

To all gas and electricity suppliers,
gas transporters, electricity
distributors, the smart meter
communications company
and other interested parties.



Making a positive difference
for energy consumers

Email: switchingprogramme@ofgem.gov.uk

Date: 1 February 2019

Designation of the Retail Energy Code Company and related matters

In facilitation of the Switching Programme¹ and pursuant to modifications recently made to the standard licence conditions of gas and electricity suppliers, gas transporters and electricity distributors we are today designating version 1.0 of the Retail Energy Code ("the REC").

Learning lessons from previous Ofgem sponsored programmes, this version of the REC is intended primarily to provide strengthened governance to support the effective and timely implementation of new switching arrangements, particularly those to be delivered via or interact with the new Central Switching Service. In addition to codifying the transitional requirements placed upon market participants, the REC and the accompanying REC Company ("RECCo") will provide a vehicle to recover the costs of certain programme support activities, such as a Programme Coordinator and Licensed Party Assurance, as recently set out in a RECCo budget consultation.² We have appointed PwC to undertake the Programme Coordinator role and will announce the appointee to the Licensed Party Assurance role shortly.

We expect the second and substantive version of the REC to take effect at or around the go-live date of the new switching arrangements, which is scheduled to be summer 2021. This version of the REC remains under development and will be maintained and subsequently implemented through our Significant Code Review procedures, as set out in the October 2018 consultation. We today published a summary of responses to that document and our intended way forward.

Designation of REC v1.0

For the purposes of condition 11 of the gas suppliers' licence and condition 11B of the electricity suppliers' licence, granted pursuant to the Gas Act 1986 and Electricity Act 1989 respectively, the document set out at Annex A is hereby designated as the Retail Energy Code, and will have effect from 28 February 2019.

We have made some minor revisions to the REC main body since it was last published in draft on 6 December 2018, alongside the directions to modify the standard conditions of relevant licences. We consider that each of these revisions clarify rather than change our stated intention, as set in previous consultation documents. Those revisions are as follows:

Clause 7 – we have clarified that the Authority or a person appointed by the Authority may undertake some or all of the functions of the Code Manager until such time as a Code Manager is appointed;

Clause 11 – we have clarified that a change to the REC may be made pursuant to a Significant Code Review; and,

¹ See: www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/smarter-markets-programme/switching-programme

² www.ofgem.gov.uk/system/files/docs/2019/01/rec_19-20_budget_consultation_1.pdf

Clause 13 – we have clarified that due consideration must be paid to the costs and impacts on Users, and particular constituencies of Users where licences or permissions are required by Users to access the switching services.

Appointment if interim RECCo directors

In June 2018 we set out our initial proposals for the establishment of the RECCo. Recognising that in advance of the REC being established there was no formal mechanism to select and appoint RECCo directors, our proposals included the use of an interim board. This interim board would be appointed by Ofgem until such time as there is sufficient business for the enduring RECCo Board to be fully constituted; i.e. upon implementation of REC versions 2.0 and 3.0.

We suggested that the interim directors could be drawn from the existing SPAA Ltd and MRASCo Ltd boards, given the obvious overlaps in required expertise and competencies, and the fact that those individuals have already been through an industry selection process. It will also be crucial that the three organisations work on a collaborative basis in order to effect a smooth and orderly winding down of the SPAA and MRA and transition of governance to the REC. This proposal was broadly supported by consultation respondents and subsequently included as part of the way forward in our October 2018 document.

We subsequently wrote to all those currently serving as directors for SPAA Ltd and/or MRASCo Ltd asking for expressions of interest in additionally serving on the interim RECCo Board. We are grateful to have received a strong response from the existing directors to this request, but in the interests of the board being efficient and manageable have chosen a small number from those individuals who put themselves forward. In doing so we have sought to ensure a broad balance between existing MRA and SPAA boards. Whilst recognising that the directors must act in the interest of the company and REC parties more generally rather than any given constituency, we have also sought to ensure that each of the main categories of REC parties are represented. It should be noted that this interim arrangement is not indicative of our views on the appropriate constitution of the enduring board, and we will be setting out our further thinking on that in due course.

For the purposes of Appendix 1 of Schedule 4: Company Governance Schedule of the Retail Energy Code, the appointments are hereby made in respect of the persons who are to be original directors of the RECCo, those persons being:

Name	Other relevant current roles
Chris Anastasi	Independent Chair – SPAA Executive Committee
Kevin Woollard	Regulatory Manager: Centrica Director: MRA Service Company Limited SPAA Limited DCUSA Limited SMiCOP Limited
Rachael Anderson	Senior Market Transformation Advisor: Utilita Director: MRA Service Company Limited SPAA Limited
Steve Mulinganie	Regulation & Compliance Manager: Gazprom Director: SPAA Limited
Tracy Pitcher	National Systems Manager: Western Power Distribution Director: MRA Service Company Limited

Next steps

We have published alongside this letter a copy of the REC accession agreement for **original parties** and an explanatory note. We invite gas and electricity suppliers, gas transporters and electricity distributors and the DCC to sign and return at the earliest opportunity, but no later than **28 February 2019**, being the date that the REC comes into effect. Please note that this form is different to that contained in Schedule 3 of the REC, which is intended for new parties acceding to the REC after the effective date.

Signed copies of the accession agreements should be returned to:

FAO: Gus Wood
Gowlings
4 More London Riverside
London SE1 2AU

In the meantime, if you have any questions, please do not hesitate to contact us, preferably via email at: switchingprogramme@ofgem.gov.uk

Rachel Clark
Programme Director, Switching Programme
Authorised to act on behalf of the Authority

Annex A: The Retail Energy Code Version v1.0

Effective Date 28 February 2019

The Retail Energy Code

CONTENTS

Clause	Heading	Page
1	DEFINITIONS AND INTERPRETATION.....	33
2	CATEGORIES OF PARTIES	33
3	BECOMING A PARTY	33
4	MANDATORY AND VOLUNTARY REC SCHEDULES	44
5	REC PANEL	55
6	RECCO AND THE REC BOARD	55
7	CODE MANAGER.....	55
8	PROTECTIONS FOR REC BOARD AND REC PANEL	77
9	ANNUAL BUDGET AND COST RECOVERY.....	88
10	CHARGES FOR THE CENTRALISED REGISTRATION SERVICE	1040
11	CHANGE CONTROL.....	1040
12	RECCO STEP-IN RIGHTS FOR CSS PROVIDER CONTRACTS	1114
13	INTELLECTUAL PROPERTY RIGHTS.....	1114
14	LIMITATION OF LIABILITY	1414
15	PERFORMANCE ASSURANCE	1616
16	EVENTS OF DEFAULT AND CONSEQUENCES OF DEFAULT	1616
17	CEASING TO BE A PARTY	1818
18	CONFIDENTIALITY.....	1919
19	DATA PROTECTION GENERALLY.....	2121
20	CSS PROVIDER AS A DATA PROCESSOR	2222
21	FORCE MAJEURE.....	2424
22	DISPUTES.....	2525
23	DEROGATIONS	2727
24	CONTRACT MANAGERS AND PARTY DETAILS	2828
25	NOTICES.....	2929
26	GENERAL	3030

VERSION CONTROL

Version	Date of Release	Change Proposal Number	Change Proposal Title	Affected Clauses/Schedules	Effective Date
1.0	01/02/19		REC v1.0 – Designated Version		28/02/19

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 CATEGORIES OF PARTIES

2.1 The following categories of person are eligible to become a Party: (a) the DCC; (b) RECCo (c) Energy Suppliers; (d) Gas Transporters; and (e) Distribution Network Operators.

2.2 The DCC is primarily a Party for the purpose of providing the Centralised Registration Service in accordance with Condition 15 (Incorporation, delivery and provision of the Centralised Registration Service) of the DCC Licence, in which context the DCC is referred to as the CRS Provider. The CRS Provider encompasses the following roles: the CSS Provider, the CSS Systems Integrator, the SI Provider and the Switching Operator (as such roles are defined in the Interpretation Schedule).

2.3 The Switching Data Service Providers other than the DCC (in its role as CSS Provider, and also in respect of services under the Smart Energy Code) cannot become a Party, but Electricity Suppliers, Gas Transporters and Distribution Network Operators should note their respective responsibilities in respect of Switching Data Service Providers (as described in paragraph 2 of the Interpretation Schedule).

2.4 Shippers, Supplier Agents and Meter Asset Providers cannot become a Party, but:

(a) Energy Suppliers should note their responsibilities in respect of Shippers, Supplier Agents and Meter Asset Providers under and in relation to the Transition Schedule (as described in paragraph 2 of the Interpretation Schedule); and

(b) Shippers, Supplier Agents and Meter Asset Providers will be able to obtain access to the Switching Network for the purposes of receiving information from the Central Switching Service by entering into an Access Agreement.

3 BECOMING A PARTY

3.1 The Original Parties entered into the Original Accession Agreement on or before the effective date of this Code.

3.2 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 Code Manager from time to time, and shall deliver such form to the Code Manager together with any other documents referred to in the form.

3.3 Within 5 Working Days of receipt of the application, the Code Manager shall notify the applicant, the REC Board and the Authority that either: (a) the applicant is to be admitted as a

Party; or (b) that the applicant is not eligible to become a Party (as described in Clause 3.1), or that further information is required from the applicant in order to complete the information referred to in the application form.

3.4 Where the Code Manager notifies the applicant that further information is required, as specified in Clause 3.3, the application will be considered to be on hold until such information is provided. Following the provision of further information by the applicant, Clause 3.3 shall apply again.

3.5 If no response is received from the applicant within 20 Working Days after the Code Manager's request for information under Clause 3.3, the application shall lapse. This does not prevent the applicant submitting a new application at a later date.

3.6 If the Code Manager decides that the applicant is not to be admitted as a New Party, then the Code Manager shall provide the applicant with the reasons for the 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 appeal the matter to the Authority for determination. Any such appeal is subject to Clause 22.8.

3.7 Where:

(a) the Code Manager issues a notice in accordance with Clause 3.3 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 3.6,

then the Code Manager shall, within 3 Working Days, send to the applicant an Accession Agreement for the applicant executed by RECCo on behalf of all the Parties.

3.8 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.

3.9 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.

3.10 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 for each Party Category as being Mandatory, Voluntary or not applicable.
- 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

- 5.1 There will not initially be a REC Panel. The functions, duties and rights assigned to the REC Panel (or any Sub-Committee, including the REC Performance Assurance Board) in this Code will initially be performed by the REC Board.

6 RECCO AND THE REC BOARD

- 6.1 RECCo shall be established in accordance with the Company Governance Schedule.
- 6.2 The REC Board shall initially comprise those willing individuals designated by the Authority from time to time, and shall conduct its business in accordance with such terms of reference as the Authority may approve from time to time.
- 6.3 The REC Board shall perform the tasks and duties assigned to it by the provisions of this Code. In particular, the REC Board shall appoint and remove the Code Manager in accordance with Clause 7.
- 6.4 It is expected that most governance decisions requiring contracts to be entered into will be taken by the REC Board, and given effect via RECCo. Nevertheless, where a corporate vehicle is necessary to give effect to the decisions of the REC Panel (including by entering into contract in order to give effect to decisions of the REC Panel which it is necessary or desirable to implement by means of a binding contract), then RECCo shall act as that corporate vehicle, and the REC Board shall ensure that the necessary steps are taken.
- 6.5 RECCo is a Party to this Code, but is not entitled to become a User or a Market Participant.

7 CODE MANAGER

- 7.1 The REC Board shall (subject to Clause 7.7) from time to time appoint, and may from time to time remove, a person or persons to be known as the Code Manager.

- 7.2 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.
- 7.3 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.
- 7.4 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 REC Board on any inconsistencies between this Code and the requirements of the Code Administration Code of Practice.
- 7.5 The Code Manager shall perform those tasks and functions expressly ascribed to it under this Code, and any other tasks and functions as the REC Board or the REC Panel may assign to the Code Manager from time to time. Without limitation, the Code Manager shall (subject to Clause 7.7):
- (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 REC Board and the REC Panel in accordance with Clauses 5 and 6;
 - (d) circulate all relevant notices, papers and minutes of the REC Board and the REC Panel in accordance with Clauses 5 and 6; and
 - (e) manage the process for progressing Change Proposals in accordance with the Change Management Schedule.

- 7.6 The REC Board shall be responsible for ensuring that the Code Manager undertakes its tasks and functions in respect of this Code. In particular, the REC Board shall (subject to Clause 7.7) 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.
- 7.7 The REC Board may, where consistent with the REC Objectives, decide not to outsource some or all of the Code Manager functions to a service provider, and may instead decide that some or all of those functions shall instead be performed by RECCo. Where this is the case, the relevant references in this Code to the Code Manager will be interpreted as references to RECCo.
- 7.8 Until such time as the RECCo Board appoints a Code Manager in accordance with Clause 7.2 and/or decides that some or all of those functions shall instead be performed by RECCo in accordance with Clause 7.7, such functions may on an interim basis be performed by the Authority or a person nominated by the Authority.

8 PROTECTIONS FOR REC BOARD AND REC PANEL

- 8.1 RECCo shall indemnify, and keep indemnified:
- (a) each director on the REC 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 8.2).

- 8.2 The indemnity under Clause 8.1 shall not apply to:
- (a) costs and expenses which are expressly stated to be incapable of recovery in the relevant approved budget under Clause 9;
 - (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.

9 ANNUAL BUDGET AND COST RECOVERY

Recoverable Costs

9.1 RECCo shall be entitled to recover, in accordance with the procedures set out in this Clause 9, all the reasonable costs and expenses RECCo properly incurs pursuant to this Code (excluding the CSS Provider's charges for the Central Switching Service, which are governed by Clause 10). Without limitation, RECCo shall be entitled to recover:

- (a) the charges and other costs and expenses under or in relation to the contract with the Code Manager;
- (b) any general administration costs and expenses associated with the REC Board or the REC Panel (including its Sub-Committees), including any costs incurred in holding meetings;
- (c) the charges and other costs and expenses of any consultant or adviser retained by the REC Board;
- (d) RECCo's costs under Clause 8; and
- (e) any costs and expenses associated with projects approved by the REC Board.

Preparation and Approval of Budgets

9.2 Not earlier than 60 Working Days, nor later than 40 Working Days, before the commencement of each Financial Year, the REC Board shall circulate to all Parties a draft budget for that Financial Year, which shall set out the REC Board's good faith estimate of the costs that are anticipated to be incurred pursuant to Clause 9.1 during that Financial Year.

