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# Main Body

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**Dated 28 February 2019**

The [Retail Energy Code](#)

## Version Control

Version	Date of Release	Change Proposal Number	Change Proposal Title	Affected Clauses/Schedules	Effective Date
1.0	28/02/2019	REC v1.0 – Designated Version			28/02/2019
1.1	15/01/2021	REC v1.1			15/01/2021
1.2	n/a	Further Consultation			N/A
2.0	01/09/2021	Further consultation Updates			01/09/2021
2.1	04/11/2021	R0003	Market-wide Half Hourly Settlement Implementation	Main Body (Clause 5.24)	4/11/2021
3.0	18/07/2022	R0041	Switching SCR Modification		18/07/2022
3.1	03/08/2022	R0046A	Governance of Data under the REC (Alternative)	Clauses 19 and 20	3/08/2022
3.2	04/11/2022	R0036	Extensive Housekeeping Amendments		04/11/2022
3.3	01/04/2023	R0025	Service Provider Performance Charges (DCC)	Clause 9.25	01/04/2023
3.4	30/06/2023	R0114	Housekeeping amendments	Removal of Clauses 11.1, 11.2 and 11.3	30/06/2023
3.5	03/11/2023	R0138	Combined Progression Of Change Proposals R0058, R0104 and R0129	Clauses 5.3, 16.1,16.4,	03/11/2023
3.6	28/06/2024	R0064	Splitting out MEM and installers as REC Parties	Clause 2.1	28/06/2024

## 1 Definitions and Interpretation

1.1. The defined terms and other rules of interpretation used in this [Code](#) are set out in the [Interpretations and Definitions Schedule](#).

## 2 Categories of [Parties](#)

2.1. The following categories of person are eligible to become a [Party](#):

- (a) the [DCC](#);
- (b) [RECCo](#);
- (c) [Energy Suppliers](#);
- (d) [Gas Transporters](#);
- (e) [Distribution Network Operators](#);
- (f) [Metering Equipment Managers](#);
- (g) [Approved Meter Installers](#); and
- (h) [Electricity Metering Operatives](#).

2.2. The [DCC](#) is primarily a [Party](#) for the purpose of providing the [Centralised Registration Service](#) in accordance with Condition 15 (Incorporation, delivery and provision of the [Centralised Registration Service](#)) of the [DCC Licence](#), in which context the [DCC](#) is referred to as the [CRS Provider](#). The [CRS Provider](#) encompasses the following roles: the [CSS Provider](#), the [SI Provider](#), the [Switching Operator](#) and, until the end of the [Post Implementation Period](#) only, the [Core Systems Assurance Provider](#) and [CSS Systems Integrator](#) (as such roles are defined in the [Interpretations and Definitions 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 [Interpretations and Definitions Schedule](#).

2.4. [REC Service Providers](#) (other than [Switching Data Service Providers](#)) cannot become a [Party](#), but [RECCo](#) is responsible for ensuring their compliance with this [Code](#), as described in Paragraph 2 of the [Interpretations and Definitions](#)

[Schedule](#).

2.5. Other organisations 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 [Interpretations and Definitions Schedule](#); and
- (b) some organisations which are not [Parties](#) are able to obtain access to [REC Services](#) by entering into an [Access Agreement](#), as further described in the [Qualification and Maintenance Schedule](#).

### 3 Becoming a [Party](#)

3.1. The [Original Parties](#) entered into the [Original Accession Agreement](#) on or before the effective date of this [Code](#).

3.2. A person wishing to be admitted as a [New Party](#) shall apply to the [Code Manager](#) for admission on the application form issued by the [Code Manager](#) from time to time, and shall deliver such form to the [Code Manager](#) together with any other documents referred to in the form.

3.3. Within 5 [Working Days](#) of receipt of the application, the [Code Manager](#) shall notify the applicant, the [REC Board](#) and the [Authority](#) that either:

- (a) the applicant is to be admitted as a [Party](#); or
- (b) that the applicant is not eligible to become a [Party](#) (as described in Clause 2.1), 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 the applicant an [Accession Agreement](#) 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 RECCo and the REC Board

### RECCo

- 5.1. RECCo shall be established in accordance with the Company Governance Schedule.
- 5.2. RECCo is a Party to this Code, but is not entitled to become a REC Service User.
- 5.3. RECCo is responsible for procuring the REC Services (including the Centralised Registration Services) from the REC Service Providers (including the CRS Provider). RECCo is then responsible for supplying the REC Services (including the Centralised Registration Service) to the REC Service Users in accordance with this Code. Any and all provision of the REC Services to the REC Service Users under this Code (including the Centralised Registration Service procured by, and from, the CRS Provider) is undertaken solely as procured from the REC Service Providers by RECCo under this Code. It is acknowledged that the REC Services are supplied to RECCo and used for the purposes of its business as the central administrator of this Code and the REC Services. Acting via the REC PAB, RECCo will take action against the REC Service Providers where they fail to provide the REC Services in accordance with this Code.

### REC Board Objectives

- 5.4. The REC Board 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 Parties or Users or any classes of Party or User; and
  - (b) that the REC Board conducts its affairs in an open and transparent manner.
- 5.5. The REC Board shall have the power to do anything necessary for, or reasonably incidental to, the governance, management, operation or other purposes of this Code.

### REC Board Appointments

- 5.6. The REC Board shall initially comprise those willing individuals designated by the Authority at or around the date of this Code's designation.
- 5.7. Thereafter, the size and composition of the REC Board shall be determined by the Nominations Committee, subject to approval of an individual's appointment in

accordance with Clause 5.9.

5.8. The [REC Board](#) shall establish the [Nominations Committee](#) as a [Sub-Committee](#). The [Nomination Committee](#) shall be responsible for:

- (a) determining (in consultation with the [Authority](#)) the skill sets, capabilities and areas of specialism required for each [REC Board](#) appointment, including so as to reflect the interests of different classes of [REC Service User](#) and [Consumers](#) and so as to enable the [REC Board](#) to deliver its strategy and business plan;
- (b) determining whether it is necessary to pay remuneration for the role;
- (c) leading the process for [REC Board](#) appointments, including the selection and evaluation of candidates; and
- (d) making recommendations on [REC Board](#) appointments.

5.9. An individual shall be appointed as a [REC Board Member](#) if the individual is recommended for appointment by the [Nominations Committee](#), and:

- (a) until the first point in time following this [Code](#)'s designation that the majority of the [REC Board Members](#) are not employees of [Parties](#) (or employees of [Affiliates](#) of [Parties](#)), the individual's appointment is approved by the [Authority](#); or
- (b) following the first point in time following this [Code](#)'s designation that the majority of the [REC Board Members](#) are not employees of [Parties](#) (or employees of [Affiliates](#) of [Parties](#)), the individual's appointment is approved by the [Parties](#) via a simple majority of the [Parties](#) who cast a vote, on the basis that each [Party](#) gets one vote (such vote to be held within 3 months of the [Nominations Committee](#)'s recommendation); and pending such vote, the individual's appointment is approved by the [REC Board](#).

#### **Vacation of Office by a [REC Board Member](#)**

5.10. Each [REC Board Member](#) shall retire 2 years after his or her appointment (plus or minus up to 2 months, as determined by the [REC Board](#) at the time of their appointment). A retiring [REC Board Member](#) may be re-appointed in accordance with Clause 5.9.

5.11. Each [REC Board Member](#) may resign his or her office by notice in writing to the [REC Board](#).

5.12. Each [REC Board Member](#):



- (a) may be removed from office by a [REC Board](#) decision if he or she fails to attend two consecutive [REC Board](#) meetings without good reason;
- (b) may be removed from office in accordance with any contract entered into by the [REC Board Member](#) with [RECCo](#);
- (c) shall be removed from office as the result of a vote of no-confidence by the [Parties](#), which shall require the support of at least 75% of the [Parties](#) who cast a vote, on the basis that each [Party](#) gets one vote (such vote to be organised by the [Code Manager](#) where requested by a [Party](#));
- (d) shall be removed from office where so directed by the [Authority](#); and
- (e) shall automatically be removed from office if he or she becomes prohibited by [Law](#) from being a director of a company.

