

Offshore Electricity Transmission: Competitive Tender Process



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Annex 2 - Draft Template Invitation to Tender Document

Overview:

Ofgem and BERR are working together to implement a new regulatory regime for offshore electricity transmission. As part of this, offshore electricity transmission licences will be granted on the basis of a competitive tender process managed by Ofgem.

This document sets out Ofgem's proposed approach to managing the tender process for those offshore transmission assets that have been or will be constructed by offshore developers, known as the transitional regime. It also proposes that the broad principles of the approach for the transitional regime would be applied on an enduring basis, where the new offshore electricity transmission licensee would construct the transmission assets.

The regime will be implemented by the commencement of certain provisions of the Energy Act 2004.

This Annex contains our draft template Invitation to Tender Document for the transitional regime.

The Office of Gas and Electricity Markets

Offshore Electricity Transmission

Invitation to Tender
2009 Transitional Tenders
Version 1.0

IMPORTANT NOTICE

This Invitation To Tender (ITT) Documentation is issued by the Office of Gas and Electricity Markets ("Ofgem") pursuant to the Gas and Electricity Authority's powers under [section 6C] of the Electricity Act 1989, as amended, and section [] of the [*insert tender regulations title*].

The ITT Documentation has been prepared and issued to Bidders for their sole use and for the sole purpose of assisting them to submit a written Bid in accordance with Ofgem's requirements and is not intended to provide the basis of any investment decision. This ITT is not intended to be considered as an investment recommendation by Ofgem or by any of its advisers. Each person to whom this ITT is made available must make its own independent assessment of the Project after making such investigation and taking such professional advice as it deems necessary.

Bidders are reminded of their confidentiality obligations set out in the Confidentiality Agreement. All information provided to Bidders as part of the Tender Process, including this document, is confidential and may not, without the express written consent of Ofgem, be published, reproduced, copied, disclosed to any person or used other than as permitted by the Confidentiality Agreement. Each Bidder must procure that its Related Parties and sub-contractors treat such information in accordance with the Confidentiality Agreement as if they were parties to it.

The copyright in this ITT Documentation and information contained within it is vested in Ofgem and may not be reproduced, copied or stored in any medium without the prior written consent of Ofgem, other than for the purpose of submitting a Bid or carrying out the Project.

Any Bidder who, in connection with this Project:

- (i) offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of Ofgem, the GBSO or the Developer or any of their Related Parties for doing or having done or causing or having caused to be done any act or omission;
- (ii) does anything which would constitute a breach of the Prevention of Corruption Acts 1889 to 1916;
- (iii) canvasses Ofgem, the GBSO or the Developer or any of their Related Parties in connection with the Project; or
- (iv) contacts any officer of Ofgem, the GBSO or the Developer prior to the award of the Offshore Transmission Licence about any aspect of the Project in a manner not permitted by this ITT (including without limitation a contact for the purposes of discussing the possible transfer of such officer to the employment of the Bidder for the purpose of the Project),

will be disqualified (without prejudice to any other remedies available to Ofgem and without prejudice to any criminal liability which such conduct by a Bidder may attract).

Any Bidder who, in connection with this Project:

- (i) fixes or adjusts the amount of its Bid by or in accordance with any agreement or arrangement with any other Bidder;
- (ii) enters into any agreement or arrangement with any other Bidder that it shall refrain from making a Bid or as to the amount of any Bid to be submitted;

- (iii) causes or induces any person to enter into such an agreement or to inform the Bidder of the amount or approximate amount of any rival Bid for the Project;
- (iv) communicates to any person other than Ofgem the amount or approximate amount of its proposed Bid (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Bid);
- (v) enters into negotiations or any agreement or arrangement with any other Bidder, directly or indirectly, with the purpose of forming a consortium or alliance through which to submit a Bid;

will be disqualified (without prejudice to any other civil remedies available to Ofgem and without prejudice to any criminal liability that such conduct by a Bidder may attract). As referred to in paragraph 4.5.2(E) of the ITT, Bidders are required to return the Anti-Collusion Certificate set out in Appendix C (Anti-Collusion Certificate) with their Bids.

Bidders must not undertake (or permit to be undertaken) at any time, whether at this stage or after the award of any Offshore Transmission Licence, any publicity activity with any section of the media in relation to this Project other than with the prior written agreement of Ofgem. Such agreement shall extend to the content of any publicity. In this paragraph the word 'media' includes (without limitation) radio, television, newspapers, trade and specialist press, the Internet and e-mail accessible by the public at large and the representatives of such media.

Where a Bidder intends to use sub-contractors it will be the responsibility of the Bidder to provide the sub-contractors with all necessary information, including (without limitation) in relation to the ITT Rules and the confidentiality obligations set out in this ITT and the Confidentiality Agreement executed by the Bidder.

Ofgem reserves the right to vary any element of the Tender Process, issue supplementary documentation or make additional arrangements at any time during the Tender Process to clarify any issue or amend any aspect of the Tender Process. All such supplementary documentation issued by Ofgem during the Tender Process will be deemed to form part of the ITT Documentation to the extent indicated in the amendment. Ofgem may, at its absolute discretion, extend the Tender Process and postpone any submission date in the event of any such amendment.

Ofgem is not bound to accept the lowest or any Bid made by Bidders.

It is the responsibility of each Bidder to ensure that they have all of the information they need to prepare their Bids. While information provided by Ofgem and/or its Related Parties has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. Neither Ofgem nor any of its Related Parties makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information provided. All such persons or entities expressly disclaim any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, the information or based on or relating to its use by the Bidder and/or any other third party.

Nothing in this ITT Documentation is intended to, or shall be deemed to, establish any partnership or joint venture between Ofgem and any Bidder.

Each Bidder will bear its own costs of participating in the Tender Process. Subject to paragraph 4.11 Ofgem is under no obligation and does not agree to any liability to reimburse any Bidder,

including without limitation any unsuccessful Bidder, for any costs, expenses, damages or losses incurred in connection with the Tender Process.

Ofgem requires all actual or potential conflicts of interest (including in particular those arising where a consortium member or adviser put forward by one Bidder is the same firm or company or is a member of the same group of companies as that put forward as a consortium member or adviser by another Bidder or is working or has worked for Ofgem on this Project) to be resolved to Ofgem's satisfaction prior to the delivery of the Bidders' Bids in response to this ITT Documentation. Failure to declare such conflicts and/or failure to address such conflicts to the reasonable satisfaction of Ofgem could result in a Bidder being disqualified.

Ofgem is relying on the information provided by Bidders during the Prequalification Stage (including but not limited to information concerning the members and structure of their consortia where relevant). If, at any time prior to the submission of the Bid, there are any material changes or proposed changes to the information provided during the Prequalification Stage or subsequently, the Bidder must advise Ofgem as soon as is reasonably practicable. For the avoidance of doubt, where a Bidder informs Ofgem of any such material change or proposed change, Ofgem shall be entitled to re-evaluate that Bidder's Prequalification Submission in light of that material change or proposed change, and determine whether to confirm that Bidder's prequalification or to exclude that Bidder from the Tender Process.

By accepting this document and participating in the Tender Process each Bidder agrees to be bound by the ITT Rules.

Legal, technical and financial advisers are acting for Ofgem in relation to the Tender Process and will not regard any other person as their clients or be responsible to anyone other than Ofgem for providing the protections afforded to their clients or for advising any other person on the contents of the ITT Documentation or any matter referred to in it.

CONTENTS

[To add]

DRAFT

1. INTRODUCTION TO THE PROJECT AND TENDER PROCESS

1.1 Framework

[Note: it is intended that this section will set out a high level short summary of the regulatory framework for offshore electricity transmission.]

- 1.1.1 Primary Legislation
- 1.1.2 Secondary Legislation (e.g. the Tender Regulations)
- 1.1.3 Licences
- 1.1.4 Industry Codes and Technical Standards

1.2 Roles

[Note: It is intended that this section will set out a summary of the roles which the key parties will have in the Tender Process]

- 1.2.1 Ofgem
- 1.2.2 GBSO
- 1.2.3 Developer

1.3 Overview of Project

[Note: It is intended that this section will set out a high level overview of the information specified below for the Project.]

- 1.3.1 a description of the Project;
- 1.3.2 a description of the Developer's requirements for the Project;
- 1.3.3 an overview of the assets to be transferred to the OFTO, including progress with construction where construction of the assets is not yet complete; and
- 1.3.4 Ofgem's RAV assessment for the Project. Where construction of the assets is not complete, this will be Ofgem's ex-ante assessment. Where construction of the assets is complete, this will be Ofgem's ex-post assessment.

1.4 Overview Of Tender Process

1.4.1 Outcome of Prequalification Stage

The Bidders that have been prequalified to bid for the Project are:

[List all prequalified Bidders here]

1.4.2 ITT Documentation and Responses

The prequalified Bidders are invited to tender for the Project and this ITT Documentation sets out the Project requirements and ITT Rules for the Tender Process. The Bidders are invited to submit their Compliant Bids for the Project by *[date]*. Ofgem will evaluate all complete Compliant Bids submitted and

intends to select a Preferred Bidder as a result of its evaluation. Each Bidder will be informed of the outcome of Ofgem's evaluation, and will be offered feedback on its Bid.

1.4.3 Optional BAFO

If Ofgem shortlists a number of Bidders as potential Preferred Bidders following the evaluation of the Bids, Ofgem may invite those shortlisted to further refine their Bids in a BAFO stage. This is an optional stage in the Tender Process and will only be included where Ofgem considers it would be helpful and/or beneficial to do so.

1.4.4 Preferred Bidder

Once a Preferred Bidder is selected there will be a short period of time during which the Preferred Bidder must demonstrate to Ofgem that it has the following arrangements in place in preparation for financial close:

- (A) funding arrangements;
- (B) legal consortium formation (if applicable), including constitution and shareholding arrangements;
- (C) internal board and other approvals;
- (D) key subcontracting arrangements; and
- (E) necessary land arrangements, both offshore and onshore.