9.3 The draft budget shall be subject to approval by the Parties on the basis of a simple majority of the Parties who cast a vote, on the basis that each Party gets one vote (except that RECCo shall not be eligible to vote). Such vote shall be managed by the Code Manger. Where the draft budget is approved via such vote, such budget shall be the approved budget for the relevant Financial Year.

9.4 Where no approved budget for a Financial Year is determined in accordance with Clause 9.3, the following provisions shall apply:

- (a) pending the approval of a budget, RECCo shall not be entitled to incur the costs which were objected to by one or more of the voting Parties, 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 Board may appeal the matter to the Authority whose decision as to the contents of the budget shall be final and binding.

Amendments to Budgets

- 9.5 The REC Board 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 9.3 and 9.4 for the approval of a draft budget.

Publication of Annual Budget

- 9.6 The Code Manager shall publish on the Website the approved annual budget from time to time for each Financial Year; provided that the REC Board shall remove or redact any information which the REC Board considers would be prejudicial to the interests of one or more Parties (including RECCo).

Payment of Costs Incurred

- 9.7 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

- 9.8 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 Board 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.

- 9.9 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 9.8. Such invoices shall be raised in monthly instalments payable in advance of the

month, using an estimate based on the most recent data on each Energy Supplier's Registrations available at the time the invoice is produced.

- 9.10 Each Energy Supplier shall pay the amounts invoiced under Clause 9.9 (including VAT, if applicable) within the time period prescribed by the REC Board.
- 9.11 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 9, 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.
- 9.12 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 9.8, and shall reconcile them against the aggregate amount invoiced to that Energy Supplier under Clause 9.9. Where the aggregate amount invoiced to an Energy Supplier is more than (or less than) the amount calculated in accordance with this Clause 9.12 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 9.9.

Audit

- 9.13 The REC Board shall arrange for the costs it incurs (as referred to in Clause 9.1) to be audited by a firm of chartered accountants on an annual basis. The REC Board shall copy the auditor's report to all Energy Suppliers within 15 Working Days of receipt.

Provision of Data on Registrations

- 9.14 The CSS Provider shall notify the Code Manager of the number of RMPs 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 9 and/or Clause 10. Until such time as this information is available via the Central Switching Service, Gas Retail Data Agent and the Electricity Retail Data Agents shall ensure that this information is made available to the Code Manager.

10 CHARGES FOR THE CENTRALISED REGISTRATION SERVICE

[Intentionally blank.]

11 CHANGE CONTROL

- 11.1 Until such time as the Change Management Schedule comes into effect, changes to this Code:

- (a) may be proposed in accordance with the change control process applying to the Switching Programme generally, and shall be subject to the Authority's approval; or
- (b) shall be made where directed by the Authority in order to give effect to the published conclusions of a Significant Code Review (as defined in Condition 11 of the Gas Supply Licence and Condition 11B of the Electricity Supply Licence).

12 RECCO STEP-IN RIGHTS FOR CSS PROVIDER CONTRACTS

12.1 The DCC shall ensure that each External Service Provider Contract 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 INTELLECTUAL PROPERTY RIGHTS

REC Materials

13.1 Clauses 13.2 to 13.4 apply in respect of this Code and any and all documents, materials, reports, charts and tables, diagrams and specifications, and any and all other works, inventions, ideas, designs or proposals (in whatever form, and including Change Proposals) arising out of or in connection with the central administration, operation and development of this Code, including any and all associated drafts and working papers (collectively known as the REC Materials); provided that the REC Materials shall not include the Services IPR.

13.2 The Parties agree that, as between the Parties, any and all Intellectual Property Rights subsisting in the REC Materials and the whole of the title to the REC Materials will:

- (a) be owned by RECCo; and
- (b) automatically and immediately vest in RECCo upon their creation or acquisition.

13.3 Where a Party other than RECCo acquires (by operation of Law or otherwise) any Intellectual Property Rights in the REC Materials, then that Party:

- (a) (as far as is permitted by Law) hereby assigns such Intellectual Property Rights to RECCo with full title guarantee, by way of present assignment of future Intellectual Property Rights; and
- (b) (to the extent such assignment is not permitted by Law) shall (and shall procure that any of its employees, agents or contractors shall) do all acts and things and execute all documents that may be reasonably necessary to transfer such Intellectual Property

Rights to RECCo with full title guarantee (and pending such assignment shall hold such rights on trust for RECCo).

- 13.4 RECCo hereby grants to each of the other Parties (for so long as they remain a Party) a royalty-free, non-exclusive, non-transferable licence to use the REC Materials for the sole purpose of participating as a Party (including exercising its rights and performing its obligations as a Party). Each licence granted to a Party under this Clause 13.4 includes the right of that Party to grant sub-licences to its agents, contractors and advisers provided that they are granted solely in respect of that Party's participation as a Party (and the REC Materials are used for no other purpose).

Services IPR

- 13.5 Clauses 13.6 to 13.13 apply in respect of Services IPR. Services IPR refers to the Intellectual Property Rights which are essential for the CRS Provider (or its contractors) to provide the Centralised Registration Services and/or essential for the Users to receive the Centralised Registration Services (but excluding in both cases commercially available off-the-shelf software). The CRS Provider's obligations under this Code in relation to the Intellectual Property Rights essential for the Users to receive the Centralised Registration Services shall be limited to the software, communications networks and interfaces for which the CRS Provider is responsible as described in the Design Baseline. The Services IPR which is not owned by the DCC is referred to as Third Party IPR.
- 13.6 As between the CRS Provider and each User, the Services IPR shall be owned by the CRS Provider (and no User shall make any claims in respect of the Services IPR).
- 13.7 The CRS Provider hereby grants to each User a royalty-free, non-exclusive, non-transferable licence to use the Services IPR for the sole purpose of receiving the Centralised Registration Services (subject to Clause 13.9). Each licence granted by the CRS Provider under this Clause 13.7 includes the right of the User to grant sub-licences to its agents, and contractors provided that they are granted solely for the purpose of the User receiving the Centralised Registration Services (and that the Services IPR is used for no other purpose).
- 13.8 The CRS Provider shall ensure that each User (and its agents and contractors) can use the Services IPR in the manner envisaged by Clause 13.7, and shall indemnify each User in respect of any claims brought by persons alleging that the use of that Services IPR in the manner envisaged by Clause 13.7 has infringed any Intellectual Property Rights.
- 13.9 If the CRS Provider cannot obtain the necessary Third Party IPR licensing rights in favour of Users and/or to enable Users to grant sub-licences of Third Party IPR (in each case as required by Clause 13.7), then the CRS Provider shall consult with the Authority, and the Authority may agree in writing that specified Third Party IPR does not need to be licensed to

Users and/or capable of being sub-licensed by Users (as would in each case otherwise be required by Clause 13.7).

- 13.10 In procuring and developing the Centralised Registration Services, the CRS Provider must give due consideration, in so far as is relevant and possible, to the total costs to and impact on Users (including consideration of variances across Users, including size) in relation to Intellectual Property Rights, on the assumption that all Users design and operate their Systems in accordance with Good Industry Practice.

Use of IPR by Successors

- 13.11 This Clause 13.11 applies to the CRS Provider in all of its activities of negotiating, entering into, managing and developing the External Service Provider Contracts. The CRS Provider must at all times carry on those activities with appropriate regard for the potential impacts of the ownership and licensing of Intellectual Property Rights on:

- (a) the existing and future integration of the Centralised Registration Service; and
- (b) the rights of any External Service Provider (or any successor) or any successor provider of the Centralised Registration Services to be able to use essential Intellectual Property Rights created or held by any of their respective predecessors.

- 13.12 In addition to, and without prejudice to the DCC's obligations under the DCC Licence, on the DCC ceasing to be the provider of some or all of the Centralised Registration Services in circumstances where the DCC remains the licensee under the DCC Licence:

- (a) in respect of any and all Services IPR relating to the services for which the DCC is no longer the provider and which the DCC owns, the DCC shall transfer such Intellectual Property Rights to (as directed by the Authority) RECCo or the successor CSS Provider with full title guarantee (and pending such assignment shall hold such rights on trust for RECCo); and
- (b) in respect of any and all Third Party IPR relating to the services for which the DCC is no longer the provider and which the successor provider needs to continue provision of the relevant Centralised Registration Services, the DCC shall ensure that the successor provider is granted a licence to use such Intellectual Property Rights on the same terms as those that had applied to the DCC (but excluding Intellectual Property Rights which the Authority agrees in writing do not need to be subject to this Clause 13.12(b)).

- 13.13 The DCC may not be party to any External Service Provider Contract which does not expressly provide for or permit the licensing envisioned by Clause 13.12(b), save where the Authority agrees in writing that the Intellectual Property Rights in question do not need to be subject to Clause 13.12(b).

General

13.14 The use by a User of Intellectual Property Rights licensed to it under this Clause 13 otherwise than in accordance with such licence shall constitute a breach of this Code, and the User breaching the Intellectual Property Rights shall indemnify the Party which granted the licence.

14 LIMITATION OF LIABILITY

14.1 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 9;
- (d) to pay its share of the charges for the Centralised Registration Service under Clause 10;
- (e) to pay amounts due under and in accordance with the Performance Assurance Schedule (but without prejudice to the financial limits set out in the Performance Assurance Schedule); or
- (f) for any other type of liability which cannot by Law be excluded or limited.

14.2 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).

14.3 The Liability of each Party (other than the DCC) under or in relation to this Code:

- (a) for breach of Clause 18 (Confidentiality), shall be unlimited (subject to Clauses 14.2 and 14.5);
- (b) for breach of Clause 13 (Intellectual Property Rights), shall be unlimited (subject to Clauses 14.2 and 14.5); and
- (c) for any other breach of this Code shall be limited to £1,000,000 (one million pounds) in respect of each incident or series of related incidents.

14.4 The Liability of the DCC under or in relation to this Code:

- (a) for breach of Clause 18 (Confidentiality), shall be unlimited (subject to Clauses 14.2 and 14.5);
- (b) for breach of Clause 13 (Intellectual Property Rights), shall be unlimited (subject to Clauses 14.2 and 14.5); and

- (c) for any other breach of this Code (unless expressly stated otherwise in this Code) shall be limited to the higher of: (A) £1,000,000 (one million pounds) in respect of each incident or series of related incidents; or (B) the amount which is recoverable by the DCC under the External Service Provider Contracts.

14.5 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.

14.6 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 14.1, each Party hereby waives and releases to the fullest extent possible all such rights and remedies provided by common law or statute.

14.7 Nothing in this Clause 14 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 14.6); or
- (b) the rights, powers and duties of the Authority or the Secretary of State.

14.8 The Performance Assurance Schedule sets out each Party's exclusive remedy in respect of the poor performance of those matters which are subject to Performance Standards under the Performance Assurance Schedule.

14.9 Where the liability of a Party under or in relation to this Code would exceed the financial cap on liability set out in Clause 14.3(c) or 14.4(c) (as applicable to that Party), and that liability is in respect of loss or damage suffered by more than one other Party, each such other Party shall be entitled to recover a proportion of the capped liability calculated by reference to the amount of any loss and damage suffered by it expressed as a fraction of the total amount of loss and damage suffered by such other Parties collectively.

14.10 Each Party shall be under a duty to mitigate its loss.

- 14.11 Each Party hereby acknowledges and agrees that the provisions of this Clause 14 are fair and reasonable having regard to the circumstances.

15 PERFORMANCE ASSURANCE

- 15.1 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.

- 15.2 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.

16 EVENTS OF DEFAULT AND CONSEQUENCES OF DEFAULT

- 16.1 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 16;
 - (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.

- 16.2 Any Party may report any suspected Event of Default to the REC Board and upon receiving such report, the REC Board shall notify the Party to whom the suspected Event of Default report relates.
- 16.3 Where the REC Board has reason to believe that an Event of Default may have occurred in respect of a Party, then the REC Board may investigate the circumstances relating to such potential Event of Default. Each Party shall provide all reasonable Data and cooperation as the REC Board may reasonably request in respect of any such investigation.
- 16.4 Where an Event of Default occurs in respect of a Defaulting Party and while that Event of Default is continuing, the REC Board may take one or more of the following steps (in each case to the extent and at such time as the REC 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 exercise its rights in respect of Change Proposals pursuant to Clause 11;
 - (f) (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
 - (g) expel the Defaulting Party from this Code subject to and in accordance with Clause 17.
- 16.5 The suspension of any or all of the Defaulting Party's rights referred to in Clause 16.4 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).
- 16.6 Where the REC Board has, pursuant to Clause 16.4, suspended a Party's rights, then the REC Board may at any time thereafter end such suspension.

16.7 Where the REC Board resolves to suspend the rights of a Party pursuant to Clause 16.4, then that Party may at any subsequent time make an appeal to the Authority to have such suspension lifted (in accordance with Clause 22.8). The Parties and the REC 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.

17 CEASING TO BE A PARTY

17.1 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 REC Board unless the Authority has approved such expulsion; and
- (b) cannot voluntarily cease to be a Party while that Energy Licence remains in force.

17.2 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 REC Board may resolve (where the REC Board considers it reasonable to do so in the circumstances); and
- (b) may give notice to the REC Board 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 REC 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).

17.3 The REC Board shall promptly 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.

17.4 Where the REC Board resolves to expel a Party pursuant to this Clause 17, then that Party may at any subsequent time apply to the Authority to be reinstated as a Party. The Parties and the REC 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.

17.5 Where the REC Board resolves to expel a Party pursuant to this Clause 17, then with effect from the time on the date at which such resolutions are effective (and subject to Clause 17.4):

- (a) that Party's accession to this Code shall be terminated, and it shall cease to be a Party; and
- (b) subject to Clause 17.6, that Party shall cease to have any rights or obligations under this Code.

17.6 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.

18 CONFIDENTIALITY

General

- 18.1 This Clause 18 imposes obligations on the DCC and on each User (referred to in this Clause 18 as the "Receiving Entity") in respect of the Confidential Information of the DCC or of a User (referred to in this Clause 18 as the "Disclosing Entity").
- 18.2 Each Receiving Entity hereby undertakes that it shall preserve the confidentiality of, and shall not directly or indirectly Disclose or use for its own purposes, each other Disclosing Entity's Confidential Information. The exceptions to this obligation are set out in Clause 18.3.

