

Model Sale and Purchase Agreement and Commentary



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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 Transmission Licences on the basis of a competitive Tender Process. Ofgem is responsible for managing this process.

Following the consultation on the Draft Model Sale and Purchase Agreement (SPA) in May 2009, this is the Model SPA that developers who qualified for the first round of transitional tenders were asked to populate on 8 July 2009. There is a commentary following the model SPA explaining Ofgem's approach to the drafting of the template SPA.

MODEL SPA

.....20[]

[] [LIMITED] [PLC]

and

[] [LIMITED] [PLC]

AGREEMENT

For the sale and purchase of the business of

[]

Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

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THIS AGREEMENT is made on

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BETWEEN:

- (1) [] [LIMITED] [PLC] a company incorporated in (registered number [] and whose registered office is at [] (the "**Vendor**"); and
- (2) [] [LIMITED] [PLC] a company incorporated in (registered number [] and whose registered office is at [] (the "**Purchaser**").¹

RECITALS:

- (A) The Gas and Electricity Markets Authority and the Department of Energy and Climate Change have together formulated and implemented a new regulatory regime for offshore electricity transmission to connect significant amounts of renewable offshore generation to the onshore electricity network. The structure of this regime has been consulted on since 2005.
- (B) The new regime provides for a competitive tender process for the grant of Offshore Transmission Licences. To facilitate the implementation of this new regime, transitional arrangements have been implemented for projects where the generator is already constructing or undertaking steps toward constructing the offshore transmission assets at the commencement of the regime. These transitional arrangements provide for the owners of offshore transmission systems that are already constructed, being constructed or have taken steps toward construction to be able to sell the completed and commissioned offshore transmission system to the preferred bidder from a competitive tender process for the award of an Offshore Transmission Licence in respect of such offshore transmission system.
- (C) The Vendor carries on the Business and that Business has been the subject of a competitive tender process for the grant of an Offshore Transmission Licence in respect of the Offshore Transmission System under the transitional arrangements.
- (D) The Purchaser has participated in the competitive tender process for the grant of the Offshore Transmission Licence.
- (E) The Purchaser has been appointed preferred bidder in accordance with the Tender Regulations and subject to [*project specific criteria*] will be granted an Offshore Transmission Licence by the Authority in respect of the Offshore Electricity Transmission.
- (F) In accordance with the outcome of the competitive tender process for the award of the Offshore Transmission Licence, the Vendor has agreed to sell the Assets and transfer the Business as a going concern to the Purchaser for the Consideration and upon the terms and

¹ Explanatory note: the template SPA does not include a parent company guarantee on behalf of either the Vendor or the Purchaser or other suitable security. Such parties (and relevant operative provisions) may need to be added if credit support is necessary in the circumstances. This will be project specific.

subject to the conditions set out in this Agreement.²

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement each of the following words and expressions shall have the following meaning:

"the 1985 Act" means the Companies Act 1985 to the extent in force from time to time;

"the 2006 Act" means the Companies Act 2006 to the extent in force from time to time;

"Acceptance Certificate" has the meaning given in STC Procedure 19-4 and is in the form set out therein;

"Affiliate" means:

(A) if the Party is a subsidiary of another company, the Party's ultimate holding company and any subsidiary (other than the Party itself) of the Party's ultimate holding company; or

(B) if the Party is not a subsidiary of another company, any subsidiary of the Party;

"Ancillary Property Contracts" means the Licences, the Easement Deeds and the Wayleave Agreements brief particulars of which are set out in Part A(1) of Schedule 5 (*Sites and Property Contracts*) and **"Ancillary Property Contract"** shall mean any one of them;

"Assets" means all property, assets and rights which are necessary to carry out the Business in accordance with Good Industry Practice (including the Sites and the rights of the Vendor under any Property Contracts) and which are agreed to be sold and purchased pursuant to this Agreement, as listed in Schedule 2 (*Assets*) and Schedule 5 (*Sites and Property Contracts*)^{3, 4};

"Assumed Liabilities" has the meaning set out in Clause 7.3;

"Authority" means the Gas and Electricity Markets Authority (also known as "GEMA"). The Authority is a "Non-Ministerial Government Department" and is a Crown Body staffed by civil servants working for and giving effect to the executive decisions of the

² Explanatory note: the template SPA has been drafted on the assumption that the underlying transaction will constitute the transfer of a going concern for UK VAT purposes. Parties should seek their own independent tax advice regarding whether a specific transaction will qualify as the transfer of a going concern. The template SPA should be amended, as appropriate, on a project specific basis to reflect the facts and circumstances of each transaction and the appropriate tax structure agreed by the parties.

³ Explanatory note: whether the assets to be transferred include leases or licences of the Designated Area (as defined in the Round 1 and Round 2 Leases) and whether a deed of variation has been entered into under which the Designated Area has been removed from the Site will be project specific.

⁴ Explanatory note: the template SPA has been drafted on the basis that the generation assets (to be retained by the Vendor) and the offshore transmission assets (to be transferred to the Purchaser) are distinguishable and separable. If necessary, separate arrangements should be documented in relation to the sharing of assets, for example, in relation to mutual access rights on the offshore platform.

Authority through the Office of the Gas and Electricity Markets (or "Ofgem"). "Ofgem", "GEMA" and the "Authority" may be used interchangeably in this Agreement and in various other documents relating to this Agreement;

"Business" means the development, construction, ownership, maintenance and operation of the Offshore Transmission System by the Vendor;

"Business Day" means a day (not being a Saturday) on which banks are open for general banking business in the City of London;

"Business Intellectual Property Rights" means the Intellectual Property Rights owned by the Vendor and relating to or used in connection with the Business at the Completion Date, as listed in Schedule 14 (*Intellectual Property*);

"Business Records" means all the information and records of the Vendor in relation to the Offshore Transmission System and/or the Business, including:

- (A) all books of account, income records, and other records and price lists;
- (B) lists of customers and suppliers of the Business;
- (C) all other accounting, financial, marketing, sales, supply, personnel, management and technical information, correspondence and literature;
- (D) all Know-how;
- (E) the original Contracts;
- (F) all correspondence relating to Payables, Receivables and/or any other Assumed Liabilities; and
- (G) all drawings, software, disks and other material embodying or incorporating or constituting any of the Business Intellectual Property Rights,

in each case, in whatever form or medium it is held or recorded (but excluding any records of the Business in relation to VAT);

"Claim" means a Common Claim and/or a Tax Claim;

"Common Claim" means a claim for breach of any of the General Warranties;

"Companies Acts" means the 1985 Act and the 2006 Act;

"Completion" means completion of the sale and purchase of the Business in accordance with Clause 13;

"Completion Conditions" means the Conditions set out in Parts B, C and D of Schedule 1 (*Conditions Precedent*);

"Completion Date" means the day on which Completion occurs;

"Conditions" means the conditions set out in Schedule 1 (*Conditions Precedent*);

"Consideration" means the consideration payable for the Business and the Assets in accordance with the terms of this Agreement;

"Contracts" means all contracts, undertakings, arrangements, understandings and agreements entered into prior to the Completion Date by the Vendor to the extent the foregoing relate exclusively to the Offshore Transmission System and/or to the Business, (except the Excluded Contracts and to the extent a Contract relates to the Excluded Assets) in each case to the extent that on the Completion Date the same remain to be completed or performed (including IP Licences and Information Technology Agreements);⁵

"CTA 2009" means the Corporation Tax Act 2009;

"CUSC" means the Connection and Use of System Code;

"Decommissioning" means the decommissioning, removal, demolition or dismantling of the Offshore Transmission System;

"Deferred Consideration" means that part of the Consideration to be determined and paid by the Purchaser following Completion in accordance with Clause 3.3.2 and Clause 17 (*Deferred Consideration*);

"Deposits" means all cash sums belonging or referable to customers or potential customers of the Business which are held by or deposited with the Vendor as deposits for, or advance or instalment payments in relation to, anything (including any service) to be provided or made available by the Purchaser or so held or deposited in relation to any future contract or service which any such person may place with the Business (each such amount a **"Deposit"**);

"Designated Employee" means any employee of the Vendor (or Affiliate of the Vendor, as the case may be) whose name is set out in Part A of Schedule 7 (*Employees*) as updated by any supplementary list delivered pursuant to Clause 10.35, each of whom is a Transferring Employee];⁶

"Disclosed Scheme" means [*description of relevant pension scheme*];⁷

"Disclosed" means fairly disclosed in writing by the Vendor to the Purchaser in the Disclosure Letter (and **"Disclosure"** shall be construed accordingly);

⁵ Explanatory note: the template SPA has been drafted on the basis that separate contracts (including construction contracts and potentially also IP Licences and Information Technology Agreements) have been entered into in relation to generation assets (to be retained by the Vendor) and offshore transmission assets (to be transferred to the Purchaser). Composite contracts relevant to both the generation assets and the offshore transmission assets will need to be split or apportioned on a project specific basis, for example, apportionment of limitations on liability and performance security obligations through bilateral or tripartite back to back arrangements.

⁶ Explanatory note: the defined term "Designated Employee" is intended to refer to the list of employees assigned to the Business and likely to transfer pursuant to TUPE if the Transfer Regulations apply prepared by the Vendor. However, by operation of law, TUPE will apply to transfer the employment of anyone wholly or mainly assigned to the undertaking which is to be transferred and this may include employees in addition to the "Designated Employees". The broader category of employees is defined as the "Transferring Employees". The inclusion of provisions relating to "Designated Employees" and "Transferring Employees" will depend on whether the Transfer Regulations apply on a project specific basis.

⁷ Explanatory note: this definition is only relevant in the event that pension warranties are required (see paragraph 14 of Schedule 8 (*Warranties*)).

"Disclosure Letter" means the letter dated the same date as this Agreement from the Vendor to the Purchaser in relation to the Warranties [including any annexures that have been signed for identification by or on behalf of the Vendor and the Purchaser];

"Easement Deed" means any deed of grant of easement or similar of which the Vendor has the benefit as at the Effective Date and which is necessary for the operation of the Business, brief particulars of which are set out in Part A(1) of Schedule 5 (*Sites and Ancillary Property Contracts*);

"Effective Date" means the date on which the Conditions set out in Part A of Schedule 1 (*Conditions Precedent*) are satisfied;

"Encumbrance" means any equity or interest (other than by virtue of this Agreement) of any person (including any right to acquire, option, right of pre-emption or conversion) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other security agreement or arrangement, or any agreement or arrangement to create any of the above;

"Environment" means the natural and man-made environment and all or any of the following media namely air (including air within buildings and air within other natural or man-made structures above or below ground), water (including territorial and coastal and inland waters, groundwater and water within any natural or man-made structure), land (including land under water, surface land and sub-surface land) and any living organisms or systems supported by those media;

"Environmental Law" means each applicable law (including statute, secondary legislation, directives, regulations, resolutions, statutory guidance and codes of practice having the force of law, civil, criminal or administrative law, common law, a notice, order, judgment, decision, ruling or other requirement from any governmental, administrative or regulatory agency or body or a court, tribunal or other assembly conducting judicial business) relating to pollution or protection of the Environment, or human health and safety, or the generation, transportation, storage, treatment, disposal or presence of any Hazardous Substances;

"Environmental Matters" means any one or more matters arising from or in relation to the Business, the Assets and/or the Offshore Transmission System:

- (A) compliance with, breach of or liability or obligation under any Environmental Permit and/or Environmental Law;
- (B) pollution, contamination, harm, and/or damage to the Environment; and/or
- (C) noise, vibration, nuisance, electromagnetic fields and/or radiation;

"Environmental Permit" means any licence, consent, authorisation, certification, registration or other permit required under Environmental Law;

"Environmental Warranties" means the warranties given in paragraph 8 of Schedule 8 (*Warranties*);

"Escrow Account" means an interest bearing deposit account in the joint names of the Purchaser's Solicitors and the Vendors' Solicitors to be opened at the Escrow Bank and operated in accordance with the Escrow Agreement;

"Escrow Agreement" means the document in the agreed terms setting out how the Escrow Account is to be operated;

"Escrow Bank" means [●];

"Ex Ante Valuation" means the value of the Business and the Assets determined by Ofgem in accordance with the Tender Regulations;

"Excluded Assets" means the property and assets which are not necessary to carry out the Business in accordance with Good Industry Practice and which are not to be transferred to the Purchaser pursuant to this Agreement as listed in Part A of Schedule 4 (*Excluded Assets and Contracts*) and as amended pursuant to Clauses 10.32 to 10.34;

"Excluded Contracts" means the contracts which are not necessary to carry out the Business in accordance with Good Industry Practice and which are not to be assigned or novated to the Purchaser pursuant to this Agreement as listed in Part B of Schedule 4 (*Excluded Assets and Contracts*) and as amended pursuant to Clauses 10.21 to 10.22;

"Excluded Liabilities" means the liabilities referred to in Clause 7.5 and which are not to be transferred to the Purchaser pursuant to this Agreement;

"Ex Post Valuation" means the value of the Business and the Assets determined by Ofgem following completion of the Offshore Transmission System in accordance with the Tender Regulations and notified to the Parties as soon as reasonably practicable following Completion;

"Fixed Assets" means the fixed assets and plant and equipment that form part of, or relate to, the Offshore Transmission System and/or are form part of, or are annexed to, the Sites at the Completion Date, including, without limitation, the assets of which brief particulars are set out in Part A of Schedule 3 (*Fixed and Moveable Assets*) and as amended pursuant to Clauses 10.29 to 10.31;

"Framework Agreement" means the agreement by which the STC is made contractually binding between the parties to that agreement in a form approved by the Secretary of State;

"Full Title Guarantee" means with the benefit of the implied covenants set out in Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 when a disposition is expressed to be made with full title guarantee;

"General Warranties" means the warranties given in Schedule 8 (*Warranties*), other than the Tax Warranties;

"Good Industry Practice" means the application of those methods and practices customarily used in good and prudent offshore wind farm and transmission system practice in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions, as amended from time to time;

"Governmental Agency" means any person having legal and/or regulatory authority or enforcement powers that are binding on any of the Parties, including, without limitation, the Authority, any court of law or tribunal in any jurisdiction, any governmental, semi-governmental or judicial entity or authority or any Taxation authority;

"Hazardous Substances" means any substance or organism which alone or in combination with others is capable of causing harm to the Environment or human health;

"Industry Document" means any and all licences, contractual agreements and codes relating to the generation, transmission, distribution and supply of electricity, and including, but not limited to, the STC, the CUSC, the Grid Code and the Great Britain Security and Quality of Supply Standard;

"Information Technology Agreements" means any agreements relating to the Information Technology Systems, including all insurance policies, licence, lease, development, maintenance, support, escrow, security, disaster recovery, website hosting, outsourcing, facilities management, utilisation, bureau, on-line services and service agreements;

"Information Technology Systems" means all communication systems and computer systems used in connection with the Business including all hardware, Software and websites but excluding networks generally available to the public;

"Initial Purchase Price" means the amount equal to 75 per cent. of the Ex Ante Valuation, as adjusted in accordance with the terms of this Agreement;

"Intellectual Property Rights" means all inventions (whether patentable or not), design rights, database rights, copyright and related rights moral rights, semiconductor topography rights, unregistered trade and service marks, logos, domain names, get-up and trade names and, in each case, the goodwill attaching to them, all Registered Intellectual Property Rights, Know-how, and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which subsist anywhere in the world;

"IP Licences" means all licences, agreements, authorisations and permissions pursuant to which the Vendor uses any Intellectual Property Rights belonging to any third party in relation to the Business;

"Key Contracts" mean the Contracts (including IP Licences) which are necessary to carry out the Business in accordance with Good Industry Practice and are material to the Business, as listed in Part A of Schedule 6 (*Key Contracts and Key Permits*) and as amended pursuant to Clauses 10.18 to 10.20;

"Key Non-Transferable Permit" means those Key Permits which are incapable of being transferred, assigned or novated to the Purchaser, as listed in Part C of Schedule 6 (*Key Contracts and Key Permits*) and as amended pursuant to Clauses 10.23 to 10.25;

"Key Non-Transferable Site Consent" means those Key Site Consents which are incapable of being transferred, assigned or novated to the Purchaser, as listed in Part C of Schedule 5 (*Sites and Property Contracts*) and as amended pursuant to Clauses 10.26 to 10.28;

"Key Permits" means those Relevant Permits which are necessary to carry on the Business in accordance with Good Industry Practice and are material to the Business;

"Key Transferable Permit" means those Key Permits which are capable of being transferred, assigned or novated to the Purchaser, as listed in Part B of Schedule 6 (*Key Contracts and Key Permits*) and as amended pursuant to Clauses 10.23 to 10.25;

"Key Transferable Site Consent" means those Key Site Consents which are capable of

being transferred, assigned or novated to the Purchaser, as listed in Part B of Schedule 5 (*Sites and Ancillary Property Contracts*) and as amended pursuant to Clauses 10.26 to 10.28;

"Key Site Consent" means those Site Consents which are necessary to carry on the Business in accordance with Good Industry Practice and are material to the Business;

"Know-how" means all know-how, trade secrets and confidential information, in any form (including paper, electronically stored data, magnetic media, film and microfilm) including without limitation financial and technical information, drawings, formulae, test results or reports, project reports and testing procedures, information relating to the working of any product, process, invention, improvement or development, instruction and training manuals, tables of operating conditions, information concerning intellectual property portfolio and strategy, market forecasts, lists or particulars of customers and suppliers, sales targets, sales statistics, prices, discounts, margins, future business strategy, tenders, price sensitive information, market research reports, information relating to research and development and business development and planning reports and any information derived from any of them;

"Leases" means the leases and/or underleases of seabed or shore or onshore or offshore substations and other premises vested in the Vendor in connection with the Business brief particulars are set out in Part A(2) of Schedule 5 (*Sites and Property Contracts*) and **"Lease"** shall mean any one of them;⁸

"Licences" means the licences relating to the situation and use of electricity cable either in or under seabed or shore or onshore vested in the Vendor in connection with the Business brief particulars of which are set out in Part A(1) of Schedule 5 (*Sites and Property Contracts*) and **"Licence"** shall mean any one of them;

"Losses" means any losses, liabilities, costs, charges, expenses, Taxation (including, without limitation, the loss of any relief in relation thereto), claims, demands, proceedings and damages suffered whether directly or indirectly arising from any particular act, omission, event or circumstance and including consequential and economic loss;

"Moveable Assets" means the loose plant, machinery, tools and furniture relating to the Offshore Transmission System and/or employed in the Business at the Completion Date including, without limitation, the moveable plant and equipment of which brief particulars are set out in Part B of Schedule 3 (*Fixed and Moveable Assets*) and as amended pursuant to Clauses 10.29 to 10.31;

"NETSO" means National Electricity Transmission System Operator;

"NGET" means National Grid Electricity Transmission plc (company number 2366977) whose registered office is situated at 1-3 Strand, London, WC2 5EH;

["Non-transferring Employee" means any employee (or former employee) engaged in the Business (for the purpose of the Transfer Regulations) at any time before the Effective

⁸ Explanatory note: the template SPA has been drafted on the basis that the Sites are leasehold interests. The SPA will need to be amended on a project specific basis if any freehold title is to be transferred.

Date, other than a Transferring Employee;]⁹

"Notice of Election" means the notice of election substantially in the form set out in Schedule 13 (*Notice of Election*);

"Offshore Transmission Licence" has the meaning given to that term in section 6C(5) of the Electricity Act 1989;

"Offshore Transmission System" means the offshore and onshore interface and transmission system from [•] to [•], known as the [•] Project, which, at any time following the Effective Date, is in the process of being developed, constructed, maintained and/or operated by the Vendor;

"Ofgem" means the Office of Gas and Electricity Markets;

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

"Payables" means all amounts (each a **"Payable"**) owed, owing, incurred or payable by the Vendor as at the Completion Date in respect of the Business or the Assets, excluding all liabilities in relation to Taxation;

"Property Contracts" means the Leases and the Ancillary Property Contracts and **"Property Contract"** shall mean any one of them;

"Receivables" means all amounts (each a **"Receivable"**) of the book and other debts receivable by or owing to the Vendor in connection with the Business or the Assets as at the Completion Date;

"Registered Intellectual Property Rights" means all patents, utility models, registered designs, registered copyrights, plant variety rights, registered trade and service marks and domain names as listed in Part A of Schedule 14 (*Intellectual Property*), together with:

- (A) the goodwill attaching to any of the foregoing;
- (B) any applications for registration and rights to grant of any of the foregoing; and
- (C) any rights or forms of protection of a similar nature to any of the foregoing anywhere in the world;

"Relevant Permit" means any regulatory consent, licence, authorisation or permit, including an Environmental Permit relating to the Assets;

"Review Date" means [*insert date*] (being the date [three]¹⁰ months before the Target Completion Date) or such other date agreed by the Parties in accordance with Clause 12;

"Site" means all the real property (including any land, buildings, seabed, shore or substations or other real property used or occupied under the Property Contracts) used or occupied or necessary to be used or occupied by the Vendor in connection with the Business (and each and every part of it and them) and independent and permanent

⁹ Explanatory note: whether this definition is required will depend on the warranties in relation to employees to be included and whether the Transfer Regulations apply (see Part B of Schedule 7 (*Employees*) and paragraph 13 of Schedule 8 (*Warranties*)).

¹⁰ Explanatory note: this date will be project specific.

construction rights held by the Vendor in connection with the Business;

"Site Consent" means any consent, licence, approval or waiver of any landlord or other third party required for the assignment or transfer of a Site or the Assets to the Purchaser or the creation or grant of a lease, licence, easement or other covenant or similar obligation relating to the operation of the Offshore Transmission System and/or the Business on or before Completion;

"Software" means all software used in connection with the Business, including third party software sold in a standard configuration and readily available to the public on standard terms and conditions and firmware that relates to or is comprised in hardware, together with all supporting documentation and materials necessary to enable a user to make full use of the functionality of, or to administer effectively such software and firmware;

"STC" means the System Operator and Transmission Owner Code;

"Target Completion Date" means [*insert date*], being the date on which the Parties anticipate that Completion will occur, or such other date agreed by the Parties in accordance with Clause 12;

"Taxation" means all forms of tax, duty, rate, levy or other imposition whenever and by whatever authority imposed and whether of the United Kingdom or elsewhere, including (without limitation) income tax (including income tax required to be deducted or withheld from or accounted for in respect of any payment), corporation tax, advance corporation tax, capital gains tax, capital transfer tax, inheritance tax, development land tax, petroleum revenue tax, VAT, customs duties, excise duties, rates, stamp duty, capital duty, stamp duty reserve tax, stamp duty land tax, national insurance and other similar contributions, any liability arising under section 601 or under section 703 of the Taxes Act and any other taxes, levies, duties, charges, imposts or withholdings corresponding to, similar to, replaced by or replacing any of them together with any interest, penalty or fine in connection with any such Taxation and regardless of whether any such taxes, levies, duties, imposts, charges, withholdings, penalties or interest are chargeable directly or primarily against or attributable directly or primarily to the Vendor or the Business or any other person and of whether any amount in respect of any of them is recoverable from any other persons;

"Taxes Act" means the Income and Corporation Taxes Act 1988;

"Tax Claim" means a claim for breach of any of the Tax Warranties;

"Tax Warranties" means the warranties given in paragraph 15 of Schedule 8 (*Warranties*);

"Tender Regulations" means the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 as amended from time to time;

"Third Party Consent" means any consent or agreement required from a third party for the transfer of the benefit of any of the Assets and/or the transfer of any rights to or assumption by the Purchaser of obligations under any of the Contracts;

[**"Transferring Employee"** means any employee employed by the Vendor (or an Affiliate of the Vendor, as the case may be) in the Business (for the purpose of the Transfer Regulations) immediately before the Effective Date excluding any employee who would have been so employed had they not been unfairly dismissed for a reason connected to the

transfer of the Business and any employee who objects to becoming employed by the Purchaser under Regulation 4(7) of the Transfer Regulations;]¹¹

["**Transfer Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI No. 246;]¹²

"**Transition Plan**" means the plan agreed or determined in accordance with Clause 11 (*Transition Plan*) and the provisions of Schedule 11 (*Transition Plan*) in order to effect an orderly and successful transfer of the Business and the Assets in accordance with Good Industry Practice;

"**VAT**" means the tax imposed by Directive 2006/112/EC and any national legislation implementing that directive together with legislation supplemental thereto, or any similar sales or turnover tax, whether of the UK or elsewhere;

"**VATA**" means the Value Added Tax Act 1994;

"**Warranties**" means together the General Warranties and the Tax Warranties; and

"**Wayleave Agreement**" means any wayleave agreement or similar arrangement of which the Vendor has the benefit as at the Effective Date and which is necessary for the operation of the Business, brief particulars of which are set out in Part A(1) of Schedule 5 (*Sites and Property Contracts*).

