

Dated

20

The Retail Energy Code

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VERSION CONTROL

| Version | Date of Release | Change Proposal Number | Change Proposal Title | Affected Clauses/Schedules | Effective Date |
|----------------|------------------------|-------------------------------|------------------------------|-----------------------------------|-----------------------|
| | | | | | |

1 DEFINITIONS AND INTERPRETATION

- 1.1 The defined terms and other rules of interpretation used in this Code are set out in the [Interpretation Schedule].

2 ORIGINAL PARTIES

- 2.1 The Original Parties entered into an Original Accession Agreement before the date of this Code.

3 ADDITIONAL PARTIES

- 3.1 A person wishing to be admitted as a New Party shall apply to the Code Manager for admission on the application form issued by the REC Panel from time to time, and shall deliver such form to the Code Manager together with any other documents referred to in the form.
- 3.2 Within [5] Working Days of receipt of the application, the Code Manager shall notify the applicant, the REC Panel and the Authority that either (a) the applicant is to be admitted as a Party; or (b) that the further information is required from the applicant in order to complete the information referred to in the application form.
- 3.3 Where the Code Manager notifies the applicant that further information is required, as specified in Clause 3.2, the application will be considered to be on hold until such information is provided. Following the provision of further information by the applicant, Clause 3.2 shall apply again.
- 3.4 If no response is received from the applicant within [20] Working Days after the Code Manager's request for information under Clause 3.2, the application shall lapse. This is without prejudice to any new application for admission that the applicant may make thereafter.
- 3.5 If the Code Manager does not determine to admit an applicant as a New Party, either on the basis of insufficient information having been provided or due to the notice period referred to in Clause 3.4 having lapsed, the Code Manager shall provide the applicant with the reasons for its decision. If the applicant considers that it has made all reasonable efforts to comply with the request for information and that it would be unable to provide further information as part of a new application, the applicant may refer the matter to the Authority for determination. The determination of the Authority shall be final.
- 3.6 Where:
- (a) the Code Manager issues a notice in accordance with Clause 3.2 that the applicant is to be admitted as a New Party; or

(b) the Authority determines that the applicant shall be admitted as a New Party pursuant to Clause 3.5,

then the Code Manager shall, within [2] Working Days, send to the applicant an Accession Agreement for the applicant executed by RECCo on behalf of all the Parties.

3.7 Each Party hereby authorises and instructs RECCo to execute each Accession Agreement on the Party's behalf. Each Party undertakes not to withdraw, qualify or revoke any such authority or instruction at any time.

3.8 Upon the execution and delivery of an applicant's Accession Agreement by RECCo and the applicant, the applicant shall become a Party for all purposes of this Code from the date specified in such Accession Agreement.

3.9 The Code Manager shall promptly notify all Parties and the Authority of the execution and delivery of each Accession Agreement.

4 MANDATORY AND VOLUNTARY REC SCHEDULES

4.1 Not all REC Schedules apply to all Parties.

4.2 Each REC Schedule is identified as being either Mandatory or Voluntary for each Party Category.

4.3 If a REC Schedule is Mandatory for a Party Category, each Party in that Party Category shall be obliged to comply with that REC Schedule.

4.4 If a REC Schedule is Voluntary for a Party Category, each Party in that Party Category should take note of the REC Schedule as outlining recognised best practice, but the Parties in that Party Category are not obliged by this Code to comply with that REC Schedule.

4.5 The status of a REC Schedule as Mandatory or Voluntary for a Party Category may change as part of a Change Proposal.

5 REC PANEL [NB: PROVISIONS RELATING TO THE REC PANEL ARE SUBJECT TO FURTHER DEVELOPMENT, AS SET OUT IN CHAPTER 3 OF THE 5 JUNE OFGEM CONSULTATION]

6 REC FORUM

Objectives of REC Forum

6.1 The purpose of the REC Forum is to act as a forum for representing the views of the Parties and for informing the Parties generally regarding the operation of this Code. In particular, the

REC Forum hears appeals in respect of REC Panel decisions under Clause **Error! Reference source not found.** or **Error! Reference source not found.**.

- 6.2 Nothing in this Clause 6 shall preclude a meeting being held by telephone or other technological means, subject to all the requirements regarding notice and minutes being kept.

REC Forum Attendees

- 6.3 Each Party shall be entitled to have one duly authorised representative attend any meeting of the REC Forum on that Party's behalf.
- 6.4 If the individual chosen by a Party to represent that Party at the REC Forum is not an employee of that Party, then that Party shall comply with any reasonable requirements specified from time to time by the REC Panel concerning confirmation of the individual's authority to represent that Party at the REC Forum.

Convening REC Forum Meetings

- 6.5 Notice to convene a meeting of the REC Forum shall be given by the Code Manager:
- (a) within [2] Working Days after receipt of a notice referring to the REC Forum any matter stated in this Code to be capable of referral to the REC Forum; or
 - (b) within [5] Working Days of a notice in writing from at least [4] Parties requesting that a meeting of the REC Forum is convened.

Notice of REC Forum Meetings

- 6.6 All meetings of the REC Forum shall be convened on between [10] and [20] Working Days' notice (or such shorter period of notice as the REC Panel may determine if the REC Panel considers the matter to be urgent).
- 6.7 All meetings of the REC Forum shall be convened by giving notice to each Party and to the Authority and the Consumer Representative.
- 6.8 All meetings of the REC Forum shall specify the time and date of the meeting, the venue of the meeting and electronic means by which the meeting may be attended, and an agenda for the meeting.

Proceedings at Meetings of the REC Forum

- 6.9 Subject to the requirements of this Code, the REC Forum shall conduct its business in accordance with such procedural rules as the REC Forum may determine from time to time.
- 6.10 No business shall be transacted at any meeting of the REC Forum unless a quorum is present at that meeting. The quorum for each REC Forum meeting shall be [TBC].

