

Draft Qualification to Tender Document 2009 Transitional Tenders

**Document type: Draft Qualification
to Tender Document**



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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.

This draft Qualification to Tender (QTT) Document is issued for information only. The final QTT Document will be issued by the Authority pursuant to Regulation 9(2) of the Tender Regulations and will apply to the first Tender Round which Ofgem will run for the grant of Offshore Transmission Licences under the Transitional Regime.

The Office of Gas and Electricity Markets

Offshore Electricity Transmission

**Draft Qualification to Tender Document
2009 Transitional Tenders**

IMPORTANT NOTICE

Introduction

This Qualification to Tender Document is issued by the Authority pursuant to regulations 9(2) of the Tender Regulations and will apply to the first Tender Round which Ofgem will run for the grant of Offshore Transmission Licences under the Transitional Regime. By accepting and participating in the Tender Process set out in the Qualification to Tender Document each Qualifying Applicant agrees to be bound by, and to comply with, the rules and requirements set out in the Tender Regulations, the Qualification to Tender Document and the Tender Rules, issued by the Authority. A material breach of the Tender Regulations, Qualification to Tender Document or the Tender Rules would give Ofgem the right, under the Tender Regulations, to disqualify the Qualifying Applicant from the Tender Process.

Non-reliance, accuracy of information and exclusion of liability

It is the responsibility of each Qualifying Applicant to ensure that it has all of the information it needs to prepare its Qualification to Tender Submission. While information provided by Ofgem and/or its Related Parties in this Qualification to Tender Document or otherwise in relation to the Tender Round has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. Neither Ofgem nor any of its Related Parties makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information provided by it or its Related Parties in this Qualification to Tender Document or otherwise in relation to the Tender Round or any information provided by Developers through Data Rooms or otherwise. 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 a Qualifying Applicant /or any other interested party.

Use of information

This Qualification to Tender Document has been prepared and issued to set out the requirements for Qualification to Tender Submissions. This Qualification to Tender Document is not intended to provide the basis of any investment decision, nor is it intended to be considered as an investment recommendation by Ofgem or by any of its Related Parties. Each Qualifying Applicant and any other interested party must make its own independent assessment of the Qualifying Project(s) after making such investigation and taking such professional advice as it deems necessary.

The material in this Qualification to Tender Document is not and should not be regarded as legal or professional advice. Participants and other interested parties should seek their own legal or other professional advice where appropriate.

Copyright

The information contained within this Pre-Qualification Document is subject to Crown copyright protection unless otherwise indicated. The Crown copyright protected material may be reproduced free of charge in any format or medium provided it is reproduced accurately and not in a misleading or derogatory manner. Where any of the Crown copyright material in this Pre-Qualification Document is being published or copied to others, the source of the material must be identified and the copyright status acknowledged.

Freedom of information

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

Although Ofgem is not under any statutory obligation to consult with a Qualifying Applicant in relation to requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, Ofgem will endeavour to inform the relevant Qualifying Applicant 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 Qualifying Applicant has identified any information as being in its opinion eligible for exemption. For further information and guidance, Qualifying Applicants' attention is drawn to the Lord Chancellor's Code of Practice issued under section 45 of the Freedom of Information Act 2000 (see <http://www.dca.gov.uk/foi/codesprac.htm>).

Data protection

In participating in the Tender Round, Qualifying Applicants must comply with the Data Protection Act 1998 and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner and must not do or cause or permit to be done anything which may cause or otherwise result in a breach by Ofgem of such requirements. Ofgem will collect, hold and use personal data obtained from and about Qualifying Applicants and in order to participate in the Tender Round Qualifying Applicants must agree to such data being collected, held and used.

Information provided by Qualifying Applicants

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

By participating in the Tender Process, each Participant shall be deemed to consent to the disclosure by Ofgem to Ofgem's Related Parties of any information given to Ofgem either before or during the Tender Process by that Participant.

Grounds for cancellation or disqualification

Parts 11 and 12 of the Tender Regulations set out the grounds on which the Tender Process may be cancelled in relation to a particular Qualifying Project(s) and the grounds on which a Qualifying Applicant may be disqualified from participating in the Tender Process in relation to a particular Qualifying Project(s).

