

## UNIFORM NETWORK CODE – GENERAL TERMS

### SECTION A - DISPUTE RESOLUTION

#### 1 GENERAL

##### 1.1 Introduction

1.1.1 This Section A provides for the resolution of certain disputes between the Parties.

1.1.2 For the purposes of this Section A:

- (a) a "**dispute**" is any dispute or difference arising between the Parties under or in connection with the Code, the Framework Agreement, any Ancillary Agreement {or any Supplemental Agreement};
- (b) in respect of any dispute "**parties**" means the Transporter(s) and/or the User(s) party to such dispute, and "**party**" shall be construed accordingly.

##### 1.2 Expert determination

1.2.1 For the purposes of the Code "**Expert Determination**" means the determination of an expert pursuant to paragraph 2.

1.2.2 Where the Code or any Ancillary Agreement provides or the parties have agreed that a dispute is to be referred to or resolved by Expert Determination:

- (a) paragraph 2 shall apply; and
- (b) subject to paragraph 1.4, no party shall commence proceedings in any court in respect of or otherwise in connection with such dispute.

##### 1.3 Mediation

The parties may agree to refer any dispute (including such a dispute as is referred to in paragraph 1.2) to mediation in accordance with paragraph 3.

##### 1.4 Interlocutory relief

Nothing in this Section A shall prevent any party from seeking interim or interlocutory relief in any court.

##### 1.5 Communications

1.5.1 Except where otherwise provided in this Section A, any notice, submission, statement or other communication relating to any dispute to be given pursuant to this Section A by or to any party, an expert, a mediator, the disputes secretary or a User shall be in writing.

1.5.2 No such notice, submission, statement or communication shall be given as a UK Link Communication.

1.5.3 Where two or more Users are parties to a dispute any such notice, submission,

statement or communication to be given by them may be given by them jointly (and any reference to the party or parties by whom and to whom it is to be given shall be construed accordingly).

- 1.5.4 For the purposes of any limit under this Section A on the length of any submission or statement or any attachments thereto a "**page**" is a single-sided A4 sheet which may contain single spaced type in a normal font size.

## 1.6 **Disputes secretary**

- 1.6.1 The Transporters shall designate a person as secretary ("**disputes secretary**") for the administrative purposes provided in this Section A, and may from time to time change the person designated as disputes secretary.
- 1.6.2 The Transporters shall keep each User informed of the identity of the disputes secretary for the time being.
- 1.6.3 The disputes secretary shall not represent any Transporter in any dispute under this Section A.

## 1.7 **DNO Users**

In this Section A references to Users include DNO Users.

## 2 **EXPERT DETERMINATION**

### 2.1 **Introduction**

- 2.1.1 A dispute which is to be referred to or resolved by Expert Determination shall be determined by an individual appointed as expert in accordance with this paragraph 2.
- 2.1.2 In this paragraph 2 a "**listed expert**" is an individual whose name is for the time being on the list of experts maintained under paragraph 2.10.
- 2.1.3 No person shall be nominated as a proposed expert under paragraph 2.2.2 or 2.2.3 or as a listed expert under paragraph 2.10 unless that person has the requisite qualifications to resolve a dispute referable under the Code to Expert Determination by virtue of his education, experience and training.

### 2.2 **Initial notice and selection of expert<sup>†</sup>**

- 2.2.1 Any party to a dispute which is to be resolved by or referred to Expert Determination may give notice of the dispute in accordance with paragraph 2.2.2.
- 2.2.2 The notice shall be given to each other party and shall:
- (a) provide brief details of the issues to be resolved; and
  - (b) nominate four persons as proposed experts (who may but need not be listed experts).

<sup>†</sup>The provisions in paragraphs 2.2.6 et seq need to be repeated and adapted to recognise Transporter/Transporter(s) disputes.

