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## **Joint Governance Arrangements Agreement**

**Dated**

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# Joint Governance Arrangements Agreement

## Dated

## Between the Parties listed in Schedule 1.

## Recitals

- A Each Party is a holder of a Transporter's Licence and is a Relevant Gas Transporter .
- B Pursuant to Standard Special Condition A12 (entitled "Joint Office Governance Arrangements") of the Transporter's Licence each Relevant Gas Transporter is required, together with the other Relevant Gas Transporters, to establish, operate and develop joint governance arrangements for:
- (i) matters specified in the Transporter's Licence;
  - (ii) other matters to be undertaken by them on a common, joint or coordinated basis;
  - (iii) the promotion of efficiency in the implementation and administration of the network code of a Relevant Gas Transporter and/or the Uniform Network Code; and
  - (iv) such other matters as they may decide.
- C The Parties are entering into this Agreement, pursuant to paragraph 1(b) of Standard Special Condition A12 of the Transporter's Licence, to provide for the establishment, operation and development of the Joint Governance Arrangements, [the form of] which has been approved by the Authority.

## It is agreed:

### 1 Definitions and Interpretations

#### 1.1 Definitions

##### 1.1.1 In this Agreement:

**Accession Agreement** means an agreement of that name, in the form set out in Schedule 2.

**Act** means the Gas Act 1986.

**Additional Party** has the meaning given in Clause 2.1.1.

**Affiliate** in relation to a Party, means any holding company or subsidiary company of that Party or any company which is a subsidiary company of the holding company of that Party and the expressions "**holding company**" and "**subsidiary**" shall have the meanings respectively given to them by sections 736 and 736A of the Companies Act 1985.

**Agency Services Agreement (or AS Agreement)** means the agreement of that name entered into by the Parties and the Transporters' Agency pursuant to Standard Special Condition A15 of the Transporter's Licence.

**Aggregate Approved Expenditure** has the meaning given in Paragraph B2 of Schedule 9.

**Agreement** means this agreement including the Recitals and the Schedules.

**Approved Expenditure** means the Expenditure approved by the Committee under Schedule 9.

**Authority** means the Gas and Electricity Markets Authority as established by Section 1 of the Utilities Act 2000.

**Budget** means an annual forecast of expenditure, prepared and revised in accordance with Clause 8.2 and in the form set out in Schedule 8 (Part II).

**Chairman** has the meaning given in Clause 6.3.1.

**Charging Methodology Modification Procedures** means the administrative procedures required for the Parties to coordinate the modification of charges, reserve prices or charging methodologies (as the case may be) required pursuant to Standard Special Conditions A4 and A5 of the Transporter's Licence, as provided in Schedule 6.

**Chief Executive** has the meaning given in Clause 7.2.1.

**Committee** has the meaning given in Clause 6.1.1.

**Confidential Information** means all information received or obtained by a Party as a result of entering into, implementing or performing this Agreement, except insofar that the information relates to the Code, the AS Agreement or the Offtake Arrangements Document.

**Contract for Employment** has the meaning given in Schedule 11.

**Deputy Secretary** has the meaning given in Clause 7.3.1.

**Distribution Network (or DN)** has the meaning given in the Uniform Network Code.

**Draft Statement of Expenses** has the meaning given in Schedule 9.

**Employer** has the meaning given in Schedule 11.

**Expenditure** means costs and expenses (including Staff remuneration and costs under Schedule 8 (Part IB)), incurred by [or on behalf of] a Party, wholly and necessarily in the performance of its obligations or exercise of its rights under this Agreement.

**Expenses Claim** has the meaning given in Paragraph B1 of Schedule 9.

**Expenses Period** means the First Expenses Period, and thereafter, each subsequent period of three calendar months.

**Final Statement of Expenses** has the meaning given in Schedule 9.

**First Expenses Period** means the period starting on the date of this Agreement and ending on [30 June 2005]/[30 September 2005].

**Individual Network Code** has the meaning given in the Uniform Network Code;

**Intellectual Property Rights** means all intellectual property rights at any time protected by statute or common law anywhere in the world, whether legal or beneficial, including, but not limited to:

- (a) patents, petty patents, utility models, copyright, design rights, rights in circuit layouts, registered designs, trade marks, domain names, database rights, and any right to have confidential information kept confidential; and
- (b) any application or right to apply for any of the rights referred to in paragraph (a) directly above.

**Joint Governance Arrangements** means the arrangements made between the Parties pursuant to Clause 5.1.

**Joint IP** has the meaning given in Clause 10.1.2.

**Joint Matters** has the meaning given in Schedule 5.

**Joint Office** (or **JO**) has the meaning given in Clause 7.1.1.

**Modification Panel** has the meaning given in the Modification Rules.

**Modification Rules** has the meaning given in the Uniform Network Code.

**National Transmission System** or **NTS** has the meaning given in the Uniform Network Code.

**Network** means a Distribution Network and/or the NTS.

**Network Code Modification Procedures** means the procedures in the Modification Rules for the modification of the Uniform Network Code and each Individual Network Code.

**Network Operator's Representative** has the meaning given in the AS Agreement.

**Network Ownership** has the meaning given in Clause 9.1.2.

**Offtake Arrangements Document** has the meaning given in the Uniform Network Code.

**Relevant Gas Transporter** means a person holding a Transporter's Licence in which Standard Special Condition A12 ("Joint Office Governance Arrangements") is effective.

**Representative** means each representative appointed under Clause 6.2.1 (and Schedule 3) and shall include any proxies established under Clause 6.5.1.

**Resource Plan** means the resource plan established under Clause 8.1.

**Secundee** has the meaning given in Schedule 11.

**Secondment** has the meaning given in Schedule 11.

**Secondment Terms** means the secondment terms set out in Schedule 11.

**Secretary** has the meaning given in Clause 7.3.1.

**Staff** means the staff appointed by the Parties under Clause 7.4.

**Staff Remuneration** means all payments constituting the total remuneration of the Staff under this Agreement, including the costs set out in Schedule 10.

**Transco** means Transco plc (company number 2006000).

**Transporters' Agency** has the meaning given in the Code.

**Transporter's Licence** means a licence granted under Section 7 of the Act.

**UNC Committee** has the meaning given in the Code.

**Uniform Network Code** (or **Code**) means the uniform network code issued from time to time by the Parties in accordance with the terms of each of their Transporter's Licences.

**Working Day** means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

## 1.2 Interpretation

In this Agreement:

- (a) the list of contents and headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (b) references to this Agreement or any other document shall be construed as references to this Agreement or that other document, as amended, varied, novated supplemented or replaced from time to time;
- (c) unless otherwise stated, references to any recital, Clause, Paragraph or Schedule are to those contained in this Agreement and all Schedules and Annexes to this Agreement are an integral part of this Agreement;
- (d) the expression **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs;
- (e) references to a **Party** are references to a party to this Agreement including that party's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement;
- (f) references to a **person** (or to a word importing a person) shall be construed so as to include that person's successors in title and assigns or transferees; and references to a **person** shall also be construed as including an individual, firm, partnership, trust, joint venture, company corporate, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality);
- (g) the words **include**, **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (h) the words **other** and **otherwise** shall not be construed ejusdem generis with any foregoing words where a wider construction is possible;
- (i) **in writing** means any communication made by letter or fax or, where the Parties agree, electronic mail;
- (j) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (k) references to **amendment** include changes, alteration and modification;
- (l) references to an **agreed form** of a document means [the document initialed by the Parties]/[and contained in an appendix to this Agreement]; and
- (m) **loss** includes any loss howsoever described or characterised and whenever and however arising (including loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, and indirect and consequential loss, including economic loss), cost (including any cost of enforcement), expense, payment, liability (including tax liability), claim, demand, damage, proceedings, penalty, fine, fee, rates, levy, charge, royalty, interest, insurance premium, call, judgment, order or other sanction or amount payable

and the amount by which any right or entitlement to an amount has been reduced as a result of the matter in question.

## **2 Accession and Exit Arrangements**

### **2.1 Accession**

2.1.1 The Parties shall admit any person who becomes a Relevant Gas Transporter after the date of this Agreement (an **Additional Party**) as an additional party to this Agreement.

2.1.2 Each Party (other than [*insert one of the parties*]) hereby irrevocably authorises [*insert the same party*] to sign on its behalf and deliver an Accession Agreement with an Additional Party and undertakes not to withdraw, qualify or revoke such authority.

2.1.3 On execution of an Accession Agreement between [*insert the same party*] and an Additional Party, the Additional Party shall become a Party to this Agreement and shall, as soon as possible thereafter, notify the Authority of its accession to this Agreement.

### **2.2 Exit**

2.2.1 A Party who ceases to be a Relevant Gas Transporter shall, with effect from that date, cease to be a Party without prejudice to the rights and obligations of it and each of the other Parties accrued up to that date, which shall continue to be enforceable.