1.2 In this Agreement, words and expressions defined in the Companies Acts shall bear the same meaning as in those Acts unless expressly stated otherwise.

1.3 In this Agreement, except where the context otherwise requires:

1.3.1 any reference to this Agreement include the Schedules to it each of which forms part of this Agreement for all purposes;

1.3.2 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;

1.3.3 words in the singular shall include the plural and vice versa;

1.3.4 references to one gender include other genders;

1.3.5 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual's executors or administrators;

1.3.6 a reference to a Clause, paragraph, Schedule (other than to a schedule to a

¹¹ Explanatory note: whether this definition is required will depend on the warranties in relation to employees to be included and whether the Transfer Regulations apply (see Part B of Schedule 7 (*Employees*) and paragraph 13 of Schedule 8 (*Warranties*)).

¹² Explanatory note: whether this definition is required will depend on the warranties in relation to employees to be included and whether the Transfer Regulations apply (see Part B of Schedule 7 (*Employees*) and paragraph 13 of Schedule 8 (*Warranties*)).

statutory provision) shall be a reference to a Clause, paragraph, Schedule (as the case may be) of or to this Agreement;

- 1.3.7 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 1.3.8 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- 1.3.9 a person shall be deemed to be connected with another if that person is connected with another within the meaning of section 839 of the Taxes Act;
- 1.3.10 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 1.3.11 a reference to a balance sheet or profit and loss account shall include a reference to any note forming part of it;
- 1.3.12 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.3.13 references to documents "in the agreed terms" or any similar expression shall be to documents agreed between the Parties, annexed to this Agreement and initialled for identification by the Vendor and the Purchaser;
- 1.3.14 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation; and
- 1.3.15 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms.

2. CONDITIONS

Conditions to Effective Date

- 2.1 Subject to Clause 2.2, this Agreement shall become effective on the Effective Date.
- 2.2 Clauses 1 (*Interpretation*), 2.6, 2.10, 2.12.1, 2.13, 16 (*Warranties*), 20 (*Announcements and Confidentiality*), 21 (*Miscellaneous*), 22 (*Costs*), 23 (*Notices*) and 24 (*Governing Law and Jurisdiction*) shall become effective on the date of this Agreement.

Conditions to Completion

- 2.3 Completion is conditional upon the satisfaction of the conditions set out in Parts B, C and D of Schedule 1 (*Conditions Precedent*) (the "**Completion Conditions**").

Waiver

- 2.4 The Purchaser may, by written notice to the Vendor, waive the Completion Conditions set out in paragraphs 4 to 11 of Part C of Schedule 1 (*Conditions Precedent*) in whole or in part at any time on or before the date specified in Clause 2.12.1.

- 2.5 The Vendor may, by written notice to the Purchaser, waive the Completion Condition set out in paragraph 5 of Part D of Schedule 1 (*Conditions Precedent*) in whole or in part at any time on or before the date specified in Clause 2.12.1.

Satisfaction of Conditions

- 2.6 The Purchaser shall, as soon as reasonably practicable following the execution of this Agreement, use all reasonable endeavours to satisfy or procure the satisfaction of the Conditions set out in Part A of Schedule 1 (*Conditions Precedent*).¹³
- 2.7 Save for the Condition set out in paragraph 1 of Part B of Schedule 1 (*Conditions Precedent*), the Parties shall use all reasonable endeavours to satisfy or procure the satisfaction of the Conditions set out in Part B of Schedule 1 (*Conditions Precedent*) not already satisfied or waived as soon as possible and in any event on or before the date specified in Clause 2.12.1.
- 2.8 The Vendor shall use all reasonable endeavours to satisfy or procure the satisfaction of the Conditions set out in Part C of Schedule 1 (*Conditions Precedent*) not already satisfied or waived as soon as possible and in any event on or before the date specified in Clause 2.12.1.
- 2.9 The Purchaser shall use all reasonable endeavours to satisfy or procure the satisfaction of the Conditions set out in Part D of Schedule 1 (*Conditions Precedent*) not already satisfied or waived as soon as possible and in any event on or before the date specified in Clause 2.12.1.

Notification of Satisfaction of Conditions

- 2.10 If the Vendor or the Purchaser is required to use reasonable endeavours to satisfy or procure the satisfaction of a Condition, the Vendor or the Purchaser (as appropriate) shall notify the other Party of the satisfaction of that Condition as soon as possible after such Condition has been satisfied and in any event within one Business Day of such satisfaction.
- 2.11 If neither the Vendor nor the Purchaser is required to use reasonable endeavours to satisfy or procure the satisfaction of a Condition, the Vendor or the Purchaser (as appropriate) shall notify the other Party of the satisfaction of that Condition as soon as possible after becoming aware that such Condition has been satisfied and in any event within [10] Business Days of becoming aware that such Condition has been satisfied.

Failure to Satisfy or Comply with Conditions

- 2.12 The provisions of Clause 2.13 shall apply if:
- 2.12.1 one or more of the Conditions remains unsatisfied on [*insert date*] and has not been waived on or before that date;
 - 2.12.2 the Authority has revoked, or has given written notice of its intention to revoke, the Offshore Transmission Licence granted to the Purchaser in relation to the

¹³ Explanatory note: the two Conditions included in Part A of Schedule 1 (*Conditions Precedent*) of the template SPA should be satisfied by the Purchaser. Clause 2.5 should be amended (or supplemented) to the extent any additional Conditions are included in Part of A of Schedule 1 (*Conditions Precedent*) on a project specific basis which should be satisfied by the Vendor or both of the Parties.

Offshore Transmission System in accordance with the provisions of the Electricity Act 1989 and the Tender Regulations; or

- 2.12.3 the Authority has effected, or has indicated its intention to effect, a property scheme to transfer all or a substantial part of the Business and the Assets under section 18 of Schedule 2A to the Electricity Act 1989 following the application for such scheme by either the Vendor or the Purchaser and the Authority has notified the Parties that such property scheme shall cause this Agreement to be terminated.

Termination

- 2.13 This Clause shall apply only in the circumstances referred to in Clause 2.12. Where this Clause applies, this Agreement, other than Clauses 1 (*Interpretation*), 16 (*Warranties*), 20 (*Announcements and Confidentiality*), 21.2 and 21.3 (*Assignment*), 21.4 and 21.5 (*Entire Agreement*), 21.10.1 (*Taxation of payments*), 21.10.2 (*Payments net of Taxation*), 21.11 (*Waiver*), 21.12 (*Counterparts*), 21.13 (*Variation*), 23 (*Notices*) and 24 (*Governing Law and Jurisdiction*) shall automatically terminate with immediate effect and each Party's rights and obligations other than those specified above shall cease immediately on termination. Such termination shall not affect the rights and obligations of the Vendor or the Purchaser existing before termination.

Powers of the Authority

- 2.14 The Parties acknowledge that the Authority is entitled to effect a property scheme in relation to all or any part of the Business or the Assets under paragraph 18 of Schedule 2A to the Electricity Act 1989, and that this Agreement may survive (in whole or in part), be amended by or be terminated by any such property scheme in the absolute discretion of the Authority.

3. SALE AND PURCHASE

Sale and Purchase

- 3.1 Subject to Clauses 4.1 and 6 (*Third Party Consents for Transfer of Assets and Contracts*), the Vendor shall sell or procure to be sold and the Purchaser shall purchase the Business and the Assets as a going concern as at and with effect from the Completion Date.¹⁴

Title

- 3.2 Subject to Clause 6 (*Third Party Consents for Transfer of Assets and Contracts*), the Vendor has the right to transfer or to procure the transfer of legal and beneficial title to the Assets and sells or procures the sale of the Assets with Full Title Guarantee and free from any Encumbrance.¹⁵

Consideration

- 3.3 The consideration for the sale of the Business and the Assets shall be:

¹⁴ Explanatory note: see also explanatory note 2.

¹⁵ Explanatory note: any circumstances that require the transfer of any Assets otherwise than with Full Title Guarantee should be dealt with on a project specific basis.

- 3.3.1 the payment by the Purchaser to the Vendor at Completion of the Initial Purchase Price;
- 3.3.2 the payment by the Purchaser of the Deferred Consideration (if any) in accordance with Clause 17; and
- 3.3.3 the assumption by the Purchaser of the Assumed Liabilities pursuant to and in accordance with Clause 7.2.

Apportionment of Consideration

- 3.4 The Consideration payable by the Purchaser shall be apportioned in accordance with Column B of Schedule 2 (*Assets*).¹⁶

Risk in the Assets

- 3.5 Risk in the Assets shall pass to the Purchaser at Completion.

4. EXCLUDED ASSETS AND CONTRACTS

- 4.1 The sale and purchase of the Business and Assets pursuant to Clause 3.1 shall not include the assets set out in Part A of Schedule 4 (the "**Excluded Assets**") or the contracts set out in Part B of Schedule 4 (the "**Excluded Contracts**").¹⁷

5. PAYABLES AND RECEIVABLES¹⁸

Payables

- 5.1 The Vendor shall be responsible for all Payables incurred or attributable to any period prior to the Completion Date, and the Vendor shall indemnify and keep indemnified the Purchaser against all Losses which may be suffered or incurred by the Purchaser as a result of any neglect, default or omission on the part of the Vendor to pay when due or otherwise properly and promptly discharge any such Payables.
- 5.2 The Purchaser shall be responsible for all Payables incurred or attributable to any period on or after the Completion Date, and the Purchaser shall indemnify and keep indemnified the Vendor against all Losses which may be suffered or incurred by the Vendor as a result of any neglect, default or omission on the part of the Purchaser to pay when due or otherwise properly and promptly discharge any such Payables.

Receivables

¹⁶ Explanatory note: the optimum apportionment of Consideration will be project specific, and should be agreed by the parties having regard to the particular facts and circumstances of the relevant Offshore Transmission System and the tax objectives of the parties.

¹⁷ Explanatory note: these provisions will only be required whether the Parties need to delineate between the generation assets to be retained by the Vendor and the offshore transmission assets to be transferred to the Purchaser. See also explanatory note 5.

¹⁸ Explanatory note: provisions relating to Payables and Receivables should be included on a project specific basis if relevant.

- 5.3 All Receivables accrued up to and including the Completion Date shall be payable to and be enforceable by the Vendor, and the Purchaser shall not take any steps to collect such Receivables nor shall it do anything to hinder or restrict the ability of the Vendor to collect such Receivables. If the Purchaser receives any payment in respect of a Receivable which accrued up to and including the Completion Date, any such monies shall be held on trust for the Vendor, and the Purchaser will immediately give details of any such receipts to the Vendor in writing and immediately pay to the Vendor any such amounts received.
- 5.4 All Receivables accruing after the Completion Date shall be payable to and be enforceable by the Purchaser, and the Vendor shall not take any steps to collect such Receivables nor shall it do anything to hinder or restrict the ability of the Purchaser to collect such Receivables. If the Vendor receives any payment in respect of a Receivable which accrues after the Completion Date, any such monies shall be held on trust for the Purchaser, and the Vendor will immediately give details of any such receipts to the Purchaser in writing and immediately pay to the Purchaser any such amounts received.

6. THIRD PARTY CONSENTS FOR TRANSFER OF ASSETS AND CONTRACTS

Assets¹⁹

- 6.1 If any Third Party Consent is required to the transfer of the benefit of any of the Assets (which, for the purposes of Clauses 6.1 to 6.4 (inclusive) of this Agreement only shall exclude the Contracts) and has not been obtained to the reasonable satisfaction of the Purchaser at or prior to Completion, the Vendor and the Purchaser shall use their respective reasonable endeavours to obtain such Third Party Consent as soon as possible following Completion.

Vendor as trustee

- 6.2 After Completion, and until such time as that consent or agreement is obtained to the reasonable satisfaction of the Purchaser and the full benefit of the Assets transferred to the Purchaser, or the Purchaser elects as provided in Clause 6.3, the Vendor shall be deemed to hold the benefit of the applicable Assets in trust for the Purchaser and the Purchaser shall be entitled to the use and enjoyment of those Assets as against the Vendor and to receive the income therefrom (if any) to the extent that the Vendor is not constrained by operation of law or any third party from granting such use or enjoyment or the right to receive any income to the Purchaser, subject always to the Purchaser maintaining any such Assets in a good state of repair (fair wear and tear excepted) and providing adequate insurance in respect of it noting the Vendor's interest on any applicable insurance policy effected by the Purchaser.

Exclusion of Assets

- 6.3 If any necessary consent or agreement is refused or not obtained on or before the date being [three] months after Completion (or such longer period as the Purchaser may, at its sole discretion, determine) in respect of the applicable Asset, that Asset shall, if so elected by the Purchaser by written notice to the Vendor on or before such date, be deemed to have been excluded from the sale under this Agreement (and shall thereby be deemed to be an Excluded Asset) and the Vendor shall indemnify the Purchaser against all Losses relating

¹⁹ Explanatory note: see also explanatory note 4.

to such exclusion including, without limitation, relating to any assets acquired in replacement thereof.

Property Contracts

- 6.4 The provisions of Clauses 6.1 to 6.16 (inclusive) shall not apply to any consent, approval or licence required in relation to the assignment, transfer or novation of any Property Contracts, which shall be governed by the provisions of Schedule 5 (*Sites and Property Contracts*).

Contracts²⁰

- 6.5 Save as provided in Clauses 6.6 to 6.18 (inclusive), the Purchaser shall assume responsibility as from the Completion Date for the due performance of all obligations under the Contracts and all liabilities arising or falling due for performance after the Completion Date under the Contracts.

Assignment

- 6.6 This Agreement constitutes, with effect from the Completion Date, an assignment of the Contracts if and to the extent the benefit of each such Contract can be assigned by the Vendor to the Purchaser without Third Party Consent.

Co-operation

- 6.7 Insofar as the Contracts comprise the benefit and burden of contracts which cannot be effectively assigned except by novation or with Third Party Consent:
- 6.7.1 this Agreement shall not constitute an assignment or attempted assignment of the relevant Contract where such conduct would constitute a breach of the Contract; and
- 6.7.2 the Vendor and the Purchaser shall co-operate and do anything which may reasonably be required to ensure, insofar as each is able, that the relevant Contracts are novated or the necessary Third Party Consent or other agreement is obtained, in each case on terms reasonably satisfactory to the Purchaser as soon as possible after Completion.

Exclusion of Contracts

- 6.8 If any requisite novation or Third Party Consent is refused or not obtained on or before the date being [three] months after Completion (or such longer period as the Purchaser may, at its sole discretion, determine) in respect of any Contract, the relevant Contract shall, if so elected by the Purchaser by written notice to the Vendor on or before such date, be deemed to have been excluded from the sale under this Agreement (and shall thereby be deemed to be an Excluded Contract) and the Vendor shall indemnify the Purchaser against all Losses relating to such exclusion including, without limitation, relating to any equivalent arrangements in replacement thereof.

Vendor as trustee

²⁰ Explanatory note: see also explanatory note 5.

6.9 After the Completion Date and until receipt of any requisite novation or Third Party Consent in respect of a relevant Contract or, if earlier, receipt of a written election from the Purchaser pursuant to Clause 6.8 (and other than in respect of any Contract to the extent it relates to an Asset excluded from the sale pursuant to Clause 6.3):

6.9.1 the Vendor shall hold the benefit of that Contract and any Assets relating thereto on trust for the Purchaser and shall account to the Purchaser accordingly in respect of any monies or other benefits received by the Vendor in relation thereto and the Purchaser shall be entitled to the use and enjoyment of such Contracts and any Assets relating thereto to the extent the Vendor is not constrained by operation of law or any third party from granting such rights or benefits and subject always to the Purchaser maintaining any Asset relating thereto in a good state of repair (fair wear and tear excepted) and providing adequate insurance in respect of it is taken out by the Purchaser, noting the Vendor's interest on any applicable insurance policy effected by the Purchaser; and

6.9.2 the Purchaser shall (if sub-contracting or agency is permissible under the relevant Contract) as the Vendor's sub-contractor or agent perform on behalf of the Vendor (but at the Purchaser's expense) all the obligations of the Vendor arising after the Completion Date (to the extent they have been disclosed to the Purchaser),

but provided that if, in the circumstances described in Clause 6.8, any Contract does not permit sub-contracting or agency, the Parties shall make such other arrangements between themselves as may be permissible to implement so far as possible the effective transfer of the benefit and burden of such Contract to the Purchaser.

Pre-Completion Date obligations

6.10 Nothing in this Agreement shall require the Purchaser to perform any obligation falling due for performance or which should have been performed before the Completion Date.

Liability for pre-Completion Date breach

6.11 Nothing in this Agreement shall make the Purchaser liable for any act, neglect, default or omission in respect of any of the Contracts committed by the Vendor, or occurring, prior to the Completion Date, or for any Losses arising from any failure to obtain any novation or Third Party Consent in respect of any such Contract or from any breach of any Contract caused by this Agreement or Completion.

Pre-Completion Date goods and services responsibility

6.12 Nothing in this Agreement shall impose any obligation on the Purchaser for or in respect of any goods sold or services provided by the Vendor prior to the Completion Date.

Vendor indemnity against Purchaser Losses

6.13 The Vendor shall indemnify and keep indemnified the Purchaser against all Losses which may be suffered or incurred by the Purchaser as a result of any act, neglect, default or omission on the part of the Vendor to perform or comply with any obligation of the Vendor under the Contracts arising prior to the Completion Date.

Purchaser indemnity against Vendor Losses

- 6.14 The Purchaser shall indemnify and keep indemnified the Vendor against all Losses which may be suffered or incurred by the Vendor as a result of any act, neglect, default or omission on the part of the Purchaser to perform or comply with any obligation of the Purchaser under the Contracts arising on or after the Completion Date.²¹

Vendor performance of non-assumed obligations

- 6.15 The Vendor shall promptly perform any Contract or other obligation of the Vendor relating to the Assets which the Purchaser is not by this Agreement, or under any of the Contracts, required to perform and the Vendor shall indemnify and keep indemnified the Purchaser against all Losses which may be suffered or incurred by the Purchaser as a result of any act, neglect, default or omission on the part of the Vendor to perform or comply with any such obligation of the Vendor.

Purchaser performance of non-assumed obligations

- 6.16 The Purchaser may, at its sole discretion, perform any contract or other obligation which the Vendor should perform under this Clause 6 and, if it shall do so, the Vendor shall indemnify and keep indemnified the Purchaser against any Losses which may thereby be suffered or incurred by the Purchaser.

Prepayments received by the Vendor

- 6.17 Where anything (including any service) is to be provided or made available by, or any permission or consent is to be granted by, the Purchaser after the Completion Date but any payment (whether by way of deposit, pre-payment or otherwise) in respect of the price or cost of it has been received by the Vendor before the Completion Date, the Vendor shall pay a sum equal to the amount (a "**Prepayment Amount**") of that payment (excluding any amount in respect of output VAT for which the Vendor is required to account and less any Deposits in relation thereto and any amount due to the Vendor in relation thereto and transferred to the Purchaser pursuant to this Agreement as a Receivable) to the Purchaser at Completion, to the extent that such Prepayment Amount has been received by Completion, or immediately upon receipt by the Vendor, if later, and shall hold any such monies in trust for the Purchaser pending any such payment. The Purchaser may set off any Prepayment Amount (in whole or in part) against any amounts payable to the Vendor on Completion pursuant to Clause 6.18 below and portion of the Consideration payable on Completion.

Prepayments made by the Vendor

- 6.18 Where anything (including any service) is to be provided or made available to, or any permission or consent is to be granted to, the Purchaser after the Completion Date, but any payment (whether by way of deposit, pre-payment or otherwise) in respect of the price or cost of it has been paid by the Vendor prior to the Completion Date, the Purchaser shall pay a sum equal to the amount of that payment (excluding any amount in respect of VAT) to the Vendor at Completion or immediately following any date, if later, upon which the Vendor shall produce to the Purchaser reasonable evidence of any amount so payable and the calculation thereof.

²¹ Explanatory note: any contractual commitments that need to be apportioned between the Purchaser and the Vendor may otherwise be dealt with through assignment or novation. In such circumstances, Clauses 6.12 and 6.13 may not be necessary.

Relevant Permits

- 6.19 To the extent that any Relevant Permits (including Environmental Permits) are capable of assignment and/or transfer, the Vendor shall assign and/or transfer such Relevant Permits to the Purchaser on or immediately following Completion or, in the case of a Key Permit, on Completion. To the extent that any Relevant Permit cannot be assigned or transferred to the Purchaser, the Purchaser shall use all reasonable endeavours to obtain its own Relevant Permit as soon as reasonably practicable.
- 6.20 In relation to any application to a Governmental Agency by, or on behalf of, the Vendor or the Purchaser in relation to the transfer and/or assignment of a Relevant Permit, each Party shall use reasonable endeavours to provide promptly to the other Party such information and assistance as that other Party shall reasonably request, provided that the Purchaser shall pay the Vendor's reasonable costs and expenses of providing any information or assistance which is required later than [six] months after Completion.

7. ASSUMED AND EXCLUDED LIABILITIES

No deemed assumption of Excluded Liabilities

- 7.1 Nothing in this Agreement shall transfer or be deemed to transfer to the Purchaser or constitute or be deemed to constitute an acceptance or assumption by the Purchaser of any of the Excluded Liabilities or any other liability or obligation of the Vendor, whether in relation to the Business or otherwise, save as expressly set out in this Agreement or in any document in the agreed terms.