- 2.2.3 Within 5 Business Days after any notice under paragraph 2.2.1 was given, each party (other than the party giving such notice) shall by notice to each other party nominate four persons as proposed experts (who may but need not be listed experts).
- 2.2.4 The parties shall endeavour within 10 Business Days after the notice under paragraph 2.2.1 was given to agree upon the selection of an expert, and may meet for this purpose.
- 2.2.5 If within 10 Business Days after the notice under paragraph 2.2.1 was given the parties shall not have agreed upon the selection of an expert, each shall within a further 5 Business Days give to the others a notice ("**preference notice**") specifying the names of seven listed experts in order of preference and assigning to each a number ("**preference number**") from 7 (the most preferred) to 1 (the least preferred), and paragraphs 2.2.6 to 2.2.9 (as applicable) shall apply.
- 2.2.6 In the case of a dispute between a Transporter and any User(s):
- (a) ~~2.2.6 Where~~where only one User is a party, or all Users who are parties have submitted a preference notice jointly (in accordance with paragraph 1.5.3), the listed expert whose name appears in both preference notices, or if more than one appears the preferred listed expert (in accordance with paragraph 2.2.8(a)), shall be selected;
  - (b) ~~2.2.7 Where~~where more than one User is party and they do not submit a preference notice jointly:
    - (i) ~~(a)~~ if the name of a listed expert appears in all of the preference notices (including the Transporter's) he shall be selected, and if there is more than one the preferred listed expert shall be selected;
    - (ii) ~~(b)~~ otherwise a list of listed experts shall be established from such Users' preference notices, comprising the seven listed experts with the greatest aggregate preference numbers, in order of aggregate preference number, and such list shall be treated for the purpose of paragraph ~~2.2.6 as~~ (a) a preference notice submitted jointly by all such Users (each such listed expert being treated as having a preference number from 7 to 1 assigned to him).
- 2.2.7 In the case of a dispute between Transporters, the preferred listed expert (in accordance with paragraph 2.2.8(a)), shall be selected.
- 2.2.8 For the purposes of paragraphs 2.2.6 and ~~2.2.7~~2.2.6(a),
- (a) "**preferred listed expert**" means the listed expert with the greatest aggregate preference number;
  - (b) a listed expert's "**aggregate preference number**" is the aggregate of:
    - (i) for the purposes of paragraph ~~2.2.6~~2.2.6(a) and ~~2.2.7~~, the preference numbers assigned to him under each preference notice (including where relevant a deemed joint preference notice under paragraph ~~2.2.7~~2.2.6(b)(i)(ii));
    - (ii) for the purposes of paragraph ~~2.2.7~~(a)2.2.6(b)(i)(i), the sum of (1) the

preference numbers assigned to him under Users' preference notices divided by the number of Users' preference notices, and (2) the preference number assigned to him under the Transporter's preference notice;

(iii) for the purposes of paragraph ~~2.2.7~~ 2.2.6(b)(i)(j), the preference numbers assigned to him under each User's preference notice;

(c) where two or more experts have the same aggregate preference number they shall be ranked in the order in which their names appear in the list of experts maintained under paragraph 2.10.

2.2.9 At the request of any party, all parties shall submit a copy of their preference notices to the disputes secretary who shall ascertain and inform the parties of the selected expert in accordance with paragraphs 2.2.6 and ~~2.2.7~~ 2.2.6(a).

### 2.3 Appointment of the Expert

2.3.1 Upon the selection under paragraph 2.2 or 2.3.3 of an expert, the parties shall forthwith notify the expert selected of his selection and request him to confirm within 5 Business Days whether or not he is willing and able to accept the appointment.

2.3.2 The notification to the expert shall include the following:

- (a) the names of the parties and a summary of the dispute;
- (b) a request that the expert ~~provide~~ provides the confirmation required under paragraph 2.6;
- (c) a request for confirmation of the expert's scale of fees;
- (d) a statement that the expert's fees and expenses will be paid as provided in paragraph 2.8;
- (e) a statement that the information disclosed in the notification is confidential and that it should not be disclosed, copied or revealed whether the appointment is accepted or not;
- (f) a copy of this paragraph 2; and
- (g) a request for confirmation that the expert is able and willing to act in accordance with the procedure set out herein.

2.3.3 If the selected expert is unwilling or unable to accept the appointment, or shall not have confirmed his willingness and ability to accept such appointment within the period required under paragraph 2.3.1, or the amount of his remuneration or terms of his appointment are not agreed within the period required under paragraph 2.3.4, the parties shall endeavour to agree upon the selection of another expert within 3 Business Days, failing which another expert shall be selected in accordance with paragraphs 2.2.5 to 2.2.9.

2.3.4 The parties shall use their best endeavours to ensure that the terms of the contract of appointment of the expert are agreed with him within 10 Business Days following his confirmation of ability and willingness to act, and agree that if the parties are unable to

agree with the expert the amount of his remuneration or any other terms of his appointment then:

- (a) if one or more of the parties is willing to agree what the expert proposes, such amount or terms shall be determined by the President for the time being of the Law Society whose decision shall be final and binding on the parties to the dispute and whose costs of such reference shall be borne by the parties to the dispute equally;
- (b) if none of the parties is willing to agree what the expert proposes, or the expert is not willing to agree what is determined pursuant to paragraph (a), another expert shall be selected in accordance with paragraph 2.3.3.