## **3 Commencement, duration and termination**

### **3.1 Commencement and duration**

3.1.1 This Agreement shall be effective from the date of this Agreement, and shall continue in force until Standard Special Condition A12 ceases to have effect in all of the Parties' Transporter's Licences.

### **3.2 Termination**

3.2.1 The termination of this Agreement (for whatever reason) shall be without prejudice to the rights and remedies of any Party that have accrued up to the date of termination (including the obligation to pay, and right to receive payment of, any amounts that have become payable under this Agreement).

3.3 Any termination of this Agreement (for whatever reason) shall not affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after such termination, including Clauses 10, 11, 14 to 18 (inclusive), 20, 23, and 25.

## **4 Initial obligations**

### **4.1 Uniform Network Code**

4.1.1 Each Party now agrees to adopt, or has already adopted, the [agreed form of the] Uniform Network Code, and each Additional Party upon execution of an Accession Agreement agrees to adopt the Uniform Network Code.

4.1.2 The Parties shall procure that a copy of the Uniform Network Code (and any amendments made to it) is submitted by the Secretary to the Authority in the form (or forms) required by the Authority and in accordance with the requirements of Standard Special Condition A11 of each Party's Transporter's Licence.



## **4.2 Agency Services Agreement**

- 4.2.1 The Parties have entered into the AS Agreement and agree that, subject to [Clause 6.4.1(f)], the governance of any matters arising under the AS Agreement, will be addressed under the AS Agreement.
- 4.2.2 Each Additional Party, upon execution of an Accession Agreement, agrees to execute the AS Agreement with the Transporters' Agency.

## **5 Joint Governance Arrangements**

### **5.1 Responsibilities**

- 5.1.1 Each Party agrees with each other Party to implement:
- (a) the Network Code Modification Procedures;
  - (b) the Joint Matters; and
  - (c) the Charging Methodology Modification Procedures,
- in accordance with the further provisions of this Agreement.
- 5.1.2 The Parties agree that:
- (a) Schedule 4 shall apply to the Network Code Modification Procedures;
  - (b) Schedule 5 shall apply to the Joint Matters; and
  - (c) Schedule 6 shall apply to the Charging Methodology Modification Procedures.

### **5.2 Implementation**

- 5.2.1 For the purpose of the Joint Governance Arrangements, the Parties shall:
- (a) establish a committee of representatives in accordance with Clause 6; and
  - (b) establish a joint office in accordance with Clause 7.

### **5.3 Compliance with licences**

- 5.3.1 The Parties acknowledge that the ability of each Party to comply with the conditions of the Transporter's Licence applicable to this Agreement is, or may be, dependant on each of the other Parties complying with their obligations under this Agreement.
- 5.3.2 Within the scope of this Agreement, each Party undertakes not to cause (by its act or omission) any other Party to be in breach of its Transporter's Licence.
- 5.3.3 No Party shall be required under this Agreement to do, or refrain from doing, anything that will [or is likely to] result in breach by that Party of its Transporter's Licence [and any provision of this Agreement which, after the date of this Agreement, is in conflict with the Transporter's Licence shall be treated as an invalid provision to which Clause 17 shall apply.]
- 5.3.4 The Parties agree that the terms of this Agreement are such as are calculated to:
- (a) promote administrative efficiency in the matters to which this Agreement relates; and

- (b) avoid undue discrimination or preference as between them.

## **6 The Committee**

### **6.1 Establishment of the Committee**

6.1.1 Not later than the date of this Agreement, the Parties shall establish a permanent committee to undertake the functions set out in Clause 6.10 (**Committee**).

6.1.2 The Committee shall comprise:

- (a) the Representatives; and
- (b) the Chairman,

and shall be supported administratively by the Joint Office and the Secretary.

6.1.3 Notwithstanding the absence of the Chairman or one or more Representatives from the Committee from time to time the Committee shall continue to, and shall, carry out its functions under this Agreement and shall be capable of making valid decisions under Clause 6.5.4.

### **6.2 Representatives**

6.2.1 Subject to Clause 6.2.4, Representatives shall be appointed to the Committee in accordance with Schedule 3.

6.2.2 The appointing Party or Parties may remove and reappoint a Representative, and shall give notice to the other Parties of any such removal and reappointment.

6.2.3 It is expected that each Representative shall represent, and inform the Committee of, the views of the Party (or Parties) appointing it, in relation to the Joint Governance Arrangements.

6.2.4 Each Representative appointed under Clause 6.2.1 shall be:

- (a) an employee of:
  - (i) a Party appointing it; or
  - (ii) an Affiliate of a Party appointing it;
- (b) suitably senior in the appointing Party's (or Parties') organisation to act in the capacity of a representative of that Party (or Parties);
- (c) automatically removed (including in its capacity as Chairman) on the date that its appointing Party (or Parties) ceases to be a Party under Clause 2.2,

and shall not be appointed as a Staff member.

6.2.5 A Party (or Parties) appointing a Representative shall give prior notice to each of the other Parties of such appointment.

6.2.6 A Party (or, as the case may be, Parties) shall give each of the other Parties prior notice of its (or their) Representative ceasing to comply with Clauses 6.2.4(a) and 6.2.4(b), and shall as soon as practicable thereafter appoint a replacement under Clause 6.2.1.

6.2.7 All Representatives from time to time appointed on the Committee shall rank equally with each other in seniority for the purposes of this Agreement.

6.2.8 Representatives shall not be, and shall not be deemed to be, employees or contractors of the Committee or the Joint Office, and the Parties shall make their Representatives aware of this prior appointing them under Clause 6.2.1.

6.2.9 Representatives appointed under this Agreement shall not, merely as a result of that appointment, be considered to be representatives or members of the [Modification Panel].

### **6.3 Chairman**

6.3.1 The Parties shall, in accordance with this clause, appoint (and as the case may be, reappoint) one of the Representatives to be chairman of the Committee (**Chairman**).

6.3.2 The following shall apply to the appointment of a Representative as Chairman under Clause 6.3.1:

- (a) the term of appointment shall be one (1) year (from the date of appointment);
- (b) the entitlement shall rotate between the Parties in the alphabetical order of their company names, commencing with the first appointment, and thereafter, upon expiry of the existing Chairman's term or when a vacancy arises; and
- (c) if a vacancy arises (for whatever reason) during a term of the existing Chairman's appointment, the Party who appointed the outgoing Chairman shall be entitled to reappoint the replacement Chairman, for the remainder of that term of appointment.

6.3.3 For the duration that the Parties fail to appoint a new Chairman under Clause 6.3.1, the existing Chairman shall continue to be Chairman.

6.3.4 The Chairman shall not have a second or casting vote at Committee meetings.

6.3.5 The Chairman shall chair meetings of the Committee and shall have such other functions (if any) as the Committee shall decide.

### **6.4 Functions of the Committee**

6.4.1 Subject to Clause 6.4.2, the functions of the Committee shall include:

- (a) the supervision and monitoring of the Joint Governance Arrangements;
- (b) the supervision of the Joint Office and the Chief Executive;
- (c) the preparation and development of the Resource Plan in accordance with Clause [8.1];
- (d) the preparation, revision and development of the Budget in accordance with Clause 8.2;
- (e) the review and approval of Expenditure;
- (f) where required under the AS Agreement, the appointment of and provision of authority and/or instructions to, a Network Operator's Representative under the AS Agreement; and
- (g) any other functions that the Parties agree from time to time.

6.4.2 Except as otherwise provided in this Agreement:

- (a) the Committee; and
- (b) any Representative (by virtue only of being a Representative),

shall have no ability to determine any matter, no competence to discharge any function or to exercise any power, and no power or authority to bind any Party, other than by virtue of the effect of any decisions of the Committee in relation to matters within the scope of its functions.

## **6.5 Meetings, Decisions and Processes of the Committee**

- 6.5.1 All necessary internal processes governing the conduct and functions of the Committee and the frequency and processes relating to its meetings shall be established, and from time to time, developed, by the Committee and circulated to the Parties.
- 6.5.2 Any Party may, via its Representative, call a meeting of the Committee on not less than [ten (10)] Working Days' notice.
- 6.5.3 Meetings of the Committee shall:
- (a) provide a forum for discussion and dissemination of the views of the Parties; and
  - (b) subject to this Clause 6, provide a forum for joint decision making of the Parties.
- 6.5.4 Decisions of the Committee shall be made by the affirmative vote of all Representatives present at a validly called meeting of the Committee at which at least two (2) Representatives are present (and references to the unanimous decision of the Committee shall be construed accordingly).
- 6.5.5 In respect of any matter in relation to which a unanimous decision is not reached by the Committee, unless the Committee decides to defer further consideration of that matter to a later meeting:
- (a) any Representative may (by notice to each other Party) refer the matter to a director of the Party (or Parties, as the case may be) appointing it, for determination, in which case the Parties shall ensure that the nominated directors meet to consider the matter; and
  - (b) if a unanimous decision is not reached by those directors within ten (10) Working Days after such notice, any Party may refer the matter to the Authority under Clause 21.
- 6.5.6 The Parties shall ensure that minutes of the Committee's meetings and records of its proceedings are kept and made available to each Representative and each Party.