Confidentiality and publicity

Qualifying Applicants will be required (before receiving the relevant Information Memoranda at the Qualification to Tender Stage) to sign a Confidentiality Agreement with the Developer of each relevant Qualifying Project. Such Confidentiality Agreement can be downloaded from the Portal. Qualifying Applicants and Developers must comply with their obligations under such agreements and procure compliance by their directors, employees, advisers, subcontractors, etc., as provided for under such agreements.

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

Right to vary Tender Process

Subject to the provisions of the Tender Regulations and EU public procurement law, Ofgem reserves the right to vary any element of the Tender Process, issue supplementary documentation (including rules particular to each stage of a Tender Process) 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 this Qualification to Tender Document to the extent indicated in the amendment. Subject to the provisions of the Tender Regulations, Ofgem may extend the Tender Process and postpone any submission date.

Costs

Each Qualifying Applicant will bear its own costs of participating in the Tender Process and will be responsible for meeting the costs incurred by Ofgem in administering the Tender Process in accordance with the Tender Regulations. Ofgem is under no obligation and shall not accept any liability for any costs or expenses incurred by any Qualifying Applicant, including without limitation any unsuccessful Qualifying Applicant, for any costs, expenses, damages or losses incurred in connection with the Tender Process.

Miscellaneous

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

Nothing in the Qualification to Tender Document is intended to, or shall be deemed to, establish any partnership or joint venture between Ofgem and any Qualifying Applicant.

Legal, technical and financial advisers are acting for Ofgem in relation to the Tender Round and will not regard any Qualifying Applicant or other interested party as their client or be responsible to anyone other than Ofgem for providing the protections afforded to their clients or for advising any other person on the Tender Round or any matter related to it.

The Tender Rules and the Qualification to Tender Document inevitably describe certain matters which are dealt with in the Tender Regulations but the Tender Rules and the Qualification to Tender Document are not, and should not be seen as, a substitute for a proper understanding of the Tender Regulations. All Participants are strongly encouraged to read the Tender Regulations in addition to reading the Tender Rules, the Pre-Qualification Document and the Qualification to Tender Document.

In the event of a conflict between the Qualification to Tender Document and the Tender Regulations, the Tender Regulations take precedence.

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1. INTRODUCTION TO THE QUALIFYING PROJECT AND TENDER PROCESS

1.1 Framework, roles and overview of Qualifying Projects and Tender Process

The Tender Rules set out the rules governing the Tender Process. Section 1 of the Tender Rules provides a brief description of the roles of the key parties involved in the Tender Process as well as the role of the OFTO.

1.2 Overview of Qualifying Projects

Qualifying Applicants will be provided with Information Memoranda relating to each of the Qualifying Projects for which they have signed a Confidentiality Agreement. Access to the relevant Information Memoranda will be provided via the portal on provision of the completed Confidentiality Agreements.

1.3 Timetable

An indicative timetable for activities within the Qualification to Tender Stage is set out below. Ofgem reserves the right (in accordance with the Tender Regulations) to vary this timetable at its discretion. Any such variation shall be communicated to Qualifying Applicants via the Portal.

Key Stage / Event	Indicative Date
Enter Confidentiality Agreement	End September 2009
Information Memoranda and final Qualification to Tender Document published	End September 2009
Clarification questions to Ofgem (if required)	End September 2009 to end October 2009
Deadline for Qualification to Tender Submission	End October 2009
Clarification of Qualification to Tender Submission (if required)	End October 2009 to mid December 2009
Evaluation of Qualification to Tender Submission (including review of any Consortium changes)	End October 2009 to mid December 2009
Notify Qualifying Applicants and publish Qualifying Bidder short list	Mid December 2009
Requests for unsuccessful Qualifying Applicant feedback	Mid December 2009 to mid January 2010

1.4 Amendment, updates and/or supplements to the Tender Rules

This Qualification to Tender Document, except as set out below and in relation to the timetable in section 1.3 above does not amend anything in the Tender Rules, but provides a greater level of detail in relation to the specific requirements for the Qualification to Tender Stage.

2. INSTRUCTIONS TO QUALIFYING APPLICANTS

2.1 Preliminary requirements

2.1.1 Confidentiality Agreement

Qualifying Applicants are required to sign a Confidentiality Agreement in relation to each Qualifying Project for which they wish to be invited to bid at the ITT Stage.

Qualifying Applicants will not be provided access to the Information Memorandum for each Qualifying Project unless they sign a Confidentiality Agreement in respect of each Qualifying Project.

