



## Final Modification Report – Variation Process

Modification Rules	Comments on Process
<p><b>2.1 Definitions</b></p> <p>"Self-Governance Modification Proposal": a Modification Proposal or an alternative to such proposal which:</p> <p>(a) the Modification Panel has determined satisfies the Self-Governance Criteria under paragraph 7.2.3(a)(i) <b>(including after any variation of such proposal under paragraph 6.5)</b> and in respect of which the Code Administrator on behalf of the Modification Panel has submitted to the Authority a Self-Governance Statement (which has not been withdrawn by the Code Administrator on behalf of the Modification Panel or rejected by the Authority by the Self-Governance Modification Proposal Determination Date); or</p>	<p>This indicates that should a modification be varied under paragraph 6.5, its Self Governance status should be reconfirmed by Panel.</p>
<p><b>6.5 Withdrawal or <b>variation</b> of Modification Proposals</b></p>	<p>This section specifically deals with the process for variations. Withdrawal of a modification has not been considered in the comments below.</p>
<p>6.5.1 A Proposer may:</p> <p>(b) subject to paragraph 6.5.7, <b>vary</b> a Modification Proposal, at any time before the Modification Panel has determined to proceed to Consultation pursuant to paragraph 7.2.3(b)(i), by notice to the Secretary, and subject to paragraph 6.4, and to paragraph 12.4, any Modification Proposal so <b>varied</b> shall replace the original Proposal;</p>	<p><b>BEFORE Panel determination to Consultation</b></p> <p>(b) advises that a modification can be varied by the Proposer at any time before it is issued to Consultation – the JO uses the term amended modification and this is used to title the email notification. It does not attract the suffix 'V' at this point as it is considered to be a revised version and the version number is incremented accordingly.</p> <p><b>Note:</b>  <b>See 2.1 Self Governance definition, above: This indicates that the Self Governance status of a modification should be reconfirmed following a variation (amendment) to the modification. Previously this has only happened when challenged or following the raising</b></p>

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<p>(c) subject to paragraphs 6.4, 6.5.7 and 12.4, request a <b>variation</b> to a Modification Proposal ("<b>variation request</b>"), at any time after the Modification Panel has determined to proceed to Consultation pursuant to paragraph 7.2.3(b)(i) and before the Modification Panel has made a determination in respect of such Modification Proposal pursuant to paragraph 9.3.3(a), by notice to the Secretary, and any such <b>variation request</b> shall contain a description of the nature of the <b>variation</b></p>	<p><b>of a Variation Request.</b></p> <p><b>AFTER Panel determination to Consultation but BEFORE determination on Implementation</b></p> <p>(c) advises that once has determined that a modification should be issued to Consultation, it can only be varied by the Proposer by submission of a formal <b>Variation Request</b> to the JO for consideration by Panel.</p> <p>In addition, the Variation Request must be made BEFORE Panel has made its determination on implementation. The JO publishes a template for Variation Requests, which helps to guide the Proposer to provide the information required by Panel.</p>
<p>6.5.2 The Secretary shall, within a reasonable period of time following any withdrawal, <b>variation</b> or <b>variation request</b> (except where such <b>variation request</b> 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, <b>variation</b> or <b>variation request</b> (as the case may be).</p>	<p>The JO advises the industry of all amended modifications or Variation Requests with the exception of those raised directly at Panel. The latter would be recorded in the Panel minutes.</p>
<p>6.5.3 Following receipt of the notice given pursuant to paragraph 6.5.1(c) the Secretary shall submit such <b>variation request</b> to the appropriate Modification Panel which the Proposer may attend for the purpose of explaining the <b>variation request</b>.</p>	<p>Variation Requests are included on the Panel agenda.</p> <p>However, variations (amended modifications) are not, which may cause a conflict with the requirements of the Self Governance definition at 2.1 above.</p>

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<p>6.5.4 Subject to paragraph 6.4, and paragraph 12.4, the Modification Proposal shall be <b>varied</b> to replace the original Proposal which shall be deemed withdrawn where the Modification Panel:</p> <ul style="list-style-type: none"> <li>(a) determines by a unanimous vote that the <b>variation request</b> is immaterial, and in such case the <b>varied</b> Modification Proposal shall continue through the Modification Procedures from the point at which the original Proposal was deemed withdrawn;</li> <li>(b) does not so determine in accordance with (a), and in such case the Modification Panel shall make a determination in respect of the <b>varied</b> Modification Proposal in accordance with paragraph 7.2.3.</li> </ul>	<p><b>It is not clear in the text that this paragraph only applies to Variation Requests 6.5.1 (c).</b></p> <p>For Variation Requests, Panel test the materiality of the variation and a unanimous vote is required for it to be considered immaterial, otherwise the Variation Request is considered material.</p> <p><b>Should this question be posed: “Is the Variation Request material ?” – positive votes are then recorded in the Panel minutes indicating the Variation Request is not immaterial.</b></p> <p><b>For immaterial</b> – the original modification is considered withdrawn and the varied modification (attracting the suffix ‘V’) continues in the process from where the original modification had reached.</p> <p><b>For material</b> – the original modification is withdrawn and the varied modification is treated as a new modification and is tested against the SCR, Self Governance criteria and whether the modification should be sent to Workgroup for assessment or issued to consultation. <b>See 7.2.3 below.</b></p>
<p>6.5.5 The Proposer of a <b>variation request</b> may withdraw it at any time before the Modification Panel votes in accordance with paragraph 6.5.4.</p>	<p>The Proposer can withdraw a Variation Request prior to its consideration by Panel.</p>
<p>6.5.7 For the purposes of this paragraph 6.5:</p> <ul style="list-style-type: none"> <li>(a) the Authority, upon request by a Proposer of a Significant Code Review Modification Proposal, may direct: <ul style="list-style-type: none"> <li>(i) that the Proposer may <b>vary</b>, withdraw or make a <b>variation request</b> in respect of the relevant Significant Code Review Modification Proposal in accordance with paragraph 6.5; or</li> <li>(ii) that the Proposer may not <b>vary</b>, withdraw or make a <b>variation request</b> in respect of the relevant Significant Code Review Modification Proposal and that such proposal shall</li> </ul> </li> </ul>	<p>Where the modification has been raised to satisfy the requirements of a Significant Code Review, it can only be varied or a variation request raised with the approval of the Authority.</p> <p><b>The Modification Rules are not clear on how the Proposer and/or Authority demonstrate that permission has been given. It would be assumed that a letter is provided by the Authority or a statement is provided for the Panel minutes.</b></p>