## **7 Joint Office**

### **7.1 Composition**

7.1.1 Not later than the date of this Agreement, the Parties shall establish a joint office (the **Joint Office**).

7.1.2 The Joint Office shall comprise the Staff.

### **7.2 Chief Executive**

7.2.1 In accordance with any rules that the Committee may determine, one of the Staff members shall be appointed (and as the case may be, removed and reappointed) as the senior Staff member of the Joint Office (**Chief Executive**).

7.2.2 For the duration that the Committee fails to appoint a new Chief Executive under Clause 7.2.1, the existing Chief Executive shall continue to be the Chief Executive.

7.2.3 Subject to Clause 7.2.4, the Chief Executive:

- (a) shall have the authority and responsibility to undertake the functions delegated to him by the Committee pursuant to this Agreement, without further approval of the Committee or the Parties;
- (b) shall together with the Staff, carry out the functions imposed on or delegated to him pursuant to this Agreement; and
- (c) may, subject to Schedule 7, delegate the performance of his functions.

7.2.4 At any time, the Committee may, in relation to any function which is delegated to the Chief Executive, withdraw from him the authority and responsibility to undertake that function.

7.2.5 The Chief Executive's authority and responsibility shall be subject to the limitations set out in Schedule 6, or as otherwise prescribed by the Committee from time to time.

### **7.3 Secretary and Deputy Secretary**

7.3.1 In accordance with any rules that the Committee may determine,

- (a) not later than the date of this Agreement:
  - (i) one of the Staff shall be appointed as the secretary (**Secretary**); and
  - (ii) one of the Staff shall be appointed as the deputy secretary (**Deputy Secretary**),  
  
of the Committee; and
- (b) the Secretary or Deputy Secretary may be removed and re-appointed.

7.3.2 For the duration that the Parties fail to appoint a new Secretary or Deputy Secretary under Clause 7.3.1, the existing Secretary or Deputy Secretary shall continue to be Secretary or Deputy Secretary (as the case may be).

### **7.4 Staff**

7.4.1 Members of Staff shall be appointed to the Joint Office (and, as the case may be, removed), by way of secondment and in accordance with:

- (a) the Resource Plan; and
- (b) the Secondment Terms.

7.4.2 Staff members (including the Chief Executive, Secretary and Deputy Secretary) shall not be, and shall not be deemed to be, employees or contractors of the Joint Office or the Committee. The Parties shall ensure that their Staff members are aware of this prior to appointing them under Clause 7.4.1.

### **7.5 Role of the Joint Office**

7.5.1 The functions of the Joint Office shall include:

- (a) the functions relating to the implementation and administration of the Network Code Modification Procedures as set out in, or determined pursuant to, Schedule 4;
- (b) the functions relating to the Joint Matters as set out in, or determined pursuant to, Schedule 5;
- (c) the functions in connection with the Charging Methodology Modification Procedures as set out in, or determined pursuant to, Schedule 6;

- (d) the provision of facilities, resources and other support as may be required in the discharge of their functions by the Committee, the Modification Panel and the UNC Committee (including any sub-committee of the UNC Committee);
  - (e) the provision of secretarial and administrative services in connection with meetings of the Committee, the Modification Panel and the UNC Committee (or any sub-committee of the UNC Committee);
  - (f) the provision of a copy of this Agreement, from time to time, to the Authority,
- under the direction and supervision of the Committee.

7.5.2 Except as otherwise provided in this Agreement, the Joint Office shall have no ability to determine any matter, no competence to discharge any function or to exercise any power and no power or authority to bind any Party.

## **7.6 Processes of the Joint Office**

7.6.1 All necessary internal processes governing the conduct and obligations of the Joint Office shall be established, and from time to time developed, by the Joint Office and circulated to each of the Representatives.

## **8 Resources and Budget**

### **8.1 Resource Plan**

8.1.1 Not later than the date of this Agreement, a resource plan shall be prepared by the Committee:

- (a) in the form set out in Schedule 8 (Part I); and
- (b) which addresses the matters set out in Clause 8.1.2,

(the **Resource Plan**).

8.1.2 The Resource Plan:

- (a) shall include provision for:
  - (i) the manpower staff requirement for the Joint Office, including:
    - (aa) the aggregate number of staff required;
    - (bb) the qualifications and/or experience of the staff required; and
    - (cc) the number and type of staff to be provided by a Party (having regard to Clause 8.3.1(a));
  - (ii) secure and suitable facilities for business purposes, including access to office space, meeting rooms, conference facilities and file storage facilities;
  - (iii) office equipment necessary for the Joint Office workplace, including telephones and other communication devices, computer workstations and office furniture; and
  - (iv) any applications developed for internal or external business purposes, including business software; and

- (b) may provide for any item of resource to be provided by one, or more but not all, of the Parties only.

8.1.3 The Resource Plan shall be developed by the Committee:

- (a) upon an Additional Party signing an Accession Agreement
- (b) upon a Party ceasing to become a Party under Clause 2.2; and
- (c) from time to time,

as is necessary to ensure that the Joint Office is properly resourced and has access to sufficient resources to undertake its functions.

## **8.2 Budget**

8.2.1 Not later than the date of this Agreement, a Budget shall be agreed by the Committee in the form set out in Schedule 8 (Part II), which shall set out:

- (a) the itemised maximum expenditure cap for each line item of resource to be provided;
- (b) the itemised budget forecast expenditure for each line item of resource to be provided;
- (c) the estimated aggregate funds required to implement the Resource Plan; and
- (d) such other costs and expenses to be incurred or likely to be incurred by any of the Parties pursuant to this Agreement.

8.2.2 The Budget agreed under Clause 8.2.1:

- (a) shall be revised annually by the Committee; and
- (b) may be developed and revised by the Committee from time to time.

## **8.3 Provision by the Parties of Resources**

8.3.1 Without prejudice to Clause 8.1.2(b), each Party:

- (a) may provide a reasonable proportion and range of the members of staff required to work in the Joint Office; and
- (b) shall provide to the Joint Office the number and type of staff identified to be provided by it (if any) in the Resource Plan.

8.3.2 Each Party shall provide to the Joint Office the other resources stipulated to be provided by it in the Resource Plan.

## **9 Sharing of costs, expenses etc.**

### **9.1 Funding obligation**

9.1.1 Each Party (or Parties, as the case may be) appointing a representative shall bear the remuneration for its Representative(s).

9.1.2 Each Party shall be responsible for funding a proportion of the Aggregate Approved Expenditure equal to:

$$\frac{\text{Aggregate Approved Expenditure} \times \text{Network Ownership}}{\text{nine (9)}}$$

where:

**Network Ownership** = number of Networks owned by that Party.

## **9.2 Entitlement to recover**

9.2.1 To the extent that a Party incurs Expenditure under this Agreement, its entitlement to recover that Expenditure from the other Parties shall be in accordance with this Clause 9 and Schedule 9.

## **9.3 Payment and invoicing**

9.3.1 Without prejudice to Clause 9.3.2, following receipt from the Committee of its Final Statement of Expenses for an Expenses Period, a Party may invoice each of the other Parties for its Approved Expenditure (if any), together with VAT, for each Expenses Period, as determined by the Committee under Schedule 9.

9.3.2 Each Party shall pay any amount due under this Agreement to another Party within thirty (30) days of the amount being invoiced to it.

9.3.3 If any amount remains unpaid after the due date, interest shall accrue on the amount unpaid at the annual rate of [2%] over the base lending rate of [Barclays Bank plc].

9.3.4 All payments due under this Agreement shall be made in pounds sterling, being the currency of the UK.

9.3.5 A Party may, in good faith, withhold from payment any disputed amount set out in an invoice.

9.3.6 Upon settlement or determination of a dispute raised under Clause 9.3.5, any amount agreed or determined to be payable by the Party that withheld the amount (together with interest under Clause 9.3.3) shall be paid by that Party within fourteen (14) days of such settlement or determination.

## **9.4 Set off**

9.4.1 For any sums payable under this Agreement to another Party, the paying Party may first deduct any sums payable by the other Party to it under this Agreement provided that it accompanies such payment with a statement of all reasonably necessary details of the set off.