A Qualification to Tender Submission will not be deemed compliant if the Qualifying Applicant has not signed a Confidentiality Agreement in relation to the relevant Qualifying Project.

2.1.2 Consortium changes after the Pre-Qualification Stage

- (A) It is anticipated that single entity organisations may make Qualification to Tender Submissions. However, single entity organisations may consider that the resources, range and depth of skills required for a Qualifying Project are such that they wish to collaborate to form a consortium, with a lead organisation or special purpose vehicle ultimately being issued the Offshore Transmission Licence. Consortium applications are therefore equally welcome. If a consortium Qualifying Applicant proposes that (if it is chosen as the Successful Bidder) a special purpose vehicle would be granted the Offshore Transmission Licence, Ofgem would not require the consortium to form that vehicle at this stage, although it will need to do so prior to the grant of the Offshore Transmission Licence.
- (B) It is anticipated that where an Applicant is a consortium, that consortium may wish to adjust its configuration and/or membership or a single entity Applicant may wish to form a consortium between the Pre-Qualification Stage and submitting a Qualification to Tender Submission. Applicants may propose such changes and where such changes are material Ofgem will reassess whether the revised consortium meets the criteria set out in the Pre-Qualification Document as part of its Qualification to Tender Submission.
- (C) Ofgem expects the configuration and membership of a consortium Qualifying Applicant to be finalised when they submit their Qualification to Tender Submissions. However, where there is a change to a consortium after this point, Ofgem will determine on a case-by-case basis whether permitting the revised consortium to remain in the Tender Process would be fair and equitable to all other Qualifying Applicants or Qualifying Bidders (as appropriate) participating in the Tender Process in respect of that particular Qualifying Project. The revised consortium would be re-evaluated against the Pre-Qualification Stage and Qualification to Tender Stage criteria to the extent that any such change to that consortium has materially affected the Participant's ability to fulfil such criteria. Any changes to consortia must be notified to Ofgem as soon as reasonably practicable.

- (D) Consortium Qualifying Applicants are required to appoint a lead member who is authorised to make Qualification to Tender Submissions on behalf of the consortium. Such lead member must instruct a duly authorised officer to sign the certificate of statements in accordance with section 9 of the QTT Questionnaire.
- (E) A Qualifying Applicant may at the Qualification to Tender Stage change the Qualifying Project(s) for which it wishes to be considered, provided it can demonstrate that it still meets the Pre-Qualification Stage evaluation criteria.
- (F) Qualifying Applicants are required to confirm in section 1 of the QTT Questionnaire that the information provided in its Pre-Qualification Submission is still materially accurate and, where information is no longer materially accurate, to provide updated information. Where completing multiple QTT Questionnaires, Qualifying Applicants may complete section 1 of the QTT Questionnaire in respect of only one such Qualification to Tender Submission in order to avoid duplication.

2.1.3 **QTT Questionnaire**

- (A) Qualifying Applicants are required to complete a separate QTT Questionnaire in respect of each Qualifying Project for which each Qualifying Applicant wishes to qualify to bid for at the ITT Stage.
- (B) Questions in the QTT Questionnaire which are required to be completed by the Qualifying Applicant should be answered by, in the case of a Qualifying Applicant which is a single entity, that entity, and in the case of a Qualifying Applicant which is a consortium, the lead member of that consortium.
- (C) Certain questions in the QTT Questionnaire require that information be provided in relation to individual members of a consortium Qualifying Applicant, in which case the lead member of a consortium Qualifying Applicant must provide information in relation to each consortium member ensuring that such information is clearly identified as relating to that consortium member.
- (D) Ofgem recognises that in the case of a consortium not every consortium member will, for example, be able to provide examples of experience requested. Ofgem's evaluation will look at the capabilities of the consortium taken as a whole.
- (E) Each Qualifying Applicant will only be permitted to complete one QTT Questionnaire in relation to each Qualifying Project.
- (F) The QTT Questionnaire should be completed in English.

