

By e-mail to: switchingprogramme@ofgem.gov.uk

Rachel Clark
Ofgem
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E14 4PU

16 November 2018

Dear Rachel,

Switching Programme: Regulation and Governance - way forward and statutory consultation on licence modifications – ELEXON response

We welcome the opportunity to comment on the proposed way forward for the Switching Programme and corresponding licence modifications.

As you are aware, ELEXON is the Code Manager for the Balancing and Settlement Code (BSC). We are responsible for managing and delivering the end-to-end services set out in the BSC and accompanying systems that support the BSC. This includes responsibility for the delivery of balancing and imbalance settlement and the provision of assurance services to the BSC Panel and BSC Parties. We manage not just the assessment/analysis, but also the development, implementation and operation of changes to central systems and processes.

In addition, through our subsidiary, EMR Settlements Ltd, we are the Electricity Market Reform (EMR) settlement services provider, acting as settlement agent to the Low Carbon Contracts Company (LCCC), for Contracts for Difference (CfD) and Capacity Market (CM). EMR services are provided to the LCCC through a contract and, like the BSC, on a non-for-profit basis.

The views expressed in this response are those of ELEXON Ltd and do not seek to represent those of the BSC Panel or of Parties to the BSC.

We summarise our overall considerations into the three main themes described below in this covering letter. Furthermore:

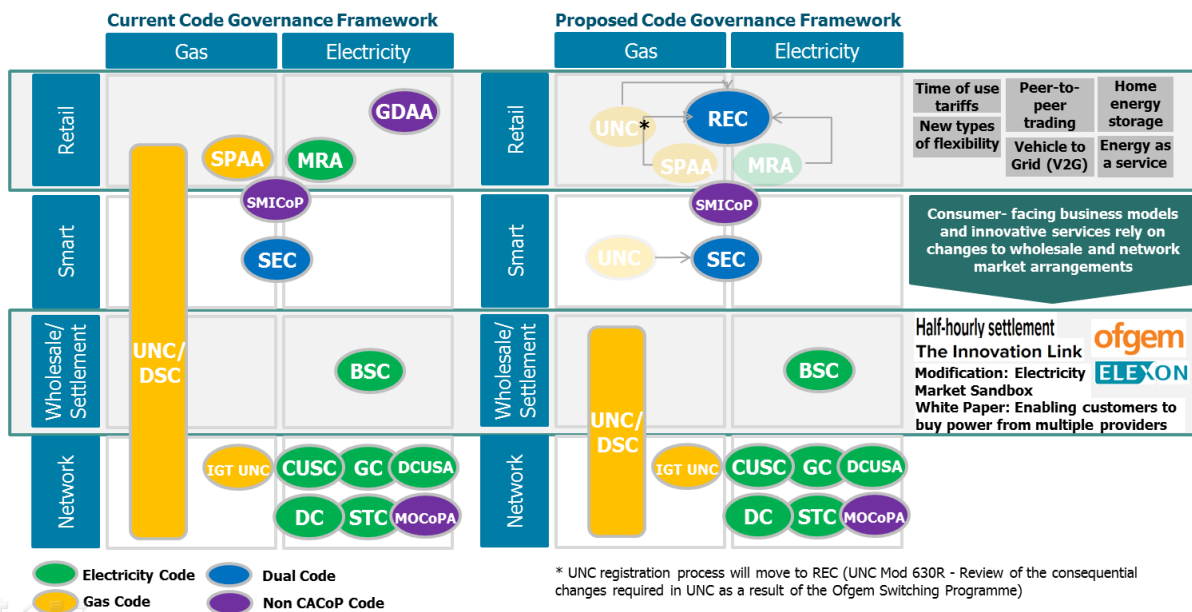
- Appendix 1 contains our Responses to the specific consultation questions.
- Appendix 2 contains our initial detailed comments on the main body of the REC draft (REC v1.0 Main Body dated 15 October 2018).

1 Main innovations in REC

We notice and welcome the three main innovations in REC:

1. Use of plain English. REC to be digitalised at a future stage;
2. Opportunity for consolidation and rationalisation of existing retail energy codes; and
3. Opportunity to create a new model for code governance.

As suggested in our previous response, we believe an even greater alignment and simplification of central code services systems is possible, bringing the 'whole systems' approach to life. A close alignment between not just the Retail governance arrangements, but also the consideration of the Wholesale/Settlement aspects of the gas and electricity parts of the code governance framework, will be key to implementing the principles of the 'whole-system' approach. We firmly believe this is a much needed development to allow for further alignment between electricity and gas, energy and transport, energy and heat networks. This will realise a reduced complexity and cost burden for market participants and consumers respectively.



The consultation shows there will be a change in the landscape on the retail side of the code governance arrangements, but equally there is an opportunity to look at Wholesale and Settlement arrangements. It should also be noted that even with these changes, there will be continued complexity in the network aspects of governance, as highlighted by Secretary of State's recent statement. Given the level of innovation, new types of market entrants, as well as new distributed flexibility sources (including EV) and the move to a DSO Model, we believe Ofgem should be more bold on the code governance landscape.

2 General Points regarding the Appointment of the REC Manager

We note the intention to develop a more detailed plan for the key REC implementation processes over the next few months. We will appreciate as advanced and regular a notice as possible on the next steps.

We note the intention that an interim REC Board, comprising mostly SPAA and MRA directors, is to determine, with the support of a Procurement Panel, who is to be appointed the REC Manager. To ensure fair, robust and transparent selection, we would encourage Ofgem to make sure:

- 1) REC Board is impartial and able to consider the procurement without the burden of history
- 2) There is a clear set of objective criteria on the behaviours/service expected from REC Code Manager

We believe Ofgem's own Code Administrators' Performance survey may assist here to determine behaviours customers find desirable. Additionally, traits such as flexibility, expertise and customer focus could all be specified, as could the required skill sets, which we believe should include contract procurement and management of service providers. Such objective criteria would reduce the risk of accusation that interim REC directors with a background in SPAA or MEC favoured the incumbent administrator.

3 General Points regarding the appointment (and removal) of REC Directors

We describe in more detail in the appendix our views on the appointment of the enduring REC Directors and in particular the need for the right skill sets and experience with their appointments made in accordance with good corporate governance. We also suggest clarity over who can remove the REC Directors, suggesting industry also has this right (subject to appropriate voting thresholds).

Continued engagement with Ofgem

As experts in code management, code operations and systems delivery with deep industry knowledge, especially expertise in balancing and settlement and performance assurance, we will continue to offer support to Ofgem in implementing the strategic change initiatives to the electricity sector and wider energy industry.