These requirements will need to be demonstrated and any outstanding issues resolved to the satisfaction of the Authority.

1.4.5 Financial Close/Licence Award

Once the Preferred Bidder has fulfilled each of its requirements to the satisfaction of the Authority and all outstanding issues are resolved to the Authority's satisfaction, financial close will be arranged.

[Note: This paragraph will summarise the process and key actions at this stage of the Tender Process. How financial close will in practice happen may depend on the type of funding involved.]

1.4.6 Responsibility for Meeting Costs of Tender Process

Each Bidder is responsible for its own costs of developing and submitting its Bid. Each Bidder is also required to make payments to Ofgem as set out in further detail in paragraph 4.11.2 in order that Ofgem's costs of running the Tender Process are met. Any refunds of such payments to unsuccessful Bidders will be made in accordance with paragraph 4.11.3.

1.4.7 Timetable

Ofgem intends to follow the indicative timetable set out below:

[insert timetable]

2. REGULATORY AND CONTRACTUAL FRAMEWORK

2.1 Introduction and Overview

2.1.1 In the electricity industry, the regulatory framework is set out in a number of instruments, including primary legislation, secondary legislation, licences issued by the Authority, industry codes and technical standards. The Authority expects that some Bidders may not have previous experience of the Great Britain electricity market, and we therefore believe it may be instructive to explain such legislation in this ITT Documentation.

2.1.2 The aim of this section is to ensure that all Bidders have an overview of the regulatory and contractual framework for the purposes of their Bid and in which they will be placed should they be successful in winning the tender.

2.2 Offshore Electricity Transmission – Regime Development

2.2.1 The Government has worked with the Authority to establish an offshore electricity transmission licensing regime to regulate the conveyance of electricity along high voltage lines offshore and associated plant and equipment which connect generating stations located offshore to the onshore electricity grid.

2.2.2 Under the new regime, the Authority, as the regulator of the gas and electricity industries in Great Britain, is responsible for regulating the transmission of electricity offshore and will manage a Tender Process for the granting of licences for the transmission of electricity offshore. The regime has been developed through a detailed consultation process and all consultation documents and publishable responses are available on the Authority's website at *[insert link to relevant part of website]*.

2.2.3 [The regime is provided for in amended primary legislation, new secondary legislation and through detailed modifications to industry codes, technical standards and standard licence conditions, as designated by the Secretary of State on []]. These arrangements are summarised in the following section.

2.3 UK Legislation

2.3.1 Electricity Act 1989

(F) The Electricity Act is the primary piece of legislation for the electricity industry in Great Britain. Some relevant parts of the Electricity Act for an OFTO are:

- (1) it provides for the Authority's principal objective;
- (2) it outlines the way in which the Authority must carry out its functions;
- (3) it provides for the granting of licences to transmit, distribute, generate and supply electricity in Great Britain;
- (4) it provides for the modification of such licences[; and

- (5) it provides for the granting of transmission licences offshore by way of competitive tender run by the Authority.]

2.3.2 Energy Act 2004

- (A) [The Energy Act 2004 amended the Electricity Act to facilitate the introduction of the offshore electricity transmission regime, including the extension of the prohibition on the transmission of electricity to the offshore environment. It also enabled the Secretary of State to designate changes to relevant industry codes and the standard licence conditions of the Transmission Licence to accommodate offshore electricity transmission. The Energy Act 2004 also extended the onshore system operator role offshore.
- (B) The Energy Act 2004 applies a special insolvency regime to entities which operate or own essential energy infrastructure known as an Energy Administration. The objective of an Energy Administration is to secure that essential energy infrastructure (such as electricity transmission systems) is and continues to be maintained and developed as an economical system. Energy Administration would apply to OFTOs. The details of Energy Administration are set out in Part 3 Chapter 3 of the Energy Act 2004.

2.3.3 Energy Act []

The Energy Act [] amended the Electricity Act to provide further detail on the competitive Tender Process for the granting of Offshore Transmission Licences. This included the ability for the Authority to make a property transfer scheme (in respect of the transitional regime) if commercial negotiations for the transfer of assets between parties fail, in order to ensure that property is transferred from the Developer to the successful Bidder of the Tender Process, and also the ability for the Authority to recover its costs for running these tenders.

2.3.4 Licences

- (A) The Authority may grant licences in relation to the following activities in Great Britain under the Electricity Act:
- (1) transmission of electricity;
 - (2) distribution of electricity;
 - (3) generation of electricity; and
 - (4) supply of electricity

Licences issued by the Authority previously are available on the Authority's electronic public register, which can be found at: <http://epr.ofgem.gov.uk/>.

- (B) The licences listed in (A) contain:
- (1) general terms as to duration and revocation of the licence;

- (2) standard conditions applicable to all licensees of the same class; and
 - (3) special conditions relevant to a single licensee.
- (C) [The standard conditions of an Offshore Transmission Licence will be appended at Appendix J.]

2.3.5 Tender Regulations

- (A) The detail of the Tender Process for both the transitional and enduring regimes is set out in regulations (i.e. secondary legislation) made under the Electricity Act. The regulations, in summary, include the following:
- (1) a requirement for tenders to be run from a date set by the Authority in each year;
 - (2) a requirement on the Authority to publish certain information and tender documentation;
 - (3) a requirement on Bidders to respond within specified timeframes;
 - (4) a requirement on the Authority to assess Bids in accordance with pre-determined criteria;
 - (5) the process to identify a Preferred Bidder; and
 - (6) a requirement on the Authority to put in place appropriate internal procedures to manage an effective Tender Process; and
 - (7) a requirement on the Authority to publish a methodology for recovering its costs of running the Tender Process.

2.4 European Union Legislation

[This section will include a brief summary of the European Union directives and regulations which are relevant to the transmission of electricity e.g. third party access requirements and unbundling requirements.]

2.5 Industry Codes and Technical Standards

2.5.1 In addition to the legislation and licences, a large amount of the regulatory requirements for electricity transmission are contained within detailed industry codes and technical standards. These are collectively known as the standard framework documents. There are provisions contained in the relevant licences which oblige the licence holder to comply with the requirements of these documents.

2.5.2 Each of the industry codes has a separate defined process for:

- (A) initiating a review of code obligations;
- (B) proposing changes to code obligations;
- (C) developing a code change proposal; and

(D) requesting a decision on a change proposal.

2.5.3 Bidders are required to satisfy themselves of the requirements of each relevant industry code and technical standard. However, for assistance, below is a short description of each. This should not be used as a substitute for Bidders referring to the primary sources of the information.

2.6 The Connection and Use of System Code (CUSC)

2.6.1 The CUSC¹ is a legal document that constitutes the contractual framework for connection to or use of the GB Transmission System. Parties to the CUSC are the GBSO, Generators, Distribution Licensees and Suppliers (not an exhaustive list). It defines arrangements for:

(A) Connection – it sets out arrangements that define the stages for connection. These include: application; connection; and termination of a connection agreement.

(B) Use of system – it sets out arrangements that define the stages for application to, and termination of, a use of system agreement, including the different types of transmission access products available to users of the GB Transmission System.

(C) De-energisation and disconnection – it sets out arrangements that cater for de-energisation and disconnection of the system for safety issues and non payment reasons.

2.6.2 The CUSC is owned by NGET. A copy of the document is on NGET's website [*insert link*]. A summary of the CUSC prepared by NGET can be found at: [*insert link*].

2.7 The System Operator Transmission Owner Code (STC)

2.7.1 The STC defines the obligations and responsibilities of the Transmission Licensees and the GBSO. Current parties to the STC are NGET, SPTL and SHETL as Transmission Licensees. An OFTO, as a Transmission Licensee, will be required to be a party to the STC in accordance with its Offshore Transmission Licence.

2.7.2 The STC makes provision for certain interactions between the Transmission Licensees and the GBSO:

(A) the provision of transmission services by the Transmission Licensees to the GBSO;

(B) directions from the GBSO to configure the GB Transmission System;

(C) transmission outage planning;

(D) joint transmission investment planning;

¹ <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/contracts/>

(E) governance of the STC and amendments to it (including accession to the STC); and

(F) dispute resolution.

2.7.3 The STC is owned by NGET, SPTL and SHETL. A copy of the document is on each company's website [*insert links*]. A summary of the STC prepared by NGET can be found at: [*insert links*].

2.8 **Grid Code**

2.8.1 The Grid Code is a technical code which sets out, among other things, the planning, connection conditions and testing requirements for the management of the GB Transmission System. It is designed to permit the development, maintenance and operation of the GB Transmission System. Parties to the Grid Code are NGET and all users of the GB Transmission System. OFTOs will be obliged by the STC to comply with specific sections of the Grid Code.

2.8.2 The Grid Code is owned by NGET. A copy of the document can be found on NGET's website [*insert link*].

2.9 **The Great Britain Security and Quality of Supply Standard (GBSQSS)**

2.9.1 The GBSQSS sets out a coordinated set of criteria and methodologies that Transmission Licensees must use in the planning and operation of the GB Transmission System. The criterion presented in the GBSQSS represents the minimum requirements for the planning and operation of the GB Transmission System. Additional criteria, for example covering more detailed and other aspects of quality of supply, are contained in the Grid Code and the STC, which should be read in conjunction with the GBSQSS.

2.9.2 The GBSQSS is owned by NGET, SPTL and SHETL. A copy of the document can be found at each company's website [*insert links*].

2.10 **Other Industry Codes and Charging Methodologies**

The industry codes and charging methodologies described below are not applicable to an OFTO for this Project, however, we include a brief description of the documents and charging methodologies as they form part of the overall regulatory framework which applies to the electricity industry.