Resolutions and Voting of the REC Forum

- 6.11 Each Party that is represented at a meeting of the REC Forum shall have one vote. Where an individual represents more than one Party that individual may vote on behalf of each Party separately or on behalf of one or more such Parties collectively.
- 6.12 A resolution of the REC Forum will be carried where: [TBC].

Minutes of the REC Forum

- 6.13 The Code Manager shall prepare minutes of all meetings of the REC Forum and shall send copies of such minutes to all Parties, the REC Panel, the Consumer Representative and the Authority as soon as practicable (and in any event within 10 Working Days) after the meeting was held. The Code Manager shall also publish such minutes on the Website.
- 6.14 If a Party wishes to raise an issue regarding the accuracy of the minutes, that Party shall do so within 10 Working Days after receipt of those minutes. Where the Code Manager agrees with the issue raised, the Code Manager shall amend the minutes and circulate updated minutes. Where the Code Manager disagrees with the issue raised, the Code Manager shall discuss the matter with the relevant Party. If the Code Manager is unable to resolve the matter, it shall include the matter in the agenda for the next following meeting of the REC Panel.

Appeals from the REC Forum

- 6.15 Where a Party reasonably believes that a resolution passed by the REC Forum, or a failure by the REC Forum to pass any resolution, will:
- (a) prejudice unfairly the interests of that Party;
 - (b) cause that Party to be in breach of this Code;
 - (c) cause that Party to be in breach of its Energy Licence (if it holds one); or
 - (d) cause that Party to be in breach of either or both of the Electricity Act and/or the Gas Act,

then such Party may, within [10] Working Days after receiving the minutes documenting the decision, appeal the matter to the Authority. Any such appeal must also be notified to the Code Manager. The Code Manager will give each other Party notice of the appeal.

- 6.16 The Authority's decision regarding any such appeal shall be final and binding. Pending the outcome of any such appeal, the resolution that has been appealed shall have no effect.

7 RECCO AND THE RECCO BOARD

- 7.1 RECCo shall be established in accordance with REC Schedule [TBC].

- 7.2 The RECCo Board shall comprise those individuals determined in accordance with REC Schedule [TBC], and shall conduct its business in accordance with that REC Schedule.
- 7.3 The REC Board shall perform the tasks and duties assigned to it by the provisions of this Code. In particular, the RECCo Board shall appoint and remove the Code Manager and professional advisers.
- 7.4 RECCo shall act as a corporate vehicle in relation to the business of the REC Board and the Panel, including by entering into contractual arrangements in order to give effect to any resolution of the REC Panel which it is necessary or desirable to implement by means of a binding contract.
- 7.5 RECCo is a Party to this Code, but is not entitled to become a User or a Market Participant.

8 CODE MANAGER

- 8.1 The RECCo Board shall from time to time appoint, and may from time to time remove, a person or persons to be known as the Code Manager.
- 8.2 In no event shall the Code Manager be a Party, an Affiliate of a Party, or an employee of a Party or an Affiliate of a Party.
- 8.3 The Code Manager shall, in all its activities, always act in a manner designed to achieve the following objectives:
- (a) that this Code is given full and prompt effect in accordance with its provisions, in a manner consistent with the REC Objectives, and without undue discrimination between the Parties or any classes of Party; and
 - (b) that the Code Manager conducts its affairs in an open and transparent manner.
- 8.4 Regarding the Code Administration Code of Practice, the Code Manager shall:
- (a) at all times, comply with the Code Administration Code of Practice and perform its tasks and functions in a manner consistent with the Code Administration Code of Practice Principles;
 - (b) in conjunction with the other persons named as code administrators in the Code Administration Code of Practice, review and where appropriate propose to the Authority that amendments be made to the Code Administration Code of Practice (subject always to the Authority's approval of those amendments); and
 - (c) report to the RECCo Board on any inconsistencies between this Code and the requirements of the Code Administration Code of Practice.

8.5 The Code Manager shall perform those tasks and functions expressly ascribed to it under this Code, and any other tasks and functions as the RECCo Board or the REC Panel may assign to the Code Manager from time to time. Without limitation, the Code Manager shall:

- (a) manage applications from potential New Parties to become a Party in accordance with Clause 3;
- (b) manage the process for the appointment of REC Panel Members in accordance with Clause 5;
- (c) convene and minute meetings of the RECCO Board, the REC Panel and the REC Forum in accordance with Clauses 5, 6 and 7;
- (d) circulate all relevant notices, papers and minutes of the RECCO Board, the REC Panel and the REC Forum in accordance with Clauses 5, 6 and 7; and
- (e) manage the process for progressing Change Proposals in accordance with the Change Management Schedule.

8.6 The RECCo Board shall be responsible for ensuring that the Code Manager undertakes its tasks and functions in respect of this Code. In particular, the RECCo Board shall ensure that the arrangements under which the Code Manager is appointed oblige the Code Manager to undertake such tasks and functions on terms no less onerous than those provided for by this Code.

9 PROTECTIONS FOR RECCO BOARD AND REC PANEL

9.1 RECCo shall indemnify, and keep indemnified:

- (a) each director on the RECCo Board;
- (b) the REC Panel Chair;
- (c) each REC Panel Member and each of their alternates;
- (d) each person who serves on a Sub-Committee; and
- (e) each Party, or an Affiliate of a Party, as employer of any person referred to in Clauses (a) to (d) above,

from and against any and all costs (including legal costs), charges, expenses, damages or other liabilities incurred or suffered by that person or employer in relation to the exercise of that person's powers duties or responsibilities under this Code, including where such powers duties or responsibilities are exercised negligently (but subject to Clause 9.2).

9.2 The indemnity under Clause 9.1 shall not apply to:

- (a) costs and expenses which are expressly stated to be incapable of recovery in the relevant approved budget under Clause 10;
- (b) costs, charges, expenses, damages or other liabilities suffered or incurred or occasioned by the wilful default or fraud of the relevant person, or in breach of a contract entered into by the relevant person with RECCo; and/or
- (c) costs, charges, expenses, damages or other liabilities which are recovered under any policy of insurance in favour of RECCo.