Assumption of Assumed Liabilities

- 7.2 The Purchaser shall with effect from the Completion Date assume and duly and properly perform, pay and discharge and indemnify the Vendor against all Assumed Liabilities.

Assumed Liabilities definition

- 7.3 "**Assumed Liabilities**" for the purposes of this Agreement means (and each is an "**Assumed Liability**"), subject to Clauses 6 and 7.4, all obligations and liabilities of the Vendor under the Contracts arising or falling due for performance on or after the Completion Date and specifically excluding any Excluded Liabilities as defined below.

Reservation of Purchaser's rights

- 7.4 Notwithstanding Clauses 7.1 (*No deemed assumption of Excluded Liabilities*) and 7.3 (*Assumed Liabilities definition*):
- 7.4.1 the assumption by the Purchaser of the Assumed Liabilities by means of this Agreement shall be without prejudice to any rights which the Purchaser may have against the Vendor under this Agreement; and
- 7.4.2 the Assumed Liabilities shall not include any liability or obligation of the Vendor arising under this Agreement.

Excluded Liabilities definition

- 7.5 "**Excluded Liabilities**" for the purposes of this agreement means all liabilities other than the Assumed Liabilities including, without limitation:

- 7.5.1 any liability or obligation of the Vendor to the extent it relates to the Excluded Assets or the Excluded Contracts;
- 7.5.2 any liability of the Vendor in respect of any person employed by the Vendor and assigned to the Business who ceased such employment prior to the Completion Date;
- 7.5.3 any unknown or contingent creditors which are not recorded in the accounting records of the Business at the Completion Date;
- 7.5.4 any liability or obligation of the Vendor which arises prior to Completion in respect of loss of profit, loss of revenue, interruption to any business or consequential or indirect loss of the Vendor;
- 7.5.5 any liability of the Vendor to the extent that the Vendor is entitled to be indemnified therefor under a policy of insurance maintained by it prior to the Completion Date; and
- 7.5.6 any liability for Taxation relating to the Business or the Assets for which the Vendor is or will become liable whether or not such liability has arisen or will have arisen at the Completion Date.

Notification of claims relating to Assumed Liabilities

- 7.6 The Vendor shall immediately notify the Purchaser if any action, claim or demand is brought or threatened against the Vendor in respect of any Assumed Liability and the Purchaser shall have the option to assume the defence of any such matter. If the Purchaser declines to assume such defence, it shall be liable to the Vendor for all reasonable costs (including legal fees) subsequently incurred by the Vendor in connection with such defence and the Vendor shall be entitled to conduct such defence in such manner as it shall deem appropriate provided that the Vendor shall not settle the action, claim or demand without the consent of the Purchaser (not to be unreasonably withheld).

Indemnity for Excluded Liabilities

- 7.7 The Vendor shall continue to be responsible for and shall promptly discharge all debts, liabilities and obligations in connection with the Business not expressly assumed by the Purchaser pursuant to this Agreement (whether or not assumed by the Purchaser by operation of law) and shall indemnify the Purchaser against all Losses in respect of all such debts, liabilities and obligations.

Decommissioning and Environmental Matters

- 7.8 Without prejudice to Clauses 7.2 (*Assumption of Assumed Liabilities*) and 7.3 (*Assumed Liabilities definition*), the Parties agree and acknowledge that all past, present and future liabilities and obligations of the Vendor to any third party or Governmental Agency in relation to or arising from Decommissioning shall be assumed by the Purchaser in their entirety and the allocation of such liabilities and obligations under this Agreement is conclusive and the Purchaser shall discharge its responsibility and liability in relation thereto.
- 7.9 Without prejudice to Clauses 7.2 (*Assumption of Assumed Liabilities*), 7.3 (*Assumed Liabilities definition*) and 7.8, the Parties agree and acknowledge that all past, present and

future liabilities and obligations to any third party or Governmental Agency in relation to Environmental Matters:

- 7.9.1 shall be retained by the Vendor to the extent that such Environmental Matters relate to any act or omission prior to Completion, and the Vendor shall discharge its responsibility and liability in relation thereto; and
 - 7.9.2 shall be assumed by the Purchaser to the extent that such Environmental Matters relate to any act or omission following Completion, and the Purchaser shall discharge its responsibility and liability in relation thereto.
- 7.10 Save in respect of any breach by the Vendor of the Environmental Warranties, neither Party shall bring any claim against the other Party (nor apply to join the other Party into proceedings commenced against the first mentioned Party) in respect of Decommissioning or any Environmental Matters for which the first mentioned Party is responsible pursuant to Clause 7.8 or 7.9.
- 7.11 Save to the extent that such Losses are recoverable by the Purchaser as a result of any breach by the Vendor of the Environmental Warranties, each Party shall indemnify and keep indemnified the other Party against any Losses suffered or incurred by the other Party after the Completion Date in relation to or arising from Decommissioning or any Environmental Matters for which the first mentioned Party is responsible pursuant to Clause 7.8 or 7.9.
- 7.12 In the event that any Governmental Agency seeks to impose responsibility or liability other than in accordance with the allocation of liabilities and obligations under Clauses 7.8 to 7.11, the Parties shall communicate and confirm their agreement as to such allocation in relation to Decommissioning or any Environmental Matters to the Governmental Agency and either Party shall be entitled to produce a copy of this Agreement to such Governmental Agency notwithstanding any provisions in the rest of this Agreement relating to confidentiality.

Tax filings

- 7.13 The parties shall as soon as possible after Completion jointly elect by notice pursuant to section 178(5) CTA 2009, and make all necessary filings to the Inspector of Taxes as shall be required, in order to establish that the consideration for the transfer of that part of the Business Intellectual Property Rights and Business Records which comprises know-how (as that term is defined in section 176(1) CTA 2009) will not be treated for tax purposes as a payment for goodwill.

8. SITES AND PROPERTY CONTRACTS

The provisions of Part D of Schedule 5 (*Sites and Property Contracts*) shall apply in respect of the Sites.

9. EMPLOYEES AND BENEFITS²²

The provisions of Part[s] B [and C] of Schedule 7 (*Employees*) shall apply.

²² Explanatory note: the inclusion of provisions relating to Employees will be project specific.

10. CONDUCT OF VENDOR ACTIVITIES BEFORE COMPLETION

Protection of Business and Assets

- 10.1 The Vendor shall take all reasonable steps to continue, and complete, the construction and commissioning of the Fixed Assets which form part of or relate to the Offshore Transmission System and which are necessary to carry on the Business in accordance with Good Industry Practice on or before the Target Completion Date.
- 10.2 Pending Completion the Vendor shall take all reasonable steps to preserve and protect the Business and the Assets, including to maintain policies of insurance in accordance with Good Industry Practice, and shall notify the Purchaser in writing promptly of any adverse change in the Business or the Assets.

Contracts

- 10.3 Pending Completion the Vendor shall procure that, unless the Purchaser (in its absolute discretion) has given its prior written consent (not to be unreasonably withheld or delayed), it shall not after the date of this Agreement enter into any contract, contract amendment, variation, liability or commitment in relation to the Business which:
- 10.3.1 is incapable of unilateral termination by the Vendor without penalty or compensation within [●] months;
- 10.3.2 results, or would result, in an expenditure or liability relating to the Business or the Assets in excess of £[●] in any calendar year or £[●] in aggregate; or
- 10.3.3 results, or would result, in a commitment relating to the Business or the Assets for a period in excess of [●] years,

provided that, in each case, the Purchaser shall be entitled to give its consent on condition that the contract, liability or commitment will not transfer to the Purchaser on Completion (in which case the contract, liability or commitment shall be deemed to be an Excluded Contract).

- 10.4 Pending Completion the Vendor shall consult the Purchaser in respect of the exercise of any discretion under the Key Contracts including:
- 10.4.1 whether or not to exercise any rights under the relevant Key Contract (including any rights to terminate or rights in relation to variation);
- 10.4.2 whether or not to waive (or choose not to enforce) any obligations of the counterparty under the relevant Key Contract in whole or in part or to seek or accept a waiver from the counterparty obligations under the relevant Key Contract;
- 10.4.3 choosing between any options that arise concerning the manner in which the counterparty could perform the relevant Key Contract; and
- 10.4.4 how to mitigate any problems that arise under or in connection with any Key Contract.
- 10.5 The Vendor shall provide the Purchaser with all information as is reasonably necessary to facilitate any such consultation.

- 10.6 Following the conclusion of any such consultation the Purchaser shall, within a reasonable timeframe, acting reasonably, notify the Vendor in writing of its decision in respect of the matter and the Vendor shall exercise its discretion in the manner directed by the Purchaser.

Changes to Relevant Permits and Site Consents

- 10.7 Pending Completion the Vendor shall procure that, unless the Purchaser (not to be unreasonably withheld or delayed) has given its prior written consent, it shall not after the date of this Agreement:

10.7.1 modify, alter, vary or surrender any Relevant Permit which is material to the Business; or

10.7.2 modify, alter, vary or surrender any Site Consent which is material to the Business.

Access and Assistance

- 10.8 Pending Completion the Vendor shall, at convenient times and upon reasonable notice in writing to the Purchaser, procure that the Purchaser and any person authorised by it is given all access and information relevant to the Offshore Transmission System as the Purchaser may reasonably require, including (without limitation) permitting the Purchaser:

10.8.1 to inspect the Assets and Sites (including to witness the state and progress of the construction of the Assets);

10.8.2 to witness any testing of the Assets and to familiarise itself with the Assets and Sites; and

10.8.3 to consult and meet with personnel or authorised representatives of the Vendor,

and the Vendor shall provide the Purchaser with such assistance and cooperation as the Purchaser shall reasonably require in relation to the provision of such access or information.

- 10.9 For the purposes of receiving access or information pursuant to Clause 10.8, the Purchaser shall comply with:

10.9.1 any reasonable rules as to access to the Vendor controlled Sites issued from time to time by the Vendor in writing to the Purchaser;

10.9.2 the orders and instructions of any Vendor personnel or duly authorised representative in the event of an emergency; and

10.9.3 the security vetting procedure of the Vendor.

- 10.10 Pending Completion the Purchaser and/or its representatives shall be entitled to be present at regular meetings relating to the construction of the Assets and the Purchaser shall be given reasonable prior notice of every such meeting but so that in any event the Vendor will provide the Purchaser with such evidence as it shall reasonably require concerning the progress of the development and construction of the Assets or any thing that affects the Assets and will supply the Purchaser with copies of the following documents as and when the same shall be issued:

- 10.10.1 minutes of such meetings or notes and progress reports and other completed information prepared for such meetings;
- 10.10.2 any [Certificate of Completion] referred to in this Agreement;
- 10.10.3 further detailed drawings as and when produced relating to the Assets;
- 10.10.4 any revised works programme in relation to the Assets; and
- 10.10.5 progress photographs.

Restrictions on Vendor Activities Before Completion

- 10.11 Pending Completion the Vendor shall procure that, unless the Purchaser has consented in writing, it shall not in relation to the Business or Assets:
 - 10.11.1 acquire or dispose of, or agree to acquire or dispose of, any material part of the Business or any material Asset or undertaking or any material revenues, give or agree to give any option, right to acquire or call in respect of any material part of the Business or any material Asset or undertaking or any material revenues or assume or incur, or agree to assume or incur, any material liability, obligation or expense (actual or contingent);
 - 10.11.2 create, grant or give any mortgage, pledge, lien, charge, assignment, hypothecation or other agreement or arrangement which has the same or similar effect to the granting of security in respect of all or any part of the Assets or any other undertaking, property or assets of the Business, save for the granting of security in respect of a refinancing of the whole or part of any indebtedness incurred prior to the date of this Agreement;
 - 10.11.3 make any advance, loan or deposit of money in relation to the Business of the Assets other than in the ordinary course of business or cancel, release or assign any indebtedness owed to it, save for any indebtedness incurred in respect of a refinancing of the whole or part of any indebtedness incurred prior to the date of this Agreement;
 - 10.11.4 [pay its creditors (including any Payables) or defer any such payment otherwise than in the ordinary course or change its policy in relation to the payment of creditors;
 - 10.11.5 collect its debts (including any Receivables) or defer any such collection other than in the ordinary course or change its policy in relation to the collection of debtors;]²³
 - 10.11.6 make, or agree to make, capital commitments or expenditure exceeding £[•];
 - 10.11.7 lease, licence or part with or share possession or occupation of any of the Sites or any Sites which may be acquired by the Business or enter into an agreement or arrangement to do so;

²³ Explanatory note: provisions relating to Payables and Receivables should be included on a project specific basis where relevant.

- 10.11.8 enter into any partnership, joint venture or other profit sharing agreement;
 - 10.11.9 fail to renew or fail to take any action to defend or preserve any Business Intellectual Property Rights or Know-how;
 - 10.11.10 enter into any agreement or arrangement to license, part with or share any Business Intellectual Property Rights;
 - 10.11.11 initiate, settle or abandon any claim, litigation, arbitration or other proceedings or make any admission of liability in relation to the Business except, in any case, in relation to debt collection in the ordinary course of the business of sums not exceeding £[•] for any single claim or as otherwise instructed by the Purchaser in writing;
 - 10.11.12 vary any terms of any of the policies of insurance of the Business, knowingly take any action which may invalid any such policies of insurance or take out any additional or replacement policies of insurance (other than renewals of such policies of insurance substantially the same terms as those in force at the date of this Agreement);
 - 10.11.13 enter into any transaction with any person in relation to the Business otherwise than at arms length and full value;
 - 10.11.14 make any proposal for the winding-up or liquidation of the Vendor; or
 - 10.11.15 change the auditors of the Business or make any change to its accounting practices or policies, except where such change is recommended by its auditors as a consequence of a change in generally accepted accounting practices or policies applicable to companies carrying on business of a similar nature, or as a consequence of a change of law.²⁴
- 10.12 [Pending Completion the Vendor shall procure that, unless the Purchaser has consented in writing (such consent not to be unreasonably withheld or delayed), it shall not, and shall procure that no Affiliate shall:
- 10.12.1 make any material change (from the point of view of the relevant Designated Employee or category of Designated Employees) in the terms and conditions of employment (contractual or non-contractual), working practices or collective agreements relating to such practices of any Designated Employee or category of Designated Employees;
 - 10.12.2 employ or engage or assign any person to work in the Business or make any change in the remuneration of or (without limitation) other terms of employment of or vary the duties of or dismiss or terminate the employment of any Designated Employee with annual remuneration in excess of £[•];
 - 10.12.3 create or amend any employee share scheme applicable to any of the Designated Employees and/or grant or issue any options under any such scheme to any of the Designated Employees; or

²⁴ Explanatory note: the restrictions applicable to the Vendor's activities before Completion will be project specific (for example, to take account of any transferring employees and related pensions arrangements).

- 10.12.4 adopt or participate in any pension scheme applicable to any of the Designated Employees (other than the existing pension schemes of the Business) or amend any of its existing pension schemes applicable to any of the Designated Employees or review any such scheme or vary or cease contributions made to any such scheme.]²⁵

Matters pending Completion

- 10.13 Pending Completion the Vendor shall notify the Purchaser immediately of any matter, circumstance, act or omission which is or may be a breach of Clauses 10.3 to 10.7 and Clause 10.11 [and 10.12].

Relevant Permits

- 10.14 Unless otherwise agreed by the Parties, within [●] Business Days of the Effective Date, the Vendor shall provide the Purchaser with:
- 10.14.1 details of all Relevant Permits;
 - 10.14.2 the compliance history in respect of each Relevant Permit;
 - 10.14.3 progress reports for any ongoing work required under the Relevant Permits; and
 - 10.14.4 details of Relevant Permits which the Vendor has not obtained, but is required to obtain or which it is in the process of obtaining.
- 10.15 Unless otherwise agreed by the Parties, [●] Business Days prior to the first Review Date, and [●] Business Days prior to any subsequent Review Date, the Vendor shall provide the Purchaser with an update to the information listed in Clause 10.14.
- 10.16 Unless otherwise agreed by the Parties, [●] Business Days prior to the Completion Date, the Vendor shall provide the Purchaser with an update to the information listed in Clause 10.14.
- 10.17 For the duration of the Transition Plan the Vendor shall provide within a reasonable timeframe any information the Purchaser may reasonably require for the purposes of transferring, assigning or applying for any Relevant Permit.

Key Contracts Update²⁶

- 10.18 Pending Completion the Vendor shall promptly provide to the Purchaser a copy of any new Contract entered into in accordance with Clause 10.3 or otherwise.
- 10.19 On the first Review Date, and any subsequent Review Date, the Vendor shall provide the Purchaser with a revised Part A of Schedule 6 (*Key Contracts and Key Permits*) and the Parties shall agree the revisions (if any) at the meeting on each applicable Review Date.

²⁵ Explanatory note: This Clause 10.12 would only be applicable in the event that, on a project specific basis, it was considered that the Transfer Regulations apply.

²⁶ Explanatory note: to consider whether the Parties shall be entitled to refer to an independent expert any material disagreement in relation to any update or further revisions to be agreed pursuant to Clauses 10.18 to 10.34.

- 10.20 The Parties shall meet [●] Business Days prior to Completion to agree any further revisions necessary to Part A of Schedule 6 (*Key Contracts and Key Permits*).

Excluded Contracts Update

- 10.21 On the first Review Date, and any subsequent Review Date, the Vendor shall provide the Purchaser with a revised Part B of Schedule 4 (*Excluded Assets and Contracts*) and the Parties shall agree the revisions (if any) at the meeting on each applicable Review Date.
- 10.22 The Parties shall meet [●] Business Days prior to Completion to agree any further revisions necessary to Part B of Schedule 4 (*Excluded Assets and Contracts*).

Key Permits Update

- 10.23 Pending Completion the Vendor shall promptly notify the Purchaser if it obtains any new Relevant Permit.
- 10.24 On the first Review Date, and any subsequent Review Date, the Vendor shall provide the Purchaser with a revised Part B of Schedule 6 (*Key Contracts and Key Permits*) and a revised Part C of Schedule 6 (*Key Contracts and Key Permits*) and the Parties shall agree the revisions (if any) at the meeting on each applicable Review Date.
- 10.25 The Parties shall meet [●] Business Days prior to Completion to agree any further revisions necessary to Part B of Schedule 6 (*Key Contracts and Key Permits*) or to Part C of Schedule 6 (*Key Contracts and Key Permits*).

Key Site Consents Update

- 10.26 Pending Completion the Vendor shall promptly notify the Purchaser if it obtains any new Site Consent.
- 10.27 On the first Review Date, and any subsequent Review Date, the Vendor shall provide the Purchaser with a revised Part B of Schedule 5 (*Sites and Property Contracts*) and a revised Part C of Schedule 5 (*Sites and Property Contracts*) and the Parties shall agree the revisions (if any) at the meeting on each applicable Review Date.
- 10.28 The Parties shall meet [●] Business Days prior to Completion to agree any further revisions necessary to Part B of Schedule 5 (*Sites and Property Contracts*) or to Part C of Schedule 5 (*Sites and Property Contracts*).

Fixed And Moveable Assets Update

- 10.29 Pending Completion the Vendor shall promptly notify the Purchaser of the acquisition or creation of any:
- 10.29.1 new fixed asset or plant and equipment which is annexed to or forms part of the Sites; and/or
- 10.29.2 new loose plant, machinery, tools or furniture employed in the Business.
- 10.30 On the first Review Date, and any subsequent Review Date, the Vendor shall provide the Purchaser with a revised Schedule 3 (*Fixed and Moveable Assets*) and the Parties shall agree the revisions (if any) at the meeting on each applicable Review Date.

- 10.31 The Parties shall meet [●] Business Days prior to Completion to agree any further revisions necessary to Schedule 3 (*Fixed and Moveable Assets*).

Excluded Assets Update

- 10.32 Pending Completion the Vendor shall promptly notify the Purchaser of the acquisition or creation of any new property or assets relating to the Offshore Transmission System and/or the Business which is not necessary to carry out the Business in accordance with Good Industry Practice.
- 10.33 On the first Review Date, and any subsequent Review Date, the Vendor shall provide the Purchaser with a revised Part A of Schedule 4 (*Excluded Assets and Contracts*) and the Parties shall agree the revisions (if any) at the meeting on each applicable Review Date.
- 10.34 The Parties shall meet [●] Business Days prior to Completion to agree any further revisions necessary to Part A of Schedule 4 (*Excluded Assets and Contracts*).

[Designated Employee Update

- 10.35 Without prejudice to Clause 10.12:
- 10.35.1 on the first Review Date, and any subsequent Review Date, the Vendor shall provide the Purchaser with a revised Part A of Schedule 7 (*Employees*); and
- 10.35.2 the Vendor, shall provide the Purchaser with a revised Part A of Schedule 7 (*Employees*) [●] Business Days prior to completion.]²⁷

11. TRANSITION PLAN

- 11.1 The Vendor shall prepare a Transition Plan not more than [●] [months] [Business Days] following the Effective Date and the Parties shall implement its provisions in accordance with Schedule 11 (*Transition Plan*) and the provisions of this Clause 11.
- 11.2 Each Party requires the other Party to actively engage and cooperate with it between the date [●] [months] [Business Days] after the Effective Date and the Completion Date in order to effect an orderly and successful transfer of the Business and Assets in accordance with Good Industry Practice. The Transition Plan shall, inter alia, set out:
- 11.2.1 a description of those actions necessary to achieve this;
- 11.2.2 the timeframes for the implementation of each part of the Transition Plan, taking into account any applicable law or regulation (including the Utilities Contracts Regulations 2006);
- 11.2.3 the milestones that need to be met by the Vendor and/or the Purchaser;
- 11.2.4 a clear delineation of responsibilities as between the Purchaser and the Vendor for each part of the Transition Plan; and
- 11.2.5 those other matters as set out in Schedule 11 (*Transition Plan*).

²⁷ Explanatory note: This Clause 10.36 will only be required if there are Designated Employees of the Business.

- 11.3 Within [●] [months] [Business Days] of the Effective Date the Parties shall meet to discuss the preparation of the Transition Plan. Within [●] [months] [Business Days] of the Effective Date the Vendor shall submit the Transition Plan to the Purchaser for approval. If the Purchaser objects to all or part of the Transition Plan, it shall notify the Vendor in writing of its objection and the grounds for its objection. No later than [5] Business Days after the date the Vendor receives the notice from the Purchaser pursuant to this Clause 11.2 the Parties shall meet to try to agree the Transition Plan. If the Parties are unable to agree the Transition Plan within [●] [months] [Business Days] of the Effective Date any matter in dispute shall be referred to an independent expert who shall be appointed in accordance with Clause 11.4 and the decision of the independent expert on the matter in dispute shall be binding on the Parties except in the case of manifest error.
- 11.4 The Parties (acting together) shall, within [●] [Business Days] of any failure to agree the Transition Plan within the time period set out in Clauses 11.3 or 11.5, appoint an independent expert to resolve any matter in dispute under the Transition Plan by agreement and, if the Parties fail to agree the appointment of the independent expert within the above-mentioned [●] [Business Day] period, the independent expert shall be appointed by the President for the time being of the Institution of Engineering and Technology on the application of either Party.
- 11.5 The Vendor or the Purchaser may, from time to time, propose to amend or revise (in whole or in part) the Transition Plan. No later than [5] Business Days after the date on which one Party receives notice from the other Party of a proposed amendment or revision to the Transition Plan, the Parties shall meet to try to agree any amendment or revision to the Transition Plan. If the Parties are unable to agree any amendment or revision to the Transition Plan within [20] Business Days any matter in dispute shall be referred to an independent expert who shall be appointed in accordance with Clause 11.4 and the decision of the independent expert on the matter in dispute shall be binding on the Parties except in the case of manifest error.

