SECTION M: GENERAL

M1 COMMENCEMENT AND DURATION

Commencement

M1.1 This Code shall take effect from the effective date designated by the Secretary of State pursuant to Condition 22 of the DCC Licence.

Duration

M1.2 Once this Code comes into effect, it shall remain in effect:

(a) in respect of the DCC, until the DCC ceases to be a Party in accordance with Section M9 (Transfer of the DCC Licence); and

(b) in respect of each Party other than the DCC, until (subject to Section M8.14) such Party ceases to be a Party in accordance with Section M8 (Suspension, Expulsion and Withdrawal).

M2 LIMITATIONS OF LIABILITY

Unlimited Liabilities

M2.1 Nothing in this Code or any Bilateral Agreement 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 the Charges and any interest accruing in respect of the Charges in accordance with this Code; or

(d) for any other type of Liability which cannot by law be excluded or limited.

Exclusion of Indirect Loss

M2.2 No Party shall in any circumstances be liable to another Party for loss arising as a result of a breach of this Code and/or any Bilateral Agreement that does not directly result from such breach and that was not reasonably foreseeable as likely to occur in the ordinary course of events.

Confidentiality and Intellectual Property Rights

M2.3 Each Party's Liability for breaches of Section M4 (Confidentiality) shall be:

(a) in the case of any breach of Section M4.20 (Confidentiality of DCC Data) relating to Data that has been clearly by the DCC as 'confidential', unlimited (save as provided in Section M2.2); and

(b) in the case of any other breach of Section M4, limited to £1,000,000 (one million pounds) in respect of each incident or series of related incidents, save as provided in Section M2.3A).

M2.3A The Liability of the DCC for a breach of Section M4.1 (Prohibition on disclosure and use by DCC) shall, where the amount of that Liability is recoverable by the DCC from a DCC Service Provider in accordance with the terms of a DCC Service Provider Contract, be:

(a) unlimited if the amount of the Liability that is recoverable from the DCC Service Provider is unlimited; or

(b) limited to any amount in which the Liability that is recoverable from the DCC Service Provider is limited, or to £1,000,000 (one million pounds) in respect of each incident or series of related incidents, whichever is the greater,

but, for the purposes of this Section, no regard shall be had to any limitation in a DCC Service Provider Contract which is expressed to be set by reference to any amount specified in or calculated under this Code.

M2.4 Each Party's Liability for any breach of Section M5 (Intellectual Property Rights) shall be unlimited (save as provided in Section M2.2).

Damage to Physical Property

M2.5 Subject to Section M2.1, each Party's Liability for loss of or damage to physical property (including loss of or damage to Systems, and loss or corruption of Data) arising as a result of a breach by that Party of this Code and/or any Bilateral Agreement shall be limited as follows:

(a) the Liability of the DCC shall be limited to £1,000,000 (one million pounds) in respect of each incident or series of related incidents; and

(b) the Liability of each Party other than the DCC shall be limited to £1,000,000 (one million pounds) in respect of each incident or series of related incidents,

for which purposes:

(c) where a defect in the design, manufacture, materials or workmanship of two (or more) Devices causes loss of or damage to physical property (including loss of or damage to Systems, and loss or corruption of Data), the defect in each such Device shall constitute a separate unrelated incident; and

(d) where a Party's Liability exceeds £1,000,000 (one million pounds) and is limited under this Section M2.5 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 £1,000,000 (one million pounds) 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.

Recovery of Loss which is Expressly Permitted

M2.6 It is expressly agreed that a Party may recover the following losses arising as a result of a breach of this Code (and without intending to limit recovery of any other Liability that may arise as a result of such breach):

(a) (subject to Sections F9.25 (Exclusive Remedies for Site Visits) and M2.5) where such breach causes the loss of, or damage to, a Smart Metering System (or any part of it), the Import Supplier, Export Supplier and/or Gas Supplier (as applicable) for that Smart Metering System shall be entitled to recover the reasonable costs and expenses (including reasonable labour costs) incurred in attending the relevant premises for the purpose of repairing or replacing that Smart Metering System (or the relevant part of it);

(b) in the case of breaches of Section F6 (Delivery and Acceptance of Communications Hubs) and/or the CH Handover Support Materials, the DCC shall be entitled to recover the reasonable costs and expenses referred to in Section F6.18 (Failure to Accept Delivery);

(c) where such breach causes an Organisation Certificate to be Compromised or issued otherwise than in accordance with the relevant Certificate Policy (and, in either case, the Subscriber wishes it to be replaced), the reasonable costs and expenses (including reasonable labour costs) incurred in replacing any or all such Compromised Certificates held on Devices (but not the costs and expenses of replacing Device Certificates), limited to £1,000,000 (one million pounds) in respect of each incident or series of related incidents); and

(d) where such breach (including a breach which is deemed to occur in accordance with Section L10.26 (Breach of the Code by the Relevant Subscriber)) gives rise to a Recovery Event such that the DCC incurs (or is required to make payments

in respect of) Recovery Costs under Section L10 (the SMKI Recovery Procedure), the DCC shall be entitled to recover the Recovery Costs that it has incurred (or been required so to pay), limited to £1,000,000 (one million pounds) in respect of each Recovery Event.

Exclusion of Loss of Profit etc.

M2.7 Subject to Sections M2.1 and M2.6 and save in the case of a breach referred to in Section M2.3(b) or M2.4, no Party shall in any circumstances be liable to another Party for any of the following losses arising as a result of a breach of this Code and/or any Bilateral Agreement:

(a) loss of profit;

(b) loss of revenue;

(c) loss of use;

(d) loss of contract;

(e) loss of goodwill; or

(f) loss resulting from the liability of such other Party to a third party for any of the matters referred to in paragraphs (a) to (e) above.

Exclusion of Other Liabilities

M2.8 Subject to Sections M2.1 and M2.6 and save in the case of a breach of those provisions referred to in Section M2.3 or M2.4, no Party shall be liable to any other Party for loss arising from any breach of this Code and/or any Bilateral Agreement other than for losses that are subject to Section M2.5. This Section M2.8 is without prejudice to the operation of the Charging Methodology, and the payments required under Section F9.22 (Payment of Type Fault and Batch Fault Compensation) or F9.23 (Compensation for Product Recall or Technology Refresh).

M2.9 The rights and remedies provided by this Code and/or any Bilateral Agreement 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 and/or any Bilateral Agreement, including any rights that any Party may possess in tort (or delict).

M2.10 Subject to Section M2.1, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute (and releases the other Parties to the same extent from all Liabilities or obligations provided by common law or statute in respect of the subject matter of this Code and/or any Bilateral Agreement).

Statutory Rights

M2.11 For the avoidance of doubt, nothing in this Section M2 shall exclude or restrict or otherwise prejudice or affect any of:

(a) the rights, powers, duties and obligations of any Party which are conferred or created by the Relevant Instruments; or

(b) the rights, powers and duties of the Authority or the Secretary of State.

Other Matters

M2.12 Each of the sub-clauses of this Section M2 shall be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable, then the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties.

