

## Offshore Electricity Transmission: Tender Rules

Version 1.1

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### Overview:

A new regulatory regime for offshore electricity transmission has been established. A key part of the regime is the grant of offshore electricity transmission licences on the basis of a competitive Tender Process. Ofgem is responsible for managing this process.

This document sets out the Tender Rules relating to the first competitive Tender Round which will lead to the granting of Offshore Transmission Licences.

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**Contact details:** [tendercoordinator@ofgem.gov.uk](mailto:tendercoordinator@ofgem.gov.uk)

## Change Control Schedule

Version number	Date	List of changes
1	21 July 2009	Tender Rules document published
1.1	8 June 2010	Amendments to Appendix 1 – Cost Recovery Methodology

## Context

Electricity generated from offshore renewable sources is expected to make an important contribution to the achievement of the UK's share of the EU's target of generating 20 per cent of energy from renewable sources by 2020. It is therefore necessary that fit for purpose offshore electricity transmission infrastructure is developed to transfer the electricity generated to the onshore network and ultimately to consumers. It is important that this infrastructure is developed in a timely and cost effective manner, whilst achieving best value for electricity consumers.

Ofgem has been working with the Government (the Department for Energy and Climate Change or DECC) to introduce a new regulatory regime for offshore electricity transmission. A key part of the regime is that offshore electricity transmission licences will be granted following a competitive Tender Process managed by Ofgem.

These Tender Rules apply to the Qualifying Projects to be included in the first competitive Tender Round under the Transitional Regime, which is expected to commence in July 2009. These Rules may be updated in documents issued subsequently by Ofgem as part of the first Tender Round. Revised Tender Rules may be issued in accordance with the Tender Regulations in relation to future Tender Rounds.

## Associated Documents

- Offshore Electricity Transmission: Final Statement on the Competitive Tender Process, June 2009, Ofgem ref: 71/09
- Overview of Great Britain's Offshore Electricity Transmission Regulatory Regime - joint DECC-Ofgem statement, June 2009, Ofgem ref: 67/09

These documents are available to download at:

[www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/Pages/cdr.aspx](http://www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/Pages/cdr.aspx)

- The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 - [http://www.opsi.gov.uk/si/si2009/uksi\\_20091340\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20091340_en_1)

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## Executive Summary

The Government has set ambitious targets for the deployment of renewable energy over the next decade. By 2020, 15 per cent of the UK's energy needs will come from renewable sources. It is expected that offshore renewable generation will make an important contribution to achieving these targets. The successful deployment of offshore renewable generation on the scale will be reliant on a number of factors, including the timely delivery of fit for purpose offshore transmission infrastructure to enable electricity to be transported to consumers. It is important that this infrastructure is developed in a cost effective manner to achieve the best value for current and future consumers.

The Government has decided that this is best achieved through the introduction of a new regulatory regime for offshore electricity transmission. As part of this regime, licences for this activity will be granted by means of a competitive Tender Process, run by Ofgem. We have worked with DECC to design and introduce this new regulatory regime and have consulted extensively on it over the last four years, culminating in a final statement published in June 2009. The regime reached an important milestone on 24 June (Go Active) whereby certain key sections of the Energy Act 2004 were commenced.

We have also consulted extensively on the design of the competitive Tender Process, taking into account views from a range of stakeholders. The legal framework for the competitive Tender Process is provided for in the new Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 that came into force on 2 June 2009. The Tender Regulations provide the necessary powers to run the competitive process, set out the requirements that Developers need to satisfy in order to qualify and enter a Tender Process, the process for Participants and the provisions for disqualification from, and cancellation of, tenders. The Tender Regulations are available from the Office of Public Sector Information website [www.opsi.gov.uk](http://www.opsi.gov.uk).

This document sets out the rules for the first transitional Tender Round. It sets out information for both Developers and Participants regarding each of the key stages of the process. These Tender Rules are published in accordance with regulation 7(4) of the Tender Regulations.

The first round of tenders will be for those offshore transmission assets that have been or are being constructed by Developers, and where the Developer meets certain pre-conditions before the Go Live date for the regime. These are projects in the transitional regime, where the assets will be transferred to an offshore transmission owner ("OFTO") upon completion of construction.

## 1. Introduction

### Background to the Tender Round

1.1. Offshore transmission systems connecting offshore wind farms to the onshore transmission system will be owned and operated by holders of Offshore Transmission Licences.

1.2. The new regulatory regime for offshore electricity transmission requires that Offshore Transmission Licences be granted after a competitive tendering process has been held to identify the OFTO licensee. The result will be that the generating assets will be owned and operated by the generator, whilst the Offshore Transmission System will be owned and operated by an Offshore Transmission Licensee.

1.3. Section 6C of the Electricity Act gives the Authority powers to make regulations to run a competitive tendering process in order to determine who will be granted Offshore Transmission Licences. The Tender Regulations provide the legal framework for this process.

### Purpose of the Tender Rules

1.4. These Tender Rules apply to those Qualifying Projects that are expected to be included in the first competitive tender exercise under the Transitional Regime.

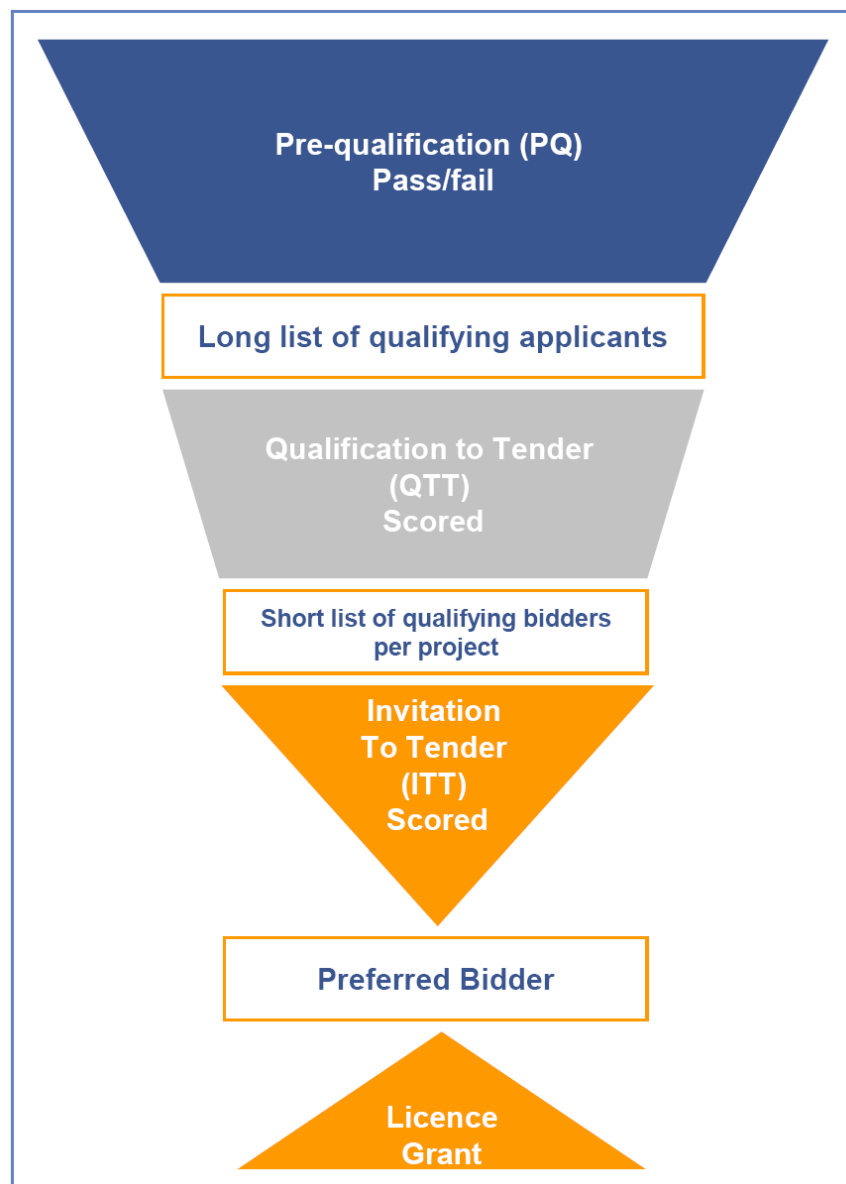
1.5. These Tender Rules have been prepared in order to inform Participants, Developers and other interested parties about how Ofgem will run the Tender Round. Developers and Participants must comply with these rules during the Tender Round. Failure to do so could lead to disqualification from this Tender Round in accordance with the Tender Regulations.

### Tender Round Overview

1.6. Chapter 2 of the Tender Rules sets out the legal requirements of the Tender Round. Chapter 3 sets out the rules of engagement and Chapter 4 describes the Offshore Electricity Transmission Portal, which will be used to administer the process.

### Process Steps

1.7. The principal stages involved in the Tender Process can be illustrated as follows:



1.8. These key stages are described in more detail in the following chapters:

- Pre-tender Stage (Qualifying Project pre-conditions and tender entry conditions) – Chapter 5;
- Pre-Qualification Stage – Chapter 6;
- Qualification to Tender Stage – Chapter 7;
- Invitation to Tender Stage – Chapter 8;
- Best and Final Offer Stage – Chapter 9; and
- Preferred Bidder to Licence Grant Stage – Chapter 10.

The remaining chapters of this document describe procedures which relate to the Tender Process including; withdrawal, cancellation and disqualification.

## **Roles of Parties Involved in the Tender Process**

### **The Authority/Ofgem**

1.9. The Gas and Electricity Markets Authority is the regulator of gas and electricity markets in Great Britain. Ofgem is the Office of Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority in performing its statutory duties and functions. Whilst the terms "Ofgem" and "the Authority" are used interchangeably in these Tender Rules, it is the Authority which is responsible for exercising the relevant statutory powers.

1.10. Pursuant to section 6C of the Electricity Act 1989, the Authority may make regulations to run the Tender Round and will ultimately grant the Successful Bidder(s) an Offshore Transmission Licence.

1.11. Ofgem is responsible for running the Tender Process.

### **Department for Energy and Climate Change (DECC)**

1.12. DECC is the government department responsible for the introduction and implementation of the new regulatory regime for offshore electricity transmission.

### **NETSO/NGET**

1.13. NETSO is the National Electricity Transmission System Operator (formally known as the GB System Operator). This role is fulfilled by National Grid Electricity Transmission (NGET) in accordance with its electricity transmission licence. In doing so, NGET has an obligation to develop and maintain an efficient, co-ordinated and economical system of electricity transmission.

1.14. Under its standard licence conditions, NGET is required to provide Ofgem with certain information and assistance in relation to any Tender Process and the Offshore Transmission System to which it relates. During the Tender Round Ofgem may, where relevant, ask NGET to respond to Participants' clarifications. Any responses from NGET will be passed on by Ofgem to the Participants via the Portal.

### **The Crown Estate**

1.15. The Crown Estate is responsible for awarding offshore wind leases for access to the seabed to wind farm operators. Each OFTO must enter into a lease or licence with The Crown Estate to be able to operate and maintain its Offshore Transmission System on the seabed.

### **Developers**

1.16. Developers are those entities that have already commenced or completed the development of offshore generation projects (including Offshore Transmission Systems). Following the conclusion of a successful Tender Process, the Developer will be required to transfer its Offshore Transmission System to the OFTO, who will own and operate these assets thereafter.

1.17. Ofgem has set up a dedicated team to liaise directly with Developers before and during the Tender Round. Participants and Developers are not allowed to contact each other during the Tender Round but Ofgem will relay via the portal all relevant questions from Participants to Developers and the Developers' responses to Participants.

### Participants

1.18. The entities which will make Submissions to Ofgem at various stages of a Tender Process are referred to generically as Participants. The table below describes what Participants will be called at each stage of a Tender Process.

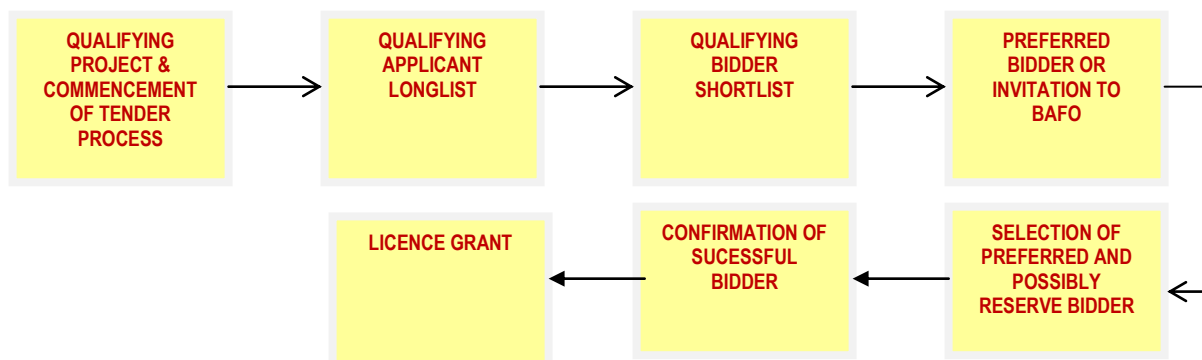
Stage	Participant Name
Pre-Qualification	Applicants
Qualification to Tender	Qualifying Applicants
Invitation to Tender	Qualifying Bidders
Best And Final Offer (optional)	Qualifying Bidders
Preferred Bidder	Preferred Bidder and Reserve Bidder
Licence Grant/Process to Closing	Successful Bidder/Offshore Transmission Licensee/OFTO

### Offshore Transmission Owners (OFTO)

1.19. Successful Bidders to which Offshore Transmission Licences are granted at the end of the Tender Round will be known as Offshore Transmission Owners. OFTOs will own the Offshore Transmission System and will receive regulated revenue streams from NETSO for meeting their licence obligations.

