

## **Annex 10: OFFSHORE TRANSMISSION ELECTRONIC TENDERING PORTAL USER AGREEMENT**

### **1. Introduction**

- 1.1. This User Agreement between the Authority and the User governs the access and use of the Offshore Transmission Electronic Tendering Portal (the System) by the User to respond to an invitation from the Authority to participate in a Tender Process.
- 1.2. This User Agreement applies to the User and the User Agents' access to and use of the System. The User hereby agrees to be bound and agrees that its User Agents shall be bound by the terms of this User Agreement.
- 1.3. The System is provided by Bravo Solution UK Lt and operated by the Authority. In consideration for the Authority providing the User with access to and use of the System the User agrees to comply with its obligations under this User Agreement.
- 1.4. Use of the Authority's website to access the System shall at all times remain subject to the terms of the disclaimer to be found at the following hyperlink <http://www.ofgem.gov.uk/CustomPages/Pages/Termsconditions.aspx>
- 1.5. The User agrees that the submission by it of any information in files or in file attachments containing viruses that have been advised by the System shall entitle the Authority to invalidate or reject any such submitted files.

### **2. Access**

- 2.1. The Authority grants to the User, free of charge, access to the System by User Agents.
- 2.2. The Authority may immediately terminate access to the System by the User and/or one or more User Agents by giving notice in writing to the User if the User commits a material breach of any of its obligations under this User Agreement.
- 2.3. The Authority may terminate access to all or part of the System by the User and/or User Agents upon conclusion of any stage of the Tender Process, where determined reasonable to do so by the Authority.
- 2.4. Upon termination of the User's access to the System for whatever reason, the User agrees to: (i) immediately cease all access to and use of the System through any means and (ii) promptly destroy all items pertaining to the System, including all copies of screens, all documents and information obtained through the System, all "cache" files, all Confidential Information, all on-line help information, all documentation relating to the System and User's user ID and password.
- 2.5. Without prejudice to any of the Authority's other rights, the Authority reserves the right to suspend access to the System without notice for technical or legal reasons.
- 2.6. The Authority reserves the right, at its discretion, to make additions, substitutions and modifications to any part of the System.
- 2.7. Users will only have access to those parts of the System which the Authority (in its discretion) deems appropriate.

- 2.8. The Authority has no obligation to monitor access to, and use of, the System. The User acknowledges and agrees that the Authority has the right to monitor the System electronically from time to time and to disclose any information as necessary or appropriate to satisfy any law, regulation or other governmental request, to operate the System properly, or to protect themselves or their users. The Authority reserves the right to refuse to post information or materials and to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, inappropriate or in violation of this User Agreement.

### **3. Registration**

- 3.1. To be granted access to the System, the User must register each person which the User wishes to be a User Agent by providing the required registration data and specifying a user ID and password.
- 3.2. User ID and password are strictly personal to the User Agent and non-transferable. The User shall ensure that its User Agents do not divulge or disclose their user ID or password to third parties. In the event that the User or a User Agent becomes aware that a user ID and / or password may have been divulged, disclosed or discovered by any third party, they shall immediately notify the Helpdesk.
- 3.3. The User shall designate an individual User Agent to manage access to the System by other User Agents.
- 3.4. The User must immediately inform the Helpdesk in the event that a User Agent leaves its employment or no longer requires access to the System. The Authority retains the right to deactivate a User Agent user id and password if there has been no access for a period of sixty (60) days.
- 3.5. The Helpdesk is established solely to supervise and maintain the operation of the System. Users are not permitted to ask any questions of Helpdesk as to the information on the System.

### **4. Configuration and Use of Material**

- 4.1. The Authority shall configure the System as appropriate for each stage of the Tender Process. The configuration settings for each stage of the Tender Process shall be displayed on the System for relevant Users to view. The User agrees to be bound by these configuration settings.
- 4.2. All material issued through the System in connection with any Tender Process shall remain the property of the Authority and shall be used only for the purpose of that Tender Process and in accordance with the System permissions.