M2.13 In respect of all substantive (but not procedural) rights or remedies provided by common law or statute (including in tort or delict, but without prejudice to contractual rights or remedies) in respect of loss of or damage to physical property (including loss of or damage to Systems, and loss or corruption of Data) arising in relation to the subject matter of this Code and/or any Bilateral Agreement, it is agreed that:

(a) each Party hereby waives and releases (to the fullest extent possible at law) such rights and remedies in respect of such loss or damage as such Party may otherwise have against the contractors, employees and agents of each other Party (including the DCC Service Providers) in their capacity as such;

(b) the DCC shall ensure that each DCC Service Provider (when acting in its capacity as such) waives and releases (to the fullest extent possible at law) such

rights and remedies in respect of such loss or damage as such DCC Service Provider may otherwise have against the Parties other than DCC in their capacity as such (and/or against the contractors, employees and agents of such Parties in their capacity as such);

(c) the waiver and release referred to in Section M2.13(a) is to be enforceable by the persons stated therein to have the benefit thereof in accordance with Section M11.5 (Third Party Rights); and

(d) the DCC shall ensure that the waiver and release referred to in Section M2.13(b) is enforceable by the persons stated therein to have the benefit thereof under the Contracts (Rights of Third Parties) Act 1999.

M2.14 Each Party shall be under a duty to mitigate its loss.

M2.15 Each Party hereby acknowledges and agrees that the provisions of this Section M2 are fair and reasonable having regard to the circumstances.

Conduct of Indemnity Claims

M2.16 Where this Code provides that one Party (the "Indemnifier") is to indemnify another Party (the "Indemnified Party") against third party claims, the Indemnified Party shall:

(a) promptly notify the Indemnifier of any such claim, and provide it with details in relation to the same and all relevant documentation excluding that which attracts legal privilege;

(b) consult with the Indemnifier with respect to the subject matter of the claim and the manner in which the Indemnified Party intends to deal with the same, keep the Indemnifier promptly advised of developments concerning the same, and have due regard to the Indemnifier's views in relation to the same;

(c) not settle, compromise or make any admission of liability concerning any such claim, without the prior written consent of the Indemnifier (such consent not to be unreasonably withheld or delayed); and

(d) where the Indemnifier so requests, allow the Indemnifier (or such person as the Indemnifier may nominate) to conduct all negotiations and proceedings

regarding the claim (at the Indemnifier's cost), in which case the Indemnifier shall ensure that the claim is diligently defended in accordance with any reasonable instructions of the Indemnified Party and not settled or compromised without the Indemnified Party's consent (such consent not to be unreasonably withheld or delayed).

SECCo

M2.17 The provisions of this Section M2 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party, but shall not limit SECCo's liability under Section C3.12 (Protections for Panel Members and Others).

M2.18 Nothing in this Section M2 shall limit the DCC's liability to reimburse SECCo in respect of Recoverable Costs.

M3 SERVICES FM AND FORCE MAJEURE

Force Majeure affecting the Services - Services FM

M3.1 The concept of Services FM applies in respect of the obligations of the DCC to provide the Services pursuant to this Code (including pursuant to any Bilateral Agreement).

M3.2 The DCC may claim relief from Liability for non-performance of its obligations in respect of the Services to the extent this is due to Services FM. To the extent that performance of the DCC's obligations is unaffected by the Services FM, the provisions of this Code and any Bilateral Agreement will continue to apply.

M3.3 The DCC cannot claim Services FM has occurred:

(a) in relation to any wilful act, neglect or failure to take reasonable precautions against the relevant Services FM event by the DCC or its servants, agents, employees or contractors (including the DCC Service Providers);

(b) in relation to any circumstances resulting from a failure or delay by any other person in the performance of that other person's obligations under a contract with the DCC (unless that other person is itself prevented from or delayed in complying with its obligations as a result of Services FM); and/or

(c) as a result of any shortage of labour, material or other resources unless caused by circumstances which are themselves Services FM,

and in any event, the DCC shall not be entitled to relief if and to the extent that it is required to comply with the BCDR Procedure in accordance with Sections H10.9 and H10.10 (the Business Continuity and Disaster Recovery Procedure) but has failed to do so (unless this failure is also due to Services FM affecting the operation of the BCDR Procedure).

M3.4 The DCC shall, as soon as reasonably practicable (and in any event within five (5) days of the occurrence of the Services FM), give to the Users that were due to receive the affected Services and to the Panel full details of the Services FM and any relief the DCC wishes to claim in connection with the Services FM.

M3.5 The DCC shall be entitled to relief in respect of Services FM to the extent that the Panel

agrees (or it is subsequently determined by arbitration) that the requirements of Sections M3.2 and M3.3 are met, and that:

(a) the DCC could not have avoided the occurrence of the Services FM (or its consequences or likely consequences) by taking steps which the DCC was required to take (or procure) under this Code and any Bilateral Agreement or might reasonably be expected to have taken;

(b) the Services FM directly caused the non-performance of the Services for which relief is claimed;

(c) the time lost and/or relief from the obligations under this Code and any Bilateral Agreement claimed by the DCC could not reasonably be expected to be mitigated or recovered by the DCC acting in accordance with Good Industry Practice; and

(d) the DCC is taking all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Services FM on the performance of the Services.

M3.6 If the DCC is entitled to relief in respect of Services FM in accordance with Section M3.5, then:

(a) the DCC shall be relieved of Liability under this Code and any Bilateral Agreement in respect of the Services to the extent to which that Liability would otherwise have arisen solely as a result of the Services FM; and

(b) for the avoidance of doubt, the Charges (but not, for the avoidance of doubt, the Fixed Charges) payable by a User shall be reduced to the extent that the DCC does not provide the Services to that User as a result of the Services FM (and shall be calculated on the basis of the Services that are actually provided).

M3.7 The DCC shall notify the affected Users and the Panel as soon as reasonably practicable after the Services FM ceases or no longer causes the DCC to be unable to comply with its obligations under this Code and/or any Bilateral Agreement in respect of the Services. Following such notification, the Services shall continue to be performed in accordance with the terms and conditions existing immediately before the occurrence

of the Services FM.

M3.8 The DCC hereby irrevocably and unconditionally waives all and any rights to claim any extension or allowance of time or other relief from performance of its obligations in respect of the Services other than to the extent caused by Services FM. Each User hereby irrevocably and unconditionally waives all and any rights to claim compensation (including for breach of contract or in tort) for failure by the DCC to provide the Services to the extent caused by Services FM.

Force Majeure

M3.9 The concept of Force Majeure applies in respect of:

(a) all obligations of the DCC pursuant to this Code and any Bilateral Agreement other than the obligations of the DCC to provide the Services; and

(b) all obligations of the other Parties pursuant to this Code and any Bilateral Agreement,

all such obligations together being in this Section M3 the "**Relevant Obligations**".

M3.10 Subject to Section M3.11, the Affected Party will not be in breach of this Code and/or any Bilateral Agreement or otherwise liable for any failure or delay in performance of any Relevant Obligations to the extent such failure or delay is caused by Force Majeure.