2.10.1 **The Balancing and Settlement Code (BSC)**

(A) The BSC contains the governance arrangements for electricity balancing and settlement in Great Britain. The BSC is largely a commercially based code which focuses on balancing and settlement arrangements. Parties to the BSC are NGET, Distribution Licensees, trading parties, interconnector administrators and Suppliers. The BSC sets out the detailed arrangements for:

(1) Balancing – allows each party to the BSC to advise the GBSO of its terms for making a change to its forecast export to or import from the GB Transmission System close to real time. The energy balancing aspect allows parties to make submissions to the GBSO

to either buy or sell electricity into/out of the market at close to real time in order to keep the system from moving too far out of phase.

- (2) Settlement – provides for the reconciliation of actual exports (from Generators) and imports (from Suppliers) with the forecast, contracted position. The settlement aspect relates to monitoring and metering the actual positions of Generators and Suppliers (and interconnectors) against their contracted positions and settling imbalances when actual delivery or offtake does not match contractual positions.
 - (3) Metering – specific standards are defined for equipment used to record electricity flows for use in the settlement processes.
- (B) The BSC is owned by Elexon. A copy of the document can be found on Elexon's website [*insert link*].

2.10.2 The Distribution Connection and Use of System Agreement (DCUSA)

[Note: If the Project connects to a distribution system onshore this paragraph would be inserted earlier in this section as it would indirectly apply to the OFTO.]

- (A) The DCUSA is a multi-party contract between Distribution Licensees, Suppliers and Generators which constitutes the contractual framework for the connection to and use of the electricity distribution network. It replaced numerous bilateral contracts to provide a consistent approach to the relationship between these parties within the electricity industry.
- (B) The DCUSA is owned by DCUSA Limited. A copy of the document can be found DCUSA Limited's website [*insert link*]

2.10.3 The Distribution Code

[Note: If the Project connects to a distribution system onshore this paragraph would be inserted earlier in this section as it would indirectly apply to the OFTO.]

- (A) The Distribution Code is another technical code that sets out the technical parameters for connection to and use of each Electricity Distribution Licensee's distribution systems. The obligation to be a party to the Distribution Code is set out in Condition 9 of a Electricity Distribution Licence.
- (B) The Distribution Code is owned by the Electricity Distribution Licensees. A copy can be found on <http://www.dcode.org.uk/>.

2.10.4 Transmission Charging

- (A) Assets that facilitate connection to the GB Transmission System are (normally) owned, built and maintained by the relevant Transmission Licensee, the cost of which are recovered through connection charges or

TNUoS. The GBSO is required to prepare charging methodologies in respect of these charges.

- (B) The GBSO charges all parties that connect to and use the GB Transmission System (e.g Generators and Suppliers). The charges can be broken down as:
 - (1) connection charges;
 - (2) Transmission Network Use of System Charges;
 - (3) Balancing Services Use of System Charges
- (C) The methodology in respect of connection charges payable by a party wishing to connect to the GB Transmission System can be found at <http://www.nationalgrid.com/NR/rdonlyres/4811E6E0-3AA5-468F-9ADC-740FE9424180/24473/GBCCMI4R0FINAL.pdf>.
- (D) The methodology in respect of use of system charges payable (TNUoS and BSUoS) can be found at <http://www.nationalgrid.com/NR/rdonlyres/BC5D87D0-4682-4C56-9375-7B932A1BD726/24713/UoSCMI4R0FINALBSUoS.pdf>.

2.10.5 **Distribution Charging**

Each Distribution Licensee charges for connection to and use of its distribution system. They are required by their Electricity Distribution Licences to prepare a methodology in respect of the connection charges payable by a party seeking connection to its distribution system and a methodology in respect of the use of system charges payable by a party that uses its distribution system. These methodologies are available on the Distribution Licensee's website.

2.11 **Miscellaneous parts of the Regulatory and Contractual Framework**

2.11.1 **Crown Estate Leases**

As the owner of much of the foreshore, all of sea-bed out to 12 nautical miles, and with the right to grant leases over sea bed in the Renewable Energy Zone, a potential OFTO will need to be familiar with Crown Estate sea-bed leases. More information can be found at www.crownestates.co.uk.

2.11.2 **Decommissioning**

Sections 105-114 of the Energy Act 2004 set out a regime for the decommissioning of offshore renewable energy installations, including any equipment used in the transmission, distribution and supply of electricity generated using water or winds, up to the mean low water mark. The key decommissioning provisions in the Energy Act 2004 broadly speaking give the Secretary of State power to require OFTO's to prepare a costed decommissioning programme. Guidance notes on decommissioning are available on the BERR website at <http://www.berr.gov.uk/files/file35754.pdf>.

3. THE OFTO'S OBLIGATIONS

3.1 Introduction

This section provides a technical overview of the Project and also summarises the commercial framework within which the OFTO will operate. It is designed only as an aid for the Bidders in the preparation of their Bids and should not be used as a substitute for the Bidders referring to the primary sources of information and undertaking their own due diligence.

3.2 Technical Overview

3.2.1 Technical Requirements for Transmission System

[Note: this will set out an overview of the technical requirements which the transmission system will be required to meet as set out for example in the industry codes and technical standards.]

3.2.2 Assets to be transferred

[This will set out an overview of the assets that the Developer has constructed or proposes to construct and intends to hand over to the OFTO. It will also set out an overview of the Developer's proposed terms of transfer.]

3.3 Commercial Overview

This commercial overview has been produced only as an aid to Bidders. It may not highlight all of the key aspects of the commercial framework, and the Bidders should refer to the primary sources of the information to form their own view of the commercial issues.

[Note: The content of this section is subject to change depending on the final form of the Transmission Licence, STC and other relevant codes.]

3.3.1 Payment

- (A) The OFTO will be paid the Regulated Revenue for operating and maintaining the transmission assets in accordance with its various obligations. The Regulated Revenue will be set in special condition [] to the Offshore Transmission Licence awarded to the successful Bidder. The payment of the Regulated Revenue will commence on when the assets have been constructed, commissioned and have been signed off by an independent engineering audit and ownership transferred to the OFTO.
- (B) The Regulated Revenue will be paid for the availability of the offshore transmission assets. It is not dependent on utilisation. The Regulated Revenue will be paid to the OFTO by the GBSO in accordance with the standard payment framework. The mechanics of payment are set out in Section E of the STC.
- (C) The Regulated Revenue may be adjusted in accordance with the performance regime.

3.3.2 Performance Regime

The OFTO will be subject to a performance regime in respect of the availability of the transmission assets.

[Note: The proposed performance regime is described at paragraph [] of the [consultation document title].]

3.3.3 Change

(A) This section sets out the risk of regulatory change which may affect an OFTO. These risks arise from changes in the regulatory framework for the transmission of electricity (such as the various codes which an OFTO is obliged to comply with under its Offshore Transmission Licence), the specific contractual arrangements which an OFTO is required to have in place and to changes in law which may affect the OFTO. Where the Authority is responsible for the approval of any changes to the regulatory framework for transmission of electricity, the Authority will sanction (or otherwise) any such change in accordance with its statutory duties.

(B) Change to codes

(1) STC:

Any party to the STC, or a person having a relevant interest (as designated in writing by the Authority), may propose a change to the STC. Once a proposed change is received by the STC Committee, it is notified to all parties. The STC Committee evaluates the proposed change and analyses its impact on the GB Transmission System and each party's position and also whether it facilitates the objectives of the STC. The parties to the STC do not have a veto over any proposed change, however, the STC Committee takes account of the parties' comments and views during the process. Ultimately, the STC Committee issues an Amendment Report to the Authority which then considers whether to give approval to the proposed amendments.

(2) GBSQSS:

The GBSQSS is governed by the GBSQSS review group which currently comprises NGET, SPTL and SHETL. The GBSQSS review group consults on and reports to the Authority on any changes it considers are required to be made to the GBSQSS (including any dissenting views on the requested change). Ultimately, the Authority must sanction any changes requested by the GBSQSS review group.

(3) Grid Code:

Any Generator, Supplier or Transmission Licensee may propose an amendment to the Grid Code by notifying the Grid Code Panel. The Grid Code Panel must consider any change proposals, consult and publish their recommendations. The GBSO has a

duty to consult in writing with all Generators, Suppliers and Transmission Licensees which are materially affected by the proposed change. Ultimately, standard condition C14 of the GBSO's Transmission Licence requires the Authority to sanction any proposed change to the Grid Code.

(C) Change to contractual arrangements

(1) Crown Estate lease:

[Note: This section will set out a summary of how the Crown Estate lease may be changed.]

(2) Decommissioning Scheme:

Both the Secretary of State for BERR and/or the person who submitted the decommissioning scheme may propose changes to the decommissioning scheme. If the Secretary of State proposes a change every person who has a decommissioning duty which may be affected by the proposed change has an opportunity to make representations to the Secretary of State. The Secretary of State ultimately determines whether to effect the proposed change.

(D) Change in Law

There is no express protection for the OFTO in the event that a change in law affects the OFTO's operations and/or costs.

3.3.4 **[Land]**

[Note: This section will provide an overview of the OFTO's rights and obligations in relation to land, both offshore (sea bed) and onshore.]

3.3.5 **Liability**

- (A) Liability as between each of the OFTO, the GBSO and any other party to the STC is set out in Section G of the STC. Liability is limited in each case to £5 million per incident or series of related incidents, except in the case of fraudulent misrepresentation, death or personal injury.
- (B) Consequential loss, loss of profit, loss of use, loss of revenue, loss of goodwill and loss of contract are all excluded from each party's liability.
- (C) The remedies provided for under the STC are exclusive remedies as between the parties to the STC.
- (D) By accession to the STC, an OFTO agrees to not make a claim against a party to the CUSC (for example the Developer) in respect of the subject matter of the CUSC except in cases of fraudulent misrepresentation, death or personal injury.

[Note: Ofgem is considering the level of detail required in this paragraph and what else may need to be summarised.]