### **5. User's Obligations**

- 5.1. The User shall ensure that all its User Agents comply:
- 5.1.1. with this User Agreement;
  - 5.1.2. forthwith with any reasonable request by Helpdesk or the Authority relating to the System; and
  - 5.1.3. with any reasonable security regulations and procedures required from time to time in connection with the System.

- 5.2. The User shall use all reasonable care and skill in performing its obligations under this User Agreement.
- 5.3. The User shall provide its User Agents with the equipment and software needed to access and use the System.
- 5.4. The User shall provide software to ensure the security of the System and use best endeavours to protect the System from viruses when being accessed and used by its User Agents.
- 5.5. The User shall use the System for lawful and proper purposes only and shall, in any event, comply with all relevant laws, regulations and Codes of Practice within the UK or other jurisdiction from which User Agents access the System.
- 5.6. In particular, the User agrees that it will not:
  - 5.6.1. manipulate any information supplied on the System in a manner that would lead to inaccurate, misleading or discriminating presentation of information being displayed;
  - 5.6.2. knowingly or intentionally restrict or inhibit any other User from using and enjoying the System;
  - 5.6.3. post, transmit or disseminate any information on or via the System which is or may be unlawful, fraudulent, libellous, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, offensive, or otherwise objectionable information of any kind, including any transmissions constituting or encouraging conduct that would constitute a criminal offence or give rise to civil liability;
  - 5.6.4. knowingly or intentionally post or transmit any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or schemes or other unsolicited commercial communication (except as otherwise expressly permitted in writing by the Authority) or engage in spamming or flooding;
  - 5.6.5. knowingly or intentionally post or transmit any information or software that contains a virus, Trojan horse, worm or other harmful component (a "**Virus**") (notwithstanding the foregoing, the User agrees to continuously use up-to-date, industry standard virus detection devices to ensure that the User does not transmit any Virus to the System);
  - 5.6.6. post, publish, transmit, reproduce, distribute or in any way exploit any information, software or other material obtained through the System for commercial purposes (other than as expressly permitted by the provider of such information, software or other material);
  - 5.6.7. de-compile (save as and to the extent that such right may not be excluded under applicable law), reverse engineer, disassemble, rent, lease, loan, copy, republish, distribute, transmit, sublicense and create derivative works from the System;
  - 5.6.8. use or otherwise access the System in violation of any national or international laws, ordinances, rules, and regulations, including the rules

and regulations of any applicable stock exchanges and over-the-counter markets;

- 5.6.9. circumvent or attempt to circumvent any security protocol on the System, whether knowingly, inadvertently or intentionally;
  - 5.6.10. use the System in a manner which is not in compliance with this User Agreement;
  - 5.6.1.1 attempt to access any data contained on the System that the User is not authorized to access;
  - 5.6.12. use the System in a manner which causes or may cause an infringement of the rights of any other; and
  - 5.6.13. use any software, routine or device to interfere or attempt to interfere electronically or manually with the operation or functionality of the System, including uploading or making available files containing corrupt data or viruses via whatever means.
- 5.7. The User agrees that its User Agents shall act as authorised agents for and on behalf of the User in submitting any data, information or response in relation to any particular Project on the System.
- 5.8. If the User accesses any documents on the System and a copy of that data is copied to the User's local computer ("**cache**"), the Authority requires that the User empties and shall use its best endeavours to empty the cache after its session on the System to ensure that any cached files from the session are deleted from the local computer.
- 5.9. The User shall be liable for failure to comply with its obligations under this User Agreement even if such failure is caused by unauthorised use of such Users' user ID and password.

## **6. Intellectual Property Rights**

- 6.1. All Intellectual Property Rights in the System are owned by, or are under licence to, the Authority.
- 6.2. The User and its User Agents shall have no Intellectual Property Rights in the System, nor shall it have any rights to copy, adapt, modify or interfere with the System.
- 6.3. The System may include the Authority's logo. The User acknowledges that it may not copy, use, or mask the Authority's logo which appears on the System without the prior consent of the Authority.