## **10 Intellectual Property Rights**

10.1.1 Save as expressly set out in this Clause 10, nothing in this Agreement shall:

- (a) confer any Intellectual Property Rights on any Party, the Committee, the Representatives, the Joint Office or its Staff; or
- (b) assign any Intellectual Property Rights existing at the date of the Agreement.

10.1.2 All Intellectual Property Rights created by any of the Parties in pursuance of the Joint Governance Arrangements (**Joint IP**) shall be owned jointly by all of the Parties as tenants in common.

10.1.3 Each Party undertakes to the extent any Joint IP has been created by it, to procure, to the extent and where possible by law, unconditional and irrevocable waivers of any moral rights that exist in any country relating to such Joint IP.

10.1.4 Each Party shall execute any further documents and do all such acts as the other Parties may reasonably require to evidence, confirm or give full effect to Clauses 10.1.2 and 10.1.3.



10.1.5 Each Party shall ensure that in the performance of this Agreement it will not infringe and will not permit any infringement by its Representatives or Staff of any intellectual property rights and, subject to a Party's total liability under Clause 14.2, each Party shall indemnify each other Party from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever in any way arising from any breach of this Clause 10.

## **11 Confidentiality**

### **11.1 Duty of Confidentiality**

11.1.1 Save as provided by Clause 11.1.2 each Party shall keep confidential and not disclose to any person any Confidential Information without the prior written consent of each other Party.

11.1.2 For the purposes of this Clause 11, references to a **person** shall be construed as including an individual, firm, partnership, trust, joint venture, corporate body, unincorporated body, association, organisation or any governmental body (whether or not in each case having separate legal personality).

### **11.2 Permitted disclosures**

11.2.1 A Party (the **Disclosing Party**) may disclose Confidential Information acquired by it under this Agreement without the prior written consent of each other Party if such disclosure is made:

- (a) for the purposes of this Agreement, to an officer, employee or servant (including any Representative or Staff member) of the Disclosing Party;
- (b) for the purposes of this Agreement, to a professional adviser of or consultant of the Disclosing Party;
- (c) to the extent that the Confidential Information has become publicly available or generally known to the public at the time of such disclosure otherwise than as a result of a breach of this Clause 11; or
- (d) when required to do so by law or by or pursuant to the rules or any order or decision of the Authority or any English or Scottish court, tribunal or agency of competent jurisdiction,

and in any such case, in accordance with the requirement in Clause 11.3.

11.2.2 A Disclosing Party shall ensure that the person to whom the Confidential Information is disclosed is aware of the Disclosing Party's obligations under Clauses 11.2.1 and does not use or disclose the Confidential Information other than as permitted by the Disclosing Party under Clause 11.2.1 above.

### **11.3 Terms of permitted disclosure**

Confidential Information shall not be used by any Party for any purpose other than the performance of this Agreement.

## **12 No partnership**

Nothing in this Agreement, and no action taken under this Agreement, shall create a partnership or establish a relationship of principal and agent between any of the Parties or otherwise authorise any Party to bind any other Party for any purpose.

## **13 Changes**

13.1 [This Agreement may only be amended:

- (a) with the prior written consent of each Party; and
- (b) with the Authority's consent (or deemed consent) in accordance with, and in the manner set out, in Standard Special Condition A12(3) of the Transporter's Licence].

13.2 The Parties shall review this Agreement from time to time [and in any event not less than every twelve (12) months] to decide whether or not any changes are required to be made to this Agreement.

13.3 Upon:

- (a) a Party ceasing to become a Party to this Agreement; and
- (b) an Additional Party becoming a Party to this Agreement,

the details of the Parties in Schedule 1 shall be deemed to have been amended accordingly to reflect that cessation or accession event (as the case may be).

## **14 Liability and Indemnity**

14.1 No Party (nor any of its Representatives or Staff) shall in any circumstances whatsoever and whether in contract, tort (including negligence and breach of statutory duty), statute, or otherwise howsoever be liable to any other Party for any losses under this Agreement, unless it causes, by breach of its obligations under this Agreement, any other Party to be in breach of its Transporter's Licence.

14.2 Each Party's total liability to each other under this Agreement whether in contract, tort (including negligence and breach of statutory duty), statute, or otherwise howsoever in any one calendar year shall not exceed [£ ].

14.3 Notwithstanding any other provision in this Agreement, nothing in this Agreement shall exclude or limit the liability of any Party for death or personal injury resulting from its negligence or the negligence of any of its representatives.

## **15 VAT**

15.1 Unless otherwise stated, all amounts payable under this Agreement are exclusive of Value Added Tax or any similar tax or duties which shall be payable in addition at the rate (if any) from time to time properly chargeable.

## **16 Remedies and waivers**

### **16.1 No waiver or discharge**

16.1.1 No default by any Party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of each other Party. A waiver by a Party of a default by another Party will not prevent the first Party from subsequently requiring compliance with the waived obligation.

### **16.2 Saving for future waivers**

16.2.1 No waiver by any Party of any default by another in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

### **16.3 Failure to exercise etc. not a waiver**

16.3.1 No failure to exercise, nor delay or omission by any Party in exercising, any right, power or remedy conferred on it under this Agreement or provided by law shall except with the express written consent of that Party:

- (a) affect that right, power or remedy; or
- (b) operate as a waiver of it.

16.3.2 No single or partial exercise by any Party of any right, power or remedy shall prevent any further exercise of that right, power or remedy or the exercise of any other right, power or remedy.

### **16.4 Rights and remedies cumulative**

16.4.1 The rights, powers and remedies conferred on the Parties by this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

## **17 Invalidity**

### **17.1 Effect of invalidity**

17.1.1 If at any time any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

### **17.2 Modifications**

17.2.1 If any provision of this Agreement is so found to be invalid, illegal or unenforceable but would be valid, legal or enforceable if some part of the provision were deleted, the provision in question shall apply with such modifications as may be necessary to make it valid, legal or enforceable.

### **17.3 Substitutions**

17.3.1 The Parties agree, in the circumstances referred to in Clause 17.1 and provided that Clause 17.2 does not apply, to attempt to substitute for any invalid, illegal or unenforceable provision a valid, legal or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid, illegal or unenforceable provision. The obligations of the Parties under any invalid, illegal or unenforceable provision of this Agreement shall be suspended whilst an attempt at such substitution is made.

## **18 Third Party rights**

The Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.

## **19 Assignment and transfer**

- 19.1 Except as permitted by this Clause 19, no Party may assign, charge or otherwise encumber, create any trust over or deal in any other manner with this Agreement or any right, benefit or interest under it, or transfer or sub-contract any of its obligations under it.
- 19.2 A Party may assign or transfer the whole or any part of this Agreement or any right, benefit, interest or obligation under this Agreement to any person:
- (a) to which that Party has transferred part or all of its Transporter's Licence under Section 8A of the Act; and
  - (b) who is a Relevant Gas Transporter.

## **20 Entire Agreement**

### **20.1 Entire Agreement**

- 20.1.1 This Agreement sets out the entire agreement between the Parties with respect to the subject matter contained in this Agreement.
- 20.1.2 No other term, express or implied, and no usage, custom or course of dealing forms part of or affects this Agreement.

### **20.2 Representations and reliance**

- 20.2.1 The only claim, right or remedy available to a Party in respect of a representation expressly set out in this Agreement shall be damages for breach of contract.
- 20.2.2 Each Party agrees and acknowledges that in entering into this Agreement it does not rely on any representation not expressly set out in this Agreement of any nature made to it by any person (whether a Party or not). Each Party irrevocably waives all claims, rights and remedies in relation to any such representations made to it before entering into this Agreement.
- 20.2.3 This Clause 20 does not exclude or restrict any liability or remedy for fraudulent misrepresentation or fraudulent concealment.

## **21 Dispute Resolution**

### **21.1 Initial resolution**

- 21.1.1 Without prejudice to Clause 6.5.5, if the Committee (acting through the Representatives), notwithstanding the use of reasonable endeavours to do so, is unable to resolve amicably a difference or dispute arising out of or in connection with this Agreement within [thirty (30)] days of such difference or dispute arising, then any Party to that dispute may require such matter be referred to a director of each Party (or Parties, as the case may be) appointing a Representative for determination, in which case the Parties shall ensure that their nominated directors meet to seek to resolve the dispute or difference.

### **21.2 Referral to the Authority**

- 21.2.1 The following may be referred by a Party to the Authority for determination:
- (a) any difference or dispute for which a Party is not satisfied with the outcome of a decision under Clause 21.1; and
  - (b) any matter which falls to be referred to the Authority under Clause 6.5.5.

21.2.2 For the purposes of Clause 21.2.1, any question arising as to whether a dispute or difference is one which falls within the jurisdiction of the Authority shall be determined by the Authority.