3.3.6 Insurance

[Note: This section will provide an overview of any insurance requirements]

3.3.7 Relief from performance

(A) Relief from transmission service requirements

Section C of the STC sets out certain circumstances in which an OFTO will be relieved from its obligations to provide the transmission services. These are Outages and Services Reductions. The relief only extends to the reduction in service and/or non-performance caused by the Outage or Service Reduction and there are obligations on the OFTO to manage its Outages and minimise its Services Reduction.

(B) Force Majeure

Section G of the STC sets out what constitutes a force majeure event and the relief given to the affected parties (including the OFTO) under the STC and the TOCA. Relief extends only to those obligations the performance of which is affected by the force majeure event.

3.3.8 Termination

(A) Revocation of Transmission Licence

The Authority and/or the Secretary of State can revoke an OFTO's Transmission Licence on the following grounds:

- (1) with agreement of the OFTO;
- (2) OFTO failure to pay the Authority under standard condition E4 of the Offshore Transmission Licence within certain timescales;
- (3) OFTO failure to comply with certain provisions under the Electricity Act 1989, Fair Trading Act 1973 and Competition Act 1998;
- (4) OFTO ceasing to carry on the transmission business or failing to commence the transmission business within 5 years of granting of the Transmission Licence; and
- (5) OFTO insolvency.

(B) Withdrawal from STC

An OFTO cannot withdraw from the STC until it is no longer subject to standard condition E13 requiring it to be a party to the STC.

(C) Compensation

No compensation is available for revocation of the Offshore Transmission Licence in accordance with its terms.

3.3.9 Residual obligations

[Note: This section will give an overview of any residual obligations of the OFTO following the expiry of the Regulated Revenue payments, such as decommissioning obligations.]

4. INSTRUCTIONS TO BIDDERS

4.1 Role of Key Third Parties in Tender Process

[Note: It is intended that this section will set out a summary of the roles which the key third parties will have in the Tender Process.]

4.1.1 The Authority

4.1.2 GBSO

4.1.3 Developer

4.2 Shortlisted Bidders

4.2.1 Identity of Bidders

The Bidders that have been prequalified to bid for the Project are:

[list all prequalified Bidders here]

4.2.2 Changes to Information Previously Provided

Bidders are reminded of the requirement set out in the Important Notice to this ITT Documentation for them to inform Ofgem as soon as is reasonably practicable of any material change or proposed change to the information provided by that Bidder in its Prequalification Submission.

4.2.3 Bidders' Acknowledgement of Receipt of ITT Documentation

An acknowledgement form for the safe receipt of the ITT Documentation is provided at Appendix B. This form should be completed, signed and returned by *[date]* to the following address:

[insert address for submission of acknowledgement]

4.3 Bid Process

4.3.1 Issue of ITT Documentation

The ITT Documentation was issued on *[date]* to the Bidders.

4.3.2 Initial Meeting With Bidders

Ofgem, together with the GBSO and the Developer will hold an initial meeting with the Bidders in the week commencing *[date]*.

4.3.3 **Final Date for Questions/Requests**

Bidders may request clarification of the ITT Documentation and further information as described in paragraph 4.4.4 below. Any and all such requests must be made on or before [*date*], and Ofgem reserves the right not to consider any such requests received after this date.

4.3.4 **Bid Submission**

Bids must be submitted in accordance with the instructions set out in paragraph 4.5 below on [or before] [*date and time*], and Ofgem reserves the right to exclude any Bidder that does not submit a complete Compliant Bid on [or before] this date.

4.3.5 **Optional BAFO Request**

Following its evaluation of the Bids received, Ofgem may, in its sole discretion, invite some or all of the Bidders to prepare and submit a BAFO to assist it in deciding which Bidder to appoint as Preferred Bidder.

4.3.6 **BAFO submission**

Any and all BAFO submissions requested by Ofgem from some or all of the Bidders should be received no later than a date to be specified by Ofgem in the BAFO documentation.

4.3.7 **Appointment of Preferred Bidder**

Ofgem's aim is to appoint a Preferred Bidder by no later than [*date*]. The Preferred Bidder will be required to sign a Preferred Bidder letter. Ofgem reserves the right to identify a Reserve Bidder and to re-engage the Reserve Bidder at any time prior to Licence Award. The Bidders that are excluded or deselected either at the ITT Stage or following the submission of a BAFO will be offered feedback on their Bids if requested.

4.3.8 **Agreement of Related Contractual Documentation**

[Note: This section will deal with the asset transfer agreement and will describe the process for finalising the agreement and the circumstances in which a transfer scheme would be made, and the process for doing so.]

4.3.9 **Licence Award and Financial Close**

Once the Preferred Bidder has demonstrated, to the satisfaction of the Authority, that it has the following arrangements in place and all outstanding issues have been resolved, financial close will be arranged:

- (A) agreed terms of transfer;
- (B) funding arrangements;
- (C) legal consortium formation (if applicable), including constitution and shareholding arrangements;
- (D) internal board and other approvals;

- (E) key subcontracting arrangements; and
- (F) necessary land arrangements, both onshore and offshore.

[Note: This paragraph will summarise the process and key actions at this stage of the Tender Process. How financial close will in practice happen may depend on the type of funding involved.]

4.3.10 Cancellation of Tender Process

If during this process one of the following events occur:

- (A) Ofgem does not select a Preferred Bidder; or
 - (B) the Preferred Bidder withdraws from the Tender Process; and
 - (C) the Reserve Bidder withdraws from the Tender Process,
- then Ofgem may cancel the Tender Process.

[Note: This section will set out the responsibility for costs and what, if any, refunds would be available in the event that a Tender process is cancelled.]

4.3.11 Amending Bid Timetable and Process

Ofgem reserves the right to amend the Bid timetable or Tender Process, or to terminate this Tender Process at any time, at its sole discretion. Bidders will be informed of any such changes.

4.4 Information Available to Bidders

4.4.1 Overview of Information Available

During the ITT Stage of the Tender Process, Bidders will be able to obtain information via the following resources/opportunities:

- (A) the Data Room;
- (B) initial meetings with Ofgem;
- (C) further bilateral meetings with Ofgem;
- (D) requests for information;
- (E) [site visits]; and
- (F) [other]

[Note: This paragraph will set out any other sources of information to be made available to Bidders during the ITT Stage of the Tender Process.]

4.4.2 Arrangements for Accessing the Data Room

Ofgem will make certain information available to Bidders in the Data Room which will be open [*insert opening times*] from [*opening date*] to [*closing date*].

The Data Room can be accessed at [*address/web address*] in accordance with the Data Room Rules.

[Note: Relevant security arrangements (e.g. passwords, or how to obtain passwords to access the virtual data room/ID to be provided upon entry to a physical data room) will be described here once identified by Ofgem.]

4.4.3 Initial Meetings with Bidders

- (A) Ofgem, together with the GBSO and the Developer will hold an initial meeting with the Bidders in the week commencing [*date*] in order to:
 - (1) provide the Bidders with an overview of the Project and ITT Documentation;
 - (2) set out how the ITT Stage will be managed;
 - (3) reiterate the rules of the Tender Process; and
 - (4) outline what will be required in Bid submissions.
- (B) Bidders will be allowed to ask for further information at the initial meeting. If Ofgem chooses to provide the information requested, it will provide the same information to all Bidders.

4.4.4 Process for Requesting Further Information

The onus is on Bidders to satisfy themselves as to the requirements for the Project and, if in any doubt, to make such enquiries as are necessary before submitting a Bid. Bidders are encouraged to identify issues that they would like to raise as early as possible. Should a Bidder wish to request further information from Ofgem, it can do so as follows:

(A) Subsequent Bidder Meetings

Ofgem and/or its advisers will be available to hold further meetings with Bidders [*indicate when they will be available*]. Ofgem will endeavour to offer the same number of meetings to each Bidder. Subject to that, Bidders should be aware that dates and times for such meetings will be allocated by Ofgem on a 'first come, first served' basis. If Bidders wish to meet with Ofgem and/or its advisers, Bidders must give at least [*notice period*] advance notice specifying an outline agenda and any specific people/advisers the Bidder wishes to meet with. Requests for meetings should be submitted to [*insert details of who/where to submit meeting requests to*]. Ofgem will then respond to confirm whether or not the meeting request can be accommodated.

(B) Information/Clarification Requests

- (1) Bidders may make requests to Ofgem for clarification on any aspect of the ITT Documentation or Tender Process, or for further information in relation to the Project. Any and all such requests must be submitted by Bidders to [*insert details of who/where to submit requests to*] using the Enquiry Form set out

at Appendix E. The Bidders should not contact any other member of staff, representative or adviser of Ofgem without prior written approval from *[insert details of person receiving requests as above]* (unless arranging access to the Data Room).

- (2) Any and all such requests must include the following information:
 - (a) Ofgem's case reference number; and
 - (b) Ofgem lead contact for the Project.
- (3) Any request and response to a request for clarification or further information may be made available to all Bidders. However, a Bidder may ask that Ofgem keep any request and its response confidential from the other Bidders, by marking such a request "**Confidential – not to be circulated to other Bidders**". Ofgem will advise the Bidder if it considers that the request cannot be treated as confidential, at which time the Bidder may either withdraw the request, or accept that the request and the response may (in Ofgem's absolute discretion) be communicated to the other Bidders.
- (4) Ofgem will respond to requests from Bidders as quickly as possible, having regard to the nature, extent and availability of the information requested. Ofgem will endeavour to respond to all requests prior to the Bid submission deadline, but Bidders should note that Ofgem cannot guarantee this.

4.4.5 [Site Visits]

[Note: Where site visits are to be permitted, details of the process and rules for conducting them will be set out here.]

4.4.6 [Other]

[Note: Details of any other sources of information to be made available to Bidders during the ITT Stage of the Tender Process, as described in paragraph 4.4.1 above, will be set out here.]