### **REC Board Chair**

- 5.13. The [REC Board Chair](#) shall be the [REC Board Member](#) identified as such at the time of his or her appointment.
- 5.14. The [REC Board Chair](#) shall preside at every meeting of [REC Board](#). If the [REC Board Chair](#) is unable to be (or is not) present at a meeting, a person selected by a simple majority of the attending [REC Board Members](#) shall act as the [REC Board Chair](#) for that meeting.

### **REC Board Procedure**

- 5.15. The [REC Board](#) shall determine its procedure as it sees fit, subject to the express requirements of this [Code](#).
- 5.16. The [REC Board Chair](#) may exclude a [REC Board Member](#) from part of a [REC Board](#) meeting where the [REC Board Chair](#) considers that the matters under discussion present a conflict of interest for the [REC Board Member](#).

### **Meetings**

- 5.17. The [REC Board](#) shall hold meetings at such times as it may decide. Each meeting of the [REC Board](#) shall be convened by the [Code Manager](#) on at least 5 [Working Days](#)' notice (or such shorter period as the [REC Board Chair](#) may approve).
- 5.18. Each [REC Board](#) meeting shall be held at the venue and/or via the electronic means determined by the [REC Board](#) from time to time.

- 5.19. A representative of the [Authority](#) shall be entitled to attend and speak (but not vote) at each [REC Board](#) meeting.

### **Voting and Quorum**

- 5.20. Each [REC Board Member](#) shall be entitled to attend and speak at every meeting of the [REC Board](#).
- 5.21. The quorum for a [REC Board](#) meeting shall be 50% of the total number of [REC Board Members](#), but excluding from such number any and all who have been excluded from the meeting by the [REC Board Chair](#) due to a conflict of interest.
- 5.22. Each decision of the [REC Board](#) shall be by simple majority of those [REC Board Members](#) attending the relevant meeting.

### **Minutes**

- 5.23. The [Code Manager](#) shall circulate copies of the minutes of each [REC Board](#) meeting to each [REC Board Member](#) and the [Authority](#) as soon as practicable (and in any event within 5 [Working Days](#)) after the relevant meeting has been held.
- 5.24. The [Code Manager](#) shall publish on the [REC Portal](#) a summary of the business conducted at each [REC Board](#) meeting.

### **Market-wide Half-Hourly Settlement Implementation**

- 5.25. [RECCo](#) shall (and the [REC Board](#) shall ensure that [RECCo](#) shall) comply with the obligations expressed to apply to [RECCo](#) (either specifically or generically as a category of participant) under section C12 (Market-wide Half-Hourly Settlement Implementation) of the [Balancing and Settlement Code](#).

## **6 [Change Panel](#) and Other [Sub-Committees](#)**

- 6.1. The [REC Board](#) may establish such sub-committees from time to time and consisting of such persons as it considers desirable (referred to as [Sub-Committees](#)).
- 6.2. The [Change Panel](#) and the [REC Performance Assurance Board](#) are [Sub-Committees](#). The [REC Board](#) shall, at a time it considers appropriate, establish the [Change Panel](#) and the [REC Performance Assurance Board](#). Until those [Sub-Committees](#) have been established, the functions, duties and powers assigned to them under this [Code](#) shall be performed and exercised by the [REC Board](#).

- 6.3. The [REC Board](#) may establish a [Sub-Committee](#) on a standing basis or for a fixed period or a finite purpose. The [REC Board](#) may decide that a [Sub-Committee](#) is to be dissolved (save for those expressly required by this [Code](#)).
- 6.4. Each [Sub-Committee](#) expressly required by this [Code](#), shall perform the functions and duties and have the powers expressly assigned to it by this [Code](#).
- 6.5. Each [Sub-Committee](#) shall be subject to such written terms of reference and such procedures as the [REC Board](#) may determine (as long as those terms of reference do not conflict with the other requirements of this [Code](#)).
- 6.6. The [Authority](#) shall be entitled to send a representative to any meeting of any [Sub-Committee](#), who shall be entitled to speak but not to vote on any issue.

## 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](#), an employee of a [Party](#), or an employee of 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 any [Sub-Committee](#)) 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) convene and minute meetings of the [REC Board](#) (and its [Sub-Committees](#)) in accordance with Clauses 5 and 6;
  - (c) circulate all relevant notices, papers and minutes of the [REC Board](#) (and its [Sub-Committees](#)) in accordance with Clauses 5 and 6; and
  - (d) manage the process for progressing [Change Proposals](#) in accordance with the [Change Management Schedule](#).
- 7.6. The [REC Board](#) shall be responsible for ensuring that the [Code Manager](#) undertakes its tasks and functions in respect of this [Code](#). In particular, the [REC Board](#) shall (subject to Clause 7.7) ensure that the arrangements under which the [Code Manager](#) is appointed oblige the [Code Manager](#) to undertake such tasks and functions on terms no less onerous than those provided for by this [Code](#).
- 7.7. [The REC Board](#) may, where consistent with the [REC Objectives](#), decide not to outsource some or all of the [Code Manager](#) functions to a service provider, and may instead decide that some or all of those functions shall instead be performed by [RECCo](#). Where this is the case, the relevant references in this [Code](#) to the [Code Manager](#) will be interpreted as references to [RECCo](#).
- 7.8. [Until](#) such time as the [REC Board](#) appoints a [Code Manager](#) in accordance with Clause 7.1 and/or decides that some or all of the [Code Manager](#)'s functions shall instead be performed by [RECCo](#) in accordance with Clause 7.7, such functions may on an interim basis be performed by the [Authority](#) or a person nominated by the [Authority](#).

## 8 Protections for [REC Board](#) and [Sub-Committees](#)

- 8.1. [RECCo](#) shall indemnify, and keep indemnified:
- (a) each director on the [REC Board](#);
  - (b) the [REC Board Chair](#);
  - (c) each [REC Board 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

### Strategy

- 9.1. The [REC Board](#) shall, in advance of each [Financial Year](#), prepare a strategy setting out the key activities which [RECCo](#) expects to carry out during that [Financial Year](#) and, to the extent reasonably foreseeable, in each of the two subsequent [Financial Years](#). Such strategy shall be prepared on the basis of the functions and duties assigned to [RECCo](#) and/or the [REC Board](#) under or pursuant to this [Code](#), and other activities considered by the [REC Board](#) to further the [REC Objectives](#).
- 9.2. By no later than 15 January in advance of each [Financial Year](#), the [REC Board](#) shall publish on the [REC Portal](#) a draft of the [RECCo](#) strategy, including indicative costs for the key activities for the new [Financial Year](#) and, to the extent reasonably foreseeable, the two subsequent [Financial Years](#). The [REC Board](#) shall invite comments on the draft strategy from [Parties](#) and other interested stakeholders, including the [Authority](#). The [REC Board](#) shall allow at least 15 [Working Days](#) from publication for comments.
- 9.3. After considering all comments received within the specified period, and with particular regard to any that may be submitted by the [Authority](#), the [REC Board](#)

shall determine its final strategy for the [Financial Year](#). The [REC Board](#) shall use the strategy to help determine its budget for the next [Financial Year](#) in accordance with Clause 9.5.