12. REVIEW PROCESS

- 12.1 On the Review Date, each Party shall use reasonable endeavours to:
- 12.1.1 demonstrate (in a manner satisfactory to the other Party) that the Completion Conditions for which it is responsible are likely to be fully satisfied by the Target Completion Date; and
 - 12.1.2 acknowledge and agree the terms of any supplementary list provided by the Vendor in accordance with Clauses 10.18 to 10.35.
- 12.2 If the Parties (acting reasonably) are not satisfied on the Review Date that all of the Completion Conditions are likely to be fully satisfied on or before the Target Completion Date:
- 12.2.1 either Party may promptly afterwards by service of a notice on the other Party waive any relevant Completion Condition pursuant to Clause 2.5 or Clause 2.4;
or
 - 12.2.2 the Parties may agree in writing:

- (A) a new Review Date, provided that any such new Review Date shall be no more than [one] month prior to the then Target Completion Date (in which case this Clause shall apply to the new Review Date);
- (B) a new Review Date and a new Target Completion Date, provided that any such new Review Date shall be no more than [one] month prior to such new Target Completion Date (in which case this Clause shall apply to the new Review Date and the new Target Completion Date); or
- (C) a new Target Completion Date.²⁸

13. CERTIFICATION OF FINAL COMPLETION AND COMMISSIONING OF OFFSHORE TRANSMISSION SYSTEM

The provisions of Schedule 12 (*Certification of Final Completion and Commissioning of Offshore Transmission System*) shall apply.

14. COMPLETION OF SALE AND PURCHASE

Completion Date

- 14.1 Completion shall take place at [address] at [time] [a.m./p.m.] on the [fifth] Business Day following the satisfaction or waiver of all the Completion Conditions or at such other place or time as the Vendor and Purchaser shall agree in accordance with Clause 12.

Vendor's Obligations

- 14.2 At Completion, the Vendor shall deliver or cause to be delivered to the Purchaser the items set out in Part A of Schedule 10 (*Completion Obligations*).

Purchaser's Obligations

- 14.3 At Completion:

14.3.1 the Purchaser shall deliver to the Vendor, the items set out in Part B of Schedule 10 (*Completion Obligations*); and

14.3.2 the Purchaser shall pay by electronic transfer to the account of the Vendor (details of which shall be provided in writing to the Purchaser no later than [five] Business Days before the date of Completion) the Initial Purchase Price in accordance with Clause 3.3 and receipt of such sum shall constitute a valid discharge of the Purchaser's obligations under Clause 3.3.1.

15. VENDOR'S DEFAULT AT COMPLETION

- 15.1 The Purchaser shall not be obliged to complete this Agreement unless the Vendor complies with the requirements of Clause 14.2.

²⁸ Explanatory note: Ofgem expects to be consulted by the Parties if there is a material slippage in progress towards the Target Completion Date requirements. Ofgem also expects that it will be consulted in relation to any agreement to set a new Review Date later than one month prior to the initial Target Completion Date or to set a new Target Completion Date.

- 15.2 If in any respect the requirements of Clause 14.2 are not complied with at the time and on the date set for Completion, the Purchaser may:
- 15.2.1 defer Completion with respect to the Business and/or some or all of the Assets to a date selected by the Purchaser being no later than [●] Business Days after that date (in which case this Clause shall apply to Completion as so deferred); or
 - 15.2.2 proceed to Completion as far as practicable (including, at the Purchaser's option, completion of the purchase of some only of the Assets) and in any case without prejudice to its rights under this Agreement.

16. WARRANTIES

Power and Authority

- 16.1 Each Party warrants to each of the other Parties that it has full power and authority to enter into and perform its obligations under this Agreement and that this Agreement is a valid and binding obligation on it in accordance with its terms.

Vendor's warranties

- 16.2 Subject to the limitations in Schedule 9 (*Limitations on Liability*), the Vendor warrants and represents to the Purchaser in the terms of the Warranties (in Schedule 8).

- 16.3 The only Warranties given:

16.3.1 in respect of Environmental Matters are the Environmental Warranties and each of the other Warranties shall be deemed not to be given in relation to Environmental Matters; and

16.3.2 in respect of Taxation are the Tax Warranties and each of the other Warranties shall be deemed not to be given in relation to Taxation.

- 16.4 Subject to the limitations in Schedule 9 (*Limitations on Liability*), the Vendor shall procure and warrants and represents to the Purchaser that the Warranties will be true and accurate at Completion by reference to the facts and circumstances then subsisting and, for this purpose, the Warranties shall be deemed to be repeated at Completion as if any express or implied reference in the Warranties to the date of this Agreement was replaced by a reference to the date of Completion.

- 16.5 Each of the Warranties shall be construed as a separate warranty and except where this Agreement expressly provides otherwise, each Warranty is not limited by the other provisions of this Agreement, including the other Warranties.

Vendor's Knowledge

- 16.6 Where any of the Warranties is qualified by the expression "*to the best of the knowledge, information and belief of the Vendor*" or "*so far as the Vendor is aware*" or any similar expression, that Warranty shall be deemed to be given only on the basis of matters within the actual knowledge of any employee or officer of the Vendor involved or concerned in the Offshore Transmission System and/or the Business.

- 16.7 The Vendor shall immediately disclose to the Purchaser any matter or thing which arises or of which it may become aware after entering into this Agreement which is inconsistent

with or a breach of any of the Warranties or which will or may be a breach of any Warranty when the Warranties are repeated at Completion or which might render any of the Warranties misleading or would be material to a purchaser for value of the Assets and Business.

Purchaser's reliance

- 16.8 The Vendor acknowledges that, in entering into this Agreement, the Purchaser has relied upon prior representations by the Vendor in the terms of the Warranties.

Purchaser's knowledge

- 16.9 Subject to the limitations in Schedule 9 (*Limitations on Liability*), the Purchaser may claim that any of the Warranties is or was untrue or misleading or has or had been breached even if the Purchaser could have discovered on or before entering into this Agreement or before Completion that the Warranty in question was untrue, misleading or had been breached and Completion shall not in any way constitute a waiver of any of the Purchaser's rights.

17. DEFERRED CONSIDERATION²⁹

- 17.1 If the Ex Post Valuation is greater than the Initial Purchase Price, the Vendor shall be entitled to receive, by way of additional consideration, the amount by which the Ex Post Valuation exceeds the Initial Purchase Price.
- 17.2 If the Ex Post Valuation is less than the Initial Purchase Price, the Deferred Consideration shall be zero and the Vendor shall not be entitled receive any additional consideration nor shall the Vendor be required to repay to the Purchaser any amount.
- 17.3 Any additional consideration payable by the Purchaser under Clause 17.1 shall be payable within [•] Business Days of the date on which Ofgem notifies the Parties of the Ex Post Valuation (the "**Ex Post Valuation Notice**") and shall be paid by electronic transfer to the account of the Vendor (details of which shall be provided in writing to the Purchaser no later than [•] Business Days after the date of the Ex Post Valuation Notice) in accordance with Clause 3.3 and receipt of such sum shall constitute a valid discharge of the Parties obligations under Clause 3.3.2.
- 17.4 Any payment payable under this Clause 17 shall be made in full without any set off or counter claim howsoever arising and shall be free and clear of and without deduction of, or withholding for or on account of, any amount which is due and payable by any Party under this Agreement.

18. POST COMPLETION ACTIVITIES

Access to information

- 18.1 For a period of [2] years from Completion and except to the extent that it may infringe competition, data-protection or other relevant laws or duties of confidentiality owed to third parties:
- 18.1.1 the Purchaser will make the Business Records available for inspection by

²⁹ Explanatory note: any deferred consideration to be paid pursuant to this Clause will result in a pro rata increase to the apportionments specified in Schedule 2.

representatives of the Vendor at all reasonable times during business hours on reasonable advance notice being given. The Purchaser will allow the Vendor's representatives to take copies, at the Vendor's expense, of any of the Business Records reasonably required by them; and

18.1.2 the Vendor will make available any books and records not delivered to the Purchaser which contain information which should be provided to the Purchaser or which is required for the purpose of the Business or any tax or other return in connection with it for inspection by representatives of the Purchaser during business hours on reasonable advance notice being given. The Vendor will allow the Purchaser's representatives to take copies, at the Purchaser's expense, of any of those books and records reasonably required by them. The directors, employees, auditors and other professional advisers of the Vendor shall be instructed to give promptly to the Purchaser and any persons authorised by it all information that it may reasonably require.

18.2 To the extent that inspection or copies of Business Records or books and records are required for the purpose of any tax or other similar return the duration of Clause 18.1 may be extended to cover a period of seven years from Completion provided and in a manner that such arrangements would not infringe any competition, data-protection or other relevant laws or duties of confidentiality owed to third parties.

Insurance

18.3 If, at any time after Completion, the Vendor receives any insurance or other monies from a third party in respect of the Business (other than in respect of an Excluded Liability), then the Vendor shall pay to the Purchaser as soon as reasonably practicable the amount recovered less an amount equal to any liability of the Vendor to Taxation which would not have arisen but for the receipt of such monies.

18.4 If, at any time after Completion, the Purchaser receives any insurance or other monies from a third party in respect of an Excluded Liability then the Purchaser shall pay to the Vendor as soon as reasonably practicable the amount recovered less an amount equal to any liability of the Purchaser to Taxation which would not have arisen but for the receipt of such monies.

Correspondence

18.5 All notices, correspondence, information, orders or enquiries relating to the Business or any of the Business Assets which are received by the Vendor on or after Completion shall immediately be forwarded to the Purchaser.

Notification to Secretary of State

18.6 The Purchaser shall, within [•] Business Days following the Completion Date, deliver to the Secretary of State a notice in accordance with section 112 of the Energy Act 2004.

19. VAT, CAPITAL ALLOWANCES AND RELATED MATTERS ³⁰

19.1 All sums payable under this Agreement shall be exclusive of VAT, and where a sum is paid pursuant to this Agreement in consideration for any supply (or deemed supply) of

³⁰ Explanatory note: see also explanatory note 2.

goods or services the payer shall, in addition to the consideration payable for such supply, pay an amount equal to the VAT (if any) arising in respect of such supply against the production of a valid VAT invoice.

- 19.2 The Vendor and the Purchaser consider that the sale of the Business and Assets is a transfer of a business as a going concern and that the Business is capable of separate operation for the purposes of both section 49(1) VATA and article 5 of the Value Added Tax (Special Provisions) Order 1995 (SI 1995/1268), and the parties shall use all reasonable endeavours to procure that the sale of the Business and Assets pursuant to this Agreement is treated by HM Revenue and Customs as such.
- 19.3 The Purchaser shall, prior to the Completion Date, make a written application to HM Revenue and Customs for confirmation that the sale of the Business and Assets pursuant to this Agreement will be treated as a transfer of a going concern capable of separate operation, for the purposes of VAT. The Vendor will provide to the Purchaser or its authorised agents all such reasonable assistance, cooperation and information as may be reasonably requested in respect of preparing and submitting the written application to HM Revenue and Customs.
- 19.4 If HM Revenue and Customs confirm prior to the Completion Date, in response to the written application to be made under Clause 19.3, that the sale of the Business and Assets pursuant to this Agreement will be treated as a transfer of a going concern capable of separate operation, for the purposes of VAT, then:
- 19.4.1 The Vendor and the Purchaser shall treat the sale of the Business and Assets as neither a supply of goods nor services for the purposes of VAT;
- 19.4.2 The Vendor shall retain and preserve all records of the Business in relation to VAT up to Completion but shall make the same available to the Purchaser or its authorised agents for inspection at reasonable times and copying at the Purchaser's expense for the period of six years from Completion;
- 19.5 If HM Revenue and Customs confirm in response to the written application to be made under Clause 19.3 and prior to the Completion Date, that in its view the sale of the Business and Assets pursuant to this Agreement does not constitute a transfer of a going concern capable of separate operation, for the purposes of VAT, then the Purchaser shall, subject to the Vendor delivering to it a valid VAT invoice, pay to the Vendor in addition to the Consideration the VAT thereon no later than six Business Days before the last date on which the Vendor is required to submit a VAT return to HM Revenue and Customs in respect of the Vendor's VAT accounting period in which Completion occurs (such date referred to in this Agreement as the "**VAT due date**").
- 19.6 If HM Revenue and Customs do not respond to the written application to be made under Clause 19.3 by the Completion Date then the Purchaser shall at the same time as the Consideration becomes payable pursuant to this Agreement pay into the Escrow Account an amount equal to the VAT arising on the Consideration (the "**Escrow Amount**"). The Escrow Amount shall be held in the Escrow Account to the Purchaser's order.
- 19.7 In the event that a response from HM Revenue and Customs to the written application to be made under Clause 19.3 is received after the Completion Date but before the VAT due date, the parties hereby agree as soon as practicable to instruct the Escrow Bank to deal with the Escrow Amount in the following manner:

- 19.7.1 to pay the Escrow Amount (including accrued interest) to the Purchaser in the event that HM Revenue and Customs confirm that the sale of the Business and Assets pursuant to this Agreement will be treated as a transfer of a going concern capable of separate operation, for the purposes of VAT; or
- 19.7.2 to pay the Escrow Amount (including accrued interest) to the Vendor in the event that HM Revenue and Customs confirm that the sale of the Business and Assets pursuant to this Agreement does not in their view constitute a transfer of a going concern capable of separate operation, for the purposes of VAT (whereby the Vendor agrees to provide the Purchaser with a valid VAT invoice).
- 19.8 In the event that a response from HM Revenue and Customs to the written application to be made under Clause 19.3 is not received by the VAT due date the Vendor may, in its sole discretion, seek the Purchaser's agreement (such agreement not to be unreasonably withheld) to instruct the Escrow Bank to pay the Escrow Amount (including accrued interest) to the Vendor no later than three Business Days after the VAT due date (whereby the Vendor agrees to provide the Purchaser with a valid VAT invoice).
- 19.9 If a payment is made to the Vendor pursuant to Clause 19.8 and HM Revenue and Customs subsequently confirm, in response to the written application to be made under Clause 19.3 that the sale of the Business and Assets pursuant to this Agreement will be treated as the transfer of a going concern capable of separate operation, for the purposes of VAT, the Vendor shall as soon as reasonably practicable issue to the Purchaser a VAT credit note equal to the Escrow Amount.
- 19.10 The Purchaser warrants:
- 19.10.1 that it intends to carry on the same kind of business in relation to the Business and the Assets with effect from Completion and without interruption as that carried on by the Vendor prior to Completion;
- 19.10.2 that it, or the representative member of its VAT group, is registered for VAT and on or before Completion shall provide the Vendor with a copy of its Certificate of Registration;
- 19.10.3 that it or a relevant associate for the purposes of Part 1 of Schedule 10 to VATA shall prior to Completion exercise an option to tax any property comprised in the Assets to be sold pursuant to the terms of this Agreement for the purposes of Part 1 of Schedule 10 to VATA with effect from no later than the Completion Date:
- 19.10.4 that it shall not revoke, nor allow any other person to revoke, nor allow anything to be done which could result in HM Revenue and Customs revoking the option to tax described in Clause 19.10.3 either before or after Completion to the extent that such revocation would or could prejudice the treatment described at Clause 19.2;
- 19.10.5 that it shall give written confirmation of the option to tax described in Clause 19.10.3 to HM Revenue and Customs in accordance with paragraph 20 of Schedule 10 to VATA or shall procure that such notice is given, in either case prior to the Completion Date; and
- 19.10.6 that it shall provide the Vendor with a copy of such notification referred to in Clause 19.10.5 prior to the Completion Date and a copy of the acknowledgement

by HM Revenue and Customs of such notification as and when received by the Purchaser.

- 19.11 The Purchaser hereby notifies the Vendor that paragraph 5(2B) Value Added Tax (Special Provisions) Order 1995 does not apply to the Purchaser.

Capital Allowances

- 19.12 The Vendor shall provide to the Purchaser and its professional advisers such information as is in its possession, as shall be requested in writing by the Purchaser from time to time and as shall reasonably be required to enable the Purchaser to make or substantiate a claim for capital allowances in respect of the value of plant and machinery installed and included within the Assets agreed to be sold and purchased pursuant to this Agreement or in respect of industrial buildings comprised in the same Assets. Nothing shall prevent the Vendor from making claims for capital allowances in respect of periods prior to Completion.
- 19.13 It is agreed by the Vendor and the Purchaser that the sum of £[●] ("**the Agreed Fixtures Sum**") is apportioned from the Consideration to the sale and purchase of the Fixtures pursuant to this Agreement. For the purposes of this Clause the expression "Fixtures" means all items which form part of the buildings comprised in the Assets to be transferred pursuant to this Agreement (other than machinery and plant that is an integral feature for the purposes of section 33A(5) of the Capital Allowances Act 2001) and which may qualify as machinery or plant for the purposes of a claim for capital allowances under the Capital Allowances Act 2001 ("**CAA**").
- 19.14 It is agreed by the Vendor and the Purchaser that the sum of £[●] ("**the Agreed Integral Features Sum**") is apportioned from the Consideration to the sale and purchase of the Agreed Integral Features pursuant to this Agreement. For the purposes of this Clause the expression "Integral Features" means all items which form part of the buildings comprised in the Assets to be transferred pursuant to this Agreement (which are integral features for the purposes of section 33A(5) of the Capital Allowances Act 2001) and which may qualify as machinery or plant for the purposes of a claim for capital allowances under the CAA.
- 19.15 The Purchaser agrees that it shall not under any circumstances claim capital allowances in respect of expenditure incurred by it on the Fixtures or the Integral Features pursuant to this Agreement except in respect of an amount which in aggregate is equal to the Agreed Fixtures Sum or the Agreed Integral Features Sum, respectively.
- 19.16 The Vendor and the Purchaser agree that they shall jointly make an election pursuant to Section 198 CAA that the Agreed Fixtures Sum and the Agreed Integral Features Sum shall be fixed as the portion of the Consideration which shall be treated as expenditure incurred by the Purchaser on the provision of the Fixtures and the Integral Features (respectively) for the purposes of Sections 198 CAA and that they shall give notice of such election in the form, or substantially in the form, of the draft annexed hereto and thereupon the Vendor shall, (with the authority of the Purchaser which is hereby given by the Purchaser) submit such notice to the Vendor's Inspector of Taxes.
- 19.17 The parties agree, in making the election referred to in Clause 19.16, to comply with all the requirements of Section 201 CAA and other requirements of legislation and HM Revenue & Customs practice from time to time in force and shall comply with all relevant time limits. In particular, but without prejudice to the generality of the foregoing, the Vendor and the Purchaser shall each provide a Notice of Election to HM Revenue & Customs as in the form required by Sections 198 and 201 CAA in the agreed terms and shall ensure that a

copy of the notice shall accompany its return for its "relevant period" for the purposes of Section 201(4) CAA. The Vendor and the Purchaser shall take such other action as the Vendor shall reasonably require to give effect to an election.

- 19.18 It is agreed by the Vendor and the Purchaser that the sum of £[] ("**the Agreed Industrial Buildings Sum**") is apportioned from the Consideration to the sale and purchase of the Industrial Buildings pursuant to this Agreement. For the purposes of this Clause the expression "Industrial Buildings" means all items which form part of the buildings comprised in the Assets to be transferred pursuant to this Agreement and which may qualify as industrial buildings for the purposes of a claim for capital allowances under Part 3 of CAA.
- 19.19 The Purchaser agrees that it shall not under any circumstances claim capital allowances under Part 3 CAA in respect of expenditure incurred by it on the Industrial Buildings pursuant to this Agreement except in respect of an amount which in aggregate is equal to the Agreed Industrial Buildings Sum.
- 19.20 To the extent that the Consideration exceeds the aggregate of the Agreed Fixtures Sum, the Agreed Integral Features Sum and the Agreed Industrial Buildings Sum the Parties agree that it shall be apportioned to the items comprised in the Assets other than Fixtures, the Integral Features or Industrial Buildings.

20. ANNOUNCEMENTS AND CONFIDENTIALITY

Announcements

- 20.1 No Party shall release any announcement or, except as provided in this Agreement, despatch any announcement or circular relating to this Agreement unless the form and content of such announcement or circular have been submitted to, and agreed by, the other Party. Nothing in this Clause 20.1 shall prohibit any Party from making any announcement or despatching any circular as required by law or any regulatory body in which case, the announcement shall only be released or despatched after consultation with the other Party and after taking into account the reasonable requirements of the other Party as to the content of such announcement.

Confidentiality

- 20.2 Each Party undertakes to the other that, subject to Clause 20.3, unless the prior written consent of the other Party shall first have been obtained it shall, and shall procure that its officers, employees, advisers and agents shall keep confidential and shall not by failure to exercise due care or otherwise by any act or omission disclose to any person whatever, or use or exploit commercially for its or their own purposes, any of the confidential information of the other Party. For the purposes of this Clause 20, "confidential information" includes the contents of this Agreement and any other agreement or arrangement contemplated by this Agreement and:
- 20.2.1 information of whatever nature concerning the Business, the Assets, liabilities, dealings, transactions, Know-how, customers, suppliers, processes or affairs of the other Party, their holding companies, subsidiaries and subsidiaries of their holding companies from time to time; and
- 20.2.2 information which is expressly indicated to be confidential in relation to the Party disclosing it or its holding companies, subsidiaries or subsidiaries of its holding

companies from time to time,

which any Party may from time to time receive or obtain (verbally or in writing or in electronic form) from any Party as a result of negotiating, entering into or performing its obligations pursuant to this Agreement and provided that such information regarding the Business and the Assets in relation to the period before Completion shall not be confidential information of the Vendor following Completion and such information concerning the Business and the Assets in relation to the period after Completion shall be confidential information of the Purchaser.

20.3 The restrictions imposed by Clause 20.2 shall not apply to the disclosure of any information by a Party ("**disclosing party**"):

20.3.1 to the extent that the relevant confidential information is in the public domain otherwise than as a result of a breach of such undertaking of confidentiality;

20.3.2 to its officers, employees, advisers and agents, in each case, to the extent required to enable such Party to carry out its obligations under this agreement and who shall in each case be made aware by such Party of its obligations under this Agreement and shall be required by such Party to observe the same restrictions on the use of the relevant information as are contained in this Clause;

20.3.3 to the extent required by or in accordance with applicable law or regulation or under any Industry Document to be disclosed to any person who is authorised or required by such applicable law or regulation or Industry Document to receive the same;

20.3.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing party is a party in a case where such disclosure is required by such proceedings;

20.3.5 which disclosing party lawfully possessed prior to obtaining it from the other Party; and

20.3.6 pursuant to the terms of this Agreement.