Exceptions to Confidentiality Obligation

- 18.3 A Receiving Entity shall be entitled to Disclose or use another Disclosing Entity's Confidential Information if and to the extent that one or more of the following apply:
- (a) the Receiving Entity is required or permitted to Disclose or use the Confidential Information by its Energy Licence, this Code 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 Receiving Entity seeking to rely upon this Clause 18.3, is in the public domain or was acquired by that Receiving Entity in circumstances in which this Clause 18 does not apply;
 - (d) the Confidential Information, after it is furnished to the Receiving Entity seeking to rely upon this Clause 18.3:
 - (i) is acquired by that Receiving Entity in circumstances in which this Clause 18 does not apply;
 - (ii) is acquired by that Receiving Entity in circumstances in which this Clause 18 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 18; or
 - (iii) enters the public domain,

and in any such case otherwise than as a result of: (A) a breach by that Receiving Entity of its obligations in this Clause 18; or (B) a breach by the person who disclosed the Confidential Information of that person's confidentiality obligation and that Receiving Entity is aware of such breach;

- (e) the Receiving Entity 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 Receiving Entity; or
- (f) the Receiving Entity Discloses the Confidential Information to its Affiliates, or its or its Affiliates' employees, directors, agents, consultants and professional advisers (subject to Clause 18.5).

18.4 Confidential Information which a Receiving Entity is permitted to Disclose or use pursuant to Clause 18.3 shall not cease to be regarded as Confidential Information in all other circumstances by virtue of such Disclosure or use.

Internal Procedures

18.5 Each Receiving Entity shall adopt procedures within its organisation for ensuring the confidentiality of the Confidential Information which it is obliged to preserve as confidential under Clause 18.2. These procedures include the following:

- (a) the Confidential Information will be disseminated within the Receiving Entity only on a "need to know" basis;
- (b) employees, directors, agents, consultants and professional advisers of the Receiving Entity in receipt of Confidential Information will be made fully aware of the Receiving Entity'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.

18.6 Each Receiving Entity shall take all reasonable steps to ensure that any person referred to in Clause 18.3(f) and 18.5(b) to whom the Receiving Entity 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 18.

Affiliate or Related Undertaking

- 18.7 Each Receiving Entity shall procure that each of its Affiliates observes the restrictions in Clauses 18.2 to 18.6 as if in each such Clause there was substituted for the name of the Receiving Entity the name of the Affiliate.

Confidentiality and the REC Bodies

- 18.8 The Parties acknowledge that, for the REC Board, the REC Panel, and the Sub-Committees to properly carry out their duties and responsibilities under this Code, the REC 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 REC 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 REC Board and/or REC Panel (and the Sub-Committees) accordingly.
- 18.9 The REC Board, the REC Panel, the Sub-Committees and the Code Manager shall each comply with Clauses 18.2 to 18.6 as if they were a Party.
- 18.10 Each Party agrees, subject to any relevant confidentiality provision binding on it, to provide the REC Board and/or REC Panel or the Code Manager with all data and other information reasonably requested by and necessary for REC Panel, REC Board or the Code Manager to properly carry out their duties and responsibilities under this Code.

19 DATA PROTECTION GENERALLY

- 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 the CSS Provider and 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.
- 19.3 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.
- 19.4 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.

- 19.5 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.
- 19.6 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.
- 19.7 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.

20 CSS PROVIDER AS A DATA PROCESSOR

- 20.1 The words and expressions used in this Clause 20 and not defined elsewhere in this Code shall be interpreted in accordance with any meaning given to them in the Data Protection Legislation.
- 20.2 It is acknowledged that in providing the Central Switching Service for each User that is a data controller, the CSS Provider may act in the capacity of data processor on behalf of that User in respect of the personal data for which that User is the data controller.
- 20.3 The personal data which the CSS Provider will process as a data processor on behalf of Users 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 Central Switching Service. 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.
- 20.4 The CSS Provider undertakes, for the benefit of each User in respect of the personal data for which that User 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 User), and not in a manner that the CSS Provider knows (or should reasonably know) is likely to cause the User 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 Users 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 User 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 User in ensuring compliance with the User's obligations in Articles 32-36 of the General Data Protection Regulation;
- (j) provide reasonable assistance to the User 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 User 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 Users collectively) to audit compliance with this Clause 20 in accordance with Clause 26.9.

20.5 The CSS Provider shall ensure that its sub-processors in respect of the personal data referred to in Clause 20.4 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.

20.6 Each User hereby gives its general authorisation to the CSS Provider to engage sub-processors who are appointed in accordance with the DCC Licence. Each User 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.

21 FORCE MAJEURE

21.1 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 21.2).

21.2 Relief under Clause 21.1 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) the obligations of any Party that arose before the circumstance of Force Majeure causing the suspension of performance shall not 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.

22 DISPUTES

22.1 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 22.

Contract Management

22.2 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

22.3 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 22.5).

22.4 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

- 22.5 Subject to Clause 22.6, 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 22.5) 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.
- 22.6 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 22.5 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.

Determination by the REC Board etc

- 22.7 Any Dispute of a nature that is expressly stated in this Code to be subject to determination by the REC Board, the REC Panel or a Sub-Committee shall be subject to determination by the REC Board, the REC Panel or a Sub-Committee. The REC Board shall ensure that any such Dispute is determined within a reasonable period of time after its referral. Unless such determination is expressly stated in this Code to be subject to a further appeal, then the decision of the REC Board, the REC Panel or the Sub-Committee (as applicable) shall be final and binding for the purposes of this Code.

Appeals to the Authority

- 22.8 Where this Code expressly states that a decision is capable of appeal to the Authority (and not otherwise), then such decision may be appealed to the Authority. Any such appeal will only be validly made if notified to the Authority within 10 Working Days after the appellant received notice of the decision (unless the Authority waives this requirement). The Authority's determination in respect of such appeal shall be final and binding for the purposes of this Code. The Authority may give notice that it dismisses the appeal where it considers that the appeal is trivial or vexatious or has no reasonable prospect of success.

Interim Relief

- 22.9 Notwithstanding the provisions of the rest of this Clause 22, any Party may apply at any time to any court of competent jurisdiction for any emergency interim interlocutory relief as may be necessary.

23 DEROGATIONS

Application for Derogation

- 23.1 A Party may, at any time, apply to the REC Performance Assurance Board for a derogation under this Clause 23 by notice in writing to the Code Manager.
- 23.2 Where the Code Manager receives such an application, it shall ensure that the matter is considered by the REC Performance Assurance Board within 10 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 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 REC Performance Assurance Board 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 Performance Assurance Board's attention any relevant circumstances, previous derogations and views that may have been expressed by the Authority

REC Performance Assurance Board's Ability to Grant Derogations

- 23.3 The REC Performance Assurance Board may (subject to Clause 23.5) 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 Performance Assurance Board may impose such conditions as it sees fit, and shall specify the term, scope and application of such derogation.
- 23.4 The REC Performance Assurance Board may, from time to time and as it sees fit (subject to Clause 23.5), resolve to retract any derogation, or to amend or add to the conditions applicable to any derogation.
- 23.5 A derogation granted to any Party by the REC Performance Assurance Board, or any retraction, amendment or addition under Clause 23.4, shall, in each case, only be effective if made in conformity with any representations received from the Authority pursuant to Clause 23.2, and if not vetoed by the Authority within 10 Working Days after notification of the REC Performance Assurance Board's decision and the rationale for it.

Effect of Derogation

- 23.6 Where a Party is granted a derogation by the REC Performance Assurance Board in accordance with this Clause 23, that Party shall, for the period provided for in the derogation:
- (a) be excused from complying with the obligations specified in the terms of that derogation;
 - (b) be deemed not to be in breach of this Code for failing to comply with the relevant obligations; and
 - (c) be required to comply with any modified obligations which are specified as a condition of the derogation.
- 23.7 A Party may, by notice in writing to the REC Performance Assurance Board 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.
- 23.8 The coming into effect of a derogation under this Clause 23 shall (unless otherwise stated in the derogation) be without prejudice to liabilities that arose prior to the derogation coming into effect. The ending of a derogation under this Clause 23 shall be without prejudice to any liabilities in respect of compliance with conditions of the derogation that arose prior to the derogation ending.

Code Manager's Role in respect of Derogations

- 23.9 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 Performance Assurance Board on the same. If, having considered the responses of the REC Performance Assurance Board, the Code Manager is of the view that a Change Proposal is appropriate, then:
- (a) the Code Manager shall develop a draft Change Proposal, for discussion at a future meeting of the REC Performance Assurance Board; and
 - (b) the REC Performance Assurance Board may instruct the Code Manager to submit the Change Proposal into the change management process, with or without any revision that the Performance Assurance Board may require.

24 CONTRACT MANAGERS AND PARTY DETAILS

- 24.1 Each Party shall appoint one or more individuals as Contract Manager to monitor and manage matters arising under or in connection with this Code on behalf of that Party.
- 24.2 Each Party can rely upon the authority of each other Party's Contract Manager in relation to this Code.

- 24.3 Each Party's original Party Details will have been provided as part of its Accession Agreement or Original Accession Agreement (as applicable).
- 24.4 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.
- 24.5 The Code Manager shall maintain a record of each Party's Party Details, and shall publish that record on the Website.
- 24.6 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.
- 24.7 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.

25 NOTICES

- 25.1 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.
- 25.2 Save as referred to in Clause 25.1, 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.
- 25.3 All notices and communications as described in Clause 25.2 shall be sent to the email address specified for such purpose in the relevant Party's Party Details.
- 25.4 Subject to Clause 25.5, all notices and communications as described in Clause 25.2 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.
- 25.5 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.
- 25.6 Notices or other communications under or in connection with this Code from or to the REC Board, REC Panel or Code Manager shall also be subject to this Clause 25. Where such notices or other communications are being sent to the REC Board, REC Panel or Code Manager, they shall be sent to the relevant address from time to time given for such purpose on the Website.

26 GENERAL

Commencement and Duration

- 26.1 This Code shall take effect from the effective date specified by the Authority in its designation of this Code.
- 26.2 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 17.

Entire Agreement

- 26.3 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.
- 26.4 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

- 26.5 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

- 26.6 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

- 26.7 No Party shall assign any of its rights under this Code without the Authority's written consent.
- 26.8 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

- 26.9 Subject to receiving reasonable prior notice, each Party shall permit an auditor appointed by the REC Board to audit that Party's compliance with this Code (or any part of this Code). The REC Board 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

- 26.10 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

- 26.11 Subject to Clause 26.12, 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.
- 26.12 The individuals stated to benefit from the indemnity under Clause 8 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

- 26.13 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.
- 26.14 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 22). This does not limit a Party's right to enforce a judgment or order in any other jurisdiction.

SCHEDULE 1

Interpretation Schedule for REC v1.0

Version: 1.0

Effective Date: 28 February 2019

Domestic Suppliers	Mandatory
Non-Domestic Suppliers	Mandatory
Gas Transporters	Mandatory
Distribution Network Operators	Mandatory
DCC	Mandatory

Change History

Version Number	Implementation Date	Reason for Change
1.0	28 February 2019	Version for designation

1 General Interpretation

1.1 In this Code, unless the context requires otherwise, any reference to:

- (a) a “person” includes a reference to an individual, a body corporate, an association, a partnership or a Competent Authority;
- (b) the singular includes the plural, and vice versa;
- (c) a gender includes every gender;
- (d) a Clause is a reference to the clause of the main body of this Code which bears the relevant number;
- (e) a Paragraph is a reference to the paragraph of the REC Schedule in which such reference occurs;
- (f) a Condition is a reference to a licence condition in an Energy Licence (and, where applicable, is a reference to the standard licence conditions of that Energy Licence);
- (g) writing (or similar) includes all methods of reproducing words in a legible and non-transitory form (including email);
- (h) a document includes spreadsheets, models, digital repositories, and other graphical and/or lexical representations of data;
- (i) a day, week or month is a reference (respectively) to a calendar day, a week starting on a Monday, or a calendar month;
- (j) a time is a reference to that time in the UK;
- (k) any statute or statutory provision includes any subordinate legislation made under it, any provision which it has modified or re-enacted, and any provision which subsequently supersedes or re-enacts it (with or without modification);
- (l) an agreement, code, licence or other document is to such agreement, code, licence or other document as amended, supplemented, novated or replaced from time to time;
- (m) a Party shall include reference to that Party’s respective successors, and (as the context permits) reference to the respective persons to whom that Party may sub-contract or otherwise delegate its rights and/or obligations under this Code;

RECV1.0 – Designated Version

- (n) any Systems of a person shall include references to the Systems of that person's service providers and contractors to the extent relevant to this Code;
- (o) any premises of a Party shall include references to any premises owned or occupied by that Party and (as the context permits) by the respective persons to whom that Party may sub-contract or otherwise delegate its rights and/or obligations under this Code; and
- (p) a Competent Authority or other public organisation includes a reference to its successors, or to any organisation to which some or all of its functions and responsibilities have been transferred.

1.2 The headings in this Code are for ease of reference only and shall not affect its interpretation.

1.3 In this Code, the words preceding “include”, “including” or “in particular” are to be construed without limitation to the generality of the words following those expressions.

1.4 Except where expressly stated to the contrary, in the event of any conflict between the provisions of this Code, the following order of precedence shall apply: (a) the main body of this Agreement; (b) then the REC Schedules; and (c) then the Technical Specification.

1.5 Where no time period is specified for performance of any obligation under this Code, the obligation shall be performed as soon as reasonably practicable.

2 Responsibility for Persons who are not Parties

2.1 The Gas Retail Data Agent is not a Party under this Code. Where this Code places an obligation on the Gas Retail Data Agent, each Gas Transporter shall ensure that the Gas Retail Data Agent shall comply with the obligations expressed to be placed on the Gas Retail Data Agent. Each Gas Transporter shall be jointly and severally liable for any failure by the Gas Retail Data Agent to comply with the obligations expressed to be placed on the Gas Retail Data Agent under this Code.

2.2 The Electricity Retail Data Agents are not Parties under this Code. Where this Code places an obligation on an Electricity Retail Data Agent, each Distribution Network Operator shall ensure that its Electricity Retail Data Agent shall comply with the obligations expressed to be placed on an Electricity Retail Data Agent. Where an Electricity Retail Data Agent acts for more than one Distribution Network Operator, each such Distribution Network Operator shall be jointly and severally liable for any failure by such Electricity Retail Data Agent to comply with the obligations expressed to be placed on the Electricity Retail Data Agents under this Code.