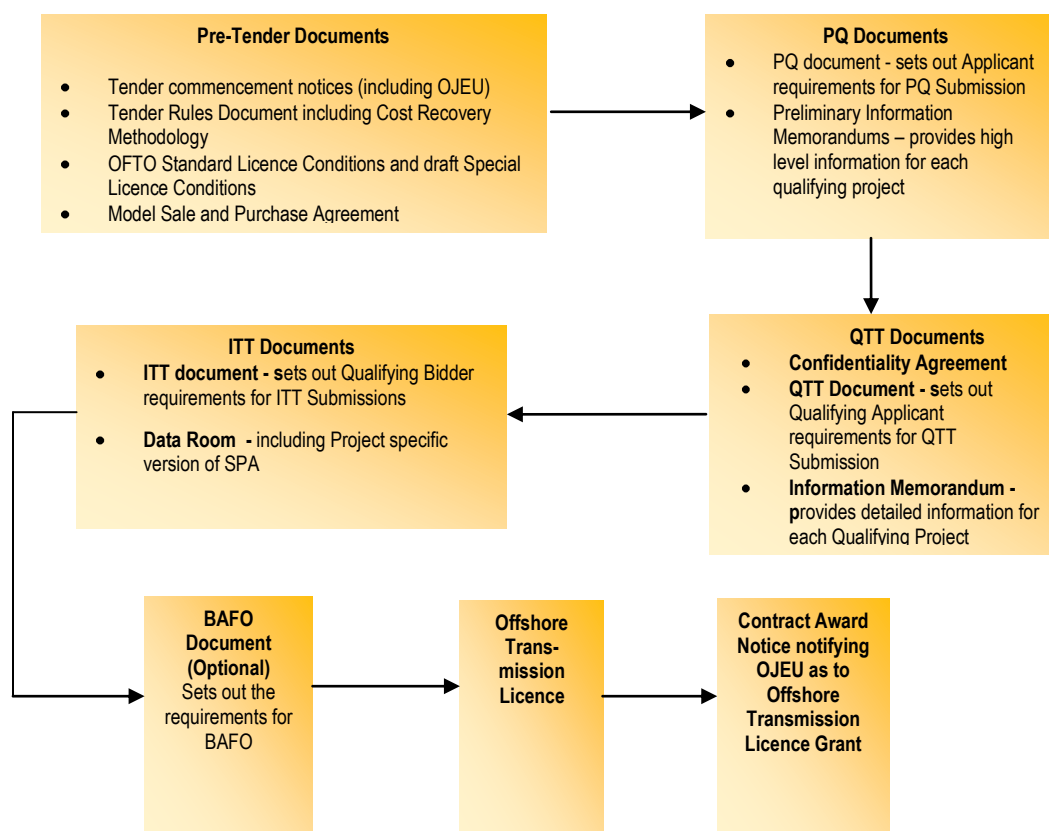
### Decision Tree

1.20. The diagram below illustrates the key decisions to be taken by Ofgem during the Tender Process and the order in which they will be taken.



## Key Documents

1.21. The diagram below outlines the key documents that Ofgem will issue during the various stages of a Tender Process. The arrows indicate the sequence of tender stages and associated issuing of documents. This list may be updated during the Tender Round.



## Indicative Timeline

1.22. Below is an indicative timeline for the Tender Round. As the times are indicative only, Ofgem reserves the right (in accordance with the Tender Regulations) to amend the timeline at its discretion and at any time during the Tender Round.

<b>Stage/Action</b>	<b>Date Document Issued by Ofgem</b>	<b>Date for Submission</b>
Pre-Qualification	22 July 2009	24 August 2009
Qualification to Tender	22 September 2009	26 October 2009
Invitation to Tender	24 December 2009	1 March 2010
Preferred Bidder decision	April 2010	
Successful Bidder/Licence grant decision	June 2010	

## 2. Legal Requirements

### Introduction

2.1. These Tender Rules are published by the Authority pursuant to regulation 7(4) of the Tender Regulations and will apply to the first Tender Round which Ofgem will run for the grant of Offshore Transmission Licences under the Transitional Regime.

2.2. By accepting and participating in a Tender Process, each Participant and Developer agrees to be bound by, and to comply with, the rules and requirements set out in the Tender Regulations and in these Tender Rules. A material breach of these Rules or the Tender Regulations by a Participant or Developer would give Ofgem the right, under the Tender Regulations, to disqualify it from the Tender Round.

### Non-reliance, Accuracy of Information and Exclusion of Liability

2.3. It is the responsibility of each Developer to ensure that it has all of the information it needs to satisfy the Qualifying Project pre-conditions and the entry conditions and the responsibility of each Participant to ensure that it has all of the information it needs to prepare its Submissions.

2.4. While information provided by Ofgem and/or its Advisers in these Tender Rules or otherwise in relation to the Tender Round has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. Neither Ofgem nor any of its Advisers makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information provided by it or its Advisers in these Rules or otherwise in relation to the Tender Round or any information provided by Developers through Data Rooms or otherwise. Ofgem and its Advisers expressly disclaim any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, the information or based on or relating to its use by a Participant, a Developer and/or any other interested party.

### Use of Information

2.5. These Tender Rules are not intended to provide the basis of any investment decision, nor are they intended to be considered as an investment recommendation by Ofgem or by any of its Advisers. Each Participant, Developer and any other interested party must make its own independent assessment of the Qualifying Project(s) after making such investigation and taking such professional advice as it deems necessary.

2.6. The material in the Tender Rules is not and should not be regarded as legal or professional advice. Participants, Developers and other interested parties should seek their own legal or other professional advice where appropriate.



## Freedom of Information

2.7. The Freedom of Information Act 2000 provides a general right of access to all information held by public authorities. The Environmental Information Regulations 2004 provide a general right of access to all environmental information held by public authorities. Ofgem is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Developers should identify which parts, if any, of the information which they provide to Ofgem either before or during the Tender Round are provided in confidence and provide reasons why they consider the information is eligible for exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and should be kept confidential. Participants should identify which parts, if any, of their Submissions are provided to Ofgem in confidence and provide reasons why they consider the information is eligible for exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and should be kept confidential. Ofgem will take any such statement of confidentiality into account in considering whether an exemption applies but Ofgem is not bound by any such statement.

2.8. Although Ofgem is not under any statutory obligation to consult with a Participant or Developer in relation to requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, Ofgem will endeavour to inform the relevant Participant or Developer of requests wherever it is reasonably practicable to do so. However, all decisions in respect of disclosure of information will be made at the sole discretion of Ofgem regardless of whether or not a Participant or Developer has identified any information as being in its opinion eligible for exemption. For further information and guidance, Participants' and Developers' attention is drawn to the Lord Chancellor's Code of Practice issued under section 45 of the Freedom of Information Act 2000 (see <http://www.dca.gov.uk/foi/codesprac.htm>).

## Data Protection

2.9. In participating in the Tender Round, Participants and Developers must 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 must not do or cause or permit to be done anything which may cause or otherwise result in a breach by Ofgem of such requirements. BravoSolution UK Ltd, on behalf of Ofgem, will collect, hold and use personal data obtained from and about Participants and Developers and, in order to participate in the Tender Round, Participants and Developers must agree to such data being collected, held and used.

## Information Provided by Participants and Developers

2.10. Ofgem is relying on the information provided by Developers and Participants before and during the Tender Round (including but not limited to, for Developers, information concerning a proposed project or Qualifying Project (for the purposes of the Information Memorandum and Data Room) and, for Participants, the members and structure of their consortia where relevant).

2.11. By participating in the Tender Round each Participant and Developer shall be deemed to consent to the disclosure by Ofgem to its Advisers of any information given to Ofgem either before or during the Tender Round by that Developer or Participant.

2.12. A Developer will be required to update a Data Room where there has been any change to the information previously provided or where new information is available and relevant (having regard to the guidance in the template Data Room guidelines).

2.13. If, at any time following the making of any Submission, there are any material changes or proposed changes to the information provided in the relevant Submission, a Participant becomes aware that information previously submitted is no longer true or accurate, the Participant must advise Ofgem as soon as is reasonably practicable. For the avoidance of doubt, where a Participant informs Ofgem of any such material change or proposed change, Ofgem shall be entitled to re-evaluate that Participant's Submissions in light of that material change or proposed change.

## **Confidentiality and Publicity**

2.14. Qualifying Applicants will be required to sign a Confidentiality Agreement with the Developer of each relevant Qualifying Project prior to receiving the Information Memorandums at the Qualification to Tender Stage. Qualifying Applicants and Developers must comply with their obligations under such an agreement and procure compliance by their directors, employees, advisers, subcontractors, etc., as provided for under such agreements.

2.15. The Confidentiality Agreements signed by the Qualifying Applicants will cover information received during the Qualification to Tender Stage and any subsequent tender stage.

2.16. Participants and Developers shall not undertake (or permit to be undertaken) at any time during the Tender Round any publicity activity with any section of the media in relation to any Qualifying Project(s) other than with the prior written agreement of Ofgem. Such agreement shall extend to the content of any publicity. In this paragraph the word 'media' includes (without limitation) radio, television, newspapers, trade and specialist press, the internet and e-mail accessible by the public at large and the representatives of such media.

## **Grounds for Cancellation or Disqualification**

2.17. Parts 11 and 12 of the Tender Regulations set out the grounds on which a Tender Process may be cancelled in relation to a particular Qualifying Project(s) and the grounds on which a Participant or Developer may be disqualified from participating in the Tender Round in relation to a particular Qualifying Project(s) and the related cost consequences.

## Right to Vary the Tender Process

2.18. Subject to the provisions of the Tender Regulations, Ofgem reserves the right to vary any element of a Tender Process, issue supplementary documentation or make additional arrangements at any time during a Tender Process to clarify any issue or amend any aspect of a Tender Process. Subject to the provisions of the Tender Regulations, Ofgem may extend a Tender Process and postpone any submission date in the event of any such amendment.

2.19. Further rules may be issued at each stage of a Tender Process or in any supplementary documentation. In this case, those rules should be read together with these Tender Rules. Where Rules are issued in any supplementary documentation during a Tender Process, such supplementary documentation will be deemed to form part of these Tender Rules to the extent indicated when the supplementary documentation is issued.

## Costs

2.20. Each Participant and Developer will bear its own costs of participating in a Tender Process and will be responsible for meeting the costs incurred by Ofgem in administering that Tender Process in accordance with the Tender Regulations. Details of costs are set out in the Cost Recovery Methodology, which is available at Appendix 1. Ofgem is under no obligation and shall not accept any liability for any costs or expenses incurred by any Developer or Participant, including without limitation any unsuccessful Participant, for any costs, expenses, damages or losses incurred in connection with a Tender Process.

## Miscellaneous

2.21. Ofgem is not bound to accept any Submission made by a Participant.

2.22. If a Developer or Participant withdraws or is disqualified from one or more Tender Processes or Ofgem cancels a Tender Process (in each case in accordance with the Tender Regulations), Ofgem shall not incur any liability for any losses whatsoever (whether in contract, tort or otherwise and including direct, indirect and consequential losses) towards any Developer or Participant or any of their Related Parties.

2.23. Ofgem shall not be liable for any costs or expenses incurred by any Developer or Participant and any of their Related Parties in relation to a Tender Process (whether such costs or expenses occurred prior to the commencement of the Tender Round or at any other time).

2.24. Nothing in the Tender Rules is intended to, or shall be deemed to; establish any partnership or joint venture between Ofgem and any Participant or any Developer.

2.25. Ofgem's Advisers in relation to the Tender Round will not regard any Participant or other interested party as their client or be responsible to anyone other than Ofgem for providing the protections afforded to their clients or for advising any other person on the Tender Round or any matter related to it.

2.26. The Tender Rules inevitably describe certain matters which are dealt with in the Tender Regulations but the Tender Rules are not, and should not be seen as, a substitute for a proper understanding of the Tender Regulations. All Developers, Participants and other interested parties are strongly encouraged to become thoroughly familiar with the Tender Regulations in addition to these Tender Rules.

2.27. In the event of any conflict between the Tender Rules and the Tender Regulations, the Tender Regulations take precedence. In the event of any conflict between the Tender Rules and any of the Pre-Qualification Document, the Qualification to Tender Document, the ITT Document or the BAFO Document, the Pre-Qualification Document, the Qualification to Tender Document, the ITT Document or the BAFO Document, (as applicable) takes precedence.

### 3. Engagement Rules

3.1. This Chapter sets out the rules and procedures which should be followed by Developers and Participants in respect of their communications with Ofgem and with each other before and during the Tender Round.

#### Developers

3.2. Ofgem has established a team whose role will be to liaise with Developers both before and during the Tender Round. The contact details for the co-ordinator of this team have been notified to all Developers. Any change to these contact details will be notified to all Developers in writing. Except for this co-ordinator, a Developer should not attempt to make contact with any member of Ofgem staff or any of its Advisers in respect of its Qualifying Project or a Tender Round.

3.3. One of the key matters for Developers before and during the Tender Process will be engagement with Ofgem regarding the Sale and Purchase Agreement (SPA) for their Qualifying Project. Ofgem will continue to liaise with Developers in this regard.

3.4. Ofgem may also send notices to relevant Developers setting out what Ofgem requires of them in relation to each relevant stage of a Tender Process at the commencement of such stage. This does not prejudice Ofgem's discretion to issue additional instructions to Developers at any other time in relation to a Tender Process.

#### Participants

3.5. If a Participant wants to contact Ofgem in relation to any aspect of the Tender Round, it must do so via the Portal. A Participant must not attempt to contact Ofgem or any of its Advisers in relation to any aspect of the Tender Round in any other way (unless Ofgem specifically instructs otherwise).

3.6. A Participant should not attempt to contact another Participant in relation to any aspect of a Tender Process or a Qualifying Project.

3.7. It should be noted that collusion between two or more Participants in relation to their Submissions and/or contact by a Participant with Ofgem (or any of its Advisers) and/or NETSO outside the requirements of the Tender Rules are disqualification events under the Tender Regulations (see Chapter 14).

#### Consortium Participants

3.8. Pre-Qualification Submissions can be submitted by single person or consortium Applicants. If a consortium Applicant is chosen as Preferred Bidder following the

completion of later tender stages, Ofgem would expect a special purpose vehicle or similar, to be established prior to the grant of the Offshore Transmission Licence.

## **Developers/Participant Contact**

3.9. Developers and Participants are reminded that anti-competitive behaviour between a Developer and a Participant could lead to that Developer and/or Participant being disqualified from the Tender Round (see Chapter 14). Except as set out below (or as otherwise directed by Ofgem), Participants are not allowed to contact Developers or vice versa in relation to any aspect of the Tender Round or any Qualifying Project.

## **Clarifications and Responses**

3.10. If Ofgem wishes to ask a Participant for clarification of its Submission, it will do so via the Portal. All responses from the Participant must be provided via the Portal.

3.11. Similarly, if a Participant needs clarification in respect of a stage or document in a Tender Process, it must use the Portal to request clarification from Ofgem. Ofgem's response to a Participant's clarification may be made available to all Participants involved at the relevant stage of a Tender Process, although the identity of the Participant that raised the clarification will remain confidential. If Ofgem considers that a Participant's clarification is sufficiently specific and confidential to that Participant, Ofgem may at its discretion opt to provide its response solely to that Participant.

3.12. All responses from Ofgem will be provided via the Portal. Ofgem will endeavour to provide a response as soon as reasonably possible, although it is likely that the timeframe within which it will respond will vary on a case-by-case basis depending on the nature of the clarification requested. Ofgem may issue responses in batches on no more than a weekly basis.