If you would like to discuss any areas of our response, please contact Angela Love, Director of Strategy and Communications on 020 7380 4156, or by email angela.love@elexon.co.uk or Alina Bakhareva, Strategy and Market Advisor on 020 7380 4160, or by email at alina.bakhareva@elexon.co.uk.

Yours sincerely,



Mark Bygraves
CEO, ELEXON

List of enclosures:

Appendix 1 – Responses to specific consultation questions

Appendix 2 - Initial detailed comments on the main body of the REC draft (REC v1.0 Main Body dated 15 October 2018).

Appendix 1 – Responses to specific consultation questions

This Appendix contains ELEXON's responses to specific consultation questions.

1. **Introduction.**

- 1.1. We have outlined our general considerations on Ofgem's overriding intention and vision for the REC Manager in the covering letter.
- 1.2. **General feedback.** We agree with Ofgem on the statement that consultation is at the heart of good policy development. Below we offer our considerations on the six questions in the General feedback section:
 - 1.2.1. Do you have any comments about the overall process of this consultation?
We note that Ofgem has allowed four weeks for respondents to compile their responses to the consultation. We would like to note that four weeks may not be sufficient time for a thorough review for a consultation of 100+ pages.
 - 1.2.2. Do you have any comments about its tone and content?
We found the tone and content suitable and appropriate.
 - 1.2.3. Was it easy to read and understand? Or could it have been better written?
The content was easy to understand. It was beneficial that the consultation highlighted the changes from the previous consultation and provided a summary of the responses received. This allowed for a faster and more efficient review process.
 - 1.2.4. Were its conclusions balanced?
We found the October consultation took into account many suggestions from the July consultation responses, specifically we were pleased to see the following:
 - Proposed roles, duties and responsibilities for RECCo Board, REC Panel, and REC Manager are elaborated upon and clarified following concerns over lack of clarity and overlapping areas of responsibilities.
 - The Performance Assurance section of the consultation has been significantly expanded and clarified, which helps ensure the REC has the appropriate assurance regime.
 - Four new operational schedules have been developed and added to the previously published first four operational schedules.
 - Ofgem has made a proposal to bring the residual elements of the MRA and SPAA that would not be ordinarily captured by the switching SCR under the REC Manager's remit.
 - 1.2.5. Did it make reasoned recommendations for improvement?
We believe it did; however, we detail some further considerations in our responses below.
 - 1.2.6. Any further comments?
No further comments.
- 1.3. No further comments are offered in this section as it contains no specific questions.

2. **Licence modifications**

- 2.1. Chapter 2. Licence modifications has no specific questions, thus no comments are offered in this section.

3. REC v1.0: Transitional Switching Programme requirements

- 3.1. Chapter 3. REC v1.0: Transitional Switching Programme requirements has no specific questions, however, we have one observation.
- 3.2. Paragraph 3.4 states a desire that the costs of REC governance are "as far as possible offset by savings made on administering the SPAA and MRA". We welcome this intent; however, we are unclear how it is to be achieved. We would welcome further clarity on mechanisms or incentives to ensure costs of MRA and SPAA reduce.
- 3.3. We believe that there is a risk that the costs of the SPAA and MRA remain unchanged. Whilst we are not familiar with the contractual arrangements underpinning the secretarial and delivery support for these Codes, we see that the service providers are commercial organisations, who will inevitably be recovering a financial margin from the contracts. We therefore believe that there may not be flexibility to scale up and down the service, without financial compensation being paid. We would as a result caution that care has to be taken in ensuring timely decisions on contract run downs and that any consideration of re-procurement, that takes place over the remain time period to full REC Manager/RECCo delivery, observe efficiency and costs reduction principles. The risk is therefore that new costs are introduced via the REC but the costs of SPAA and MRA remain unchanged.
- 3.4. Additionally, it is unclear if the existing personnel, who are serving the MRA and SPAA arrangements, will automatically transfer to the new REC Manager or remain to administer some of the outstanding SPAA and MRA provisions. In this respect we would expect the incumbent service providers to observe TUPE arrangements and for the existing knowledgeable resources to be deployed in the service of the REC obligations. It would be unfortunate if the REC were to commence without the corporate memory and benefit of the existing talent base, which could see an additional cost burden on the REC, and ultimately end-consumers, through recruitment.

4. Enduring REC Governance

Question 4.1: We would welcome views on whether Ofgem should have an ongoing role in ratifying RECCo Board appointments after the appointment of the first board.

- 4.1. We agree that Ofgem should ratify the appointments to the first Board. Noting that the first Board will be appointed during the transitional arrangements, Ofgem's ratification is important to confer legitimacy on the initial Board. As regards the initial nominations committee, in addition to developing your thinking on the composition of that committee, we believe that Ofgem should also give consideration to the terms of reference for that committee. In particular, in order to make the initial appointment process as efficient as possible Ofgem should consider either setting, or approving in advance, the criteria used to identify suitable candidates.
- 4.2. Our view is that there is no need for Ofgem to have an ongoing role in ratifying the Board appointments. In line with the principles of good corporate governance we believe that RECCo and its board, like any other company, should be responsible for appointing its own board (via an internal Nomination Committee, which typically comprises the Board Chair and other NEDs). We would highlight that for BSCCo (ELEXON) Ofgem has no role in the appointment of directors.

Question 4.2: We would also welcome views on whether the REC parties should have a role in ratifying the first and/or subsequent boards.

- 4.3. Our response to this question also encompasses issues relating to question 4.1. We have combined our answers because, in our view, both questions raise the same fundamental issues relating to accountability.