2.1.4 Clarification

- (A) If a Qualifying Applicant has a query in relation to any aspect of the Qualification to Tender Document or its Qualification to Tender Submission, it may submit that query via the Portal provided that queries are submitted no later than one week prior to [*the Qualification to Tender Submission deadline*]. There will be no direct interface between Qualifying Applicants and Developers and Qualifying Applicants must not attempt to contact Ofgem for clarification other than via the Portal.
- (B) Ofgem will endeavour to provide responses as soon as reasonably possible, although it is likely that the timeframe within which Ofgem will respond will vary on a case-by-case basis depending on the nature of the clarification requested. All responses from Ofgem will be provided via the Portal. Ofgem may issue responses in batches on a weekly basis.
- (C) Ofgem's response to a Qualifying Applicant's query may be made available to all Qualifying Applicants, although the identity of the Qualifying Applicant which raised the query will remain confidential. However, if Ofgem believes that a Qualifying Applicant's query is sufficiently specific and confidential to that Qualifying Applicant, Ofgem may at its discretion opt to provide its response solely to that Qualifying Applicant.

2.2 Qualification to Tender Submission

2.2.1 Deadline for Qualification to Tender Submission

Each Qualifying Applicant's Qualification to Tender Submission must be submitted via the Portal no later than 12noon on [*the Qualification to Tender Submission deadline*]. Once a Qualification to Tender Submission has been submitted via the Portal, the Qualifying Applicant will receive confirmation that its Qualification to Tender Submission has been received.

2.2.2 Detailed instructions on form and contents of Qualification to Tender Submission

Qualifying Applicants must complete a separate Qualification to Tender Submission for each Qualifying Project for which they wish to be invited to the ITT Stage. Qualification to Tender Submissions should be submitted via the Portal in accordance with the requirements set out in this Qualification to Tender Document and guidelines available in the "help" section of the Portal.

Qualification to Tender Submissions should contain the following:

- (A) a completed QTT Questionnaire, together with optional and/or required supporting documentation, in the form set out at Appendix B to this Qualification to Tender Document; and
- (B) a completed Qualifying Applicant's checklist in the form set out in Appendix C to this Qualification to Tender Document.

No other documents or information should be submitted with the completed Qualification to Tender Submission.

- 2.2.3 Ofgem is relying on the information provided by Developers and Qualifying Applicants before and during the Tender Process (including but not limited to, for Qualifying Applicants, the information concerning the members and structure of their consortia where relevant). If, at any time following the making of any

Qualification to Tender Submission and before Ofgem publishes the short list of those Qualifying Applicants who have been selected as Qualifying Bidders for the ITT Stage for each Qualifying Project, there are any material changes or proposed material changes to the information provided in the relevant QTT Questionnaire, or a Qualifying Applicant becomes aware that information previously submitted is no longer true or accurate, such Qualifying Applicant must advise Ofgem as soon as is reasonably practicable. For the avoidance of doubt, where a Qualifying Applicant informs Ofgem of any such material change or proposed material change, Ofgem shall be entitled to re-evaluate that Qualifying Applicant's Qualification to Tender Submission in light of that material change or proposed material change.

2.3 Evaluation of Qualification to Tender Submission

2.3.1 Ofgem's right to seek clarification/further information from Qualifying Applicants

Following receipt of the Qualification to Tender Submissions, Ofgem will undertake a completeness check. If Ofgem identifies any omissions from the information required to be provided by a Qualifying Applicant it will notify the relevant Qualifying Applicant and give that Qualifying Applicant 48 hours to rectify the omission. Ofgem may invite Qualifying Applicants to clarify their Qualification to Tender Submission at any time.

2.3.2 Identification of compliant Submissions

A Qualification to Tender Submission will only be deemed to be compliant if it includes all of the material and fulfils all of the requirements set out in the Qualifying Applicants' Checklist at Appendix C.

2.3.3 Evaluation Process

(A) Update to Pre-Qualification Submission (if applicable)

For these purposes, the Qualifying Applicant must confirm that the information provided in its Pre-Qualification Submission is still materially accurate and, where information is no longer materially accurate, the Qualifying Applicant must provide updated information by providing updated answers to relevant Pre-Qualification Questionnaire question(s).

Where a Qualifying Applicant has:

1. adjusted its consortium configuration and/or membership since submitting the Pre-Qualification Submission, and/or
2. changed the Qualifying Project(s) for which it wishes to be considered and/or
3. increased the aggregate value of Ofgem's estimated transfer values for which it wishes to be invited to tender; and/or

if there have been any other changes to the Qualifying Applicant's circumstances, then (if the change is a material one) Ofgem will re-assess, on a pass/fail basis, the Qualifying Applicant against the applicable criteria in the Pre-Qualification Document.