### **Recoverable Costs**

- 9.4. [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](#) (save to the extent covered by the charges recovered under Clause 10 or the [Performance Assurance Schedule](#)). Without limitation, [RECCo](#) shall be entitled to recover:
- (a) the charges and other costs and expenses under or in relation to each of its contracts with the [REC Service Provider](#)s and the [Code Manager](#);
  - (b) any general administration costs and expenses associated with the [REC Board](#) (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**

- 9.5. By no later than the 15th [Working Day](#) of February, before the commencement of each [Financial Year](#), the [REC Board](#) shall circulate to all [Parties](#) its agreed 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 in delivering the strategy determined pursuant to Clause 9.3 for that [Financial Year](#).
- 9.6. In preparing the budget the [REC Board](#) shall adopt a zero-based budgeting methodology, which clearly distinguishes between those costs items which the [REC Board](#) consider at its discretion will further the [REC Objectives](#), and costs that are necessary in order to comply with legally binding obligations to which [RECCo](#) is committed in accordance with this [Code](#).
- 9.7. Any [Party](#) may appeal the decision of the [REC Board](#) to approve the budget to the [Authority](#) within 10 [Working Days](#) of the publication of the budget pursuant to Clause 9.5. Any appeal brought under this Clause 9.7 shall be specific to one or more individual cost items, not to the budget as a whole.

9.8. The [Authority](#) may allow an appeal where the [Authority](#) is satisfied that the cost item in question:

- (a) was not consulted upon in accordance with Clause 9.2 or the [REC Board](#) failed to have reasonable regard to the consultation responses submitted;
- (b) is not a legitimate item of expenditure for the [REC Board](#);
- (c) is a manifestly inappropriate provision for the activity in question, and there are insufficient safeguards in place to ensure that the actual costs incurred will be efficient; or
- (d) will, or is likely to, prejudice unfairly the interests of one or more [Parties](#), or cause them to be in breach of this [Code](#), the [Energy Licences](#) and/or [Law](#).

9.9. Where the [Authority](#) allows an appeal of the budget, the [Authority](#) may:

- (a) refer the particular cost item back to the [REC Board](#) for further consideration and, if appropriate, to pursue a revision to the prevailing budget;
- (b) revise the provision for that budget item to a figure which it reasonably considers to be a better forecast of the cost likely to be incurred, whether that is higher or lower than the [REC Board](#) budgeted figure; or
- (c) direct the [REC Board](#) to remove that cost item entirely, and make suitable revision to its annual budget and strategy.

9.10. Pending resolution of any appeal, [RECCo](#) shall not be entitled to incur costs in respect of the cost item that is subject to appeal, except insofar as necessary in order to comply with legally binding obligations which it has previously incurred in accordance with this [Code](#) (which includes [RECCo](#)'s obligation to pay for the [Centralised Registration Service](#) in accordance with Clause 9.25).

### **Amendments to Budgets**

9.11. The [REC Board](#) may make revisions to the approved budget for a [Financial Year](#) within the limits defined in the approved budget. For revisions to the approved budget of greater than those limits, the [REC Board](#) shall consult with [Parties](#) and the [Authority](#), and the appeal process set out in Clauses 9.7 to 9.10 shall apply.

### **Publication of Annual Budget**

9.12. The [REC Board](#) shall publish on the [REC Portal](#) 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**

9.13. 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](#)**

9.14. Each [Energy Supplier](#) shall be liable to fund the costs incurred by [RECCo](#) in respect of each [Financial Year](#) as follows:

Where:

MP = the average number of [RMPs](#) for which the [Energy Supplier](#) was the [Registered Supplier](#) on the 15<sup>th</sup> day of each month of the [Financial Year](#);

C = the costs incurred by the [REC Board](#) in accordance with the approved budget (to the extent not covered by the charges recovered under Clause 10 or the [Performance Assurance Schedule](#)); and

TMP = the average number of [RMPs](#) across all [Registered Suppliers](#) that existed on the 15<sup>th</sup> day of each month of the [Financial Year](#).

9.15. 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](#). [RECCo](#) shall invoice each [Energy Supplier](#) for [RECCo](#)'s estimate of the [Energy Supplier](#)'s contribution to the expected costs to be incurred in accordance with the most recent approved budget, pursuant to Clause 9.14. Such invoices shall be raised in the first month of each calendar quarter, using an estimate based on the costs expected to be incurred in accordance with the approved budget for that quarter and the most recent data on each [Energy Supplier](#)'s registrations provided to [RECCo](#) pursuant to Clause 9.23.

9.16. Each [Energy Supplier](#) shall pay the amounts invoiced under Clause 9.15 (including VAT, if applicable) within the time period prescribed by the [REC Board](#).

9.17. For the avoidance of doubt, a failure to make a payment in accordance with Clause 9.16 may be treated as an [Event of Default](#) under Clause 16.

9.18. [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.

- 9.19. Within 30 [Working Days](#) after the end of each [Financial Year](#), [RECCo](#) shall calculate each [Energy Supplier](#)'s total contribution for that [Financial Year](#) in accordance with the proportions set out in Clause 9.14, and shall reconcile them against the aggregate amount invoiced to that [Energy Supplier](#) under Clause 9.15. Where the aggregate amount invoiced to an [Energy Supplier](#) is more than (or less than) the amount calculated in accordance with this Clause 9.19 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 9.15 after the financial statements for the [Financial Year](#) have been audited in accordance with Clause 9.23 and approved by the [REC Board](#).

### **Bad Debt**

- 9.20. Where amounts owed to [RECCo](#) under this Clause 9 or Clause 10 are determined to be a bad debt (by the [REC Board](#) or by the [Code Manager](#) in accordance with a policy approved by the [REC Board](#)), then the debt shall be recovered from other [Energy Suppliers](#) under the next round of invoices produced under Clause 9.15. This is without prejudice to the liability of the original debtor, and any amounts subsequently recovered from the original debtor will be applied so as to reduce the future [Recoverable Costs](#) payable by [Energy Suppliers](#).

### **Annual Report**

- 9.21. The [REC Board](#) shall, following the end of each [Financial Year](#), prepare and publish on the [REC Portal](#) a report summarising the implementation and operation of the [Code](#) and the activities of the [REC Board](#) and its [Sub-Committees](#) during that [Financial Year](#). Such annual report shall include:
- (a) a review of the mobilisation and/or subsequent performance of the [Code Manager](#);
  - (b) a review of the [Change Management Schedule](#) procedures and the changes that have been subject to those procedures, including where appropriate the impact of changes that have been implemented;
  - (c) a summary of the key risks identified by the [REC PAB](#) and progress made in mitigating those risks, and/or in improving key industry metrics as may be identified by the [REC PAB](#);

- (d) a review of progress made in delivering the [RECCo](#) strategy and performance against budget; and
  - (e) details of operational issues that have been identified as requiring, or otherwise expected to contribute to, improvements in [RECCo's](#) delivery of [REC Services](#) to [REC Service Users](#), and the actions being taken to make such improvements, to the extent these are not a feature of the [RECCo](#) strategy.
- 9.22. Notwithstanding the publication of such an annual report, the [REC Board Chair](#) will write to and offer to meet with the chair of the [Authority](#) highlighting any aspect of the annual report which the [REC Board Chair](#) considers to be of particular relevance to the [Authority](#).

### **Audit**

- 9.23. The [REC Board](#) shall arrange for the costs it incurs (as referred to in Clause 9.4) to be audited by a firm of chartered accountants on an annual basis. The [REC Board](#) shall publish the audited financial statements including the auditor's report, on the [REC Portal](#) within 15 [Working Days](#) of the financial statements being approved by the [REC Board](#).

### **Provision of Data on [Registrations](#)**

- 9.24. The [CSS Provider](#) shall notify the [Code Manager](#) of: (a) the number of [RMPs](#) (separately for gas and electricity) for which each [Energy Supplier](#) is the [Registered Supplier](#) and; (b) the number of [RMPs](#) associated with each [Network Party's](#) network, (in each case) 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](#), the [Gas Retail Data Agent](#) and the [Electricity Retail Data Agents](#) shall ensure that this information is made available to the [Code Manager](#).