- 4.4. In our response to the last consultation we identified areas of mixed accountabilities and we were pleased to note that many of these have now been resolved. However, we believe that the proposed governance arrangements would benefit from further clarification in this regard. In particular, in our experience, genuine accountability in a board context can only happen where there is a right to remove a board, or individual directors. Consequently, our recommendation for the enduring arrangements is that there is a need to be clear on who can remove the RECCo directors, and the circumstances in which that is possible.
- 4.5. The governance arrangements currently propose including the following levers for exercising accountability:
- 4.5.1. RECCo Board to provide an annual report to Ofgem in respect of its objectives: we support the provision of an annual report and assume that the report will be made public. We would suggest that this report forms part of wider details, which address and socialises RECCo's overall performance. We would propose that such reporting should not just be against delivery objectives, given that the RECCo will set these. We see that there is no reason why this detail should not form part of RECCo's annual report and financial statements, which could then be used as a basis for RECCo's wider accountability to REC Parties and Ofgem.
- 4.5.2. RECCo's accountability to Ofgem: We note that it is Ofgem's intention that RECCo should be accountable to Ofgem in relation to delivery of its objectives and agree that Ofgem should be able to comment on the report. Subject to our comments above, about the wider visibility of reporting, we would observe that if Ofgem's intention that RECCo should be accountable to Ofgem then the proposed approach provides for only very light touch accountability.
- 4.5.3. Ofgem's ongoing ratification of board appointments: as outlined above we are unclear what the benefits would be of an ongoing role for Ofgem in the ratification of board appointments and would note that robust corporate governance arrangements should allow for effective Board arrangements and accountability. As part of this we would expect that the RECCo Board itself will be best placed to identify whether it has the requisite mix of skills, expertise and experience.
- 4.5.4. REC parties' ratification of the first and/or subsequent boards: we support RECCo being accountable to REC parties but suggest taking a wider look at how this can best be achieved. In particular:
- The process for ratifying appointments implies a one-off exercise which would be focused on the effectiveness of the initial recruitment process, not the performance of RECCo or the RECCo Board.
 - We would suggest a mechanism whereby REC parties can periodically vote on the RECCo directors. This could be an annual vote (as takes place in listed companies) or a periodic vote (for example, ELEXON directors are subject to a vote every 3 years which coincides with their appointment/re-appointment).
 - We also support REC parties having the right to remove RECCo directors at any time i.e. not just an annual or triennial right. This right already forms part of the Companies Act 2006, so REC parties, as shareholders in RECCo, will have this right already by default. This, however, ought to be explicitly referred to in Schedule 4 to make clear that the restrictions in that Schedule have not resulted in REC parties contracting out of their statutory rights. Alternatively, if the intention is that REC parties' ability to exercise this right should be limited then Schedule 4 should address this (or a different ownership model considered).
 - We do not believe it is appropriate for REC parties to be able to appoint directors as this potentially undermines RECCo's independence and cuts across good corporate governance. However we do still believe that it is appropriate for REC parties to be able to remove Directors, but only where there is an appropriate proportion of REC parties, who agree with such a proposal.

- 4.5.5. REC parties' right to approve budgets: this is the currently proposed model for achieving accountability to REC parties. In our view, a right to approve budgets is really a right for REC parties to exercise control over RECCo rather than a means through which parties can hold RECCo to account. For clarity, we would absolutely support a requirement for RECCo to consult on its budget and, if parties objected to the budget, then the RECCo board would have to listen or potentially face being removed by a vote of shareholders.
- 4.6. We also have concerns about the process for approving the budget. The draft REC sets out that parties will be asked to vote on the budget (essentially a yes/no exercise), without explaining concerns. We believe that this is potentially a rather blunt tool for identifying specific objections and we think it would be difficult to see how the provisions in 9.4(a) would work as, under the proposed model, a budget is either approved or not so there would be no basis for RECCo to determine which of their costs should be held in abeyance.
- 4.7. In conclusion, our view is as follows:
- Ofgem should ratify the initial board appointments but not subsequently;
 - REC parties should have a right to remove RECCo Board directors (either at annually or at least triennially) together with a right to remove any director at any time;
 - REC parties should not have the right to approve RECCo's budget.
- 4.8. In addition to the above, we would like to share our views on paragraph 4.11 of the consultation document. We note para 4.11 makes it clear that the REC Manager is responsible for all RECCo functions and we support this as an efficient model.
- 4.9. A more fundamental question arises on the need to separate REC Manager and RECCo. We anticipate that this approach is to (i) possibly introduce competitive tension via a retendering every 7 years or so and/or (ii) enable REC Manager to be replaced periodically (particularly, if there is a breach of the service sufficient to justify termination of the REC Manager contract).
- 4.10. In response to (i) (the retendering point) we note that on any change of service provider, all relevant staff, contracts and systems will transfer to the new provider, which is a very expensive exercise to remove the existing leadership. We believe such change of company leadership could be achieved in a far more efficient manner.
- 4.11. In response to (ii) (the termination point) we are not aware of any code Administrator ever having its terminated. Given the nature of the services provided it is unlikely that there would be such a fundamental breach, which would necessitate termination of the contract. By separating RECCo and REC Manager via a contract, it will be necessary for RECCo to manage that contract (service standards, payment, change of scope etc.), which will lead to more cost. As an example, in the BSC, where ELEXON is both BSCCo and BSC Manager, industry has found that it can sufficiently demand improvements to services and changes to operations, without the overhead of a contract management team within BSCCo, without ELEXON arguing for extra payments for 'new' services via contract change notifications and without a profit margin that would otherwise be needed to attract a replacement provider.
- 4.12. We would also caution against RECCo concluding that as a result of the separation of RECCo from REC Manager via a contract that RECCo needs to resource up in order to manage the REC Manager, thereby duplicating costs unnecessarily. There are industry examples where the contracting company was originally intended to be a 'thin' company outsourcing most activities to third parties but which has in fact grown to become a substantial operation.

Question 4.3: Do you agree that the REC should place less reliance on face to face industry meetings for modification development and instead empower the REC Manager to develop and analyse proposals, procuring expert support as and where required?

- 4.13. We are in favour of improving the efficiency of the change process and we support the proposal that the REC Manager has wider powers than current code Administrators to raise Modifications and provide support to the development of solutions. We welcome Ofgem's approach to the progression of change with an emphasis on self – governance and the introduction of proportionate and flexible change management arrangements that reduce complexity for users.

- We support the aim to reduce modification timelines and ease the burden on code parties. These are two objectives that we are looking to pursue in the BSC.
- 4.14. Similarly we support the Manager taking a more instrumental role via the production of analysis and ability to procure expert support etc. (although we would anticipate that a properly resourced and expert Manager should not need to seek external support very often). Whilst this approach is not part of all code arrangements, it is already the service provided by ELEXON for the BSC.
 - 4.15. We support Ofgem's desire to speed up the change process but we also believe Workgroups offer valuable insights. Drawing on our experience of operating the BSC change process, we believe workgroups provide two key purposes under the BSC. Firstly, workgroups provide expertise and knowledge, not always held by the code administrator, to assess and develop the best possible solution for the Proposer, or where they disagree with the Proposer, an alternative solution. This input can play a vital role in the development of modifications under the BSC, particularly for more complex changes. However, there will be occasions where this is not needed or can be provided by ELEXON as BSC Code Manager or can be just as easily sought via consultation. Secondly, Workgroups provide views and opinions, for consideration by the BSC Panel and, where not Self-Governance, Ofgem. These views could be just as easily sought from a consultation. We therefore believe the change process should be flexible, calling on the expertise of workgroups only when needed. When a workgroup is needed, they could focus on developing solutions, rather than providing views on the proposal. This would require fewer workgroups and speed up the assessment of change. Where adequate workgroup attendance cannot be achieved the code manager should have the flexibility to take on responsibility itself and seek advice and expertise as needed in order to avoid delay.
 - 4.16. Additionally, it would be beneficial to learn lessons from other existing codes and their change processes. Particularly, we believe Ofgem should try to limit the number of multiple alternative solutions that are created, which are permissible in some codes, as this can lead to unnecessary delays to the change process.