4.5 Bid Submission

4.5.1 Deadline and Address for Submission

[Four] hard copies [and [four] CD-ROM electronic copies] of each Bid must be packaged *[insert packing details]* and sent by [courier] to be delivered to the following address no later than *[time]* on *[date]*:

[insert address]

4.5.2 Detailed Instructions on Form and Contents of Response

Hard copy Bids should be printed on A4 paper, in colour, double-sided and spiral bound. Electronic copy Bids should be provided on a single CD-ROM holding

files in [PDF][Microsoft Word] format. Both hard and electronic copy Bids should contain the following information and be set out in the format described in Appendix G (Format for Technical, Financial and Commercial Responses):

(A) Detailed Index and Executive Summary

Each Bid should include a detailed index and executive summary to facilitate navigation of the Bid documentation and setting out the key features of the Bid.

(B) Technical

Bidders must describe how they intend to meet the technical requirements set out in section 3 of this ITT Documentation, including providing:

- (1) a project plan describing the tasks to be performed and the identities of those responsible for performing them;
- (2) details of the proposed supply chain and any key sub-contracts;
- (3) its programme plan; and
- (4) its resourcing plan.

[Note: This paragraph will set out all the requirements of response for the technical section of the Bid.]

(C) Financial

(1) Populated Input Sheets

Bidders must include Input Sheets in their Bids that relate to Ofgem's financial model, populated in accordance with paragraph 4.5.3 below.

(2) Proposed Financing Structure

Bidders must describe how they propose to finance the Project, including providing details of:

- (a) the type and extent of any financing to be put in place;
- (b) any relevant finance arrangements already in place,; and
- (c) any parent company or other guarantees or other financial support that will be provided.

(3) Insurance

Bidders must include details of any insurances, required or otherwise, that they propose to put in place in relation to this Project.

[Note: Currently the proposed requirements of response for the financial section of the Bid are set out at Appendix K. Ultimately, that information will be set out in this paragraph.]

(D) Commercial

A Bidder's commercial submission must comprise:

- (1) confirmation that it accepts the licence terms proposed by Ofgem together with any information required to populate those terms (e.g. the required revenue stream);
- (2) confirmation that it agrees to accede to the STC in its current form;
- (3) confirmation that it accepts the Developer's proposed terms of transfer of assets;
- (4) *[anything relevant in connection with decommissioning, depending on what is requested from the Bidders]*; and
- (5) *[anything relevant in connection with the Crown Estate lease or other consents, depending on what is requested from the Bidders]*.

[Note: This section will contain all the requirements of response for the commercial section of the Bid.]

(E) Anti-Collusion Certificate

Bidders should include a completed Anti-Collusion Certificate in the form set out at Appendix C with each Bid submitted.

(F) Bid Checklist

Bidders should include a completed Bid Checklist in the form set out at Appendix G with each Bid submitted.

(G) Payment

A payment of £[●]

4.5.3 **Instructions for Population of the Input Sheets**

[Note: The instructions for populating and/or explaining the Input Sheets for Ofgem's reference financial model will be set out in this paragraph.]

4.5.4 **Consequences of Submitting an Incomplete or Non-Compliant Bid**

Ofgem reserves the right to reject any Bid that, in Ofgem's opinion, fails to comply with the ITT Rules, but Ofgem shall not be obliged to reject any such Bids.

4.5.5 **Compliant Bid**

Bidders are required to submit a Compliant Bid. A Compliant Bid is one that:

- (A) delivers the Developer's requirements for the Project in accordance with what the Developer has agreed with the GBSO under the CUSC;
- (B) complies with all the relevant general technical requirements under the codes (e.g. GBSQSS, STC, Grid Code);

- (C) confirms the Bidder's acceptance of the licence terms proposed by Ofgem and provides any information required to populate those terms;
- (D) confirms the Bidder's acceptance to accede to the STC in its current form;
- (E) confirms the Bidder's acceptance of the Developer's proposed terms of transfer of assets;
- (F) [anything relevant in connection with the decommissioning obligations depending on what is requested from the Bidders];
- (G) [anything relevant in connection with the Crown Estate lease or other consents, depending on what is requested from the Bidders].

[Note: Ofgem intends to allow Variant Bids in respect of packaging of projects. See section [] of the [Consultation Document title] for a summary of Ofgem's current proposal.]

4.6 Procurement Compliance

4.7 Evaluation

4.7.1 Completeness

The completeness of Bids will be established by reviewing each submission against the completed Bid Checklist in the form of Appendix F (Bid Checklist).

4.7.2 Ofgem's Right to Seek Clarification/Further Information from Bidders

Following receipt of the Bids, Ofgem may request Bidders to clarify their proposals.

4.7.3 Identification of Compliant Bids

A Bid will be deemed a Compliant Bid only if meets the criteria set out in paragraph 4.5.5 above.

4.7.4 Evaluation Criteria [and Weighting]

[Note: This paragraph will set out the evaluation criteria and weightings ascribed to those criteria. See section [] of the [Consultation Document title] for a summary of Ofgem's current proposal.]

4.7.5 Variant Bids

[Note: Ofgem intends to allow certain Variant Bids. This paragraph would set out any requirements in respect of such Variant Bids.]

4.7.6 Option for BAFO Submission

- (A) Ofgem may invite two or more Bidders to make a BAFO submission to assist it in deciding which Bidder to appoint as Preferred Bidder.
- (B) However, Ofgem reserves the right to proceed solely with one Bidder following the ITT evaluation from which it may, at its discretion, invite a BAFO.

4.7.7 **Status of Preferred Bidder Appointment**

[A Preferred Bidder will not be selected until negotiations on all issues of principle have been completed. Accordingly, final negotiations should be accomplished within a short time of selection of the Preferred Bidder. Attempts by the Preferred Bidder to change positions already agreed, or to introduce new issues, may lead to withdrawal of Preferred Bidder status.]

4.8 **Freedom of Information Act 2000**

4.8.1 The FOIA provides a general right of access to all information held by public authorities. Ofgem is subject to the FOIA.

4.8.2 Bidders are invited to identify which parts, if any, of their Bids are provided to Ofgem in confidence and provide reasons why they consider the information is eligible for exemption under the FOIA and should be kept confidential.

4.8.3 Although Ofgem is not under any obligation to consult with a Bidder in relation to requests for information made under the FOIA, Ofgem will endeavour to inform the relevant Bidder of requests wherever it is reasonably practicable to do so. However, all decisions about disclosure of information will be made at the sole discretion of Ofgem regardless of whether or not a Bidder has identified any information as being in its opinion, eligible for exemption.

4.8.4 For further information and guidance, Bidders' attention is drawn to the Lord Chancellor's Code of Practice issued under section 45 of the FOIA (see <http://www.dca.gov.uk/foi/codesprac.htm>).

4.9 **Ongoing Obligation to Update Information Provided in the Bid**

Ofgem will rely on the information provided by Bidders in their Bids. Bidders may not change any aspect of their Bid which is within their reasonable control post-submission. If, at any time after the submission of the Bid, there is a change to any aspect of the Bid which is outside the Bidder's reasonable control, the Bidder must advise Ofgem as soon as is reasonably practicable. For the avoidance of doubt, where a Bidder informs Ofgem of any such change, Ofgem will evaluate (or re-evaluate) the Bid in light of the change notified.

4.10 **Withdrawal/Exclusion**

If a Bidder:

4.10.1 decides not to submit a Bid, having considered the ITT Documentation; or

4.10.2 is excluded from the Tender Process by Ofgem,

that Bidder is requested to return the ITT Documentation, copies of documents obtained from the Data Room and any other information or material provided by Ofgem in relation to the Tender Process to the address given in paragraph 4.5.1 above and in the case of paragraph 4.10.1, is requested to notify Ofgem of its decision in writing at the same address.

4.11 **Costs**

4.11.1 **Ofgem's Projected Costs of Running the Tender Process**

Ofgem's total projected costs of running the Tender Process are estimated at approximately £[]. This figure is indicative only and is not, and is not intended to be, legally binding. Consequently it may be revised upwards or downwards to reflect Ofgem's actual costs incurred in running the Tender Process.

4.11.2 Bidder Payments

- (A) Each Bidder must include a payment with their Bid (as set out in paragraph 4.5.2(G) which will be attributed towards Ofgem's costs of running the Tender Process.
- (B) Ofgem may request further payments from the Bidders as required to meet its actual and/or estimated costs incurred in running the Tender Process.
- (C) The Bidder that is ultimately awarded the Offshore Transmission Licence shall prior to being awarded such licence, be required to make a payment to Ofgem equal to the total actual costs incurred by Ofgem in running the Tender Process, less any payment already made to Ofgem by that Bidder pursuant to paragraph 4.11.2(A) and 4.11.2(B) above and paragraph 2.2.2(C) of the Prequalification Document.

[Note: This section will be aligned with Ofgem's Cost Recovery Methodology]

4.11.3 Refunds to Unsuccessful Bidders

- (A) Where a Bidder withdraws or is excluded from the Tender Process, it shall be entitled to receive a refund of any payment already made to Ofgem by that Bidder pursuant to paragraph 4.11.2(A) and 4.11.2(B) above and paragraph 2.2.2(C) of the Prequalification Document calculated in accordance with Ofgem's [*cost recovery methodology for calculating charges and refunds*] published in accordance with the Tender Regulations.
- (B) Before Ofgem can make a refund pursuant to paragraph 4.11.3(A) above, the Bidder must give written notice to Ofgem which must include details of who the payment should be made to (including bank details if electronic transfer of funds is requested), and must be delivered to Ofgem at the following address:

[insert address that refund requests should be sent to].