21. MISCELLANEOUS

Joint and several liability

21.1 Where in this Agreement any liability is undertaken by two or more persons the liability of each of them shall be joint and several.

Assignment

21.2 Neither Party may assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of this Agreement and neither Party may sub-contract or delegate in any manner whatsoever its performance under this Agreement, without the prior written consent of the other Party.

21.3 In the event of an assignment consented to pursuant to Clause 21.2, the original contracting Party remains liable to procure the performance of its obligations under the Agreement by the assignee.

Entire agreement

- 21.4 Each of the Parties to this Agreement confirms that this Agreement together with the documents in the agreed terms, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.
- 21.5 Each Party confirms that:
- 21.5.1 in entering into this Agreement it has not relied on any representation or warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement or the documents in the agreed terms; and
- 21.5.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement or with any of the documents in the agreed terms are those pursuant to this Agreement or such document in the agreed terms, and without limitation, no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement).

Unenforceable provisions

- 21.6 If any provision or part of this Agreement is void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

Further assistance

- 21.7 The Vendor shall after Completion execute all such deeds and documents and do all such things as the Purchaser may require for perfecting the transactions intended to be effected under or pursuant to this Agreement and for vesting in the Purchaser the full benefit of the Business including the Assets.

Completion

- 21.8 So far as it remains to be performed this Agreement shall continue in full force and effect after Completion. The rights and remedies of the Parties shall not be affected by Completion.

Third party rights

- 21.9 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

Taxation of payments

- 21.10.1 All payments made by or due from any person (the "**Payer**") under, or pursuant to the terms of, this Agreement to another person (the "**Recipient**") shall be free

and clear of all deductions or withholdings for or on account of Tax (a "**Tax Deduction**") save only for any Tax Deduction required by law.

21.10.2 If any Tax Deduction is required by law, or any payments (other than the Consideration) made by or due from the Payer under this Agreement are liable for Taxation in the hands of the Recipient or would have been liable for Taxation but for the utilisation of any tax relief in respect of such liability, the Payer shall be liable to pay to the Recipient such further sums as shall be required to ensure that the net amount received by the Recipient will equal the full amount which would have been received under the relevant provisions of this Agreement in the absence of any such Tax Deduction or Taxation liabilities.

21.10.3 If a payment which any person is entitled to receive pursuant to this Agreement is increased by the operation of Clause 21.10.2 above, and the Recipient determines (in its discretion, acting reasonably) that it has obtained a Tax credit, repayment or other Tax benefit as a result of the increased payment, the Recipient shall pay to the Payer an amount which it determines (in its discretion, acting reasonably) will leave it (after the making of that payment) in the same after-Tax position as it would have been in had no Tax Deduction been required to be made by the Payer, or the payment had not been liable for Taxation in the hands of the Recipient.

Waiver

21.11 The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

Counterparts

21.12 This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

Variation

21.13 No variation of this Agreement (or any of the documents referred to in it) shall be valid unless it is in writing (which, for this purpose, does not include email) and signed by or on behalf of each of the Parties. The expression "variation" includes any variation, supplement, deletion or replacement however effected.

No set-off, deduction or counterclaim

21.14 Every payment payable by the Vendor or the Purchaser under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the Vendor or the Purchaser (as the case may be) under this Agreement.

22. COSTS

The Parties shall pay their own costs in connection with the preparation and negotiation of

this Agreement and any matter contemplated by it.

23. NOTICES

23.1 A notice (including any approval, consent or other communication) in connection with this Agreement and the documents referred to in it:

23.1.1 must be in writing;

23.1.2 must be left at the address of the addressee or sent by pre-paid recorded delivery (airmail if posted to or from a place outside the United Kingdom) to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Clause in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number in England or Wales and/or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this Clause.

The relevant details of each Party at the date of this Agreement are:

Vendor

Address: [*Ensure address and fax number are in England or Wales*]

Facsimile:

Attention:

Purchaser

Address: [*Ensure address and fax number are in England or Wales*]

Facsimile:

Attention:

23.1.3 must not be sent by electronic mail.

23.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 23.3 below.

23.3 Subject to Clause 23.4 below, a notice is deemed to be received:

23.3.1 in the case of a notice left at the address of the addressee, upon delivery at that address;

23.3.2 in the case of a posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, the seventh day after posting; and

23.3.3 in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

23.4 A notice received or deemed to be received in accordance with Clause 23.3 above on a day which is not a Business Day or after 5 p.m. on any Business Day, according to local time in the place of receipt, shall be deemed to be received on the next following Business Day.

23.5 Each Party undertakes to notify all of the other Parties by notice served in accordance with this Clause if the address specified herein is no longer an appropriate address for the service of notices.

24. GOVERNING LAW AND JURISDICTION

- 24.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 24.2 Each Party irrevocably agrees that the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).
- 24.3 Each Party irrevocably waives any right that it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.
- 24.4 Each Party agrees that without preventing any other mode of service, any document in an action (including, but not limited to, a claim form or any other document to be served under the Civil Procedure Rules) may be served on any Party by being delivered to or left for that Party at its address for service of notices under Clause 23 and each Party undertakes to maintain such an address at all times in the United Kingdom and to notify the other Party in advance of any change from time to time of the details of such address in accordance with the manner prescribed for service of notices under Clause 23.

SCHEDULE 1

CONDITIONS PRECEDENT ³¹

PART A - CONDITIONS PRECEDENT TO EFFECTIVE DATE

1. Delivery to the Vendor of evidence [to the reasonable satisfaction of the Vendor] that the Authority has issued, and not revoked, an Offshore Transmission Licence to the Purchaser in respect of the Sites in accordance with the provisions of the Electricity Act 1989 and the Offshore Tender Regulations notwithstanding that such licence has sections [●] switched off pending Completion;
2. Delivery to the Vendor of evidence [to the reasonable satisfaction of the Vendor] that the Purchaser has entered into the Framework Agreement as required by the Offshore Tender Regulations; and
3. [*Other conditions precedent to be added on a project specific basis*].

PART B – GENERAL CONDITIONS PRECEDENT TO COMPLETION

1. Sections 89 and 180 of the Energy Act 2004 are in full force and effect;
2. Ofgem has notified the Purchaser and the Vendor in writing of the Ex Ante Valuation;
3. NGET as NETSO has signed and delivered Part 2 of an Acceptance Certificate to the Vendor;
4. The Secretary of State has released the Vendor from all liability in relation to the decommissioning of the Offshore Transmission System and has given notice either under section 108(6) of the Energy Act 2004 that the Purchaser is now liable for the decommissioning of the Offshore Transmission System or has approved a decommissioning plan submitted by the Purchaser under section 106 of the Energy Act 2004; and
5. [*Other conditions precedent to be added on a project specific basis*].

PART C – VENDOR CONDITIONS PRECEDENT TO COMPLETION

1. Completion of the Offshore Transmission System has been certified in accordance with Clause 13 (*Certification of Final Completion and Commissioning of Offshore Transmission System*);
2. NGET and the Vendor have notified the Purchaser that all necessary agreements under the CUSC in relation to the Offshore Generator (as defined in the CUSC) are in full force and effect;

³¹ Explanatory note: this Schedule has been prepared as a framework of the matters that will need to be addressed prior to Completion. This Schedule will need to be tailored on a project specific basis, and Ofgem would anticipate that the Parties will also endeavour to satisfy any relevant matters prior to signing of the SPA to the extent possible

3. The Vendor has entered into a Deed of Variation with the Crown Estate Commissioners in the agreed terms;³²
4. The Vendor has obtained any necessary Third Party Consent, novation or other agreement in relation to each Key Contract;³³
5. The Vendor has obtained any necessary Third Party Consent, novation or other agreement in relation to each Key Transferable Site Consent;
6. The Vendor has obtained any necessary Third Party Consent, novation or other agreement in relation to each Key Transferable Permit;
7. The Vendor has obtained any necessary Third Party Consent or other agreement in relation to each Property Contract;
8. The Vendor has transferred, assigned or novated each Key Contract to the Purchaser;³⁴
9. The Vendor has transferred or assigned each Key Transferable Permit to the Purchaser, except where the Purchaser has notified the Vendor in writing prior to the Completion Date that the Key Transferable Permit no longer needs to be transferred or assigned;
10. The Vendor has transferred, assigned or novated each Key Transferable Site Consent to the Purchaser, except where the Purchaser has notified the Vendor in writing prior to the Completion Date that the Key Transferable Site Consent no longer needs to be transferred or assigned;
11. The Vendor has transferred, assigned or novated each Property Contract; and
12. *[Any relevant tax clearances];*
13. *[Any other commercial arrangements to be entered into by one or both of the Parties];*
14. *[Any deeds of release];*
15. *[Others conditions precedent to be added on a project specific basis].*

PART D – PURCHASER CONDITIONS PRECEDENT TO COMPLETION

1. The Purchaser has entered into the Framework Agreement required by the STC and all agreements required by that Framework Agreement and has provided the Vendor with evidence to the reasonable satisfaction of the Vendor that such agreements are in full force and effect;

³² Explanatory note: a deed of variation will need to be entered into where the Round 1 or Round 2 Lease has not been varied so as to exclude the Designated Area (as defined in the Lease). If such a document has not been entered into it will be necessary for the Vendor to commit to using reasonable endeavours to procuring it is entered into.

³³ Explanatory note: the transfer of Key Contracts and Property Contracts are required for Completion. Any documentation required to effect such transfers will be prepared on a project specific basis, however may be signed at Completion or signed in advance conditional upon Completion occurring.

³⁴ Explanatory note: see also explanatory note 5.

2. *The Purchaser has entered into all interface and other agreements required by the STC and has provided the Vendor with evidence to the reasonable satisfaction of the Vendor that such agreements are in full force and effect;*
3. The Purchaser has obtained an appropriate and sufficient replacement or equivalent to each Key Non-Transferable Permit;
4. The Purchaser has obtained an appropriate and sufficient replacement or equivalent to each Key Non-Transferable Site Consent;
5. The Purchaser has provided the Vendor with evidence to the reasonable satisfaction of the Vendor that the only condition to draw down of funds for the purchase of the Business and the Assets is Completion; and
6. *[Other conditions precedent to be added on a project specific basis].*³⁵

³⁵ Explanatory note: additional conditions precedent should be included on a project specific basis, for example, a competition condition may be required in some circumstances.

SCHEDULE 2

ASSETS³⁶

(A)	(B)
Asset	Apportionment of Consideration
Fixed Assets	
Moveable Assets	
Business Records	
Business Intellectual Property Rights	
Contracts ³⁷	
Sites	
Software	
Information Technology Systems	

³⁶ Explanatory note: this Schedule shall include details of the Assets to be sold by the Vendor and purchased by the Purchaser. This will be project specific.

³⁷ Explanatory note: this category is intended to capture all "Contracts" relevant to the Offshore Transmission System, including construction contracts, IP Licences and Information Technology Agreements. See also explanatory note 5.

SCHEDULE 3
FIXED AND MOVEABLE ASSETS³⁸

PART A – FIXED ASSETS

[Insert as appropriate]

PART B – MOVEABLE ASSETS

[Insert as appropriate]

³⁸ Explanatory note: this Schedule shall include details of the Fixed Assets and Moveable Assets to be sold by the Vendor and purchased by the Purchaser. This will be project specific.

SCHEDULE 4

EXCLUDED ASSETS AND CONTRACTS ³⁹

PART A – EXCLUDED ASSETS

[Insert as appropriate]

PART B – EXCLUDED CONTRACTS

[Insert as appropriate]

³⁹ Explanatory note: this Schedule shall include details of any assets or contracts not transferred to the Purchaser. This will be project specific.

SCHEDULE 5
SITES AND PROPERTY CONTRACTS⁴⁰

PART A

PART A(1)

ANCILLARY PROPERTY CONTRACTS

[Insert details of Licences, Easement Deeds and Wayleave Agreements as appropriate]

PART A(2)

LEASES

[Insert details of Leases as appropriate]

PART B – KEY TRANSFERABLE SITE CONSENTS

[Insert as appropriate]

PART C – KEY NON-TRANSFERABLE SITE CONSENTS

[Insert as appropriate]

**PART D – TERMS OF TRANSFER ASSIGNMENT AND NOVATION OF PROPERTY
CONTRACTS**

[Insert as appropriate]

⁴⁰ Explanatory note: the property aspects of the template SPA have been drafted as a framework and these should be amended on a project specific basis to reflect the individual nature of the Sites and the relevant property agreements.

1. ANCILLARY PROPERTY CONTRACTS

- 1.1 The Vendor shall from the Effective Date use its reasonable endeavours to obtain any Third Party Consent necessary for the assignment or novation or re-grant of the Ancillary Property Contracts to the Purchaser as soon as reasonably practicable and in any event prior to the Target Completion Date.
- 1.2 The provisions of paragraph 10.4 of this Schedule 5 shall apply to the obtaining of any such Third Party Consent as if it was a Relevant Consent and the Ancillary Property Contracts were a Lease.
- 1.3 If at that time any required Third Party Consent has been obtained in relation to the assignment or novation of any Ancillary Property Contract then on and with effect from the Completion Date the benefit and burden of any Ancillary Property Contracts shall be assigned or novated by the Vendor to the Purchaser.
- 1.4 The assignment of any Ancillary Property Contract shall be:
- 1.4.1 [in the form set out in Schedule [●] (or otherwise) on terms to be agreed between Parties (acting reasonably and without delay)]; and
- 1.4.2 prepared and executed in duplicate, the duplicate to be retained by the Vendor.
- 1.5 The novation of any Ancillary Property Contract shall be:
- 1.5.1 [in the form set out in Schedule [●] (or otherwise) on terms to be agreed between Parties (acting reasonably and without delay) and by the relevant third party who will be a party to the deed of novation]; and
- 1.5.2 prepared and executed in duplicate, the duplicate to be retained by the Vendor.
- 1.6 *[Other]*⁴¹

2. ASSIGNMENT OR TRANSFER OF THE LEASES⁴²

2.1 Interpretation

The definitions and rules of interpretation in this paragraph apply in this Schedule 5.

Landlord: the person or persons from time to time entitled to the reversion (whether immediate or not) expectant upon the termination of any Lease.

⁴¹ Explanatory note: where particular Ancillary Property Contracts are capable of being appropriately dealt with as Contracts under Clause 6 then it may be appropriate to state in this Schedule that the Clause 6 provisions apply to such Ancillary Property Contracts.

⁴² Explanatory note: the template SPA has been drafted on the basis that rental payments made prior to the Completion Date which relate to the period following Completion will be apportioned on the same basis as any other prepayment made by the Vendor in accordance with Clause 6.

Lease Transfer Date: the day which is 10 Business Days after the date of the Relevant Consent granted in respect of the assignment or transfer of the Lease in accordance with this Schedule 5.

Relevant Consent: the consent of the Landlord authorising an assignment or transfer of the Lease to the Purchaser in accordance with and pursuant to the terms of the Lease, such consent being evidenced in a written, formal licence to assign (where so required by the Landlord), dated signed or executed by or on behalf of all of the parties to it.

Part 1 Conditions: the conditions in Part 1 of the Standard Commercial Property Conditions (Second Edition) and **Condition** means any one of them.

Part 2 Conditions: the conditions in Part 2 of the Standard Commercial Property Conditions (Second Edition).

2.2 Standard Commercial Property Conditions

2.2.1 The Part 1 Conditions are incorporated in this agreement so far as they:

- (A) apply to the assignment or transfer of the Leases only
- (B) apply to a sale by private treaty;
- (C) are applicable to leasehold land;
- (D) are not inconsistent with the other Clauses in this agreement or Clauses in this Schedule 5; and
- (E) have not been modified by the other Clauses in this agreement or Clauses in this Schedule 5.

2.2.2 The Part 2 Conditions are not incorporated into this Schedule 5.

2.2.3 The following Conditions shall not apply:

- (A) Condition 1.1.4(a);
- (B) Condition 2;
- (C) Conditions 3.1, 3.2.1 and 3.3;
- (D) Conditions 6.1, 6.2, 6.3, 6.6.2, 6.6.3 and 6.6.4;
- (E) Conditions 7.1.2 and 7.1.3;
- (F) Condition 10.3; and
- (G) Condition 11.

2.2.4 The Conditions shall be amended as follows:

- (A) the definition of "completion date" in Condition 1.1.1(d) shall be construed as a reference to the Lease Transfer Date.

2.3 Vacant Possession and Title Guarantee

2.3.1 The Vendor shall:

(A) assign or procure the assignment of the Lease to the Purchaser; or

(B) transfer or procure the transfer of the Lease to the Purchaser,

on the Lease Transfer Date with Full Title Guarantee and with vacant possession save for any Assets.

2.4 Matters affecting the Lease

2.4.1 The Purchaser accepts the Vendor's title to the Lease without any further enquiry or requisition.

2.4.2 The Lease is to be assigned free from Encumbrances other than:

(A) any fully and fairly disclosed matters, except for financial charges;

(B) any matters that the Vendor does not, and could not reasonably, know about;

(C) matters discoverable by inspection of the Site;

(D) matters disclosed, or which would have been disclosed by searches and enquiries which a reasonably prudent assignee would ordinarily make before agreeing to acquire an interest such as the Lease or Licence; and

(E) unregistered interests of the kind referred to in Schedule 1 or Schedule 3 of the Land Registration Act 2002 other than those of which the Vendor is aware (in which case the Lease shall be assigned subject to such encumbrances only to the extent fully and fairly disclosed),

and the Purchaser accepts all such matters without any further enquiry or requisition.

2.5 Assignment or transfer

2.5.1 The Vendor shall use reasonable endeavours to:

(A) assign or procure the assignment of the Lease to the Purchaser; or

(B) transfer or procure the transfer of the Lease to the Purchaser.

[No purchase price or deposit is payable for the assignment of the Lease.]

2.5.2 Any assignment of a Lease shall be:

(A) [in the form set out in Schedule [•] (or otherwise) on terms to be agreed between Parties (acting reasonably and without delay)]; and

(B) prepared and executed in duplicate, the duplicate to be retained by the Vendor.

2.5.3 Any transfer of a Lease shall be:

- (A) [in the form set out in Schedule [●] (or otherwise] on terms to be agreed between Parties (acting reasonably and without delay)[)]; and
- (B) prepared and executed in duplicate, the duplicate to be retained by the Vendor.

2.6 **Completion**

Completion of the assignment or transfer of the Lease shall take place on the Lease Transfer Date.

2.7 **Landlord's Consent**

- 2.7.1 Completion of the assignment or transfer of the Lease is conditional on every Relevant Consent required under the Lease.
- 2.7.2 Immediately following the date of this Agreement, the Vendor shall apply for and use all reasonable endeavours to obtain every Relevant Consent necessary for the assignment or transfer of the Lease prior to the Completion Date.
- 2.7.3 The Vendor shall pay all costs associated with obtaining, or seeking to obtain, each Relevant Consent.
- 2.7.4 The Purchaser shall with all due speed:
 - (A) supply all information, accounts and references as the Landlord may be lawfully entitled to require in connection with an application for or consideration of any Relevant Consent;
 - (B) supply, procure or enter into any guarantees, rental or other deposits, direct covenants or other security for the performance of the tenant or licensee's covenants in the Lease as may be lawfully required by the Landlord; and
 - (C) execute the documents containing a Relevant Consent and execute or procure the execution of the documents (if any) required to be entered into pursuant to this Schedule 5 each in the form that the Landlord shall be lawfully entitled to require. The Purchaser shall return all such documents duly executed within [10] Business Days after each engrossment has been submitted to it.

SCHEDULE 6

KEY CONTRACTS AND KEY PERMITS ⁴³

PART A - KEY CONTRACTS (INCLUDING IP LICENCES)

Description of contract	Parties	Date

PART B – KEY TRANSFERABLE PERMITS

Description of Key Transferable Permit

PART C – KEY NON-TRANSFERABLE PERMITS

Description of Key Non-Transferable Permit

⁴³ Explanatory note: the contents of this Schedule will be project specific.

SCHEDULE 7
EMPLOYEES⁴⁴

PART A - PARTICULARS

[Insert as appropriate]

⁴⁴ Explanatory note: the contents of this Schedule will be project specific.

PART B – TERMS OF TRANSFER OF EMPLOYMENT⁴⁵

1. It is acknowledged by the Vendor and the Purchaser that the sale and purchase of the business, including the business assets, constitutes a "**relevant transfer**" for the purposes of the Transfer Regulations. In accordance with, and pursuant to the provisions of, the Transfer Regulations (subject always to the terms of this Part B of this Schedule), the Transferring Employees shall become employees of the Purchaser with effect from the Completion Date.
2. Subject to paragraph 4.1 below, the Vendor shall indemnify the Purchaser against all costs, expenses, damages, compensation, fines and other liabilities arising out of or in connection with:
 - 2.1 any claim by any Transferring Employee arising out of or in connection with his employment with the Vendor (or any Affiliate of the Vendor as the case may be) or the termination of that employment (howsoever arising) prior to the Completion Date, excluding:
 - 2.1.1 any claims in respect of which the Purchaser is able to recover under any insurance policy;
 - 2.1.2 any claim relating to an obligation to make any payment in respect of the Transferring Employee's period of continuous employment prior to the Completion Date as a result of the termination of any Transferring Employee's employment on or after the Completion Date;
 - 2.1.3 any claim relating to any payment or benefit to be provided under or in connection with an occupational pension scheme;
 - 2.1.4 any claim wholly or partly arising from an act or omission of the Purchaser whether arising before or after the Completion Date;
 - 2.1.5 any claim that a tribunal award should be increased pursuant to section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 as a result of an unreasonable failure by the Purchaser to comply with the Acas Code of Practice 1 on Disciplinary and Grievance Procedures.
 - 2.2 any claim by any Non-transferring Employee arising out of or in connection with his employment with the Vendor (or any Affiliate of the Vendor, as the case may be) or the termination of that employment (howsoever arising), excluding any claims arising out of or in connection with any act or omission of the Purchaser or the proposed change of employer to the Purchaser (including any claim pursuant to Regulation 4(9) of the Transfer Regulations or any claim in the circumstances referred to in Regulation 4(11) of the Transfer Regulations);
 - 2.3 any claim by or on behalf of any Transferring Employee or Non-transferring Employee arising out of or in connection with the failure of the Vendor (or the relevant employing entity) to comply with any legal obligation to supply information to and/or consult with

⁴⁵ Explanatory note: this Part B will only be relevant in the event that on a project specific basis it is considered that the Transfer Regulations apply.

that employee or a representative of that employee or to comply with a tribunal order to pay compensation for such failure, excluding any claims in respect of the failure by the Vendor (or the relevant employing entity) to comply with its duties pursuant to Regulation 13 of the Transfer Regulations by virtue of the Purchaser's breach of Regulation 13(4).

For the purposes of this paragraph 2, "claim" shall include any grievance made under a grievance procedure.