## **7. Data Protection**

- 7.1. In its use and access of the System, the User shall comply with the Data Protection Act 1998 and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner and it shall not do or cause or permit to be done anything which may cause or otherwise result in a breach by the Authority of the same.

7.2. The Authority, will collect, hold and use personal data obtained from and about the User and User Agents pursuant to Clause 3.1. The User agrees to such data being collected, held and used in accordance with this User Agreement and its obligations under the Data Protection Act 1998.

## **8. Limitation of Liability**

8.1. Neither the Authority nor the User excludes or limits liability to the other for death or personal injury or any breach of any obligations implied by Section 8 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.

8.2. In no event shall the Authority be liable to the User for any direct loss, indirect loss or damages incurred by the User arising from the use of the System.

8.3. The User acknowledges and accepts that:

8.3.1. the Authority reserves the right to interrupt and/or suspend the availability of the System and/or revoke access at any time by notice to the User without incurring any liability;

8.3.2. the Authority provides the System on an 'as is' basis and 'as available' basis without any warranty of any kind whether express or implied;

8.3.3. the Authority does not accept any liability for any information or links on the System that may refer User Agents to external sources: and

8.3.4. the User may not assign or otherwise transfer this User Agreement or any rights of access to the System.

8.3.5. the User shall be liable for the acts of its User Agents and their failure to comply with the terms and conditions of this User Agreement.

8.4. The User will indemnify the Authority in full against all claims, demands, actions or proceedings (including legal and other professional advisers fees) made by any third party arising out of or in relation to the User's breach of its obligations under this User Agreement.

## **9. Confidentiality**

9.1. Each party shall:-

9.1.1. treat all Confidential Information as Confidential and safeguard it accordingly;

9.1.2. not disclose any Confidential Information to any third party without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of this User Agreement: and

9.1.3. not use any Confidential Information otherwise than for the purposes of this User Agreement.

- 9.2. The User shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with this User Agreement:
  - 9.2.1. is given only to such employee, consultant, sub-contractor, professional advisor or agent engaged to advise it in connection with this User Agreement as is strictly necessary for the performance of this User Agreement and then only to the extent necessary for each employee, consultant, sub-contractor, professional advisor or agent activities in the performance of this User Agreement;
  - 9.2.2. is treated as confidential and not disclosed (without prior written approval) or used by any employee, consultant, sub-contractor, professional advisor or agent otherwise than for the purposes of this User Agreement;
  - 9.2.3. in the event that any Confidential Information belonging to or relating to any other User is accessed improperly by the User or by any of its User Agents whether accidentally or deliberately, the User shall upon such notice coming to the Users attention, immediately notify the Authority in order that appropriate steps can be taken and instructed with a view to preserving the integrity of any particular Tender Process and to protecting the confidentiality and intellectual property rights of any third party that may otherwise be adversely affected.
- 9.3. Where it is considered necessary in the opinion of the Authority, the User shall ensure that any employee, consultant, sub-contractor, professional advisor or agent of the User sign a confidentiality undertaking before commencing work in connection with this User Agreement.
- 9.4. The provisions of this Clause 9 shall not apply to any information:-
  - 9.4.1. which is or becomes public knowledge (otherwise than by breach of the obligations of confidentiality under this User Agreement);
  - 9.4.2. which is in the possession of the party concerned, without restriction as to its disclosure, before receiving it from the disclosing party;
  - 9.4.3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 9.4.4. is independently developed without access to the Confidential Information; or
  - 9.4.5. which is issued through the System if the use and disclosure of such information is governed by a separate confidentiality agreement that the User has entered into with the Authority.
- 9.5. Nothing in this User Agreement shall prevent the Authority from:-
  - 9.5.1. disclosing any Confidential Information which is required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive,

decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation parliamentary obligation; or

9.5.2. disclosing any information for the purpose of:-

9.5.2.1. the examination and certification of the Authority's accounts;  
or

9.5.2.2. any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

9.5.3. disclosing any information obtained from the User:-

9.5.3.1. to any other department, office or agency of the Crown; or

9.5.3.2. to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to this User Agreement, provided that in disclosing information under this sub-paragraph (9.5.3) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

9.6. Nothing in this User Agreement shall prevent either party from using any techniques, ideas or know-how gained during the performance of this User Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

9.7. In the event that the User fails to comply with this Clause 9, the Authority reserves the right to terminate this User Agreement by notice in writing with immediate effect.

