Authority and the Transporters shall consult with the Authority and shall recommend the procedure and timetable to be followed in respect of each Urgent Modification Proposal.

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

- (a) the Secretary shall notify each Transporter, each User, each Member and each Non-Code Party (if any);
- (b) to the extent that the Authority agrees with the recommendation made in the procedure and timetable submitted by the Transporters, 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 Transporters 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.

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

### **10.2 Modification report**

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

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

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

### **10.3 Modification**

- 10.3.1 The Transporters 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 Transporters shall as soon as possible notify each Transporter, each User, each Non-Code Party (if any) and each Member 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 and review**

Where an urgent Modification is implemented, the Transporters 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 subject to the review procedures. If the Modification Panel shall so determine, the Transporters shall procure that a Review Proposal in respect of the urgent Modification so made and refer such proposal to the relevant Workstream together with the Terms of Reference to be applicable.

## **11 REVIEW PROCEDURES**

### **11.1 Purpose**

The review procedures are designed to provide a means by which the Uniform Network Code and each Individual Network Code may be reviewed and considered without being subject to the Modification Procedures.

### **11.2 Review proposals**

11.2.1 The Modification Panel may determine:

- (a) that any matter; or
- (b) (at a meeting of the Modification Panel), that the Modification Proposal discussed at that meeting,  
  
should be subject to review.

11.2.2 If the Modification Panel shall make a determination:

- (a) pursuant to paragraph 11.2.1(a), the Transporters shall procure that a Review Proposal is made in respect of such matter; or
- (b) pursuant to paragraph 11.2.1(b), the Proposer shall be treated as having made a Review Proposal pursuant to paragraph 11.2.3 or, as the case may be, paragraph 11.2.4.

11.2.3 The Transporters may, from time to time, procure that a Review Proposal is made or withdraw such a Review Proposal.

11.2.4 Any User may, from time to time, make a Review Proposal or withdraw a Review Proposal made by that User, and the Transporters and Users may either raise an alternative Review Proposal (which proposal shall be raised in accordance with paragraph 11.2.2(a)) or where the User withdraws a Review Proposal adopt the Review Proposal (in which case the adopted Review Proposal shall continue through the review procedures from the point at which it was withdrawn by the User).

### **11.3 Form of proposal**

11.3.1 Each Review Proposal shall:

- (a) be in writing; and
- (b) set out in reasonable but not excessive detail the nature of the Review Proposal.

11.3.2 The Modification Panel may, from time to time, stipulate the form which a Review Proposal should take.

11.3.3 The Transporters shall allocate to each Review Proposal a unique reference number.

### **11.4 Review procedures**

11.4.1 Following the submission of a Review Proposal:

- (a) the Modification Panel may determine:
  - (i) that such Review Proposal be subject to review by a Review Group in accordance with such Terms of Reference, procedures and such timetable as the Modification Panel shall determine; or
  - (ii) that such Review Proposal be referred to a Workstream for consideration in accordance with such Terms of Reference, procedures and such timetable as the Modification Panel shall determine;
- (b) subject to paragraph 11.4.1(a), the Transporters may refer the Review Proposal to a Workstream for consideration in accordance with such Terms of Reference, procedures and such timetable as the Transporters may determine; and
- (c) subject to paragraphs 11.4.1(a) and (b), the Review Proposal shall lapse and the Transporters shall notify the Proposer.

11.4.2 Following review by a Workstream or Review Group in accordance with paragraph 11.4.1(a) or (b), the Workstream or Review Group shall submit a report to the Modification Panel.

11.4.3 Following submission of a report under paragraph 11.4.2, the Modification Panel shall consider the report, and in the event that the Modification Panel does not determine that a further review be undertaken by the Workstream or Review Group (as the case may be), the Transporters shall circulate the report to each Transporter and all Users.