### **Invoicing [CRS](#) Charges**

- 9.25. The [CRS Provider](#) shall submit monthly invoices to [RECCo](#) for the [Centralised Registration Service](#). For each [Financial Year](#), the amount of each such monthly invoice will be equal to one twelfth (1/12th) of the [CRS Provider](#) budget (excluding VAT) for that [Financial Year](#) agreed or determined under Clauses 9.27 to 9.34 (inclusive). Each such monthly invoice shall set out the charges for the previous month (plus VAT). Where [Performance Charges](#) have been applied in such previous month, in accordance with the [Performance Assurance Schedule](#), then the [CRS Provider](#) shall deduct the amount of such [Performance Charges](#) from the amount it would otherwise have invoiced. [RECCo](#) shall pay each invoice within 5 [Working Days](#) of receipt.

9.26. The [CRS Provider](#) shall, without prejudice to any other right or remedy, charge (and [RECCo](#) shall pay) interest on any payment not duly made in accordance with Clause 9.25, 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.

### **Budgeting for [CRS](#) Charges**

9.27. The [CRS Provider](#) shall present its rough order of magnitude forecast charges for the following [Financial Year](#) to [REC Board](#) by the end of November. The first submission of the forecast charges shall be by the end November 2022 for the [Financial Year](#) ending 31 March 2024. Such forecast charges shall be evidenced and reflect the [CRS Provider](#)'s reasonable forecast costs of providing the [Centralised Registration Service](#) and permitted under the [DCC Licence](#). The forecast costs shall include relevant internal costs, external costs, adjustments to account for under or over recovery of costs in the previous year approved by the [Authority](#) and margin permitted under its licence but shall not include any contingency costs. The forecast charges shall exclude VAT.

9.28. Where the [REC Board](#) provides comments to the [CRS Provider](#) by the end of December each year, the [CRS Provider](#) shall take account of these comments and shall respond to the [REC Board](#), including where appropriate, by providing updated forecast charges, by the end of January.

9.29. Where the [REC Board](#) considers that the [CRS Provider](#) has not taken sufficient account of its comments, it may refer the [CRS](#) forecast charges to the [Authority](#).

9.30. The [Authority](#) may consider a referral under Clause 9.29 where it agrees that the [CRS Provider](#) may not have taken sufficient account of [REC Board](#)'s comments and that, in not doing so, this may have a material impact of the charges that would otherwise become due to the [CRS Provider](#) in the following [Financial Year](#).

9.31. Where the [Authority](#) has considered a referral under Clause 9.29, it may:

- (a) refer the forecast charges back the [CRS Provider](#) for further consideration; or
- (b) revise the forecast charges to a figure which it reasonably considers to be a better forecast of the cost likely to be incurred, whether that is higher or lower than the [CRS Provider](#)'s figure.

9.32. Pending resolution of any such referral to the [Authority](#), the [CRS Provider](#) shall charge [RECCo](#) based on the undisputed amount of the forecast [Centralised Registration Service](#) charges.

9.33. Once the budget for [Centralised Registration Service](#) charges in a [Financial Year](#)

has been agreed or determined under this Clause 9, it shall only be amended if such amendment is approved under the [Change Management Schedule](#) as if the amendment was an amendment to this [Code](#).

- 9.34. [RECCo](#) shall only become responsible for [Centralised Registration Service](#) charges from 01 April 2023 onwards. It shall not be responsible for any charges incurred prior to that date.

## 10 Charges Dependent on Usage

### [REC Charging Methodology](#)

- 10.1. The [REC Board](#) shall develop a draft [REC Charging Methodology](#) and raise a [Change Proposal](#) to have such [REC Charging Methodology](#) incorporated into this [Code](#).
- 10.2. The [REC Board](#) shall periodically review the [REC Charging Methodology](#) and (where the [REC Board](#) considers it necessary to do so) raise a [Change Proposal](#) to propose amendments to the [REC Charging Methodology](#). This is without prejudice to the ability of other interested parties to raise [Change Proposals](#) in respect of the [REC Charging Methodology](#).
- 10.3. In addition to the [REC Objectives](#), the [REC Charging Methodology](#) shall be designed to result in charges which:
- (a) do not unduly discriminate between [REC Service Users](#) (or classes of [REC Service Users](#)); and
  - (b) are reflective of the costs incurred by [RECCo](#) in procuring the service to which such charges apply (in so far as is reasonable, having regard to the costs of implementing such an approach, and recognising that such costs will otherwise be recovered under Clause 9).

### [REC Charging Statement](#)

- 10.4. The [REC Board](#) shall, from time to time (including on first publication of, and each subsequent amendment to, the [REC Charging Methodology](#)), determine the [REC Charging Statement](#), and publish that statement on the [REC Portal](#). The [REC Board](#) shall determine the [REC Charging Statement](#) by applying the [REC Charging Methodology](#).
- 10.5. The [REC Board](#) shall publish draft and final versions of the [REC Charging Statement](#) at the same time as it publishes draft and final versions of the Annual Budget (under Clause 9).

## Invoicing and Payment

- 10.6. [RECCo](#) shall raise invoices at the times, and to cover the periods, provided for in the [REC Charging Statement](#). [RECCo](#) may rely on usage forecasts or estimates where it is reasonable necessary to do so (subject to reconciliation once actuals are known).
- 10.7. Each [REC Service User](#) shall pay the amounts invoiced under Clause 10.6 (plus VAT, if applicable) within the time period prescribed by the [REC Charging Statement](#).
- 10.8. [RECCo](#) shall, without prejudice to any other right or remedy, charge (and the relevant [REC Service User](#) shall pay) interest on any payment not duly made in accordance with this Clause 10, calculated from day-to-day at an annual rate equal to the [Default Interest Rate](#) from the day after the date on which payment was due up to and including the date of payment, together with an administration charge (if one is provided for in the [REC Charging Statement](#)).
- 10.9. For the avoidance of doubt, a failure to make a payment in accordance with Clause 10.7 may be treated as an [Event of Default](#) under Clause 16.

## 11 Change Control

- 11.1. There may be instances where an inconsistency arises between the requirements of this [Code](#) and the requirements of an [Energy Licence](#) or other [Energy Code](#). Where a [Party](#) identifies such an inconsistency, the [Party](#) shall notify the [Code Manager](#). Following such a notification by a [Party](#) to the [Code Manager](#), the [Party](#) shall not be considered to be in breach of this [Code](#) where such breach arises as a result of the [Party](#) complying with its obligations under an [Energy Licence](#) or other [Energy Code](#).

## 12 [RECCo](#) Step-In Rights for [CSS Provider](#) Contracts

- 12.1. The [DCC](#) shall ensure that each [External Service Provider Contract](#) is capable of being novated to [RECCo](#):
- (a) at the [DCC](#)'s request; and
  - (b) at the direction of the [Authority](#).
- 12.2. The [DCC](#) shall ensure that [RECCo](#) can, pursuant to the Contract (Rights of Third Parties) Act 1999, directly enforce such right to have the contract novated to [RECCo](#).