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- 2.3 The gas Market Intelligence Agent is not a Party under this Code. Where this Code places an obligation on the gas Market Intelligence Agent, each Gas Transporter shall ensure that the gas Market Intelligence Agent shall comply with the obligations expressed to be placed on the gas Market Intelligence Agent. Each Gas Transporter shall be jointly and severally liable for any failure by the gas Market Intelligence Agent to comply with the obligations expressed to be placed on the gas Market Intelligence Agent under this Code.
- 2.4 The electricity Market Intelligence Agent is not a Party under this Code. Where this Code places an obligation on the electricity Market Intelligence Agent, each Distribution Network Operator and each Electricity Supplier shall ensure that the electricity Market Intelligence Agent shall comply with the obligations expressed to be placed on the electricity Market Intelligence Agent. Each Distribution Network Operator and each Electricity Supplier shall be jointly and severally liable for any failure by the electricity Market Intelligence Agent to comply with the obligations expressed to be placed on the electricity Market Intelligence Agent under this Code.
- 2.5 Shippers, Supplier Agents and Meter Asset Providers are not obliged to become Parties under this Code. Where this Code places an obligation on one or more Shippers, Supplier Agents or Meter Asset Providers under or in relation to the Transition Schedule, then:
 - (a) in the case of obligations which apply by reference to a particular RMP, the Registered Supplier for that RMP shall ensure that the Shipper, Supplier Agents and Meter Asset Provider registered in respect of that RMP perform those obligations; and
 - (b) in the case of obligations which apply without reference to a particular RMP, each Energy Supplier shall ensure that the Shippers, Supplier Agents and Meter Asset Providers registered in respect of any or all the RMPs for which the Energy Supplier is the Registered Supplier at the relevant time perform those obligations.
- 2.6 Where this Code (other than in relation to the Transition Schedule) includes a right or obligation for a Shipper, Supplier Agent or Meter Asset Provider, the ability to enforce that right or the requirement to comply with that obligation arises under that entity's Access Agreement.

3 Definitions

- 3.1 In this Code, unless the context requires otherwise, the following words shall have the following meanings:

Term	Acronym	Definition
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Term	Acronym	Definition
Access Agreement		means an agreement by which a Shipper, Supplier Agent or Meter Asset Provider is permitted to access the Switching Network.
Accession Agreement		means an agreement by which a Party (other than the Original Parties) agrees to be bound by this Code, in the form set out in the Accession Agreement Schedule.
Accession Agreement Schedule		means REC Schedule 3.
Address Management Service		means the component of the Central Switching Service which undertakes activities to identify and maintain a matching REL Address for each RMP.
Affected Party		means a Party which is unable to carry out its obligations under this Code due to circumstance of Force Majeure.
Affiliate		means, in relation to a person, any group undertaking of that person from time to time (and the expression "group undertaking" shall have the meaning given to that expression in section 1161 of the Companies Act 2006).
Authority		means the Gas and Electricity Markets Authority as established under section 1 of the Utilities Act 2000.
Balancing and Settlement Code	BSC	means the Balancing and Settlement Code, as defined in the Electricity Supply Licences.
Central Switching Service	CSS	means the Systems and processes that are to be developed by (or the development of which will be procured by) the CSS Provider pursuant to the Transition Schedule in order to deliver the services which will become the Address Management Service and the Registration Service.

Term	Acronym	Definition
Centralised Registration Service		means the services to be provided pursuant to Condition 15 (Incorporation, delivery and provision of the Centralised Registration Service) of the DCC Licence, being the services to be provided under this Code by the CSS Provider (including as Core Systems Assurance Provider), CSS Systems Integrator, SI Provider and Switching Operator.
Change Proposal		means a proposal to change this Code made in accordance with Clause 11 of the main body of this Code.
Code		means this Retail Energy Code, including its REC Schedules and the Technical Specification.
Code Administration Code of Practice		means the document of that name as approved by the Authority from time to time.
Code Administration Code of Practice Principles		means the principles set out as such in the Code Administration Code of Practice.
Code Manager		means the person described in Clause 7 of the main body of this Code.
Competent Authority		means the Authority, and any local, regional, national or supra-national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person having (in each case) jurisdiction over the relevant Party, this Code or its subject matter.
Confidential Information		means, in relation to the DCC or a User, all data or other information supplied or otherwise made available by the DCC or that User under or pursuant to this Code.
Consumer		means any person supplied (or seeking a supply) of Energy at an RMP (whether or not that person also exports or is seeking to export electricity at an RMP).
Contract Manager		means, for each Party, the individual appointed as such from time to time under Clause 24 of the main body of this Code.

Term	Acronym	Definition
Core Systems Assurance Provider		means the Systems assurance function provided or procured by the CSS Provider.
Core Systems Assurance Requirements		means the document or documents produced by the CSS Provider, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
Company Governance Schedule		means REC Schedule 4.
CRS Provider		means the DCC when performing the functions and services required by Condition 15 (Incorporation, delivery and provision of the Centralised Registration Service) of the DCC Licence.
CSS Data Migration Plan		means the document produced by the CSS Provider reflecting the principles set out in the E2E Data Migration Plan, approved by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
CSS Provider		means the DCC when performing functions under or in relation to this Code (but always excluding its functions under the Smart Energy Code and its roles as CSS Systems Integrator, SI Provider and Switching Operator), including in respect of the Central Switching Service and including in effecting the design, build and testing of any System that will allow it to perform functions under this Code after Go-Live. This role is the CSS Procurer and Manager function as described in the E2E Data Migration Plan, E2E Integration Plan, E2E Post Implementation Plan, E2E Testing Plan, E2E Transition Plan: Implementation Approach and E2E Transition Plan: In-Flight Switches Approach.
CSS Systems Integrator		means the system integration function provided or procured by the DCC. The DCC shall be responsible for ensuring that the CSS Systems Integrator complies with the obligations imposed on the CSS Systems Integrator under this Code.
Data Aggregator	DA	means the person appointed by an Electricity Supplier to aggregate consumption data for an RMP as further described in the Balancing and Settlement Code.

Term	Acronym	Definition
Data Collector	DC	means the person appointed by an Electricity Supplier to collect and process meter readings for an RMP as further described in the Balancing and Settlement Code.
Data Communications Company	DCC	means the person holding the DCC Licence.
Data Enquiry Service	DES	means the service of that name pursuant to the UNC which allows authorised users to access Gas Retail Data.
Data Migration and Transition Testing		has the meaning given in Paragraph 4.25 of the Transition Schedule.
Data Model		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
Data Protection Legislation		means the Data Protection Act 2018; and EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, which is known as the General Data Protection Regulation.
Data Transfer Network	DTN	has the meaning given to that expression in the MRA (in relation to electricity RMPs) or the SPAA (in relation to gas RMPs).
Database Remedy Document		means the document named "Data Improvement Address Database Remedy 1" designated by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
DCC Licence		means the licences granted under section 6(1A) of the Electricity Act and section 7AB (2) of the Gas Act.
Default Interest Rate		means the interest rate provided for in the Late Payment of Commercial Debts (Interest) Act 1998.

Term	Acronym	Definition
Defaulting Party		has the meaning given in Clause 16.1 of the main body of this Code.
Defect Management Plan		means the document or documents to be produced pursuant to the Transition Schedule and approved by the Authority, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
Design Baseline		means the suite of documents, collectively known as Design Baseline 4, published by the Authority on 22 June 2018, as updated or superseded from time-to-time (including by the Technical Specification).
Design Products		means the design products designated as such by the Authority from time to time as amended from time to time.
Design, Build and Test Phase		means the period commencing pursuant to the Transition Schedule and ending on the Go-Live Date.
Disclose		means disclose, reveal, report, publish or transfer. " Disclosed " and " Disclosure " shall be construed accordingly.
Dispute Resolution Procedure Document		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
Distribution Network Operator	DNO	means a person holding an Electricity Distribution Licence.
Domestic Premises		means a premises at which a supply of Energy is (or will be) taken wholly or mainly for domestic purposes, which is to be interpreted in accordance with the Energy Supply Licences.
Domestic Supplier		means an Energy Supplier which is authorised by its Energy Supply Licence to supply Domestic Premises.
E2E Data Architecture		means the document or documents designated as such by the Authority from time to time, as amended

Term	Acronym	Definition
and Data Governance Model		from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
E2E Data Migration Plan		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedures for its amendments developed under the Switching Programme.
E2E Design Products		means the design products designated as such by the Authority from time to time which at the date of this Code include the E2E Non-Functional Requirements, E2E Solution Architecture, E2E Operational Choreography, E2E Service Management Strategy, E2E Detailed Design, and E2E Data Architecture and Data Governance Model.
E2E Detailed Design		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
E2E Integration Plan		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
E2E Non-Functional Requirements		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
E2E Operational Choreography		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
E2E Post Implementation Plan		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedures for its amendments developed under the Switching Programme.

Term	Acronym	Definition
E2E Service Management Strategy		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
E2E Solution Architecture		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
E2E Testing Plan		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
E2E Transition Plan		means the document or documents designated by the Authority from time to time, as amended from time to time in accordance with its provisions.
E2E Transition Plan: Implementation Approach		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
E2E Transition Plan: In-Flight Switches Approach		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
Electricity Act		means the Electricity Act 1989.
Electricity Central Online Enquiry Service	ECOES	means the service of that name pursuant to the MRA which allows authorised users to access Electricity Retail Data.
Electricity Distribution Licence		means an electricity distribution licence under the Electricity Act.

Term	Acronym	Definition
Electricity Retail Data		means the technical and other data necessary to facilitate the supply by any Electricity Supplier to all Retail Energy Locations, as recorded in the Metering Point Administration Service.
Electricity Retail Data Agent		means a provider of a DNO's Metering Point Administration Service.
Electricity Supplier		means a person holding an Electricity Supply Licence.
Electricity Supply Licence		means an electricity supply licence under the Electricity Act.
End-to-End Testing		means the activity described as such in the E2E Testing Plan.
Energy		means gas and/or electricity.
Energy Code		means a multilateral code or agreement maintained pursuant to one or more of the Energy Licences.
Energy Licence		means a licence under the Electricity Act or the Gas Act.
Energy Supplier		means a person which is either or both an Electricity Supplier and/or a Gas Supplier.
Energy Supply Licence		means an Electricity Supply Licence or a Gas Supply Licence.
Event of Default		has the meaning given in Clause 16.1 of the main body of this Code.
External Service Provider Contract		has the meaning given in the DCC Licence, but only insofar as the relevant contract relates to the procurement of the Centralised Registration Services.
Financial Year		means 1 April to 31 March (inclusive) each year.

Term	Acronym	Definition
Force Majeure		means, in respect of an Affected Party, any event or circumstance which is beyond the reasonable control of the Affected Party, but only to the extent such event or circumstance (or its consequences) could not have been prevented or avoided had the Affected Party acted in accordance with Good Industry Practice. Neither lack of funds nor strikes or other industrial disturbances affecting only the employees of the Affected Party and/or its contractors shall be interpreted as an event or circumstance beyond the Affected Party’s control.
Gas Act		means the Gas Act 1986.
Gas Retail Data		means the technical and other data necessary to facilitate the supply by any Gas Supplier (and shipping by its Shipper) to all Retail Energy Locations, as recorded in UK Link.
Gas Retail Data Agent		means the 'Central Data Service Provider' appointed by Gas Transporters pursuant to standard special condition A15A (Central Data Service Provider) of the Gas Transporter Licences.
Gas Supplier		means a person holding a Gas Supply Licence.
Gas Supply Licence		means a gas supply licence under the Gas Act.
Gas Transporter	GT	means a person holding a Gas Transporter Licence which requires that person to become a party to this Code.
Gas Transporter Licence		means a gas transporter licence under the Gas Act.
Go-Live Date		means the time and date designated as such by the Authority.
Good Industry Practice		means, in respect of a person, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced organisation engaged in a similar type of undertaking as that person under the same or similar circumstances.

Term	Acronym	Definition
Independent Gas Transporter Uniform Network Code	IGT UNC	means the code of that name established under the Gas Transporter Licences.
Individual Programme Plan		has the meaning given in Paragraph 2.5 of the Transition Schedule.
In-Flight Switch		means a Switch defined as such under the In-Flight Switches Implementation Plan.
In-Flight Switches Implementation Plan		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with its the procedure for its amendment developed under the Switching Programme.
Integration Help Desk		means the help desk facility to be made available by the SI Provider for testing and issue resolution purposes as further described in the E2E Integration Plan and SI Requirements Document.
Integration Memorandum of Understanding		means a non-binding document to be prepared in accordance with the E2E Integration Plan and approved by the Authority which will set out ways in which the CSS Provider, each other Switching Data Service Provider and the SI Provider will work together to support systems and service integration testing required by the E2E Integration Plan.
Intellectual Property Rights		means patents, trademarks, trade names, service marks, rights in designs, copyright (including rights in computer software), logos, rights in internet domain names, and moral rights, database rights, rights in know-how, and other intellectual property rights (in each case, whether registered or unregistered or subject to an application for registration, and includes any and all rights or forms of protection having equivalent or similar effect anywhere in the world).
Interfaces		means those System components and interfaces required to enable a User to connect to the Central Switching Service in accordance with this Code.

Term	Acronym	Definition
Interfacing System		means those System components and interfaces required to enable a User to access the Central Switching Service, and to send data to and receive data from the Central Switching Service, in accordance with this Code; but excluding the System components and interfaces of Switching Data Service Providers.
Interpretation Schedule		means this REC Schedule 1.
Large Supplier		means an Energy Supplier which, at the time it is necessary to assess its status, supplies electricity and/or gas to more than 250,000 RMPs.
Law		means any law (including the common law), statute, statutory instrument, regulation, instruction, direction, rule, condition or requirement (in each case) of any Competent Authority (or of any authorisation, licence, consent, permit or approval of any Competent Authority).
Liability		includes any loss, liability, damages, costs (including legal costs), expenses and claims.
Licensed Party Assurance Provider		means the assurance function provided or procured by the Authority to provide assurance on the activities of Suppliers, Shippers, Gas Transporters, and Electricity Distribution Network Operators.
Live Proving		has the meaning given in Paragraph 4.27 of the Transition Schedule.
Mandatory		means, in respect of a REC Schedule and a Party Category, that compliance with the REC Schedule is mandatory for Parties in that Party Category, as further described in Clause 4 of the main body of this Code.
Market Intelligence Agent	MIS-DES MIS-ECOES	means the person which provides DES or ECOES.
Master Registration Agreement	MRA	means the Master Registration Agreement referred to in the Electricity Supply Licences.