M3.11 An Affected Party may only rely upon Section M3.10 in respect of a failure or delay in performance of any Relevant Obligations to the extent that the Affected Party and the Party or Parties to whom the Affected Party owes the Relevant Obligations agree (or it is determined by arbitration) that the Affected Party:

(a) notified the Party or Parties to whom the Affected Party owes those Relevant Obligations of the matters constituting Force Majeure as soon as reasonably practicable following their occurrence;

(b) kept such Party or Parties fully informed as to the matters relating to the Force Majeure; and

(c) took all reasonable steps in accordance with Good Industry Practice to overcome

the Force Majeure and/or minimise the consequences of the Force Majeure on the performance of the Relevant Obligations.

M3.12 The Affected Party shall notify the Party or Parties to whom the Affected Party owes the Relevant Obligations as soon as reasonably practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with the Relevant Obligations.

M3.13 Each Party hereby irrevocably and unconditionally waives all and any rights to claim any extension or allowance of time or other relief from performance of the Relevant Obligations other than to the extent caused by Force Majeure. Each Party hereby irrevocably and unconditionally waives all and any rights to claim compensation (including for breach of contract or in tort) for, or to seek to expel the Affected Party from this Code for, any failure by the Affected Party to comply with the Relevant Obligations to the extent caused by Force Majeure.

SECCo

M3.14 The provisions of this Section M3 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party.

M4 CONFIDENTIALITY

Prohibition on disclosure and use by DCC

M4.1 Subject to Sections M4.3 and M4.4, the DCC shall not disclose another Party's Confidential Information to, or authorise access to another Party's Confidential Information by, any person.

M4.2 Subject to Section M4.3, the DCC shall not use a Party's Confidential Information for any purpose other than the purpose for which it was provided (or otherwise made available) to the DCC, and in any event for any purpose other than the purposes of this Code

Circumstances in which disclosure or use by the DCC are permitted

M4.3 The restrictions on disclosure and authorisation of access in Section M4.1 and on use in Section M4.2 shall not apply to the disclosure or use of, or authorisation of access to, a Party's Confidential Information to the extent:

(a) expressly permitted or required by the DCC Licence;

(b) necessary for the exercise by the DCC of any of its obligations under the Electricity Act, the Gas Act, the DCC Licence, or this Code;

(c) made or given in accordance with the Authority's prior written consent;

(d) such Confidential Information is already available in the public domain other than as a result of a breach by the DCC of this Section M4 and/or the DCC Licence; or

(e) such Confidential Information is already lawfully in the possession of the DCC otherwise than as a result (whether directly or indirectly) of a breach of this Code and/or the DCC Licence (but without prejudice to any obligations to which the DCC is subject in respect of the use or disclosure of such Confidential Information under the arrangements relating to such lawful possession).

M4.4 The restrictions on disclosure and authorisation of access in Section M4.1 shall not apply to the disclosure of, or authorisation of access to, a Party's Confidential

Information to the extent:

(a) made or given in order to comply with the DCC's duties under Laws and Directives or the rules of any recognised stock exchange; provided that, in so far as is reasonably practicable in accordance with such Laws and Directives or rules, the DCC shall provide that Party with prior notice of such proposed disclosure or authorisation of access; or

(b) made or given to the employees, other agents, contractors or advisers of the DCC to the extent such persons require such Confidential Information for the purpose of performing their roles as such; provided that such persons are subject to restrictions on the disclosure or use of, or authorisation of access to, such Confidential Information equivalent to those under this Section M4, and provided that the DCC shall be liable for any disclosure, authorisation or use by such persons otherwise than in accordance with this Section M4. This Section M4.4(b) is without prejudice to Section M4.5.

Restriction of disclosure to DCC employees who are leaving

M4.5 The DCC shall not (having regard to the nature and effective life of the Confidential Information in question) continue to disclose Confidential Information to (or authorise access to Confidential Information by) an employee or other agent of the DCC who has notified DCC of his or her intention to become engaged as an employee or agent of:

(a) any other Party; or

(b) a broker or consultant who is known to provide services in relation to the Supply of Energy and/or Commercial Activities,

save where the DCC could not, in all the circumstances, reasonably be expected to refrain from divulging to such employee or other agent Confidential Information which is required for the proper performance of his or her duties.

DCC Practices, Systems and Procedures

M4.6 The DCC shall put in place and at all times maintain managerial and operational practices, systems, and procedures designed to ensure that it complies with this Section M4.

Provision of Information to the Panel

M4.7 Each Party agrees, subject to any confidentiality provision binding on it, to provide to the Panel (or its Sub-Committees and/or Working Groups, including via the Code Administrator, the Secretariat or SECCo) all Data reasonably requested by the Panel (or its Sub-Committees and/or Working Groups, including via the Code Administrator, the Secretariat or SECCo) in order that they may properly carry out their duties and functions under this Code.

Confidentiality and the Panel

M4.8 Where a Party wishes its Party Data to remain confidential, it shall:

(a) in the case of the DCC (in so far as it acts in accordance with Sections M4.22 to M4.24), clearly mark such Party Data as either 'confidential' or 'controlled'; and

(b) in the case of any other Party, clearly mark such Party Data as 'confidential'.

M4.9 Where a Party does not clearly mark its Party Data as ’confidential’, or (in the case of the DCC only)'controlled', the Panel (or its Sub-Committees or Working Groups, the Code Administrator, the Secretariat or SECCo, as applicable) may treat such Party Data as not being confidential (and shall have no confidentiality obligation in respect of the same).

M4.10 Subject to Section M4.11, the Panel shall not (and shall also ensure that its Sub-Committees and Working Groups, the Code Administrator, the Secretariat and SECCo shall not) disclose, or authorise access to, any Party Data provided (or otherwise made available) to them by a Party where that Party has clearly marked such Party Data as 'confidential' or (in the case of the DCC only) 'controlled' in accordance with Section M4.8.

M4.11 The restrictions in Section M4.10 on disclosures of, or authorisation of access to, Party Data shall not apply to the extent:

(a) made or given in accordance with duties under Laws and Directives or instructions of the Authority;

(b) such Party Data is already available in the public domain other than as a result

of a breach by the Panel (or its Sub-Committees or Working Groups, the Code Administrator, the Secretariat or SECCo); or

(c) such Party Data is already lawfully in the possession of the Panel (or its Sub-Committees or Working Groups, the Code Administrator, the Secretariat or SECCo) otherwise than as a result (whether directly or indirectly) of this Code and/or the DCC Licence (but without prejudice to any obligations in respect of the use or disclosure of such Party Data under the arrangements relating to such lawful possession).

M4.12 The Parties acknowledge that, in order for the Panel (and its Sub-Committees and Working Groups, the Code Administrator, the Secretariat and SECCo) to properly carry out their duties and functions under this Code, the Panel may decide (or be obliged) to keep Data as confidential, and not disclose that Data to the Parties. The Panel shall take reasonable steps to keep such instances to a minimum.

Panel Information Policy

M4.13 The Panel shall establish and maintain a policy for classifying, labelling, handling and storing Party Data received by it (and its Sub-Committees and Working Groups, the Code Administrator, the Secretariat and SECCo) pursuant to the provisions of Section G (Security), Section I (Data Privacy), and Section L (Smart Metering Key Infrastructure) and its related SEC Subsidiary Documents.