Question 4.4: Do you consider that a recommendation to the Authority should be made by the RECCo Change Panel, with reference to the REC relevant objectives, or based on a vote of REC parties?

- 4.17. We note that the REC change management process has been developed to address concerns raised in the CMA findings and the Ofgem Future Supply Market Arrangements project. We understand that the composition of the Change Panel will be based on Ofgem's preferred model for the REC Panel, which you outlined in the June 2018 consultation document. The composition will be guided by the principles that were detailed in 3.46 of that document. When required, we believe that it should be the RECCo Change Panel that provides recommendations to Ofgem. We would like to stress the importance of a balanced and independent Change Panel and an independent Chair, who has sufficient up to date knowledge to aid and facilitate Panel meetings.
- 4.18. We believe the balanced and independent nature of the Change Panel will more likely lead to recommendations and views that better support innovation, regulatory developments and policy objectives and therefore fits better with BEIS/Ofgem's policy aims.
- 4.19. Given that the REC Change Panel will be accountable to the RECCo Board we would welcome further information on how the Board will hold the Change Panel accountable in an open and transparent way.
- 4.20. We agree that, whatever the decision making route, the decision making at each stage should be based on the same criteria, perhaps utilising the Relevant Objective tests, as used in many other codes. Further, we believe there is merit in considering consistent criteria/objectives across the other codes so that a consistent and level playing field can be established.
- 4.21. Furthermore, we have a comment on paragraph 4.46 of the consultation. Paragraph 4.46 refers to 'REC Manager not being exposed to material financial liabilities that exceed the value of the

contract ensuring bids can be secured from organisations that operate under a not for profit (NFP) model'. To be clear, any NFP model which potentially faces liability will immediately become insolvent should such a liability arise, irrespective of the level of liability. Whilst we believe that this approach may be appropriate for a large liability/risk, it is not appropriate for a small risk and it is not necessarily the best outcome for the REC Parties. Under the BSC, and also under the settlement services contract with LCCC/ESC, ELEXON and its subsidiary EMRS, bear no liability and receive no margin or bonus. This has not prevented ELEXON from delivering the best in class service, as evidenced by Ofgem's own code administrator survey, for the second year running and delivering and operating a settlement system for EMR to time and budget. We would encourage Ofgem to consider the behaviours it wishes to encourage from a code manager and determine whether liability and damages claims, which will require the Manager to add a premium to its charges to take account of this risk, is really the most efficient structure.

Question 4.5: Do you, in principle, support the approach to performance assurance outlined?

- 4.22. ELEXON supports the approach to performance assurance outlined. In particular:
- 4.22.1. Provision of the tools to support performance assurance, which reflects the intention to strengthen accountability at all levels (paragraph 4.2) – access to timely and accurate knowledge / data, code provisions to facilitate action and clear requirements to take decisions where there is an indication of underperformance.
 - 4.22.2. The need for escalation to be a credible consequence of persistent (and/or demonstrably material) non-compliance with the code, so that parties believe sanctions will be applied and act on the incentive to minimise non-compliance. Ofgem will have a role in this to indirectly, or directly, support the REC Manager, the PAB and the RECCo Board in triggering liabilities or removal of rights. Whilst the more serious levels of the escalation process should only be commenced when there is a proportionately serious non-compliance, the sanction will lose its credibility if it is not perceived as likely.
 - 4.22.3. Developments of the requirements early so that the PAB can “hit the ground running”. The risk methodology will need to provide for evaluation if there is limited data about performance and the levels / types of non-compliance. Re-evaluation will be possible as the various sources of information (qualitative and quantitative) provide evidence that allows re-forecasting of risk (the potential for future errors) and application of mitigations. As the REC provisions are developed, opportunities for validation and reporting of key processes should be built in, without being overly prescriptive so the risk management framework can be responsive to new and changing risk areas. We'd note that the quality as well as timeliness of data from the data providers is important. An industry-wide data catalogue could be an opportunity to review data flows and use them to enhance knowledge about REC processes.
 - 4.22.4. Supporting REC parties and other stakeholders with understanding their obligations and being compliant, which should start within the market entry and testing stages.

5. REC v2.0: Enduring switching arrangements

Question 5.1: Would you support the development of a REC digitalisation strategy?

- 5.1. We can see many advantages to this proposal. Given advances in digital technology, website design and content management we see the REC as an opportunity to test and showcase the advantages of digitalisation for code management. We believe the key aims of the digitalisation strategy should be improving ease of access to the requirements of the code. Supporting REC

- parties with understanding the obligations specific to their role will be very important as we see more market entrants with little or no prior experience in the energy markets.
- 5.2. ELEXON is already looking into applying concepts similar to the ones outlined in paras 5.1-5.8 of the consultation (Digitisation and Digitalisation). We are trying to enhance in the BSC Performance Assurance Framework by identifying for each risk the key BSC and subsidiary document clauses pertinent to the risk area. Additionally, we are developing a visual representation of the risks to demonstrate where they appear within the 'meter-to-bank' settlement process.
 - 5.3. Digitalisation could also facilitate the code change process, by making connections within the code, and to other codes, explicit in the code metadata. It could also aid understanding by simplifying code visualisation and navigation.

Question 5.2: Do you agree that the draft Registration Services Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

- 5.4. Broadly yes, but with the need for clarification on the points below.
- 5.5. We note that the Supplier Agents referenced in para 1.3 exclude Meter Administrators (for Half Hourly unmetered supplies). It is not clear whether this is intentional.
- 5.6. Unlike in the gas arrangements, the BSC does not currently envisage de-registrations. There will always be a Supplier registered for a Metering System until such time as it is permanently disconnected. Our understanding from the design phase was that the CSS would provide the functionality to allow for de-registrations in both electricity and gas, but that the question of whether de-registration should be allowed in the electricity arrangements would be subject to further impact assessment. The Data Management Schedule appears to confirm this view, by including a 'dormant' status for gas, but not for electricity. However, Section 14 appears to allow electricity Suppliers to de-register. We are unclear if this is the result of a further impact assessment undertaken by Ofgem.
- 5.7. In para 1.110 we note that Ofgem is not intending to accommodate retrospective changes in the CSS design but "will consider the merits of retaining any current functionality for retrospectively amending data elements that are mastered in MPAS systems and which do not impact on the data held by CSS". The MPAS systems currently support retrospection (albeit via a manual process in the event that the data to be amended is not the latest for the Metering Point in question). This is an important feature from the point of view of Settlement data quality and one which we would like to see retained with appropriate control and reporting.