Term	Acronym	Definition
Meter Asset Provider	MAP	means the person that makes the Metering Equipment Assets for an RMP available for use by the Registered Supplier and the Consumer.
Meter Point		is the generic term used to refer to a Metering Point or a Supply Meter Point.
Metering Point Administration Service	MPAS	means the service of that name which each DNO is required to provide under its Electricity Distribution Licence.
Metering Equipment Asset		means a meter and associated devices utilised in Energy measurement, data storage, communications or ancillary functions (including data display and load management).
Metering Equipment Manager	MEM	means, as applicable, either: (a) for electricity, the 'Meter Operator Agent' appointed by an Electricity Supplier under the BSC; or (b) for gas, the 'Meter Asset Manager' appointed by the Gas Supplier under the SPAA.
Metering Point		means the point at which an electricity service enters or exits a Location, as further described in the MRA.
MRA Service Company	MRASCo	means the person responsible under the MRA for providing ECOES.
New Party		means a person that has agreed to be bound by this Code in accordance with an Accession Agreement.
Non-Domestic Premises		means a premises at which a supply of Energy is (or will be) taken wholly or mainly for non-domestic purposes, which is to be interpreted in accordance with the Energy Supply Licences.
Non-Domestic Supplier		means an Energy Supplier which is not authorised by its Energy Supply Licence to supply Domestic Premises.
Operational Testing		has the meaning given in Paragraph 4.26 of the Transition Schedule.
Original Accession Agreement		means the agreement equivalent to an Accession Agreement, in the form designated by the Authority.

Term	Acronym	Definition
Original Party		means a person that agreed to be bound by this Code in accordance with the Original Accession Agreement.
Party		means, from time to time, an Original Party or a New Party that has not at that time ceased to be a Party in accordance with Clause 17 of the main body of this Code.
Party Category		means one of the following categories of Party: (a) the DCC; (b) Domestic Suppliers; (c) Non-Domestic Suppliers; (d) Gas Transporters; and (e) Distribution Network Operators.
Party Details		means, for each Party, its name, jurisdiction of incorporation (if applicable), company number (if applicable), addresses for receipt of notices, Contract Manager, and (if it is resident or incorporated outside of the UK) an address in the UK for service of process.
Post Implementation Period		means the period commencing on the Go-Live Date and ending on the Steady State Commencement Date.
Pre-Integration Testing	PIT	means the testing described in Paragraph 4.13 of the Transition Schedule.
Production Interface		means the permanent interface that will be used in the live environment (and staging during the transition process) during the Design, Build and Test Phase.
Programme Co-ordinator		means the person appointed as such by the Authority from time to time.
Programme Co-ordinator Requirements Document		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
Programme Management and Reporting Framework		means the management and performance framework produced by the SI Provider from time to time.
Programme Plan		means the document or documents designated as such by the Authority from time to time, as amended

Term	Acronym	Definition
		from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
Programme Systems		means any System produced by a Testing Participant which is necessary for that Testing Participant to participate in the arrangements created by the Switching Programme after the Go-Live Date.
REC Board		means the board of directors for RECCo.
REC Objectives		means the objectives set out as such in condition 11B of the Electricity Supply Licences and condition 11 of the Gas Supply Licences.
REC Materials		means the materials described in Clause 13.1 of the main body of this Code.
REC Panel		means the panel established as such under Clause 5 of the main body of this Code.
REC Performance Assurance Board	REC PAB	means the performance assurance board for this Code, as from time to time established under Clause 15 of the main body of this Code (which is a Sub-Committee).
REC Schedule		means a schedule forming part of this Code.
RECCo		means the company established under Clause 6 of the main body of this Code.
Registered Supplier		means, in respect of an RMP and at any time, the Energy Supplier recorded against that RMP in the relevant Switching Data Service at that time with an active registration status (or, in respect of a period of time, the Energy Supplier that had, has or will have an active registration status in respect of that RMP during that period).
Registrable Measurement Point	RMP	means a Meter Point.

Term	Acronym	Definition
Registration Service		means the component of the Central Switching Service which records data related to Switches and manages Switches.
Registrations		means the record in the Central Switching Service for each RMP identifying the Energy Supplier (and, in the case of a gas RMP, the Shipper) which is registered in respect of that RMP, and the Registration Status of each such registration.
Retail Energy Location	REL	means a Location to which Energy is delivered via an RMP, and/or from which electricity is exported via an RMP.
Retail Energy Location (Welsh) Address	REL (W) Address	means, for RMPs in Wales, the Welsh-language version of the Retail Energy Location Address.
Retail Energy Location Address	REL Address	means the address (or other spatial reference) of each Retail Energy Location, as created and maintained by the CSS Provider. For RMPs in Wales, references to the Retail Energy Location Address include the REL (W) Address, unless the context requires otherwise.
Services IPR		means the Intellectual Property Rights described in Clause 13.5 of the main body of this Code.
Shipper		means a person holding a Shipper Licence.
Shipper Licence		means a gas shipper licence under the Gas Act.
SI Provider		means the system integration function provided or procured by the DCC. The DCC shall be responsible for ensuring that the SI Provider complies with the obligations imposed on the SI Provider under this Code.
SI Requirements Document		means the document or documents designated as such by the Authority from time to time, as amended from time to time in accordance with the procedure for its amendment developed under the Switching Programme.
Smart Energy Code	SEC	means the code of that name maintained pursuant to the DCC Licence.

Term	Acronym	Definition
Smart Meter Comms Service	CSP	means the communications services provided by the DCC pursuant to the Smart Energy Code to manage the transmission of commands and data between the DCC and Smart Meters.
Smart Meter Data Service	DSP	means the data services provided by the DCC pursuant to the Smart Energy Code to manage the transfer of service requests and data between DCC and service users.
Steady State Commencement Date		means the time and date designated by the Authority when all exit criteria have been met and handover to steady state governance has taken place.
Sub-Committee		means a sub-committee of the REC Panel established from time to time in accordance with Clause 5 of the main body of this Code.
Supplier Agent		means a Data Aggregator, a Data Collector or a Meter Equipment Manager.
Supply Meter Point		means the point at which a gas service enters a Location, as further described in the UNC.
Supply Point Administration Agreement	SPAA	means the Supply Point Administration Agreement, as defined in the Gas Supply Licences.
Switching Data Services		means each of the Central Switching Service, the UK Link Service, the Metering Point Administration Service, the Smart Meter Data Service, the Smart Meter Comms Service, the Electricity Central Online Enquiry Service and the Data Enquiry Service.
Switching Data Service Providers		means the CSS Provider, the DCC (in respect of the services provided under the Smart Energy Code), the Gas Retail Data Agent, the Electricity Retail Data Agents, and the Market Intelligence Agents.
Switching Network		means the communications networks and other Systems which are used to transfer data between Market Participants and the CSS Provider and between the CSS Provider and other Switching Data Service Providers, as further defined in the Technical Specification.

Term	Acronym	Definition
Switching Network Service Providers		means the providers of the Switching Network.
Switching Operator		means the DCC in performing the role of managing the co-ordination of the CSS Provider, the other Switching Data Service Providers and the Switching Network Service Providers, including the mechanisms for Users to report incidents and access service management support.
Switching Programme		means the programme established by the Authority to implement new switching arrangements in retail energy markets.
System		means a system for generating, sending, receiving, storing (including for the purposes of back-up), manipulating or otherwise processing electronic communications, including all hardware, software, firmware and data associated with such activities.
Systems Integration Testing	SIT	means the testing described in Paragraph 4.16 of the Transition Schedule.
Technical Specification		means the technical documents to be developed pursuant to the Switching Programme and incorporated into this Code. No such technical documents will form part of this Code until formally incorporated into it.
Test Data		means data to be used for testing purposes during a Test Phase, as further described in the relevant Test Plan for that Test Phase.
Test Environments		means the testing environments as described in the E2E Testing Plan.
Test Phase		has the meaning given to that expression in Paragraph 4.1 of the Transition Schedule.
Test Plan		has the meaning given in Paragraph 4.3 of the Transition Schedule.
Test Tools		means the testing tools and simulators as described in the E2E Testing Plan.

Term	Acronym	Definition
Testing Artefacts		means the artefacts to be made available by the SI Provider for testing and issue resolution purposes as further described in the SI Requirements Document.
Testing Participant		means, in respect of each Test Phase, the Users required to participate in that Test Phase, or eligible to participate in that Test Phase and which elect to do so, as (in each case) further described in the Test Plan for that Test Phase.
Third Party IPR		means Services IPR which is not owned by the DCC.
Transition Schedule		means REC Schedule 2.
UK Link		means the System used by the Gas Retail Data Agent in its capacity as such.
UK Link Service		means the service of providing UK Link.
Uniform Network Code	UNC	means the Uniform Network Code established under the Gas Transporter Licences.
User		means each Party, Switching Data Service Provider (other than the CSS Provider), Shipper, Supplier Agent, and Meter Asset Provider that uses the Central Switching Service.
User Entry Process Testing		means the user entry process testing which Users must undertake before they can use the Central Switching Service, as described in the E2E Testing Plan.
User Integration Testing	UIT	means the testing described in Paragraph 4.19 of the Transition Schedule.
Voluntary		means, in respect of a REC Schedule and a Party Category, that the REC Schedule is not legally binding on Parties in that Party Category, as further described in Clause 4 of the main body of this Code.
Website		means the website for this Code maintained by the Code Manager.

Term	Acronym	Definition
Working Day	WD	means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday in either or both England and Wales and/or Scotland within the meaning of the Banking and Financial Dealings Act 1971.

SCHEDULE 2

Transition Schedule

Version: 1.0

Effective Date: 28 February 2019

Domestic Suppliers	Mandatory
Non-Domestic Suppliers	Mandatory
Gas Transporters	Mandatory
Distribution Network Operators	Mandatory
DCC	Mandatory

RECV1.0 – Designated Version

Change History

Version Number	Implementation Date	Reason for Change
1.0	28 February 2019	Version for designation

Contents Table

<i>Paragraph</i>	<i>Heading</i>	<i>Page</i>
1	Introduction	44
2	The Programme Plan and Individual Programme Plans	44
3	Role of Programme Co-ordinator and System Integrator during Design, Build and Testing Phase 44	
4	Testing Activity during the Design, Build and Test Phase	55
5	Data Migration	99
6	Management of In- Flight Switches	99
7	Defect Management	99
8	Post Go-Live Date Requirements	1010
9	Use of the Central Switching Service	1111

RECv1.0 – Designated Version

1 Introduction

- 1.1 This REC Schedule sets out transitional provisions that will apply from the date of this Code until the Steady State Commencement Date.
- 1.2 This REC Schedule includes obligations on Users in relation to the designing, building, testing and implementing of Systems relating to the Central Switching Service. It also provides for the migration of data, processes for the management of in-flight switches and processes for remedying defects that arise.

2 The Programme Plan and Individual Programme Plans

- 2.1 Each Switching Data Service Provider shall, in accordance with the timetable set out in the Programme Plan, produce a plan in accordance with Good Industry Practice to cover its proposed activities in designing, building, testing and implementing its Switching Data Service and Systems, which plan must be consistent with and complementary to the Programme Plan.
- 2.2 Each Switching Data Service Provider shall design, build, test and implement its Switching Data Service, and the Systems for its Switching Data Service, in accordance with the timetable set out in the Programme Plan.
- 2.3 Each Party shall, in accordance with the timetable set out in the Programme Plan, produce a plan in accordance with Good Industry Practice to cover its proposed activities in designing, building, testing and implementing its Interfacing System, which plan must be consistent with and complementary to the E2E Transition Plan.
- 2.4 Each Party shall design, build, test and implement its Interfaces in accordance with the timetable set out in the Programme Plan, and in accordance with the other requirements of the E2E Transition Plan.
- 2.5 Each such plan produced under Paragraph 2.1 or 2.3 (and any amendments to it) shall be subject to the notification or approval requirements (if any) set out in the Programme Plan. Each such plan as so notified or approved shall be, for each Switching Data Service Provider or Party, its "**Individual Programme Plan**".
- 2.6 Each Switching Data Service Provider and each Party shall comply with the Programme Plan and (subject to the E2E Transition Plan and this Code) its Individual Programme Plan.
- 2.7 In the event of any inconsistency between the Programme Plan and any Individual Programme Plan, the Programme Plan shall take priority.

3 Role of Programme Co-ordinator and System Integrator during Design, Build and Testing Phase

- 3.1 Each Party shall, on a timely basis, provide all such information and access, and take all such steps, as the Programme Co-ordinator may from time to time reasonably require to enable it to fulfil its roles and responsibilities as Programme Co-ordinator, as set out in and in accordance with the E2E Integration Plan and Programme Co-ordinator Requirements Document.
- 3.2 Each Switching Data Service Provider shall, on a timely basis, provide all such information and access, and take all such steps, as the SI Provider may from time to time reasonably require to enable it to fulfil its roles and responsibilities as SI Provider, as set out in and in accordance with the E2E Integration Plan and SI Requirements Document.

RECV1.0 – Designated Version

- 3.3 Each Switching Data Service Provider shall, on a timely basis, provide all such information and access, and take all such steps, as the Core Systems Assurance Provider may from time to time reasonably require to enable it to fulfil its roles and responsibilities as set out in the Core Systems Assurance Requirements.
- 3.4 Each Switching Data Service Provider (other than the CSS Provider) shall promptly following a request by the Authority (and in any event by no later than the commencement of the Design, Build and Test Phase), enter into an Integration Memorandum of Understanding with the CSS Provider and the SI Provider.
- 3.5 Each Switching Data Service Provider and each Party shall, during the period starting on commencement of the Design, Build and Test Phase and ending on the Steady State Commencement Date, use the Integration Help Desk and the Testing Artefacts for all testing and issue resolution purposes.
- 3.6 With the exception of disputes between the SI Provider and the CSS Provider, disputes relating to the subject matter of this REC Schedule involving any Party and/or Switching Data Services Provider, which arise during the period starting on commencement of the Design, Build and Test Phase and ending on the Steady State Commencement Date, shall be resolved in accordance with the Dispute Resolution Procedure Document.

4 Testing Activity during the Design, Build and Test Phase

General

- 4.1 The testing provided for under the E2E Testing Plan sets out phases (each a "Test Phase") which includes:
 - (a) Pre-Integration Testing;
 - (b) Systems Integration Testing;
 - (c) User Integration Testing;
 - (d) Data Migration and Transition Testing;
 - (e) Operational Testing; and
 - (f) Live Proving.
- 4.2 The SI Provider shall, in accordance with the E2E Testing Plan, produce or procure production of a plan (which plan must be consistent with and complementary to the E2E Testing Plan) for each Test Phase (other than Pre-Integration Testing) in accordance with Good Industry Practice which shall cover:
 - (a) its proposed activities and those of the Switching Data Service Providers in designing, building, testing and implementing its and their Systems insofar as relevant to that Test Phase; and
 - (b) identify the requirements for Users in testing their Systems insofar as relevant to that Test Phase.
- 4.3 The plan produced under Paragraph 4.2 in respect of each Test Phase, and any amendments to that plan, shall be subject to the notification or approval requirements (if any) set out in the

RECV1.0 – Designated Version

E2E Testing Plan. The plan as so notified or approved shall be, for each Test Phase, the "**Test Plan**".