10 ANNUAL BUDGET AND COST RECOVERY

Recoverable Costs

10.1 The RECCo shall be entitled to recover, in accordance with the procedures set out in this Clause 10, all the reasonable costs and expenses RECCo properly incurs pursuant to this Code, which shall include:

- (a) the charges of the CSS Provider;
- (b) the charges and other costs and expenses under or in relation to the contract with the Code Manager;
- (c) any general administration costs and expenses associated with the RECCo Board, the REC Panel (including its Sub-Committees) or the REC Forum, including any costs incurred in holding meetings;
- (d) the charges and other costs and expenses of any consultant or adviser retained by the RECCo Board;
- (e) RECCo's costs under Clause 9; and
- (f) any costs and expenses associated with projects approved by the RECCo Board.

Preparation and Approval of Budgets

10.2 Not earlier than 60 nor later than 40 Working Days before the commencement of each Financial Year, the REC Panel shall circulate to all Parties a draft budget for that Financial Year, which shall set out the REC Panel's good faith estimate of the costs that are anticipated to be incurred pursuant to Clause 10.1 during that Financial Year.

10.3 [The draft budget shall be presented to the REC Forum for approval by resolution. The REC Forum may, by resolution, approve the draft budget, or amend the draft budget and approve it as amended. Where a resolution to approve the budget is carried by the REC Forum such budget shall be the approved budget for the relevant Financial Year.] / [The draft budget shall be subject to a vote by the Parties as if it was a Self-Governance Change. Any Party may

raise an alternative draft budget for consideration as an Alternative Change Proposal. Where the draft budget (or an alternative draft budget) is approved via such vote, such budget shall be the approved budget for the relevant Financial Year.]

10.4 Where no approved budget for a Financial Year is determined in accordance with Clause 10.3, the following provisions shall have effect:

(a) pending the approval of a budget, the REC Panel shall not be entitled to incur the costs which were the subject of dispute, except insofar as necessary in order to comply with legally binding obligations which it has previously incurred in accordance with this Code; and

(b) [the REC Panel shall refer the matter to the Authority whose decision as to the contents of the budget shall be final and binding] / [any Party may propose an alternative draft budget for approval under Clause 10.3].

Amendments to Budgets

10.5 The REC Panel may make revisions to the approved budget for a Financial Year within the limits defined in the approved budget. The procedure for the approval of changes greater than those limits shall be the same as that set out in Clauses 10.3 and 10.4 for the approval of a draft budget.

Publication of Annual Budget

10.6 The REC Panel shall publish on the Website the approved annual budget from time to time for each Financial Year; provided that the REC Panel shall remove or redact any information which the REC Panel considers would be prejudicial to the interests of one or more Parties.

Invoicing of CSS Provider's Charges

10.7 The CSS Provider shall invoice RECCo for the CSS Provider's charges for the Central Switching Service monthly in arrears, to be payable [20] Working Days after receipt of the invoice (together with VAT, if applicable).

Payment of Costs Incurred

10.8 Following receipt of an invoice or other statement relating to costs which are provided for in an approved budget, RECCo shall pay the amount stated in such invoice within [5] Working Days (or such longer payment terms as may have been agreed with the payee).

Recovery of Costs from Parties

10.9 [Each Energy Supplier shall be liable to fund the costs incurred by RECCo in respect of each Financial Year as follows:

$$\text{Energy Supplier's Contribution} = \frac{MP \times C}{TMP}$$

Where:

MP = the average number of RMPs for which the Energy Supplier was the Registered Supplier on the 15th day of each month of the Financial Year;

C = the costs incurred by the REC Panel in accordance with the approved budget; and

TMP = the average number of RMPs across all Registered Suppliers that existed on the 15th day of each month of the Financial Year.]

- 10.10 It is acknowledged that neither the final costs incurred in respect of, nor the market share of each Energy Supplier during, a Financial Year will be known until after the end of the Financial Year. The Code Manager shall arrange for RECCo to invoice each Energy Supplier for the Code Manager's estimate of the Energy Supplier's contribution in accordance with Clause 10.9. Such invoices shall be raised in monthly instalments payable in advance of the month, using an estimate based on the most recent data on Energy Supplier Registrations available at the time the invoice is produced.
- 10.11 Each Energy Supplier shall pay the amounts invoiced under Clause 10.10 (including VAT, if applicable) within the time period prescribed by the REC Panel.
- 10.12 RECCo shall, without prejudice to any other right or remedy, charge (and the relevant Energy Supplier shall pay) interest on any payment not duly made in accordance with this Clause 10, calculated from day to day at an annual rate equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment, together with an administration charge as notified by the Code Manager to the Parties from time to time.
- 10.13 Within 20 Working Days after the end of each Financial Year, the Code Manager shall calculate each Energy Supplier's total contribution for that Financial Year in accordance with the proportions set out in Clause 10.9, and shall reconcile them against the aggregate amount invoiced to that Energy Supplier under Clause 10.10. Where the aggregate amount invoiced to an Energy Supplier is more than (or less than) the amount calculated in accordance with this Clause 10.13 in respect of that Energy Supplier, RECCo shall include a credit (or additional charge) for the difference in the next invoice to be raised pursuant to Clause 10.10.

Audit

- 10.14 The RECCo Board shall arrange for the costs it incurs (as referred to in Clause 10.1) to be audited by a firm of chartered accountants on an annual basis. The RECCo Board shall copy the auditor's report to all Energy Suppliers within 15 Working Days of receipt.

Provision of Data on Registrations

10.15 The CSS Provider shall notify the Code Manager of the number of Meter Points for which each Energy Supplier is the Registered Supplier at such intervals and in respect of such periods as the Code Manager may reasonably request for the purposes of this Clause 10.