Question 5.3: Do you agree that the draft Address Management Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

- 5.8. Yes.

Question 5.4: Do you agree that the draft Data Management Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

- 5.9. Yes. The least change option for the management of Switching Domain Data for electricity, is for the BSCCo to continue to provide this service. We are currently reviewing how we hold, maintain and publish market participant data as part of our Foundation Architecture programme. This could create new opportunities for sharing market participant data more efficiently with industry services/systems, including the CSS. At the appropriate time, we would be happy to explore this with the CSS provider and REC Manager.

- 5.10. We also note that some data sets, such as Energy Company and Switching Reference Data, shown as mastered by the REC Code Manager will involve some duplication of BSC Party data currently mastered by the BSCCo. We accept that this is a natural consequence of a dual fuel Retail Energy Code, but would welcome the opportunity to work with the REC Manager to ensure that this process is sufficiently robust to ensure that the data sets remain aligned (and that there is an efficient governance process that doesn't duplicate operational/change by each code).

Question 5.5: Do you agree that the draft Interpretations Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

- 5.11. Yes. A minor observation is that Local Time references Greenwich Mean Time, where it should refer to UTC (a defined term).

Question 5.6: Do you agree that the draft Entry Assessment and Qualification Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

- 5.12. ELEXON agrees the drafting of the Entry Assessment and Qualification Schedule aligns with the Regulatory Design Principles. We would suggest that paragraph 1.1 of the Entry Assessment and Qualification Schedule is reworded to be clearer with regards to Market Participants other than Suppliers being deemed as Qualified. We wondered if Suppliers the only Market Participants required to send / receive registration information, hence no other MPs needing to be Qualified.

Question 5.7: Do you agree with our proposals that:

- **PAB, as part of its role in mitigating risk to consumers and the market, should provide information to the REC Manager on the specific risks that it wants to be mitigated and assured against through Entry Assessment and Re-Qualification;**
- **The Code Manager should have clear obligations to support the Applicant and coordinate with other code managers; and**
- **Suppliers that undertake a material change to their systems, processes or people should undertake Re-Qualification?**

- 5.13. With regards to the above questions:

- 5.13.1. Q5.7 a) – We agree that the PAB should confirm to the REC Manager which risks should be mitigated through Entry Assessment and Re-Qualification. We would envisage that the Code Manager would carry out an assessment as part of the wider prioritisation of risk, and consider the individual applicant's situation. The Code Manager would then report to the PAB on options and recommendation(s), against past precedent and lessons learned from previous applications for the PAB to use in its decision making.
- 5.13.2. Q5.7 b) – We agree that the REC Manager should have obligations to support the Qualification and re-Qualification Applicants, and to co-ordinate applications with other code managers, as appropriate. As noted in our previous response, we would support harmonisation of market entry and systems testing across the codes. For BSC Market Entry we liaise with MRA Entry Processes, and Meter Operator and Supplier applicants for BSC Qualification are asked to confirm they are signed up to the MOCOPA, or will procure Agents who are. We envisage that this would reduce costs and improve service. We would note that the BSC does not include the concept of Controlled Market Entry, and re-Qualification is not applicable to Suppliers. However, both BSC Qualification and re-Qualification are currently under review, so this could potentially change.

- 5.13.3. Q5.7 c) – In principle we support Re-Qualification for material changes, however we would refer back to the limitations we highlighted in our previous response, that it can be easy to avoid Re-Qualification. It is not advisable to publish a prescriptive list of triggers for Re-Qualification, as equally material changes could fall outside it, but too little prescription can result in eligible parties determining that no change meets the criteria. We note that 'Material Change' is capitalised indicating it is a defined term in the Entry Assessment and Qualification Schedule but not defined in the schedule, the REC main body or the Interpretations Schedule – is the intention to have a definition?
- 5.13.4. The benefits of Re-Qualification are predominantly when it is carried out before a change is implemented, as suggested in the Entry Assessment and Qualification Schedule 3.1 which states that suppliers 'must' Re-Qualify before a material change. If parties fail to do so, there should be appropriate consequences. The REC Manager and the PAB should demonstrate the benefits of the re-Qualification process, such that it should fit in with a standard good practice change management approach, act as additional assurance and provide useful structured guidance to mitigating risk

Question 5.8: Do you think that PAB and the REC Manager should work with service providers to identify and mitigate risks associated with material changes to their systems, processes or people?

- 5.14. We agree that the PAB and REC Manager should work with Service Providers on risks from material changes they make, wherever those changes could impact on the REC processes and Objectives and data quality.

Question 5.9: Do you agree that the draft Service Management Schedule meets the required standards set out in the Regulatory Design Principles including whether we have set out clear and workable roles and responsibilities for Market Participants, service providers and the Switching Operator that will support the effective operation of the new switching arrangements? If not, please describe how you think it should be improved?

- 5.15. We note that there are requirements in the BSC for processing reads (on the Supplier and DC) but not on obtaining reads. There is a standard for the proportion of energy settled on actual consumption data, but not to collect readings – although this appears to be the main cause of failure to achieve the energy on actual standards (more significant than failure to process reads that are obtained). So it might have a beneficial effect on Settlement performance to set targets for obtaining reads within the BSC.

Question 5.10: We also welcome views on the draft service levels set out in Appendix B of the draft Service Management Schedule.

- 5.16. We note that although Appendix B sets out the target fulfilment times for Critical, High, Medium and Low priority service requests, these are undefined in the Appendix and in the body of the schedule.
- 5.17. Furthermore, KPIs and SLs proposed in Appendix B of the draft Service Management Schedule may need to be refined to be more specific to ensure these support the critical nature of the service customers require. It may be prudent to include examples of the varying severity levels so that it is clear what the descriptions refer to as these are undefined at present. Resolution times may also need to be considerate of the supply chain model required to deliver the service.
- 5.18. On a more general note, we recognise the importance of Key Performance Indicators (KPIs) and Service Levels (SLs) within our contractual relationships. These are an important measurement to ensure a continual high level of service delivery and availability. KPIs and SLs form a key measurement in a supplier's performance and support development of the

relationship between the parties. SL and KPI reviews form part of the regular Service Delivery Meeting and feed into the Supply Relationship Management meetings as part of the robust contract governance at Elexon.

Question 5.11: Do you agree that the draft Switch Meter Reading Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

- 5.19. Broadly, yes, subject to some observations.
- 5.20. Given in the electricity market, under normal circumstances, the readings used for customer billing and those used for Settlement, there is considerable overlap between the REC and BSC processes, so the hand-offs between the two processes will need to be clearly defined. The process flow (to be added to page 12) following the consultation may help to clarify how the exception processes for missing readings and disputed readings will interact with the meter reading processes defined in the BSC. We would like to note that this situation may change with the implementation of market-wide HHS (Half-Hourly Settlement).
- 5.21. One example, is the exchange of time of use register readings in para 4.6. In the REC drafting this requirement is placed on the supplier who initiates a reading dispute, whereas in the BSC process the readings are exchanged as part of the standard reading process, so both suppliers would already have the necessary readings at the point that a dispute was raised.