3.13. No direct interface via the Portal will be permitted between Participants and Developers or between Participants and NETSO.

## **Meetings during the Tender Round**

3.14. At the start of each stage, where required, Ofgem will issue a schedule of meetings setting out the purpose and attendees to Participants and Developers. Any schedule of meetings may include briefing events, presentations etc.

## 4. The Portal

### Introduction

4.1. Relevant information and data relating to each stage of the Tender Round will be made available as appropriate to Participants and Developers via the Portal, once Ofgem has approved its release.

4.2. Participants and Developers will be required to submit any information or data relating to a Tender Process by uploading it via the Portal.

4.3. Data Rooms for each Qualifying Project will be available through the Portal from the commencement of the ITT Stage.

4.4. Further details of the Portal and how it should be used are set out below.

### Information Provided via the Portal

#### Tender Process documents and information exchange

4.5. Ofgem will use the Portal to circulate to relevant Participants the documents, instructions and information relating to the different stages of a Tender Process. The table below illustrates the parties that will have access to particular documents (via the Portal) at specific stages of the Tender Process.

<b>Document/Information relating to a Qualifying Project</b>	<b>Access given to</b>
Preliminary Information Memorandum (PIM)	All parties registered on the Portal
Pre-Qualification (PQ) Document	All parties registered on the Portal
Information Memorandum (IM)	Qualifying Applicants who have signed the relevant Confidentiality Agreements(s)
Qualification to Tender (QTT) Document	Qualifying Applicants
Invitation to Tender (ITT) Document	Qualifying Bidders
Data Room(s) (including Project SPA(s))	Qualifying Bidders (Bidder view), Developers (Developer view)
BAFO Document (if applicable)	Selected Qualifying Bidders

4.6. Participants must not attempt to contact Ofgem or its Advisers in relation to any aspect of the Tender Round except by using the Portal (unless Ofgem specifically instructs otherwise).

### **Data Room**

4.7. Each Developer will be responsible for uploading on to the Portal the relevant documents for the Data Room for its Qualifying Project in accordance with the Data Room guidelines. Ofgem will then confirm the content against the Data Room guidelines and transfer the documents into the relevant Data Room on the Portal for Qualifying Bidders to view. The Data Room in respect of each Qualifying Project will be made available to the relevant Qualifying Bidders at the ITT Stage and updated on the Portal on a weekly basis (to the extent necessary).

### **Submissions**

4.8. Participants must use the Portal to provide Ofgem with any Submission. Ofgem will not open any Submission until after the applicable deadline for making the Submission has expired.

### **Portal User Agreement and User ID/Password**

4.9. Developers, Participants and interested parties are advised to consider the Portal User Agreement carefully in order to understand the terms on which they are being given access to and use of the Portal.

4.10. Each Developer for a Qualifying Project must agree to the terms of the User Agreement, in its role as a Developer, before the commencement of the Tender Round. Each Participant and interested party must agree to the terms of the User Agreement in order to access any information provided through the Portal in relation to the Tender Round, any stage of the Tender Round or a Qualifying Project.

### **Developer access**

4.11. Following acceptance of the terms of the User Agreement, Developers will be issued with a user ID and password to be used by its single User Agent. This user ID and password can only be used by the Developer to access the Developer view of the Data Room for their qualifying project. It cannot be used to access the Participant view of the Portal. Where a Developer wishes to participate in the Tender Round as a Participant, it must register separately as a Participant.

### **Participant/interested party access**

4.12. Following acceptance of the terms of the User Agreement, Participants/interested parties must register any and each of their proposed User Agents by providing the required registration data and specifying a user ID for each



of them in accordance with the requirements as specified on the Portal. Each User will then be provided with a password, which it will be required to change. Once this process has been completed, a User will be able to access the relevant parts of the Portal.

4.13. Each Participant or other interested party must designate a User Agent to manage access to the Portal by that Participant's or interested party's other Users (if applicable).

### **Security requirements**

4.14. A Developer, Participant or other interested party must immediately inform the Helpdesk in the event that any registered Portal User or User Agent(s) ceases to be a representative of the Developer, Participant or other interested party or no longer requires access to the Portal for the purpose of the Tender Round.

4.15. User IDs and passwords are strictly personal to the Portal User to which they are given and non-transferable (including to other Portal Users of the same Developer or Participant). Each Developer and Participant must ensure that its User Agent(s) do not divulge or disclose their user ID or password to third parties (including to other Portal Users of the same Developer or Participant). In the event that a Developer or Participant or a User becomes aware that a user ID and/or password may have been divulged, disclosed or discovered by any third party, they must immediately notify the Helpdesk.

4.16. Any Submission that is submitted by a Participant using the user ID and password of any of its User Agents will be deemed to be a valid Submission and will be binding on that Participant. A Participant will be responsible for any unauthorised, false or fraudulent Submission that is submitted using the user ID and password of one of its User Agents.

4.17. Developers, Participants and interested parties and their User Agents will not be able to view or find out the identity of other Developers, Participants or interested or their User Agents on, or through the use of, the Portal.

### **Updates to the Portal**

4.18. Ofgem will, where necessary, update the documents and information on the Portal (including in relation to Data Rooms) on no less than a weekly basis.

4.19. To enable Ofgem to do this, Developers will be required on a weekly basis, where information or documents which they have already provided have changed or been updated, or where new relevant information or documents become available, to upload such updates on the Portal in line with a timetable notified to Developers by Ofgem. Developers should notify Ofgem via email where there is no update required on a weekly basis.

4.20. Each time Ofgem makes an update, it will send a message (via the Portal) to each relevant User of the Portal who is permitted access to the relevant document/information notifying it of the updates. Whenever a message is sent on the Portal, a notification email will be sent to the recipient's (including all relevant User Agents') nominated email address.

## **Security**

4.21. The BravoSolution system is compliant with Office of Government Commerce standards.

## **Portal Information and Helpdesk**

4.22. A workshop for Participants will be held to provide an overview of how the Portal works. This will form part of a "bidder day" that will take place following tender commencement.

4.23. Help guides are available on the Portal that provide further information about how to use the Portal in relation to the Tender Round. These will be updated where appropriate.

4.24. BravoSolution UK Ltd will provide a Helpdesk facility to handle technical support in respect of queries raised by users of the Portal. Helpdesk are instructed only to supervise and maintain the operation of the Portal and Users are not permitted to ask any questions of Helpdesk in relation to the Tender Round or in respect of information available through the Portal.

4.25. The Portal Helpdesk will be open between 8am and 6pm (Monday to Friday) and can be contacted as follows:

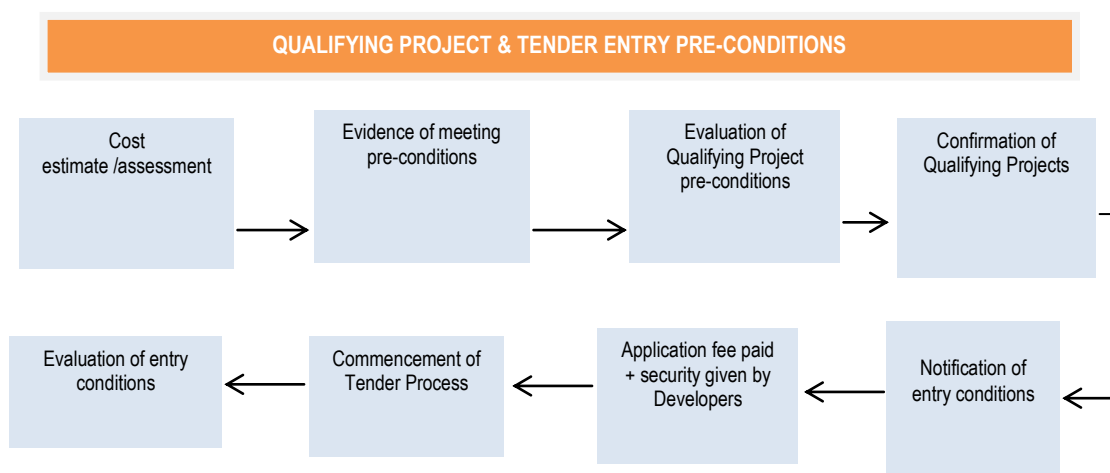
Telephone: + 44 (0)800 011 2470  
Fax: +44 (0)20 7060 0480  
Email: help@bravosolution.co.uk

## 5. Pre-Tender Stage

### Introduction

5.1. The purpose of the pre-tender stage is to identify Qualifying Projects that may enter into the Tender Round.

5.2. This Chapter sets out the key steps in the pre-tender stage, which are also illustrated below:



### Cost Estimate/Assessment

5.3. Before commencing a Tender Process, Ofgem will calculate the economic and efficient costs which it considers ought to be, or ought to have been, incurred in developing and constructing the relevant Offshore Transmission System.

5.4. Where the Offshore Transmission System has not yet been built, this calculation will take the form of an estimate of economic and efficient costs. The Developer will be required to pay Ofgem's costs of making an estimate of costs on receiving notice from Ofgem (which will be served after the cost estimation). Once the Offshore Transmission System has been built, Ofgem will undertake an assessment of the economic and efficient costs which it considers ought to be, or ought to have been, incurred. The Successful Bidder will be required to pay Ofgem's costs of making an assessment of costs on receiving a notice from Ofgem (which will be served once the Tender Process for the relevant Qualifying Project has been held). Refer to the Cost Recovery Methodology for further details at Appendix 1.

## **Request to Commence a Tender Process**

5.5. Where a Developer requests that Ofgem commence a Tender Process for a proposed project, Ofgem will determine whether that project is a Qualifying Project. This will require the Developer to provide Ofgem with evidence demonstrating that the Qualifying Project pre-conditions referred to in paragraphs 5.6 or 5.7 below have been satisfied.

## **Evaluation of Qualifying Project Pre-Conditions**

5.6. Where a Developer can demonstrate in respect of its proposed project that it has satisfied the pre-conditions set out in paragraph 2 of Schedule 1 to the Tender Regulations, then Ofgem will determine such proposed project to be a Qualifying Project.

5.7. If Ofgem determines that a Developer has not satisfied the requirements in paragraph 2(b) or (c) of Schedule 1 of the Tender Regulations, Ofgem may nonetheless deem a proposed project to be a Qualifying Project if Ofgem is satisfied that the Developer will use its reasonable endeavours to meet those requirements by a date specified by Ofgem.

## **Determination of Qualifying Projects**

### **Confirmation of Qualifying Project Status**

5.8. If Ofgem concludes that a proposed project is a Qualifying Project then it will notify the Developer accordingly. Where Ofgem has determined a proposed project to be a Qualifying Project in accordance with paragraph 5.7, it shall notify the Developer of the dates by which the pre-conditions must be met. If a Developer fails to meet such pre-conditions within the specified timeframe it shall no longer be deemed a Qualifying Project and therefore will no longer be able to participate in the Tender Round.

### **Denial of Qualifying Project Status**

5.9. If Ofgem determines that a proposed project is not a Qualifying Project then Ofgem will notify the Developer giving reasons for its decision. If the Developer disagrees with such decision, the Developer may write to Ofgem within seven days specifying the grounds on which it disagrees. Ofgem will consider such representations and will notify the Developer of its decision and provide reasons for its decision.

## **Payment and Security**

5.10. Prior to the commencement of a Tender Round, a Developer must make a payment to Ofgem of £50,000 in order to participate in the Tender Round and provide security to Ofgem in the form of a cash deposit or letter of credit as described in the Cost Recovery Methodology at Appendix 1.

## **Commencement of a Tender Process**

5.11. As soon as reasonably practicable after Ofgem has determined the proposed projects that have qualified as Qualifying Projects, Ofgem will publish a notice stating its intention to commence a Tender Round in respect of the Qualifying Projects and specifying the date on which the Tender Round will commence. Ofgem intends to commence the Tender Round for all Qualifying Projects on the same date.

5.12. However, Ofgem may amend the date of commencement of a Tender Process in respect of a particular Qualifying Project following consultation with the Developer. Where Ofgem considers it impracticable to commence a Tender Round or Tender Process on the date first specified, it shall publish a further notice specifying a revised date for commencement.

5.13. A Tender Process will not commence in respect of a Qualifying Project until Ofgem has received from the relevant Developer the payment and security referred to in paragraph 5.10 and the Cost Recovery Methodology (Appendix 1).

## **Tender Entry Conditions**

5.14. In accordance with the Tender Regulations, the Developer must satisfy a number of tender entry conditions for its Qualifying Project to participate in a Tender Round. Failure to meet the tender entry conditions may result in cancellation of the Qualifying Project from the Tender Round and delay the appointment of an OFTO.

5.15. At the same time as notifying of project qualifying status, Ofgem will notify the Developer of the tender entry conditions that apply and must be satisfied. The notification will include a request for specific information that a Developer must submit, by specified deadlines, in order that Ofgem can determine whether each entry condition has been met.

5.16. The Developer must satisfy the following entry conditions:

### **Information Memorandum and Data Room**

5.17. The Developer must, before the deadline notified to the Developer by Ofgem, provide sufficient information to enable Ofgem to issue an Information Memorandum for the Qualifying Project. Ofgem will need to be satisfied that the information

provided for the Information Memorandum is appropriate and adequate and Ofgem may request further information as necessary.

5.18. The Developer must also, before the deadline notified to the Developer by Ofgem, provide sufficient information to enable Ofgem to establish a Data Room in respect of the Qualifying Project. Ofgem will need to be satisfied that the information provided for the Data Room is appropriate and adequate (having regard to the guidance in the Data Room guidelines) and Ofgem may request further information as necessary. The Developer will also be required to update the Data Room as necessary on a weekly basis.

### **Information Warranty**

5.19. The Developer must provide Ofgem with a written warranty stating that the information referred to in paragraphs 5.17 and 5.18 above is to the best of its knowledge and belief, having made reasonable enquiries, true, accurate and complete in all material respects.

### **Populate Project SPA**

5.20. The Developer must populate the Model SPA to reflect the specific requirements and circumstances of its Qualifying Project (i.e. populate a Project SPA). Ofgem will need to be satisfied that the Project SPA populated by the Developer is appropriate and sufficient and Ofgem may request further information as necessary. Each Developer must provide a written undertaking that it will work with Ofgem to produce a fully and appropriately populated Project SPA as soon as is reasonably practicable.