M4.14 The Panel (and its Sub-Committees and Working Groups, the Code Administrator, the Secretariat and SECCo) shall act in accordance with the policy established and maintained in accordance with Section M4.13.

Confidentiality of DCC Data

M4.15 Where Data belonging to the DCC, or relating to the DCC or the Services, is disclosed (or otherwise becomes available) to another Party under or in relation to this Code, and where the DCC wishes such Data to remain confidential, the DCC shall (in so far as it acts in accordance with Sections M4.22 to M4.24) clearly mark such Data as either 'confidential' or 'controlled' and where the DCC does not do so, the other Parties may treat such Data as not being confidential (and shall have no confidentiality obligation in respect of the same).

M4.16 Where a Party wishes to dispute whether or not Data which the DCC has marked as 'controlled' may be given that designation in accordance with Section M4.23, that Party may refer the matter to arbitration in accordance with Section M7 (Dispute Resolution).

M4.17 Where a Party wishes to be able to receive from the DCC Data which the DCC marks as 'confidential', that Party shall:

(a) provide to the DCC a list containing the names and contact details of one or more individuals who are authorised by it to receive such Data; and

(b) where it wishes to change the names and/or contact details of the individuals on the list, provide an updated version of the list to the DCC a reasonable time in advance of the update taking effect.

M4.18 Where a Party has provided to the DCC in accordance with Section M4.17 the names and contact details of one or more individuals who are authorised by it to receive Data marked by the DCC as 'confidential', the DCC shall not disclose such Data to that Party except by sending it or making it available to all of those named individuals.

M4.19 Where a Party has not provided to the DCC the names and contact details of one or more individuals who are authorised by it to receive Data marked by the DCC as 'confidential':

(a) the DCC shall be under no obligation to, and shall not, disclose any such Data to that Party; and

(b) paragraph (a) shall be deemed to take precedence over any contrary provision of this Code, and any such provision shall be read as if it incorporated no requirement to disclose any Data marked by the DCC as 'confidential'.

M4.20 Each Party other than the DCC shall not disclose, or authorise access to, Data that is clearly marked by the DCC as either 'confidential' or 'controlled', in accordance with Section M4.15, provided that such restrictions on disclosure and access shall not apply to the extent that:

(a) the disclosure is made or given in accordance with duties under Laws and Directives or instructions of the Authority;

(b) such Data is already available in the public domain other than as a result of a breach of this Code by a Party;

(c) such Data is already lawfully in the possession of the Party otherwise than as a result (whether directly or indirectly) of this Code and/or the DCC Licence (but without prejudice to any obligations in respect of the use or disclosure of such Data under the arrangements relating to such lawful possession); or

(d) such Data is clearly marked by the DCC as 'confidential', but the DCC has disclosed it to the Party by sending or making it available to an individual not named in a list provided by the Party under Section M4.17, or by using contact details different to those specified in that list, and:

(i) the disclosure or access occurs as a direct consequence of that breach by the DCC of Section M4.18; and

(ii) if the Party was made or otherwise became aware of that breach by the DCC, it had taken all reasonable steps to avoid the disclosure or access.

Use of DCC Data

M4.21 The Parties other than the DCC may only use the Data belonging to the DCC, or relating to the DCC or the Services, which is disclosed (or otherwise becomes available) to them under or in relation to this Code for the purpose of performing their obligations or exercising their rights under this Code (or for any other use that is expressly authorised by the DCC in writing).

DCC Classification of Data

M4.22 For the purposes of Sections M4.8 and M4.15, the DCC may only mark Data as 'confidential' where:

(a) that Data relates to a DCC Service Provider providing services pursuant to a DCC Service Provider Contract which was referred to in paragraph 1.5 of schedule 1 to the DCC Licence on its grant;

(b) the DCC is subject to an existing obligation under the DCC Service Provider Contract referred to in paragraph (a) to ensure that that Data remains

confidential;

(c) the DCC's Liability for breaching the obligation referred to in paragraph (b) is unlimited; and

(d) the DCC is not prohibited from marking that Data as 'confidential' under Section M4.24.

M4.23 For the purposes of Sections M4.8 and M4.15, the DCC may only mark Data as 'controlled' where:

(a) the uncontrolled disclosure of, or uncontrolled authorised access to, that Data could reasonably be considered to be prejudicial to the DCC (or any DCC Service Provider); and

(b) the DCC is not prohibited from marking that Data as 'controlled' under Section M4.24.

M4.24 The DCC shall not mark Data as either 'confidential' or 'controlled' where or to the extent that:

(a) the DCC is expressly required to place that Data in the public domain in order to comply with its duties under Laws and Directives;

(b) it is necessary for the exercise by the DCC of any of its obligations under the Electricity Act, the Gas Act, the DCC Licence, or this Code to place that Data in the public domain; or

(c) that Data is already in the public domain other than as a result of a breach by the Parties or the Panel of this Section M4 and/or the DCC Licence.

Onward Supply of Supplier Party Data

M4.25 Where the DCC is obliged under a condition of the DCC Licence to disclose to a third party for a specified purpose information relating to a Supplier Party, that Supplier Party shall, where requested to do so, consent to the further disclosure of that information by that third party to the extent such further disclosure is necessary to fulfil that specified purpose.

Injunctive Relief

M4.26 The Parties agree that damages may not be an adequate remedy in the event of breach of this Section M4, and that a Party may seek injunctive relief in respect of any breach or potential breach of this Section M4.

M5 INTELLECTUAL PROPERTY RIGHTS

SEC Materials

M5.1 Section M5.2 applies 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 Modification 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, the "**SEC Materials**"); provided that the SEC Materials shall not include the Consumer Data or the Services IPR.

M5.2 The Parties agree that, as between the Parties, any and all Intellectual Property Rights subsisting in the SEC Materials and the whole of the title to the SEC Materials will:

(a) be owned by SECCo; and

(b) automatically and immediately vest in SECCo upon their creation or acquisition.

M5.3 Where a Party other than SECCo acquires (by operation of Laws and Directives or otherwise) any Intellectual Property Rights in the SEC Materials, then that Party:

(a) (as far as is permitted by law) hereby assigns such Intellectual Property Rights to SECCo with full title guarantee, by way of present assignment of future Intellectual Property Rights; and

(b) (to the extent such assignment is not permitted) 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 SECCo with full title guarantee (and pending such assignment shall hold such rights on trust for SECCo).

M5.4 SECCo 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 SEC 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 Section M5.4 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 SEC Materials are used for no other purpose).

M5.5 SECCo hereby grants to each of the Panel Members, any Sub-Committee or Working Group members, the Code Administrator and the Secretariat (for so long as they each remain such) a royalty-free, non-exclusive, non-transferable licence to use the SEC Materials for the sole purpose of performing their roles as such. Each licence granted to a person under this Section M5.5 includes the right of that person to grant sub-licences to its agents, contractors and advisers provided that they are granted solely in respect of that person's performance of the role for which the licence was granted (and the SEC Materials are used for no other purpose).