## **22 Jurisdiction**

22.1.1 The Parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

22.1.2 Each Party irrevocably waives any objection to the English courts, whether on the grounds of venue, or on the grounds that the forum is not appropriate.

22.1.3 Any Party which is not a company incorporated under the Companies Act 1985 shall provide to the other Parties an address in England or Wales for service of process on its behalf in any proceedings.

## **23 Counterparts**

23.1 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts. Each counterpart shall constitute an original of this Agreement, but together the counterparts shall constitute one document.

## **24 Notices**

### **24.1 Service**

24.1.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand, sent by prepaid first class post, or transmitted by fax, and shall be addressed to the Party at its registered office (marked for the attention of its Representative) for the time being or to such other address as a Party may have previously notified to the other Parties in writing as being its address for such purpose.

24.1.2 A notice to be given to the Committee under this Agreement shall also be served on each of the Representatives.

### **24.2 Receipt**

24.2.1 For the purpose of Clause 24.1.1, any notice or communication delivered by hand shall be deemed to have been received at the time of delivery, any notice or communication sent by post shall be deemed to have been received on the second Working Day (for inland mail) after the date of posting, and any notice or communication transmitted by fax shall be deemed to have been received on the Working Day following the date of transmission.

### **24.3 Electronic communication**

23.3.1 Any notice or communication to be given under this Agreement may be made by electronic mail or other electronic means, if the party to whom the communication is sent (the **Receiving Party**) and the party from whom the communication originates (the **Sending Party**):

(a) notify each other of the address to which such electronic mail and/or any other information required to enable the sending and receipt of information by that means; and

(b) notify each other of any change to their address or any other such information supplied by them.

23.3.2 Any electronic communication made between a Sending Party and a Receiving Party will be effective only when actually received by the Receiving Party in readable form.

**25 Governing law**

25.1 This Agreement shall be governed by and construed in accordance with English law.

**Signed** by the Parties or their duly authorised representatives

**Signed** by )  
duly authorised for and )  
on behalf of )  
[ ] ) \_\_\_\_\_

**Signed** by )  
duly authorised for and )  
on behalf of )  
[ ] ) \_\_\_\_\_

**Signed** by )  
duly authorised for and )  
on behalf of )  
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**Signed** by )  
duly authorised for and )  
on behalf of )  
[ ] ) \_\_\_\_\_

**Signed** by )  
duly authorised for and )  
on behalf of )  
[ ] ) \_\_\_\_\_

\_\_\_\_\_

# Schedule 1 – Parties

**Party Name:** (\*\* )

**Company details:** [registered in England with number \*\* whose registered office is at \*\* ][a corporation organised and existing under the laws of \*\* whose principal place of business is at \*\* ][of \*\* ]

**Date of becoming a Party:** (\*\* )

**Party Name:** (\*\* )

**Company details:** [registered in England with number \*\* whose registered office is at \*\* ][a corporation organised and existing under the laws of \*\* whose principal place of business is at \*\* ][of \*\* ]

**Date of becoming a Party:** (\*\* )

**Party Name:** (\*\* )

**Company details:** [registered in England with number \*\* whose registered office is at \*\* ][a corporation organised and existing under the laws of \*\* whose principal place of business is at \*\* ][of \*\* ]

**Date of becoming a Party:** (\*\* )

**Party Name:** (\*\* )

**Company details:** [registered in England with number \*\* whose registered office is at \*\* ][a corporation organised and existing under the laws of \*\* whose principal place of business is at \*\* ][of \*\* ]

**Date of becoming a Party:** (\*\* )

**Party Name:** (\*\* )

**Company details:** [registered in [Scotland] with number \*\* whose registered office is at \*\* ][a corporation organised and existing under the laws of \*\* whose principal place of business is at \*\* ][of \*\* ]

**Date of becoming a Party:** (\*\* )

# Schedule 2 – Accession Agreement

[NOTE: Agreed form of Accession Agreement to be included in this Schedule]



## Schedule 3 – Representatives

### A. Entitlement to appoint Representatives

1. The Party (or if there is more than one Party, the Parties) who is (or are) the owner(s) for the time being of the Networks identified in Column 1 of the table below shall be entitled to appoint to the Committee the number of representatives stated in Column 2 of the table below:

Column 1 Networks	Column 2 Number of Representatives
<b>NTS</b>	One (1)
<b>North (DN)</b>	One (1)
<b>Scotland and South of England (DNs)</b>	One (1)
<b>Wales and the West (DN)</b>	One (1)
<b>East of England, West Midlands, London, North West (DNs)</b>	One (1)

## Schedule 4 – Network Code Modification Procedures

### A. General

1. The provisions of this Schedule are the arrangements required to be made by the Parties for the administration of the Network Code Modification Procedures, pursuant to Standard Special Condition A11 (and A12(4)) and A12(1)(a)(i).
2. The Parties agree that:
  - (a) each Representative shall be entitled to nominate one (1) of the five (5) representatives to be appointed (or as the case may be reappointed) by the transporters as transporters' representatives on the Modification Panel;
  - (b) the Chief Executive shall be, and undertake the role of, panel chairman of the Modification Panel pursuant to the Modification Rules;
  - (c) the Chief Executive shall nominate a member of Staff to be, and undertake the role of, deputy panel chairman of the Modification Panel pursuant to the Modification Rules;
  - (d) the Secretary (with the support of the Staff) shall be, and undertake the role of, the secretary to the Modification Panel pursuant to the Modification Rules;
  - (e) the Deputy Secretary (with the support of the Staff) shall be, and undertake the role of, the deputy secretary to the Modification Panel pursuant to the Modification Rules; and
  - (f) each Representative shall nominate (and as required, re-nominate), consistent with the criteria to be satisfied by those individuals under the Modification Rules, at least two (2) individuals (or such greater number as may be specified by the Committee) to act as subject matter experts pursuant to the Modification Rules.
3. The Parties agree that the following functions shall be delegated by the Committee to the Chief Executive:
  - (a) subject to Clauses 7.2.4 and 7.2.5, and except as provided in Paragraph A2 above, the administration and implementation of the Joint Modification Rules Matters;
  - (b) preparation, publication (where required) and issue of the following:
    - (i) the Chairman's Guidelines;
    - (ii) the SME Code of Conduct;
    - (iii) the Terms of Appointment; and
    - (iv) such other document pursuant to the Modification Rules as the Committee notifies to the Chief Executive, from time to time;
  - (b) procuring the preparation, and thereafter, the receipt, publication (where required), and circulation of the systems impact assessments required to be prepared under the Modification Rules by the Transporters' Agency;
  - (c) pursuant to the Modification Rules, the performance of any function of the Relevant Subject Matter Expert which, following the failure of the Relevant Subject Matter Expert to perform, the Modification Panel determines should be undertaken by the Parties (as transporters under the Modification Rules); and
  - (d) procuring the provision of necessary legal resources pursuant to the Modification Rules.

**B. Development of process**

1. The Chief Executive shall develop (and from time to time review and revise), for approval by the Committee, a process for:
  - (a) the implementation and administration of the Network Code Modification Procedures, as is consistent with the Modification Rules; and
  - (b) subject to Paragraph A2(f) above, the nomination of nine (9) (or such other number as is specified in the Modification Rules) individuals to act as subject matter experts pursuant to the Modification Rules.

**C. Implementation of process**

1. The process shall be implemented and administered by the Joint Office.

**D. Definitions**

1. In this Schedule 4, the following definitions have the meaning given in the Uniform Network Code:
  - (a) the Chairman's Guidelines;
  - (b) Modification Rules;
  - (c) Modification Panel;
  - (d) Relevant Subject Matter Expert;
  - (e) SME Code of Conduct; and
  - (f) Terms of Appointment.
2. In this Schedule 4, **Joint Modification Rules Matters** means those matters under the Modification Rules which are, or are required to be, undertaken by the Parties on a joint basis.

## Schedule 5 – Uniform Network Code Joint Matters

### 1 General

#### 1.1 Introduction

1.1.1 The provisions of this Schedule 5 are the arrangements made by the Parties pursuant to Standard Special Condition A12(1)(a)(iii) of their Transporter's Licences.

1.1.2 In this Schedule

(a) **Joint Matters** means matters which the Code provides to be implemented by the Parties on a common, joint or collective basis; and

(b) **TPD** means Transportation Principal Document,

and unless otherwise defined in this Agreement, capitalised terms shall have the meaning given to them in the Code.

1.1.3 The Parties agree to implement the Joint Matters (and the Committee shall take any decisions in respect of Joint Matters) in such manner as will ensure compliance by the Parties with the provisions of the Code and the requirements of their respective Transporter's Licences, and (so far as consistent therewith) in accordance with the further provisions of this Schedule 5.