### **Undertakings**

5.21. The Developer must give Ofgem a written undertaking that it will:

- provide information and documentary updates to Ofgem when necessary to enable Ofgem to update the Data Room on a weekly basis;
- respond to queries from Ofgem and respond to clarifications submitted by Participants to Ofgem quickly enough to enable Ofgem to respond within the reasonable timeframes specified by Ofgem;
- transfer any property, rights or liabilities relating to the Offshore Transmission System to the Successful Bidder in accordance with the Project SPA; and
- if applicable, put in place an appropriate internal information barrier to prevent information passing between the team working as Developers and the separate team working as Participants.

5.22. A breach of the warranty or any of the undertakings referred to in paragraph 5.21 would be a material breach of these Tender Rules and would constitute a disqualification event under the Tender Regulations.

## **Determination of Tender Entry conditions**

5.23. In evaluating whether the tender entry conditions for a Qualifying Project have been satisfied, Ofgem may request additional information from the Developer.

5.24. Ofgem will determine whether Qualifying Projects have satisfied the tender entry conditions prior to the commencement of the Qualification to Tender Stage of the Tender Round.

5.25. If Ofgem determines that all of the tender entry conditions for a Qualifying Project have been satisfied then Ofgem will notify the relevant Developer and all Applicants.

5.26. If a Developer fails to satisfy any of the tender entry conditions for a Qualifying Project by the date specified by Ofgem, Ofgem may notify the Developers and all Applicants that the Tender Process for that Qualifying Project has been cancelled in accordance with the Tender Regulations.

## **Confidentiality Agreement**

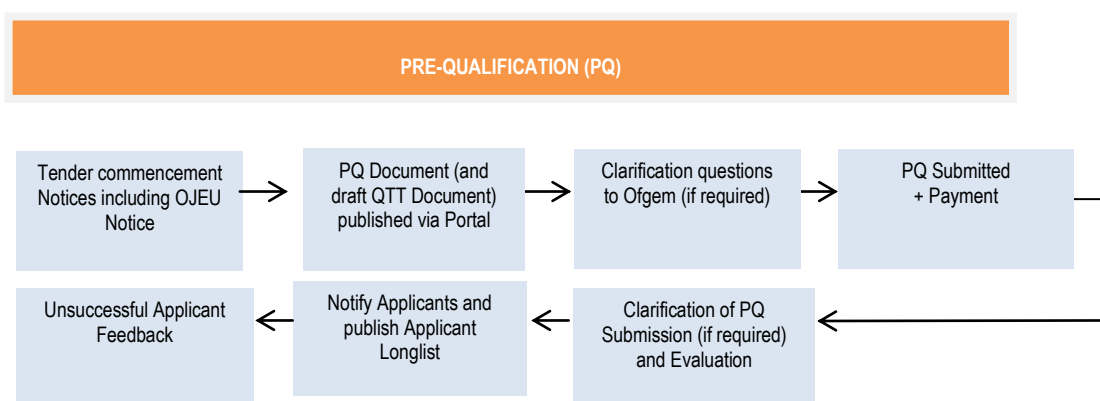
5.27. In order to enter into a Confidentiality Agreement with Qualifying Applicants for their Qualifying Project at QTT Stage, Developers need to submit a signed copy of the Confidentiality Agreement provided to them by Ofgem within a date specified by Ofgem.

## 6. Pre-Qualification Stage

### Introduction

6.1. The Pre-Qualification Stage is the first stage of the Tender Round. This stage will involve a generic assessment of an Applicant's suitability, rather than an assessment on a Qualifying Project-by-Qualifying Project basis. At the end of this stage, Ofgem will identify a longlist of those Applicants that are eligible to progress to the next stage of the Tender Round.

6.2. The key steps in the Pre-Qualification Stage are illustrated below:



### Tender Notices

6.3. A voluntary notice will be published in the Official Journal of the European Union. This notice will set out the commencement date of the Tender Round and include a link to the Portal where further information can be found. Ofgem will also publish notices in other publications.

### Issue Pre-Qualification Document

6.4. The Pre-Qualification Document will be published on the Portal.

6.5. The document will contain the Pre-Qualification Questionnaire to be submitted by each Applicant, as well as details of how and when to make the payment for this tender stage (refer to Cost Recovery Methodology at Appendix 1).

6.6. At the same time as the Pre-Qualification Document is published or shortly after:

- the Qualification to Tender Document will be published in draft on the Portal; and



- the Developer may be sent notices of instruction via the Portal setting out what Ofgem requires of them during the Pre-Qualification Stage.

6.7. Any changes to consortia, following a Pre-Qualification Submission, must be notified by Participants to Ofgem as soon as reasonably practicable.

## Information Available to Applicants

### Preliminary Information Memorandum

6.8. A Preliminary Information Memorandum (PIM) for each Qualifying Project will be published on the Portal. This will set out high-level, project specific information provided by Developers in respect of the relevant Qualifying Project.

### Model SPA

6.9. Alongside the PQ document, we will publish the Model SPA via the Portal. Separately, Developers are required to populate this document to Ofgem's satisfaction as part of their tender entry conditions. Prior to the QTT stage, we have asked Developer to put in place a Project SPA, which reflect the specific requirements and circumstances of its Qualifying Project.

## Instructions to Applicants

6.10. Instructions to Applicants will be included in the Pre-Qualification Document. Broadly, these instructions will set out:

- the payment required to be made to Ofgem (see paragraph 6.17 below);
- what information is required to be submitted by Applicants in response to the Pre-Qualification Document;
- the process for requesting clarification from Ofgem;
- the format in which a Pre-Qualification Submission must be made and the process and deadline for doing so; and
- the requirements on an Applicant to update its Pre-Qualification Submission if circumstances change.

## Clarifications

6.11. If an Applicant has a clarification in relation to any aspect of the Pre-Qualification Document, it may submit such clarification to Ofgem via the Portal. Ofgem will endeavour to provide responses to those clarifications received up to two weeks prior to the Pre-Qualification Submission deadline. Any clarifications submitted after this deadline cannot be assured of receiving a response prior to the submission deadline and Ofgem may not respond to any clarifications received after this time.

6.12. Applicants must not attempt to contact Ofgem or its Advisers regarding clarifications other than via the Portal.

6.13. There will be no direct interface between Applicants and Developers.

6.14. Please see paragraph 3.10 above for more detail on the clarification and response process.

## **Pre-Qualification Submission**

6.15. Applicants must submit their completed Pre-Qualification Submissions via the Portal by the stated deadline.

6.16. Once a Pre-Qualification Submission has been submitted via the Portal, the Applicant will receive confirmation that its Pre-Qualification Submission has been received.

6.17. Ofgem is relying on the information provided by Developers and Applicants before and during the Tender Process (including but not limited to, for Applicants, the information concerning the members and structure of their consortia where relevant). If, at any time following the making of any Pre-Qualification Submission and before Ofgem publishes the longlist of Qualifying Applicants, there are any material changes or proposed material changes to the information provided in the relevant Pre-Qualification Submission, or an Applicant becomes aware that information previously submitted is no longer true or accurate, such Applicant must advise Ofgem as soon as is reasonably practicable. For the avoidance of doubt, where an Applicant informs Ofgem of any such material change or proposed material change, Ofgem shall be entitled to re-evaluate that Applicant's Pre-Qualification Submission in light of that material change or proposed material change.

## **Payment**

6.18. A Pre-Qualification Submission will not be considered by Ofgem until it has received the payment of £5,000 from the relevant Applicant in cleared funds.

6.19. Instructions for how to make payments can be found at Appendix 1.

## **Rectifying Incomplete Submissions**

6.20. Ofgem will check if each Pre-Qualification Submission is complete. If Ofgem identifies any omissions from the information required to be provided, it will notify the Applicant. That Applicant will then have 48 hours in which to rectify the omission(s) and re-submit its Pre-Qualification Submission.

## **Clarification of Pre-Qualification Submissions**

6.21. Ofgem may ask Applicants to clarify their Pre-Qualification Submissions (via the Portal). Applicants must respond in writing via the Portal unless notified otherwise.

## **Evaluation of Pre-Qualification Submissions**

6.22. Ofgem will evaluate the Pre-Qualification Submissions according to the criteria set out in the Pre-Qualification Documentation.

## **Notification of Successful/Unsuccessful Applicants**

6.23. Ofgem will notify each Applicant (via the Portal) whether its application has been successful or unsuccessful. Once all Applicants have been notified, the longlist of Qualifying Applicants will be published on the Portal. The notices given to the Qualifying Applicants will set out the next steps they will need to take in order to participate in the Qualification to Tender Stage.

## **Unsuccessful Applicant Feedback**

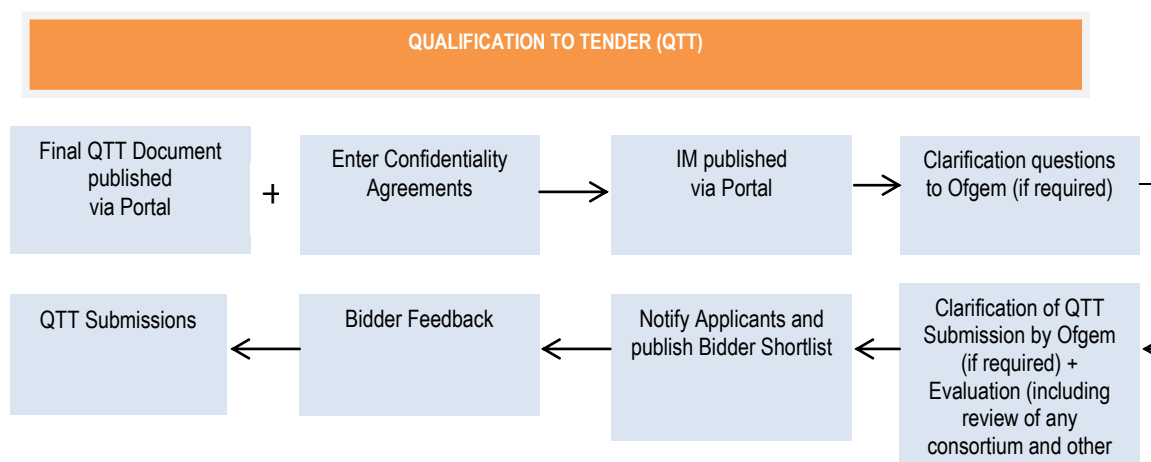
6.24. Upon request, Ofgem will provide feedback to any unsuccessful Applicant. Any request for feedback must be made within 1 month of an Applicant receiving notification that it has been unsuccessful.

## 7. Qualification to Tender Stage

### Introduction

7.1. The purpose of the Qualification to Tender (QTT) Stage is to identify the most suitable Qualifying Applicants to be chosen as Qualifying Bidders to proceed to the ITT Stage in respect of each Qualifying Project.

7.2. The key steps in the Qualification to Tender Stage are illustrated below.



### Enter Confidentiality Agreements

7.3. A Qualifying Applicant must enter into a Confidentiality Agreement with each Developer before it gets access to the Qualification to Tender Document and Information Memorandums. A copy of the Confidentiality Agreement, and instructions on how to enter into it, will be included on the Portal.

### Issue Qualification to Tender Document

7.4. A draft of the Qualification to Tender Document will be published on the Portal at the same time as or shortly after the Pre-Qualification Document. The final version of the Qualification to Tender Document will be made available to Qualifying Applicants via the Portal once they have entered into the Confidentiality Agreement.

7.5. Developers may be sent notices via the Portal setting out what Ofgem requires of them during the Qualification to Tender Stage.

## Information Available to Qualifying Applicants

### Confidentiality Agreement

7.6. Each Qualifying Applicant that has entered into a Confidentiality Agreement(s) will be granted access on the Portal to the Information Memorandums prepared in respect of each of the relevant Qualifying Project(s).

### Project SPA

7.7. As set out in Chapter 5, Developers are required to populate the Model SPA to Ofgem's satisfaction to reflect the specific requirements and circumstances of its Qualifying Project as part of its tender entry conditions, thus establishing Project SPAs. Alongside the Qualification to Tender document, we intend to make the Project SPAs available for each project. These will only be available to those Qualifying Applicants that have entered into the necessary Confidentiality Agreement(s). Bidders will have an opportunity at this stage to consider their response to these Project SPAs in their response through their Qualification to Tender Submission. Further detail will be set out in the final Qualification to Tender Document.

## Instructions to Qualifying Applicants

7.8. Instructions to Qualifying Applicants will be included in the Qualification to Tender Document.

## Changes to Consortia and Other Changes

7.9. Where there has been any change to a Qualifying Applicant's consortium or a change to its circumstances, the Qualifying Applicant must, if the change is a material one, provide updated information in response to the relevant/affected section(s) of the Pre-Qualification Questionnaire as part of its Qualification to Tender Submission. Ofgem will decide whether the new or revised consortium continues to meet the criteria set out in the Pre-Qualification Document as part of its Qualification to Tender Submission.

7.10. Where a Qualifying Applicant wishes to increase its proposed project expenditure level in the light of the Information Memorandums received at the Qualification to Tender stage, it will be required to demonstrate that it can still meet the economic and financial standing criteria set out in the Pre-Qualification Document.

## Clarifications

7.11. The process for a Qualifying Applicant to seek clarification from Ofgem in relation to the Qualification to Tender Document is the same as that for the Pre-Qualification Stage (see paragraph 3.10 and 6.11 above).

## Payment

7.12. Qualifying Applicants are not required to make any payments to Ofgem at the Qualification to Tender Stage.

## Qualification to Tender Submission

7.13. Qualifying Applicants must complete a separate Qualification to Tender Submission for each Qualifying Project for which they wish to qualify to bid at the ITT Stage.

7.14. Qualifying Applicants must submit their completed Qualification to Tender Submissions via the Portal, in accordance with the detailed instructions set out in the Qualification to Tender Document, by the stated deadline. Only one Qualification to Tender Submission per project will be permitted.

7.15. Once a Qualification to Tender Submission has been submitted via the Portal, the Qualifying Applicant will receive confirmation by email that its Submission has been received.

7.16. If, at any time following the making of any Qualification to Tender Submission and before Ofgem publishes the shortlist of Qualifying Bidders, there are any material changes or proposed material changes to the information provided in the relevant Qualification to Tender Submission, or a Qualifying Applicant becomes aware that information previously submitted is no longer true or accurate, such Qualifying Applicant must advise Ofgem as soon as is reasonably practicable. For the avoidance of doubt, where a Qualifying Applicant informs Ofgem of any such material change or proposed material change, Ofgem shall be entitled to re-evaluate that Qualifying Applicant's Qualification to Tender Submission in light of that material change or proposed material change.

## Rectifying Incomplete Submissions

7.17. Ofgem will check if each Qualification to Tender Submission is complete. If Ofgem identifies any omissions from the information that must be provided, it will notify the Qualifying Applicant. The Qualifying Applicant will then have 48 hours in which to rectify the omission(s) and re-submit its Qualification to Tender Submission.