## 13 Intellectual Property Rights

### REC Materials

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

### CRS Services IPR

- 13.5. Clauses 13.6 to 13.13 apply in respect of [CRS Services IPR](#). [CRS Services IPR](#) refers to the [Intellectual Property Rights](#) which are essential for the [CRS Provider](#) (or its contractors) to provide the [Centralised Registration Service](#) and/or essential for the [REC Service Users](#) to receive the [Centralised Registration Service](#) (but excluding in both cases commercially available off-the-shelf software). The [CRS Provider](#)'s obligations under this [Code](#) in relation to the [Intellectual Property Rights](#) essential for the [REC Service Users](#) to receive the [Centralised Registration Service](#) shall be limited to the software, communications networks and interfaces for which the [CRS Provider](#) is responsible as described in the [Design Baseline](#). The [CRS Services IPR](#) which is not owned by the [DCC](#) is referred to as [Third Party IPR](#).
- 13.6. As between the [CRS Provider](#) and each [REC Service User](#), the [CRS Services IPR](#) shall be owned by the [CRS Provider](#) (and no [User](#) shall make any claims in respect of the [CRS Services IPR](#)).
- 13.7. The [CRS Provider](#) hereby grants to each [REC Service User](#) a royalty-free, non-exclusive, non-transferable licence to use the [CRS Services IPR](#) for the sole purpose of receiving the [Centralised Registration Service](#) (subject to Clause 13.9). Each licence granted by the [CRS Provider](#) under this Clause 13.7 includes the right of the [REC Service User](#) to grant sub-licences to its agents, and contractors provided that they are granted solely for the purpose of the [REC Service User](#) receiving the [Centralised Registration Service](#) (and that the [CRS Services IPR](#) is used for no other purpose).
- 13.8. The [CRS Provider](#) shall ensure that each [REC Service User](#) (and its agents and contractors) can use the [CRS Services IPR](#) in the manner envisaged by Clause 13.7, and shall indemnify each [REC Service User](#) in respect of any claims brought by persons alleging that the use of that [CRS Services IPR](#) in the manner envisaged by Clause 13.7 has infringed any [Intellectual Property Rights](#).
- 13.9. If the [CRS Provider](#) cannot obtain the necessary [Third Party IPR](#) licensing rights in favour of [REC Service Users](#) and/or to enable [REC Service Users](#) to grant sub-licences of [Third Party IPR](#) (in each case as required by Clause 13.7), then the [CRS Provider](#) shall consult with the [Authority](#), and the [Authority](#) may agree in writing that specified [Third Party IPR](#) does not need to be licensed to [REC Service Users](#) and/or capable of being sub-licensed by [REC Service Users](#) (as would in each case otherwise be required by Clause 13.7).
- 13.10. In procuring and developing the [Centralised Registration Service](#), the [CRS Provider](#) must give due consideration, in so far as is relevant and possible, to the total costs to and impact on [REC Service Users](#) (including consideration of variances across [REC Service Users](#), including size) in relation to [Intellectual Property Rights](#), on the assumption that all [REC Service Users](#) design and operate their [Systems](#) in accordance with [Good Industry Practice](#).

## Use of CSS Services IPR by Successors

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

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

13.12. In addition to, and without prejudice to the [DCC](#)'s obligations under the [DCC Licence](#), on the [DCC](#) ceasing to be the provider of some or all of the [Centralised Registration Service](#) in circumstances where the [DCC](#) remains the licensee under the [DCC Licence](#):

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

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

## [RECCo Services IPR](#)

13.14. Clauses 13.15 to 13.17 apply in respect of [RECCo Services IPR](#). [RECCo Services IPR](#) refers to the [Intellectual Property Rights](#) (other than [Services Data](#) and commercially available off-the-shelf software) which are essential for [REC Service Users](#) to receive the [REC Services](#) (excluding those which form part of



the [Centralised Registration Service](#)).

- 13.15. As between [RECCo](#) and each [REC Service User](#), the [RECCo Services IPR](#) shall be owned by [RECCo](#) (and no [REC Service User](#) shall make any claims in respect of the [RECCo Services IPR](#)).
- 13.16. [RECCo](#) hereby grants to each [REC Service User](#) a royalty-free, non-exclusive, non-transferable licence to use the [RECCo Services IPR](#) for the sole purpose of receiving the relevant [REC Services](#) in accordance with this [Code](#). Each licence granted by [RECCo](#) under this Clause 13.16 includes the right of the [REC Service User](#) to grant sub-licences to its agents, and contractors provided that they are granted solely for the purpose of the [REC Service User](#) receiving the relevant [REC Services](#) in accordance with this [Code](#) (and that the [RECCo Services IPR](#) is used for no other purpose).
- 13.17. [RECCo](#) shall ensure that each [REC Service User](#) (and its agents and contractors) can use the [RECCo Services IPR](#) in the manner envisaged by Clause 13.16, and shall indemnify each [REC Service User](#) in respect of any claims brought by persons alleging that the use of that [RECCo Services IPR](#) in the manner envisaged by Clause 13.16 has infringed any [Intellectual Property Rights](#).

### Services Data

- 13.18. Clauses 13.19 to 13.21 apply in respect of [Services Data](#). [Services Data](#) is the data which is stored, accessed or exchanged pursuant to one or more [REC Services](#).
- 13.19. Each [Party](#) acknowledges and agrees the following position with respect to ownership of [Services Data](#):
- (a) each [REL Address](#) is owned by Ordnance Survey and licensed to the [CRS Provider](#), and shall (between the [Parties](#)) be owned by the [CRS Provider](#) and subject to the provisions that apply to [CRS Services IPR](#) (and not subject to Clauses 13.20 and 13.21);
  - (b) subject to sub-clause (a) above, all [Services Data](#) held within the [Central Gas Register](#) shall (as between the [Parties](#)) be owned by the relevant [Gas Transporter](#);
  - (c) subject to sub-clause (a) above, all [Services Data](#) held within [MPAS](#) shall (as between the [Parties](#)) be owned by the relevant [Distribution Network Operator](#);
  - (d) subject to sub-clauses (a), (b) and (c) above, the [Services Data](#) which is provided by a [REC Service User](#) shall (as between the [Parties](#)) be owned by the [REC Service User](#) which provided the data; and

- (e) subject to sub-clauses (a), (b), (c) and (d) above, the [Services Data](#) shall (as between the [Parties](#)) be owned by [RECCo](#).

13.20. The relevant owner of the [Services Data](#) (as identified in Clause 13.19) hereby grants royalty-free, non-exclusive, non-transferable licences (including a right to grant sub-licences to contractors for the same purpose):

- (a) to each [REC Service Provider](#) to use that [Services Data](#) for the sole purpose of providing its [REC Service](#) in accordance with this [Code](#); and
- (b) to each other [REC Service User](#) to use that [Services Data](#) for the purpose of receiving the relevant [REC Service](#)(s) in accordance with this [Code](#) and (in the case of [REC Service Users](#) which hold [Energy Licences](#)) and the purposes of the business authorised by its [Energy Licence](#).

13.21. Each [REC Service User](#), in respect of the [Services Data](#) provided by it, shall ensure that the licensees can use that [Services Data](#) in the manner envisaged by Clause 13.20, and shall indemnify each licensee in respect of any claims brought by persons alleging that the use of that [Services Data](#) in the manner envisaged by that Clause has infringed any [Intellectual Property Rights](#).

## General

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

## 14 Limitation of [Liability](#)

14.1. Nothing in this [Code](#) shall exclude or limit a [Party](#)'s liability:

- (a) for death or personal injury resulting from the negligence of that [Party](#);
- (b) for fraud or fraudulent misrepresentation;
- (c) to pay its share of [RECCo](#)'s costs under and in accordance with Clause 9;
- (d) to pay the charges under and in accordance with Clause 10;
- (e) to pay amounts due under and in accordance with the [Performance Assurance Schedule](#) (but without prejudice to the financial limits set out in the [Performance Assurance Schedule](#)); or

(f) for any other type of liability which cannot by [Law](#) be excluded or limited.

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

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

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

14.4. The [Liability](#) of the [DCC](#) under or in relation to this [Code](#):

- (a) for breach of Clause 18 (Confidentiality), shall be unlimited (subject to Clauses 14.2 and 14.5);
- (b) for breach of Clause 13 ([Intellectual Property Rights](#)), shall be unlimited (subject to Clauses 14.2 and 14.5); and
- (c) for any other breach of this [Code](#) (unless expressly stated otherwise in this [Code](#)) shall be limited to the higher of: (A) £1,000,000 (one million pounds) in respect of each incident or series of related incidents; or (B) the amount which is recoverable by the [DCC](#) under the [External Service Provider Contracts](#).

