

Dated

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The Retail Energy Code

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VERSION CONTROL

Version	Date of Release	Change Proposal Number	Change Proposal Title	Affected Clauses/Schedules	Effective Date
<u>v0.3</u>	<u>06/12/18</u>	<u>N/A</u>	<u>N/A – baselined version of REC main body (subject to later designation)</u>	<u>2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 26, Schedule 1: Interpretation.</u>	<u>N/A</u>
<u>V0.2</u>	<u>16/10/18</u>	<u>N/A</u>	<u>N/A – revised version of REC main body</u>	<u>All</u>	<u>N/A</u>
<u>v0.1</u>	<u>05/06/18</u>	<u>N/A</u>	<u>N/A – initial consultation on REC drafting</u>	<u>All</u>	<u>N/A</u>

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 ORIGINAL PARTIES

~~2.1 The Original Parties entered into an Original Accession Agreement before the date of this Code. 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 CSS Provider, the CSS Systems Integrator, the SI Provider or 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~~

~~(a)(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 ANEW PARTYIES

~~3.1 The Original Parties entered into an Original Accession Agreement before the date of this Code. The following categories of person are eligible to become a Party: (a) the DCC (as CSS Provider); (b) RECCo (c) Energy Suppliers; (d) Gas Transporters; and (e) Distribution Network Operators.~~

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](#)~~Corporate~~ 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.

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 CSS PROVIDER'S CHARGES FOR THE CENTRALISED REGISTRATION SERVICE

- ~~10.1 The CSS Provider shall invoice RECCo for the CSS Provider's charges for the Central Switching Service monthly in arrears, to be payable 20 Working Days after receipt of the invoice (together with VAT, if applicable).~~

~~10.2 Energy Suppliers shall reimburse RECCo for the CSS Provider's charges for the Central Switching Service in accordance with Clause 9, on the same basis as applies to costs incurred in accordance with an approved budget.~~

~~[Intentionally blank This Clause 10 will be amended in due course to provide for a methodology via which RECCo recovers the CSS Provider's charges for the Central Switching Service from Energy Suppliers. This may include credit assessments and provision of credit support where necessary. RECCo might be required to seek credit insurance. In any event, any bad debt would be socialised.]~~

11 CHANGE CONTROL

11.1 Until such time as the Change Management Schedule comes into effect, ~~which is expected to be at REC v2.0~~, changes to this Code 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.

12 RECCO STEP-IN RIGHTS FOR CSS PROVIDER CONTRACTS

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

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

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

13 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 ~~13.12~~~~13.12~~~~13.10~~ apply in respect of Services IPR. Services IPR refers to the Intellectual Property Rights which are essential for the DCC (or its contractors) to provide the Centralised Registration Services and/or essential for the Users to receive created by, arising from or that are otherwise associated with the Centralised Registration Switching Services (but excluding in both cases commercially available off-the-shelf software such Intellectual Property Rights being known as the Services IPR). The Services IPR which is not owned by the DCC is referred to as Third Party IPR.
- 13.6 As between the ~~DCCGSS Provider~~ and each User, the Services IPR shall be owned by the DCCGSS Provider (and no User shall make any claims in respect of the Services IPR).
- 13.7 The ~~DCCGSS Provider~~ hereby grants to each User a royalty-free, non-exclusive, non-transferable licence to use the Services IPR for the sole purpose of receivusing the Centralised Registration Switching Services (subject to Clause 13.9). Each licence granted by the ~~DCCGSS 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 receivusing the Centralised Registration Switching Services (and that the Services IPR is used for no other purpose).
- 13.8 The ~~DCCGSS 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.

~~13.8~~13.9 If the DCC 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 DCC 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).

Use of IPR by Successors

13.10 This Clause 13.10 applies to the DCC in all of its activities of negotiating, entering into, managing and developing the External Service Provider Contracts. The DCC 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
- (a)(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.

~~13.9~~13.11 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 ServicesCSS Provider 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 has created or 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 PartyServices IPR relating to the services for which the DCC is no longer the providerwhich the DCC is licensed to use and which the successor CSS Pprovider needs to continue provision of the relevant Centralised RegistrationSwitching Services, the DCC shall ensure that the successorCSS Pprovider is granted a licence to use such Intellectual Property Rights on the same terms as those that had applied to the DCCas CSS Provider (but excluding Intellectual Property Rights which the Authority agrees in writing do not need to be subject to this Clause 13.11(b)).

13.12 The DCC may not be party to any External Service Provider Contract ~~(as defined in the DCC Licence)~~ which does not expressly provide for or permit the licensing envisioned by Clause ~~13.11(b)~~~~13.11(b)~~~~13.9(b)~~, save where the Authority agrees in writing that the Intellectual Property Rights in question do not need to be subject to Clause 13.11(b).

General

~~13.40~~13.13 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 Clauses 9;

~~(e)~~(d) to pay its share of the charges for the Centralised Registration Service under ~~Clause~~and 10;

~~(d)~~(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

~~(e)~~(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.

~~14.3~~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.

~~14.4~~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.

~~14.5~~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~~14.4); 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.

~~14.6~~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 PartyReceiving 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 EntityParty's Confidential Information. The exceptions to this obligation are set out in Clause ~~18.318.318.2~~.