## **Clarification of Qualification to Tender Submissions**

7.18. Ofgem may ask Qualifying Applicants to clarify their Qualification to Tender Submissions (via the Portal). Qualifying Applicants must respond in writing via the Portal unless notified otherwise.

## **Evaluation of Qualification to Tender Submissions**

7.19. Ofgem will evaluate the Qualification to Tender Submissions according to the criteria set out in the Qualification to Tender Document.

## **Notification of Qualifying Bidders and Unsuccessful Qualifying Applicants**

7.20. Ofgem will notify each Qualifying Applicant (via the Portal) as to whether its application has been successful or unsuccessful. Once all Qualifying Applicants have been notified, the Qualifying Bidder shortlist will be published on the Portal. Ofgem may also make a general public announcement.

7.21. The notices given to the Qualifying Bidders will set out the next steps they will need to take in order to participate in the ITT Stage.

## **Unsuccessful Qualifying Applicant Feedback**

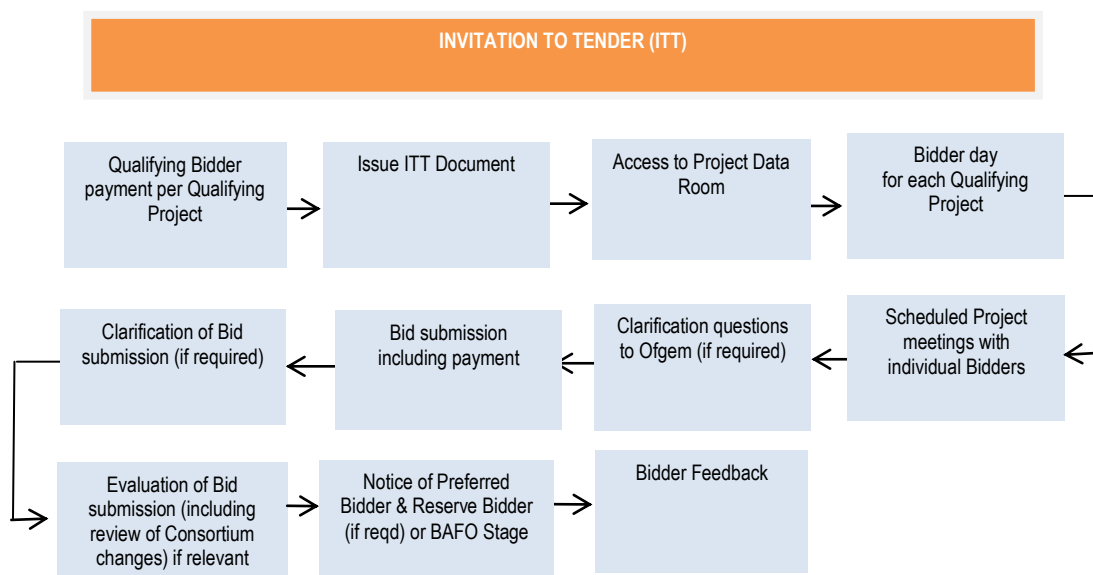
7.22. Upon request, Ofgem will provide feedback to any unsuccessful Qualifying Applicant. Any request for feedback must be made within 1 month of a Qualifying Applicant receiving notification that it has been unsuccessful.

## 8. Invitation to Tender

### Introduction

8.1. The purpose of the Invitation to Tender (ITT) Stage is to identify a Preferred Bidder (and possibly a Reserve Bidder) or, failing which, Qualifying Bidders to invite to participate in the BAFO Stage.

8.2. The key steps in the ITT Stage are illustrated below.



### Bidder Payment per Qualifying Project

8.3. Each Qualifying Bidder must, at the start of the ITT Stage, make a payment to Ofgem in respect of each Qualifying Project for which it is invited to bid.

8.4. The total amount of the payment will be based on a sliding scale, according to the ex-ante cost estimate of the Qualifying Projects for which the Qualifying Bidder is invited to bid. The payment will be subject to an aggregate cap of £50,000 (refer to the Cost Recovery Methodology at Appendix 1).

### Issue ITT Document

8.5. A Qualifying Bidder will only be issued the ITT Document in respect of each Qualifying Project for which it has been invited to bid, once it has paid the requisite amounts to Ofgem. The ITT Document will be issued via the Portal.

8.6. At the same time as the ITT Document is issued, Developers may be sent notices via the Portal setting out what Ofgem requires of them during the ITT Stage.



## Information Available to Bidders

### Access to Data Room

8.7. On receipt of the ITT Document, Qualifying Bidders will be granted access to the Data Room(s) relating to the Qualifying Project(s) for which they are bidding. Each Data Room will be accessed via the Portal.

### Scheduled Meetings

8.8. Ofgem will advise of a schedule of meetings (if required) at the outset of the ITT stage. Ofgem will consider requests for meetings received from Qualifying Bidders on the basis that all Qualifying Bidders in respect of a Qualifying Project will be offered the same number of potential meetings. The scheduled meetings may include briefing sessions and presentations.

### Project SPAs

8.9. Alongside the ITT document, we will publish Project SPAs (which Developers are required to populate to Ofgem's satisfaction) for each project. These will only be available to those Qualifying Bidders that are shortlisted for the specific projects following the QTT stage of the process. Qualifying Bidders will be provided limited time to mark up these documents as part of their Submission at this stage of the process. Further detail will be set out in the ITT document.

## Instructions to Qualifying Bidders

8.10. Instructions to Qualifying Bidders will be included in the ITT Document.

## Changes to Consortia

8.11. Any change to consortia must be notified to Ofgem as soon as reasonably practicable.

8.12. Should unexpected or unforeseen circumstances arise leading to a proposal by a consortium to change its composition following the commencement of the ITT Stage, Ofgem will determine on a case-by-case basis whether permitting the changed consortium to remain in the Tender Process would be fair and equitable to all other Qualifying Applicants or Qualifying Bidders (as applicable) participating in a Tender Process for that particular Qualifying Project.

## Clarifications

8.13. The process for a Qualifying Bidder to seek clarification from Ofgem in relation to the ITT Document is the same as that for the Pre-Qualification Stage and the Qualification to Tender Stage (see paragraphs 3.10 and 6.11 above).

## Bid Submission

8.14. Qualifying Bidders may submit a completed Bid for each Qualifying Project for which they have been invited to tender.

8.15. Bids must be submitted via the Portal (in accordance with the detailed instructions set out in the ITT Document) before the stated deadline.

8.16. Once a Bid has been submitted via the Portal, the Qualifying Bidder will receive confirmation by email that its submission has been received.

8.17. If, at any time following the making of any Bid and before Ofgem makes its decision in relation to the ITT stage, there are any material changes or proposed material changes to the information provided in the relevant Bid, or a Qualifying Bidder becomes aware that information previously submitted is no longer true or accurate, such Qualifying Bidder must advise Ofgem as soon as is reasonably practicable. For the avoidance of doubt, where a Qualifying Bidder informs Ofgem of any such material change or proposed material change, Ofgem shall be entitled to re-evaluate that Qualifying Bidder's Bid in light of that material change or proposed material change.

8.18. If a Qualifying Bidder decides not to submit a Bid for a Qualifying Project, it must notify Ofgem in writing via the Portal as soon as reasonably possible after having made such decision.

## Variant Bids

8.19. Ofgem will set out the scope and definition of variant Bids in the Invitation to Tender Document.

## Rectifying Incomplete Bids

8.20. Ofgem will check if each Bid submitted is complete. If Ofgem identifies any omissions from the information that must be provided, it will notify the Qualifying Bidder. The Qualifying Bidder will then have 48 hours in which to rectify the omission(s) and re-submit its Bid.

## **Clarification of Bid Submission**

8.21. Ofgem may ask Qualifying Bidders to clarify their Bids (via the Portal). Qualifying Bidders must respond in writing via the Portal unless notified otherwise.

## **Ongoing Obligation to Update Bid**

8.22. Once a Bid has been submitted, a Qualifying Bidder may not change any aspect which is within its reasonable control. If a change in the Bid occurs which is outside the Qualifying Bidder's reasonable control, it must inform Ofgem as soon as reasonably possible. Ofgem will evaluate (or re-evaluate) the Bid in light of any change(s) notified.

## **Evaluation of Bids**

8.23. Ofgem will evaluate Bids in accordance with the criteria set out in the ITT Document.

## **Notice of Preferred Bidder (and Reserve Bidder, if Applicable)**

8.24. Ofgem will give notice to the Qualifying Bidder(s) which it has selected as the Preferred Bidder and (if applicable) the Reserve Bidder and to each unsuccessful Qualifying Bidder for each Qualifying Project for which an ITT Stage has been run.

8.25. If Ofgem decides to run a BAFO Stage for a Qualifying Project, Ofgem will notify those Qualifying Bidders that are invited to take part and those Qualifying Bidders that are not invited to take part in the BAFO Stage.

## **Unsuccessful Bidder Feedback**

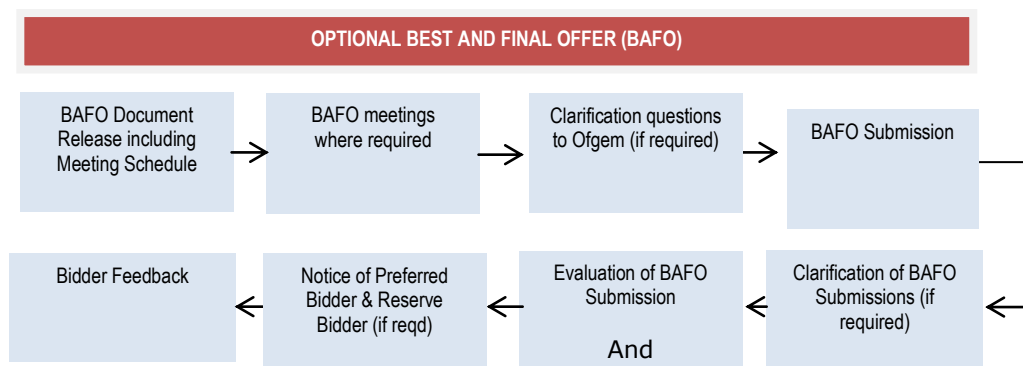
8.26. Upon request, Ofgem will provide feedback to any unsuccessful Qualifying Bidder. Any request for feedback must be made within 1 month of a Qualifying Bidder receiving notification that it has been unsuccessful.

## 9. Best and Final Offer Stage

### Introduction

9.1. Ofgem may invite one or more Qualifying Bidder(s) to make a BAFO Submission.

9.2. The key steps in the BAFO Stage are illustrated below.



### Notification of BAFO

9.3. Ofgem will notify each Qualifying Bidder that has participated in the ITT Stage whether it is invited to take part in a BAFO Stage.

### Issue BAFO Document

9.4. A Qualifying Bidder will only be issued the BAFO Document in respect of each Qualifying Project for which it has received a notice inviting it to submit a BAFO Submission. The BAFO Document will be issued via the Portal.

9.5. At the same time as the BAFO Document is issued, the relevant Developer will be sent notices via the Portal setting out what Ofgem requires of them during the BAFO Stage.

### Instructions to Bidders

9.6. Instructions to Qualifying Bidders will be set out in the BAFO Document. Qualifying Bidders are likely to be required to update some parts only of their Bids, but this will be determined by the circumstances applicable to each particular Qualifying Project.

## Meetings

9.7. Ofgem will hold meetings with Qualifying Bidders participating in the BAFO Stage where required.

## Clarifications

9.8. A Qualifying Bidder may (within the period stated in the BAFO Document) submit to Ofgem any clarification in relation to the BAFO Document or the Qualifying Project for which it is bidding.

9.9. The process for seeking clarification from Ofgem is the same as that for the Pre-Qualification Stage (see paragraphs 3.10 and 6.11 above).

## Payment

9.10. Qualifying Bidders invited to participate in the BAFO Stage are not required to make a payment to Ofgem for the BAFO Stage.

## BAFO Submission

9.11. A Qualifying Bidder must submit a completed BAFO via the Portal in accordance with the instructions set out in the BAFO Document before the stated deadline.

9.12. If, at any time following the making of any BAFO Submission and before Ofgem makes its decision in relation to the BAFO Stage, there are any material changes or proposed material changes to the information provided in the relevant BAFO Submission, or a Qualifying Bidder becomes aware that information previously submitted is no longer true or accurate, such Qualifying Bidder must advise Ofgem as soon as is reasonably practicable. For the avoidance of doubt, where a Qualifying Bidder informs Ofgem of any such material change or proposed material change, Ofgem shall be entitled to re-evaluate that Qualifying Bidder's Bid in light of that material change or proposed material change.

9.13. Once a BAFO Submission has been uploaded on to the Portal, the Qualifying Bidder will receive confirmation by email that its submission has been received.

## Rectifying Incomplete BAFO Submissions

9.14. Ofgem will check if each BAFO submission is complete. If Ofgem identifies any omissions from the information required to be provided, it will notify the Qualifying Bidder. The Qualifying Bidder will then have 48 hours in which to rectify the omission(s) and re-submit its BAFO Submission.

## **Clarification of BAFO Submission**

9.15. Ofgem may ask Qualifying Bidders to clarify their BAFO Submissions via the Portal. Qualifying Bidders must respond in writing via the Portal unless notified otherwise.

## **Evaluation of BAFO Submissions**

9.16. Ofgem will evaluate Bids in accordance with the criteria set out in the BAFO Document.

## **Notice of Preferred Bidder (and Reserve Bidder, if applicable)**

9.17. Ofgem will give notice to the Qualifying Bidder(s) which it has selected as the Preferred Bidder and (if applicable) the Reserve Bidder for each Qualifying Project for which a BAFO Stage has been run.