(B) Evaluation Criteria

Once the Qualifying Applicant has successfully demonstrated that it meets the requirements of paragraphs 2.3.2 and, if applicable, 2.3.3(A) above, Ofgem will evaluate and score the Qualifying Applicant's Qualification to Tender Submissions, on a per Qualifying Project basis.

It is anticipated that the Qualification to Tender Stage will identify up to 5 Qualifying Bidders for the applicable Qualifying Project based on Ofgem's assessment of each Qualifying Applicant's overall approach to satisfying the following criteria.

Qualifying Applicants are also required to provide information in response to certain questions in the QTT Questionnaire which will be used by Ofgem for information purposes although information provided may be used as context for evaluation.

The criteria relevant to each section of the QTT Questionnaire and the weighting to be accorded to each criterion are set out below.

Section 3 - Project IRR and Tender Revenue Stream

The Qualifying Applicant must provide an indicative annual Tender Revenue Stream for the relevant Qualifying Project incorporating its proposed Project IRR and other relevant assumptions. Qualifying Applicants will be evaluated on the basis of their Project IRR together with their approach to deriving Tender Revenue Stream.

Weighting: 25%

Section 4 - Financing strategy

The Qualifying Applicant must provide an overview of the proposed approach to funding, evidence of the deliverability of its proposed funding package, including the Qualifying Applicant's funding solution and ability to raise the finance proposed.

Weighting: 25%

Section 5 – Financial and operational risk management

The Qualifying Applicant must demonstrate an approach to managing risk in relation to financing, demonstrating that it understands key risks associated with the relevant Qualifying Project which have a financing and/or commercial implication and provide details of its proposed mitigation measures in respect of such risks.

Weighting: 10%

Section 6 - Shareholding/consortium structure

The Qualifying Applicant must demonstrate the robustness of its proposed shareholding / consortium organisational and contractual structure.

Weighting: 5%

Section 7 - Management capability statement

The Qualifying Applicant must demonstrate its capabilities through experience-based management approaches to key aspects of the role to be undertaken by an OFTO and the specifics of operating within the offshore transmission regime.

Weighting: 25%

Section 8 - Take over and operational plan

The Qualifying Applicant must demonstrate, with regard to its management approach, its understanding and approach to acquiring a business or assets from a third party, developing and evolving an operations plan for newly acquired assets and dealing with associated risks and mitigation.

Weighting: 10%

Section 9 – Certificate

A duly authorised officer of the Qualifying Applicant is required to confirm the statements in section 9. A Qualifying Applicant who does not satisfy the criteria in section 9 will have its Qualification to Tender Submission rejected and such Qualification to Tender Submission will not be considered at the next evaluation stage.

In relation to statement (D), a Qualifying Applicant will not be required to initial and sign where it can demonstrate that any relevant bankruptcy or other insolvency related claim is vexatious or not material in the context. In evaluating a Qualifying Applicant's response to statement (D), Ofgem will consider whether a Qualifying Applicant's explanation raises or fails to answer concerns over its ability to service the anticipated finance liabilities of an OFTO.

2.3.4 Notification of which Qualifying Applicants have been selected to proceed to ITT Stage

- (A) The objective of the evaluation process is to assess the Qualification to Tender Submissions in order to identify the most suitable Qualifying Applicants to proceed to the ITT Stage in respect of each Qualifying Project.
- (B) Qualification to Tender Submissions will be checked against the criteria for compliant Submissions. Qualification to Tender Submissions which satisfy the criteria for compliant Submissions will proceed to the next evaluation stage as described in paragraph 2.3.3 above. Subject to paragraph 2.3.1 above, a Qualifying Applicant whose Qualification to Tender Submission does not satisfy the criteria for compliant Submissions will have its Qualification to Tender Submission rejected and such Qualification to Tender Submission will not be considered at the next evaluation stage.
- (C) Compliant Submissions will then be evaluated by Ofgem as set out in paragraphs 2.3.3, in order to select which Qualifying Applicants will be invited to take part in the ITT Stage of the Tender Process.
- (D) Ofgem will notify the Qualifying Applicants of the outcome of the evaluation by publishing a short list of those Qualifying Applicants who will proceed to the ITT Stage for each Qualifying Project.
- (E) Ofgem is sensitive to the likely level of investment which Qualifying Applicants will have to undertake during the ITT Stage and considers that it would not be beneficial, either for Ofgem or Qualifying Applicants, to

take too many Qualifying Applicants beyond the Qualification to Tender Stage. Therefore, Ofgem reserves the right to limit the number of Qualifying Applicants who will be invited to take part in the ITT Stage in relation to any Qualifying Project. It is anticipated that this will be a maximum of 5.