Appendix A

Glossary

"**Anti-Collusion Certificate**" means the certificate at Appendix [C] of the ITT Documentation;

"**Applicant**" means an entity that makes a Prequalification Submission;

"**Authority**" means the Gas and Electricity Markets Authority;

"**BAFO**" means the best and final offer that may be requested by Ofgem from some or all of the Bidders pursuant to paragraph [4.3.5] of the ITT Documentation;

"**Balancing Services Use of System Charge**" means the charge related to the cost of NGET balancing generation and demand, and maintaining quality and security of supply in real time;

"**BERR**" means the Department for Business, Enterprise & Regulatory Reform;

"**Bid**" means each bid submitted to Ofgem in response to the ITT Documentation;

"**Bid Checklist**" means the checklist that is contained in Appendix [G] of the ITT Documentation;

"**Bidder(s)**" means an entity invited to submit a Bid to Ofgem in response to the ITT Documentation, or in the case of a Bid which is accepted and in pursuance of which an Offshore Transmission Licence is granted, the Offshore Transmission Licensee;

"**BSC**" means the Balancing and Settlement Code;

"**Compliant Bid**" means a Bid that fulfils the criteria set out at paragraph [4.5.5(A)] of the ITT Documentation;

"**Confidentiality Agreement**" means the agreement of the same name entered into between the Bidder and Ofgem regarding the basis upon which information is disclosed to that Bidder by Ofgem in connection with the Tender Process and the treatment of such information by the Bidder;

"**Crown Estate**" means property owned by the Sovereign of the United Kingdom;

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

"**Data Room**" means the [virtual] room open to each Bidder[, the contents of which are detailed in Appendix [E] of the ITT Documentation];

"**Data Room Rules**" means the rules that each Bidder must comply with when attending and using the [virtual] Data Room as detailed in Appendix [E] of the ITT Documentation;

"**DCUSA**" means Distribution Connection and Use of System Agreement;

"**Developer**" means the person falling within sub-sections 6D(2)(a) and (4) of the Electricity Act who intends to develop an Offshore generating station which has triggered the commencement of this Tender Process;

"**Electricity Distribution Licence**" means a licence granted pursuant to section 6(1)(c) of the Electricity Act and "**Electricity Distribution Licensee**" means the holder of a Distribution Licence;

"Electricity Generation Licence" means a licence granted under section 6(1)(a) of the Electricity Act;

"Electricity Supply Licence" means a licence granted under section 6(1)(d) of the Electricity Act;

"Energy Administration" means the insolvency regime, set out in Part 3 Chapter 3 of the Energy Act 2004;

"Enquiry Form" means the template form on which the Bidder should make requests to Ofgem for clarification on any aspect of the ITT Documentation, or for further information in relation to the Project, as set out at Appendix [F] of the ITT Documentation;

"FOIA" means the Freedom of Information Act 2000;

"GBSO" or "Great Britain System Operator" means National Grid Electricity Transmission plc, which acts as the system operator for the GB Transmission System pursuant to the terms of its Transmission Licence.;

"GBSQSS" means the GB Security and Quality of Supply Standards;

"GB Transmission System" means the system consisting (wholly or mainly) of high voltage electric lines owned or operated by Transmission Licensees and used for the transmission of electricity from one generating station to a sub-station or to another generating station or between sub-stations or to or from any inter-connector and includes any electrical plant or meters owned or operated by any Transmission Licensee in connection with the transmission of electricity;

"Generator" means an entity that generates electricity under an Electricity Generation Licence or exemption under the Electricity Act 1989;

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

"Grid Code" means the code NGET is required to prepare and maintain pursuant to standard condition C14 of its Transmission Licence, which is designed to permit the development, maintenance and operation of an efficient, co-ordinated and economical system for the transmission of electricity, to facilitate competition in the generation and supply of electricity and to promote the security and efficiency of the power system as a whole;

"Grid Code Panel" means the panel having the functions set out at section GC.4 of the Grid Code;

"Input Sheets" means the input sheets to the financial model that Bidders are required to complete and include with their Bids pursuant to paragraph [4.5.3], in the form set out in Appendix [I] of the ITT Documentation;

"ITT Documentation" means this document, including all appendices, annexures, schedules and other documents related hereto;

"ITT Rules" means the rules that each Bidder must comply with during the Tender Process as detailed in the ITT Documentation;

"ITT Stage" means the stage at which the ITT Documentation is distributed to Bidders by Ofgem, and Bids are prepared, submitted and evaluated;

"Licence Award" means the grant of the Offshore Transmission Licence by Ofgem to the successful Bidder, pursuant to paragraph [4.3.9] of the ITT Documentation;

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

"Offshore Construction Secured Amount" means security equivalent to [x] % of the Forecast Offshore Construction Cost that an OFTO is required to provide on acceptance by the GBSO of a TOCO and which shall be called on in the event of a TO Event of Default under the TOCA, as described in paragraphs [3.1.11(D)(3) and 3.4.2(J)] of the ITT Documentation;

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

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

and includes the Renewable Energy Zone and **"Offshore Transmission Licensee"** means the holder of an Offshore Transmission Licence "

"Offshore Transmission System" has the meaning given to that term in the Offshore Transmission Licence;

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

"OFTO" means the owner of an Offshore Transmission System and the holder of a related Offshore Transmission Licence;

"Outage" means either:

- (a) a planned temporary reduction in the extent to which the transmission services are provided by an OFTO; or
- (b) a planned temporary withdrawal from service (either partially or completely) of the GBSO's plant and apparatus comprising part of the GB Transmission System,

as defined at section J of the STC;

"Preferred Bidder" means the Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received (including any BAFO submissions requested), as the Bidder it intends to award the Offshore Transmission Licence to in relation to the Tender Process;

"Prequalification Stage" means the stage at which the Prequalification Document is distributed to Applicants by Ofgem, and Prequalification Submissions are prepared, submitted and evaluated;

"Project" means the management and operation of the Offshore Transmission System which the ITT Documentation relates to;

"RAV" means a regulated asset valuation calculated in accordance with Part 9 clause 21 of the Tender Regulations;

"Regulated Revenue" means the revenue paid to an OFTO by the GBSO in accordance with the STC and special condition [] of the OFTO's Offshore Transmission Licence;

"Related Party" means employees, officers, directors, stakeholders and suppliers of the associated Party and any third party that could influence the outcome of the Bid;

"Renewable Energy Zone" means the area designated as such pursuant to section 84(4) of the Energy Act 2004;

"Reserve Bidder" means the Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received (including any BAFO submissions requested), as the second choice Bidder that Ofgem would consider awarding the Offshore Transmission Licence to should Ofgem ultimately decide not to award the Offshore Transmission Licence to the Preferred Bidder;

"Secretary of State" of the Secretary of State for Business, Enterprise & Regulatory Reform;

"Services Reductions" has the meaning given at Section C, Part One, sub-paragraph 4.1.2 of the STC;

"SHETL" means Scottish Hydro Electric Transmission Ltd (registered number SC213461) whose registered office is situated at Inveralmond House, 200 Dunkeld Road, Perth PH1 3AQ;

"SPTL" means SP Transmission Ltd (registered number SC189126) whose registered office is situated at 1 Atlantic Quay, Robertson Street, Glasgow G2 8SP;

"STC Committee" means the committee appointed and empowered under the STC;

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

"Supplier(s)" means an entity that has been granted an Electricity Supply Licence pursuant to section 6(1)(d) of the Electricity Act 1989;

"Tender Process" means the competitive process run by Ofgem in order to identify a suitable entity to be awarded the Offshore Transmission Licence in relation to the Project;

"Tender Regulations" means [];

"TNUoS" or "Transmission Network Use of System Charge" means the charge related to the cost of installing, operating and maintaining transmission infrastructure assets to meet the continued demands placed on it;

"TOCA" means the construction agreement that is entered into by the GBSO and the OFTO (in the form or substantially the form set out in the CUSC) following the acceptance of a TOCO;

"TO Final Sums" means the calculation of securities required for a Transmission Licensee to undertake its own works and works that it will undertake with other Users;

"Transmission Licence" means a licence issued under section 6(1)(b) of the Electricity Act and **"Transmission Licensee(s)"** means the holder of a Transmission Licence;

"Variant Bid" means a Bid that is not a Compliant Bid, but that fulfils the criteria set out at paragraph [4.5.5(B)] of the ITT Documentation.

Appendix B

ITT Acknowledgement of Receipt Form

DRAFT

Appendix C

Certificate of Non-Collusion

DRAFT

Appendix D

[Contents of Data Room and Data Room Rules – *may be issued separately*]

DRAFT

Appendix E

Enquiry Form for Clarificatory Questions from Bidders

DRAFT

Appendix F

Bid Checklist

DRAFT

Appendix G

Format for Technical, Financial and Commercial Responses

DRAFT

Appendix H
Input Sheets Template

DRAFT

Appendix I
Bid Submission Certificate

DRAFT

Appendix J

Draft Transmission Licence

DRAFT

Appendix K

Instructions for Financial Response

Guidance Notes – Finance Instructions

1. Introduction

1.1 These Guidance Notes (“The guidance”) are prepared in accordance with the Instructions to Bidders of the Invitation to Tender (ITT). The guidance covers The Bidders Financial Model (under section 4.5.2 Part C (1)), The Proposed Financing Structure (section 4.5.2 Part C(2)) and Insurance (section 4.5.2 Part C(3)).