## **Unsuccessful Bidder Feedback**

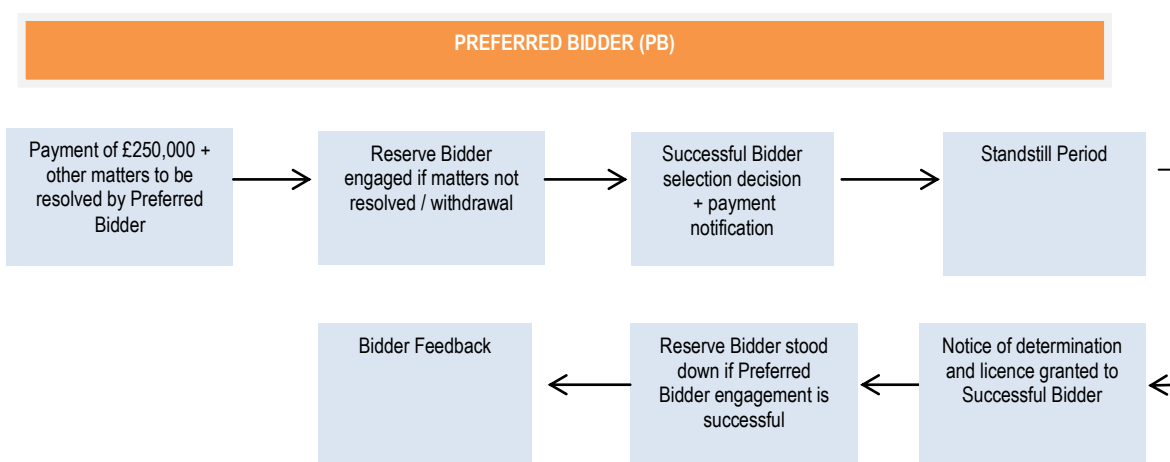
9.18. Upon request, Ofgem will provide feedback to any unsuccessful Qualifying Bidder (including, if applicable, the Reserve Bidder). Any request for feedback must be made within 1 month of a Qualifying Bidder receiving notification that it has been unsuccessful.

## 10. Preferred Bidder (PB) to Licence Grant (LG)

### Introduction

10.1. The purpose of the Preferred Bidder Stage is to enable the Preferred Bidder to satisfy the requirements necessary to become the Successful Bidder and be granted the offshore transmission licence for the Qualifying Project.

10.2. The key steps in the Preferred Bidder Stage are illustrated below.



10.3. The Preferred Bidder Stage will begin once Ofgem has sent the notice to the Preferred Bidder and (where applicable) the Reserve Bidder. Further to the publication of the notice, the full timetable will be advised to the Preferred Bidder and (where applicable) the Reserve Bidder.

### Matters to be Resolved by the Preferred Bidder

10.4. At the same time that selection of Preferred Bidder is notified, Ofgem will provide the Preferred Bidder with details of the requirements which the Preferred Bidder must fulfil (to Ofgem's satisfaction) before the Preferred Bidder can become the Successful Bidder. This will include information regarding how and when such requirements must be satisfied.

### Preferred Bidder Payment

10.5. Once notified the Preferred Bidder will be required to make a payment of £250,000 to Ofgem in accordance with the Cost Recovery Methodology (Appendix 1).

## Confirmation of Disengagement

10.6. Ofgem will publish a notice stating that it has withdrawn the Preferred Bidder from the Tender Process, where:

- a. the requirements referred to in paragraphs 10.4 above are not resolved by the Preferred Bidder to Ofgem's satisfaction;
- b. the Preferred Bidder fails to make the payment referred to in paragraph 10.5 above; or
- c. the Preferred Bidder gives notice to Ofgem that it has withdrawn from the Tender Process in accordance with Chapter 13 below.

Following such notice, the Preferred Bidder will not be allowed to participate further in the Tender Process for the relevant Qualifying Project.

## Reserve Bidder

10.7. Where Ofgem has served a notice withdrawing the Preferred Bidder from the Tender Process (or received a withdrawal notice from a Preferred Bidder) then, provided that Ofgem has already appointed a Reserve Bidder, Ofgem may decide to treat such Reserve Bidder as if it were the Preferred Bidder by:

- a. issuing a formal notice to the Reserve Bidder to this effect; and
- b. providing the Reserve Bidder with the information relating to those requirements to be satisfied prior to it becoming a Successful Bidder as described in paragraphs 10.4 and 10.5 above.

## Successful Bidder Decision Notification

10.8. Where Ofgem is satisfied that the Preferred Bidder (or a Reserve Bidder which has been promoted to Preferred Bidder status) has satisfied the requirements notified to it in accordance with 10.4 and 10.5 above, it will determine that the Preferred Bidder has been successful in the Tender Process and therefore should become the Successful Bidder to which the offshore transmission licence for the Qualifying Project is intended to be granted.

10.9. Ofgem shall notify the Successful Bidder of its determination, outlining the next steps associated with the grant of the offshore transmission licence, including reference to the standstill period.

10.10. The notice to the Successful Bidder shall include a request for payment of as determined in accordance with the Cost Recovery Methodology in Schedule 1 to Appendix 1, which must be made following the conclusion of the standstill period, detailed below.



10.11. At the same time as notifying the Successful Bidder, Ofgem will notify all Qualifying Bidders in relation to the relevant Qualifying Project of its determination and intention to grant an offshore transmission licence, such notice to include:

- confirmation of the evaluation criteria used by Ofgem to evaluate Bids during the ITT Stage;
- the score obtained by that Qualifying Bidder and the Successful Bidder;
- the name of the Successful Bidder; and
- the date for the commencement of the standstill period.

### **Standstill Period**

10.12. Ofgem will allow a period of at least ten working days to elapse between the date on which it publishes the notice to the Successful Bidder and all Qualifying Bidders referred to in paragraph 10.11 above and the date on which it proposes to grant an Offshore Transmission Licence to the Successful Bidder.

10.13. Where Ofgem receives a request from a Qualifying Bidder by midnight on the second working day of the ten working day period referred to above, Ofgem will provide such Qualifying Bidder with the basis on which such Qualifying Bidder was unsuccessful and the reasons for the Successful Bidder's success. Ofgem will provide such feedback at least three working days before the end of the ten working day period referred to above or, if that is not possible, Ofgem will extend the ten working day period to ensure that the Qualifying Bidder receives feedback at least three working days prior to the date on which Ofgem proposes to grant the Offshore Transmission Licence to the Successful Bidder.

10.14. Ofgem may withhold any of the information to be provided under the first and second bullet points of paragraph 10.11 where disclosure of such information would impede law enforcement, be contrary to law or public interest, would prejudice the legitimate commercial interests of any other Qualifying Bidder or could prejudice fair competition between Qualifying Bidders.

### **Notice of Confirmation of Successful Bidder and Determination of Licence Grant**

10.15. Subject to any interim or final findings of any proceedings brought within the ten working day period referred to in paragraph 10.12, at the end of such ten working day period Ofgem will determine whether or not to grant an Offshore Transmission Licence to the Successful Bidder and will publish a notice to that effect.

10.16. In addition, within 48 days after choosing the Successful Bidder, Ofgem will (in accordance with the relevant public contracts regulations) send a notice of the grant of an Offshore Transmission Licence to the Successful Bidder to the Official Journal of the European Union.

## **Standing-down Reserve Bidder**

10.17. Where Ofgem determines that the Preferred Bidder should become the Successful Bidder, Ofgem will notify the Reserve Bidder (if any) that the Preferred Bidder has been successful and that its status as Reserve Bidder has ended.

## **Unsuccessful Bidder Feedback**

10.18. Upon request, Ofgem will provide feedback to any unsuccessful Preferred Bidder or Reserve Bidder. Any request for feedback must be made within 1 month of a Preferred Bidder or Reserve Bidder receiving notification that it has been unsuccessful.

## 11. Other Matters

### Introduction

11.1. This Chapter summarises certain other matters which may be relevant in the context of a Tender Process.

### Transfer Scheme Powers

11.2. A Preferred Bidder/Successful Bidder (as applicable) and/or Developer may at any time apply to Ofgem for a property scheme pursuant to paragraph 3 of Schedule 2A to the Electricity Act under which, if the application was successful, Ofgem would make a scheme to transfer property rights and liabilities from the Developer to the Successful Bidder.

11.3. Ofgem would only expect these property scheme powers to be exercised as a last resort in the event that there was a risk of a Tender Process being frustrated by stalled negotiations. Ofgem considers that a purely commercial solution would be preferable through the Project SPA.

11.4. The process, timing, terms and other matters in relation to property transfer schemes are set out fully in Schedule 2A to the Electricity Act.

### OFTO of Last Resort

11.5. Information regarding the OFTO of last resort process will be provided at the ITT Stage.

## 12. Withdrawal

### Introduction

12.1. This Chapter summarises the rights which Participants and Developers will have to withdraw from a Tender Process.

### Withdrawal Process

#### Developers

12.2. A Developer may withdraw its Qualifying Project from the Tender Round at any time by giving written notice to Ofgem. Withdrawal by a Developer would give Ofgem the right to cancel the Tender Process for the relevant Qualifying Project. See Chapter 13 below.

#### Participants

12.3. A Participant may withdraw from a Tender Process at any stage by giving written notice to Ofgem.

### Consequences of Withdrawal

#### Applicants, Qualifying Applicants and Qualifying Bidders

12.4. If an Applicant, Qualifying Applicant or Qualifying Bidder withdraws from a Tender Process in respect of a particular Qualifying Project, it may only be re-admitted to the Tender Process for that Qualifying Project or another Qualifying Project if:

- a. it joins a consortium which is an existing Applicant, Qualifying Applicant or Qualifying Bidder; and
- b. Ofgem consents to its addition to such consortium (see paragraphs 7.8 and 8.12 above).

#### Preferred Bidder, Reserve Bidder or Successful Bidder

12.5. If a Preferred Bidder, Reserve Bidder or Successful Bidder withdraws from a Tender Process, it will not be re-admitted to the Tender Process for that or any other Qualifying Project except at the sole discretion of Ofgem.

#### Costs

12.6. The consequences of withdrawal in relation to costs are set out in the Cost Recovery Methodology in Appendix 1.

## 13. Cancellation

### Introduction

13.1. This Chapter summarises the circumstances in which Ofgem may cancel a Tender Process in respect of one or more Qualifying Projects.

### Cancellation Events

13.2. Ofgem may cancel the Tender Process for a Qualifying Project if one or more of the following events occur:

- a. No complete Submissions are received at any stage of the Tender Process.
- b. Ofgem decides that there are no Qualifying Applicants or Qualifying Bidders.
- c. A Preferred Bidder withdraws or fails to satisfy the requirements set by Ofgem to become the Successful Bidder and there is no Reserve Bidder (or, if there is a Reserve Bidder, it also withdraws or fails to satisfy the requirements set by Ofgem to become the Successful Bidder).
- d. The Successful Bidder fails to make a payment requested by Ofgem (see Cost Recovery Methodology at Appendix 1).
- e. A Developer has been disqualified by Ofgem, has failed to make a payment or provide the security described in the Cost Recovery Methodology at Appendix 1 above or its Qualifying Project fails to satisfy the entry conditions.
- f. A Developer terminates its bilateral agreement with NGET or fails to amend it in order to accommodate a Preferred Bidder.
- g. A Developer withdraws its Qualifying Project from the Tender Round.
- h. Ofgem decides that it would not be appropriate to grant an Offshore Transmission Licence to any Qualifying Bidder.

### Cancellation Process

13.3. Ofgem must give seven days' notice to the relevant Developers and those Participants which have submitted a Submission in relation to a Qualifying Project if it intends to cancel the Tender Process for that Qualifying Project, in order to allow comments and representations. Ofgem must consider comments and representations on that notice received from the Developers and the relevant Participants.

### Consequences of Cancellation

#### Recommencing Tender Process

13.4. If Ofgem cancels the Tender Process for a Qualifying Project but decides that it wants to re-run all or part of it for that Qualifying Project, it may either:

- a. recommence the whole Tender Process for the relevant Qualifying Project; or
- b. recommence it at a particular stage.

13.5. If Ofgem recommences the Tender Process for a Qualifying Project but is unable to identify a Preferred Bidder, Reserve Bidder or Successful Bidder then Ofgem may either:

- a. restart a further Tender Process (either from the start or from a particular stage);  
or
- b. decide that the Tender Process for that Qualifying Project has failed.

**Costs**

13.6. The consequences of cancellation in relation to costs are set out in the Cost Recovery Methodology in Appendix 1.

## 14. Disqualification

### Introduction

14.1. This Chapter summarises the circumstances in which a Developer or Participant may be disqualified from a Tender Round.

### Disqualification Events

14.2. If one or more of the following events occurs and Ofgem believes that this materially affects the outcome of a Tender Round, it will disqualify the relevant Developer(s) or Participant(s) from that Tender Round.

#### Events Applicable to Developers and Participants

- a. Informing, or colluding to inform, a Developer or Participant of the value of any rival Submission.
- b. A material breach of these Tender Rules, the rules governing any individual stage of the Tender Process or the Tender Regulations.
- c. Giving Ofgem false or misleading information unless Ofgem accepts further information to correct the previous error.
- d. Any anti-competitive behaviour by or between any Developer or Participant.
- e. A breach of the Prevention of Corruption Acts 1889 to 1916.

#### Events Applicable to Developers only

- a. Offering to give any money or inducement to Ofgem, a Participant or any of their Related Parties.
- b. Contacting a Participant (or any Related Party) outside the requirements of the Tender Regulations (including discussing the transfer of an employee of a Participant to a Developer for the purpose of the Tender Process).

#### Events Applicable to Participants only

- a. Failing to pay any amount required by Ofgem pursuant to the Tender Regulations (see Cost Recovery Methodology at Appendix 1), unless that failure has been remedied within ten days.
- b. Fixing or adjusting the amount of its Submission by any agreement or arrangement with another Participant or by improperly using insider information.
- c. Agreeing with any other Participant not to make a Submission.
- d. Giving details of its proposed Submission to any person other than Ofgem (except in confidence in order to obtain the necessary quotations for preparing the Submission).
- e. Any changes to the membership of a Participant's consortium without Ofgem's approval.
- f. Offering to give any money or inducement to Ofgem, NGET, a Developer or any of their Related Parties.



- g. Contacting Ofgem, its Advisors, NGET or a Developer or any of their Related Parties outside the requirements of the Tender Regulations, the Tender Rules or the rules governing any individual stage of the Tender Process (including discussing the transfer of an officer to the employment of the Participant for the purpose of the Tender Process).

## **Consequences of Disqualification**

14.3. If a Participant is disqualified, Ofgem will not consider any Submission from that Participant when it determines the Successful Bidder for the relevant Qualifying Project.

14.4. Upon request, Ofgem will provide feedback to any disqualified Participant or Developer. Any request for feedback must be made within 1 month of a Participant or Developer receiving notification that it has been disqualified.

## **Costs**

14.5. The consequences of disqualification in relation to costs are set out in the Cost Recovery Methodology in Appendix 1.

## Appendices

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## Appendix 1 – Cost Recovery Methodology

### Introduction

1.1. This Cost Recovery Methodology is published by the Authority pursuant to regulation 23(2) of Tender Regulations and will apply to the first Tender Round which Ofgem will run for the grant of Offshore Transmission Licences in the Transitional Regime.