3. Subject to sub-paragraph 4.2 below, the Purchaser shall indemnify the Vendor (on its own behalf and on behalf of any other entity employing employees in the Business on the Vendor's behalf) against all costs, expenses, damages, compensation, fines and other liabilities arising out of or in connection with:
 - 3.1 Subject to sub-paragraph 2.1.4 above, any claim by or on behalf of any Transferring Employee arising out of or in connection with his employment with the Purchaser or the termination of that employment (howsoever arising) on or after the Completion Date;
 - 3.2 any claim by or on behalf of any Transferring Employee or Non-transferring Employee arising out of or in connection with the Purchaser's failure to comply with its duties pursuant to Regulation 13 of the Transfer Regulations or the failure by the Vendor (or the relevant employing entity) to comply with its duties pursuant to Regulation 13 of the Transfer Regulations by virtue of the Purchaser's breach of Regulation 13(4), or arising out of or in connection with the Purchaser's failure to comply with a tribunal order to pay compensation for either such failure;
 - 3.3 any claim by any Transferring Employee or Non-transferring Employee in relation to his employment or the termination of that employment where such claim arises out of or in connection with any act or omission of the Purchaser or the proposed change of employer to the Purchaser (including without limitation any claim pursuant to Regulation 4(9) of the Transfer Regulations or any claim in the circumstances referred to in Regulation 4(11) of the Transfer Regulations).

For the purposes of this paragraph 3, "claim" shall include any grievance made under a grievance procedure.

4.
 - 4.1 The indemnities in sub-paragraphs 2.1, 2.2 and 2.3 are given on condition that:
 - 4.1.1 forthwith upon becoming aware of any such claim (or the threat of a claim) the Purchaser shall notify the Vendor and shall determine any grievance (including any appeal) brought in relation to such claim in accordance with the Vendor's instructions; and
 - 4.1.2 the Purchaser shall not admit or seek to compromise the claim or take any other action which could reasonably be expected to prejudice the ability of the Vendor (or the employer of the employee(s) in question) to defend the claim; and
 - 4.1.3 the Purchaser shall allow the Vendor (or the employer of the employee(s) in question) at its expense to defend such claim (if necessary, in the name of the Purchaser) and give all reasonable assistance as it shall request for that purpose including the provision of relevant documentation and witness statements.

- 4.2 The indemnities in sub-paragraphs 3.1, 3.2 and 3.3 are given on condition that the provisions of sub-paragraphs 4.1.1, 4.1.2 and 4.1.3 shall apply mutatis mutandis.
5. Within 10 business days following Completion the Vendor shall, or shall procure that the relevant employing entity shall:
- 5.1 deliver to the Purchaser appropriate PAYE records relating to each of the Transferring Employees duly completed up to the Completion Date and including, if appropriate, copies of P45s which the Vendor (or the relevant employing entity) shall have delivered to the Transferring Employees; and
- 5.2 in respect of each of the Transferring Employees account to the Purchaser with the cash equivalent calculated by reference to each Transferring Employee's terms of employment of any accrued holiday entitlement not taken by any Transferring Employee or not paid by the Vendor (or the relevant employing entity) less any holiday entitlement not yet accrued but taken by any Transferring Employee, and/or accrued bonus or commission (whether contractual or discretionary) or other amount payable after Completion wholly or partly in respect of the period up to the Completion Date.
6. The Vendor shall, or shall procure that the relevant employing entity shall, following Completion at the Purchaser's expense provide to the Purchaser in relation to any Transferring Employee such information or documents which are not delivered to the Purchaser at Completion as the Purchaser may reasonably require relating to the terms and conditions of employment, records of parental, holiday and other leave taken (including sickness-related absence records), records kept to comply with the Working Time Regulations 1998, disciplinary and grievance records, pension and life assurance arrangements, insurance policies, health, welfare or any other matter concerning such Transferring Employee or his employment with the Vendor (or relevant employing entity) prior to the Completion Date.

PART C – PENSIONS ⁴⁶

[Provisions regarding future pensions accrual may be required on a project specific basis]

⁴⁶ Explanatory note: this Part C will only be relevant in the event that on a project specific basis it is considered that the Transfer Regulations apply.

SCHEDULE 8
WARRANTIES⁴⁷

1. ASSETS

1.1 Sole assets

No assets are used or employed in relation to the Business other than the Assets and the Excluded Assets; and none of the Excluded Assets individually or collectively are material to the operation of the Business.

1.2 Title to Assets

Each of the Assets (other than the Sites and the Intellectual Property Rights relevant to an IP Licence) is the absolute property of the Vendor free from any Encumbrance and is not the subject of any leasing, hiring or hire-purchase agreement or agreement for payment on deferred terms or assignment or factoring or other similar agreement, and each such Asset is in the exclusive possession or under the control of the Vendor.

1.3 Condition of assets

[As at the Completion Date:]⁴⁸

1.3.1 *[these items, 1.3.1 to ([]), will use the applicable warranty wording from the design and/or construction contract(s) such that the vendor makes all the same warranties to the Purchaser in relation to the condition of the assets as it itself receives from its contractors. These will include such matters as compliance with specification, compliance with performance requirements and fitness for purpose.];*

1.3.2 [];

1.3.3 [].

1.4 [Maintenance of assets

[As at the Completion Date],⁴⁹ the Offshore Transmission System has been operated and maintained, and the records relating to the Offshore Transmission System have been maintained, in each case in all material respects in accordance with Good Industry Practice.]⁵⁰

⁴⁷ Explanatory note: this schedule sets out warranties which might be applicable in respect of all projects and others which would need to be amended on a project specific basis. This list of warranties is not exhaustive or prescriptive.

⁴⁸ Explanatory note: depending on the project specific circumstances these warranties may only be appropriate as at the Completion Date and not at the time of signing.

⁴⁹ Explanatory note: depending on the project specific circumstances this warranty may only be appropriate as at the Completion Date and not at the time of signing.

⁵⁰ Explanatory note: this warranty is only relevant if the Offshore Transmission System or any part of it has already been operated and maintained by the Vendor prior to Completion.

1.5 **[Past performance of the assets and fitness for purpose**

[As at the Completion Date and]⁵¹ since [Commissioning]:

- 1.5.1 the Offshore Transmission System has not suffered any breakdown or failure which has caused material disruption to the transmission of electricity [(save as has been disclosed in writing to the Purchaser)];
- 1.5.2 so far as the Vendor is aware, no material defect or damage has been discovered in relation to the Offshore Transmission System [(save as has been disclosed in writing to the Purchaser)]; and
- 1.5.3 so far as the Vendor is aware, the Offshore Transmission System has not suffered any material adverse change in its performance [(save as has been disclosed in writing to the Purchaser)]⁵².

2. **GRANTS AND SUBSIDIES**

- 2.1 None of the Assets has been acquired with the assistance of any governmental, local governmental, quasi-governmental or regulatory grant, subsidy or aid or is held on terms that any such grant, subsidy or aid is due to be repaid or reimbursed in any circumstances.
- 2.2 The Vendor has not done or agreed to do anything as a result of which:
 - 2.2.1 any investment grant or other grant or any subsidy received by the Vendor in relation to the Business is or may be liable to be refunded wholly or partly; or
 - 2.2.2 any application made by the Vendor in relation to the Business for such a grant or subsidy shall or may be refused wholly or partly

and neither the signature nor the performance of this Agreement shall have any such result.

3. **LICENCES AND APPLICABLE LEGISLATION**

- 3.1 All Relevant Permits have been unconditionally obtained in writing and are in full force and effect.
- 3.2 The Vendor has complied with the requirements of all Relevant Permits and, so far as the Vendor is aware, no other relevant entity has failed to comply with all Relevant Permits in all material respects.
- 3.3 So far as the Vendor is aware, there are no circumstances which could (a) require any further regulatory consents, licences, authorisations or permits to be obtained; (b) lead to the revocation, cancellation, suspension, modification, variation or alteration of any Relevant Permits; or (c) necessitate any works or expenditure (other than routine maintenance) in order to continue to comply with such Relevant Permits.

⁵¹ Explanatory note: depending on the project specific circumstances these warranties may only be appropriate as at the Completion Date and not at the time of the signing.

⁵² Explanatory note: this warranty is only relevant if the Offshore Transmission System or any part of it is transferring to the Purchaser having already been operated and maintained by the Vendor for a period prior to Completion.

4. COMMERCIAL ARRANGEMENTS AND CONDUCT

4.1 Disclosure

Up-to-date copies of each of the Key Contracts, Key Permits and Key Site Consents have been disclosed or made available to the Purchaser (including any amendments, supplements and/or variations thereto).

4.2 Key Contracts

4.2.1 Complete and accurate details of all Contracts which are necessary to carry on the Business in accordance with Good Industry Practice and are material to the Business are set out in Part A of Schedule 6 (*Key Contracts and Key Permits*) or notified to the Purchaser pursuant to Clauses 10.19 to 10.21 (*Key Contracts Update*).

4.2.2 The terms of each Key Contract [(including but not limited to design, construction, testing, commissioning and operation and maintenance)]⁵³ have been complied with by the Vendor in all material respects and, so far as the Vendor is aware, the other parties to the Key Contracts (in each case) in all material respects.

4.3 Effect of Agreement on other agreements

4.3.1 The benefit of each of the Key Contracts is capable of being assigned by the Vendor to the Purchaser without the prior consent of any other party to any such Contract or of any third party.

4.3.2 There is no agreement or arrangement between the Vendor in relation to the Business and any other person which will or may be terminated as a result of this Agreement (or Completion) or which will be affected materially by it or which includes any provision in respect of a change in the control or management of the Business or any of the Assets.

4.4 Material information

All information relating to the Business and the Assets that is in the possession of or under the control of the Vendor (including the current and proposed operations, programmes, budgets, designs, drawings, studies and test results in respect of the Business or the Assets) has been disclosed to the Purchaser in writing, and, so far as the Vendor is aware, the Vendor has received and remains in possession of all information and data to which the Vendor is entitled; and no information known to the Vendor has not been supplied or made available to the Purchaser that would render misleading to a material extent any information or documents that have been so supplied or made available.

⁵³ Explanatory note: the contents of these brackets will depend on the stage the particular project has reached at the time of the Effective Date and of Completion.

5. **LITIGATION, DEFAULTS AND INSURANCE**

5.1 **Legal proceedings**

Apart from normal debt collection, the Vendor is not engaged, or proposing to engage, in any litigation, arbitration, prosecution or other legal proceedings in relation to the Business, and, so far as the Vendor is aware, there are no claims or actions (whether criminal or civil) in progress, outstanding, pending or threatened by or against the Vendor in relation to the Business.

5.2 **Unlawful acts by Vendor**

So far as the Vendor is aware, neither the Vendor nor any of its officers or employees has by any act or default, in relation to the Business committed:

5.2.1 any criminal or unlawful act, other than minor road traffic offences; or

5.2.2 any breach of contract or statutory duty or any tortious act which could entitle any third party to terminate any of the Contracts or could lead to a claim against the Vendor for damages, compensation or an injunction.

5.3 **Official Investigations**

No governmental or official investigation or inquiry concerning the Vendor or the Business is in progress or threatened.

6. **BUSINESS RECORDS**

6.1.1 All records and information belonging to the Vendor in relation to the Business, including all Business Records, (whether or not held in written form) are in its exclusive possession, under its direct control and subject to unrestricted access by it.

6.1.2 All the Business Records are true and complete in all material respects and, where applicable, are written up to date.

7. **ETHICAL ISSUES**

7.1 Neither the Vendor nor any of its officers or employees who are employed in or provide services to the Business have either in private business dealings or in dealings with the public / government sector directly or indirectly given, offered or received or agreed (either themselves or in agreement with others) to offer, give or receive any bribe or committed or attempted to commit (either themselves or in agreement with others) any other corrupt act whether in the United Kingdom or elsewhere in the world.

7.2 Neither the Vendor nor any of its officers or employees who are employed in or provide services to the Business have, in relation to the Business or the affairs of the customers or suppliers or contacts of the Business, whether acting as principal or agent, received, agreed or attempted to receive the proceeds of or profits from a crime or agreed to assist any person to retain the benefits of a crime.

8. ENVIRONMENTAL MATTERS

- 8.1 The Vendor is conducting and has conducted the Business in compliance with Environmental Law.
- 8.2 The Vendor in relation to the Business has obtained all Environmental Permits (all of which are valid and subsisting) and the Vendor complies and has complied with all Environmental Permits in all material respects.
- 8.3 The Vendor in relation to the Business has not received any written notice of any regulatory or administrative action, claim, investigation or other proceeding or suit alleging any breach or liability under any Environmental Permit and/or Environmental Law.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Interests

9.1.1 Complete and accurate details are set out in Schedule 14 of:

- (A) All Business Intellectual Property Rights that are Registered Intellectual Property Rights;
- (B) all other Business Intellectual Property Rights that are unregistered Intellectual Property Rights and are material to the Business; and
- (C) all written licences granted by the Vendor under which third parties make use of Business Intellectual Property Rights.

9.1.2 The Vendor is the sole legal and beneficial owner of all Business Intellectual Property Rights, and the sole registered proprietor of all Business Intellectual Property Rights that are Registered Intellectual Property Rights;

9.1.3 All application and renewal fees have been paid for the prosecution and maintenance of all Business Intellectual Property Rights that are Registered Intellectual Property Rights;

9.1.4 So far as the Vendor is aware, there are and have been no claims, challenges, disputes or proceedings, pending or threatened, in relation to the ownership or validity of any Business Intellectual Property Rights that are Registered Intellectual Property Rights;

9.1.5 So far as the Vendor is aware, all Intellectual Property Rights required to conduct the Business at the date of Completion are owned by or licensed to the Vendor.

9.2 Infringement and Breach

9.2.1 So far as the Vendor is aware, no person has infringed, is infringed or is threatening to infringe and nothing has been done or is being done and no circumstances exist which give or are likely to give rise to infringement of, any Business Intellectual Property Right.

9.2.2 So far as the Vendor is aware, the Vendor does not infringe the Intellectual Property Rights for any third party as a result of its use of the Business Intellectual Property Rights.

9.3 **Infringement and Breach**

So far as the Vendor is aware, no person has infringed, is infringing or is threatening to infringe and nothing has been done or is being done and no circumstances exist which give or are likely to give rise to infringement of, any Business Intellectual Property Right.

9.4 **Confidentiality**

No confidential information relating to the Business has been disclosed or permitted to be disclosed to any person (except in the ordinary and normal course of business and under an obligation of confidence) and the Vendor has not undertaken or arranged to disclose to any person any confidential information relating to the Business.

10. **INFORMATION TECHNOLOGY**⁵⁴

10.1 The Vendor holds all the rights necessary to use the Information Technology Systems in the manner in which they are used by the Business.

10.2 Complete and accurate details of all Information Technology Systems are set out in Part A of Schedule 15 (*Information Technology*) [or have been Disclosed].

10.3 All Information Technology Systems are in the exclusive possession and control of the Vendor.

10.4 The Information Technology Systems:

10.4.1 are in satisfactory working order;

10.4.2 have appropriate security, and hardware and software support and maintenance, to minimise the risk of any error, breakdown, failure or security breach occurring;

10.4.3 are maintained to minimise the effects of bugs, viruses, logic bombs, trojan horses and other destructive programs or scripts; and

10.4.4 so far as the Vendor is aware, have not suffered any error, breakdown, failure or security breach in the last twelve months which has caused material disruption or damage to the Business;

⁵⁴ Explanatory note: the template SPA has been drafted on the bases that:

- (i) no databases are used by the Vendor in connection with the Business. The SPA should be amended on a project specific basis to include applicable warranties if any databases are used in connection with the Business and are to be transferred to the Purchaser; and
- (ii) no "personal data" (as defined in the Data Protection Act 1998) is processed in connection with the Business and so will not transfer to the Purchaser (although note that personal data in respect of Transferring Employees will be transferred to the Purchaser if TUPE applies). The SPA should be amended on a project specific basis if any personal data is processed in connection with the Business to include applicable warranties relating to the Vendor's compliance with its data processing obligations as a "data controller" (as defined in the Data Protection Act 1998).

10.5 Complete and accurate details of all Information Technology Agreements are set out in Part B of Schedule 15 (*Information Technology*) [or have been Disclosed] and no person is in material breach of any Information Technology Agreement;

10.6 A copy of the disaster recovery plan in relation to the Business has been Disclosed and the Vendor has complied with that plan;

11. **INSURANCE**

11.1 A summary detailing all policies of insurance of the Business for the current insurance year has been Disclosed.

11.2 In respect of the policies of insurance of the Business referred to in paragraph 11.1:

11.2.1 all premiums have been paid to date; and

11.2.2 all policies of insurance are in full force and effect.

11.3 There is no individual claim outstanding under any such policies of insurance where the amount outstanding exceeds £[•] and (so far as the Vendor is aware), no such claim is pending or threatened and (so far as the Vendor is aware) no circumstances exist which may lead to any such claim.

12. **PROPERTY AND PROPERTY CONTRACTS**

12.1 **Particulars of Property Contracts**

12.1.1 The particulars of the Property Contracts as set out in Parts A(1) and A(2) of Schedule 5 (*Sites and Property Contracts*) are true, complete and accurate.

12.1.2 The interest of the Vendor under the Property Contracts comprises the entirety of the Site⁵⁵.

12.2 **Replies to Enquiries**

All written replies given by or on behalf of the Vendor, in response to any written enquiries raised by or on behalf of the Purchaser in relation to the Site were complete and accurate at the date they were given, and would still be complete and accurate if the replies were instead being given on the Completion Date.⁵⁶

12.3 **Title to Sites**

12.3.1 The Vendor is solely legally and beneficially entitled to, and has good and marketable title to its interest under the Property Contracts, in each case free from Encumbrances.

12.3.2 The Vendor has in its possession and control and has disclosed to the Purchaser:

⁵⁵ Explanatory note: to the extent that the Property Contracts are not all the real property used or occupied or necessary to be used or occupied by the Vendor in connection with the Business this will need to be disclosed. Additional conditions precedent would then be required.

⁵⁶ Explanatory note: it is anticipated that the Purchaser will have raised questions in relation to specific issues with the documentation disclosed to it and this warranty will therefore be required.

- (A) copies of all the title deeds and documents necessary to prove good and marketable title to its interest under the Property Contracts (including all necessary consents for the grant and any assignment of each Property Contract prior to the Effective Date);
- (B) satisfactory evidence of (as appropriate) each landlord, reversioner, grantor or licensor's title to the Property Contracts and all consents required under each Property Contract for its vesting in the Vendor; and
- (C) copies of all collateral assurances undertakings or concessions affecting any of the Property Contracts.

12.3.3 There are, appurtenant to the Site, the rights and easements necessary for its present or intended use and enjoyment in connection with the Business (without restriction as to time or otherwise).

12.3.4 The Vendor is in possession and actual occupation of the whole of the Site on an exclusive basis, and no right of occupation or enjoyment has been acquired or is in the course of being acquired by any third party.

12.4 **Compliance with covenants affecting the Property Contracts**

12.4.1 No covenants, conditions, restrictions, limitations and other matters affecting the Site are either of an unusual or onerous nature or prejudicially affect the present or intended use or occupation of the Site.

12.4.2 The landlord, licensor, grantor, covenantor, covenantee, tenant, licensee, or grantee (as the case may be) under any Property Contract has observed and performed in all material respects all covenants, restrictions, stipulations and other encumbrances relating to that Property Contract and there are no present or anticipated disputes relating to any such matters.

12.4.3 All material outgoings and payments of principal rents and other charges and expenses due under the any Property Contract have been paid when due and none are disputed.

12.4.4 There are no current or anticipated circumstances which (with or without taking other action) would entitle any party to exercise a right of entry to, or take possession of all or any part of the Site, or to determine any of the Property Contracts.

12.5 **Statutory obligations and requirements as to lawful use of the Sites**

12.5.1 So far as the Vendor is aware, the use to which the Site is presently put is a lawful use.

12.5.2 So far as the Vendor is aware, the Vendor has complied in all material respects with all applicable statutory and bye-law requirements, and all regulations, rules and delegated legislation with which it is obliged to comply under the terms of the Property Contracts.

12.5.3 No notices or complaints have been issued or made by any competent authority or undertaking exercising statutory powers in relation to the Site and the Vendor is

not aware of any matter which might reasonably be expected to lead to any such notice, complaint or requirement.

12.6 **Claims and disputes**

12.6.1 So far as the Vendor is aware, no action, claim, proceeding, demand, dispute or liability (contingent or otherwise) in respect of any of the Property Contracts is outstanding or anticipated.

12.6.2 So far as the Vendor is aware, no dispute with any adjoining or neighbouring owner with respect to real property adjoining or neighbouring the Site or with respect to any easement, right or means of access to any of the Site is existing.

12.6.3 The Vendor has had no occasion to make any claim or complaint in relation to any property neighbouring the Site or the use or occupation of that property.

12.7 **Condition of the Sites**⁵⁷

12.7.1 The Site is in good and substantial repair and fit for the purposes for which it is presently used or is intended to be used. There is no material defect in the construction or condition of the Site and no mining operations have been or are contemplated under it.

12.7.2 There has been and is no significant structural or other defect relating to the Site.

12.7.3 The Vendor does not expect to have to make, or agree to make, commitments or expenditures exceeding £[●] in respect of any of the Site in the near future.

12.7.4 No deleterious building material or method of construction not in accordance with currently accepted good building practice has been used in the construction, alteration or repair of the Site.

13. **EMPLOYEES**

13.1 **General**

[No entity currently employs or ever has employed any employee, or currently has in place or has ever had in place contracts for service or consultancy services with any individual or for the benefit of any individual, in each case wholly or mainly assigned to work in relation to the Business.]⁵⁸

OR

[In this paragraph 13.1 references to "employee" shall include any individual within the definition of "employee" or "worker" in section 230 Employment Rights Act 1996 and references to a "contract of employment" shall include any contract within section 230(2)

57 Explanatory note: depending on the project specific circumstances the warranties in paragraph 12.7 may only be appropriate at the Completion Date and not at the date of the SPA is signed.

58 Explanatory note: this paragraph is intended to apply if there are no employees employed in the Business. The alternative paragraph 13.1 (and paragraphs 13.3 to 13.5) are intended to apply if there are employees employed in relation to the Business. These warranties will need to be tailored on a project specific basis.

or 230(3)(b) Employment Rights Act 1996; "employ" and "employment" shall have a corresponding meaning.

13.2 **Disclosure of Material Facts**

13.2.1 There are no employees employed by the Vendor (or an Affiliate of the Vendor, as the case may be) wholly or mainly in relation to the Business or other individuals who directly or indirectly provide services to the Business, whether as consultant, contractor, agent or representative or otherwise, other than the Designated Employees.

13.2.2 All material facts and matters relating to the employment of all the Designated Employees have been disclosed in writing to the Purchaser, anonymised save in relation to directors (whose consent to disclosure shall have been obtained), including but not limited to full particulars of:

(A) for each person, his/her respective salary, date of birth, date of commencement of continuous service and notice period;

(B) their respective terms and conditions of employment and any other agreement, arrangement, policy or practice relating to their employment, including for the making of any payments, provision of benefits or insurance policies on or after the termination of employment (howsoever arising).