- 4.4 Each Test Plan shall set out the matters required by the E2E Testing Plan for that Test Phase, which may include:
- (a) the Users that are required to, or eligible to, participate in the Test Phase (i.e. the Testing Participants);
 - (b) the objectives for the Test Phase (or each stage of the Test Phase) and pass/fail criteria;
 - (c) the Test Tools, Test Data and Test Environments to be made available;
 - (d) the timetable for the Test Phase including specific stages within the Test Phase;
 - (e) the entry criteria for the start of the Test Phase (and for each test stage of the Test Phase);
 - (f) the reports required to be produced by Switching Data Service Providers or Testing Participants;
 - (g) the exit criteria for completion of the Test Phase (or each stage of the Test Phase); and
 - (h) the process by which the Test Phase (or each stage of the Test Phase) will be determined to be complete.
- 4.5 Each Switching Data Service Provider and Party required by the Test Plan to participate in a Test Phase shall so participate.
- 4.6 Each Switching Data Service Provider and each Testing Participant shall comply with the Test Plan for each Test Phase.
- 4.7 To the extent that a Party is dependent upon the co-operation of a third party in order to discharge its obligations under this REC Schedule, that Party shall ensure that such third party performs such tasks as may be required.
- 4.8 Each Switching Data Service Provider and each Testing Participant shall, in relation to its participation in each Test Phase, act reasonably, fairly, co-operatively and in accordance with Good Industry Practice.
- 4.9 Each Switching Data Service Provider shall facilitate the completion (in a timely manner) of tests pursuant to each Test Phase by each Testing Participant. To the extent it is reasonably practicable to do so, each Switching Data Service Provider shall allow all Testing Participants to undertake tests pursuant to that Test Phase concurrently; or shall (otherwise) determine, in a non-discriminatory manner, a reasonable order in which the Testing Participants will be allowed to undertake such tests.
- 4.10 Each Party shall, at the request of the Authority or the SI Provider, provide to one or more of the Switching Data Service Providers, such Test Data as is reasonably required to facilitate testing pursuant to a Test Phase.
- 4.11 Each Switching Data Service Provider required to do so under the relevant Test Plan shall produce the test reports required to demonstrate its successful completion of the Test Phase

RECV1.0 – Designated Version

(or a stage of the Test Phase), and shall submit those reports to the SI Provider and Core Systems Assurance Provider.

- 4.12 Each Testing Participant required to do so under the relevant Test Plan shall produce the test reports required to demonstrate its successful completion of the Test Phase (or a stage of the Test Phase), and shall submit those reports to the Programme Co-ordinator and the Core Systems Assurance Provider or Licenced Party Assurance Provider as appropriate.

Pre-Integration Testing

- 4.13 "**Pre-Integration Testing**" is further described in the E2E Testing Plan, and involves the separate testing in isolation of each Switching Data Service Provider's Switching Data Service and Systems by that Switching Data Service Provider, and of each Testing Participant's Interfacing System by that Testing Participant.
- 4.14 Each Switching Data Service Provider and Testing Participant shall, in accordance with the timetable set out in the E2E Testing Plan, produce its own plan in accordance with Good Industry Practice to cover its proposed activities in designing, building, testing and implementing its Switching Data Service and Systems insofar as relevant to Pre-Integration Testing, which plan must be consistent with and complementary to the E2E Testing Plan.
- 4.15 Each Switching Data Service Provider and Testing Participant shall (subject to this Code) comply with its own testing plan produced under Paragraph 4.14.

Systems Integration Testing

- 4.16 "**Systems Integration Testing**" is further described in the E2E Testing Plan, and:
- (a) involves the testing of the CSS Provider's System together with the Systems of the other Switching Data Service Providers; and
 - (b) includes testing of each component of the CSS Provider's System together, and (subsequently) with the Systems used to provide the other Switching Data Services, to ensure (in each case) that they are integrated and can interoperate to allow delivery of the Central Switching Service and other relevant requirements of the E2E Design Products.
- 4.17 Each Switching Data Service Provider shall provide all such information and access and cooperate with the SI Provider during Systems Integration Testing, and act in accordance with the reasonable instructions of the SI Provider in respect of Systems Integration Testing.
- 4.18 The SI Provider shall provide assistance to the Switching Data Service Providers in performance of their assigned test preparation, test execution and defect resolution activities (as further described in the Test Plan for Systems Integration Testing), ensuring that they have the requisite information to undertake those activities.

User Integration Testing

- 4.19 "**User Integration Testing**" is further described in the E2E Testing Plan, and:
- (a) involves the testing of each Testing Participant's Interfacing Systems in conjunction with the Systems of the Switching Data Service Providers;

RECV1.0 – Designated Version

- (b) includes Testing Participants undertaking User Entry Process Testing and End-to-End Testing; and
 - (c) includes provision of Test Tools and Test Environments by the Switching Data Service Providers to facilitate testing by each Testing Participant of its Interfacing Systems.
- 4.20 Each Testing Participant shall ensure that it participates in and completes User Entry Process Testing before it uses its Interfacing Systems to connect to the CSS.
- 4.21 A Testing Participant shall only be eligible to participate in End-to-End Testing once it has completed User Entry Process Testing.
- 4.22 Each Large Supplier shall ensure that it is, and that its Interfacing System is, ready to commence the User Entry Process Testing as soon as the User Entry Process Testing is made available.
- 4.23 Each Large Supplier is obliged to participate in End-to-End Testing, but participation in End-to-End Testing during User Integration Testing shall be optional for all other Parties.
- 4.24 Each Energy Supplier which participates in either or both of User Entry Process Testing and/or End-to-End Testing shall ensure that such testing includes testing in respect of the Systems of the Shippers, Supplier Agents and (to the extent reasonably practicable) Meter Asset Providers for the Meter Points for which that Energy Supplier is the Responsible Supplier at the relevant time. This shall include ensuring that such persons are ready to interface with the Central Switching Service, and that the interfaces used by these persons have been subjected to appropriate testing.

Other

- 4.25 "**Data Migration and Transition Testing**" is further described in the E2E Testing Plan, and involves verification of the approach to data migration and the planned transition into live operation. The SI Provider shall lead Data Migration and Transition Testing, and will involve the Switching Data Service Providers.
- 4.26 "**Operational Testing**" is further described in the E2E Testing Plan, and involves verification of whether the Systems of the Switching Data Service Providers can be operated in live configuration.
- 4.27 "**Live Proving**" is further described in the E2E Testing Plan, and includes:
- (a) verification of whether the Systems of the Switching Data Service Providers are fit for purpose;
 - (b) production acceptance checks on System configuration and function and data population;
 - (c) pre-go-live stability testing by conducting a full regression test;
 - (d) verification of the Central Switching Service's ability to function in the event of disaster recovery; and
 - (e) a live-rehearsal stage organised by the SI Provider at the direction of the Authority, with the participation of Switching Data Service Providers and Parties.

RECv1.0 – Designated Version

5 Data Migration

- 5.1 Each Switching Data Service Provider and any Party which is identified as a data master in the Data Model shall comply with the E2E Data Migration Plan and the CSS Data Migration Plan. The following paragraphs are without prejudice to the general obligation to comply with the E2E Data Migration Plan and the CSS Data Migration Plan.
- 5.2 Each Switching Data Service Provider (other than the CSS Provider) shall provide data for data migration purposes in accordance with the timetables set out in the E2E Data Migration Plan and CSS Data Migration Plan and in accordance with the other requirements of the E2E Data Migration Plan and the CSS Data Migration Plan.
- 5.3 Each Switching Data Service Provider shall undertake the migration and synchronisation of data in accordance with the timetables set out in the E2E Data Migration Plan and in accordance with the other requirements of the E2E Data Migration Plan, and shall comply with the requirements of each of the Data Model and the CSS Data Migration Plan.
- 5.4 Each Switching Data Service Provider, and each Party to the extent it is required to do so pursuant to the Database Remedy Document and the Design Products, shall provide data to the CSS Provider in the timetable required by and otherwise in accordance with the requirements of Database Remedy Document and the Design Products, so as to enable the CSS Provider to develop the Retail Energy Location Data.

6 Management of In- Flight Switches

- 6.1 Each Energy Supplier shall create design, execute and test business processes for retaining and queuing In-Flight Switches in accordance with the timetable in and which meet the requirements of the E2E Transition Plan: In-Flight Switches Approach.
- 6.2 Each Gas Retail Data Agent shall create design, execute and test business processes for retaining and queuing In-Flight Switches in accordance with the timetable in and which meet the requirements of the E2E Transition Plan: In-Flight Switches Approach.
- 6.3 Each Electricity Retail Data Agent shall create design, execute and test business processes for retaining and queuing In-Flight Switches in accordance with the timetable in and which meet the requirements of the E2E Transition Plan: In-Flight Switches Approach.

7 Defect Management

- 7.1 The SI Provider shall, by no later than such date as the Authority may direct, develop a Defect Management Plan.
- 7.2 The process for reporting and managing defects arising during the period beginning on commencement of the Design, Build and Test Phase and ending on the Steady State Commencement Date shall be dealt with in accordance with the relevant Defect Management Plan.
- 7.3 Each Switching Data Service Provider, each Supplier Agent and each Party shall comply with the Defect Management Plan.
- 7.4 Each Switching Data Service Provider shall ensure that any defects it identifies during Pre-Integration Testing shall be resolved in accordance with the Defect Management Plan.

8 Post Go-Live Date Requirements

- 8.1 During the Post Implementation Period, each Switching Data Service Provider, each Party, each Supplier Agent, each Meter Asset Provider and each Shipper shall comply with the requirements of the E2E Post Implementation Plan.
- 8.2 Each Switching Data Service Provider, each Party, each Supplier Agent, each Meter Asset Provider and each Shipper shall (to the extent required by the E2E Post Implementation Plan), in accordance with the timetable set by the E2E Post Implementation Plan, produce a plan in accordance with Good Industry Practice which shall detail how it will, during the Post Implementation Period, provide early life support and care to its System and ensure its effective interaction with the Systems of all other Switching Data Service Providers, Parties, Supplier Agents, Meter Asset Providers and Shippers with which its System must interact, which plan must be consistent with and complementary to the E2E Post Implementation Plan.
- 8.3 Each Switching Data Service Provider shall make the plan produced pursuant to Paragraph 8.2 (to the extent required by the E2E Post Implementation Plan) available to the CSS System Integrator on request.
- 8.4 Each Party, each Supplier Agent, each Meter Asset Provider and each Shipper shall make the plan produced pursuant to Paragraph 8.2 (to the extent required by the E2E Post Implementation Plan) available to the Programme Co-ordinator on request.
- 8.5 Without prejudice to its general obligation to comply with the E2E Post Implementation Plan, during the Post Implementation Period, each Switching Data Service Provider, each Party, each Supplier Agent, each Meter Asset Provider and each Shipper shall, to the extent required to comply with its obligations under this Code:
 - (a) maintain adequate personnel to provide early life support and care to its System, and shall take all steps necessary to transfer knowledge relating to its obligations under this Code to personnel to be involved in the management and operation of its System after the Steady State Commencement Date;
 - (b) maintain all assets and facilities (including but not limited to Test Environments, Test Data, and Test Tools) used by it for the purposes of the Programme during the Design, Build and Test Phase in place;
- 8.6 Without prejudice to its general obligation to comply with the E2E Post Implementation Plan, during the Post Implementation Period, each Switching Data Service Provider, each Party, each Supplier Agent, each Meter Asset Provider and each Shipper shall participate in, and comply with, the Programme Management and Reporting Framework to the extent the same applies during the Post Implementation Period.
- 8.7 Each Switching Data Service Provider shall:
 - (a) co-operate with and act in accordance with instructions received from the CSS System Integrator; and
 - (b) provide status and progress reports to the SI Provider in respect of activities undertaken by it during the Post Implementation Period in the form and in accordance with the timetable required by the E2E Post Implementation Plan.
- 8.8 Each Party, Supplier Agent, Meter Asset Provider and Shipper shall:

RECV1.0 – Designated Version

- (a) co-operate with the Programme Co-ordinator;
 - (b) co-operate with the Licenced Party Assurance Provider; and
 - (c) provide status and progress reports to the Programme Co-ordinator and the Licenced Party Assurance Provider in respect of activities undertaken by it during the Post Implementation Period in the form and in accordance with the timetable required by the E2E Post Implementation Plan.
- 8.9 Each Switching Data Service Provider, each Party, each Supplier Agent, each Meter Asset Provider and each Shipper shall implement in accordance with Good Industry Practice, arrangements for knowledge capture during the Design, Build and Test Phase of the Switching Programme and continue to implement such arrangements throughout the Post Implementation Period.

9 Use of the Central Switching Service

Notwithstanding any other provision in this Code, there is no obligation on the CSS Provider to provide, or right for Users to use, the Central Switching Service prior to the Go-Live Date.

SCHEDULE 3

Accession Agreement Schedule

Version: 1.0

Effective Date:

28 February 2019

Domestic Suppliers	Mandatory
Non-Domestic Suppliers	Mandatory
Gas Transporters	Mandatory
Distribution Network Operators	Mandatory
DCC	Mandatory

Please note that this schedule applies to any 'New Party' wishing to accede to the REC after the effective date of 28 February 2019.

Accession of 'original parties' prior to the effective date will be via the original accession form circulated by the Authority at the time this code was designated.

RECV1.0 – Designated Version

Change History

Version Number	Implementation Date	Reason for Change
1.0	28 February 2019	Version for designation

RECV1.0 – Designated Version

THIS ACCESSION AGREEMENT is made on 2[XXX]

BETWEEN:

- (1) [TBC] a company incorporated in [Jurisdiction] (registered number [TBC]) whose registered office is at [TBC] (the “**New Party**”); and
- (2) **Retail Energy Code Company Limited** a company incorporated in England and Wales with company number 10989875 (“**RECCo**”).

WHEREAS

- A) *The New Party is eligible to become a party to the Retail Energy Code.*
- B) *RECCo is authorised by the Parties to the Retail Energy Code to accept the accession to the Retail Energy Code of the New Party.*

NOW IT IS HEREBY AGREED as follows:

1 Interpretation

- 1.1 In this Accession Agreement, including the recitals hereto, “**Retail Energy Code**” means the code of that name maintained pursuant to the electricity supply licences granted pursuant to the Electricity Act 1989 and the gas supply licences granted pursuant to the Gas Act 1986, as such code is modified from time to time in accordance with its provisions.
- 1.2 Subject to clause 1.1 above, the words and expressions used in this Accession Agreement shall be construed and interpreted in accordance with the definitions and provisions regarding interpretation set out in the Retail Energy Code.