1.2 The guidance is organised into 4 sections:

- PART 1 – Financial Model

- 1 General
- 2 Model Requirements
- 3 Coding Principles
- 4 Accounting Policies

- PART 2 – Financing Structure

- 1 General
- 2 Specific Information
- 3 Proposed Funding
- 4 Existing Funding
- 5 Parent Company(s) Support

- PART 3 – Insurance

- 1 General
- 2 Specific Information

- PART 4 – Appendices

- 1 Company Structure
- 2 Funding Structure

1.3 The guidance has been prepared by David Young and any questions in relation to this should be addresses to him at the following address: []

PART 1 - Bidders Financial Model

1. General

- 1.1 Under Section 4.5.2 Part C (1) the Bidder is requested to submit a populated Financial Model detailing the financing of the project and the returns the bidder expects to make. **For avoidance of doubt this Financial Model is separate and distinct from Input sheets which Ofgem has asked Bidders to complete in accordance with Section 4.5.3 of the ITT.** The Input sheets of 4.5.3 will be fed into Ofgem's own model and will be used as a benchmarking tool for evaluating bids. The model required under 4.5.2 (and henceforth referred to in the rest of this section) is the Bidder's own model – developed by the bidder for the purposes of securing project finance

Submission of Model

- 1.2 The model submitted by the Bidder should be the “Bankable Model” – that is the model which will be used by the Bidders financiers to assess the viability of the project and by which the Bidder has secured finance.
- 1.3 The rest of Section 1 will provide guidance as to what the model must contain and key attributes of the model which will help the Authority assess the bids.

2. Requirements in the Model

- 2.1 All models should be developed in Microsoft Excel in either Microsoft Excel version 2003 or Microsoft Excel Version 2007.
- 2.2 If the bidder is bidding for more than one project then they must submit one model per project. Please **do not** submit aggregated models
- 2.3 The model must contain a cover sheet clearly stating:
1. The name of the bidder
 2. The project which they are bidding
 3. The date of the model was last updated
 4. The person who prepared the model
- 2.4 Additionally the model must contain a contents page which users can navigate from.
- 2.5 The model must contain the following accounting statements:
1. Profit and Loss Statement or Income Statement
 2. Cash Flow Statement
 3. Balance Sheet
 4. Key Accounting Ratios
 5. All working schedules used in the calculation of 1 to 4 above

- 2.6 Items 1 to 3 will be dependent upon whether the bidder has UK Generally Accepted Accounting Principles (UK GAAP) or International Financial Reporting Standards (IFRS). For further guidance please see Section 4 below.
- 2.7 Item 4 should relate to the key accounting ratios used by the bidder's financiers in providing finance. These accounting ratios should agree to any term sheets and loan documentation. Furthermore in your supporting commentary this references should be made explicit and clear (see Part 2 Financing Structure below).
- 2.8 Additionally Ofgem would expect the model to contain the following accounting ratios:
- Gearing (defined as debt / (debt + equity))
 - Interest Cover
 - Return on Capital Employed (ROCE)

Discounted Cash Flow Analysis (DCF)

- 2.9 The bidder should also have a section in their model providing a Discounted Cash Flow Analysis. This section should be clearly identified within the contents page. Furthermore either the manual or in the model (preferably both) the following must be stated:
- Discount Rate used
 - Net Present Value (NPV) analysis of over the project life
 - Internal Rate of Return (IRR) analysis over the project life

Manual

- 2.10 The bidder must provide a detailed manual explaining the operations of the model. The manual must cover:
- Overview of model and model structure
 - Explanation of assumptions in model
 - Explanation of complex formula – and where they are found
 - Details of Macros and Visual Basic Code (subject to comments below)
 - Explanation of accounting policies
 - Disclosure of Discount Rate
 - Details of Passwords used to protect the model

Audit Requirement

- 2.11 The model must be accompanied by an independent audit certificate stating that in the opinion of the auditors the model is free from material errors.
- 2.12 Furthermore the certificate should be accompanied by a letter from the auditors detailing the procedures they undertook to reach their opinion.

Contact Names

- 2.13 The bidders must provide the contact names of individuals used to develop the model and who can be contacted for on-going queries should they arise

3. Coding Principles and Best Practice for Model Development

- 3.1 This section is only a guide for bidders. However following these guidelines will aid transparency in the process and avoid Ofgem and its advisers asking questions surrounding clarification.

Model Design

- 3.2 Please ensure the model follows a logical flow – with input sheets, calculation pages and output reports all being separated and clearly identifiable as demonstrated in the diagram below.



Fig 1 – Model Logic

Complex Formula

- 3.3 Please ensure that where possible complex formula are broken down into sub components and located in separate cells. Please do not condense too much code into single cells such that the user has difficulty understanding them.

Hard coded numbers in formula

- 3.4 Please avoid placing hard coded numbers in formula. All formula should reference to other cells only. If hard coded numbers in formula is unavoidable then please state reference to such formulas in the manual.

Use of Visual Basic and Macros

- 3.5 The use of macros for functional purposes such as print macros or navigation is more than acceptable. However macros for purposes other than this is discouraged as it reduces transparency within the model and can inhibit the users understanding.

- 3.6 If macros and visual basic code is used then the code must be clearly shown in the manual as well as supporting commentary giving a detailed explanation as to how the code operates.
- 3.7 Please bear in mind that Ofgem is a government organization. In line with IT policy all files containing portable code and sent by electronic mail will be blocked by security systems to ensure they do not contain harmful viruses.
- 3.8 For further guidance on Spreadsheet modeling we refer bidders to the guidance issued by the Institute of Chartered Accountants of England and Wales.

4. Accounting Policies

- 4.1 Ofgem are not prescribing a set of accounting policies for the bidder. However as indicated above we require the bidders to clearly state what set accounting policies they are following – and specifically whether they are adopting UK GAAP or IFRS.
- 4.2 Furthermore the manual must contain a section outlining the accounting policies. This section should refer as to how items have been treated and what the subsequent policy is. Ofgem is not limiting the scope of this section and would expect it to cover as a minimum the following area:

Capitalization Policies – including capitalization of interest and treatment of repairs and maintenance

Treatment of Foreign Currencies

Treatment of dividends and distribution to shareholders

Treatment of Financial Instruments – including loan finances and instruments to manage financial risk

UK GAAP and IFRS reconciliation

- 4.3 For all material items (where materiality is defined as the lesser of 1% of Turnover or 10 % of Total assets) we will require a reconciliation from UK GAAP (or IFRS) to IFRS (or UK GAAP).
- 4.4 These reconciliations should take the form of separate schedules and should include :
- Schedules showing reconciling items and reasons for adjustment
 - Restatement of Income Statement / P&L
 - Restatement of Balance Sheet
 - Restatement of Cash Flow
 - Supporting commentary

PART 2 – Proposed Financing Structure

1. General

- 1.1 Under Section 4.5.2 Part(C) paragraph 2 the Bidder is required to provide information on:
- The type and extent of the finance
 - Relevant finance arrangements already; and
 - Any parent company financial support
- 1.2 This section provides guidance for the bidders on how these requirements are to be met.

2. Specific Information

- 2.1 The bidder will be required to provide the following specific information in support of the tender:
1. Company registration details for the Special Purpose Vehicle (“SPV”) – including company name and company registration numbers.
 2. Names of Directors and their Curriculum Vitae (CV’s)
 3. Details of the company’s auditors
 4. Details of the Equity share capital and associated voting rights
 5. An organizational chart showing the corporate structure of the SPV and the group to which it pertains
 6. A diagram showing the funding structure of the SPV

Corporate Structure and Funding Structure Diagrams

- 2.2 Points 5 and 6, above, requires the Bidder to provide organizational charts relating to the SPV. Example diagrams are provided in the appendices to this document.
- 2.3 The charts must clearly demonstrate the ownership, control and the sources of finance for the SPV. Providing the bidder can clearly demonstrate this in a diagram a combined chart is acceptable.

3. Funding of SPV – Proposed Arrangements

3.1 Section 4.5.2, part (c) paragraph 2c of the ITT requires information relating to the type and extent of any financing to be put in place.

3.2 To meet this requirement the bidder must provide the following documents:

1. A commentary describing the proposed financing. The commentary must:
 - i. Be labeled “Supporting Commentary for Proposed Financing.”
 - ii. Describe the financing strategy of the bidder for the SPV making explicit reference to:
 1. raising of equity finance debt finance
 2. raising debt finance
 3. raising mezzanine finance
 4. Intentions to re-finance during the life of the project
 5. Financing risks facing the SPV
 6. Currency risks facing the SPV
 7. Proposals for dealing with tax including any discussion the bidder may have had with the HMRC
 - iii. Provide details of the sponsoring company, the finance they are providing and whether that finance takes the form of equity share capital, debt finance or mezzanine finance.
 - iv. Provide details of Equity Investors (other than the sponsoring company) including names of the entities, the share capital provided, the terms on which it is provided and any mezzanine finance provided.
 - v. Provide details of financiers providing debt finance including names of the entities, the terms of the loans and any whether the loans contain the clauses to convert the debt into equity
 - vi. Provide details of hedging strategies including proposed hedging instruments, with whom the instruments have been taken out and the terms by which the instruments will be secured.
 - vii. Provide details of proposed tax treatment including expected tax rates which the SPV will face, Writing Down Allowances (WDAs) for Capital Expenditure and whether or not tax legislation from jurisdictions outside the United Kingdom will affect the SPV.
2. A financing schedule profiling the debt instruments over the duration of the project. The schedule must include for each instrument:
 - i. Denomination of loan (Amount and Currency)
 - ii. Loan Amount (in Sterling)

- iii. Terms of loan – Fixed or Floating
- iv. Maturity Period / Repayment Terms
- v. Interest Rate
- vi. Repayment profile split between capital repayment of loan and interest on loan (in Sterling)
- vii. Hedging instruments against the debt instrument (SWAP, Forward Rate Agreement or Futures)

The schedule must be clearly labelled “Funding Arrangements – Proposed Financing Schedules.

- 3. A schedule outlining the expected Corporation tax payments over the life
- 4. All information above must be internally consistent and agree to sources provided elsewhere – for example the bidders financial model.
- 5. All relevant loan documentation including term sheets
- 6. The documentation must be accompanied by a letter signed from a Finance Director (or equivalent) stating to the best of their knowledge the information is accurate and complete.