#### 1.2 Categorisation of Joint Matters

1.2.1 The Parties agree that Joint Matters can be considered as falling into the following categories (**Categories**), which are not intended to be mutually exclusive, of provisions of the Code (in each case, to the extent to which such provisions of the Code provide for a common, joint or collective basis of implementation):

Category	Description of Matter
Administrative	Provisions of an administrative nature (including for the notification or publication of things determined by the Parties pursuant to other provisions)
Code Documents	Provisions for the preparation and publication of documents referred to in (and having effect for the purposes of) the Uniform Network Code, whether of a technical or other nature
Demand Estimation	Provisions related to demand estimation under TPD Section H1 to H4 [(or short-term demand modelling under TPD Section H5)]
Liability Sharing	Requirements to determine and pay amounts to Users pursuant to Compensation Rules, or for Users to pay comparable amounts to the Parties
UK Link	Provisions of TPD Section U relating to the availability, use, access and modification of UK Link
Invoicing	Provisions of TPD Section S relating to invoicing
Audit	Requirements related to the appointment of auditors in connection with Compensation Rules
Transporter's Agency	Provisions (in addition to provisions in any other Category) relating to matters which the Transporter's Agency is engaged

	to undertake for the Parties
Modification Rules	Provisions of the Modification Rules
Offtake Arrangements	Provisions (if any) of the Offtake Arrangements Document under which the Parties are to act together
Miscellaneous	Provisions of the Code which do not fall into any of the above categories

1.2.2 The Chief Executive shall prepare, keep under review and from time to time revise, with the approval of the Committee, a statement of all Joint Matters (by reference to the relevant provisions of the Code), allocating each such matter to one of the above Categories on the most appropriate basis.

1.2.3 The allocation of Joint Matters to Categories shall be consistent with the provisions of the Code, the Agency Services Agreement and the further provisions of this Schedule 5.

## **2 Implementation of Joint Matters**

### **2.1 General**

2.1.1 Unless the Parties otherwise decide, the implementation of Joint Matters within each Category shall be as provided in this Paragraph 2.

2.1.2 Where the implementation of any Joint Matter requires any contract or other commitment to be made with or to a third party (not including, for the avoidance of doubt, the Transporter's Agency or any User):

- (a) any of the Parties may (and the Chief Executive may designate one of the Parties which shall) enter into such contract or make such commitment on behalf of the Parties;
- (b) such Party shall perform and exercise its rights under such contract or commitment in accordance with (and so as to give effect to) the further provisions of this Paragraph 2;
- (c) the terms of such contract or commitment shall be such as are determined in accordance with the further provisions of this Paragraph 2;
- (d) the costs incurred by any Party or Parties pursuant to such contract or commitment shall be treated as (and allocated between the Parties as) Expenditure in accordance with Clause 9 and Schedule 9; and
- (e) the Parties shall bear, and each Party shall indemnify the Party entering into such contract or commitment in respect of, any liability incurred under or in connection with such contract or commitment, in the proportions in which Aggregate Approved Expenditure is allocated between the Parties in accordance with Clause 9 and Schedule 9.

2.1.3 Where:

- (a) a Joint Matter is not within a Category which (in accordance with Paragraph 2.5) is to be implemented in accordance with the Agency Services Agreement, but
- (b) the implementation of such Joint Matter requires any notice to be given to the Transporter's Agency and/or and other procedure or other step to be implemented or taken under the Agency Services Agreement,

the Chief Executive shall secure that such notice is given or (as the case may be) such step or procedure initiated.

## **2.2 Administrative Joint Matters**

2.2.1 Joint Matters within the Administrative Category shall be implemented by the Joint Office.

## **2.3 Uniform Network Code Documents**

2.3.1 The preparation of documents within the Code Documents Category, and the revision from time to time of such documents, shall be a matter for (and decided by) the Committee, which may delegate such matter to (or obtain advice from) such technical or other experts as it shall decide.

2.3.2 Any Party may propose a revision to such a document by notice to each other Party, copied to the [Secretary], setting out the proposed revision and the rationale for the proposal; and the Secretary shall ensure that the proposal is placed on the agenda for a meeting of the Committee.

2.3.3 Requirements for consultation in respect of, and the publication of, any such document shall be administered by the Joint Office.

## **2.4 Liability Sharing**

2.4.1 Paragraph 3 shall apply in respect of Joint Matters within the Liability Sharing Category.

## **2.5 Joint Matters to be dealt with under the Agency Services Agreement**

2.5.1 Joint Matters falling within any of the following Categories are implemented pursuant to and in accordance with the Agency Services Agreement:

- (a) Demand Estimation;
- (b) UK Link;
- (c) Invoicing;
- (d) Transporter's Agency.

## **2.6 Audit Provisions**

2.6.1 The selection and appointment of persons pursuant to provisions within the Audit Category shall be a matter for (and decided by) the Committee.

2.6.2 The administration of the appointment of such persons (and the giving of any Code Communications in connection therewith) shall be implemented by the Joint Office.

2.6.3 For avoidance of doubt the Audit Category will not include any provision for appointment of a person which is a matter within the Transporter's Agency Category.

## **2.7 Modification Rules**

2.7.1 The implementation of the Modification Rules is provided for in Schedule 4.

## **2.8 Offtake Arrangements**

2.8.1 The implementation of any Joint Matters under the Offtake Arrangements Document is provided for in the Offtake Arrangements Document.

## **2.9 Miscellaneous**

2.9.1 In respect of any Joint Matters within the Miscellaneous Category, the Committee shall decide whether such matters shall be implemented:

- (a) by the Joint Office;
- (b) by decision of the Committee;
- (c) pursuant to the Agency Services Agreement; or
- (d) otherwise,

and such matters shall be implemented accordingly.

### **3 Liability Sharing**

#### **3.1 Uniform Network Code Provisions**

3.1.1 In this Paragraph 3 a **Joint Liability Provision** is a Compensation Rule (or other provision of the TPD) under which the Transporters collectively are liable to pay to or (as the case may be) entitled to receive any amount from a User or Users as a result of any failure (on the part of any Transporter(s) or User) to achieve a standard prescribed in the Code.

3.1.2 The **Liability Sharing Category** shall comprise all Joint Liability Provisions.

3.1.3 At the date of this Agreement, the **Joint Liability Provisions** are:

- (a) the Compensation Rules in the following provisions of the TPD:
  - (i) TPD Section G4.1.3, which provides for liability in respect of failures to respond to referred Supply Point Nominations;
  - (ii) TPD Section M5.2.2, which provides for liability in respect of failures to provide Valid Meter Readings;
  - (iii) TPD Sections S4.7.3 and S4.7.5, which provide for liability in respect of failures to resolve invoice Queries; and
  - (iv) TPD Sections U7.6 and U 8.6, which provide for liability in respect of the recovery period for a UK Link Failure and for failing to provide information to Users in respect of certain UK Link Modifications; and
- (b) TPD Section M3.8.10, which provides for liability on the part of a User in respect of failures to provide Opening Meter Readings.

#### **3.2 Liability Sharing**

3.2.1 The Parties agree to that they will *inter se* be liable for or (as the case may be) entitled to amounts payable pursuant to the Joint Liability Provisions in accordance with the Liability Sharing Rules.

3.2.2 The Liability Sharing Rules are the rules set out in the Annex to this Schedule, or such revised rules as may from time to time be determined in accordance with Paragraph 3.2.3.

3.2.3 Where as a result of any modification of the Code:

- (a) there is or is to be any change in any of the Joint Liability Provisions as a result of which the allocation provided for in the Liability Sharing Rules is no longer appropriate; or
- (b) there is or is to be any new Joint Liability Provision,

the Committee shall decide upon an appropriate revision of or (as the case may be) addition to the Liability Sharing Rules, to provide for an allocation on principles consistent with the principles reflected in the current Liability Sharing Rules, and shall issue a revised version of Liability Sharing Rules which shall be effective from the effective date of the relevant Code Modification.

### **3.3 Implementation**

3.3.1 The Agency Services Agreement provides for the implementation of:

- (a) the Joint Liability Provisions; and
- (b) the allocation between Parties provided for in this Paragraph 3 and the Liability Sharing Rules.

3.3.2 Each Transporter undertakes:

- (a) to provide to the Transporter's Agency such information as may be required in accordance with the Agency Services Agreement for such implementation; and
- (b) to give such instructions to its Contract Manager (as defined in the Agency Services Agreement) as are necessary to give effect to this Paragraph 3.

3.3.3 The Parties intend (as provided in the Agency Services Agreement) that the amounts for which they are liable to each User pursuant to Joint Liability Provisions in respect of any month will be credited to the User (by way of credit in respect of amounts payable by the User under an Invoice) in the proportions in which such amounts (or the aggregate such amounts) are allocated between the Parties pursuant to the Liability Sharing Rules.