11.4.4 Where the report submitted in accordance with paragraph 11.4.2 contains a recommendation in the form of a Modification Proposal and the Modification Panel:

- (a) determines to support such recommendation, such Modification Proposal shall be dealt with in accordance with paragraph 7.3; or
- (b) makes no determination, the Workstream or Review Group may reconsider and resubmit the report (whether or not containing a new recommendation) for reconsideration by the Modification Panel and paragraph 11.4.3 shall apply.

## **12 GENERAL**

### **12.1 Notices**

12.1.1 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.

## **12.2 Non-receipt**

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

## **12.3 Representations**

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

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

12.3.3 The Transporters shall send to the Authority copies of all representations, but the Transporters 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 Transporters' reasonable opinion are of no relevance to the subject matter to which they are intended to relate, or from persons who are not likely to be materially affected.

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

## **12.4 Variation of Modification Proposal**

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

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

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

## **12.5 Time periods**

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

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

- 12.6.1 These Rules shall not give rise to or impose any duty, obligations or rights (whether in contract, tort, trust or otherwise) pursuant to, in relation to, in respect of or in connection with the Uniform Network Code or an Individual Network Code on any person that is treated as being, for the time being, a User and shall not give rise to any action or claim or liability (whether in contract, tort (including, but without limitation, negligence), for breach of trust or otherwise) against any such person pursuant to, in relation to, in respect of or in connection with the Uniform Network Code or an Individual Network Code.
- 12.6.2 These Rules shall not give rise to or impose any duty, obligation (other than pursuant to a Transporter's Licence) or right (whether in contract, tort, trust or otherwise) and consequently shall not give rise to any action or claim or liability pursuant to, in relation to, in respect of or in connection with these Rules.
- 12.6.3 Without prejudice to the generality of paragraph 12.6.2, no Member, individual in any Development Work Group or Review Group, or Relevant Subject Matter Expert shall be liable (in whatever capacity) and no employer of any such person shall be vicariously liable for any act or thing done or omitted to be done pursuant to, in relation to, in respect of or in connection with these Rules.
- 12.6.4 Without prejudice to the generality of paragraph 12.6.2, no act or thing done or omitted to be done by a Transporter, the Transporters or any User (or any employee, director or agent of a Transporter, the Transporters 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) or by any other User, Non-Code Party or a Transporter, the Transporters against such User (or any such employee, director or agent of such User).
- 12.6.5 Nothing in or arising as a consequence of these Rules is intended in any way to limit or negate the ability for the time being of any User 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.
- 12.6.6 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.
- 12.6.7 Any person who provides any information for the purposes of or pursuant to these Rules may require that such information may only be made available subject to such confidentiality undertakings as such person may require.

## **12.7 Disapplication of these Rules**

In respect of any Modification Proposal, Third Party Modification Proposal or Review Proposal, if the Transporters consider that it would be appropriate to disapply any of these Rules the Secretary shall notify each Member, each Transporter and each User, each Third Party Participant and each Non-Code Party (if any) and in that notice specify which paragraphs of these Rules the Transporters consider it would be appropriate to disapply and explaining why and invite each Transporter, Users, Third Party Participants and Non-Code Parties (if any) to make representations within ten (10) Business Days following the date of such invitation in respect of the proposed disapplication. The Transporters shall within the three (3) Business Days following the expiry of such ten (10) Business Days send to each Member and the Authority copies of all representations (if any) so received. The Modification Panel shall, subject to paragraph 5.3.1, at the next following meeting of the Modification Panel consider the representations (if any) received (in accordance with this paragraph 12.7) from Transporters, Users, Third Party Participants and Non-Code Parties (if any), and the Modification Panel may determine that it is appropriate to disapply any of the paragraphs of these Rules specified in the

relevant notice. If the Modification Panel shall so determine the paragraphs of these Rules specified in the relevant notice shall, if the Authority agrees, be disapplied.