14.5. No [Party](#) shall be liable to another [Party](#) under or in relation to this [Code](#) for:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of use;
- (d) loss of contract;
- (e) loss of goodwill; or
- (f) loss resulting from the liability of such other [Party](#) to a third party for any of the matters referred to in clauses (a) to (e) above.

14.6. The rights and remedies provided by this [Code](#) are exclusive and not cumulative, and exclude and are in place of all substantive (but not procedural) rights or remedies provided by common law or statute in respect of the subject matter of this [Code](#). Subject to Clause 14.1, each [Party](#) hereby waives and releases to the fullest extent possible all such rights and remedies provided by common law or statute.

14.7. Nothing in this Clause 14 shall exclude or affect any of:

- (a) the rights, powers, duties and obligations of any [Party](#) which are conferred or created by an [Energy Licence](#) or [Law](#) (save as described in Clause 14.6); or
- (b) the rights, powers and duties of the [Authority](#) or the Secretary of State.

14.8. The [Performance Assurance Schedule](#) sets out each [Party](#)'s exclusive remedy in respect of the poor performance of those matters which are subject to Performance Levels under the [Performance Assurance Schedule](#).

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

14.10. Each [Party](#) shall be under a duty to mitigate its loss.

14.11. Each [Party](#) hereby acknowledges and agrees that the provisions of this Clause 14 are fair and reasonable having regard to the circumstances.

## 15 [Performance Assurance](#)

15.1. The [REC Performance Assurance Board](#) shall be established in accordance with the [Performance Assurance Schedule](#), and shall conduct its business in accordance with that [REC Schedule](#).

15.2. Each [Party](#) shall potentially be subject to [Performance Standards](#) under and in accordance with the [Performance Assurance Schedule](#), and shall potentially be liable to pay compensation payments in accordance with that [REC Schedule](#).

## 16 [Events of Default and Consequences Of Default](#)

16.1. An "[Event of Default](#)" shall occur in respect of a [Party](#) (the "[Defaulting Party](#)") if one or more of the following occurs in respect of it:

- (a) the [Defaulting Party](#) is in breach of any of the material terms or conditions of this [Code](#) and/or in persistent breach of any of the terms or conditions of this [Code](#) and, if the breach is or was capable of remedy, it fails to remedy the breach within 20 [Working Days](#) of receipt of a notice from another [Party](#) giving details of the breach, requiring the [Defaulting Party](#) to remedy the breach and stating that a failure to remedy the breach may give rise to consequences set out in this Clause 16;
  - (b) the [Defaulting Party](#) is determined to have committed an [Event of Default](#) under the [Performance Assurance Schedule](#);
  - (c) the [Defaulting Party](#) passes a resolution for its winding-up, or a court of competent jurisdiction makes an order for the winding-up or dissolution of the [Party](#);
  - (d) the [Defaulting Party](#) has an administration order is made in respect of it or a receiver is appointed over, or an encumbrancer takes possession of or sells, any substantial part or parts of the [Party's](#) assets, rights, or revenues;
  - (e) the [Defaulting Party](#) makes an arrangement or composition with its creditors generally or makes an application to a court for protection from its creditors generally;
  - (f) the [Defaulting Party](#) is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, but as if in that Section the sum of £10,000 was substituted for the sum of £750;
  - (g) the [Defaulting Party](#) fails to pay an amount which is payable pursuant to this [Code](#), and fails to remedy that failure within 10 [Working Days](#) of receipt of a notice from [RECCo](#) requiring the [Defaulting Party](#) to make the payment; and/or
  - (h) 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 Performance Assurance Board](#) and upon receiving such report, the [REC Performance Assurance Board](#) shall notify the [Party](#) to whom the suspected [Event of Default](#) report relates.
- 16.3. Where the [REC Performance Assurance Board](#) has reason to believe that an [Event of Default](#) may have occurred in respect of a [Party](#), then the [REC Performance Assurance Board](#) may investigate the circumstances relating to such potential [Event of Default](#). Each [Party](#) shall provide all reasonable data and cooperation as the [REC Performance Assurance 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 Performance Assurance Board](#) may take one or more of the following steps (in each case to the extent and at such time as the [REC Performance Assurance 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 Proposal](#)s 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](#);
  - (g) instruct [RECCo](#) to suspend (in which case [RECCo](#) shall suspend, as soon as reasonably practicable) the right of the [Defaulting Party](#) to receive one or more [REC Services](#) (as specified by the [REC PAB](#), but not including the [Central Switching Service](#)); and/or
  - (h) recommend to the [REC Board](#) that the [Defaulting Party](#) be expelled 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 Performance Assurance Board](#) has, pursuant to Clause 16.4, suspended a [Defaulting Party](#)'s rights, then the [REC Board](#) may at any time thereafter end such suspension.

16.7. Where the [REC Performance Assurance Board](#) resolves to suspend the rights of a [Defaulting 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 Performance Assurance 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. The processes applying to [Parties](#) which are expelled from this [Code](#) or which wish to voluntarily withdraw from this [Code](#) are set out in the [Market Exit and Supplier of Last Resort Schedule](#).

17.3. Where the [REC Board](#) resolves to expel a [Party](#) from this [Code](#), 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](#).

17.4. Where a [Party](#) is expelled or withdraws from this [Code](#) in accordance with the [Market Exit and Supplier of Last Resort Schedule](#), then with effect from the time on the date at which such expulsion or withdrawal is effective (and subject to Clause 17.3):

- (a) that [Party](#)'s accession to this [Code](#) shall be terminated, and it shall cease to be a [Party](#); and
- (b) subject to Clause 17.5, that [Party](#) shall cease to have any rights or obligations under this [Code](#).

17.5. 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 each [REC Service Provider](#) and each [REC Service User](#) (referred to in this Clause 18 as the "Receiving Entity") in respect of the [Confidential Information](#) of each other [REC Service Provider](#) and [REC Service User](#) (referred to in this Clause 18 as the "Disclosing Entity").
- 18.2. Each Receiving Entity hereby undertakes that it shall preserve the confidentiality of, and shall not directly or indirectly [Disclose](#) or use for its own purposes, each other Disclosing Entity's [Confidential Information](#). The exceptions to this obligation are set out in Clause 18.3.

### Exceptions to Confidentiality Obligation

- 18.3. A Receiving Entity shall be entitled to [Disclose](#) or use another Disclosing Entity's [Confidential Information](#) if and to the extent that one or more of the following apply:
- (a) the Receiving Entity is required or permitted to [Disclose](#) or use the [Confidential Information](#) by its [Energy Licence](#), this [Code](#) or another [Energy Code](#), to the extent of such requirement or permission;
  - (b) the person to whose affairs the [Confidential Information](#) relates gives its prior written consent to the [Disclosure](#) or use, to the extent of such consent;
  - (c) the [Confidential Information](#), before it is furnished to the Receiving Entity seeking to rely upon this Clause 18.3, is in the public domain or was acquired by that Receiving Entity in circumstances in which this Clause 18 does not apply;
  - (d) the [Confidential Information](#), after it is furnished to the Receiving Entity seeking to rely upon this Clause 18.3:
    - (i) is acquired by that Receiving Entity in circumstances in which this Clause 18 does not apply;
    - (ii) is acquired by that Receiving Entity in circumstances in which this Clause 18 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 18; or



- (iii) enters the public domain,

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

- (e) the Receiving Entity is required to [Disclose Confidential Information](#):
  - (i) in compliance with [Law](#);
  - (ii) in response to a requirement of any recognised stock exchange; or
  - (iii) pursuant to any judicial or arbitral process or tribunal having jurisdiction in relation to the Receiving Entity; or
- (f) the Receiving Entity [Discloses](#) the [Confidential Information](#) to its [Affiliates](#), or its or its [Affiliate](#)s' employees, directors, agents, consultants and professional advisers (subject to Clause 18.5).