3.3.4 For the avoidance of doubt the obligations of the Parties between themselves (in relation to Joint Liability Provisions) shall be governed by this Paragraph 3 and not the Agency Services Agreement; and the Parties shall make any adjustment payments between themselves as may be necessary to give effect to this Paragraph 3 in the event of any failure in the implementation of this Paragraph 3 under the Agency Services Agreement.



## Annex (to Schedule 5) – Liability Sharing Rules

### 1 Section G4.1.3

- 1.1 The **G4.1.3 Amount** in respect of a User and a month is the amount payable in the month by Parties to the User pursuant to TPD Section G4.1.3, after taking account of TPD Section V13.2.
- 1.2 The amount of the G4.1.3 Amount payable to a User in respect of a month for which each Party shall be liable shall be calculated as:

$$A_{G4.1.3} * \{(A' - (B' - C')) / (A - (B - C))\}$$

where

$A_{G4.1.3}$  is the G4.1.3 Amount;

A, B, C are the terms A, B and C in TPD Section G4.1.3; and

A', B', C' are those terms on the basis that TPD Section G4.1.3 is construed as if references to Supply Point Nominations were to Supply Point Nomination in respect of a Supply Point on any of that Party's Systems.

### 2 Section M5.2.2

- 2.1 The **M5.2.2 Amount** in respect of a User and a month is the amount payable in the month by Parties to the User pursuant to TPD Section M5.2.2, after taking account of TPD Section V13.2.
- 2.2 The amount of the M5.2.2 Amount payable to a User in respect of a month for which each Party shall be liable shall be calculated as:

$$A_{M5.2.2} * \{(A' - B') / (A - B)\}$$

where

$A_{M5.2.2}$  is the M5.2.2 Amount;

A, B are the terms A and B in TPD Section M5.2.2; and

A', B' are those terms on the basis that TPD Section M5.2.2 is construed as if references to Performance Relevant Supply Meters were to Performance Relevant Supply Meters on any of that Party's Systems.

### 3 Section S4.7

- 3.1 The **S4.7 Amount** in respect of a User and a month is the amount payable in the month by Parties to the User pursuant to TPD Sections S4.7.3 and S4.7.5, after taking account of TPD Section V13.2.
- 3.2 The amount of the S4.7 Amount payable to a User in respect of a month for which each Party shall be liable shall be calculated as:

$$AA_{S4.7} * A / B$$

where

$AA_{S4.7}$  is the S4.7 Amount;

A is the number of LDZ Supply Points on all of the Party's Systems at the start of the month;

B is the aggregate number of LDZ Supply Points at the start of the month.

3.3 In accordance with paragraph 3.2 Transco NTS will not be liable for any part of the Aggregate S4.7 Amount.

#### **4 Section U7.6 and 8.6**

4.1 A **Section U Amount** is any amount payable by the Parties to any User(s) in any month (after taking account of TPD Section V13.2):

(a) pursuant to Section U7.6 in respect of a UK Link Failure, or

(b) pursuant to Section U8.6 in respect of a UK Link Modification.

4.2 Each Party shall be liable for the relevant proportion of each Section U Amount, where the relevant proportion is:

(a) where the UK Link Failure or (as the case may be) the UK Link Modification is (or is predominantly) a failure of or modification of AT Link or RGTA, the proportion borne by that Party pursuant to the Charging Statement for that year of that part of the Cost Base which is identified in the Charging Statement as related to AT Link or RGTA;

(b) otherwise, the proportion borne by that Party pursuant to the Charging Statement for that year of that part of the Cost Base which is not identified in the Charging Statement as related to AT Link or RGTA;

where AT Link, RGTA, Charging Statement and Cost Base have the meanings given to those terms in the Agency Services Agreement.

4.3 The question whether a UK Link Failure or UK Link Modification is (or is predominantly) a failure of or modification of AT Link or RGTA shall be decided by the Transporter's Agency.

#### **5 Section M3.8.10**

5.1 Each Party shall be entitled to a proportion of any amount payable by a User pursuant to Section M3.8.10 in a calendar month calculated as  $(A / B)$  where A and B are the respective numbers of LDZ Supply Points referred to in Paragraph 3 of this Annex (relating to TPD Section S4.7) for that month.

5.2 In accordance with Paragraph [/] Transco NTS will not be entitled to any part of such amount.

## Schedule 6 – Charging Methodology Modification Provisions

### A. General

1. In this Schedule 5:
  - (a) **Charging Statement** means the statement (of charges, reserve prices and methods and principles) which each Party is required to furnish to the Authority pursuant to Standard Special Condition A4(1) of its Transporter's Licence;
  - (b) **Charging Methodology** means the methodology which each Party is required to establish pursuant to Standard Special Condition A4(5)(a) of its Transporter's Licence.
2. The Parties agree that they will coordinate the making of changes and modifications to their respective Charging Methodologies and Charging Statements in accordance with this Schedule 5.
3. The provisions of this Schedule 5 are the arrangements made by the Parties pursuant to Standard Special Condition A12(1)(a)(iii) of their Transporter's Licences.
4. [Nothing in this Schedule 5 requires any Party to make the same change or modification to its Charging Methodology or Charging Statement as another Party makes or proposes to make to its Charging Methodology or Charging Statement.]
5. Nothing in this Schedule 5 restricts a Party from making any change or modification to its Charging Methodology or Charging Statement which it may be required to make in order to comply with the Act or any Condition of its Licence.
6. [Nothing in this Schedule 5 authorises the Chief Executive or any Staff member to engage in any discussion with the Authority concerning any Proposed Changes.]

### B. Development of process

1. The Chief Executive shall develop (and from time to time review and revise), for approval by the Committee, a process for the coordination of changes and modifications to the Parties' Charging Methodologies and Charging Statements, which process shall be such as will enable each Party to comply with its obligations under Standard Special Conditions A4 and A5 of its Transporter's Licence.
2. The process will provide for the following:
  - (a) each Party to give notice to the other Parties of any change or modification which it proposes to make to its Charging Methodology or Charging Statement (a **Proposed Change**);
  - (b) the exchange of information and holding of meetings between the Parties to discuss their Proposed Changes;
  - (c) the giving of notice to the Authority of the Proposed Changes;
  - (d) consultation (by the Parties or the Joint Office on their behalf) with Users and others in respect of the Proposed Changes, including:
    - (i) the preparation and issue of consultation papers to Users and others in respect of the Proposed Changes;
    - (ii) the receipt and consideration of representations made by Users and others in response to such consultation papers; and
    - (iii) the issue of conclusions documents following such consultation; and

- (e) the holding of at least one [open] meeting per annum between representatives of the Parties and Users and others to discuss the Charging Methodologies, and other meetings as any Party may request; and
- (f) the receipt, preparation, publication, sending or issue (to the Authority, Users or others, as appropriate, as required by the Transporter's Licences) on a coordinated basis of:
  - (i) any direction from the Authority not to make a change to a Charging Methodology;
  - (ii) a decision by a Party to implement proposals for a change to charges or reserve prices in a Charging Statement;
  - (iii) a report in respect of a proposed modification of a Charging Methodology;
  - (iv) any change made to a Charging Statement or modification made to a Charging Methodology; and
  - (v) the Parties' prevailing Charging Statements and Charging Methodologies.

**C. Implementation of process**

1. Each Party undertakes to participate in and comply with the process for the time being established under Paragraph B2 above, and (subject to Paragraph A5 above) not to make any change to its Charging Statement or modification to its Charging Methodology except in accordance with such process.
2. The process under Paragraph B2 above shall be implemented and administered by the Joint Office.

## **Schedule 7 – Chief Executive**

### **A. General**

1. This Schedule applies to the individual from time to time appointed by the Committee to be the Chief Executive.

### **B. The authority and responsibility of the Chief Executive**

1. Except as otherwise provided in this Agreement, the Chief Executive:
  - (a) shall manage the Joint Office and do anything that is requisite for the management and conduct of the Joint Office;
  - (b) may delegate (in writing) any of the functions imposed on, or delegated to, him pursuant to this Agreement to a member of Staff whose position and authority is appropriate to such delegation;
  - (c) may, on behalf of the Parties, subject to Schedule 11, enter into and terminate Secondment contracts;
  - (d) shall not:
    - (i) secure any resource which is not authorised by the Committee pursuant to the Resource Plan;
    - (ii) incur any expenditure (whether or not on behalf of a Party or Parties) in the management of the Joint Office, except expenditure authorised by the Committee pursuant to the Budget;
    - (iii) enter into a Secondment contract otherwise than in accordance with Schedule 11; or
    - (iv) commence any litigation or arbitration on behalf of the Parties (or their Representatives).
2. The Chief Executive shall undertake his functions:
  - (a) in a manner best calculated to promote efficiency; and
  - (b) in compliance with the Transporter's Licence and all applicable legal requirements.