### Cost Recovery Principles

1.2. Section 6D of the Electricity Act<sup>1</sup> contains key provisions with regard to the offshore transmission regime, specifically in terms of Ofgem's powers to fully recover its direct and administrative support costs associated with running a Tender Round. The Electricity Act enables the Authority to:

- secure a financial commitment from Developers in respect of any potential liability the Developer may have. This commitment is referred to as the "security";
- secure payments from Developers and Participants to cover Ofgem's costs of running a Tender Process. These payments are referred to as "payments"; and
- in respect of offshore projects in the Transitional Regime, request a payment from the Developer to cover costs incurred in relation to undertaking an ex-ante cost estimate, and from the Successful Bidder to cover costs incurred in relation to undertaking an ex-post cost assessment.

1.3. The Tender Regulations provide the legal framework for the process which Ofgem will run for the grant of Offshore Transmission Licences. The rules of this process are set out in the body of this Tender Rules document.

1.4. These principles apply in respect of the first Tender Round commencing in the financial year 2009-10. The principles will be kept under review in light of any material changes in circumstances. In any case, in accordance with the Tender Regulations, the Authority shall publish a Cost Recovery Methodology prior to the commencement of each Tender Round.

### Ofgem's Costs

#### Tender Set-up costs

1.5. The Electricity Act does not state explicitly when costs may start to be recovered. However, under normal Government practice,<sup>2</sup> set up expenditure may be incurred and hence is recoverable once the specific legislation, the Energy Act 2008 in this instance, comes into force. This occurred on 26 November 2008 and, as such, we expect to recover £500,000 of our 2008-09 costs up to 31 March 2009, and all of our costs thereafter.

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<sup>1</sup> Inserted by section 44 of the Energy Act 2008

<sup>2</sup> *Managing Public Money*, Annex 2.5, section A.2.5.2 and HM Treasury's Fees and Charges guide.

1.6. Set up costs relating to preparation for the Tender Round will include (but are not necessarily limited to):

- Tender project staff costs;
- External expert advice;
- Legal costs (internal and external);
- IT Systems; and
- Ofgem overhead.

1.7. It is anticipated that full recovery of initial set up costs relating to establishing the framework for running Tender Rounds in the Transitional Regime will be completed within the first two or three Tender Rounds. Set up costs arising for Tender Rounds for the enduring regime will be recovered from the respective tenders.

### **Ongoing Tender Costs**

1.8. The Electricity Act gives Ofgem the ability to seek payments and security from the Developer and payments from the Participants in a Tender Process in order to recover its full costs in respect of running the Tender Process. Tender costs include the costs which are incurred in relation to a Tender Process in respect of a specific Qualifying Project, and an appropriate proportion of costs incurred in relation to the Tender Round as a whole.

### **Costs Incurred in Relation to a Tender Process for a Specific Qualifying Project**

1.9. The direct costs (for example, external expert advice, advertising, etc) which are incurred in relation to a Tender Process for a specific Qualifying Project will be allocated to a specific stage of the Tender Process. Staff costs will be apportioned to each stage based on a general time apportionment methodology. Any other relevant costs (for example bank charges), will also be allocated to a specific stage. A contingency amount will be included to provide for additional costs of uncertainty and unpredictable events such as tender re-runs and legal challenge to the process.

1.10. Payments made by Participants will be based on a forecast of these anticipated costs. As described in section 6, an aggregation exercise at the end of the Tender Round will ensure that costs for Participants will reflect the relevant tender costs incurred and any excess monies are repaid.

### **Costs incurred in Relation to the Tender Round as a Whole**

1.11. In respect of the Tender Round as a whole, there will also be a recovery of Ofgem's overheads. The overhead calculation is in two parts:

- General overhead (excluding accommodation); and
- Accommodation overhead.

1.12. General overheads cover Ofgem's administrative support functions such as HR, IT, Facilities Management, Finance etc. This is a set percentage of staff costs. Therefore, the higher the level of staff time spent on the Tender Round, the higher the level of overhead it will attract.

1.13. An accommodation charge will be based on the area of floor space that is taken up by the offshore transmission team and any associated legal/managerial (pro-rata) staff and

applied as a proportion of the overall office floor space, to allocate accommodation cost overheads.

1.14. The fixed overhead rate for each Tender Process will be reviewed at least annually to avoid the risk of significant over/under recovery over time.

### **Cost Estimates and Assessments**

1.15. The Electricity Act allows Ofgem to undertake valuation assessments where transmission assets need to be transferred from the Developer to the OFTO in the Transitional Regime and recover its costs in doing so. The estimate/assessment of the economic and efficient costs in connection with developing and constructing the project will enable Ofgem to determine the appropriate asset transfer value. Further details are set out in regulations 3 and 4 of the Tender Regulations.

1.16. For the initial cost estimate, the Developer will be liable for costs as soon as reasonably practicable after Ofgem has undertaken the estimation<sup>3</sup>. This amount will be recoverable by the Developer as part of the final cost assessment.

1.17. For the final cost assessment, the Successful Bidder (OFTO) will be liable for costs as soon as reasonably practicable after the Tender Round has been held<sup>4</sup> and will be recoverable via an adjustment to the terms of their special licence conditions. An estimate of the final cost assessment will be provided to the Successful Bidder prior to financial close.

1.18. Costs include (but are not necessarily limited to):

- Tender project staff costs;
- Consultancy costs;
- Legal costs (internal and external); and
- Ofgem overhead.

### **VAT**

1.19. Ofgem will not be required to charge VAT on the amounts to be recovered. Running the Tender Round is a statutory service and therefore outside the scope of VAT.

## **Payments and Security**

1.20. The Electricity Act enables Ofgem to require Developers and Participants to pay for the costs that Ofgem incurs in relation to the Tender Round and, in the case of Developers, provide security in respect of any potential liability the Developer may have.

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<sup>3</sup> In accordance with regulation 4(1) of the Tender Regulations.

<sup>4</sup> In accordance with regulation 4(2) of the Tender Regulations.

1.21. The payment and security details for the first transitional Tender Round are set out in Schedule 1.

## **Cost Consequences of Withdrawal, Cancellation and Disqualification**

1.22. The Tender Regulations set out the cost consequences of:

- Withdrawal by a Participant from a Tender Process;
- Cancellation of a Qualifying Project from a Tender Round; and
- Disqualification of a Developer or Participant from a Tender Round.

1.23. For further details on each of these events, please refer to the relevant section of these Tender Rules.

1.24. The cost consequences of each event are described in more detail below. In summary, they ensure that Ofgem will be able to recover its costs where an event has occurred through no fault of its own.

### **Withdrawal**

1.25. If a Participant withdraws from a Tender Process, any payment (including any interest which it may have accrued but excluding any non-refundable payments) which that Participant has paid to Ofgem in relation to the Tender Process will only be repaid to the Participant where the aggregate of the payments received from the Participant exceed the costs incurred.

1.26. If a Developer withdraws from a Tender Process for any reason, Ofgem will treat this as an event of cancellation.

### **Cancellation**

1.27. If a Tender Process is cancelled as a result of a Participant cancellation event, set out in (a) (except in relation to Prequalification Submissions), (b), (c), (d) and (h) of section 13.2 of the Tender Rules:

- the Developer will be repaid (in whole or in part dependent on the costs incurred up until the stage at which the Tender Process is cancelled) the payment made to Ofgem (including any interest which that payment may have accrued) and Ofgem shall release the security provided in respect of the same; and
- the relevant Participant(s) will not be entitled to be repaid (in whole or in part dependent on the costs incurred up until the stage at which the Tender Process is cancelled) any payment which it has made to Ofgem in relation to that Tender Process (including any interest which those amounts may have accrued).

1.28. If a Tender Process is cancelled as a result of a Developer cancellation event, set out in (a) (in relation to Prequalification Submissions only), (e), (f) and (g) of section 13.2 of the Tender Rules:

- the Developer will not be entitled to be repaid (in whole or in part) any payment made to Ofgem (including any interest which those amounts may have accrued) and Ofgem may decide whether to call upon the security provided by the Developer; and
- the relevant Participant(s) will be repaid (in whole or in part dependent on the costs incurred up until the stage at which the Tender Process is cancelled) any amounts (including any interest which those amounts may have accrued) paid to Ofgem.

## Disqualification

1.29. If a Participant is disqualified, it will not be entitled to be repaid (in whole or in part) any amount which it has paid to Ofgem in relation to the Tender Process (including any interest which those amounts may have accrued).

1.30. If a Developer is disqualified, it will not be entitled to be repaid (in whole or in part) any payment made to Ofgem (including any interest which those amounts may have accrued). Ofgem may decide whether to call upon the security provided by the Developer, dependent on the stage of the Tender Process that the Developer is disqualified and the costs incurred up until that point.

## Aggregation

1.31. In accordance with regulation 23(5) and (6) of the Tender Regulations, Ofgem is required to undertake an aggregation exercise as soon as reasonably practicable after a Tender Round is finished, in order to identify whether the Authority's total tender costs have been exceeded. In this case, Ofgem must repay any excess to the relevant party.

1.32. Ofgem will undertake an aggregation of:

- Payments made by the Developer and Participants (with the exception of the payment made at the Pre-Qualification Stage) which have not been repaid in the event of withdrawal, cancellation or disqualification; and
- Any security forfeited by the Developer in the event of cancellation (including withdrawal of a Qualifying Project from a Tender Round) or disqualification.

1.33. It is not anticipated that there will be any refund of the payments in respect of the cost estimates and assessments described in section 3.3, as those payments will be invoiced after the actual costs are known.

1.34. Where the aggregation exercise reveals that the total amount of payments made have exceeded Ofgem's total attributable costs, Ofgem shall:

- Repay (in whole or in part) the relevant proportion of any excess payment to the relevant Developer or Participant (including any interest which those amounts may have accrued); and
- Release (in whole or in part) any excess drawn down security to the Developer (including any interest where the security provided is a cash deposit).

1.35. The aggregation exercise will be audited by Ofgem's outsourced internal audit service provider as soon as practicable after each Tender Round.

## Interest

1.36. The Electricity Act confirms<sup>5</sup> that any repayment is to include an amount representing interest accrued on the whole or part of the payment.

1.37. Where the security is to be returned to the Developer, any interest accrued in an escrow account will be returned together with the principal sum.

1.38. In terms of Ofgem's own bank account, an Office of the Paymaster General (PGO) interest bearing bank account will be opened. Monies will be drawn down from escrow accounts and paid into the PGO account as they fall due. The interest will be taken into account during the aggregation exercise.

1.39. The amount of interest accruing from the PGO account will be calculated with reference to the following:

- PGO interest rate(s);
- Amount(s) held; and
- Length of time in account.

1.40. A typical PGO interest rate calculation could be as follows:

Rate 0.3% (example base rate 0.5% less 0.2%) @ refundable amount £100,000 held for 3 months = £75.

## Additional payments

1.41. In accordance with the Tender Regulations, additional payments may be payable, to cover full costs, in the following circumstances:

- Enquiries to the Authority – as described in regulation 25 of the Tender Regulations, and
- Changes to bidder groups – as described in regulation 26 of the Tender Regulations.

## Financial governance

1.42. The procedures for administering the Tender Round will be subject to review by Ofgem's internal audit function, the Authority Committee for Offshore Electricity Transmission and, more generally, by the Audit Committee. The National Audit Office (NAO) is the statutory external auditor of Ofgem and may also wish to review the procedures for administering the Tender Round. As well as providing an opinion on financial statements, the NAO can also examine and report to Parliament on the economy, efficiency and effectiveness of any public spending.

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<sup>5</sup> Section 6D (1)(e)(ii) and (iii) of the Electricity Act 1989.



## **Schedule 1: Payments and Security for First Transitional Tender Round**

### **Developers' Payment and Security**

Each Developer will be required, before a Tender Process is commenced for its Qualifying Project, to:

- make a payment to Ofgem of £50,000; and
- provide Ofgem with security in the form of a letter of credit or a cash deposit for an amount as calculated in accordance with the charging schedule set out in this Schedule 1. Schedule 2 sets out Ofgem's standard form letter of credit and form of demand we would use if we needed to draw down.

The security will be returned to the Developer at the end of the Tender Round where there is no reason for Ofgem to forfeit it.

### **Participants' payments**

Each Participant is responsible for its own costs of developing and submitting its Submission(s). In addition, each Applicant, Qualifying Bidder, Preferred Bidder and Successful Bidder will be required to make prescribed payments to Ofgem at the Prequalification Stage, the ITT Stage (based on a sliding scale), the Preferred Bidder Stage and the Successful Bidder stage respectively.

The timing (and other details) of each of the above payments in accordance with the charging schedule detailed below:

- each Applicant will be required to pay Ofgem a non-refundable payment when it submits its Pre-Qualification Submission;
- each Qualifying Bidder will be required to pay Ofgem at the start of the ITT Stage an amount for each Qualifying Project for which it wishes to submit a Bid based on a sliding scale, subject to an overall cap;
- once it has been confirmed as Preferred Bidder for the relevant Qualifying Project, a Preferred Bidder will be required to make a further payment to Ofgem; and
- the Successful Bidder will be required to make a further payment to Ofgem on the grant of an Offshore Transmission Licence.

### **Payment Details**

Payments made by Developers and Participants are required to be paid into the following dedicated Ofgem escrow account:

Bank:	Lloyds TSB
Account Name:	Gas & Electricity Markets Authority Offshore Tender
Account Number:	00928001
Sort Code:	30 00 03

As the Tender Process proceeds, Ofgem will draw down monies from this escrow account to cover the costs of running the Tender Round.

**Charging Schedule**

<b>Process Stage</b>	<b>Participant</b>		
	<b>Developer</b>	<b>Bidder</b>	<b>Successful Bidder</b>
Developer security	Sliding scale from £500,000 <sup>1</sup>	N/A	N/A
Developer payment	£50,000	N/A	N/A
PQ stage	N/A	£5,000 <sup>2</sup>	N/A
QTT stage	N/A	N/A	N/A
ITT stage	N/A	Sliding scale up to £50,000 <sup>3</sup>	N/A
Preferred Bidder	N/A	£250,000	N/A
Licence Grant	N/A	N/A	Sliding scale from £350,000 <sup>4</sup>

**Table notes**

<sup>1</sup>Developer security is based on a sliding scale to reflect the size and complexity of the asset transfer.

<sup>2</sup>This is a flat charge and is not dependent on the number of projects the Applicant signals its interest in.

<sup>3</sup>This payment is based on a sliding scale up to a maximum of £50,000 per Qualifying Bidder irrespective of the number of projects bid for.

<sup>4</sup> This payment is based on a sliding scale to reflect the size and complexity of the asset transfer.

*Developer Security*

The amount of Developer security is based on a sliding scale to reflect the size and complexity of the asset transfer, which will have an impact on the costs Ofgem bears. The amount of security will be from £500,000 (for projects with a transfer value up to £100m) to £2.5m (for projects with a transfer value above £400m). Ofgem will directly inform Developers of the required level of security.