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proceed in accordance with the Modification Procedures; and	
<p><b>12.4 Variation of Modification Proposal</b></p> <p>12.4.1 In the case of a Modification Proposal adopted pursuant to paragraph 6.4, the:</p> <ul style="list-style-type: none"><li>(a) Transporter(s) or User(s) adopting the proposal (where that proposal made is in respect of the Uniform Network Code); or</li><li>(b) Relevant Transporter or Relevant Shipper adopting the proposal (where that proposal made is in respect of an Individual Network Code),</li></ul> <p>shall (as the case may be) as it considers appropriate modify that adopted Modification Proposal having regard to better facilitating the achievement of the Relevant Objectives and having had regard to any other matter (including, but without limitation, representations (if any) received (in accordance with these Rules) from each Transporter, Users, Non-Code Parties, Third Party Participants and otherwise and the report of the relevant Workgroup and discussions at meetings of the Modification Panel) as appropriate.</p>	<p>This paragraph applies to modifications that have been withdrawn by the original Proposer and then adopted by another party.</p>

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<p>7.2.3 Subject to paragraph 7.2.2 and paragraph 7.2.8, the Modification Panel may, without prejudice to paragraph 7.2.4, determine that:</p> <p>(a) Modification Proposal:</p> <ul style="list-style-type: none"> <li>(i) satisfies the Self-Governance Criteria; and, if applicable</li> <li>(ii) satisfies the Fast Track Self-Governance Criteria</li> <li>(iii) For the avoidance of doubt, a Modification Panel determination under 7.2.3(a)(ii) must be unanimous</li> </ul> <p>(b) Modification Proposal:</p> <ul style="list-style-type: none"> <li>(i) subject to paragraph 7.2.3(d), should proceed to Consultation in accordance with paragraph 7.3; or</li> <li>(ii) should be referred to a Workgroup for Workgroup Assessment in accordance with paragraph 7.5 (and the Modification Panel may determine the Terms of Reference for such work (including terms as to the identity of any third parties to be consulted) and the date upon which it requires the Workgroup to submit its Workgroup Report); or</li> <li>(iii) should be deferred to a subsequent meeting of the Modification Panel for further discussion; or</li> <li>(iv) be implemented, subject to unanimous determination under 7.2.3(a)(ii) that Fast Track Self-Governance Criteria are satisfied and subject to Panel determining unanimously that the Modification Proposal be implemented.</li> </ul>	<p><b>Note:</b></p> <p><b>This process recently caused a conflict following the send back of an FMR (0451/0451A) that contained an alternative modification. Both modifications required Variation Requests following disapplication of the rules and Panel determined that both variations were material.</b></p> <p><b>Both modifications were then tested against this paragraph and Panel determined under 7.2.3 (b) (i) to issue them both the Consultation. As both modifications had been issued to Consultation, neither could be considered as an alternative 6.4.5 (see below) prevents alternatives being raised at this stage.</b></p> <p><b>This should be considered an exceptional scenario and that modifications which are alternates and subsequently Varied under .64.5 should remain as alternatives in the process.</b></p>

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<p>(c) at any time before a Modification Proposal made by a Transporter or (provided it is a User Pays Modification Proposal a User proceeds to Consultation in accordance with paragraph 7.3 the Transporters shall:</p> <ul style="list-style-type: none"> <li>(i) in accordance with a period determined by the Modification Panel, provide a rough order of magnitude assessment, which will include cost estimate(s) for any User Pays Service, any indicative User Pays Charge(s) and, having regard to the User Pays Guidance Document a commentary in respect of these; and</li> <li>(ii) request from the Authority a View on whether the proposed cost apportionment and any User Pays Charges are appropriate and following receipt of such View circulate it to the next meeting of the Modification Panel; and</li> </ul> <p>(d) the impact (if any) of the Modification proposed in a Modification Proposal on Greenhouse Gas Emissions is likely to be material (after considering any assessment by the Proposer under paragraph 6.2.6 of the quantifiable impact of the Modification proposed in a Modification Proposal on Greenhouse Gas Emissions) and shall have regard to such determination (if any) in determining whether the Modification Proposal should proceed to Consultation under paragraph 7.2.3(b)(i) (provided that where the Modification Panel determines the likely impact will be material and the Proposer provided no assessment in respect of such impact under paragraph 6.2.6 the Modification Proposal shall not proceed to Consultation).</p>	
<p>6.4.5 An alternative Modification Proposal may not be made in respect of a Modification Proposal after the Modification Panel</p>	<p>This section prevents an alternative modification being raised once any modification has been issued to consultation by Panel.</p>

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pursuant to paragraph 7.2.3(b) has determined such Modification Proposal should proceed to Consultation.	
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