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

### Internal Procedures

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

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

18.6. Each Receiving Entity shall take all reasonable steps to ensure that any person referred to in Clause 18.3(f) and 18.5(b) to whom the Receiving Entity [Discloses](#) the [Confidential Information](#) does not use that [Confidential Information](#) for any purpose other than that for which it is provided and does not [Disclose](#) that

[Confidential Information](#) otherwise than in accordance with this Clause 18.

### **Affiliate or Related Undertaking**

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

### **Confidentiality and the REC Bodies**

18.8. The [Parties](#) acknowledge that, for the [REC Board](#), and the [Sub-Committees](#) to properly carry out their duties and responsibilities under this [Code](#), the [REC Board](#) 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](#) 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 the [Sub-Committees](#)) accordingly.

18.9. The [REC Board](#), the [Sub-Committees](#) and the [Code Manager](#) shall each comply with Clauses 18.2 to 18.6 as if they were a [Party](#).

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

## **19 REC Controller Obligations**

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. Where a [Party](#) (including the [CRS Provider](#) or [RECCo](#)) or a [REC Service User](#) or [REC Service Provider](#) acts as a Controller in [Processing REC Data](#), then it shall be a [REC Controller](#).

19.3. This Clause 19 sets out the obligations of each [REC Controller](#) when they are acting as a Controller in respect of the [Processing of REC Data](#).

19.4. Each [REC Controller](#) confirms that it has effected, and undertakes that it shall maintain, all such notices 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](#).

- 19.5. Each [REC Controller](#) undertakes to comply with the [Data Protection Legislation](#) in the performance of this [Code](#), including ensuring, in respect of [REC Data](#) to be shared or otherwise [Processed](#) pursuant to this [Code](#), that the [REC Controller](#) has a lawful basis for such sharing and other [Processing](#).
- 19.6. Without limiting Clause 19.5, each [REC Controller](#) shall provide to relevant [Data Subjects](#) (including [Consumer](#)s), the information required by the [Data Protection Legislation](#) to be provided by them in respect of the [Processing](#) of [REC Data](#).
- 19.7. Each [REC Controller](#) shall comply with the [Data Protection Legislation](#) as regards the exercise of rights by [Data Subjects](#) in respect of [REC Data](#) for which it is the Controller. In particular, each [REC Controller](#) shall designate its own contact point responsible for dealing with data protection queries, requests or complaints raised by relevant [Data Subjects](#).
- 19.8. Each [REC Controller](#) shall be responsible for, and shall make its own determination as regards, notifying any [Competent Authority](#) (if applicable) and [Data Subjects](#) (if applicable) in case of a [Personal Data Breach](#) relating to [REC Data](#) in accordance with [Data Protection Legislation](#).
- 19.9. In the event of a [Personal Data Breach](#) concerning [REC Data](#) relating to any [Centralised Registration Service](#), a [REC Controller](#) shall, upon becoming aware of the [Personal Data Breach](#), without undue delay notify the [CRS Provider](#) and the [REC Board](#) in writing. The [REC Board](#) shall then communicate the [Personal Data Breach](#) to other relevant [REC Controllers](#) as it sees fit

## 20 [REC Processor](#) Obligations

- 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. Where a [Party](#) (including the [CRS Provider](#) or [RECCo](#)) or a [REC Service User](#) or [REC Service Provider](#) acts as a [Processor](#) or in [Processing](#) [REC Data](#), then it shall be a [REC Processor](#) on behalf of one or more [REC Controllers](#). Where this is the case, the purpose of the [Processing](#) will be provision or receipt of the relevant [REC Service](#), and the subject matter and nature of the [Processing](#), and the type of [Personal Data](#) that is being [Processed](#), is described in the relevant [REC Schedule](#) and/or [Service Definition](#) (together with the [REC Data Specification](#)).
- 20.3. Where Clause 20.2 applies, the [REC Processor](#) shall comply with this Clause 20.
- 20.4. Each [REC Processor](#) shall, when acting as a [Processor](#) of [REC Data](#) for one or

more [REC Controllers](#):

- (a) only [Process](#) that [REC Data](#) for the purposes permitted by this [Code](#) (which represents the documented instructions of the [REC Controllers](#)), and not in a manner that the [REC Processor](#) knows (or should reasonably know) is likely to cause the [REC Controller](#)s to breach their obligations under the [Data Protection Legislation](#) (subject to paragraph (b) below);
- (b) if the [REC Processor](#) is aware that, or is of the opinion that, any requirement of paragraph (a) above breaches the [Data Protection Legislation](#), the [REC Processor](#) shall immediately inform the [REC Board](#) (on behalf of the [REC Controller](#)s) of this giving details of the breach or potential breach (unless the [REC Processor](#) is prohibited from doing so by any of its other obligations under [Law](#));
- (c) only [Process](#) that [REC Data](#) for so long as it is required to do so by this [Code](#);
- (d) ensure that the [REC Processor](#)'s personnel who are authorised to [Process REC Data](#) are under enforceable obligations of confidentiality and are required only to [Process](#) that [REC Data](#) in accordance with the [REC Processor](#) obligations under this Clause 20;
- (e) (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 ensure that the [REC Data](#) is [Processed](#) in compliance with the [Data Protection Legislation](#) and is protected against accidental or unlawful loss, destruction, damage, alteration or disclosure;
- (f) (taking into account the nature of the [Processing](#) and the information available to the [REC Processor](#)) assist the [REC Controller](#)s with their obligations to comply with [Data Subjects](#)' requests and [Data Subjects](#)' rights under the [Data Protection Legislation](#) in respect of that [REC Data](#) (through, insofar as is possible, the use of appropriate technical and organisational measures);
- (g) provide reasonable assistance to the [REC Controller](#)s in complying with any enquiry made, or investigation or assessment initiated, by any [Competent Authority](#) in respect of the [Processing](#) of that [REC Data](#) pursuant to this [Code](#);
- (h) as soon as practicable (and, in any event, within 1 [Working Day](#)) notify the [REC Board](#) and the [REC Controller](#)s in the event that the [REC Processor](#) becomes aware of a [Personal Data Breach](#) in relation to [REC Data](#);
- (i) upon request by the [REC Board](#) (on behalf of [REC Controller](#)s collectively),

provide all such reasonable and timely assistance as the [REC Board](#) may require in order to conduct a data protection impact assessment in accordance with [Data Protection Legislation](#);

- (j) upon termination or expiry of the relevant [REC Services](#) in connection with which the [REC Processor](#) [Processes](#) the [REC Data](#), destroy the [REC Data](#) that is within its possession or control (including where subcontracted to a third party); save that this requirement shall not apply to the extent that the [REC Processor](#): (i) is required by [Law](#) to retain the [REC Data](#); and/or (ii) continues to process the [REC Data](#) for one or more other [REC Controllers](#); and
- (k) permit the [REC Board](#) (on behalf of [REC Controllers](#) collectively) to audit compliance with this Clause 20 in accordance with Clause 26.9 and make available to the [REC Board](#) on request from the [REC Board](#) all information reasonably necessary to demonstrate such compliance.

20.5. Each [REC Processor](#) shall ensure that its sub-processors, in respect of the [REC Data Processed](#) on behalf of [REC Controllers](#), are subject to written contractual obligations in respect of the [Processing](#) of that [Personal Data](#) which are the same as the [REC Processor](#) obligations under this Clause 20.

20.6. Each [REC Controller](#) hereby gives its general authorisation to the [REC Processors](#) to engage sub-processors who are appointed in accordance with the requirements of this [Code](#) (and, in the case of the [CRS Provider](#), in accordance with the requirements of the [DCC Licence](#)). Each [REC Controller](#) hereby confirms that it does not object to the engagement of any sub-processors engaged in accordance with such requirements. Where a sub-processor is appointed in accordance with this Clause 20.6, the [REC Processor](#) shall maintain a list of sub-processors (including details of the processing it performs or will perform) and provide such list of sub-processors to the [REC Board](#) (on behalf of the [REC Controllers](#) collectively) on request.