Question 5.12: We welcome views on whether we should retain or amend the remit of the proposed Switch Meter Reading Exception Schedule beyond domestic consumers and electricity NHH consumers.

- 5.22. The current exception processes for switch readings under the MRA and BSC only apply to NHH consumers because there is no 'switch read', as such, for HH consumers. This would hold true for the REC and, as noted, the expected reduction in NHH Settlement will result in less use of the Schedule.

Question 5.13: Do you agree that we should move any requirements to obtain and process meter reads for settlement purposes into the BSC and UNC?

- 5.23. Yes. Reading validation and the use of readings to calculate Annualised Advance (AA) and Estimated Annual Consumption (EAC) values should remain in the BSC. Paragraph 5.57 suggests that there is a clean cutover point between agreeing readings (under REC governance) and the processing of readings for Settlement (under BSC/UNC governance). However, the REC drafting thus far appears to only address reading exceptions. If the 'happy path' reading process is to remain in the BSC (as is the case currently, with the disputed reading process under the MRA), there will be two points of entry into the BSC process. Consideration needs to be given to how the REC and BSC/UNC processes "dovetail", and we will be happy to assist Ofgem in the further development of these processes.
- 5.24. Additionally, we would like to note that the requirement to take readings in gas is already in the UNC, but there is no sanction if the levels of read submission are not met and indeed this appears to be a concern of the gas Performance Assurance Committee.

Question 5.14: We welcome views on whether the Switching Meter Reading Exception Schedule should make specific provisions for consumers with smart gas meters.

- 5.25. No views.

Question 5.15: Do you agree that the draft Debt Assignment Protocol Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

5.26. Yes.

Question 5.16: Do you agree that the REC should refer to existing security standards rather than develop separate and bespoke ones?

5.27. Yes.

Question 5.17: Do you agree that a consolidated PPM Schedule should be developed and given effect as part of REC v2.0?

5.28. Yes.

Furthermore, we have an observation on para. 5.73-5.74. Through our work on the BSC Settlement Risk around appointment of agents we understand that Agents can be appointed to sites that they can't service, e.g. as they are not able to work with the equipment (meter types, communications systems) on site. As meter technology innovates, even with DCC reading SMETS2 and adopted SMETS1, there is a risk that this issue can become more prevalent. If it does, there needs to be some mitigation actions.

6. REC v3.0: wider consolidation

Question 6.1: What do you think are the pros and cons of Model A and Model B and which do you think we should use to develop an Exceptions Schedule in the REC?

- 6.1. Model A has the advantage of allowing parties greater flexibility in how they manage their internal processes to deliver better consumer outcomes. However, successful outcomes for the consumer will depend to varying degrees on the actions of both losing and gaining suppliers, and often their respective agents. This is likely to make performance difficult to monitor. Poor experiences for the consumer are likely to be the result of the losing and gaining suppliers failing to reach agreement. Either or both suppliers could be culpable.
- 6.2. Retaining prescription of the supplier interoperability requirements in Model B and monitoring against the prescribed standards will allow for more targeted monitoring of points of failure. For this reason, we believe that Model B should be used to develop an Exceptions Schedule in the REC.

Question 6.2: Do you agree that the theft of gas and electricity provisions should be moved to the REC?

- 6.3. Yes, we agree that it would be appropriate to align the gas and electricity theft provisions in a single place and the REC will provide a suitable home for the retail aspects of theft. We recommend that any adjustments to Settlement to take into account unrecorded units identified by the retail processes should remain under the governance of the BSC and could be considered more fully under the UNC.
- 6.4. We believe that the introduction of the REC could prove an opportunity to ensure that there are robust arrangements between the work to identify and quantify theft and information feeding into gas Settlement on lost volumes and the assumptions in the Shrinkage model.

Question 6.3: Do you agree that the REC Manager should undertake the (re)procurement of any services due to commence at or after REC v2.0 implementation?

6.5. Yes.

Question 6.4: Do you support the establishment of an industry-wide data catalogue that all code bodies incorporate by reference into their own codes and collaborate on the maintenance of?

- 6.6. Partially. We support the establishment of an industry-wide data catalogue to support the functions defined by the REC. However, we believe that process design and data design are most effective when integrated and should preferably fall under the same governance arrangements. For example, having smart metering processes defined in the SEC supported by data flows defined in the REC could lead to inefficiencies in change management. Similarly, data that only serves to support Settlement functions would sit better under the BSC and UNC.
- 6.7. Therefore we would support the principle that each data flow is defined in one place only, rather than duplicated under multiple codes. Where a change to a process falls entirely under the governance of another code such as the BSC, this should not require a separate change under the REC to introduce or amend the data flows to support this process.
- 6.8. We would also suggest that a centralised data catalogue should provide the minimum specification appropriate to the relevant data flows, so that it does not become a “monolith” and constrain innovative methods of data exchange or competition in data networks.
- 6.9. Finally, our experience with running a Performance Assurance Framework (PAF) under the BSC has found that comprehensive, consistent, and timely access to data (such as data flows) allows risk management to be delivered more efficiently and effectively. A provision to allow the Code Manager access to live instances of the various data flows defined in the REC (with appropriate security provisions) would enable ad hoc analysis on potential risks and issues, as well as routine reporting on known areas of concern. We would see facilitating central access for assurance purposes as a useful enabler for effective risk management and would seek to ensure that lessons are learned from the gas performance assurance arrangements, where information is only provided in report form to the PAF Administrator.
- 6.10. We also note that with the recent establishment of the Energy Data Task Force, which aims to develop recommendations for how industry and public sector can work together to facilitate greater competition, innovation and markets through improving data availability and transparency. This work will have implications for the way data is made available and how it is governed which will potentially affect the REC.

Question 6.5: Do you think that the REC should have the responsibility of hosting the industry-wide data catalogue?

- 6.11. Any data objects that are common across retail, smart metering and Settlement would be best defined in a data catalogue hosted by the REC. Smart metering and Settlement data catalogues could then reference the retail catalogue.

Question 6.6: Do you think that an industry-wide data catalogue should be developed for REC v2.0 (to enable REC CSS messages to be incorporated from day 1) or should consolidation be undertaken as part of REC v3.0?

- 6.12. Establishing an industry-wide data catalogue is likely to be much more than a “paper exercise”, involving the selection, procurement and hosting of data catalogue software, the development of requirements for configuration management and publication, the migration of meta data from existing data catalogues and more. Targeting REC v2.0 could put the delivery of more essential aspects of the programme at risk.