## **12.8 View**

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

- (a) on any matter arising (under these Rules or otherwise) from a Modification Proposal [that is not a Self-Governance Modification Proposal](#) at any stage prior to the date on which the Transporters finalise the Modification Report; and
- (b) in respect of the proposed funding arrangements for a User Pays Modification Proposal, at any stage prior to a determination under paragraph 7.2.3(a)(iii).

12.8.2 If the Transporters decide to seek a View pursuant to paragraph 12.8.1, 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 Proposal by any Development Work Group; and
- (c) notify each Transporter, each User and each Non-Code Party (if any) of such decision to seek a View.

12.8.3 If, in respect of a View sought pursuant to this paragraph 12.8, the Authority expresses the View that the Modification Proposal should not proceed, the Modification Proposal shall lapse and the Transporters shall within the five (5) Business Days following receipt of the View prepare and circulate notification of such lapse.

12.8.4 If, in respect of a View sought pursuant to this paragraph 12.8, the Authority shall not express any View as to how the Modification Proposal should proceed or expresses the View that the Modification Proposal should proceed to the Development Phase, the Modification Proposal shall proceed to the Development Phase.

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

## **12.9 Terms of reference**

12.9.1 The Terms of Reference for each Development Work Group, Modification Proposal referred to a Workstream or Review Group shall:

- (a) detail the composition of the Development Work Group or Review Group in accordance with paragraph 8.1;
- (b) detail the Modification Proposal;
  - (i) detail the work to be undertaken by the Development Work Group, Workstream or Review Group to enable the Development Work Group, Workstream or Review Group to prepare its report; and
  - (ii) specify any matters, in addition to those referred to in paragraph 8.6.1, which the Development Work Group, Workstream or Review Group should address in its report;
- (c) detail other matters (if any) to be considered or reviewed by the Development Work Group, Workstream or Review Group;

- (d) state whether the Development Work Group, Workstream or Review Group 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;
- (e) set a timetable in accordance with which the work of the Development Work Group, Workstream or Review Group is to be done and its report prepared; and
- (f) specify when the Development Work Group, Workstream or Review Group is to comment upon the text of the Modification, provided to the Group pursuant to paragraph 9.6.

12.9.2 Unless the Modification Panel shall otherwise determine, the timetable referred to in paragraph 12.9.1(e) shall not exceed a period of six (6) months.

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

- (a) to change the Terms of Reference of:
  - (i) any Development Work Group;
  - (ii) Modification proposal referred to a Workstream; and
  - (iii) any Review Group;
- (b) if the Terms of Reference of the relevant Development Work Group or Review Group so anticipate, that the Development Work Group, or Review Group, should undertake new or further work or consider new matters (whether or not related to any earlier work undertaken by that Development Work Group, or Review Group); or
- (c) to change the Chairman's Guidelines.

## 13 APPEAL PROCEDURES

13.1 The Appealing Party may no later than fifteen (15) Business Days after the date of a determination under paragraph 9.3.9(a) make an Appeal by giving written notice of the Appeal to the Secretary, such notice to identify the Self Governance Modification Proposal which is the subject of the Appeal and any representations which the Appealing Party wishes to make in support of the Appeal.

13.2 The Secretary shall, on receipt of a notice under paragraph 13.1 notify each Transporter, User, Member, Third Party Participant, Non-Code Party (if any) and the Authority that an Appeal has been made and the Secretary shall put discussion of the Appeal on the Agenda of the next meeting of the Modification Panel which shall (subject to paragraphs 5.4.1 and 5.4.2) be convened pursuant to paragraph 5.3.1.

13.3 If the Modification Panel determines that the Appeal satisfies the Appeal Criteria, the Modification Panel shall decide whether to confirm or reverse its initial determination under paragraph 9.3.9(a) having regard to any representations made by the Appealing Party in support of the Appeal.