2.3.5 The expert shall be an independent contractor and the relationship of the parties and the expert shall in no event be construed to be that of principal and agent or master and servant.

2.3.6 The expert shall not act as an arbitrator (and accordingly the provisions of the Arbitration Acts 1950-1979 shall not apply) nor as mediator.

## 2.4 Timetable and Procedure

2.4.1 No later than 5 Business Days following his appointment, the expert shall by giving reasonable notice to each party convene a meeting with the parties at which he shall raise any matters upon which he requires clarification and discuss with the parties any additional procedural requirements he or they may have.

2.4.2 The parties shall, not later than 10 Business Days after the appointment of the expert, submit to the expert and to each other party written submissions of not more than 10 pages in length together with all supporting documentation, information and data which they wish to submit in respect of the dispute; and the parties may also submit a statement of facts which they have agreed between themselves to the expert.

2.4.3 Each party may, not later than 20 Business Days after the appointment of the expert, submit to the expert and each other party written submissions of not more than 10 pages in length, together with any additional supporting documentation, information and data, in reply to the submissions made under paragraph 2.4.2.

2.4.4 The expert shall disregard any documentation, information, data or submissions supplied or made (other than pursuant to paragraph 2.4.9) by any party later than 20 Business Days after his appointment unless the same are provided in response to a request from the expert.

2.4.5 If the expert shall wish to obtain independent professional and/or technical advice in connection with the dispute:

- (a) he shall first provide the parties with details of the name, organisation and estimated fees of the professional or technical adviser; and
- (b) he may engage such adviser with the consent of the parties (which consent shall not be unreasonably withheld) for the purposes of obtaining such professional and/ or technical advice as he may reasonably require.

2.4.6 The expert may at his discretion and at any time request information from any of the

parties orally but shall only do so in the presence of the other parties.

- 2.4.7 At any time after the period referred to in paragraph 2.4.3 expires, with the written consent of the parties, the expert may (but shall not be required to) convene a hearing upon giving the parties reasonable notice.
- 2.4.8 The expert shall provide a draft of his determination, which shall be a report in writing giving reasons for the determination, to the parties not later than 35 Business Days following his appointment.
- 2.4.9 Each party may, within 10 Business Days following delivery of the draft determination, submit to the expert any documentation, information, data, submissions or comments not exceeding 5 pages in length on or in respect of the draft determination.
- 2.4.10 The expert shall submit his final determination, which shall be a report in writing giving reasons for his determination of the dispute, to the parties not later than 50 Business Days following his appointment.
- 2.4.11 If the expert fails to submit the final determination by the time required under paragraph 2.4.10, at the request of any party another expert may be appointed in accordance with the provisions of this paragraph 2 and the appointment of the previous expert shall cease unless, before the appointment of the new expert, the previous expert shall have submitted his final determination hereunder, in which case the new expert shall be forthwith informed that his services will not be required.

## 2.5 **Effect of determination**

- 2.5.1 The expert's final determination shall (unless given after the appointment of another expert under paragraph 2.4.11) be final and binding on the parties except in the event of fraud or where it is so clearly erroneous on its face that it would be unconscionable for it to stand, in which case another expert may be appointed in accordance with the provisions of this paragraph 2.
- 2.5.2 Except as provided in paragraph 2.5.1, no party shall commence proceedings in respect of or refer to any court any finding by the expert, whether made at any time after his appointment or in his determination, as to the dispute or the construction of or otherwise in respect of the Code, a Framework Agreement or any Ancillary Agreement.

## 2.6 **Conflict of interests**

- 2.6.1 The expert shall confirm to the parties before his appointment that he does not hold any interest or duty which would or potentially would conflict with the performance of his duties under his contract with the parties.
- 2.6.2 If after his appointment the expert becomes aware of any interest or duty which conflicts or potentially conflicts with the performance of his duties under his contract with the parties, the expert shall inform the parties forthwith of such conflict giving full details thereof.
- 2.6.3 Any party may within 5 Business Days of the disclosure of any such conflict or potential conflict object to the appointment or continued appointment of an expert, in which case the expert shall not be or shall cease to be appointed and a new expert shall be selected and appointed in accordance with this paragraph 2 (and the rejected expert

shall not be nominated for such selection).