*Sliding Scale ITT Payment*

The amount which each Qualifying Bidder must pay at the ITT Stage is based on a two-part sliding scale. This amount is comprised of:

- (a) a fixed fee of £10,000 for each Qualifying Project for which the Qualifying Bidder wishes to submit a Bid; and
- (b) a variable fee of £5,000 for each increment of £50m of Ofgem's estimated transfer value of the Qualifying Project.

The payment to be made by a Qualifying Bidder at the ITT Stage will not be more than £50,000 in total, irrespective of how many Qualifying Projects a Qualifying Bidder submits a Bid for.

For example, to bid a project with a value of between £100m and £150m, the bidder would pay a charge of £10,000 plus 3 x £5,000 (i.e. £25,000). If the bidder bids for three projects, each with a value of between £100m and £150m, the total charge would be £50,000 (i.e. 3 x £10,000 plus 9 x £5,000, but subject to the total cap of £50,000).

*Sliding Scale Successful Bidder Payment*

The amount each Successful Bidder must pay at licence grant is based on a sliding scale to reflect the size and complexity of the asset transfer, which will have an impact on the costs Ofgem bears.

The payment will be from £350,000 for projects with a transfer value of up to £100m, and increase in tiers for projects with transfer values above £100m by £50m increments, subject to a maximum payment of £1,350,000 for projects with a transfer value above £200m. Ofgem will indicate the level of payment required from the Successful Bidder at the Preferred Bidder stage. The Successful Bidder payment will be confirmed once the Successful Bidder is appointed prior to the grant of the Offshore Transmission Licence.

## Schedule 2: Form of Letter of Credit and Form of Demand

### Form of Letter of Credit

To: Gas and Electricity Markets Authority  
9 Millbank  
London  
SW1P 3GE

(the "**Beneficiary**")

[Date]

### Irrevocable Standby Letter of Credit no.[ ]

At the request of [ ], [Issuing bank] (the "**Issuing Bank**") issues this irrevocable standby letter of credit ("**Letter of Credit**") in your favour on the following terms and conditions:

#### Definitions

In this Letter of Credit:

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for general business in London;

"**Demand**" means a demand for a payment under this Letter of Credit in the form of the schedule to this Letter of Credit;

"**Expiry Date**" means [ ];

"**Total L/C Amount**" means [ ];

#### Issuing Bank's Agreement

1.1. The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand may not be given after the Expiry Date. A Demand must be received by the Issuing Bank by [ ] p.m. (London time) on the Expiry Date.

1.2. Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within [ten] Business Days of receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand.

1.3. The Issuing Bank will not be obliged to make a payment under this Letter of Credit if as a result the aggregate of all payments made by it under this Letter of Credit would exceed the Total L/C Amount.

#### Expiry

1.4. The Issuing Bank will be released from its obligations under this Letter of Credit on the date (if any) notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.

1.5. Unless previously released under paragraph 1.4 above, on [ ] p.m. (London time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.

1.6. When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

### **Payments**

1.7. All payments under this Letter of Credit shall be made in pounds sterling and for value on the due date to the account of the Beneficiary specified in the Demand.

### **Delivery of Demand**

1.8. Each Demand shall be in writing, and, unless otherwise stated, may be made by letter or fax and must be received in legible form by the Issuing Bank at its address and by the particular department or officer (if any) as follows:

[ ]

### **Assignment**

1.9. The Beneficiary's rights under this Letter of Credit may not be assigned or transferred.

### **ISP 98**

1.10. Except to the extent it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590.

### **Governing Law**

1.11. This Letter of Credit and any non-contractual obligations arising out of or in connection with it are governed by English law.

### **Jurisdiction**

1.12. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Credit (including a dispute relating to any non-contractual obligation arising out of or in connection with this Letter of Credit).

Yours faithfully,

[Issuing Bank]

By:

**Form of Demand**To: *[ISSUING BANK]**[Date]*

Dear Sirs

Standby Letter of Credit no. [ ] issued in favour of the Gas and Electricity Markets Authority (the "Letter of Credit")

We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

We certify that the sum of £[ ] is due [and has remained unpaid for at least [ ] Business Days] under any notice(s) issued pursuant to The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009. We therefore demand payment of the sum of £[ ].

Payment should be made to the following account:

Name: [ ]

Account Number: [ ]

Bank: [ ]

The date of this Demand is not later than the Expiry Date.

Yours faithfully

(Authorised Signatory)

(Authorised Signatory)

For  
Gas and Electricity Markets Authority

## Appendix 2 – The Authority’s Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority (“the Authority”), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004 and the Energy Act 2008, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.<sup>6</sup>

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly<sup>7</sup>.

1.4. The Authority’s principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them<sup>8</sup>;
- the need to contribute to the achievement of sustainable development; and

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<sup>6</sup> entitled “Gas Supply” and “Electricity Supply” respectively.

<sup>7</sup> However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

<sup>8</sup> under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

- 
- the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.<sup>9</sup>

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- promote efficiency and economy on the part of those licensed<sup>10</sup> under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and
- secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- the effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance about its contribution towards the attainment of any social or environmental policies issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation<sup>11</sup> and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

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<sup>9</sup> The Authority may have regard to other descriptions of consumers.

<sup>10</sup> or persons authorised by exemptions to carry on any activity.

<sup>11</sup> Council Regulation (EC) 1/2003



## Appendix 3 - Glossary

**"Advisers"** means in relation to Ofgem, its employees, officers, directors, officials, insurers, agents, consultants, advisers, contractors, subcontractors (of any tier) and affiliates.

**"Applicant"** means person or consortium of persons that submits or proposes to submit a Pre-Qualification Submission;

**"Authority"** means the Gas and Electricity Markets Authority<sup>12</sup>;

**"BAFO"** means the best and final offer that may be requested by Ofgem from some or all of the Qualifying Bidders;

**"BAFO Document"** means, in respect of a particular Qualifying Project, the document which will be delivered to each Qualifying Bidder invited to submit a BAFO and which sets out the rules and requirements of the BAFO Stage;

**"BAFO Stage"** means the period starting from the distribution of the BAFO Document to selected Qualifying Bidders by Ofgem, and including BAFO preparation, submission and evaluation, and ending when a Preferred Bidder is selected;

**"BAFO Submission"** means a selected Qualifying Bidder's response to the BAFO Document;

**"Bid"** means each bid submitted to Ofgem in response to an ITT Document;

**"Confidentiality Agreement"** means a confidentiality agreement in substantially the same form as provided through the Portal;

**"Cost Recovery Methodology"** means the Cost Recovery Methodology relating to the Tender Round published by Ofgem;

**"Data Room"** means, in respect of a Qualifying Project, an electronic data room populated by Ofgem with information provided by the relevant Developer which is made available to applicable Qualifying Bidders through the Portal;

**"Developer"** means the person falling within sub-sections 6D(2)(a) and (4) of the Electricity Act which has developed or is developing an offshore generating station who requests that Ofgem commences a Tender Process in respect of a proposed project;

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<sup>12</sup> The terms "Ofgem" and "the Authority" are used interchangeably in these Tender Rules. Please see paragraph 1.9 of these Tender Rules for an explanation of the distinction between the Gas and Electricity Markets Authority and Ofgem.

**"Electricity Act"** means the Electricity Act 1989 as amended from time to time;

**"Government"** means Her Majesty's Government in the United Kingdom;

**"Helpdesk"** means the facility provided by BravoSolution UK Ltd to handle technical support queries raised by users of the Portal;

**"Information Commissioner"** has the meaning given to that term in the Data Protection Act 1998 as amended from time to time;

**"Information Memorandum"** means the document prepared by Ofgem for a Qualifying Project containing detailed information for such Qualifying Project which is issued to Qualifying Applicants at the Qualification to Tender Stage provided they have entered into the applicable Confidentiality Agreement;

**"ITT Document"** means, in respect of a particular Qualifying Project, the document, which will be made available to each Qualifying Bidder invited to submit a Bid for that Qualifying Project and which sets out the rules and requirements of the ITT Stage;

**"ITT Stage"** means the period starting from the distribution of the ITT Document to Qualifying Bidders by Ofgem, and including Bid preparation, submission and evaluation, and ending when either a Preferred Bidder is selected or a BAFO Stage is commenced;

**"Model SPA"** means a generic sale and purchase agreement produced by Ofgem to form the basis of the Project SPA;

**"NGET"** means National Grid Electricity Transmission PLC

**"NETSO"** means National Electricity Transmission Operator. This role is fulfilled by Nation Grid Electricity Transmission in accordance with its electricity transmission licence;

**"OFTO"** or **"Offshore Transmission Licensee"** means the holder of an Offshore Transmission Licence;

**"Offshore Transmission Licence"** means a licence granted pursuant to section 6(1)(b) of the Electricity Act in relation to the transmission of electricity in offshore waters, where offshore waters means:

- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea;
- (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964; and
- (c) waters within an area designated under section 84(4) of the Energy Act 2004.

**"Offshore Transmission System"** means the onshore and offshore transmission system in respect of which an Offshore Transmission Licence is (or is to be) granted or anything which forms part of that system;

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**"Ofgem"** means the Office of Gas and Electricity Markets;<sup>13</sup>

**"Participant"** means an Applicant, a Qualifying Applicant, a Qualifying Bidder, a Preferred Bidder, a Reserve Bidder and/or a Successful Bidder (as applicable);

**"Portal"** means the Offshore Transmission Electronic Tendering Portal described in Chapter 4 of these Tender Rules;

**"Preferred Bidder"** means, in relation to a Qualifying Project, the Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received (and any BAFO Submissions requested), as the Qualifying Bidder to which it intends (subject to the satisfaction of the conditions specified by Ofgem) to grant the Offshore Transmission Licence;

**"Preferred Bidder Stage"** means the period starting at the date of Ofgem's notice to a Qualifying Bidder that it has been selected as Preferred Bidder and ending at the date of Ofgem's notice to the Preferred Bidder that it has been selected as the Successful Bidder;

**"Preliminary Information Memorandum"** means the preliminary information memorandum provided via the Portal which contains high level information in relation to a Qualifying Project;

**"Pre-Qualification Document"** means the document prepared and issued by Ofgem for the purpose of selecting a longlist of Qualifying Applicants to progress to the Qualification to Tender Stage and which sets out the rules and requirements of the Pre-Qualification Stage;

**"Pre-Qualification Questionnaire"** means the Pre-Qualification questionnaire made available at the Pre-Qualification Stage, as part of the Pre-Qualification Document, to entities which have registered on the Portal;

**"Pre-Qualification Stage"** means the period starting from the publication of the Pre-Qualification Document, including the preparation, submission and evaluation of Pre-Qualification Submissions and ending once Ofgem has published the longlist of Qualifying Applicants who have prequalified for the Qualification to Tender Stage;

**"Pre-Qualification Submission"** means an Applicant's response to the Pre-Qualification Document;

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<sup>13</sup> The terms "Ofgem" and "the Authority" are used interchangeably in these Tender Rules. Please see paragraph 1.9 of these Tender Rules for an explanation of the distinction between the Gas and Electricity Markets Authority and Ofgem.

**"Project SPA"** means the sale and purchase agreement produced by the Developer in relation to its Qualifying Project on the basis of the Model SPA;

**"Qualifying Applicant"** means a person or consortium of persons invited to submit a Qualification to Tender Submission;

**"Qualifying Bidder"** means a person or consortium of persons invited to submit a Bid to Ofgem in response to the ITT Document;

**"Qualifying Project"** means an offshore generating project in respect of which Ofgem determines that the Developer has satisfied the pre-conditions described in paragraph 5.6 of these Tender Rules or which Ofgem determines at its discretion (exercised in accordance with the Tender Regulations) that the Developer will satisfy the relevant pre-conditions within a period specified by Ofgem;

**"Qualification to Tender Document"** means the document prepared and issued by Ofgem for the purpose of selecting Qualifying Bidders to progress to the ITT Stage and which sets out the rules and requirements of the Qualification to Tender Stage;

**"Qualification to Tender Stage"** means the period starting from Ofgem publishing the longlist of Qualifying Applicants who have prequalified, including the preparation, submission and evaluation of Qualification to Tender Submissions and ending once Ofgem has notified the Qualifying Applicants of its selection of Qualifying Bidders for the Qualifying Projects;

**"Qualification to Tender Submission"** means a Qualifying Applicant's response to the Qualification to Tender Document;

**"Related Party"** or **"Related Parties"** means in relation to a Participant or a Developer (as applicable) its employees, officers, directors, officials, funders, insurers, agents, consultants, advisers, contractors, subcontractors (of any tier) and affiliates, and in relation to a Participant the employees, officers, directors, officials, funders, insurers, agents, consultants, advisers, contractors, subcontractors (of any tier) and affiliates of a person who is a member of the Participant's consortium;

**"Reserve Bidder"** means the Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received (and any BAFO Submissions requested), as the second choice Qualifying Bidder to which Ofgem would consider granting the Offshore Transmission Licence should Ofgem determine not to grant the Offshore Transmission Licence to the Preferred Bidder;

**"Secretary of State"** means the Secretary of State for Energy and Climate Change;

**"Standard Licence Conditions"** means the standard licence conditions for OFTOs as modified by Ofgem and available on Ofgem's website at:  
[http://www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/cons2009/Documents1/StdConds\\_TxLicence\\_Go-Active.pdf](http://www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/cons2009/Documents1/StdConds_TxLicence_Go-Active.pdf);

**"Submission(s)"** means a Pre-Qualification Submission, a Qualification to Tender Submission, a Bid and/or a BAFO Submission (as applicable);

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**"Successful Bidder"** means a Preferred Bidder to which Ofgem has determined to grant an Offshore Transmission Licence;

**"Tender Process"** means the competitive process run by Ofgem in order to identify a Successful Bidder to be granted an Offshore Transmission Licence in relation to a particular Qualifying Project;

**"Tender Regulations"** means the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009;

**"Tender Round"** means the Tender Processes run by Ofgem in order to identify Successful Bidders to be granted Offshore Transmission Licences in relation to Qualifying Projects;

**"Tender Rules"** means these rules published by Ofgem pursuant to regulation 7(4) of the Tender Regulations (as amended by documents subsequently issued by Ofgem in connection with the Tender Round or a Tender Process);

**"Transitional Regime"** means a Tender Round for the grant of Offshore Transmission Licences where the transmission assets have been or are being constructed by Developers, and where the Developer meets certain pre-conditions to the satisfaction of the Authority;

**"User"** means any person who is granted access to and use of the Portal;

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

**"User Agreement"** means an agreement governing the access and use of the Portal by Users.