Consumer Data

M5.6 Section M5.7 applies in respect of the Data that is obtained by the DCC (or its employees, other agents or contractors) as a result of providing Services to that User, including the Data contained in requests for Services and that is obtained as a result of communicating with Smart Metering Systems pursuant to this Code on behalf of a User (such Data being the "**Consumer Data**" of that User).

M5.7 As between the DCC and each User, any and all Intellectual Property Rights subsisting in the Consumer Data of that User shall be owned by that User (and the DCC shall make no claims in respect of such Intellectual Property Rights).

M5.8 Each User, in respect of its Consumer Data, hereby grants to the DCC a royalty-free, non-exclusive, non-transferable licence to use that Consumer Data for the sole purpose of DCC exercising its rights and performing its obligations under the Electricity Act, the Gas Act, the DCC Licence and this Code. Each licence granted to the DCC under this Section M5.8 includes the right of the DCC to grant sub-licences to its agents, contractors and advisers provided that they are granted solely in respect of the DCC's rights and obligations under the Electricity Act, the Gas Act, the DCC Licence and this Code (and the Consumer Data is used for no other purpose).

M5.9 Each User, in respect of its Consumer Data, shall ensure that the DCC (and its agents, contractors and advisers) can use that Consumer Data in the manner envisaged by Section M5.8, and shall indemnify the DCC in respect of any Liabilities suffered or incurred by the DCC (or its agents, contractors or advisers) as a result of claims brought

by persons alleging that the use of that Consumer Data in the manner envisaged by Section M5.8 has infringed any Intellectual Property Rights.

Party Data

M5.10 Section M5.11 applies in respect of the Data (other than SEC Materials and Consumer Data) that is provided (or otherwise made available) pursuant to this Code to the Panel (or its Sub-Committees and/or Working Groups, including via the Code Administrator, the Secretariat or SECCo) by or on behalf of a Party (such Data being the "**Party Data**" of that Party).

M5.11 As between the Panel (including its Sub-Committees and/or Working Groups, the Code Administrator, the Secretariat and SECCo) and each Party, any and all Intellectual Property Rights subsisting in the Party Data of that Party shall be owned by that Party (and none of the Panel, its Sub-Committees, its Working Groups, the Code Administrator, the Secretariat or SECCo shall make any claims in respect of such Intellectual Property Rights).

M5.12 Without prejudice to Section M4.10 (Confidentiality and the Panel), each Party, in respect of its Party Data, hereby grants to SECCo, the Panel Members, any Sub-Committee or Working Group members, the Code Administrator and the Secretariat a royalty-free, non-exclusive, non-transferable licence to use that Party Data for the sole purpose of performing their roles as such. Each licence granted to a person under this Section M5.12 includes the right of that person to grant sub-licences to its agents, contractors and advisers provided that they are granted solely in respect of that person's performance of the role for which the licence was granted (and the Party Data is used for no other purpose).

M5.13 Without prejudice to Section M4.10, each Party, in respect of its Party Data, shall ensure that SECCo, the Panel Members, any Sub-Committee or Working Group members, the Code Administrator and the Secretariat (and their agents, contractors and advisers) can use that Party Data in the manner envisaged by Section M5.12, and shall indemnify the SECCo, the Panel Members, any Sub-Committee or Working Group members, the Code Administrator and the Secretariat in respect of any Liabilities suffered or incurred by them (or their agents, contractors or advisers) as a result of claims brought by persons alleging that the use of that Party Data in the manner envisaged by Section M5.12 has

infringed any Intellectual Property Rights.

Services IPR

M5.14 Section M5.15 applies in respect of the Intellectual Property Rights created by, arising from or that are associated with:

(a) the activities undertaken by the DCC for the purposes of carrying on its Authorised Business (as defined in the DCC Licence) in accordance with the DCC Licence; or

(b) the operation of a DCC Service Provider Contract in accordance with its provisions,

such Intellectual Property Rights being the "**Services IPR**".

M5.15 As between the DCC and each User, the Services IPR shall be owned by the DCC (and no User shall make any claims in respect of the Services IPR).

M5.16 The DCC hereby grants to each User a royalty-free, non-exclusive, non-transferable licence to use the Services IPR for the sole purpose of receiving (and to the extent necessary to receive) the Services. Each licence granted by the DCC under this Section M5.16 includes the right of the User to grant sub-licences to its agents, and contractors provided that they are granted solely for the purpose of the User receiving (and to the extent necessary for the User to receive) the Services (and that the Services IPR is used for no other purpose).

M5.17 The DCC shall ensure that each User (and its agents and contractors) can use the Services IPR in the manner envisaged by Section M5.16, and shall indemnify each User in respect of any Liabilities suffered or incurred by that User (or its agents or contractors) as a result of claims brought by persons alleging that the use of that Services IPR in the manner envisaged by Section M5.16 has infringed any Intellectual Property Rights.

General

M5.18 For the avoidance of doubt, the use by a Party of Intellectual Property Rights licensed to it under this Section M5 otherwise than in accordance with such licence shall

constitute a breach of this Code.

M5.19 The Parties agree that damages may not be an adequate remedy in the event of breach of this Section M5, and that a Party may seek injunctive relief in respect of any breach or potential breach of this Section M5.

SECCo

M5.20 The provisions of this Section M5 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party.

M6 PARTY DETAILS

Provision of the Party Details

M6.1 Each Party's original Party Details shall be provided as part of its Framework Agreement counterpart or its Accession Agreement (as applicable).

Amendments to Party Details

M6.2 Each Party may amend its Party Details by notice to the Secretariat from time to time, and each Party shall ensure that its Party Details remain up-to-date.

Publication

M6.3 The Secretariat shall maintain a record of each Party's Party Details, and shall publish that record on the Website (other than those elements of the Party Details that are identified in Schedule 5 as being confidential).

M6.4 As soon as reasonably practicable after each person becomes a Party, or following notification of an amendment to a Party's Party Details in accordance with Section M6.2, the Secretariat shall update the record referred to in Section M6.3.

M6.5 The Secretariat 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.

M7 DISPUTE RESOLUTION

Duty to Seek to Resolve

M7.1 Where a Dispute arises between two or more Parties, each such Party shall seek to resolve the Dispute amicably within a reasonable timescale through negotiation in good faith.

Reference to the Authority

M7.2 Any Dispute of a nature that is expressly stated in this Code or in the Electricity Act or the Gas Act or in the Energy Licences to be subject to determination by the Authority shall be subject to determination by the Authority (which shall be final and binding for the purposes of this Code). For the purposes of Condition 20.3(c) of the DCC Licence, disputes of the nature referred to in Condition 20 of the DCC Licence in respect of the following Other Enabling Services shall be subject to determination by the Authority pursuant to that condition:

(a) requests by TCH Participants for Test Communications Hubs pursuant to Section F10 Test Communications Hubs);

(b) requests by Parties for Detailed Evaluations pursuant to Section H7.7 (Detailed Evaluations of Elective Communication Services);

(c) requests by Parties for the provision of further assistance in respect of the Parse and Correlate Software pursuant to Section H11.12 (Provision of Support and Assistance to Users);

(d) requests by Testing Participants for the provision of a connection to a simulation of the SM WAN for the purposes of testing pursuant to Section H14.31 (Device and User System Tests);

(e) requests by Testing Participants for the provision of additional testing support pursuant to Section H14.33 (Device and User System Tests); and

(f) requests by Parties for DCC Gateway Connections pursuant to Section H15 (DCC Gateway Connections).