2 Compliance with the Retail Energy Code

- 2.1 With effect from the date hereof, the New Party hereby undertakes, for the benefit of RECCo and each other Party from time to time, to comply with the Retail Energy Code in accordance with, and subject to, its terms and conditions.

3 Identity of the Parties

- 3.1 The New Party acknowledges that the Original Parties became bound by the Retail Energy Code pursuant to the Original Accession Agreements, and that each such Original Party is a Party for the purposes of clause 2 above (and otherwise).
- 3.2 The New Party acknowledges that it has agreed a mechanism (set out in the Retail Energy Code) by which New Parties other than itself may have (or may in the future) become bound by the Retail Energy Code, each of whom is (or will then become) a Party for the purposes of clause 2 above (and otherwise).
- 3.3 The New Party acknowledges that it has agreed a mechanism (set out in the Retail Energy Code) by which it may cease to be bound by the Retail Energy Code, from which time it will (subject to the saving provisions set out in the Retail Energy Code) cease to be obliged to

RECV1.0 – Designated Version

comply with the Retail Energy Code.

- 3.4 The New Party acknowledges that it has agreed a mechanism (set out in the Retail Energy Code) by which other Parties may cease to be bound by the Retail Energy Code, from which time such other Parties will (subject to the saving provisions set out in the Retail Energy Code) cease to be a Party for the purposes of clause 2 above (and otherwise).

4 Party Details

- 4.1 The New Party's Party Details shall initially be those details set out as such in the Schedule, and shall be subject to change in accordance with the Retail Energy Code.

5 Third Party Rights

- 5.1 Without prejudice to any provisions of the Retail Energy Code permitting enforcement of the Retail Energy Code by third parties, neither the New Party nor RECCo intends that any of the terms or conditions of this Accession Agreement will be enforceable by a third party (whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise).

6 Governing Law and Jurisdiction

- 6.1 This Accession Agreement 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 specified in the Retail Energy Code from time to time.
- 6.2 In relation to any dispute or claim arising out of or in connection with this Accession Agreement (including in respect of non-contractual claims), each of the New Party and RECCo irrevocably agrees to submit to the exclusive jurisdiction of the relevant person, panel, court or other tribunal specified in the Retail Energy Code from time to time.

THIS ACCESSION AGREEMENT has been executed and delivered as a **DEED** on the date first stated above¹.

Schedule to the Accession Agreement – Party Details

[To be completed by the Code Manager based on information provided by the New Party.]

¹ The Code Manager shall determine appropriate means of execution.

SCHEDULE 4

Company Governance Schedule

Version: 1.0

Effective Date:

28 February 2019

Domestic Suppliers	Mandatory
Non-Domestic Suppliers	Mandatory
Gas Transporters	Mandatory
Distribution Network Operators	Mandatory
DCC	Mandatory

RECV1.0 – Designated Version

Change History

Version Number	Implementation Date	Reason for Change
1.0	28 February 2019	Version for designation

Contents

<i>Paragraph</i>	<i>Heading</i>	<i>Page</i>
1	Background	33
2	Additional Definitions and Interpretation	33
3	Acknowledgement of Preliminary Matters Already Undertaken	44
4	RECCo's Objective	44
5	RECCo's Business	44
6	New Shareholders.....	44
7	Dealings with Shares.....	55
8	Composition and Proceedings of the REC Board	66
9	Expenditure and Working Capital	66
10	Conflict with the Articles	66
11	Further Assurance.....	66

RECV1.0 – Designated Version

1 Background

- 1.1 It is intended that each Eligible Party will become a shareholder in RECCo, and that the shareholders in RECCo shall be limited to the Eligible Parties.
- 1.2 The Shareholders have agreed that their respective rights as Shareholders shall be regulated by the provisions of this REC Schedule. The rights of the Parties as Shareholders are set out exclusively in this REC Schedule. No other provision of this Code shall apply to the regulation of the rights and obligations of Shareholders in their capacity as Shareholders.

2 Additional Definitions and Interpretation

- 2.1 In this REC Schedule, except where the context otherwise requires, the following words and expressions shall have the following meanings:

Articles	means the articles of association of RECCo, as amended from time to time.
Director	means a director of RECCo from time to time.
Eligible Party	means each Party other than RECCo.
Objective	means to give effect to the decisions of the REC Board in accordance with this Code, and (subject thereto) to act as a corporate vehicle to give effect to the decisions of the REC Panel and its Sub-Committees.
Retiring Shareholder	means a Shareholder that ceases to be an Eligible Party in accordance with this Code.
RECCo Chair	means the chairman of the REC Board from time to time.
RECCo Secretary	means the Code Manager in the role of RECCo's company secretary.
Share	means an ordinary share of £1 each in the share capital of RECCo.
Shareholder	means a person from time to time registered as a holder of a Share.
Subscribing Shareholders	means each Eligible Party that agreed (prior to the designation of this Code) to become a Shareholder with effect from the designation of this Code.

- 2.2 Words and expressions defined elsewhere in this Code shall have the same meaning in this REC Schedule unless the context otherwise requires.

3 Acknowledgement of Preliminary Matters Already Undertaken

- 3.1 It is acknowledged that resolutions of the REC Board and of the Shareholders were made prior to the designation of this Code, at which the business set out in Appendix 1 was undertaken. As set out in that appendix, such business is to have effect from the designation of this Code.
- 3.2 The consequence of the resolutions referred to above is that, with effect from the designation of this Code, each of the Subscribing Shareholders is a Shareholder and each of the individuals that are to initially serve on the REC Board have been appointed as Directors.

4 RECCo's Objective

- 4.1 The Shareholders and RECCo acknowledge and agree that RECCo shall not undertake any activities other than those that are reasonably necessary for carrying out the Objective.
- 4.2 Each Shareholder acknowledges and agrees that RECCo will have complete independence from its Shareholders in its operations and undertakes not to take any action which obstructs or interferes with, or seeks to obstruct or interfere with, the carrying out of the Objective (provided that this Paragraph 4.2 shall not restrict the exercise of Shareholder rights in order to comply with the requirements of this REC Schedule).

5 RECCo's Business

- 5.1 Each Shareholder agrees with each other Shareholder to exercise its rights under this REC Schedule and as a Shareholder in RECCo so as to ensure that:
- (a) RECCo performs and complies with all its obligations under this Code (including without limitation this REC Schedule) and complies with the restrictions (if any) imposed on it by the Articles; and
 - (b) RECCo's activities are conducted in accordance with sound and good business practice with a view to achieving the Objective.

6 New Shareholders

- 6.1 As part of its application to become a New Party, each Eligible Party will apply to become a Shareholder. Any Eligible Party from time to time that is not a Shareholder shall apply to become a Shareholder. Upon any such application, the Directors shall either:
- (a) procure the transfer to such Eligible Party of one Share then held by a nominee in accordance with Paragraph 7.2 or 7.3; or
 - (b) allot to such Eligible Party one Share.
- 6.2 For the purposes of Paragraph 6.1(b), the Shareholders agree that, where no Shares are otherwise available for issue, they will exercise the voting rights attaching to their Shares to procure that all necessary steps are taken to create and/or authorise the issue of further Shares.

7 Dealings with Shares

- 7.1 Otherwise than in accordance with the following provisions of this Paragraph 7, no Shareholder shall:
- (a) pledge, mortgage (whether by way of fixed or floating charge) or otherwise encumber its legal or beneficial interest in its Shares; or
 - (b) sell, transfer or otherwise dispose of any of such Shares (or any legal or beneficial interest therein); or
 - (c) enter into any agreement in respect of the rights attached to Shares; or
 - (d) agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.
- 7.2 Upon written notice by the REC Board requiring it to do so, a Retiring Shareholder shall pay up all amounts which remain unpaid on any Share held by it. The Retiring Shareholder will transfer its Shares at par to a nominee who will hold the Shares for and on behalf of all the other Shareholders. The nominee will be selected by the Directors. All costs and expenses of such transfer shall be for the account of the Retiring Shareholder.
- 7.3 If a Retiring Shareholder fails or refuses to transfer any Shares in accordance with its obligations under Paragraph 7.2, the Retiring Shareholder irrevocably appoints by way of security for the failure to perform obligations under this Paragraph 7.3 any Director to execute and deliver a transfer of the Shares from the Retiring Shareholder to a nominee on behalf of the Retiring Shareholder. RECCo may accept the consideration for the transfer (subject to the Retiring Shareholder paying-up all amounts which remain unpaid on any Share) and hold it on trust for the Retiring Shareholder, which acceptance shall be a good discharge to the nominee, and may set off such amounts against the costs and expenses of the transfer. The Directors shall cause the nominee to be registered as the holder of such Share and, following the registration of the transfer, the validity of the proceedings shall not be questioned by RECCo or any Shareholder.
- 7.4 The nominee referred to in Paragraphs 7.2 and 7.3 shall hold Shares transferred to it until such time as it is directed by the Directors to transfer them (or some of them) in accordance with Paragraph 6.1(a) and for such period (and only for such period) as the nominee holds any Shares, all rights attaching to the Share shall be suspended, including:
- (a) the right to receive income and/or capital;
 - (b) the right to attend and vote or appoint proxies to attend and vote at general meetings of RECCo (whether on a show of hands or on a poll and in the case of proxies only on a poll); and
 - (c) the right to appoint and remove a Director.
- 7.5 The Shareholders shall procure that, save in the case of any nominee for the purposes of Paragraphs 7.2 and 7.3:
- (a) no person who is not an Eligible Party may at any time become a Shareholder; and
 - (b) no Eligible Party shall hold more than one Share at any time,

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and the Directors shall be entitled to refuse to allot and/or to register any transfer of a Share that would result in a breach of this Paragraph 7.5.

8 Composition and Proceedings of the REC Board

- 8.1 RECCo and the Shareholders acknowledge that this Code contains detailed provisions regarding the composition of the REC Board. RECCo and the Shareholders agree that the composition of the REC Board should be consistent with the requirements of this Code.
- 8.2 RECCo and the Shareholders acknowledge that this Code contains detailed provisions regarding the procedural rules of the REC Board. RECCo and the Shareholders agree that the composition of the REC Board should be consistent with the requirements of this Code.

9 Expenditure and Working Capital

- 9.1 The Shareholders intend that RECCo should be run on a “break even” basis and shall procure that any surplus working capital shall, rather than being distributed to Shareholders, be retained by RECCo and applied to subsequent expenditure.
- 9.2 None of the Shareholders shall be obliged to provide any finance to RECCo or to provide any guarantee, indemnity or other security which third parties may require to secure the obligations of RECCo.
- 9.3 The Shareholders shall exercise the rights attaching to their Shares with a view to ensuring that RECCo does not incur costs unless authorised to do so in accordance with this Code.

10 Conflict with the Articles

- 10.1 In the event of any ambiguity created by or discrepancy between the provisions of this REC Schedule and the Articles, it is the intention that the provisions of this REC Schedule shall prevail and accordingly the Shareholders shall exercise all voting and other rights and powers available to them so as to give effect to the provisions of this REC Schedule and shall further, if necessary, procure any required amendment to the Articles.
- 10.2 Any Shareholder failing to comply with the provisions of Paragraph 10.1 shall be deemed to have appointed RECCo as its lawful attorney for the purpose of signing any written resolution (or receiving notices of and attending and voting at all meetings) of the members of the RECCo to give effect to the provisions of Paragraph 10.1 and to effect any required amendment to the Articles (including to conform the Articles to this REC Schedule), and this power of attorney (which is given by way of security to secure the performance of obligations owed by the Shareholder to the RECCo under Paragraph 10.1) shall be irrevocable.

11 Further Assurance

- 11.1 Each Shareholder shall co-operate with the other Shareholders and execute and deliver to the other Shareholders such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights under, and the intended purpose of, this REC Schedule.

APPENDIX 1

Prior to designation of this Code, RECCo (acting by its directors from time to time) and/or the shareholders of RECCo (as applicable) approved the following matters:

- the transfer of the subscription share in the capital of RECCo to a nominee as if Paragraph 7.2 applied;
- the change of the accounting reference date of RECCo to 31 March;
- the adoption of new Articles of Association of RECCo in the form set out in Appendix 2;
- the subscription for Shares in RECCo by the Subscribing Shareholders;
- the appointment of the original directors of RECCo as Directors;
- conflicts of interest (if any) of the incoming directors of RECCo; and
- the resignation of the incumbent Director of RECCo appointed at incorporation.

APPENDIX 2

Form of New Articles

ARTICLES OF ASSOCIATION

THE COMPANIES ACT 2006

ARTICLES OF ASSOCIATION

of

Retail Energy Code Company Limited (the “Company”)

(Registered No. 10989875)

(adopted by Special Resolution passed on or before 28 February 2019)

1 Defined terms

1.1 In these articles:

“**CA 2006**” means the Companies Act 2006;

“**Code**” means the Retail Energy Code maintained pursuant to the electricity supply licences granted pursuant to the Electricity Act 1989 and the gas supply licences granted pursuant to the Gas Act 1986, as such code is modified from time to time in accordance with its provisions;

“**Companies Acts**” means the Companies Acts (as defined in section 2 of the CA 2006), in so far as they apply to the company;

“**connected persons**” in relation to a director means persons connected with that director for the purposes of section 252 CA 2006;

“**eligible director**” means, in relation to a matter or decision, a director who is or would be entitled to count in the quorum and vote on the matter or decision at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter or decision);

“**Group Company**” means a body corporate which is at the relevant time: (a) a subsidiary of the Company; or (b) the Company’s holding company or a subsidiary of that holding company, (and for these purposes “**holding company**” and “**subsidiary**” have the meanings given to those expressions in section 1159 CA 2006); and

“**Model Articles**” means the regulations contained in schedule 3 to The Companies (Model Articles) Regulations 2008.

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- 1.2 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Model Articles and CA 2006, in each case as in force on the date when these articles become binding on the Company.
- 1.3 For the purposes of these articles a corporation shall be deemed to be present in person if its representative duly authorised in accordance with the Companies Acts is present in person.
- 1.4 Headings in these articles are used for convenience only and shall not affect the construction or interpretation of these articles.
- 1.5 A reference in these articles to an “article” is a reference to the relevant article of these articles unless expressly provided otherwise.
- 1.6 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:
- (a) any subordinate legislation from time to time made under it; and
 - (b) any amendment or re-enactment,
- and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.7 Any phrase in these articles or the Model Articles introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 Adoption and variation of Model Articles

- 2.1 Subject as provided in these articles, the Model Articles shall apply to the Company.
- 2.2 Model Articles 7, 8(2), 11, 12, 13(3), 16, 17(2), 18(4), 19, 20, 21, 23, 41, 52 – 62 (inclusive), and 70 – 77 (inclusive) shall not apply to the Company.