13.2.3 Copies of all contracts of employment with each and every Designated Employee as at the Effective Date and copies of all service agreements with any Designated Employees who are directors of their employing entity, together with all amendments, variations or supplements thereto, have been provided to the Purchaser together with a schedule of all current rates of remuneration and entitlement to benefits of all such Designated Employees.

13.2.4 Details of any recognised trade union, staff association, European Works Council or other Works Council, employee representatives or other body representing or seeking to represent any Designated Employee have been disclosed.

13.3 **Compliance with requirements**

The Vendor (or relevant Affiliate of the Vendor, as the case may be) has, in relation to each of the Designated Employees and each of its or their former employees employed wholly or mainly in relation to the Business whose employment has ceased within the last 6 months complied with its obligations under legislation, regulations and codes of practice (whether applicable in England or in any other jurisdiction) relevant to its relations with:

13.3.1 any Designated Employee and any such former employee;

13.3.2 any recognised trade union, staff association, European Works Council or other Works Council, employee representatives or other body representing or seeking to represent any Designated Employee or any such former employee;

and with all orders and awards made under such legislation and with all collective and other agreements from time to time in force relating to such relations or the terms and conditions of employment of any Designated Employee or any such former employee.

13.4 **Disputes**

13.4.1 No dispute has arisen and no industrial action has taken place within the last 2 years between the Vendor (or relevant Affiliate of the Vendor, as the case may be) and any of the Designated Employees and no such dispute or industrial action is currently existing or threatened or anticipated and the Vendor (or relevant Affiliate of the Vendor, as the case may be) is not aware of any circumstance which might give rise to such a dispute or industrial action.

13.4.2 There are no complaints or claims existing or threatened or anticipated against the Vendor (or relevant Affiliate of the Vendor, as the case may be) of whatsoever nature in relation to any of the Designated Employees, and the Vendor (or relevant employing entity, as the case may be) is not aware of any circumstances which might give rise to such a complaint or claim.]

14. **PENSIONS**⁵⁹

14.1 With the exception of the Disclosed Scheme, there is no arrangement (including any ex gratia arrangement) to which the Vendor contributes, is bound to contribute or could be required to contribute or make any payment to, under which benefits of any kind are payable to or in respect of any employee or any dependant of any employee on retirement, death or disability, nor has any proposal been announced or any promise made to establish any such agreement or arrangement.

14.2 True and complete copies of the trust deeds and rules and other documents containing the provisions currently governing the Disclosed Scheme and full particulars of the benefits and entitlements under the Disclosed Scheme (including any discretionary practices) and the contributions payable to the Disclosed Scheme, and true and complete copies of all material announcements and other communications that have been issued to current and former members of the Disclosed Scheme, have been provided to the Purchaser and there is no obligation to provide benefits to any employee or officer or former employee or officer of the Business under the Disclosed Scheme other than as revealed in such documents and particulars nor is there anything contained in any announcement or other communication to any members of the Disclosed Scheme which is inconsistent with the information given in such documents and particulars.

14.3 True and complete copies of the latest actuarial valuation report and actuarial certificate and of the latest trustees' report and accounts relating to the Disclosed Scheme have been provided to the Purchaser and there has been no material change in the circumstances of the Disclosed Scheme since the effective dates of such report and certificate and such report and accounts.

14.4 All amounts due to be paid to the Disclosed Scheme have been paid when due.

14.5 The Disclosed Scheme is registered (within the meaning of the Finance Act 2004).

⁵⁹ Explanatory note: This paragraph will only be relevant if any employee transfers with the Business. This paragraph should be tailored on a project specific basis.

- 14.6 The Disclosed Scheme has at all times been administered in accordance with its trusts powers and provisions and the requirements of legislation (including without limitation Article 141 EC Treaty (ex Article 119) ("**Article 141**")) and of HM Revenue and Customs and with due regard to the general requirements of trust law. The Vendor has complied with all its legal obligations in relation to the Disclosed Scheme (including Article 141).
- 14.7 A list of all Employees who are members of the Disclosed Scheme, or who would in time have become eligible for membership, has been disclosed to the Purchaser.
- 14.8 In relation to the Disclosed Scheme there are no claims or actions (including without limitation any complaints made under any internal disputes procedure maintained in respect of the Disclosed Scheme and no complaints, references or applications made to the Pensions Ombudsman or the Pensions Regulator) in progress, pending, threatened or anticipated (other than routine claims for benefits and there are no circumstances which could give rise to any such claims, actions or disputes).
- 14.9 No employee came to his employment with the Vendor as a result of a transfer under the Transfer Regulations.

15. **TAXATION MATTERS**

15.1 **General and compliance matters**

HM Revenue and Customs has not agreed to operate any special arrangement (being an arrangement which is not based on a strict and detailed application of the relevant legislation whether expressly provided for in the relevant legislation or operated by way of extra statutory concession or otherwise) in relation to the Business.

15.2 **[Employment related matters⁶⁰**

- 15.2.1 All National Insurance contributions and sums payable to HM Revenue and Customs under the P.A.Y.E. system (including, for the avoidance of doubt, any sums payable in respect of benefits provided to the Designated Employees) payable in respect of emoluments and benefits paid or provided up to the date of this Agreement have been paid and the Vendor has made all such deductions and retentions as should have been made under section 203 of the Taxes Act and Part 11 ITEPA and all regulations made thereunder.
- 15.2.2 The Vendor has not in relation to the Business adopted or operates or is part of any scheme approved, or for which approval has been or is to be sought, under section 202 of the Taxes Act or Part 12 ITEPA (Charities: Payroll Deduction Scheme) or Chapter III of Part V of the Taxes Act (Profit Related Pay).
- 15.2.3 As at the date of this Agreement, no Designated Employee is entitled to receive (whether or not by way of exercise of an option granted to him) at any time after the execution of this Agreement any amount to which section 696 ITEPA and any regulations made thereunder may apply (income provided in other ways) (PAYE and notional payments).]

⁶⁰ Explanatory note: This paragraph 15.2 is only relevant in the event that there are employees transferring with the Business.

15.3 VAT

- 15.3.1 The Vendor is a registered and taxable person in relation to the Business for the purposes of the VATA and will be registered as such on the Completion Date. The Vendor has complied with and observed in all respects the terms of such legislation and the Finance Act 1985 and all regulations made or notices issued thereunder and has maintained and obtained full, complete, correct and up to date records, invoices and other documents (as the case may be) appropriate or requisite for the purposes thereof.
- 15.3.2 The Vendor:
- (A) is not in arrears with any payment or returns or notifications under the VATA, the Finance Act 1985 or any regulations made or notices issued thereunder or liable to any abnormal or non routine payment or any forfeiture or penalty or interest or surcharge provisions contained therein;
 - (B) has not received a notice under paragraph 2 of Schedule 6 to the VATA (valuation – special cases);
- 15.3.3 [No claims have been or could be made by the Vendor in relation to the Business under section 36 of the VATA or any regulations made thereunder (refund of tax in cases of bad debts).]
- 15.3.4 The Vendor is not contractually committed (contingently or otherwise) to receive any supply in respect of which an election to waive the exemption to VAT in accordance with the provisions of Part 1 of Schedule 10 to the VATA has been made.
- 15.3.5 The Vendor has disclosed in writing to the Purchaser details (including the total input tax on the capital item and the percentage of input tax claimed on the item in the first interval, both as defined in Part XV of the Value Added Tax Regulations 1995 SI 1995/2518 ("**the VAT Regulations**")) of all land and other capital items which are used in the course or furtherance of the Business to which Part XV of the VAT Regulations could apply. No such adjustment as is referred to in regulations 112 to 116 of the VAT Regulations [has been made or should have been made and no such adjustment] is likely to have to be made in respect of the current interval in relation to any such capital items.
- 15.3.6 The Vendor has in relation to the Business not made exempt supplies such or of such amount that it is unable or would be unable if not a member of the VAT group to obtain full credit for input tax paid or suffered by it.
- 15.3.7 The Vendor (or any of the Vendor's predecessors within the meaning of paragraph 5 (5A) Sch 4 VATA 1994) was or is entitled to credit for the whole or any part of the VAT on the supply, acquisition or importation of all of the Assets (VAT: deemed supplies).

OR

The Vendor has disclosed in writing to the Purchaser details of all the Assets in respect of the supply, acquisition or importation of which neither the Vendor

(nor any of the Vendor's predecessors, within the meaning of paragraph 5 (5A) Schedule 4 VATA 1994) is or was entitled to credit for input tax.

15.4 **Industrial Buildings and Capital Allowances**

15.4.1 The Vendor has in writing identified each part of the Site on which expenditure has been incurred in respect of which industrial building allowances may be or have been claimed and in respect of each such part of the Site contains details of:

- (A) the amount of capital expenditure concerned;
- (B) the aggregate of initial and writing down allowances claimed;
- (C) the residue of expenditure (as defined in Section 313 of the CAA) available immediately before the date of this Agreement;
- (D) the period of years over which writing down allowances may be available to the Purchaser;
- (E) whether the building or structure has been used as at the date of this Agreement and, if so, the date of which it was first used;
- (F) whether initial allowances may be available to the Purchaser under Part 3 of the CAA.

15.4.2 The Vendor has disclosed in writing to the Purchaser details in respect of:

- (A) such parts of the Site as are leasehold, of all fixtures, within the meaning of Section 173(1) of the CAA, which are treated by virtue of Chapter 14, Part 2 of that Act as belonging to the Vendor;
- (B) such parts of the Site as are freehold, of all fixtures, as aforesaid, that are treated, as aforesaid, as belonging to a person other than the Vendor.

15.4.3 The Vendor warrants that its qualifying expenditure on the items mentioned in paragraphs 15.4.1 and 15.4.2 above is at least £[*to be specified in each case*].

15.5 **Inheritance tax**

15.5.1 None of the Assets is subject to an outstanding HM Revenue and Customs charge (as defined in Section 237 of the Inheritance Tax Act 1984).

15.5.2 No circumstances exist such that a power of sale could be exercised in relation to any of the Assets pursuant to section 212 of the Inheritance Tax Act 1984 (contingent liability of transferee for unpaid capital transfer tax or inheritance tax).

15.6 **Stamp duty**

All documents in the possession or under the control of the Vendor or to the production of which the Vendor is entitled which are necessary to establish the title of the Vendor to any of the Assets and which, in the United Kingdom or elsewhere, attract either stamp duty or require to be stamped with a particular stamp denoting that no duty is chargeable or that the document has been produced to the appropriate authority, have been properly stamped; and

no such documents which are outside the United Kingdom would attract stamp duty if they were brought into the United Kingdom.

15.7 Intangibles

The Disclosure Letter sets out full particulars of all the intangible fixed assets of the Business to which Schedule 29 of the Finance Act 2002 applies.

15.8 Stamp duty land tax

There are no circumstances in which the Purchaser will or may become liable to pay an amount of stamp duty land tax or submit a land transaction return after Completion in respect of the Sites.

SCHEDULE 9
LIMITATIONS ON LIABILITY⁶¹

1. DISCLOSURE

- 1.1 The Vendor shall not be liable in respect of a Claim to the extent that the facts and circumstances giving rise to the Claim are fairly disclosed in the Disclosure Letter.
- 1.2 The Vendor's liability in respect of a Claim for breach of the Warranties as deemed to be repeated at Completion by reference to the facts and circumstances then subsisting shall be limited by the provisions of this Schedule. Without prejudice to this Schedule, such liability of the Vendor shall not be limited as a result of the disclosure of additional facts and circumstances after the date of this Agreement or matters of which the Purchaser became aware (or ought reasonably to have become aware) after the date of this Agreement.

2. NOTIFICATION OF CLAIMS AND TIME LIMITS

- 2.1 The Vendor shall not be liable for any Common Claim unless the Purchaser gives to the Vendor written notice containing reasonable details of the Common Claim as far as is known to the Purchaser, on or before the date being [•] years from Completion.
- 2.2 The Vendor shall not be liable for any Tax Claim unless the Purchaser gives written notice containing reasonable details of the Tax Claim as far as it is known to the Purchaser to the Vendor on or before the date being [•] years from Completion.
- 2.3 A Claim shall not be enforceable against the Vendor and shall be deemed to have been withdrawn unless legal proceedings in respect of such Claim are commenced (by being issued but not necessarily served) within [•] months of service of notice of the Claim on the Vendor.

3. MONETARY LIMITS

- 3.1 The liability of the Vendor in respect of the aggregate of all Claims shall not exceed £[*total amount or value or proportion of consideration under Agreement*].
- 3.2 The Vendor shall have no liability in respect of any Claim unless the amount of the liability of the Vendor in respect of all Claims exceeds £[*de minimis*] in which case the Vendor shall be liable [only for the excess over £[*de minimis*]/for the full amount of the Claims not just the excess].
- 3.3 The Vendor shall have no liability in respect of any Claim unless the Claim (or the aggregate of a series of connected Claims or Claims arising out of similar facts or circumstances) exceeds £[*individual de minimis*] in which case the Vendor shall be liable [only for the excess over £[*de minimis*]/for the full amount of the Claims not just the excess].

⁶¹ Explanatory note: this Schedule 9 has been drafted as a framework. The specific limitations on liability will be determined on a project specific basis.

- 3.4 Regardless of whether the Vendor's liability for a Claim is excluded pursuant to paragraph 3.3 of this Schedule, the full amount of the Claim shall be treated as a Claim for the purposes of calculating whether the threshold in paragraph 3.2 has been reached.

4. **PURCHASER'S ACTIONS**

- 4.1 The Vendor shall not be liable in respect of a Claim to the extent that the Claim would not have arisen but for an act or omission of the Purchaser after Completion or to the extent that the Claim would not have arisen but for a breach of this Agreement by the Purchaser.
- 4.2 The Vendor shall not be liable in respect of a Claim to the extent that the Claim would not have arisen but for an act, omission or transaction occurring before Completion at the written direction of or with the prior written consent of the Purchaser.

5. **CHANGES IN LAW, REGULATION AND PRACTICE**

- 5.1 The Vendor shall not be liable in respect of a Claim to the extent that the Claim arises or is increased as a result of:
- 5.1.1 a change in law, administrative practice or published interpretation of the law after the date of this Agreement;
 - 5.1.2 any change in generally accepted accounting practice after the date of this Agreement;
 - 5.1.3 any change in the accounting policies or practice of the Purchaser, its subsidiaries, its parent companies or the subsidiaries of its parent companies after Completion; or
 - 5.1.4 the passing of any legislation, or making of any subordinate legislation after the date of this Agreement.

6. **INSURANCE**

The Vendor shall not be liable in respect of a Claim to the extent that the Claim relates to any loss which is recoverable by the Purchaser (or any assignee or successor in title thereof) from its insurers or which would have been so recoverable if at all times following Completion there had been maintained valid and adequate insurance cover of a type, and affording the same degree of cover as that in force in relation to the Business or the Assets at the date of this Agreement.

7. **SUMS RECOVERABLE FROM THIRD PARTIES**

- 7.1 Where the Purchaser is entitled to recover from any person any sum in respect of any matter or event which gives rise to a Claim, the Purchaser shall use its reasonable endeavours to recover that sum and shall keep the Vendor informed of the conduct of such recovery. The Purchaser shall not be restricted from pursuing that or any other Claim in relation to the same subject matter against the Vendor.
- 7.2 Any sum recovered by the Purchaser before settlement or final determination of the Claim (less any costs and expenses incurred by the Purchaser in recovering the sum and any Taxation attributable to or suffered in respect of the sum recovered) will reduce the amount of the Claim by an equivalent amount.

- 7.3 If recovery is delayed until after the Claim has been satisfied by the Vendor, the Purchaser shall (subject to the remaining provisions of this Clause) repay to the Vendor the amount so recovered (less any costs and expenses incurred by the Purchaser in recovering the sum and any Taxation attributable to or suffered in respect of the sum recovered).
- 7.4 If the amount so recovered exceeds the amount of the Claim satisfied by the Vendor the Purchaser shall be entitled to retain the excess.

8. **SUMS RECOVERABLE UNDER STATUTE**

- 8.1 Where the Purchaser is entitled to present a complaint to an employment tribunal under Regulation 12 of the Transfer Regulations in respect of any matter or event which gives rise to a Claim, any compensation awarded to the Purchaser before settlement or final determination of the Claim pursuant to Regulation 12 (less any costs and expenses incurred by the Purchaser in presenting the tribunal complaint) will reduce the amount of the Claim by an equivalent amount.
- 8.2 If compensation is not awarded until after the Claim has been satisfied by the Vendor, the Purchaser shall (subject to the remaining provisions of this Clause) repay to the Vendor the amount so recovered (less any costs and expenses incurred by the Purchaser in presenting the tribunal complaint).
- 8.3 If the amount so recovered exceeds the amount of the Claim satisfied by the Vendor the Purchaser shall be entitled to retain the excess.

9. **ACTIONS BY THIRD PARTIES**

- 9.1 If the Purchaser becomes aware of any claim action or demand made against it by a third party (a "**Third Party Claim**") which may give rise to a Claim:
- 9.1.1 the Purchaser shall, as soon as practicable, notify the Vendor giving reasonable details, so far as are known to the Purchaser, of the relevant facts and circumstances relating to the Third Party Claim; and
- 9.1.2 the Purchaser shall keep the Vendor reasonably informed of all material developments in relation to the Third Party Claim within its knowledge.

10. **INFORMATION PROVIDED BY THE VENDOR**

The Vendor expressly disclaims all liability and responsibility for any conclusion, opinion, forecast or evaluation contained within or derived or capable of being derived from:

- 10.1.1 any investigation carried out or made by or on behalf of the Purchaser in the course of any due diligence or other enquiry prior to the Parties entering into this Agreement; or
- 10.1.2 any other data, document, record or information disclosed by the Vendor to the Purchaser.

11. **MITIGATION**

Nothing in this Schedule restricts or limits any general obligation at law of the Purchaser to mitigate any loss or damage which it may suffer or incur as a consequence of any breach of any Warranty.

12. **INDIRECT AND CONSEQUENTIAL LOSS**

The Vendor shall not be liable to the Purchaser for any indirect or consequential loss or punitive damages.

SCHEDULE 10

COMPLETION OBLIGATIONS

PART A - VENDOR'S OBLIGATIONS

1. A copy of the minutes of a meeting of the directors of the Vendor authorising the Vendor to enter into and perform its obligations under this Agreement, certified to be a true and complete copy by a director or the secretary of the Vendor;
2. A copy of the certificate provided to the Vendor or such other evidence to the Purchaser's reasonable satisfaction that completion of the Offshore Transmission System has been certified in accordance with Schedule 12 (*Certification Of Final Completion And Commissioning Of Offshore Transmission System*);
3. A copy of the notice issued by NGET, or such other evidence to the Purchaser's reasonable satisfaction, confirming that all necessary agreements under the CUSC in relation to the Offshore Transmission System are in full force and effect;
4. *[Such documents as the Purchaser may reasonably require to complete the sale and purchase of the Assets including, without limitation, the forms of conveyance, transfer and/or assignment specified in the following provisions of this Schedule;]*⁶²
5. All deeds and documents of title (if any) relating to any of the Assets and any waivers, consents or other documents required to vest in the Purchaser the full legal and beneficial ownership of the Assets in accordance with Clause 3.1;
6. Assignments, novations or consents in respect of all of the Key Contracts, Key Transferable Permits and Key Transferable Site Consents in the agreed terms and all forms necessary to record the change of ownership, in each case duly executed by or on behalf of the Vendor (if applicable);
7. Assignments of each of the Business Intellectual Property Rights in the agreed terms and all forms necessary to record the change of ownership, in each case duly executed by or on behalf of the Vendor and/or the registered holder (as the case may be);
8. Assignments, novations, consents or other documents in respect of all of the Property Contracts in the agreed terms and all forms necessary to record the change of ownership, in each case duly executed by or on behalf of the Vendor and/or the registered holder or other third party (as the case may be);
9. *[All licences, consents, permits and authorisations obtained by or issued to the Vendor in respect of the Business;]*
10. The original Acceptance Certificate as duly signed or executed by or on behalf of the Vendor and NGET as NETSO;
11. The original of each of the Contracts (or counterpart, as appropriate) as duly signed or executed by or on behalf of the Vendor;

⁶² Explanatory note: to be amended on a project specific basis.

12. The documents which the Purchaser may reasonably require to vest title in each of the Sites into the name of the Purchaser or in the name of such other person as the Purchaser may direct including in respect of the Sites written evidence, in a form reasonably satisfactory to the Purchaser, of the consent of all reversioners to the assignment contemplated by this Agreement;
13. Possession of each of the Sites and of all other Assets agreed to be sold in accordance with this Agreement;
14. The Business Records duly completed and up to date in all respects but so that, to the extent that the Vendor may be required by law to retain any of them, the Vendor may deliver copies of the appropriate documents to the Purchaser subject to the provisions of Clause 18.1.2;
15. Any material books of account or references of customers and/or suppliers and other material records and all insurance policies in respect of the Business; and
16. [*Others*].

PART B - PURCHASER'S OBLIGATIONS

1. A copy of the minutes of a meeting of the directors of the Purchaser authorising the Purchaser to enter into and perform its obligation under this agreement, certified to be a true and complete copy by a director or the secretary of the Vendor;
2. A copy of all interface and other agreements entered into by the Purchaser as required by STC or such other evidence to the Vendor's reasonable satisfaction that such agreements are in full force and effect;
3. A copy of the equivalent or replacement for each Key Non-Transferable Permit and each Key Non-Transferable Site Consent in the name of the Purchaser; and
4. [*Others*].

SCHEDULE 11

TRANSITION PLAN

Any Transition Plan the Vendor is required to prepare pursuant to Clause 11 shall inter alia contain provisions dealing with the following matters:

1. **NOMINATED REPRESENTATIVES**

The name and contact details of each Party's representative who will act as the primary point of contact for all transition and transition related matters.

2. **TRANSITION TEAM**

2.1 The timing and process for jointly establishing a transition team of suitably skilled representatives of the Parties to manage the implementation of the Transition Plan ("**Transition Team**").

2.2 The name and contact details for each member of the Transition Team and his/her role, and replacements thereto.

2.3 The Transition Team shall consist of no more than [5] representatives from each Party.

3. **DURATION**

The commencement and duration of the Transition Plan. Unless the Parties agree otherwise, the Transition Plan shall cover the period commencing on the date [•] [months] [Business Days] after the Effective Date and ending on the Completion Date.

4. **PROJECT PLAN**

A project plan detailing the timeframes for implementation of each part of the Transition Plan and any milestones that need to be met by the Vendor, or the Purchaser.

5. **MANAGEMENT PROCEDURES**

Details of the management processes and controls to be used in the implementation of the Transition Plan.

6. **MEETINGS**

A list of the meetings that shall take place during the implementation of the Transition Plan. Unless agreed otherwise, the Transition Team shall meet at least [once a week].

7. **CERTIFICATION OF FINAL COMPLETION AND COMMISSIONING OF OFFSHORE TRANSMISSION SYSTEM⁶³**

[•]

⁶³ Explanatory note: the process in relation to certification of final completion and commissioning is a key part of the transition activity and will therefore interface with the Transition Plan.