Reference to the Panel or its Sub-Committees

M7.3 Any Dispute of a nature that is expressly stated in this Code or a Bilateral Agreement to be subject to determination by the Panel (or one of its Sub-Committees) shall be subject to determination by the Panel (or that Sub-Committee). The Panel shall ensure that any such Dispute is determined within a reasonable period of time after its referral to the Panel (or its Sub-Committee).

M7.4 Unless such determination by the Panel (or one of its Sub-Committees) is expressly stated in this Code or a Bilateral Agreement to be final and binding, such disputes shall (following the Panel's or Sub-Committee's determination) be subject to final determination by the Authority (where this is expressly stated to be the case) or as referred to in Section M7.5.

Arbitration

M7.5 Subject to Sections M7.2, M7.3 and M7.4, any Dispute shall be subject to determination by arbitration in accordance with Section M7.6 (subject to Section M7.13).

M7.6 Where this Section M7.6 applies:

(a) the Party seeking to initiate the arbitration shall give a written notice to the other Party or Parties involved in the Dispute, stating that the matter is to be referred to arbitration and setting out a brief summary of the Dispute;

(b) the Party seeking to initiate the arbitration shall send a copy of that notice to the Panel;

(c) to the extent consistent with this Section M7.6, the arbitration shall be subject to the Arbitration Act 1996 and the rules of the London Court of International Arbitration (the LCIA);

(d) the arbitrator shall be a person appointed by agreement between the Parties involved in the Dispute, or (in the absence of agreement within 10 Working Days following the notice under Section M7.6(a)) appointed by the LCIA;

(e) (unless otherwise agreed by the Parties involved in the Dispute) the arbitration proceedings shall take place in London and in the English language;

(f) the Parties involved in the Dispute agree to keep the arbitration process (and the decision or anything said, done or produced in or in relation to the arbitration process) confidential, except as may be required by Laws and Directives and provided that representatives of the Panel may attend the arbitration and receive a copy of the decision;

(g) the Panel shall treat the decision and all other information relating to the arbitration as confidential, and Section M4.10 (Confidentiality and the Panel) shall apply to the decision and such information;

(h) the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996; and

(i) subject to any contrary award by the arbitrator, each Party involved in the Dispute shall bear its own costs in relation to the arbitration and an equal share of the fees and expenses of the arbitrator.

M7.7 The decision of the arbitrator pursuant to a reference in accordance with Section M7.6 shall be final and binding on each of the Parties to the arbitration, except where there is a serious irregularity (as defined in section 68(2) of the Arbitration Act 1996) or a Party successfully appeals the arbitral award on a point of law in accordance with section 69 of the Arbitration Act 1996. Each Party shall comply with such decision provided that (for the avoidance of doubt) the arbitrator shall not have the power to modify this Code.

DCC Service Provider Disputes

M7.8 If any Dispute that is subject to determination by arbitration involves the DCC, and the DCC considers that the Dispute relates to a dispute it has under or in relation to one or more of the DCC Service Provider Contracts, then the DCC may join the relevant DCC Service Provider or DCC Service Providers to the arbitration, so that the arbitrator hears and determines the disputes under or in relation to the DCC Service Provider Contracts simultaneously with the Dispute. The Parties other than the DCC hereby consent to such joining of disputes.

M7.9 Where the DCC is aware of any dispute arising under or in relation to one or more DCC Service Provider Contracts that may reasonably relate to a Dispute or potential Dispute that would be subject to arbitration, then the DCC may give notice of that dispute to the

Panel and to any or all of the other Parties.

M7.10 Where the DCC gives notice to a Party under Section M7.9, such notice shall only be valid if the DCC gives reasonable detail of such dispute and expressly refers to the waiver that may potentially be given by that Party under Section M7.12.

M7.11 Within 30 Working Days after the DCC has given a valid notification to a Party under Section M7.9 in respect of a dispute under or in relation to a DCC Service Provider Contract, that Party should give notice to the DCC of any Dispute that that Party wishes to bring in relation to that dispute. Where that Dispute is to be resolved by arbitration, the DCC may then exercise its rights under Section M7.8.

M7.12 Where the DCC gives notice to a Party in accordance with Section M7.9, and where that Party does not give notice to the DCC in accordance with Section M7.11, then that Party shall be deemed to have waived any right it may have to bring a claim against the DCC in respect of the subject matter of the dispute in question (and shall, notwithstanding Section M2 (Limitations of Liability), indemnify the DCC in full against any Liabilities incurred by the DCC as a consequence of that Party bringing any such claim).

Claims by Third Parties

M7.13 Subject to Section M7.14, 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 Section M7.13) be subject to arbitration, then (in lieu 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.

M7.14 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 Section M7.13 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.

Injunctive Relief

M7.15 Nothing in this Section M7 shall prevent a Party seeking interim or interlocutory remedies in any court in relation to any breach of this Code.

SECCo

M7.16 The provisions of this Section M7 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party.

M8 SUSPENSION, EXPULSION AND WITHDRAWAL

Events of Default

M8.1 An "**Event of Default**" shall have occurred in respect of any Party other than the DCC (the "**Defaulting Party**") if one or more of the following occurs in respect of the Defaulting Party:

(a) the Defaulting Party does not hold an Energy Licence and has not, during any period of six consecutive months, done any or all of the following: (i) taken one or more Services; and/or (ii) made a request for a formal offer for a proposed Elective Communication Service;

(b) the Defaulting Party has committed a material breach of Section I1.2 (User Obligations);

(c) the Defaulting Party has failed in a material respect to comply with an enforcement notice served by the Information Commissioner pursuant to the Data Protection Legislation, whether such failure has been notified to the Panel by the Information Commissioner or the Panel has otherwise become aware of such failure;

(d) the DCC has served a notice on the Defaulting Party in accordance with Section J2.1 (Notification of Payment Failure) in respect of Charges payable by the Defaulting Party, and such Charges have not been paid within three (3) Working Days following that notice;

(e) the DCC has issued a notice to the Defaulting Party in accordance with Section J3.14 (Breach of Credit Cover Obligations) in respect of Credit Support required to be procured by the Defaulting Party, and such Credit Support has not been provided within three (3) Working Days following that notice;

(f) the Defaulting Party has not paid any amount other than in respect of the Charges (failures in respect of which are subject to Section M8.1(d)) which the Defaulting Party is due to have paid under this Code, and does not remedy such failure within five (5) Working Days after a notice requiring it to do so (which notice must refer to this Section M8);

(g) the Defaulting Party has made a material misrepresentation in its Application Form;

(h) the Defaulting Party is in material breach of any of its material obligations under this Code and/or any Bilateral Agreement (other than those that are subject to another paragraph of this Section M8.1) and the Defaulting Party has failed to remedy the breach (or to desist from the breach and mitigate its effects insofar as it is reasonably practicable to do so) within 20 Working Days after a notice requiring it to do so (which notice must describe the breach in reasonable detail and refer to this Section M8); and/or

(i) the Defaulting Party suffers an Insolvency Type Event.