9.8. The User acknowledges that the Authority is subject to the requirements of the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and cooperate with the Buyer in meeting its obligations thereunder. The User shall use all reasonable endeavours to ensure the observance of the provisions of this Clause 9 by its sub-contractors.

9.9. The obligations of this Clause 9 shall survive the expiry of this User Agreement for a period of 5 years.

## **10. Rights of Third Parties**

10.1. This User Agreement shall not create any rights that shall be enforceable by anyone other than the Authority and the User and/or the User's Agents.

10.2. With the exception of the right of the Authority's Representatives to enforce the terms contained in Clauses 8, 9 and 12.3 and the right to enforce the terms contained in Clause 7.2 no term of this User Agreement is enforceable under the Contracts (rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

## **11. Amendments to User Agreement**

- 11.1. Subject to Clauses 11.2 and 11.3, the User acknowledges that the Authority reserves the right to vary or amend this User Agreement by publication of a notification or message on the System or through an email or letter to the User, using the email address or postal address referred to in Clause 13.1.3.
- 11.2. The amendments shall be deemed to have been accepted by the User unless the Helpdesk receives, within 11 days of the date of the notice under Clause 11.1, a written communication from the User expressing refusal of the amendments. In any case, the User's continued use of the System shall represent its unconditional acceptance of the amendments in its entirety.
- 11.3. The User shall be entitled to terminate this User Agreement with immediate effect in the event that notice is given pursuant to Clause 11.1.

## **12. General**

- 12.1. The waiver by either party of any breach of this User Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 12.2. If at any time any part of this User Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this User Agreement and the validity and/or enforceability of the remaining provisions of this User Agreement shall not in any way be affected or impaired as a result of that omission.
- 12.3. Nothing contained either inside or outside this User Agreement shall be taken as constituting:
  - 12.3.1. a contract, including any collateral contract, or any contractual term between the Authority and any other party as to the procurement of any goods, services or works, including any potential service provider; or
  - 12.3.2. any representation by or on behalf of the Authority.
- 12.4. the Authority and the User acknowledge that, for the entire duration of the Tender Process, any dates and times shall be those displayed on the System and any other Helpdesk recording and telecommunications equipment, and such recordings shall represent a full account of the actual facts and circumstances.
- 12.5. The Authority shall be entitled to remove any of the User's access to the System (in part or whole) and remove any of the User's information (in part or whole) from the System at any time at its discretion and at all times acting reasonably.
- 12.6. The waiver by either party of any breach of this User Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 12.7. In the event that the User withdraws from or is disqualified from the Tender Process for any particular Project, the User shall not make any attempt access any further information or data from the System and in relation to that particular Project, and subject to the reasons for such withdrawal or disqualification, the Authority at all times acting reasonably, shall be entitled to terminate this User Agreement with



immediate effect and to revoke all passwords and id facilities that may be previously granted to the User.