### **C. Removal of the Chief Executive**

1. The removal of the Chief Executive by the Committee shall be justified:
  - (a) if the Chief Executive has acted materially or persistently outside the scope of his authority and responsibility under this Agreement;
  - (b) if the Chief Executive has failed to undertake his functions to the requisite standard; and
  - (c) on the grounds set out in rules determined by the Committee pursuant to Clause 7.2.1.

# Schedule 8 – Annual Resource Plan and Budget

## Part I – Form of Resource Plan

Resources			Responsible Party
<b>A. Joint Office Staff</b>			
Job Title	Qualifications	Experience	
<b>Total Staff</b>			

<b>B. Infrastructure</b>	Quantity	Maximum Authorised Expenditure	Responsible Party or Parties
1. Facilities			
2. Office Equipment			
3. Software Applications			
4. Other			
<b>Total Authorised Expenditure</b>			



## Schedule 9 – Recovery of Expenditure

### A. General Principles

1. The Committee shall, in accordance with the principles and processes set out in this Schedule, be responsible for deciding, and may decide, whether or not to approve any Expenditure in whole or in part in respect of each Expenses Period.
2. The principles and processes set out in this Schedule seek to ensure that each Party:
  - (a) can recover; and
  - (b) shall neither gain or lose by reason of, its Expenditure under this Agreement.
3. Notwithstanding Paragraph A2 above, remuneration of Representatives shall be paid in accordance with Clause 9.1.1.
4. Recovery of any cost incurred by a Party under Schedule 8 (Part IB) shall be limited to the open market value of the relevant item at the date that such cost was incurred.

### B. Cost Sharing

1. Each Party seeking to recover its Expenditure shall submit an expenses claim to the Committee within [one (1) month] of the end of each Expenses Period:
  - (a) setting out the details of its Expenditure (net of VAT) during that Expenses Period; and
  - (b) together with reasonable supporting evidence as the Committee may require, (an **Expenses Claim**).
2. On receipt of the Parties' Expenses Claim, the Committee shall, within [14 days] prepare and circulate to the Parties a statement setting out for the relevant Expenses Period its determination of:
  - (a) the budgeted expenditure under the Resource Plan;
  - (b) each Party's Expenditure;
  - (c) the Parties' aggregate Expenditure;
  - (d) Approved Expenditure for each Party;
  - (e) the Parties' aggregate Approved Expenditure (**Aggregate Approved Expenditure**);
  - (f) taxes or duties chargeable, if any; and
  - (g) the proportion of the Aggregate Approved Expenditure recoverable by, and payable by, each Party in accordance with Clause 9.1.1;
  - (h) any other information the Committee, in its reasonable discretion, considers relevant, (**Draft Statement of Expenses**)
3. Expenditure not set out in an Expenses Claim for the previous Expenses Period, may be submitted in the an Expenses Claim for the subsequent Expenses Period.



**C. Disputes**

1. If a Party disputes the Draft Statement of Expenses (or any part of it), it shall, within [five (5) days] of the date of the Draft Statement of Expenses notify the Committee with details of the dispute (a Dispute Notification) and, within a further [seven (7) days], provide such supporting evidence as the Committee may reasonably require.
2. Within seven days of the notice period for disputes under Paragraph C1 expiring, the Committee shall:
  - (a) (where no Dispute Notice has been made), notify the Parties that the Draft Statement of Expenses is final; or
  - (b) (where one or more Dispute Notifications have been made), circulate to the Parties a revised statement of expenses which shall reflect the undisputed part of the Statement of Expenses only,

**(Final Statement of Expenses).**

3. The Committee shall consider all disputes under Paragraph C1 and shall make a determination, which shall be notified to the Parties within [twenty-one (21) days] of the notice period for disputes under Paragraph C1 expiring.
4. Determinations under Paragraph C3 shall be reflected in the next following Draft Statement of Expenses to be issued under Paragraph B2, and any Party that made a Dispute Notification may not make a Dispute Notification in respect of that part or parts of the Draft Statement of Expenses that were subject to the earlier dispute.

**D. Further Rules**

1. The Committee may develop further rules on recovery of Expenditure as it considers reasonably necessary, save that such rules shall not be inconsistent with the general principles in Paragraph A.

## Schedule 10 – Staff Remuneration

### A Staff remuneration

1. Without prejudice to any other payments constituting the remuneration of the Staff under this Agreement, Staff Remuneration shall include:
  - (a) Seconded's salaries under their Contracts of Employment;
  - (b) associated costs under Paragraph A1(a) above, including employers national insurance contributions and superannuation, if applicable;
  - (c) FRS17 pensions charges, if applicable;
  - (d) the value of Seconded's [taxable] benefits under their Contracts of Employments (if any); and
  - (e) other costs as may be agreed by the Committee from time to time.

## **Schedule 11 – Terms of Secondment**

### **A. General**

1. The appointment of a Staff member to the Joint Office, shall be by way of secondment. This Schedule 11 sets out the terms of the secondment of the Staff.

### **B. Initial Obligations**

1. Prior to the commencement of any Secondment, the Employer shall establish in agreement with the Committee:
  - (a) the commencement date of the Secondment;
  - (b) the duration of the Secondment; and
  - (c) the scope of services to be performed by the Secondee.
2. Prior to the commencement of the Secondment, the Employer shall provide confirmation to the Committee that the Secondee has accepted the terms of Secondment set out in this Schedule 11.

### **C. Secondee's Obligations**

1. During the course of the Secondment, the Secondee shall:
  - (a) be an employee of the Employer;
  - (b) not take employment elsewhere during the term of secondment (subject to Paragraph C1(a) above);
  - (c) be seconded on a full-time basis;
  - (d) maintain the qualifications stipulated in the Resource Plan;
  - (e) comply with the Committee's and/or the Joint Office's reasonable instructions; and
  - (f) act independently.

### **D. Employer's obligations**

1. During the course of the Secondment, the Employer shall:
  - (a) account to the appropriate authorities for all sums payable under the Contract of Employment (or by reason of its termination) by way of income tax and employers' national insurance contributions;
  - (b) comply with its obligations (express and implied) under the Contract of Employment[, except to the extent that those obligations are incompatible with this Agreement]; and
  - (c) take no steps to encourage or induce the Secondee to contravene any lawful direction of the Committee relating to the manner of the provision of the services to the Joint Office[]; and
  - (d) take no steps inconsistent with, or seek to influence, the Secondee's provision of services under the Secondment.]

## **E. Termination of Secondment**

1. The Secondment shall automatically terminate if at any time during the Secondment the Employer ceases to be a Party, or if the Secondee:
  - (a) ceases to become employed by the Employer for any reason;
  - (b) is unable for any reason to perform his or her duties under the Secondment for [one (1)] consecutive] month, or for [thirty (30)] Working Days in aggregate in any period of three (3) consecutive months;
  - (c) is or becomes of unsound mind or a patient for any purpose of any statute relating to mental health;
  - [(d) is or becomes bankrupt or makes any arrangement or composition with his or her creditors generally;]
  - (e) is guilty of misconduct or commits any serious or persistent breach of any of his or her obligations under this Schedule 11;
  - (f) is convicted of a criminal offence carrying a term of imprisonment (other than offences carrying only a fixed penalty under the Road Traffic Acts);
2. The Employer may terminate the Secondment for any reason by giving [120] days' notice.
3. The Employer shall immediately notify the [Committee] of any termination under this Paragraph E.

## **F. Secondment Fees**

1. Staff Remuneration shall be paid in accordance with Clause 9.

## **G. Compliance with obligations**

1. Each of the Parties shall take such reasonable steps as may be necessary so as to ensure that the Employer is able to comply with its obligations under the Contract for Employment (including any obligations relating to working time and holidays).

## **H. Grievance and Disciplinary Procedures**

1. All matters relating to any grievances raised by the Secondee remain the exclusive responsibility of the Employer.
2. All matters relating to the discipline of the Secondee shall remain the exclusive responsibility of the Employer and shall be dealt with in accordance with the Employer's disciplinary procedure. If any of the other Parties, or if the Joint Office, raises any disciplinary matter relating to the Secondee with the Employer, the Employer shall deal with the matter promptly. Any action to be taken shall remain wholly within the Employer's discretion.

## **I. Definitions**

1. In this Schedule 11:
  - (a) "**Contract of Employment**" means the contract of employment between the Employer and any Secondee;
  - (b) "**Employer**" means the Party that employs (or whose Affiliate employs) the Secondee;
  - (c) "**Secondee**" means a person appointed under Clauses 7.4.1; and

- (d) "**Secondment**" means secondment to the Committee or the Joint Office (as the case may be) under the terms of this Schedule 11.