13.4 The Modification Panel shall notify the Secretary and the Appealing Party of its determination under paragraph 13.3 as soon as reasonably practicable following receipt of the Appeal, and where the Modification Panel:

- (a) confirms its initial determination under paragraph 9.3.9(a), the Secretary shall notify each Transporter, User, Member, Third Party Participant, Non-Code Party (if any) and the Authority of the Modification Panel's confirmation of its determination under

paragraph 9.3.9(a) and confirm the implementation or (as the case may be) non-implementation of the proposal:

(b) reverses its initial determination under paragraph 9.3.9(a), the Secretary shall notify each Transporter, User, Member, Third Party Participant, Non-Code Party (if any) and the Authority of the Modification Panel's determination and send each such person an implementation or (as the case may be) non implementation notice, which shall have effect in place of the implementation or (as the case may be) non implementation notice issued pursuant to the Modification Panel's initial determination under paragraph 9.3.9(a).

13.5 The Appealing Party may no later than fifteen (15) Business Days after receipt of notification under paragraph 13.4(a) or (b) make an appeal to the Authority in respect of the Modification Panel's determination under paragraph 13.3, such notice to identify the Self Governance Modification Proposal which is the subject of the appeal and any representations which the Appealing Party wishes to make in support of the Authority Appeal.

13.6 If the Authority determines the Authority Appeal satisfies the Appeal Criteria, the Authority shall consider the Authority Appeal having regard to:

(a) the Self-Governance Modification Proposal;

(b) the final Modification Report in respect of the Self-Governance Modification Proposal;

(c) any representations made by the Appealing Party in support of the Authority Appeal; and

(d) the determination made by the Modification Panel under paragraph 13.3

and the Authority may confirm or reverse the Modification Panel's determination under paragraph 13.3 or rule that the Modification Panel's determination should have no further effect for the purposes of these Modification Rules.

13.7 Where requested to do so by the Authority for the purposes of paragraph 13.6, the Modification Panel shall reconsider its determination under paragraph 13.3, following which the Modification Panel shall notify the Authority in writing of any matter which the Modification Panel considers may be relevant in respect of the Authority's consideration of the Authority Appeal.

13.8 The Authority shall notify the Secretary and the Appealing Party of its decision under paragraph 13.6 in respect of the Authority Appeal as soon as reasonably practicable following receipt of the Authority Appeal, and the decision of the Authority shall be final and binding on the Appealing Party.

13.9 Where the Authority:

(a) confirms the Modification Panel's determination under paragraph 13.3, the Secretary shall notify each Transporter, User, Member, Third Party Participant and Non-Code Party (if any) of the Authority's confirmation of the Modification Panel's determination under paragraph 13.3 and confirm the implementation or (as the case may be) non-implementation of the proposal;

(b) reverses the Modification Panel's determination under paragraph 13.3, the Secretary shall notify each Transporter, User, Member, Third Party Participant and Non-Code Party (if any) of the Authority's decision and send each such person an implementation notice or (as the case may be) non implementation notice, which shall have effect in place of the Modification Panel's determination under paragraph 13.3;

(c) decides the Modification Panel's determination under paragraph 9.3.8(a) should have no further effect for the purposes of these Modification Procedures, the Secretary shall notify each Transporter, User, Member, Third Party Participant and Non-Code Party (if

any) of the Authority's decision and the Self Governance Modification Proposal shall be resubmitted (in accordance with the Authority's decision) to the Consultation Phase in accordance with paragraph 7.3 or to the Development Phase.

13.10 Where the notice referred to in paragraph 13.9(b) is an implementation notice:

- (a) paragraphs 9.3.8 to 9.3.11 (inclusive) shall not apply; and
- (b) the Secretary shall direct the Transporters to:
  - (i) amend the final Modification Report in respect of such proposal, so that the Modification Panel's determination is treated as its recommendation under paragraph 9.3.3(b); and
  - (ii) submit the report to the Authority under paragraph 9.3.4.