## 2.7 Confidentiality

- 2.7.1 The parties and the expert shall keep the fact that the Expert Determination is taking place and its outcome confidential.
- 2.7.2 All documentation, information, data, submissions and comments disclosed or delivered whether in writing or otherwise by any party to the expert or to any other party either in connection with or in consequence of the appointment of the expert shall be regarded and treated as confidential; and the expert and the parties shall not disclose any or all of the documentation, information, data, submissions and comments including the contents and copies thereof in any form except in connection with any proceedings in any court which a party is not prohibited under this Section A from commencing.

## 2.8 Costs

- 2.8.1 Each party shall bear its own costs including without limitation costs of providing documentation, information, data, submissions or comments under this paragraph 2 and all costs and expenses of all witnesses and other persons retained by it.
- 2.8.2 The expert shall provide the parties with a breakdown of:
- (a) his fees; and
  - (b) his reasonable expenses, including the fees of and reasonable expenses incurred by any technical or professional advisers.
- 2.8.3 The expert's fees and expenses under paragraph 2.8.2 shall be payable by the parties in equal amounts, unless the expert (having regard to the conduct of the parties with respect to the dispute in question) shall direct in his final determination that such costs and expenses should be borne by one or some only of the parties, in which case the parties shall pay such fees and expenses in accordance with such direction.
- 2.8.4 If the terms of the expert's appointment provide for the payment of his fees and expenses before the delivery of the final determination, the parties shall pay such fees and expenses in equal amounts, and shall make adjustment payments inter se following any such direction as is referred to in paragraph 2.8.3.

## 2.9 Miscellaneous

The expert shall not be held liable for any act or omission unless it shall be shown that the expert has acted fraudulently or in bad faith.

## 2.10 List of Experts <sup>21</sup>

- 2.10.1 The disputes secretary shall maintain a list of experts comprising (except in the case of any casual vacancy) 12 persons available to act as experts in accordance with paragraph 2.10.2 and listed in alphabetical order by surname.

- 2.10.2 The listed experts shall be such persons as the Uniform Network Code Committee

<sup>21</sup> Transporter/Transporter disputes still to be considered.

(identifying 6 such persons being treated as nominated by the Transporters and 6 by Users) shall by panel majority nominate.

- 2.10.3 In default of such nomination by the Uniform Network Code Committee, the list shall comprise:
- (a) 6 persons nominated by the Transporters; and
  - (b) 6 persons nominated by Users (not being persons appointed by the Transporters under paragraph (a)) in accordance with paragraph 2.10.4.
- 2.10.4 Where Users are to nominate a person or persons under this paragraph 2.10:
- (a) the disputes secretary shall invite each User to nominate (by notice in writing to the disputes secretary) up to three persons;
  - (b) the persons placed on the list shall be the six persons (or for the purposes of paragraph 2.10.6(c) the person) whose name(s) appear most frequently in all Users' nominations;
  - (c) the disputes secretary shall determine and inform Users of reasonable procedures and time periods for the implementation of this paragraph 2.10.4.
- 2.10.5 No person shall be nominated as expert under this paragraph 2.10 unless he has first confirmed in writing to the disputes secretary that he accepts his nomination.
- 2.10.6 If any listed expert indicates that he no longer wishes to be included in the list he shall be removed from the list and replaced by a person nominated:
- (a) by panel majority of the Uniform Network Code Committee at either of its next following meetings; or
  - (b) where he was nominated or treated as nominated by the Transporters, by the Transporters; or
  - (c) where he was nominated or treated as nominated by Users, by the application of paragraph 2.10.4 (but so as to refer to 1 and not 6 persons).
- 2.10.7 At intervals of approximately 5 years the Uniform Network Code Committee shall review the list of experts, and unless it shall by panel majority decide otherwise the list shall be cancelled and a new list established in accordance this paragraph 2.10 (but so that any of the former listed experts may be renominated).

### **3 MEDIATION**

#### **3.1 Introduction**

- 3.1.1 A dispute which is to be referred to mediation shall be referred to a single mediator who shall explore the interests of the parties to the dispute and encourage the parties to resolve the dispute in light of such interests.