8. **TRAINING**

An outline of any training of the Purchaser's personnel required to be carried out by the Vendor in order to effect orderly and successful transition (including Purchaser familiarisation with the Assets) in accordance with Good Industry Practice.

9. **FIXED ASSETS**

The procedure and timetable of actions for the process of the Vendor transferring the Fixed Assets to the Purchaser.

10. **MOVEABLE ASSETS**

The procedure and timetable of actions for the process of the Vendor transferring the Moveable Assets to the Purchaser.

11. **KEY CONTRACTS**

The procedure and timetable of actions for the process of the Vendor transferring, assigning or novating the Key Contracts to the Purchaser.

12. **PROPERTY CONTRACTS**

The procedure and timetable of actions for the process of the Vendor transferring, assigning or novating the Property Contracts to the Purchaser.

13. **KEY TRANSFERABLE SITE CONSENTS**

The procedure and timetable of actions for the process of the Vendor transferring or assigning the Key Transferable Site Consents to the Purchaser.

14. **KEY NON-TRANSFERABLE SITE CONSENTS**

The procedure and timetable of actions for the process of the Purchaser applying for and obtaining all Key Non-Transferable Site Consents.

15. **KEY TRANSFERABLE PERMITS**

The procedure and timetable of actions for the process of the Vendor transferring or assigning the Key Transferable Permits.

16. **KEY NON-TRANSFERABLE PERMITS**

The Procedure and timetable of actions for the process of the Purchaser applying for and obtaining all Key Non-Transferable Permits.

17. **BUSINESS INTELLECTUAL PROPERTY RIGHTS**

The procedure and timeframe for the Vendor transferring documents and assets containing the Business Intellectual Property Rights to the Purchaser.

18. **BUSINESS RECORDS**

A list of the Business Records and other documentation that will be provided by the Vendor to the Purchaser upon Completion, and the form of the documentation, and the timeframe and terms for the transfer of the Business Records.

19. **SOFTWARE AND LICENCES**

An outline of any special transition provisions relating to the transfer or removal of any Software or the transfer or termination of any Software licences.

SCHEDULE 12
**CERTIFICATION OF FINAL COMPLETION AND COMMISSIONING OF OFFSHORE
TRANSMISSION SYSTEM**⁶⁴

[Insert as appropriate]

⁶⁴ Explanatory note: the process in relation to certification of final completion and commissioning will be project specific and this Schedule will have to be tailored to each project.

SCHEDULE 13

NOTICE OF ELECTION

(Form of joint election)

HM Inspector of Taxes,
[Address - one letter to each local inspector]

Dear Sirs,

[] ("**THE VENDOR**")
- [TAX DISTRICT REFERENCE NUMBER]
[] ("**THE PURCHASER**")
- [TAX DISTRICT REFERENCE NUMBER]

We hereby give notice to the Board of our joint election pursuant to Section 198 of the Capital Allowances Act 2001 for the portion of the Sale Price to be brought into account for the purposes of Part 2 of the Capital Allowances Act 2001 as expenditure incurred by the Buyer on the provision of the Fixtures to be fixed at £[] and on the provision of Integral Features to be fixed at £[] in each case in relation to the Sale of the Property (the expressions "Sale Price", "Fixtures", "Integral Features", "Sale" and "Property" all being defined below).

For the purposes of this notice:

1. "**Fixtures**" means all items of machinery and plant, expenditure in respect of which qualifies or has qualified for capital allowances and which are comprised in the Property which is the subject of the Sale (as defined below) and details of which are as follows: [].
2. "**Integral Features**" means all items of machinery and plant that are integral features for the purposes of section 33A(5) of the Capital Allowances Act 2001, expenditure in respect of which qualifies or has qualified for capital allowances and which are comprised in the Property which is the subject of the Sale (as defined below) and details of which are as follows: []
3. The "**Property**" means [full description].
4. The "**Sale**" means the sale of the Property by the Seller to the Buyer pursuant to an Agreement dated [] and the sale is the disposal in respect of which this election applies.
5. The "**Sale Price**" means £[].

The tax district address and reference of each of the Seller and the Buyer is as follows:

[Seller] [tax district and reference]

[Buyer] [tax district and reference]

.....

For and on behalf of

[]

.....

For and on behalf of

[]

SCHEDULE 14
INTELLECTUAL PROPERTY

PART A – REGISTERED BUSINESS INTELLECTUAL PROPERTY RIGHTS

[insert as appropriate]

PART B - MATERIAL UNREGISTERED BUSINESS INTELLECTUAL PROPERTY RIGHTS

[insert as appropriate]

PART C – WRITTEN LICENCES OF INTELLECTUAL PROPERTY RIGHTS GRANTED TO THIRD PARTIES

[insert as appropriate]

SCHEDULE 15
INFORMATION TECHNOLOGY

PART A – INFORMATION TECHNOLOGY SYSTEMS

[insert as appropriate]

PART B – INFORMATION TECHNOLOGY AGREEMENTS

[insert as appropriate]

IN WITNESS whereof this **DEED** has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

VENDOR

EXECUTED AS A DEED by)
[Vendor]) -----)
acting by [Name of) **Director**
a director])
in the presence of:)

Signature of witness

.....

Name of witness
(in BLOCK CAPITALS)

.....

Address of witness

.....

.....

PURCHASER

EXECUTED AS A DEED by)
[Purchaser]) -----)
acting by [Name of) **Director**
a director])
in the presence of:)

Signature of witness

.....

Name of witness
(in BLOCK CAPITALS)

.....

Address of witness

.....

.....

COMMENTARY ON MODEL SPA

1. PURPOSE OF THIS DOCUMENT

- 1.1 This document accompanies Ofgem's final template SPA and sets out a commentary to explain Ofgem's approach to the drafting of the template SPA for those developers whose projects are likely to fall into the transitional regime.
- 1.2 The Consultation on the Draft Model Sale and Purchase Agreement and Draft Data Room Guidelines for Transitional Tenders ("Consultation") provided an opportunity for developers and other interested parties to comment upon the template SPA. Ofgem has considered each of those responses and has subsequently made amendments to the first template SPA which was circulated as part of the Consultation.
- 1.3 This document provides commentary in relation to each clause of the SPA in turn, and in relation to each schedule as it is referred to. This document also provides some further guidance on Ofgem's approach to the major issues identified by developers and interested parties in response to the Consultation.
- 1.4 The commentary is by way of explanation only and does not constitute legal, financial or tax advice from the Authority, Ofgem or its retained advisers.

2. CLAUSE 2 – CONDITIONS

- 2.1 The key event under the SPA is the transfer of the offshore transmission system to the preferred bidder (referred to in the SPA as the "Purchaser"). In some cases, where the system is still under construction, there may be a substantial period between the award of the offshore licence and the transfer of assets. The SPA will set out rules to govern the Parties' behaviour during this period. It is therefore structured to become effective at the same time as the offshore transmission licence is granted.
- 2.2 Part A of Schedule 1 to the SPA contains the conditions precedent which must be met in order for the SPA to become effective, although this list will likely need to be amended and/or supplemented on a project specific basis. Following the Consultation, minor amendments have been made to the template SPA to clarify that substantially all operative provisions of the SPA will become effective upon the satisfaction of these conditions precedent. The key condition to such effectiveness is the grant of an OFTO licence to the successful bidder by Ofgem.
- 2.3 Parts B, C and D of Schedule 1 to the SPA contain Ofgem's view of the conditions precedent which will need to be met in order for the transfer of the offshore transmission system to occur, described in the SPA as "Completion". These conditions precedent are intended to ensure that the Purchaser is able to operate the offshore transmission system immediately following Completion. The conditions will need to be tied in with any conditions precedent in other relevant documents, in particular the OFTO licence and the STC, and the lists in the template SPA will likely need to be amended and/or supplemented on a project specific basis.
- 2.4 A number of the conditions precedent may be capable of satisfaction prior to signing of the SPA (and developers should aim to ensure that as many of the conditions precedent as possible are satisfied prior to signing). Developers will be expected to indicate to Ofgem

the timing for obtaining any consents or other approvals required to satisfy a condition precedent where such conditions precedent are not expected to be satisfied prior to signing.

- 2.5 If the conditions precedent have not been met by a longstop date, the SPA terminates; it being assumed that in these circumstances Ofgem will need to make a transfer scheme under Schedule 2A of the 1989 Act introduced by the Energy Act 2008. The SPA will also terminate where the offshore transmission licence is not granted or is revoked.
- 2.6 The template SPA intentionally does not specify, or include guidance in relation to, the date by which the conditions precedent must be satisfied, as the timetable for Completion will necessarily be dictated by the facts and circumstances of each individual project and should be negotiated on a commercial basis between the Parties.
- 2.7 Merger control laws may also necessitate the insertion of a condition precedent requiring notifications to be made to and/or merger clearances to be obtained from the relevant competition authorities.
- 2.8 In the event that notifications need to be made to and/or merger control clearances are required from any jurisdictions which prohibit the completion and/or implementation of a transaction prior to clearance being obtained, consideration should be given as to whether any of the provisions (for example, conduct of Vendors' activities before completion) would breach such a prohibition.

3. CLAUSES 3 AND 17 - SALE AND PURCHASE AND DEFERRED CONSIDERATION

- 3.1 The SPA has been structured as the sale and purchase of assets to recognise that only part of the Vendor's assets (the transmission assets) are to be transferred and the other assets (the generation assets) retained. The SPA includes additional provisions which provide for the sale and purchase of the assets to be categorised as the transfer of a business as a going concern, although an assessment of whether the transfer does constitute the transfer of a business as a going concern will need to be conducted by the developer on a project specific basis.
- 3.2 The details of the assets and contracts to be transferred to the Purchaser will be project specific, and shall be set out in Schedules 2, 3, 5 and 6 of the SPA.
- 3.3 The template SPA has been drafted on the assumption that transmission assets and the generation assets (and contracts relating to each group of assets) are easily distinguishable and separable. However, the operative provisions relating to the transfer of assets and contracts will need to be addressed on a project specific basis, including to accommodate arrangements for the sharing of assets or the apportionment of contractual conditions if relevant.
- 3.4 Following the Consultation, additional wording has also been incorporated to provide a more comprehensive framework for the transfer of any applicable information technology systems and intellectual property rights, details of which shall be set out in Schedules 14 and 15 of the SPA.
- 3.5 The template SPA has been amended to clarify that, as set out in the earlier consultation documents, the Vendor is guaranteed to receive 75 per cent of the ex ante assessment.
- 3.6 As the ex post valuation will not be available prior to Completion, the SPA provides for the purchase price to be paid in two instalments:-

- 75% of the ex ante assessment, as notified by Ofgem prior to Completion and which is payable by the Purchaser at Completion; and
- a further payment by the Purchaser of the amount the ex post valuation, as notified by Ofgem, exceeds 75% of the ex ante assessment, and which shall be payable by the Purchaser (if applicable), as soon as reasonably practicable following completion of the offshore transmission system and Completion of the SPA.

3.7 Ofgem understands that some developer projects may have phased completion under their construction contracts. In relation to any such projects the SPA may therefore have to be amended in order to allow for the phased transfer of completed assets with multiple sequential completions.

4. CLAUSE 4 - EXCLUDED ASSETS AND CONTRACTS

The SPA provides for the generation assets (and contracts relating to them) which are to be retained by the Vendor to be excluded from the sale and purchase of assets to the Purchaser. The details of any such excluded assets and contracts will be necessarily project specific, and shall be set out in Schedule 4 of the SPA.

5. CLAUSE 5 - PAYABLES AND RECEIVABLES

5.1 The SPA has been structured to effect a clean division of title and liability on and from the Completion Date. Accordingly, the SPA provides that the Vendor shall be responsible for all payables incurred or attributable to any period prior to the Completion Date and that the Vendor shall be entitled to receive and enforce any receivables accrued up to and including the Completion Date.

5.2 The SPA contemplates an adjustment to the consideration payable by the Purchaser to the extent any prepayments for goods and services have been made, or received by, the Vendor.

6. CLAUSE 6 - THIRD PARTY CONSENTS FOR TRANSFER OF ASSETS AND CONTRACTS

6.1 The Parties have a mutual obligation to obtain any required third party consent or agreement in relation to the transfer of title of any of the Assets. If any required third party consent or agreement is not obtained prior to Completion, the Vendor is deemed to hold the benefit of the applicable Assets in trust for the Purchaser pending the receipt of such consent or agreement. If the requisite third party consent or agreement is not obtained by a longstop date after Completion, the Assets are excluded from the sale and purchase, and the Vendor must indemnify the Purchaser in respect of all associated costs.

6.2 The Vendor is also required to assign and/or transfer any permits, licences or approvals relating to the Business to the extent possible. If the permit, licence or approval is not assignable or transferable, the Purchaser will need to obtain its own permit, licence or approval as soon as reasonably practicable.

7. CLAUSE 7 - ASSUMED AND EXCLUDED LIABILITIES

- 7.1 Clause 7 makes it clear that the Purchaser does not assume any liability of the Vendor, save as expressly set out in the SPA. In particular, the Purchaser does not assume any liability for taxation relating to the Business prior to the date of transfer by the Vendor.
- 7.2 The SPA deals separately with liability for environmental matters, as referred to in Clauses 7.9 to 7.12.
- 7.3 Following the Consultation, the template SPA provides that the Vendor will remain liable for any environmental liabilities caused by an act or omission prior to Completion and the Purchaser shall be indemnified in respect of such liabilities. The Purchaser shall, on the other hand, be responsible for any environmental liabilities caused by an act or omission following Completion and shall indemnify the Vendor in respect of such liabilities.
- 7.4 The template SPA provides that all decommissioning liabilities are assumed by the Purchaser in their entirety.

8. CLAUSE 8 - SITES AND PROPERTY DOCUMENTS

- 8.1 The terms on which any right, title or interest in any real property are to be transferred to the Purchaser will be project specific, and the relevant provisions shall be set out in Schedule 5 of the SPA, as referred to in Clause 8.
- 8.2 The SPA anticipates that the Vendor will at Completion have entered into leases or licences of seabed and also into substation licences which relate to property that is offshore. It is also anticipated that the Vendor will have interests in land and under contracts relating to land that is located onshore, such as under wayleave agreements.
- 8.3 In relation to the interests in land of the Vendor these will be Leases, as defined by the SPA, and specific drafting in relation to the transfer of those interests to the Purchaser is as set out in paragraph 2 of Part D of Schedule 5 of the SPA. Leases are to be transferred on Completion following the obtaining of any necessary third party consents.
- 8.4 It is a condition to Completion that any third party consent necessary for the transfer of any licences, easement deeds or wayleave agreements to the Purchaser has been obtained.
- 8.5 Following the Consultation, additional wording has been incorporated to provide a more comprehensive framework for the assignment, novation or transfer of all real property interests (for example, references to easement deeds and mechanics to develop agreed form drafts). Further drafting will be appropriate where freehold title is to be transferred.

9. CLAUSE 9 – EMPLOYEES AND BENEFITS

The terms on which any employees are to be transferred to the Purchaser (and whether there will be any such employees) will be project specific, and the relevant provisions can be out in Schedule 7 of the SPA.

10. CLAUSE 10 - CONDUCT OF VENDOR ACTIVITIES BEFORE COMPLETION

- 10.1 Clause 10 governs the behaviour of the Vendor in the period leading up to Completion.
- 10.2 To protect the Purchaser's interests in the transferring system, the Vendor is not entitled, without the Purchaser's consent (inter alia) to:

- 10.2.1 enter into, amend or modify any material contract;
 - 10.2.2 exercise any rights, grant any waivers or elect a particular method of performance pursuant to a material contract; or
 - 10.2.3 modify, alter, vary or surrender any material permits, licences, approvals or consents,
relating to the Business or the Assets.
- 10.3 Clause 10 also sets out the Vendor's obligations to the Purchaser to provide reasonable access, information and co-operation to inspect the Assets, witness tests of the Assets and familiarise itself with the Assets in order to facilitate an effective transfer.
- 10.4 Clause 10.12 includes a standard list of restricted matters that the Vendor must also not undertake or permit without the consent of the Purchaser.
- 10.5 Notwithstanding comments received as part of the Consultation, the template SPA does not seek to define the materiality thresholds that should apply with regard to activities between signing and Completion, as Ofgem believes that the terms of such rights and obligations should be negotiated and agreed on a commercial basis between the Parties.
- 10.6 Clause 10 also provides procedures for the Parties to agree updates to the various schedules of the SPA which set out what is and what is not to transfer on Completion. It is under consideration whether the Parties should be entitled to refer to an expert any material disagreement in relation to any update or further revisions to be agreed pursuant to Clauses 10.18 to 10.35.

11. CLAUSE 11 - TRANSITION PLAN

- 11.1 In order to ensure an orderly, successful transfer of the transmission business to the Purchaser where there is an extended period of time between the Effective Date and Completion the Parties are required to agree a Transition Plan.
- 11.2 This plan will set out the actions, timetables and milestones that need to be met by the Vendor and Purchaser (as applicable) in order to ensure that the transfer of the system is carried out in an efficient and effective manner. It will be necessary for both Parties to actively engage and cooperate with each other during the transition period. Schedule 11 (Transition Plan) sets out more details in relation to the content of the Transition Plan.
- 11.3 It is in both the Vendor's and the Purchaser's interests to have a robust and effective Transition Plan in place in good time. However, in case the Parties are not able to agree a Transition Plan within a reasonable time, then the SPA provides for the matter to be referred to an independent expert.

12. CLAUSE 12 - REVIEW PROCESS

The SPA provides for a review process pursuant to which the Parties must, as the target date for Completion approaches, assess progress towards the fulfilment of the conditions precedent to Completion. The Parties are required to share information relating to the status of the conditions precedent and to determine whether Completion should proceed in accordance with the then agreed timetable or be delayed until a later date.

13. CLAUSE 13 - CERTIFICATION OF COMPLETION OF OFFSHORE TRANSMISSION SYSTEM

- 13.1 Ofgem's view is that these provisions will be highly project specific in that they will need to reflect the certification provisions under the Vendor's construction contract(s) as well as relevant processes under the STC. Ofgem has not therefore sought to draft template wording, but Ofgem would like to further discuss the certification provisions (and the closing process more generally) as part of the ongoing dialogue with developers over the coming months.
- 13.2 The SPA is intended to enable the Purchaser to have the benefit of the construction contractor's latent defect warranties and other relevant obligations under the construction contract. If certification by an independent certifier triggers take-over under the SPA, the Purchaser may also require a collateral warranty from or an equivalent direct right of recourse against that independent certifier.

14. CLAUSE 14 - COMPLETION OF SALE AND PURCHASE

The SPA includes standard provisions relating to the Completion process. The items to be delivered by each Party at Completion will, however, necessarily be project specific. The list of Completion deliverables will be set out in Schedule 10.

15. CLAUSE 15 - VENDOR'S DEFAULT AT COMPLETION

If the Vendor does not comply with its Completion obligations, the Purchaser is not obliged to complete the sale and purchase, but may elect to defer Completion or to proceed to Completion as far as practicable. The SPA does not grant the Purchaser any right to terminate or rescind the SPA in such circumstances, as the sale and purchase contemplated by the SPA is a key feature of the offshore transmission regime.

16. CLAUSE 16 - WARRANTIES

- 16.1 Under the SPA each Party warrants that it is duly authorised to enter into and complete the sale and purchase contemplated by the SPA.
- 16.2 In addition, the Vendor warrants in the terms of the warranties which are set out in Schedule 8. Many of these warranties are expected to be relevant to all projects and have been prepared by Ofgem having regard to the subject matter typically included in a sale and purchase agreement.
- 16.3 Paragraphs 1.3 to 1.5, 12, 13, 14 and 15 set out certain warranties which may only be relevant to certain projects and/or which will require tailoring to the project specific circumstances by the developer prior to being issued to bidders (for example, by reference to the terms and conditions included in the underlying construction contracts). This list of warranties is not exhaustive and developers should consider whether further warranties based on the project specific circumstances are required. Bidders will then comment on the proposed warranties as part of their response to the ITT.
- 16.4 The template SPA provides that the warranties are given at the date of the SPA and repeated at Completion, and are subject to standard limitations on claims, including disclosure, time limits and monetary thresholds, which will be set out in Schedule 9. This framework will need to be customised on a project specific basis and it is a matter for

negotiation between the Parties on a project specific basis as to whether some or all warranties are repeated, depending upon the facts and circumstances of each individual project. For example, depending on the project specific circumstances, certain of the warranties may only be appropriate at the Completion Date and not at the time of signing.

- 16.5 Further to responses received as part of the Consultation, Ofgem does not consider that it is appropriate to provide further guidance on the precise terms of the limitations on liability as Ofgem considers that such matters should be negotiated and agreed between the Parties.

17. CLAUSE 18 - POST COMPLETION ACTIVITIES

The template SPA assumes that there will be minimal transitional issues post Completion and the post completion obligations relate only to the Vendor's ongoing access to books and records applicable to the Business and the Assets and the requirement for the Vendor to forward any correspondence, information or enquiries relating to the Assets to the Purchaser. Any additional post Completion requirements will be dealt with on a project specific basis.

18. CLAUSE 19 - VAT AND RELATED MATTERS

- 18.1 Clause 19 provides for the Purchaser writing to the tax authorities to confirm whether or not the sale will be treated as the transfer of a going concern for VAT purposes in the United Kingdom. There are then provisions to deal with either eventuality. The Purchaser or the representative member of its group has to be registered for VAT on or before Completion.

- 18.2 In response to the Consultation, Ofgem recommends that the tax structure to be adopted, and the tax treatment to be applied, should be reviewed by the Parties on a project specific basis, having regard to the tax affairs of the Parties and the facts and circumstances of an individual project.

- 18.3 There are also provisions setting out how capital allowances will be apportioned between the Vendor and the Purchaser.

19. CLAUSE 20 - ANNOUNCEMENTS AND CONFIDENTIALITY

The template SPA includes standard provisions prohibiting the release or despatch of any announcement relating to the SPA or the disclosure of any information relating to, or obtained as a result of, the negotiation, entering into or performance of the SPA, without the consent of the other Party or as otherwise exempted.

20. CLAUSES 21 TO 24 - MISCELLANEOUS, NOTICES, COSTS AND GOVERNING LAW AND JURISDICTION

Standard provisions regarding assignment, third party rights, variation, service of notices and governing law are also incorporated in the template SPA. The OFTO licence will contain a requirement on the OFTO to notify Ofgem of any assignment of the SPA.

21. MISCELLANEOUS

- 21.1 The template SPA has been drafted for the purposes of the asset transfer contemplated by the Tender Regulations, rather than as a wholesale agreement relevant to the ongoing

arrangements between the Parties (for example, maintenance services). Additional contractual arrangements may be appropriate on a project specific basis, however Ofgem would envisage that these would be documented in standalone agreements and linked to the SPA if necessary through the conditions precedent.

- 21.2 A number of respondents noted that the transmission assets may be operating prior to the Go-Live Date of the relevant legislation and sought guidance on the process for transition of such operating assets. If and where such circumstances arise, Ofgem acknowledges that it may be necessary to develop with the relevant government agencies a structure to facilitate transmission during the period prior to Completion of the SPA.