Notification of an Event of Default

M8.2 Where the DCC or the Code Administrator or the Secretariat becomes aware that an Event of Default has occurred in respect of a Party, then the DCC or the Code Administrator or the Secretariat (as applicable) shall notify the Panel of such occurrence. Where any Party other than the DCC becomes aware that an Event of Default has occurred in respect of another Party, the Party that has become so aware may notify the Panel of such occurrence.

Investigation of an Event of Default

M8.3 Where the Panel has reason to believe that an Event of Default may have occurred in respect of a Party, then the Panel may investigate the circumstances relating to such potential Event of Default. Each Party shall provide all reasonable Data and cooperation as the Panel may reasonably request in respect of any such investigation.

Consequences of an Event of Default

M8.4 Where an Event of Default occurs in respect of a Defaulting Party and while that Event of Default is continuing, the Panel may take one or more of the following steps (in each case to the extent and at such time as the Panel sees fit, having regard to all the circumstances of the Event of Default and any representations made by any Competent Authority or any Party, provided that the Panel must always take the steps referred to in Section M8.4(a) and (b)):

(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 one or more of the Defaulting Party's rights referred to in Section M8.5 (following such prior consultation with the Defaulting Party as the Panel considers appropriate);

(f) instruct the DCC to suspend (in which case the DCC shall, within one Working Day thereafter, suspend) one or more of the Defaulting Party's rights referred to in Section M8.6 (following such prior consultation with the Defaulting Party as the Panel considers appropriate); and/or

(g) expel the Defaulting Party from this Code subject to and in accordance with Section M8.10.

Suspension of Rights

M8.5 The rights referred to in Section M8.4(e) are:

(a) the right of the Defaulting Party (and each other member of its Voting Group) to vote in Panel Member elections under Section C4 (Panel Elections);

(b) the right of the Defaulting Party to raise new Modification Proposals under Section D (Modifications); and

(c) the right of the Defaulting Party to influence the appointment of a Change Board Member, so that:

(i) in the case of a Supplier Party, the Change Board Member appointed by the Voting Group of which that Supplier Party forms part shall be suspended; or

(ii) in the case of any Party other than a Supplier Party, the Secretariat shall ignore the views of that Party when considering any request to appoint or remove a Change Board Member appointed by the Party Category of which that Party forms part.

M8.6 The rights referred to in Section M8.4(f) are:

(a) the right of the Defaulting Party to receive Core Communication Services or Local Command Services in the 'Other User' User Role;

(b) (subject to the Authority's approval) the right of the Defaulting Party to receive Core Communication Services or Local Command Services in any User Role other than the 'Other User' User Role;

(c) (subject to the Authority's approval) the right of the Defaulting Party to receive any or all Elective Communication Services;

(d) (subject to the Authority's approval) the right of the Defaulting Party to initiate Enrolment of Smart Metering Systems; and

(e) (subject to the Authority's approval) the right of the Defaulting Party to request or receive any or all Services other than those referred to elsewhere in this Section M8.6.

M8.7 The suspension of any or all of the Defaulting Party's rights referred to in Section M8.5 or M8.6 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). Without prejudice to the generality of the foregoing, the Defaulting Party shall continue to be liable for all Charges that it is or becomes liable to pay under this Code.

M8.8 Where the Panel has, pursuant to Section M8.4(e) and/or (f), suspended a Party's rights, then the Panel may at any time thereafter end such suspension (provided that, in the case of rights that the Panel cannot suspend without the Authority's approval, the Panel

may not end such suspension without the Authority's approval).

Ceasing to be a Party

M8.9 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 Panel unless the Authority has approved such expulsion (and, in the case of any such approval, Section M8.10(a) shall apply as if the Party did not hold an Energy Licence that requires it to be a party to this Code); and

(b) cannot voluntarily cease to be a Party while that Energy Licence remains in force.

M8.10 A Party that does not hold an Energy Licence that requires that Party to be a party to this Code:

(a) may (while an Event of Default is continuing in respect of that Party) be expelled from this Code with effect from such time on such date as the Panel may resolve (where the Panel considers it reasonable to do so in the circumstances); and

(b) may give notice to the Panel of that Party's intention to voluntarily cease to be a Party and of the time on the date from which it wishes to cease to be a Party. The Panel shall, following receipt of such a notice, resolve that that Party shall cease to be a Party with effect from the time on the date notified.

M8.11 The Panel shall notify the Authority and each remaining Party in the event that any person is expelled from this Code or voluntarily ceases to be a Party.

Appeal to the Authority

M8.12 Where the Panel resolves to suspend the rights of a Party and/or to expel a Party pursuant to this Section M, then that Party may at any subsequent time apply to the Authority to have such suspension lifted or to be reinstated as a Party. The Parties and the Panel 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.

Consequences of Ceasing to be a Party

M8.13 Where the Panel makes a resolution in respect of a Party in accordance with Section M8.10, then with effect from the time on the date at which such resolutions are effective:

(a) that Party's accession to this Code shall be terminated, and it shall cease to be a Party; and

(b) subject to Section M8.14, that Party shall cease to have any rights or obligations under this Code or any Bilateral Agreement.

M8.14 The termination of a Party's accession to this Code shall be without prejudice to:

(a) those rights and obligations under this Code and/or any Bilateral Agreement that may have accrued prior to such termination; or

(b) those provisions of this Code or any Bilateral Agreement that are expressly or by implication intended to survive such termination, including Sections A (Definitions and Interpretation), J (Charges), M2 (Limitations of Liability), M5 (Intellectual Property Rights), M7 (Dispute Resolution), M10 (Notices), and M11 (Miscellaneous).

M9 TRANSFER OF DCC LICENCE

Introduction

M9.1 This Section M9 is included in accordance with Condition 22 of the DCC Licence, and provides for the transfer of (amongst other things) the DCC's interest in this Code to a Successor Licensee.

Application and Interpretation of this Section M9

M9.2 This Section M9 shall only apply where two persons hold a DCC Licence at the same time. In such circumstances:

(a) "**Transfer Date**" has the meaning given to that expression in Condition 43 of the earlier of the two DCC Licences;

(b) until the Transfer Date, the holder of the earlier DCC Licence shall be "**the DCC**" for the purposes of this Code, and the holder of the later DCC Licence shall be "**the Successor Licensee**"; and

(c) from the Transfer Date, all references in this Code to "**the DCC**" shall be references to the holder of the later DCC Licence.

Novation Agreement

M9.3 Where this Section M9 applies, the DCC and the Successor Licensee shall each enter into a novation agreement in a form approved by the Authority.

M9.4 Such novation agreement will, with effect from the Transfer Date, novate to the Successor Licensee all rights and obligations of the DCC under the agreements referred to in Section M9.5 (including all rights obligations and liabilities of the DCC that may have accrued in respect of the period prior to the Transfer Date).

M9.5 Such novation agreement shall be in respect of the following agreements:

(a) the Framework Agreement;

(b) all Accession Agreements; and

(c) all Bilateral Agreements.