11 CHANGE CONTROL

11.1 A change to this Code may only be made in accordance with the procedures set out in the Change Management Schedule.

12 RECCO STEP-IN RIGHTS FOR CSS PROVIDER CONTRACTS

12.1 The DCC shall ensure that each External Service Provider Contract (as defined in the DCC Licence) relating to the CSS Provider is capable of being novated to RECCo:

- (a) at the DCC's request; and
- (b) at the direction of the Authority.

12.2 The DCC shall ensure that RECCo can, pursuant to the Contract (Rights of Third Parties) Act 1999, directly enforce such right to have the contract novated to RECCo.

13 LIMITATION OF LIABILITY

13.1 Nothing in this Code shall exclude or limit a Party's liability:

- (a) for death or personal injury resulting from the negligence of that Party;
- (b) for fraud or fraudulent misrepresentation;
- (c) to pay its share of RECCo's costs under and in accordance with Clause 10;
- (d) to pay amounts due under and in accordance with the Performance Assurance Schedule; or
- (e) for any other type of liability which cannot by Law be excluded or limited.

13.2 A Party shall only be liable to another Party under or in relation to this Code for losses that arise as a direct result of a breach of this Code (being losses that were reasonably foreseeable as likely to occur in the ordinary course of events).

13.3 [Each Party's liability under or in connection with this Code shall be capped at: [TBC].]

13.4 It is expressly agreed that a Party may recover the following losses arising as a result of a breach of this Code (and without intending to limit recovery of any other liability that may arise as a direct result of such breach): [TBC].

- 13.5 No Party shall be liable to another Party under or in relation to this Code for:
- (a) loss of profit;
 - (b) loss of revenue;
 - (c) loss of use;
 - (d) loss of contract;
 - (e) loss of goodwill; or
 - (f) loss resulting from the liability of such other Party to a third party for any of the matters referred to in paragraphs (a) to (e) above.
- 13.6 The rights and remedies provided by this Code are exclusive and not cumulative, and exclude and are in place of all substantive (but not procedural) rights or remedies provided by common law or statute in respect of the subject matter of this Code. Subject to Clause 13.1, each Party hereby waives and releases to the fullest extent possible all such rights and remedies provided by common law or statute.
- 13.7 Nothing in this Clause 13 shall exclude or affect any of:
- (a) the rights, powers, duties and obligations of any Party which are conferred or created by an Energy Licence or Law (save as described in Clause 13.6); or
 - (b) the rights, powers and duties of the Authority or the Secretary of State.
- 13.8 Each Party hereby acknowledges and agrees that the provisions of this Clause 13 are fair and reasonable having regard to the circumstances.

14 PERFORMANCE ASSURANCE

- 14.1 The REC Performance Assurance Board shall be established in accordance with the Performance Assurance Schedule, and shall conduct its business in accordance with that REC Schedule.
- 14.2 Each Party shall potentially be subject to Performance Standards under and in accordance with the Performance Assurance Schedule, and shall potentially be liable to pay compensation payments in accordance with that REC Schedule.

15 EVENTS OF DEFAULT AND CONSEQUENCES OF DEFAULT

- 15.1 An “**Event of Default**” shall occur in respect of a Party (the “**Defaulting Party**”) if one or more of the following occurs in respect of it:

- (a) the Defaulting Party is in breach of any of the material terms or conditions of this Code and/or in persistent breach of any of the terms or conditions of this Code and, if the breach is or was capable of remedy, it fails to remedy the breach within 20 Working Days of receipt of a notice from another Party giving details of the breach, requiring the Defaulting Party to remedy the breach and stating that a failure to remedy the breach may give rise to consequences set out in this Clause 15;
- (b) the Defaulting Party is determined to have committed an Event of Default under the Performance Assurance Schedule;
- (c) the Defaulting Party passes a resolution for its winding-up, or a court of competent jurisdiction makes an order for the winding-up or dissolution of the Party;
- (d) the Defaulting Party has an administration order is made in respect of it or a receiver is appointed over, or an encumbrancer takes possession of or sells, any substantial part or parts of the Party's assets, rights, or revenues;
- (e) the Defaulting Party makes an arrangement or composition with its creditors generally or makes an application to a court for protection from its creditors generally;
- (f) the Defaulting Party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, but as if in that Section the sum of £10,000 was substituted for the sum of £750; and/or
- (g) if the Defaulting Party holds an Energy Licence, the Defaulting Party has its Energy Licence revoked.

15.2 Any Party may report any suspected Event of Default to the RECCo Board and upon receiving such report, the REC Panel shall notify the Party to whom the suspected Event of Default report relates.

15.3 Where the RECCo Board has reason to believe that an Event of Default may have occurred in respect of a Party, then the RECCo Board may investigate the circumstances relating to such potential Event of Default. Each Party shall provide all reasonable Data and cooperation as the RECCo Board may reasonably request in respect of any such investigation.

15.4 Where an Event of Default occurs in respect of a Defaulting Party and while that Event of Default is continuing, the RECCo Board may take one or more of the following steps (in each case to the extent and at such time as the RECCo Board sees fit, having regard to all the circumstances of the Event of Default and any representations made by any Competent Authority or any Party):

- (a) notify the Authority that such Event of Default has occurred in respect of the Defaulting Party;

- (b) notify the Defaulting Party that such Event of Default has occurred in respect of it;
- (c) notify each other Party that such Event of Default has occurred in respect of the Defaulting Party;
- (d) require the Defaulting Party to give effect to a reasonable remedial action plan designed to remedy and/or mitigate the effects of the Event of Default within a reasonable timescale (a material breach of which plan shall in itself constitute an Event of Default);
- (e) suspend the right of the Defaulting Party to vote in the REC Forum;
- (f) suspend the right of the Defaulting Party to exercise its rights under the Change Management Schedule;
- (g) (in the case of an Energy Supplier) instruct the CSS Provider to suspend (in which case the CSS Provider shall suspend, with effect from the next following day) the right of the Defaulting Party to make new Registrations; and/or
- (h) expel the Defaulting Party from this Code subject to and in accordance with Clause 16.