20.7. Notwithstanding such general consent to appointment of sub-processors under Clause 20.6, the [REC Board](#) (acting on behalf of the [REC Controllers](#) collectively), may object to the appointment of a sub-processor on reasonable grounds relating to the protection of [Personal Data](#). In the case of such an objection, the [REC Processor](#) will either not appoint the sub-processor or, if already appointed, terminate the sub-processor's services (either immediately if the sub-processor has caused a breach of any of the [REC Processor](#) obligations under this Clause 20 or otherwise within three months of the [REC Board](#)'s objection).

20.8. Each [REC Processor](#) shall, where acting as a [Processor](#) of [REC Data](#) on behalf of one or more [REC Controllers](#), not transfer or process the [REC Data](#) outside the European Economic Area or the United Kingdom unless the [REC Processor](#):

- (a) has first obtained the [REC Board](#)'s approval (on behalf the [REC Controllers](#) collectively); and
- (b) takes such measures as are necessary to ensure the transfer is in compliance with [Data Protection Legislation](#), which may include transferring the [REC Data](#) to a recipient: (i) in a country that the Secretary of State has decided provides adequate protection for [Personal Data](#); (ii) that has achieved binding corporate rules authorisation in accordance with [Data Protection Legislation](#); or (iii) that has executed relevant standard contractual clauses adopted or approved by the Secretary of State or otherwise permitted by the [Data Protection Legislation](#).

20.9. [RECCo](#) shall ensure that each [REC Processor](#) is given contact details for contacting the [REC Board](#) under this Clause 20 in connection with notifications to [REC Controllers](#). The [REC Board](#) shall, as soon as practicable (and, in any event, within 1 [Working Day](#)) after receipt of such a notification ensure that the notification is provided to the entity or entities which the [REC Board](#) reasonably understands to be the relevant [REC Controller](#)(s).

## 21 [Force Majeure](#)

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

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

shall be suspended without liability for the period during which the circumstance of [Force Majeure](#) prevails (subject to Clause 21.2).

21.2. Relief under Clause 21.1 is subject to the following:

- (a) the [Affected Party](#) shall give the other [Parties](#) prompt notice describing the circumstance of [Force Majeure](#) including the nature of the occurrence and its expected duration and where reasonably practicable, shall continue to furnish regular reports with respect thereto during the period of [Force Majeure](#);
- (b) the suspension of performance shall be of no greater scope and of no longer duration than is required by the circumstance of [Force Majeure](#);
- (c) the obligations of any [Party](#) that arose before the circumstance of [Force Majeure](#) causing the suspension of performance shall not be excused as a result of the [Force Majeure](#);

- (d) the [Affected Party](#) shall take all reasonable steps to mitigate the impact of the circumstance of [Force Majeure](#) and to remedy its inability to perform as quickly as possible; and
- (e) immediately after the end of the circumstance of [Force Majeure](#), the [Affected Party](#) shall notify the other [Parties](#) in writing of the same and resume performance of its obligations under this [Code](#).

## 22 [Disputes](#)

22.1. Save where expressly stated in this [Code](#) to the contrary, and subject to any contrary provision of the [Electricity Act](#), the [Gas Act](#) or any [Energy Licence](#), any dispute or difference of whatever nature and howsoever arising under, out of or in connection with this [Code](#) (each a "[Dispute](#)") shall be resolved according to the provisions of this Clause 22. Where a [REC Schedule](#) provides for an escalation process, that escalation process must be followed before a [Dispute](#) can be raised under 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](#) or a [Sub-Committee](#) shall be subject to determination by the [REC Board](#) 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](#) 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 or such longer period as may be prescribed by this [Code](#) (unless the [Authority](#) waives such 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](#).
- 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 onto 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, Operational Contacts and Party Details**

24.1. Each [Party](#) shall appoint one or more individuals as [Contract Manager](#) to monitor and manage general matters arising under or in connection with this [Code](#) on behalf of that [Party](#).

- 24.2. Each [Party](#) shall also appoint one or more individuals as [Operational Contacts](#) to manage operational issues on behalf of that [Party](#), in respect of such operational aspects as the [Code Manager](#) may specify.
- 24.3. Each [Party](#) can rely upon the authority of each other [Party's Contract Manager](#) in relation to this [Code](#) generally, and the authority of each other [Party's Operational Contacts](#) in relation to the [REC Services](#) in connection with which they are appointed.
- 24.4. A [Party](#) can appoint the same (or different) individuals as its [Contract Manager](#) and as its [Operational Contacts](#). Each [Party's Contract Manager](#) and [Operational Contacts](#) form part of that [Party's Party Details](#).
- 24.5. Each [Party's](#) original [Party Details](#) will have been provided as part of its [Accession Agreement](#) or [Original Accession Agreement](#) (as applicable).
- 24.6. 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.
- 24.7. The [Code Manager](#) shall maintain a record of each [Party's Party Details](#), and shall publish that record on the [REC Portal](#).
- 24.8. 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.
- 24.9. 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. Where this is the case, such communications must be sent via the specified means, unless the sender and the recipient have bilaterally agreed a different means by which the communication is to be sent. In respect of any such bilateral agreements, the sender and recipient must still adhere to the requirements of this [Code](#) concerning confidentiality and security.
- 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](#), a [Sub-Committee](#) or [Code Manager](#) shall also be subject to this Clause 25. Where such notices or other communications are being sent to the [REC Board](#), a [Sub-Committee](#) or [Code Manager](#), they shall be sent to the relevant address from time to time given for such purpose on the [REC Portal](#).

## 26 General

### Commencement and Duration

- 26.1. This [Code](#) shall take effect from the effective date specified by the [Authority](#) in its designation of this [Code](#).
- 26.2. Once this [Code](#) comes into effect, it shall remain in effect in respect of each [Party](#), until such [Party](#) ceases to be a [Party](#) in accordance with Clause 17.

### Entire Agreement

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

### Severability

26.5. If any provision of this [Code](#) shall be held to be invalid or unenforceable by a judgement or decision of a [Competent Authority](#), the same shall be deemed to be severable and the remainder of this [Code](#) shall remain valid and enforceable to the fullest extent permitted by [Law](#). In such circumstances, the [Code Manager](#) shall promptly raise a [Change Proposal](#) to provide an alternative means of preserving the intent of the original provision, whilst addressing the issues which led to 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 following persons shall be entitled to enforce the following rights under and in accordance with the Contract (Rights of Third Parties) Act 1999:

- (a) any person identified in a [REC Schedule](#) as having rights under this Clause 26.12;
- (b) the individuals stated to benefit from the indemnity under Clause 8 shall be entitled to enforce their rights under that Clause; and
- (c) each [Non-Party REC Service User](#) shall be entitled to enforce its rights under the [REC Schedules](#) with which it has agreed to comply in its [Access Agreement](#) and under Clauses 13 ([Intellectual Property Rights](#)), 18 (Confidentiality), 19 (Data Controller Obligations) and 20 (Data Processor Obligations).

26.13. This [Code](#) shall be capable of amendment and termination in accordance with its provisions without the consent of the persons who benefit under Clause 26.12.

## Anti-bribery

26.14. Each [Party](#) undertakes that it has complied, and undertakes that it will continue to comply with, all anti-bribery and anti-corruption legislation applicable to it, including the Bribery Act 2010, and shall use reasonable endeavours to procure that its officers, employees, directors, agents and representatives comply with all such laws.

26.15. Each [Party](#) shall maintain policies and procedures dealing with bribery and corruption which that [Party](#) (acting reasonably) believes are proportionate to the risks of bribery and corruption to which that [Party](#) is exposed. Each [Party](#) shall supply a copy of all such written policies and procedures, and (if practicable) a written summary of any that are not in writing, to the [Code Manager](#) on request.

## Governing [Law](#)

26.16. 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.

26.17. 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.