#### **3.2 Appointment of mediator**

- 3.2.1 Within 5 Business Days after agreeing to refer a dispute to mediation the parties shall

meet and use their best endeavours to agree upon a person to act as mediator, unless they have agreed upon a mediator when agreeing so to refer the dispute.

- 3.2.2 Where the parties agree upon a mediator they shall request such person to accept appointment as mediator, and shall use all reasonable endeavours to agree (between themselves and with the mediator) upon the terms of his appointment.
- 3.2.3 A person shall be treated as appointed as a mediator for the purposes of this paragraph 3 when he has confirmed his acceptance to act as mediator in accordance herewith.

### 3.3 Procedure and timetable

- 3.3.1 Within 5 Business Days following his appointment, the mediator shall require each party to provide him with a written summary of the dispute, which written summary shall not exceed 5 pages.
- 3.3.2 The mediator may in his discretion:
  - (a) request any party to provide him with copies of any documentation or information which he believes will assist to explain any such summary; and
  - (b) provide any such written summary and/or any information or copy documentation received under paragraph (a) to the other party(ies) to the dispute.
- 3.3.3 Within 10 Business Days following his appointment, the mediator shall contact the parties and shall arrange to meet them.
- 3.3.4 Each party shall attend the meeting with the mediator with a maximum of three representatives, one of whom shall be a person with decision making authority in relation to the subject matter of the dispute and one of whom may be the legal adviser of that party.
- 3.3.5 No additional persons shall attend without the prior written consent of the mediator.
- 3.3.6 The mediator may convene more than one meeting with the parties but shall not convene any meetings later than 40 Business Days following his appointment, unless the parties agree otherwise.
- 3.3.7 The mediator may at his discretion meet each party on his own whether during a meeting attended by the other parties or otherwise, but he shall not disclose to any other party matters disclosed to him in such circumstances without the consent of the disclosing party.
- 3.3.8 At any meeting attended by the parties, the mediator may require each party to make a brief presentation of its case and he may also require the other parties to reply to another party's presentation.
- 3.3.9 The mediator shall not act as an arbitrator (and accordingly the provisions of the Arbitration Acts shall not apply).

### 3.4 Result of mediation

- 3.4.1 The mediator shall encourage the parties to resolve the dispute by agreement and may also discuss informally with any party his own views as to the merits of the dispute.
- 3.4.2 If the dispute remains unresolved 45 Business Days after the mediator's appointment the mediator shall, if so requested by any party, advise the parties of his views and may, at his discretion, also inform them of what he considers to be a fair settlement of the dispute.
- 3.4.3 No party shall be bound to adopt the views or advice expressed or provided by the mediator.
- 3.4.4 If the dispute is resolved or the parties accept the views and advice of the mediator under paragraph 3.4.2, the parties shall use their best endeavours, within 5 Business Days after such resolution or acceptance, to enter into a settlement agreement which shall:
- (a) set out the terms accepted by the parties or on which the dispute was resolved; and
  - (b) contain provisions of confidentiality similar to those set out in paragraph 3.5.
- 3.4.5 Such settlement agreement shall be made pursuant to English law and courts in England shall be given exclusive jurisdiction over any dispute arising from the settlement agreement.
- 3.4.6 A settlement agreement shall not be an Ancillary Agreement.

### 3.5 Confidentiality

- 3.5.1 The mediator and the parties, their representatives and advisers and any person connected in any way with the mediation shall keep confidential the fact that the mediation is taking place, and its outcome, and all documents, submissions, statements, information and data including anything revealed orally or otherwise during the mediation and any settlement agreement except as may be necessary for implementation or enforcement of the settlement agreement.
- 3.5.2 All documents and information prepared by a party for and disclosed in the mediation, and all discussions which take place with a party during the course of the mediation, shall be afforded the same protection from discovery as "**Without Prejudice**" negotiations in proceedings in court; provided that this shall not preclude any document, which may have been disclosed during the mediation but was not prepared solely for use in the mediation, from being discoverable in any proceedings.

### 3.6 Costs

- 3.6.1 The parties shall unless they agree otherwise bear their own costs and expenses of whatsoever nature of the mediation.
- 3.6.2 The parties shall bear the fees and expenses of the mediator and all administrative costs arising from the mediation equally.

### 3.7 Further proceedings

- 3.7.1 The mediator shall not act in any subsequent legal or similar proceedings in respect of the dispute in which he acted as mediator.
- 3.7.2 The mediator shall not be held liable for any act or omission unless it shall be shown that he has acted fraudulently or in bad faith.