15.5 The suspension of any or all of the Defaulting Party's rights referred to in Clause 15.4 shall be without prejudice to the Defaulting Party's obligations and liabilities under and in relation to this Code (whether accruing prior to, during, or after such suspension).

15.6 Where the RECCo Board has, pursuant to Clause 15.4, suspended a Party's rights, then the RECCo Board may at any time thereafter end such suspension.

15.7 Where the RECCo Board resolves to suspend the rights of a Party pursuant to Clause 15.4, then that Party may at any subsequent time apply to the Authority to have such suspension lifted. The Parties and the RECCo Board shall give effect to any decision of the Authority pursuant to such application, which shall be final and binding for the purposes of this Code.

16 CEASING TO BE A PARTY

16.1 A Party that holds an Energy Licence that requires that Party to be a party to this Code:

- (a) cannot be expelled from this Code by the RECCo Board unless the Authority has approved such expulsion; and
- (b) cannot voluntarily cease to be a Party while that Energy Licence remains in force.

16.2 A Party that does not hold an Energy Licence that requires that Party to be a party to this Code:

- (a) may (while an Event of Default is continuing in respect of that Party) be expelled from this Code with effect from such time on such date as the RECCo Board may resolve (where the RECCo Board considers it reasonable to do so in the circumstances); and
 - (b) may give notice to the REC Panel of that Party's intention to voluntarily cease to be a Party and of the time on the date from which it wishes to cease to be a Party (and the RECCo Board shall, following receipt of such a notice, resolve that that Party shall cease to be a Party with effect from the time on the date notified).
- 16.3 The RECCo Board shall notify the Authority and each remaining Party in the event that any person is expelled from this Code or voluntarily ceases to be a Party.
- 16.4 Where the RECCo Board resolves to expel a Party pursuant to this Paragraph 16, then that Party may at any subsequent time apply to the Authority to be reinstated as a Party. The Parties and the RECCo Board shall give effect to any decision of the Authority pursuant to such application, which shall be final and binding for the purposes of this Code.
- 16.5 Where the RECCo Board resolves to expel a Party pursuant to this Paragraph 16, then with effect from the time on the date at which such resolutions are effective (and subject to Clause 16.4):
 - (a) that Party's accession to this Code shall be terminated, and it shall cease to be a Party; and
 - (b) subject to Clause 16.6, that Party shall cease to have any rights or obligations under this Code.
- 16.6 The termination of a Party's accession to this Code shall be without prejudice to:
 - (a) those rights and obligations under this Code that may have accrued prior to such termination; or
 - (b) those provisions of this Code that are expressly or by implication intended to survive such termination.

17 CONFIDENTIALITY

General

- 17.1 Each Party hereby undertakes that it shall preserve the confidentiality of, and shall not directly or indirectly Disclose or use for its own purposes, each other Party's Confidential Information. The exceptions to this obligation are set out in Clause 17.2.

Exceptions to Confidentiality Obligation

17.2 A Party shall be entitled to Disclose or use another Party's Confidential Information if and to the extent that one or more of the following apply:

- (a) the Party is required or permitted to Disclose or use the Confidential Information by its Energy Licence or another Energy Code, to the extent of such requirement or permission;
- (b) the person to whose affairs the Confidential Information relates gives its prior written consent to the Disclosure or use, to the extent of such consent;
- (c) the Confidential Information, before it is furnished to the Party seeking to rely upon this Clause 17.2, is in the public domain or was acquired by that Party in circumstances in which this Clause 17 does not apply;
- (d) the Confidential Information, after it is furnished to the Party seeking to rely upon this Clause 17.2:
 - (i) is acquired by that Party in circumstances in which this Clause 17 does not apply;
 - (ii) is acquired by that Party in circumstances in which this Clause 17 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 17; or
 - (iii) enters the public domain,

and in any such case otherwise than as a result of: (A) a breach by that Party of its obligations in this Clause 17; or (B) a breach by the person who disclosed the Confidential Information of that person's confidentiality obligation and that Party is aware of such breach;

- (e) the Party is required to Disclose Confidential Information:
 - (i) in compliance with Law;
 - (ii) in response to a requirement of any recognised stock exchange; or
 - (iii) pursuant to any judicial or arbitral process or tribunal having jurisdiction in relation to the Party; or
- (f) the Party Discloses the Confidential Information to its Affiliates, or its or its Affiliates' employees, directors, agents, consultants and professional advisers (subject to Clause 17.4).

- 17.3 Confidential Information which a Party is permitted to Disclose or use pursuant to Clause 17.2 shall not cease to be regarded as Confidential Information in all other circumstances by virtue of such Disclosure or use.

Internal Procedures

- 17.4 Each Party shall adopt procedures within its organisation for ensuring the confidentiality of the Confidential Information which it is obliged to preserve as confidential under Clause 17.1. These procedures include the following:

- (a) the Confidential Information will be disseminated within the Party only on a "need to know" basis;
- (b) employees, directors, agents, consultants and professional advisers of the Party in receipt of Confidential Information will be made fully aware of the Party's obligations of confidence in relation thereto; and
- (c) any copies of the Confidential Information, whether in hard copy or computerised form, will clearly identify the Confidential Information as confidential.

- 17.5 Each Party shall take all reasonable steps to ensure that any person referred to in Clause 17.2(f) and 17.4(b) to whom the Party Discloses the Confidential Information does not use that Confidential Information for any purpose other than that for which it is provided and does not Disclose that Confidential Information otherwise than in accordance with this Clause 17.

Affiliate or Related Undertaking

- 17.6 Each Party shall procure that each of its Affiliates observes the restrictions in Clauses 17.1 to 17.5 as if in each such Clause there was substituted for the name of the Party the name of the Affiliate.