3 Conflicts of interest

- 3.1 In this article and articles 4 and 5:

“authorise” means to authorise in accordance with section 175(5)(a) CA 2006 and **“authorisation”, “authorised”** and cognate expressions shall be construed accordingly;

a **“conflict of interest”** includes a conflict of interest and duty and a conflict of duties;

“conflicted director” means a director in relation to whom there is a conflicting matter;

“conflicting matter” means a matter which would or might (if not authorised or if not permitted under article 4) constitute or give rise to a breach of the duty of a director under section 175(1) CA 2006 to avoid a conflict situation;

“conflict situation” means a situation in which a director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company (including a conflict of interest);

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“**interested director**” means a director who has, in any way, a material direct or indirect interest in a matter or decision;

a conflicting matter, conflict situation or interest is “**material**” unless it cannot reasonably be regarded as likely to give rise to a conflict of interest; and

“**other directors**” means, in relation to a particular conflicting matter, directors who are not interested directors in relation to that conflicting matter.

3.2 Exercise of the power of the directors to authorise a conflicting matter shall be subject to the provisions of this article.

3.3 The provisions of this article apply:

(a) subject to article 4; and

(b) without prejudice (and subject) to the provisions of section 175(6) CA 2006.

Nothing in these articles shall invalidate an authorisation.

3.4 A conflicted director seeking authorisation of any conflicting matter shall disclose to the other directors the nature and extent of the conflicting matter as soon as is reasonably practicable. The conflicted director shall provide the other directors with such details of the conflicting matter as are necessary for the other directors to decide how to address the conflicting matter, together with such additional information as may be requested by the other directors.

3.5 Any director (including the conflicted director) may propose that a conflicted director’s conflicting matter be authorised. Any such proposal, and any authorisation given by the directors, shall be effected in the same way as any other matter that may be proposed to and resolved on by the directors under the provisions of these articles, except that:

(a) the conflicted director and any other interested director shall not count towards the quorum nor vote on any resolution giving that authorisation; and

(b) the conflicted director and any other interested director may, if the other directors so decide, be excluded from any meeting of the directors while the conflicting matter and the giving of that authorisation are under consideration.

3.6 Where the directors authorise a conflicted director’s conflicting matter:

(a) the directors may (whether at the time of giving the authorisation or subsequently): (i) require that the conflicted director is excluded from the receipt of information, the participation in discussions and/or the making of decisions (whether at meetings of the directors or otherwise) in relation to which any actual or potential conflict of interest may arise from the conflicting matter; and (ii) impose on the conflicted director such other terms or conditions for the purpose of dealing with any actual or potential conflict of interest which may arise from the conflicting matter as they may determine;

(b) the conflicted director shall conduct himself in accordance with any terms or conditions imposed by the directors (whether at the time of giving that authorisation or subsequently);

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- (c) the directors may provide that, where the conflicted director obtains (otherwise than through his position as a director) information that is confidential to a third party, the conflicted director will not be obliged to disclose the information to the company, or to use or apply the information in relation to the company's affairs, where to do so would amount to a breach of that confidence;
- (d) the terms of the authorisation shall be recorded in writing (but the authorisation shall be effective whether or not the terms are so recorded); and
- (e) the directors may revoke or vary the authorisation at any time but no such action will affect anything done by the conflicted director prior to that action in accordance with the terms of the authorisation.

4 Permitted conflict situations

4.1 If a director or a connected person of a director:

- (a) is or becomes a member, director, manager or employee of the company or any other Group Company; or
- (b) acquires and holds shares in the capital of any other body corporate, wherever incorporated, provided that the shares held by the director and his connected persons do not exceed 3% of the nominal value of the issued share capital of that body corporate,

then any conflict situation which arises only by reason of such a conflicting matter is permitted by this article and the relevant conflicting matter does not require disclosure and authorisation in accordance with article 3.

4.2 A director shall not, by reason of his office or of the resulting fiduciary relationship, be liable to account to the company for any benefit which he (or a person connected with him) derives from:

- (a) a conflicting matter authorised by the directors;
- (b) a conflicting matter to which article 4.1 applies; or
- (c) a decision of the directors in relation to which, in accordance with article 5.2, the director was an eligible director, notwithstanding his relevant conflicting interest,

and no transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit.

5 Directors' interests and decision making

5.1 Model Articles - 8 – 10 (inclusive), 13, 17 and 18 shall take effect subject to the terms of the Code.

5.2 A director who has a direct or indirect interest or duty that conflicts with the interests of the company in relation to a proposed decision of the directors is not an eligible director in relation to that decision unless article 5.3 applies to him.

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5.3 A director who has a direct or indirect interest that conflicts with the interests of the company in relation to a proposed decision of the directors (a “**relevant conflicting interest**”) shall be an eligible director in relation to that decision, provided that:

(a) in a case where the relevant conflicting interest is in an actual or proposed transaction or arrangement with the company, the nature and extent of the relevant conflicting interest either:

(i) has been duly declared to the other directors in accordance with section 177 or section 182 CA 2006, as the case may require; or

(ii) is not required by the terms of either of those sections to be declared; and

(A) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and:

1) *that conflicting matter (or any breach of the relevant director’s duty under section 175(1) CA 2006 by reason of that conflicting matter) is or has been authorised, permitted, approved or ratified, either in accordance with article 3 or article 4 or by the members (and that authorisation, permission, approval or ratification has not been revoked, withdrawn or reversed); and*

2) *the relevant director has not been required to be excluded from participation in discussions and/or the making of decisions in relation to which the director has the relevant conflicting interest; or*

(B) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and that conflicting matter (or any breach of the relevant director’s duty under section 175(1) CA 2006 by reason of that conflicting matter) is not or has not been authorised, permitted, approved or ratified, either in accordance with article 3 or article 4 or by the members:

1) *the conflict situation arising by reason of that conflicting matter is not material; or*

2) *the other directors are aware of the relevant conflicting interest and have determined that the director shall be an eligible director in relation to that decision; and*

(b) in any other case:

(i) the director has disclosed the nature and extent of the relevant conflicting interest, or has not done so where:

(A) it cannot reasonably be regarded as likely to give rise to a conflict of

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interest; or

- (B) the other directors are already aware of it; and
- (ii) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and:
 - (A) that conflicting matter (or any breach of the relevant director's duty under section 175(1) CA 2006 by reason of that conflicting matter) is or has been authorised, permitted, approved or ratified, either in accordance with article 3 or article 4 or by the members (and that authorisation, permission, approval or ratification has not been revoked, withdrawn or reversed); and
 - (B) the relevant director has not been required to be excluded from participation in discussions and/or the making of decisions in relation to which the director has the relevant conflicting interest; or
- (iii) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and that conflicting matter (or any breach of the relevant director's duty under section 175(1) CA 2006 by reason of that conflicting matter) is not or has not been authorised, permitted, approved or ratified, either in accordance with article 3 or article 4 or by the members:
 - (A) the conflict situation arising by reason of that conflicting matter is not material; or
 - (B) the other directors are aware of the relevant conflicting interest and have determined that the director shall be an eligible director in relation to that decision; but

the provisions of this article do not apply in relation to a decision under article 3.5.

For the purposes of this article, the other directors are to be treated as aware of anything of which they ought reasonably to be aware.

- 5.4 If a question arises at a meeting of the directors about whether or not a director (other than the chair of the meeting):
- (a) has a material conflict situation for the purposes of articles 3 or 4;
 - (b) can vote (where that director does not agree to abstain from voting) on the issue in relation to which the conflict situation arises; or
 - (c) can be counted in the quorum (where that director does not agree not to be counted in the quorum) for the purpose of voting on the issue in relation to which the conflict arises,

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then the question must (unless article 5.5 applies) be referred to the chair of the meeting. The ruling of the chair of the meeting in accordance with this article 5.4 about any director other than himself is final and conclusive, unless the nature or extent of the director's conflict situation (so far as it is known to him) has not been fairly disclosed to the other directors.

5.5 If in relation to a question of the kind referred to in article 5.4 the chair of the meeting is an interested director, the question must be referred to the other directors in accordance with article 5.5 as if it were a question about the chair of the meeting.

5.6 If a question of the kind referred to in article 5.4 arises about the chair of the meeting (or if article 5.5 applies), the question shall be decided by a resolution of the other directors. The chair of the meeting (or conflicted director) cannot vote on the question but can be counted in the quorum. The other directors' resolution about the chair of the meeting (or conflicted director) is conclusive, unless the nature and extent of the chair's (or conflicted director's) conflict situation (so far as it is known to him) has not been fairly disclosed to the other directors.

5.7 For the purposes of:

- (a) any meeting (or part of a meeting) held in accordance with article 3 to authorise a director's conflict; or
- (b) any determination in accordance with article 5.4 or 5.6,

if there is only one director present who is not an interested director for the purpose of that authorisation or determination, the quorum for that meeting (or part of a meeting) is one eligible director.

5.8 For the purposes of:

- (a) any written directors' resolution to authorise a director's conflict in accordance with article 3; or
- (b) any written determination in accordance with article 5.4 or 5.6,

if there is only one director in office who is not an interested director for the purpose of that authorisation or determination, the quorum for the purpose of signing that resolution or determination is one eligible director.

5.9 Nothing in this article 5 shall be taken as absolving any director from any of the obligations set out in article 3. A determination by the directors in accordance with article 5.3(a)(ii)(B)(2) or 5.3(b)(iii)(B) that a conflicted director may be an eligible director in relation to a decision of the directors does not amount to authorisation of the relevant conflict situation.

5.10 The company may, by ordinary resolution, ratify any transaction, arrangement or other matter which has not been properly authorised by reason of a contravention of these articles.

6 Decision-making by directors: general

6.1 Subject to the terms the Code, the general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or by written resolution in accordance with Model Article 18.

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- 6.2 The quorum for each meeting of the Directors shall be as determined by the Code. If:
- (a) the Company only has one director; and
 - (b) no other provision of these articles requires it to have more than one director,
- the general rule does not apply, the quorum for meetings of the directors shall be one and the director may take decisions without regard to any of the provisions of these articles relating to directors' decision-making, other than the provisions of articles 6.3 and 6.7.
- 6.3 The directors must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.
- 6.4 Model Article 9(3) shall be modified so that any meeting where all the directors participating are not in the same place shall be treated as taking place in the place where the chair of the meeting is.
- 6.5 Model Article 10(2) shall be read:
- (a) subject to articles 5 and 6.2; and
 - (b) as if the final word was deleted and the words "two eligible directors" were added in its place.
- 6.6 The chair of directors' meetings shall have no vote, save in the event of an equality of votes, where he shall have a casting vote, and Model Article 13(2) shall be modified accordingly.
- 6.7 Model Article 14(2) shall be read as if the words "to be counted" to "voting purposes" inclusive were omitted and the words "an eligible director for the purposes of that meeting (or part of a meeting)" were added in their place.
- 6.8 For the purposes of Model Articles 17 and 18, a written resolution of the directors may be in electronic form. Model Article 18 shall be read as if the words "all the directors" were omitted and the words "a simple majority of the directors" were added in their place.
- 6.9 A decision may not be taken in accordance with Model Article 18 if the eligible directors making that decision would not have formed a quorum at a directors' meeting resolving on the same matter.
- 6.10 Save for the chair person, the directors shall not be entitled to any remuneration from the Company. This is without prejudice to the recovery of reasonable expenses properly incurred in connection with the Company.

7 General meetings and written resolutions

- 7.1 Voting rights attaching to a share may be exercised, either at a general meeting or on any written resolution, notwithstanding that amounts are outstanding, due and payable to the Company in respect of that share.

8 Allotment of shares

- 8.1 Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, all shares shall be issued to the persons, on the terms and conditions and with the rights, priorities, privileges or restrictions in each case as provided in the

RECv1.0 – Designated Version

resolution creating or issuing the relevant shares. In the absence of any such provision, the directors may issue the shares, subject to section 551 CA 2006, to such persons at such times and generally on such terms and conditions and with such rights, priorities, privileges or restrictions as they may think fit. Accordingly, and in accordance with section 570 CA 2006, sections 561(1) and 562 CA 2006 shall not apply to the Company.

- 8.2 No share shall be issued to any infant, bankrupt, insolvent body corporate or person who, by reason of that person's mental health, is subject to a court order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have.

9 Transmission of shares

- 9.1 Nothing in these articles or the Model Articles releases the estate of a deceased member from any liability in respect of a share solely or jointly held by that member.

10 Return of capital

- 10.1 The Shareholders intend that the Company should be run on a "break even" basis and shall procure that any surplus working capital shall, rather than being distributed to Shareholders, be retained by the Company and applied to subsequent expenditure.

- 10.2 Subject to articles 10.1 and 10.3, on a return of capital on liquidation, capital reduction or otherwise, the surplus assets of the Company remaining after the payment of its liabilities shall be applied:

- (a) in paying to each holder of shares an amount in respect of each share held equal to the amount paid up thereon (including any premium); and
- (b) thereafter, in distributing the balance of such assets amongst the holders of the shares in proportion to the amounts paid up or credited as paid up on the shares and held by them.

- 10.3 Any Shareholder may elect (by notice to the Company secretary) to pay up all amounts which remain unpaid on any Share immediately prior to any return of capital of the kind referred to in article 10.2.

11 Delivery of documents and information

- 11.1 Any notice, document or other information shall be deemed to be served on and delivered to the intended recipient:

- (a) if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five business days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five business days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
- (b) if properly addressed and delivered by hand, when it was given or left at the appropriate address; and

RECV1.0 – Designated Version

- (c) if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

- 11.2 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by CA 2006.
- 11.3 For the purposes of section 1147(3) CA 2006, where a document or information is sent or supplied by the Company to any member by electronic means, and the Company is able to show that it was properly addressed, it is deemed to have been received by the intended recipient one hour after it was sent (but subject to section 1147(5)).
- 11.4 Where a document or information is sent or supplied to the Company by one person (the “agent”) on behalf of another person (the “sender”), the Company may require reasonable evidence of the authority of the agent to act on behalf of the sender.

12 The Code

- 12.1 In addition to the provisions of these Articles, the members shall be obliged (except to the extent, if any, prohibited by law) to give effect to the Code in force at the relevant time.
- 12.2 Each Shareholder shall procure, to the extent reasonably possible, that the Directors shall act in all reasonable respects in relation to the Company so as to give effect to the Code, provided always that each Director will not be required to act in any manner prejudicial to his fiduciary duties as a Director of the Company.