Question 6.7: Subject to further development, assessment and consultation, would you in principle support aligning the gas and electricity metering codes of practice under common governance?

6.13. We would support the alignment of the metering codes of practice that currently form part of the MAMCoP and MOCOPA under common governance. We would note that the metering codes of practice under BSC governance could be more properly described as technical specifications for Settlement Meters (particularly the larger Meters used for power stations, Grid Supply Points and interconnectors etc). We assume that these metering codes of practice remain outside the scope of your considerations in this section.

Question 6.8: If yes, do you consider that the REC would be a suitable vehicle for such common governance?

6.14. Yes.

Question 6.9: Do you consider that the SMICoP should be incorporated into an industry code, and if so, do you agree that this should be the REC?

6.15. Yes, in the interests of code consolidation, it should be incorporated into an industry code. As it applies to gas and electricity and relates to consumer safeguards, rather than the technical installation of the smart meter, the REC would provide the best home.

7. The DCC

- 7.1. With respect to the DCC and margin, we note that the proposal is for a margin on internal costs of 12%, plus the ability to receive a further bonus. We are unclear of the risk that the DCC is taking to merit a return of 12%. We also note that there are several exceptions so that the DCC can claim circumstances were beyond its control and avoid losing margin. Without understanding what risks DCC is truly assuming 12% seems an excessive margin, which is much beyond anything that Ofgem allows under the network Price Controls.
- 7.2. We also understand that much work will be conducted by service providers to the DCC which will presumably include in their contracts the payment of damages to DCC for delay or poor performance. Clarification is requested that any such payments will be passed on to RECCo and not retained by DCC. It would not be appropriate for DCC to recover damages from its service providers but then not pass those to RECCo, whilst at the same time saying it was exempt from paying liabilities itself because it was beyond the DCC control.
- 7.3. We note that there is an open consultation on the DCC Price Control Consultation. We will share further considerations on the DCC margin, bonus and price control in our response that the consultation.

Question 7.1: Do you agree with the five incentivised milestones identified? Do you think any milestone should be given greater importance and therefore a larger proportion of margin placed at risk?

7.4. As stated above, we note that there is an open consultation on the DCC Price Control Consultation. We will share further considerations on the DCC margin, bonus and price control in our response that the above consultation.

Question 7.2: Do you agree with our proposals for the shape of the margin loss curves. Do you have any suggestions for other margin loss curves which may better incentivise DCC to achieve its milestones in a timely manner while encouraging quality?

7.5. No comment.

Question 7.3: Do you agree with our proposal for a potential recovery mechanism? Please give reasons. What types of criteria could be considered for demonstrating clear, transparent communication and what portion of lost margin should be available to be recovered?

7.6. No comment.

Question 7.4: Do you agree with our proposals for a discretionary reward where it can be demonstrated that DCC has gone above and beyond established requirements for REL Address matching? Please give reasons.

7.7. We see no reason for there to be any further discretionary bonus, in particular given the 12% margin that the DCC already receives and we would question, as outlined above, what risk is actually faced by the DCC in relation to the service provided.

8. The Way forward

Question 8.1: Do you agree with the proposed collaborative approach to consultation and modification report production?

- 8.1. Yes, we agree with the proposed collaborative approach to consultation and modification report production.
- 8.2. We share your concern with retaining end-to-end integrity and will support the collaborative process to help achieve this.
- 8.3. Paragraph 8.5 refers to BSC changes to replace references to the MRA with references to the REC "to the extent the relevant provisions will be migrated to that code". It notes that this will be one of the more "straightforward" modifications. However, paragraph 6.29 suggests that certain "residual MPAS provisions" could potentially be migrated to the DCUSA. This implies a two stage process for REC v3.0 drafting, in which additional MRA provisions are moved to the REC (along with the SPAA equivalents), followed by an assessment of the residual MPAS provisions and a decision on where these provisions should sit. It will only be when these decisions have been made, that the BSC changes can be finalised. As the BSC processes are the furthest "downstream" from the CSS processes, consequential changes to the BSC will have more "upstream" dependencies. As such, draft consequential changes to the BSC required for REC v3.0 may need to be provisional at March 2019, unless the REC changes and residual MRA decisions can be made in sufficient time.

Question 8.2: Would you in principle support REC v3.0 code consolidation being progressed as a SCR separate to, but run in parallel with, the Switching Programme SCR?

- 8.4. Yes. We agree that, given the number of industry codes impacted and the scope of the changes, an SCR will provide the most efficient way of delivering the REC v3.0 changes. The benefit of running separate SCRs is that, even if the two SCRs are run in parallel, there is a risk that REC v3.0 proves to be more challenging than anticipated. Separate SCRs will help ensure that the REC v3.0 changes do not putting closure of the Switching Programme SCR at risk.

Appendix 2 – Detailed comments on the main body of the REC draft (REC v1.0 Main Body dated 15 October 2018)

We would like to offer our initial comments on the REC v1.0 Main Body dated 15 October 2018. Most of these are based on our experience as a code manager but some are drafting/legal points.

Clause 3 (New Parties). We would suggest that further consideration be given to how the timescales of the accession procedure works. In particular, the timescales in paragraphs 3.3 and 3.7 mean that RECCo needs to have executed all Accession Agreements within 8 Working Days of a New Party applying to accede. Noting that the Accession Agreement needs to be executed as a deed (so must be signed by a director of RECCo) and we understand that the RECCo Board will be a wholly non-executive board, we would question how achievable this timescale will be as NEDs will typically only be readily available on the days that the RECCo Board meets.

Clause 7 (Code Manager). We believe clause 7.2 should be subject to clause 7.7 on the basis that if RECCo brings any of the REC Manager's functions in-house then the Code Manager will, by default, be a Party to the REC. Further, we would suggest that clarity is needed on the intention of this clause and whether it is to prevent any employees of a REC Party, or an affiliate of a REC Party, from being a non-executive director of the Code Manager. This may have implications for existing code administrators who are likely to tender for the Code Manager role and who may have non-executive directors appointed from within the industry (noting that this prohibition does not exist for most other code administrators).

Clause 8.2(c) (Protections for REC Board and REC Panel). This clause states that the indemnity to RECCo's directors does not apply to any amounts recovered under a policy of insurance in favour of RECCo. We would question how this caveat is intended to relate to directors' and officers' insurance, one of the functions of which is to underwrite the indemnity given by a company to its directors. If a liability arises in relation to a RECCo director's actions and RECCo is able to recover sums under its D&O policy, the director would potentially still be at risk because the indemnity in that director's favour would have to be dis-applied.