Confidentiality and the REC Bodies

- 17.7 The Parties acknowledge that, for the RECCo Board, the REC Panel, and the Sub-Committees to properly carry out their duties and responsibilities under this Code, the RECCo Board and/or the REC Panel may decide or be obliged to keep confidential to it (and may instruct the Sub-Committees to keep confidential) matters, reports, data and other information produced by or for, or made available to or held by it (or them). In any such case, the RECCo Board and/or REC Panel shall neither Disclose the same to the Parties nor be required by such Parties to Disclose. Each of the Parties agrees to respect the position of the RECCo Board and/or REC Panel (and the Sub-Committees) accordingly.
- 17.8 The RECCo Board, the REC Panel, the Sub-Committees and the Code Manager shall each comply with Clauses 17.1 to 17.5 as if they were a Party.

17.9 Each Party agrees, subject to any relevant confidentiality provision binding on it, to provide the RECCo Board and/or REC Panel or the Code Manager with all data and other information reasonably requested by and necessary for REC Panel, RECCo Board or the Code Manager to properly carry out their duties and responsibilities under this Code.

18 DATA PROTECTION GENERALLY

18.1 The words and expressions used in this Clause 18 and not defined elsewhere in this Code shall be interpreted in accordance with any meaning given to them in the Data Protection Legislation.

18.2 It is acknowledged that each Energy Supplier, Gas Transporter and Distribution Network Operator is likely to process personal data in the course of its business, including personal data concerning Consumers. It is further acknowledged that each such Party is likely to process such personal data as a data controller, and in some limited cases as joint data controllers with one or more other Parties.

18.3 Each Party confirms that it has effected, and undertakes that it shall (while it remains a Party) effect and maintain, all such notifications and registrations as it is required to effect and maintain under the Data Protection Legislation to enable it lawfully to perform the obligations imposed on it by this Code, and exercise the rights granted to it by this Code.

18.4 Each Party undertakes to comply with the Data Protection Legislation in the performance of this Code, including ensuring that it has a lawful basis for sharing personal data with another Party and that it complies with the Data Protection Legislation in relation to such sharing of personal data.

18.5 Each Energy Supplier shall provide to its Consumers, and each Gas Transporter and Distribution Network Operator shall provide to the Consumers connected to its network, the information required by the Data Protection Legislation to be provided by them in respect of the processing to be undertaken under this Code.

18.6 Each Party shall comply with the Data Protection Legislation as regards the exercise of rights by data subjects for which the Party is the data controller. In particular, each Party shall designate its own contact point responsible for dealing with data protection queries raised by data subjects for which the Party is the data controller. Unless agreed otherwise in writing at the relevant time, and to the extent any Parties are joint controllers:

- (a) each Party shall independently comply with the Data Protection Legislation, regarding the rights of Consumers under Data Protection Legislation; and
- (b) each Party shall independently inform Consumers about its processing activities and shall refer to the other joint controller in such notices.

18.7 Without limiting any other basis for processing which may be available in accordance with the Data Protection Legislation, each Party undertakes that, in any case where information to be disclosed by it under this Agreement may lawfully be Disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior valid consent so as to enable it to lawfully Disclose the information.

19 CSS PROVIDER AS A DATA PROCESSOR

19.1 The words and expressions used in this Clause 19 and not defined elsewhere in this Code shall be interpreted in accordance with any meaning given to them in the Data Protection Legislation.

19.2 It is acknowledged that in providing the [Registration Services] for each Energy Supplier, the CSS Provider may act in the capacity of data processor on behalf of that Energy Supplier in respect of the personal data for which that Energy Supplier is the data controller.

19.3 The personal data which the CSS Provider will process as a data processor on behalf of Energy Suppliers will be the personal data which is included within messages sent and received via the Switching Network. The purpose of such processing is to provide the [Registration Services]. The full description of the subject matter, nature and purpose of the processing, and the type of personal data is described in the Technical Specification.

19.4 The CSS Provider undertakes, for the benefit of each Energy Supplier in respect of the personal data for which that Energy Supplier is the data controller, to:

- (a) only process that personal data for the purposes permitted by this Code (subject to paragraph (c) below);
- (b) undertake the processing of that personal data in accordance with this Code (which represents the documented instructions of the Energy Supplier), and not in a manner that the CSS Provider knows (or should reasonably know) is likely to cause the Energy Supplier to breach its obligations under the Data Protection Legislation (subject to paragraph (c) below);
- (c) if the CSS Provider is aware that, or is of the opinion that, any requirement of paragraph (a) or (b) above breaches the Data Protection Legislation, the CSS Provider shall immediately inform the Energy Suppliers of this giving details of the breach or potential breach (unless the CSS Provider is prohibited from doing so by any of its other obligations under Law);
- (d) only process that personal data for so long as it is required to do so by this Code;
- (e) ensure that the CSS Provider's personnel who are authorised to process personal data are under enforceable obligations of confidentiality and are required only to

process that personal data in accordance with the CSS Provider's obligations under this Code;

- (f) (having regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of data subjects) implement appropriate technical and organisational measures to protect that personal data against accidental or unlawful loss, destruction, damage, alteration or disclosure;
- (g) not transfer or process that personal data outside the European Economic Area;
- (h) (taking into account the nature of the processing) assist the Energy Supplier with its obligations to comply with data subjects' requests and data subjects' rights under the Data Protection Legislation in respect of that personal data through, insofar as is possible, the use of appropriate technical and organisational measures;
- (i) (taking into account the nature of the processing and the information available to the CSS Provider) assist the Energy Supplier in ensuring compliance with the Energy Supplier's obligations in Articles 32-36 of the General Data Protection Regulation;
- (j) provide reasonable assistance to the Energy Supplier in complying with any enquiry made, or investigation or assessment initiated, by any Competent Authority in respect of the processing of that personal data pursuant to this Code;
- (k) promptly notify the Energy Supplier in the event that the CSS Provider processes any of that personal data otherwise than in accordance with this Code (including in the event of unauthorised access to such personal data); and
- (l) permit RECCo (on behalf of Energy Suppliers collectively) to audit compliance with this Clause 19 in accordance with Clause 25.9.