### **13. Notices**

- 13.1. All communications given under this User Agreement shall be in writing and shall be:
  - 13.1.1. served to the User, via e-mail, to the e-mail address the User has given upon registration or through the messaging facility available on the System; or
  - 13.1.2. served to the Authority, via e-mail to [help@bravosolution.co.uk](mailto:help@bravosolution.co.uk) or through the messaging facility available on the System; and
  - 13.1.3. deemed to be received by the addressee on the same day as the addressor sending such e-mail, subject to the:
    - 13.1.3.1. addressor using the addressee's correct e-mail address; and
    - 13.1.3.2. addressee, on receipt of such an e-mail, e-mailing an acknowledgement of receipt to the addressor as soon as is practicable and in any event not later than 13:00 of the following Working Day after the addressee received such e-mail. If the addressor fails to receive such acknowledgement by 13:00 of the next Working Day after the addressee received the e-mail, the addressor may also serve the communication by first class registered post to:
      - 13.1.3.2.1 the User, to the postal address the User has given upon registration; or
      - 13.1.3.2.2. the Authority, at 9 Millbank, London, SW1P 3GE, and shall be deemed to be received by the addressee two working days after posting.
- 13.2. Either party to this User Agreement may change its postal address for notification purposes by giving the other reasonable prior written notice of the new information and its effective date pursuant to this Clause 13.

### **14. Law and Jurisdiction**

- 14.1. This User Agreement and any dispute or claim arising out of or in connection with them shall be governed by, and construed in accordance with, the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales to which the parties irrevocably submit.
- 14.2. Regardless of whether the courts of any country other than England have jurisdiction to consider a dispute falling within Clause 14.1, the User irrevocably undertakes that they will neither issue nor cause to be issued originating or other process in respect to such dispute in any jurisdiction other than England.
- 14.3. In the event that either Party commences an action in the courts of any country other than England (a "**Foreign Action**"), the Party which commenced the Foreign Action shall indemnify the other Party (whichever did not commence the Foreign Action) in respect of any and all costs and/or liabilities which it has incurred in

connection with the Foreign Action, whether or not those costs and/or liabilities would be recoverable apart from the provisions of this Clause.

## **15. Interpretations**

- 15.1. The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of this User Agreement.
- 15.2. Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.
- 15.3. The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 15.4. References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 15.5. All references in this User Agreement to Clauses are to the clauses to this User Agreement and references to Sections are to sections of this User Agreement unless otherwise stated.

## **16. Definitions**

**"Authority"** means the Gas and Electricity Markets Authority (also known as "GEMA"). The Authority is a "Non-Ministerial Government Department" and is a Crown Body staffed by civil servants working for and giving effect to the executive decisions of the Authority through the Office of the Gas and Electricity Markets (or "Ofgem"). "Ofgem", "GEMA" and the "Authority" may be used interchangeably in this Agreement and in various other documents relating to this Agreement;

**"Confidential Information"** means secret, confidential, commercial, financial, marketing, technical or other information, know-how, trade secrets and other information in any form or medium and belonging to or in relation to any party whatsoever, including any other User and whether accessed through the System legitimately or in error or whether disclosed orally or in writing before or after the date of this User Agreement, together with any reproductions of such information in any form or medium or any parties of this information;

**"Confidential"** means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available;

**"Helpdesk"** means the facility provided by the Authority (through BravoSolution UK Ltd as the Authority's contractor) to handle support queries and issues raised by User Agents;

**"Intellectual Property"** means any patent, copyright, database right, moral right, design right (whether registered or unregistered), trade mark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any application for any such right, or other industrial or intellectual property right;

**"Party"** or **"Parties"** means a party or parties to this User Agreement;

**"Project"** means the actual or planned management and operation by the User of an offshore transmission asset with specific reference to any of the Projects subject to a Tender Process being run by the Authority;

**"System"** means the eSourcing System (provided by BravoSolution UK Ltd on behalf of the Authority) for Applicants to participate in the Tender Process;

**"Tender Process"** means any competitive process run by the Authority in accordance with Section 6C of the Electricity Act 1989 in order to identify a suitable entity to be awarded an offshore transmission licence in relation to a particular Project;

**"User"** means any person who is granted access to and use of the System; [note that person is defined in the interpretation clause 15.2 to include body corporate]

**"User Agent"** means any person authorised by the User to access and use the System and/or acting as a representative or agent of the User in accessing and using the System;

**"Working Day"** means 09:00-17:00 Monday to Friday in the United Kingdom and excluding Bank Holidays.