Clause 9.1 (Annual Budget and Cost Recovery). Given that this clause refers to the general administration costs of the REC Board and any costs or charges of consultants and advisers, we would suggest it would also be advisable that the clause explicitly refers to any fees payable to RECCo's non-executive directors.

Clause 9.5 (Annual Budget and Cost Recovery). We would question the phrase "within the limits defined in the approved budget", as this creates some ambiguity as to the extent to which the REC Board can amend its budget. It would appear that RECCo can amend its budget however it wishes provided that it does not exceed the total amount.

Clause 9.7 (Annual Budget and Cost Recovery). We are unclear as to the rationale for this clause. It appears to require RECCo to pay invoices to third parties in accordance with the payment terms set out in the contract with that third party. This seems superfluous. Additionally, we would suggest the use of a standard 30 calendar days (equivalent to 20 working days) period.

Clause 9.8 (Annual Budget and Cost Recovery). We query the reference, in the definition of C, to "costs incurred". For the purpose of clause 9.9 this would presumably need to be estimated costs or budgeted costs. As drafted, 9.9 seems to require the Code Manager to base invoices on (i) an estimate of RMPs in a specific month and (ii) costs actually incurred during this month. From a practical perspective this won't be possible as the RECCo invoices will be issued in advance of the month in which the costs are incurred. However, we would also suggest that it would be preferable, from the perspective of maintaining RECCo's financial stability that the reconciliation at the end of the year (clause 9.12) involves only refunds to REC Parties which would presumably be easier to achieve

if monthly invoices are based on estimated costs. We do have a concern that if the reconciliation mechanism in 9.12 is dependent on RECCo receiving payments from REC Parties, and these payments are not received, then there is a risk that RECCo cannot meet its obligations to those Parties that are due a refund.

Clause 9.10. (Recovery of Costs from Parties). We believe this clause should specify payment timescales to give suppliers some clarity. Five working days would be advised as it falls in line with other industry payment timescales.

Clause 9.12. (Recovery of Costs from Parties). We suggest refining timings as the proposed timings do not work. The assumption is the actual year costs will need to be audited before the reconciliation can take place. Timescales for reconciliation should be 20 working days from accounts sign off. Also, we pose a question on an overdraft being allowed.

Clause 14 (Limitation of Liability). We query whether there needs to be some further protections for RECCo under the REC's liability provisions. As things stand, we note that:

- RECCo is subject to the same liability regime as all other Parties;
- RECCo's only source of revenue is the funding it receives from REC Parties under the REC
- It is not clear that RECCo's recoverable costs would include liabilities it incurs to REC Parties
- It is a not-for-profit entity

We also note that RECCo will be in a somewhat different position vis-à-vis REC Parties than, for example, MRASCo under the MRA. In particular, under the MRA:

- MRASCo is not a party to the MRA (unlike RECCo under the REC)
- As we understand it, material actions/decisions under the MRA are taken by the MEC, the members of which are indemnified by MRA Parties, rather than MRASCo
- MRASCo itself is just a corporate vehicle for contracting with the MRA secretariat and doesn't play an active role in MRA governance. Under the REC, although actions and decisions are framed as decisions of the RECCo Board, the RECCo Board forms part of RECCo so RECCo Board decisions are invariably also decisions of RECCo.

As a consequence of the above, we believe that in this context RECCo is more comparable to BSCCo than MRASCo and so should arguably be subject to a similar liability regime. The BSC regime is comprised of two parts (1) BSCCo benefits from robust exclusions of liability; and (2) any liabilities BSCCo incurs are to be funded by BSC Parties. This is obviously also underwritten by commercial insurance but the BSC regime does have the benefit of ensuring that it is possible for particularly disadvantaged BSC Parties to recover losses from BSCCo and that there is no consequential risk of BSCCo becoming insolvent.

Clause 15.2. There are a few questions that need to be clarified:

- Are these compensation costs to be billed out with the charges in 9.8?
- How is the compensation payments data communicated to RECCo, and in what timescales?
- Will the schedule timescales allow for integration with billing cycle?

Clause 16 (Events of Default). In our experience, having clear events that trigger default is very important because, when a Party is performing in a way that potentially brings risk to other Parties, it is essential that swift action be taken to prevent or limit that risk. We would therefore suggest that the principle of plain English drafting is applied to the REC's events of default. In particular:

- The concept of 'material terms and conditions' is vague – this will require the Party enforcing the breach to take a view on whether a provision of the REC is material and this will not always be clear
- There may also be an opportunity to clarify what is meant by persistent breach i.e. does this mean a breach which is continuous for a certain period (if so for how long?) or does this

mean repeated breach of the same provision. If the latter then the 20 day cure period should be reconsidered as it may not be possible to ascertain whether the defaulting behaviour has been cured within this period

- 16.1(d) is not particularly clear and only appears to cover circumstances where an administrator is appointed pursuant to a court order. 16.1(e) appears to allude to the situation where a company appoints an administrator using the out of court route but we would suggest this is explicitly referred to for clarity. Further, it isn't clear that an event of default would be triggered if a floating charge holder followed the out of court route to appoint an administrator.
- Under the BSC we have a lot of recent experience whereby we have been aware that a BSC Party has ceased trading and its insolvency is inevitable but none of the formal insolvency events of default have been triggered. In these circumstances we rely on the Party confirming to us in writing that it has admitted its inability to pay its debts as they fall due (as a distinct event of default from the Insolvency Act definition of inability to pay debts as they fall due). This enables us to take swift action to protect BSC Parties which would otherwise be delayed until formal publication that that Party was in administration. We would recommend including a similar trigger or possibly even an event of default that is triggered when a Party announces that it has ceased to trade (which would be less reliant on the Party itself confirming it was in default which may not always be forthcoming).

Clause 23.2 (Derogations). We would suggest replacing the 10 Working Day timescale for consideration by the REC Performance Assurance Board with a requirement for the latter to consider at its next meeting otherwise an ad hoc PAB meeting may need to be convened on every occasion that there is a derogation application.

General comments. The drafting of REC v1.0 also raises a number of general questions as well:

- If parties do not pay, is there a mutualise process (ie the remaining parties pick up the costs) If so, what are the rules, and calculations? Is this the bracketed note in 10.2?
- Are there any invoice billing thresholds? i.e. minimum amount before an invoice is raised.
- If parties do not pay, will there be any form of Late Payment register that can be published?
- We suggest that it needs to be made clear that payments should be made by electronic means; no cheque payments. Also, we believe a clarification on whether direct debits are allowed will be helpful.
- Is the Working Day 09:00 – 17:30 applicable to payments as well? In the modern banking age, payments can be made out till 10pm. Will they be classed as late for interest/default purposes if they pay on the due date but after 17:30?