M9.6 The DCC shall enter into such novation agreement in (to the extent applicable) its own right, and also (to the extent applicable) on behalf of the Parties (which shall include SECCo) that are counterparties to the agreements referred to in Section M9.5.

DCC Authority to enter into Accession Agreements

M9.7 Each Party (which shall include SECCo) hereby irrevocably and unconditionally authorises the DCC to execute and deliver, on behalf of such Party, a novation agreement as envisaged by this Section M9.

Co-operation

M9.8 Each Party shall do all such things as the Panel may reasonably request in relation to the novation of the agreements referred to in Section M9.5 from the DCC to the Successor DCC.

M10 NOTICES

Communication via Specified Interfaces

M10.1 This Code requires certain communications to be sent via certain specified means, including as described in:

(a) Section E2 (Provision of Registration Data);

(b) Section H3 (DCC User Interface);

(c) Section H8 (Service Management, Self-Service Interface and Service Desk) and;

(d) Section L4 (The SMKI Service Interface) and L5 (The SMKI Repository Interface).

Other Notices

M10.2 Save as referred to in Section M10.1, any notice or other communication to be made by one Party to another Party under or in connection with this Code or any Bilateral Agreement shall be in writing and shall be:

(a) delivered personally or by courier;

(b) sent by first class prepaid post; or

(c) sent by fax or email.

M10.3 All notices and communications as described in Section M10.2 shall be sent to the physical address, fax number or email address specified for such purpose in the relevant Party's Party Details. Where no fax or email address is specified for a particular type of notice or communication, notice may not be given in that manner.

M10.4 Subject to Section M10.5, all notices and communications as described in Section M10.2 shall be deemed to be received by the recipient:

(a) if delivered personally or by courier, when left at the address set out for such purpose in the relevant Party's Party Details;

(b) if sent by first class prepaid post, two Working Days after the date of posting;

(c) if sent by fax, upon production by the sender's equipment of a transmission report indicating that the fax was sent to the fax number of the recipient in full without error; and

(d) 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.

M10.5 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.

The Panel, Code Administrator, Secretariat and SECCo

M10.6 Notices between a Party and any of the Panel, the Code Administrator, the Secretariat or SECCo shall also be subject to this Section M. Notices to any of the Panel, the Code Administrator, the Secretariat or SECCo shall be sent to the relevant address given for such purpose, from time to time, on the Website (or, in the absence of any such address, to SECCo's registered office).

Process Agent

M10.7 Any Party (being a natural person) who is not resident in Great Britain or (not being a natural person) which is not incorporated in Great Britain shall, as part of its Party Details, provide an address in Great Britain for service of process on its behalf in any proceedings under or in relation to this Code and/or any Bilateral Agreement. Where any such Party fails at any time to provide such address, such Party shall be deemed to have appointed SECCo as its agent to accept such service of process on its behalf.

M11 MISCELLANEOUS

Entire Code

M11.1 This Code and any document referred to herein represents the entirety of the contractual arrangements between the Parties in relation to the subject matter of this Code. This Code and any document referred to herein supersedes any previous contract between any of the Parties with respect to the subject matter of this Code.

M11.2 Each Party confirms that, except as provided in this Code and without prejudice to any claim 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

M11.3 If any provision of this Code shall be held to be invalid or unenforceable by a judgement or decision of any Competent Authority, that provision shall be deemed severable and the remainder of this Code shall remain valid and enforceable to the fullest extent permitted by law.

Waivers

M11.4 The failure by any Party to exercise, or the delay by any Party in exercising, any right, power, privilege or remedy provided under 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 future exercise thereof or the exercise of any other right, power, privilege or remedy.

Third Party Rights

M11.5 The following persons shall be entitled to enforce the following rights in accordance with the Contracts (Rights of Third Parties) Act 1999:

(a) the person referred to in Sections C3.12 (Protections for Panel Members and Others) and M2.13(a) (Other Matters) shall be entitled to enforce the respective rights referred to in those Sections; and

(b) the Approved Finance Party for each Communications Hub Finance Facility

shall be entitled to exercise and/or enforce the following rights of the DCC in respect of the Communications Hub Finance Charges relating to that facility where a Communications Hub Finance Acceleration Event has occurred in respect of that Communications Hub Finance Facility and the Authority has determined that the DCC is unwilling or unable to do so:

(i) the right to calculate the amount of the Communications Hub Finance Charges arising as a result of that event (provided in such circumstances that the Approved Finance Party must demonstrate to the satisfaction of the Authority that the amount of the charges so calculated will in aggregate be no more than the amount contractually due and payable (but unpaid) by the DCC to the Approved Finance Party in respect of that event);

(ii) the right to invoice the Users in respect of the Communications Hub Finance Charges arising as a result of the Communications Hub Finance Acceleration Event (whether in the amount calculated by the DCC in accordance with this Code, or in the amount calculated by the Approved Finance Party and approved by the Authority under Section M11.5(b)); and/or

(iii) the right to enforce payment by the Users in accordance with this Code of the amount of Communications Hub Finance Charges invoiced in accordance with this Code,

and the payment of any amount by a User to an Approved Finance Party pursuant to this Section M11.5(b) shall satisfy that User's obligation to pay that amount to the DCC.

M11.6 Subject to Section M11.5, the Parties do not intend that any of the terms or conditions of this Code will be enforceable by a third party (whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise).

M11.7 Notwithstanding that a person who is not a Party has the right to exercise and/or enforce particular rights in accordance with Section M11.5, the Parties may vary or terminate this Code in accordance with its terms without requiring the consent of any such person.

Assignment and Sub-contracting

M11.8 Without prejudice to a Party's right to appoint agents to exercise that Party's rights, no Party may assign any of its rights under this Code without the prior written consent of the other Parties.

M11.9 Any Party may sub-contract or delegate the performance of any or all of its obligations under this Code to any appropriately qualified and experienced third party, but such Party shall at all times remain liable for the performance of such obligations (and for the acts and omissions of such third party, as if they were the Party's own). It is expressly acknowledged that the DCC has sub-contracted a number of its obligations under this Code to the DCC Service Providers.

Agency

M11.10 Nothing in this Code shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties and no employee of one Party shall be deemed to be or have become an employee of another Party.

M11.11 No Party shall:

(a) pledge the credit of another Party;

(b) represent itself as being another Party, or an agent, partner, employee or representative of another Party; or

(c) hold itself out as having any power or authority to incur any obligation of any nature, express or implied, on behalf of another Party.

Derogations

M11.12 A Party that holds an Energy Licence shall not be obliged to comply with its obligations under this Code to the extent to which such Party has the benefit of a derogation from the obligation to do so granted by the Authority under such Energy Licence.

Law and Jurisdiction

M11.13 This Code and any dispute or claim arising out of or in connection with it (including non-contractual claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

M11.14 In relation to any dispute or claim arising out of or in connection with this Code (including in respect of non-contractual claims), each Party (subject to Section M7 (Dispute Resolution)) irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales and of Scotland. For the avoidance of doubt, the foregoing shall not limit a Party's right to enforce a judgment or order in any other jurisdiction.

SECCo

M11.15 The provisions of this Section M11 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party.