19.5 The CSS Provider shall ensure that its sub-processors in respect of the personal data referred to in Clause 19.4 are subject to written contractual obligations in respect of the processing of personal data which are at least equivalent to the obligations imposed on the CSS Provider under this Code.

19.6 Each Energy Supplier hereby gives its general authorisation to the CSS Provider to engage sub-processors who are appointed in accordance with the DCC Licence. Each Energy Supplier hereby confirms that it does not object to the engagement by the CSS Provider of any sub-processors engaged in accordance with the DCC Licence.

20 FORCE MAJEURE

20.1 If any Party (referred to as the Affected Party) shall be unable to carry out any of its obligations under this Code due to a circumstance of Force Majeure, then this Code shall remain in effect but:

- (a) the Affected Party's obligations; and
- (b) any other obligations of the other Parties which a Party is unable to carry out directly as a result of the suspension of the Affected Party's obligations,

shall be suspended without liability for the period during which the circumstance of Force Majeure prevails (subject to Clause 20.2).

20.2 Relief under Clause 20.1 is subject to the following:

- (a) the Affected Party shall give the other Parties prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and where reasonably practicable, shall continue to furnish regular reports with respect thereto during the period of Force Majeure;
- (b) the suspension of performance shall be of no greater scope and of no longer duration than is required by the circumstance of Force Majeure;
- (c) no obligations of any Party that arose before the circumstance of Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure;
- (d) the Affected Party shall take all reasonable steps to mitigate the impact of the circumstance of Force Majeure and to remedy its inability to perform as quickly as possible; and
- (e) immediately after the end of the circumstance of Force Majeure, the Affected Party shall notify the other Parties in writing of the same and resume performance of its obligations under this Code.

21 DISPUTES

21.1 Save where expressly stated in this Code to the contrary, and subject to any contrary provision of the Electricity Act, the Gas Act or any Energy Licence, any dispute or difference of whatever nature and howsoever arising under, out of or in connection with this Code (each a "**Dispute**") shall be resolved according to the provisions of this Clause 21.

Contract Management

21.2 Any Party shall refer a Dispute to the Contract Managers, by notice in writing to all other Parties to the Agreement who are Party to the Dispute (the Party referring the Dispute and the other Parties to the Dispute each being a "**Disputing Party**"). The Contract Managers of the Disputing Parties shall endeavour to resolve the Dispute between them. The Contract Managers of the Disputing Parties shall have authority to negotiate in relation to and to resolve the Dispute including authority to bind the Party nominating them. The joint and unanimous decision of the Contract Managers of the Disputing Parties shall be binding upon the Parties to the Dispute.

Arbitration

21.3 If the Contract Managers of the Disputing Parties are not able to resolve the Dispute within 10 Working Days of the reference of a Dispute to them, then any Disputing Party may, within 20 Working Days of such reference, refer the Dispute to arbitration before an arbitral tribunal composed of a single arbitrator pursuant to the rules of the London Court of International Arbitration (subject to Clause 21.5).

21.4 Whatever the nationality residence or domicile of any Disputing Party and wherever the Dispute or any part thereof arose the laws of England and Wales shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be London and the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted.

Claims by Third Parties

21.5 Subject to Clause 21.6, if any person who is not a Party to this Code brings any legal proceedings in any court against any Party and that Party considers such legal proceedings to raise or involve issues that are or would be the subject matter of a Dispute or potential Dispute that would (but for this Clause 21.5) be subject to arbitration, then (instead of arbitration) the court in which the legal proceedings have been commenced shall hear and determine the legal proceedings and the Dispute between such person and the Parties.

21.6 If any person who is not a Party to this Code brings any legal proceedings in any court against any Party and that Party considers such legal proceedings to raise or involve issues that are the subject matter of a Dispute that is already subject to an ongoing arbitration, then Clause 21.5 shall only apply where the arbitrator in that arbitration determines that such legal proceedings raise or involve issues that are the subject matter of the Dispute.

Interim Relief

- 21.7 Notwithstanding the provisions of the rest of this Clause 21, any Party may apply at any time to any court of competent jurisdiction for any emergency interim interlocutory relief as may be necessary.

22 DEROGATIONS

Application for Derogation

- 22.1 A Party may, at any time, apply to the REC Panel for a derogation under this Clause 22 by notice in writing to the Code Manager.
- 22.2 Where the Code Manager receives such an application, it shall ensure that the matter is added to the agenda for the next REC Panel meeting occurring more than [5] Working Days after receipt of such application, and shall give notice to all the Parties and to the Authority, at least [5] Working Days before the Panel meeting in question:
- (a) setting out the identity of the Party by whom the application has been made and the terms of the derogation sought;
 - (b) specifying the date on which the Panel is due to consider the matter;
 - (c) inviting representations or objections with respect to the derogation before that time; and,
 - (d) where appropriate, bringing to the REC Panel's attention any relevant circumstances, previous derogations and views that may have been expressed by the Authority

REC Panel's Ability to Grant Derogations

- 22.3 The REC Panel may (subject to Clause 22.5) resolve, on the application of any Party, to grant a derogation to any Party or Parties in relation to any obligation or obligations contained in this Code. In resolving to grant such derogation, the REC Panel may impose such conditions as it sees fit, and shall specify the term, scope and application of such derogation.
- 22.4 The REC Panel may, from time to time and as it sees fit (subject to Clause 22.5), resolve to retract any derogation, or to amend or add to the conditions applicable to any derogation.
- 22.5 A derogation granted to any Party by the REC Panel, or any retraction, amendment or addition under Clause 22.4, shall, in each case, only be effective if made in conformity with any representations received from the Authority pursuant to Clause 22.2, and if not vetoed by the Authority within 10 Working Days after notification of the REC Panel's decision and the rationale for it.