Exceptions to Confidentiality Obligation

- 18.3 A PartyReceiving Entity shall be entitled to Disclose or use another Disclosing EntityParty's Confidential Information if and to the extent that one or more of the following apply:
- (a) the PartyReceiving 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 EntityParty seeking to rely upon this Clause ~~18.318.318.2~~, is in the public domain or was acquired by that Receiving EntityParty in circumstances in which this Clause 18 does not apply;
 - (d) the Confidential Information, after it is furnished to the Receiving EntityParty seeking to rely upon this Clause ~~18.318.318.2~~:
 - (i) is acquired by that Receiving EntityParty in circumstances in which this Clause 18 does not apply;

- (ii) is acquired by that [Receiving EntityParty](#) 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 EntityParty](#) 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 EntityParty](#) is aware of such breach;

- (e) the [Receiving EntityParty](#) 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 EntityParty](#); or
- (f) the [Receiving EntityParty](#) Discloses the Confidential Information to its Affiliates, or its or its Affiliates' employees, directors, agents, consultants and professional advisers (subject to Clause ~~18.518.518.4~~).

18.4 Confidential Information which a [Receiving EntityParty](#) is permitted to Disclose or use pursuant to Clause ~~18.318.318.2~~ 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 EntityParty](#) shall adopt procedures within its organisation for ensuring the confidentiality of the Confidential Information which it is obliged to preserve as confidential under Clause ~~18.218.218.1~~. These procedures include the following:

- (a) the Confidential Information will be disseminated within the [Receiving EntityParty](#) only on a "need to know" basis;
- (b) employees, directors, agents, consultants and professional advisers of the [Receiving EntityParty](#) in receipt of Confidential Information will be made fully aware of the [Receiving EntityParty](#)'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 EntityParty](#) shall take all reasonable steps to ensure that any person referred to in Clause ~~18.3(f)18.3(f)18.2(f)~~ and ~~18.5(b)18.5(b)18.4(b)~~ to whom the [Receiving EntityParty](#)

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 EntityParty](#) shall procure that each of its Affiliates observes the restrictions in Clauses ~~18.218.218.4~~ to ~~18.618.618.5~~ as if in each such Clause there was substituted for the name of the [Receiving EntityParty](#) 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 ~~18.218.218.1~~ to ~~18.618.618.5~~ 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 [UserEnergy Supplier that is a data controller](#), the CSS Provider may act in the capacity of data processor on behalf of that [UserEnergy Supplier](#) in respect of the personal data for which that [UserEnergy Supplier](#) is the data controller.
- 20.3 The personal data which the CSS Provider will process as a data processor on behalf of [UsersEnergy Suppliers](#) will be the personal data which is included within messages sent and

received via the Switching Network. The purpose of such processing is to provide the 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 [UserEnergy-Supplier](#) in respect of the personal data for which that [UserEnergy-Supplier](#) is the data controller, to:

- (a) only process that personal data for the purposes permitted by this Code (subject to paragraph (c) below);
- (b) undertake the processing of that personal data in accordance with this Code (which represents the documented instructions of the [UserEnergy-Supplier](#)), and not in a manner that the CSS Provider knows (or should reasonably know) is likely to cause the [UserEnergy-Supplier](#) to breach its obligations under the Data Protection Legislation (subject to paragraph (c) below);
- (c) if the CSS Provider is aware that, or is of the opinion that, any requirement of paragraph (a) or (b) above breaches the Data Protection Legislation, the CSS Provider shall immediately inform the [UsersEnergy-Suppliers](#) of this giving details of the breach or potential breach (unless the CSS Provider is prohibited from doing so by any of its other obligations under Law);
- (d) only process that personal data for so long as it is required to do so by this Code;
- (e) ensure that the CSS Provider's personnel who are authorised to process personal data are under enforceable obligations of confidentiality and are required only to process that personal data in accordance with the CSS Provider's obligations under this Code;
- (f) (having regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of data subjects) implement appropriate technical and organisational measures to protect that personal data against accidental or unlawful loss, destruction, damage, alteration or disclosure;
- (g) not transfer or process that personal data outside the European Economic Area;
- (h) (taking into account the nature of the processing) assist the [UserEnergy-Supplier](#) with its obligations to comply with data subjects' requests and data subjects' rights under the Data Protection Legislation in respect of that personal data through, insofar as is possible, the use of appropriate technical and organisational measures;
- (i) (taking into account the nature of the processing and the information available to the CSS Provider) assist the [UserEnergy-Supplier](#) in ensuring compliance with the

~~UserEnergy Supplier~~'s obligations in Articles 32-36 of the General Data Protection Regulation;

- (j) provide reasonable assistance to the ~~UserEnergy Supplier~~ in complying with any enquiry made, or investigation or assessment initiated, by any Competent Authority in respect of the processing of that personal data pursuant to this Code;
- (k) promptly notify the ~~UserEnergy Supplier~~ in the event that the CSS Provider processes any of that personal data otherwise than in accordance with this Code (including in the event of unauthorised access to such personal data); and
- (l) permit RECCo (on behalf of ~~UsersEnergy Suppliers~~ 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 ~~UserEnergy Supplier~~ hereby gives its general authorisation to the CSS Provider to engage sub-processors who are appointed in accordance with the DCC Licence. Each ~~UserEnergy Supplier~~ hereby confirms that it does not object to the engagement by the CSS Provider of any sub-processors engaged in accordance with the DCC Licence.

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) ~~no~~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 ~~asa~~ 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 date of its designation by the Authority.
- 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.