4. Funding of SPV – Existing Arrangements

4.1 Section 4.5.2, part (c) paragraph 2d of the ITT requires information relating to relating to existing arrangements.

4.2 To meet this requirement the bidder must provide:

- i. A commentary describing the existing arrangements which must contain the following:
 - i. Be clearly labelled “SPV Funding – Existing Arrangements”
 - ii. Description of the financing arrangements already in place. The description must make explicit reference to the following:
 - 1. The existing equity capital in the SPV and the associated voting rights including identification of the entities holding the equity
 - 2. Any existing debt in the SPV including the amounts and the term sheets of the loans (with supporting legal documentation)
 - 3. Access the SPV may have to funds including details of committed and uncommitted facilities even if the facilities have not yet been drawn-down. Please provide copies of the term sheets for these facilities

- iii. Tax computations – If applicable please provide copies of the corporation tax returns filed with the HMRC
- iv. All relevant loan documentation including term sheets
- v. If applicable please provide copies of accounts filed with Companies House

5. Funding of SPV – Parent Company Support

5.1 Section 4.5.2, part (c) paragraph 2c of the ITT requires information relating to relating to parent company support.

5.2 In order to meet these requirements please provide the following information:

- i. The latest set of accounts from the Ultimate Parent within the group of the SPV.
- ii. The latest set of accounts from the Immediate Parent within the group of the SPV
- iii. A written undertaking from the Ultimate Parent which:
 - 1. Provides adequate assurance the ultimate parent will provide as much assistance as can be reasonably undertaken to support the SPV.
 - 2. Has been agreed by the Board of Directors of the Ultimate Parent
 - 3. Is signed by the Chief Executive of the Ultimate Parent
- iv. An example of a written undertaking is provided in the Appendices

PART 3 – Insurance

1. General

- 1.1 Under Section 4.5.2 Part(C) paragraph 2 the Bidder is required to provide information on Insurance.
- 1.2 This section provides guidance for the bidders on how these requirements are to be met.

2. Specific Information

- 2.1 The Bidder must provide the following information in relation to Insurance:
- i. A written commentary on Insurance Strategy. The written commentary must:
 1. Provide details of the insurance provider(s).
 2. List the principle risks the bidder seeks to assure against. In particular Ofgem would seek to understand how the bidder is proposing to insure against risks associated with delays in construction of assets and revenue protection.
 3. Identify risks given in 2 above that financiers have required insurance against
 4. Provide insurance Cover details of the risks given in 2 above including the values being insured and any excess
 5. Detail the premiums associated with insurance policies given in 4 above
 6. Provide details of how the risks have been re-insured and spread amongst a syndicate if appropriate
 - ii. Relevant and appropriate Insurance documents supporting the written commentary.

PART 4 – Appendices

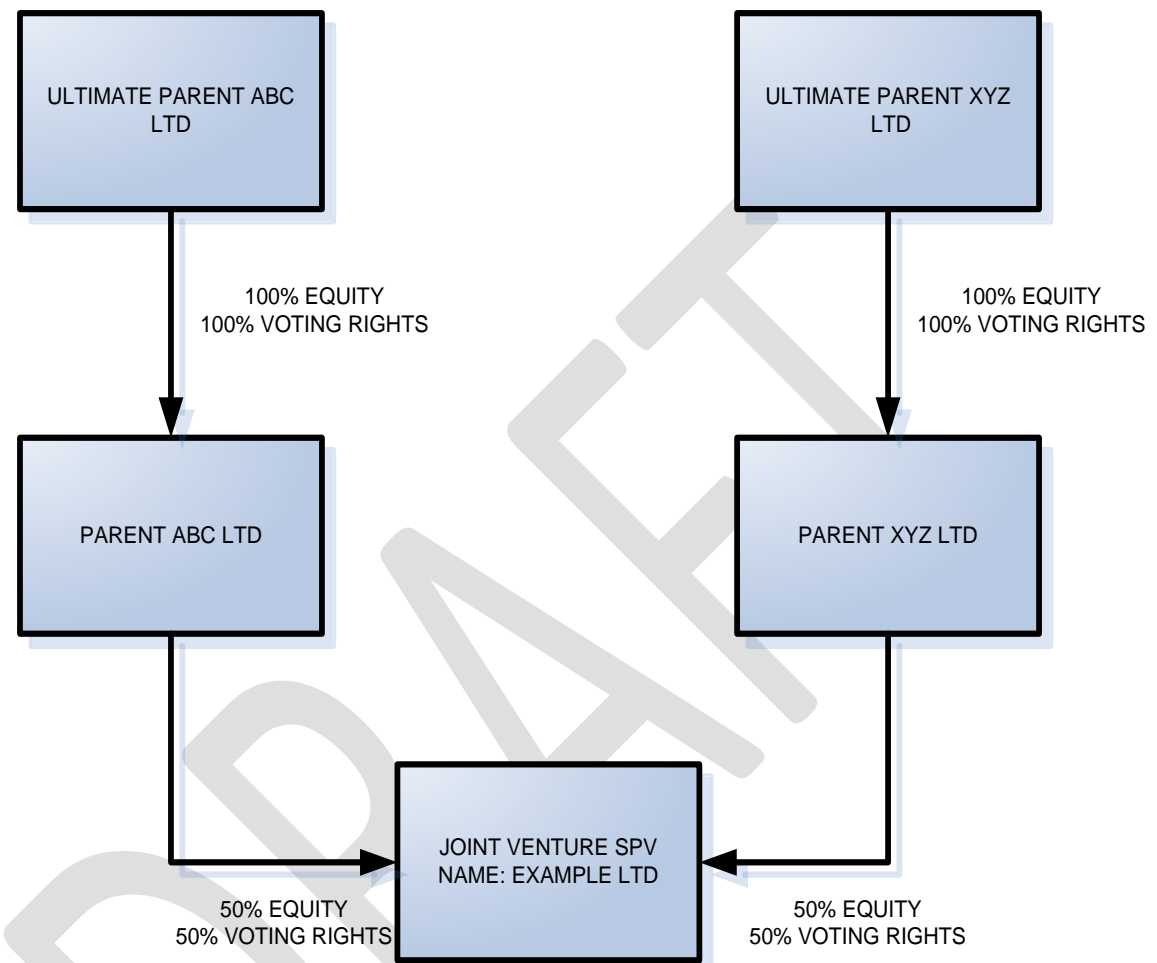
Appendix 1 Illustrative Check List

Finance Guidance - Check List

Provided

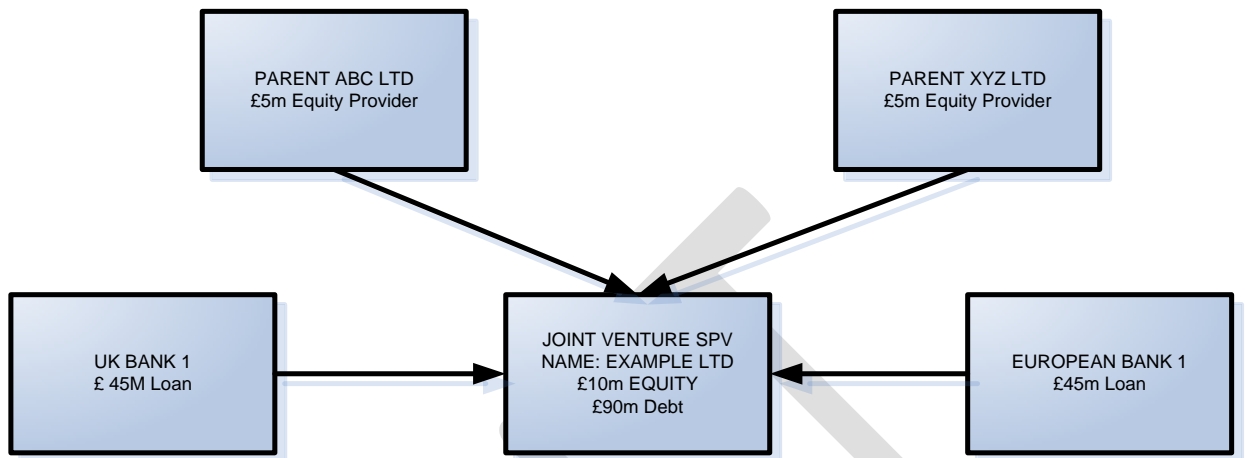
Model				
1	Cover Sheet	1	Company Name	
		2	Project	
		3	Date	
2	P&L / Income Statement			
3	Balance Sheet			
4	CashFlow			
5	Key Accounting Ratios			
6	Working Schedules			
7	Discounted CashFlow Analysis	1	Discount Rate	
		2	NPV	
		3	IRR	
8	Manual	1	Model Structure	
		2	Assumptions stated	
		3	Complex formula explained	
		4	VBA code disclosed	
		5	Password disclosed	
		6	Discount Rate disclosed	
		7	Accounting Policies	
9	Reconciliation Schedules			
10	Audit Report	1	Auditors Statement	
		2	Procedures Letter	
Bidders Prospectus: Proposed Financing Structure, Existing Structure and Insurance				
1	Introduction	1	Company Name	
		2	Directors CV	
		3	Company Auditors	
		4	Owners -	
		5	Equity share capital	
2	Ownership Chart			
3	Funding Structure Chart			
4	Supporting Commentary for Proposed Financing	1	Commentary	
		2	Funding Arrangements - Proposed Financing Schedules	
		3	Schedule of Corporation Tax Payments	
		4	Loan Documentation	
		5	Signed letter from Director	
5	Supporting Commentary for SPV - Existing Arrangements	1	Commentary	
		2	Tax computations	
		3	Loan Documentation	
		4	Copies of Accounts (attached in appendices)	
6	Parent company Support Letter			
7	Insurance Details	1	Insurance commentary	
		2	Supporting documents in appendix	

Appendix 2 Illustrative Company Structure



**Organisational chart for
Example Ltd**

Appendix 3 Illustrative Funding Structure



Funding structure for Example Ltd