Effect of Derogation

- 22.6 Where a Party is granted a derogation by the REC Panel in accordance with this Clause 22, that Party shall be excused from complying with the obligations specified in the terms of that derogation, and shall be deemed not to be in breach of this Code for failing to comply with the relevant obligations for the term of the derogation, but shall be required to comply with any modified obligations which are specified as a condition of the derogation.
- 22.7 A Party may, by notice in writing to the REC Panel at any time, reject any derogation then applying to the Party, in which case the derogation shall cease to apply from the date specified in the Party's notice.

Code Manager Role

- 22.8 In relation to each derogation request, the Code Manager shall consider whether there is an issue of general application, which would better be addressed by a Change Proposal, and shall report to the REC Panel on the same.

23 CONTRACT MANAGERS AND PARTY DETAILS

- 23.1 Each Party shall appoint a Contract Manager to monitor and manage matters arising under or in connection with this Code on behalf of that Party.
- 23.2 Each Party can rely upon the authority of each other Party's Contract Manager in relation to this Code.
- 23.3 Each Party's original Party Details will have been provided as part of its Accession Agreement or Original Accession Agreement (as applicable).
- 23.4 Each Party may amend its Party Details by notice to the Code Manager from time to time. Each Party shall ensure that its Party Details remain up-to-date.
- 23.5 The Code Manager shall maintain a record of each Party's Party Details, and shall publish that record on the Website.
- 23.6 The Code Manager shall take reasonable steps to identify any errors or omissions in each Party's Party Details, and shall notify the relevant Party of any such errors or omissions.
- 23.7 Any Party (being a natural person) who is not resident in the United Kingdom or (not being a natural person) which is not incorporated in the United Kingdom shall, as part of its Party Details, provide an address in the United Kingdom for service of process on its behalf in any proceedings under or in relation to this Code. Where any such Party fails at any time to provide such address, such Party shall be deemed to have appointed RECCo as its agent to accept such service of process on its behalf.

24 NOTICES

- 24.1 This Code requires certain communications to be sent via certain specified means, including via the Switching Network. Where this is the case, such communications must be sent via the specified means.
- 24.2 Save as referred to in Clause 24.1, any notice or other communication to be made by one Party to another Party under or in connection with this Code shall be in writing and shall be sent by email.
- 24.3 All notices and communications as described in Clause 24.2 shall be sent to the email address specified for such purpose in the relevant Party's Party Details.
- 24.4 Subject to Clause 24.5, all notices and communications as described in Clause 24.2 shall be deemed to be received by the recipient if sent by email, one hour after being sent, unless an error message is received by the sender in respect of that email before that hour has elapsed.
- 24.5 Any notice that would otherwise be deemed to be received on a day that is not a Working Day, or after 17.30 hours on a Working Day, shall be deemed to have been received at 9.00 hours on the next following Working Day.
- 24.6 Notices between a Party and the REC Panel or Code Manager shall also be subject to this Clause 24. Such notices shall be sent to the relevant address given for such purpose, from time to time, on the Website (or, in the absence of any such address, to RECCo's registered office).

25 GENERAL

Commencement and Duration

- 25.1 This Code shall take effect from the date of its designation by the Authority.
- 25.2 Once this Code comes into effect, it shall remain in effect in respect of each Party, until such Party ceases to be a Party in accordance with Clause 16.

Entire Agreement

- 25.3 This Code and any document referred to herein represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and without prejudice to the generality of the foregoing excludes any warranty, condition or other undertaking implied at law or by custom.
- 25.4 Each Party confirms that, except as provided in this Code and without prejudice to any liability for fraudulent misrepresentation, it has not relied on any representation, warranty or undertaking which is not contained in this Code or any document referred to herein.

Severability

- 25.5 If any provision of this Code shall be held to be invalid or unenforceable by a judgement or decision of a Competent Authority, the same shall be deemed to be severable and the remainder of this Code shall remain valid and enforceable to the fullest extent permitted by Law. In such circumstances, the Code Manager shall promptly raise a Change Proposal to provide an alternative means of preserving the intent of the original provision, whilst addressing the issues which led the provision being held to be invalid or unenforceable.

Waivers

- 25.6 The failure by any Party to exercise, or the delay by any Party in exercising, any right, power, privilege or remedy provided by this Code or by Law shall not constitute a waiver thereof nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any further exercise thereof or the exercise of any other right, power, privilege or remedy.

Assignment and Sub-contracting

- 25.7 No Party shall assign any of its rights under this Code.
- 25.8 Any Party may sub-contract or delegate the performance of all or any of its obligations under this Code to any appropriately qualified and experienced third party, but shall at all times remain liable to any other Parties in relation to all sub-contracted or delegated obligations.

Audit and Records

- 25.9 Subject to receiving reasonable prior notice, each Party shall permit an auditor appointed by the REC Panel to audit that Party's compliance with this Code (or any part of this Code). The REC Panel may not audit a Party more frequently than once every Financial Year. Each Party shall provide reasonable co-operation to any such auditor, and shall permit such auditor (during normal business hours) to access that Party's premises, records and Systems (in each case) to the extent relevant to the performance of this Code.

Counterparts

- 25.10 The Original Accession Agreements and Accession Agreements may be executed in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute the same document.

Contract (Rights of Third Parties) Act 1999

- 25.11 Subject to Clause 25.12, no provision of this Code is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Code.

25.12 The individuals stated to benefit from the indemnity under Clause 9 shall be entitled to enforce their rights under that Clause in accordance with the Contract (Rights of Third Parties) Act 1999. This Code shall be capable of amendment and termination in accordance with its provisions without the consent of those individuals.

Governing Law

25.13 This Code and any dispute or claim arising out of or in connection with it (including non-contractual claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

25.14 In relation to any dispute or claim arising out of or in connection with this Code (including in respect of non-contractual claims), each Party submits to the exclusive jurisdiction of the courts of England and Wales (subject to Clause 21). This does not limit a Party's right to enforce a judgment or order in any other jurisdiction.