2.4 **Withdrawal, cancellation and disqualification**

2.4.1 Parts 10, 11 and 12 of the Tender Regulations and chapters 12, 13 and 14 of the Tender Rules set out circumstances in which Qualifying Applicants may withdraw, any particular Tender Process may be cancelled and circumstances under which a Qualifying Applicant may be disqualified from the Tender Round and the consequences of such withdrawal, cancellation or disqualification.

2.4.2 Ofgem reserves the right:

- (A) to reject any Qualification to Tender Submission that, in Ofgem's opinion, fails to comply with the requirements and/or fails to achieve a de-minimus score for Qualification to Tender Submissions set out in the Qualification to Tender Document; and/or
- (B) to exclude any Qualifying Applicant that fails to comply with the Tender Rules,

although, subject to the Tender Regulations, Ofgem shall not be obliged to reject any such Qualification to Tender Submissions or exclude any such Qualifying Applicants in such circumstances.

2.5 **Unsuccessful Qualifying Applicant feedback**

In the event that a Qualification to Tender Submission is unsuccessful, the relevant Qualifying Applicant will not be invited to participate in the ITT Stage of that Qualifying Project. Any request for feedback must be made within one month of a Qualifying Applicant receiving notification that it has been unsuccessful. Ofgem will provide feedback to any unsuccessful Qualifying Applicant who requests it within a reasonable timeframe.

APPENDIX A: GLOSSARY

"**Applicant**" means an entity that submits or proposes to submit a Pre-Qualification 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 Qualifying Bidders;

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

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

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

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

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

"**Corporate Finance**" means any finance provided by the company without recourse to external parties e.g. intercompany loans, where the shareholders or parent company are the sole source of finance;

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

"**Debt Finance**" means non-recourse or limited recourse senior debt finance;

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

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

"**Equity Finance**" means any direct equity and mezzanine finance;

"**Equity Investor**" means a person who provides Equity Finance;

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

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

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

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

"NETSO" means National Electricity Transmission plc acting in its capacity as the system operator of the National Electricity Transmission System;

"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
- (c) waters within an area designated under section 84(4) of the Energy Act 2004.

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

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

"OFTO" means the holder of an Offshore Transmission Licence;

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

"Portal" means the Offshore Transmission Electronic Tendering Portal described in section 4 of the Tender Rules;

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

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

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

"Pre-Qualification Stage" means the period starting from the publication of the Pre-Qualification Document, including the preparation, submission and evaluation of Pre-Qualification Submissions

and ending once Ofgem has published the longlist of Qualifying Applicants who have prequalified for the Qualification to Tender Stage;

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

"Project IRR" means the internal post-tax, real forecast project cash flow rate of return for the relevant Qualifying Project;

"QTT Questionnaire" means the qualification to tender questionnaire issued to Qualifying Applicants at the Qualification to Tender Stage as part of the Qualification to Tender Document;

"Qualifying Applicant" means an entity invited to submit a Qualification to Tender Submission;

"Qualifying Bidder" means an entity invited to submit a Bid to Ofgem in response to the ITT Document;

"Qualifying Project" means any offshore generating project in respect of which Ofgem determines that the Developer has satisfied the pre-conditions described in section 5 of the Tender Rules or which Ofgem determines at its discretion (exercised in accordance with the Tender Regulations) that the Developer will satisfy the relevant pre-conditions within a period specified by Ofgem;

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

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

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

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

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

"SPA" means the Sale & Purchase Agreement;

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

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

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

"Tender Revenue Stream" means a [£xxx] amount priced as at the asset transfer date for the relevant Qualifying Project and as set out in Appendix B, section 3, B.

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

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

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

APPENDIX B: QUALIFICATION TO TENDER QUESTIONNAIRE

The QTT Questionnaire contains the following sections:

1. Confirmation of Pre-Qualification Submission
2. Relevant Qualifying Project
3. Project IRR and Tender Revenue Stream
4. Financing strategy
5. Financial and operational risk management
6. Shareholding/consortium structure
7. Management capability statement
8. Take over and provisional operational plan
9. Certificate
10. SPA
11. Confidentiality

Section 1 Confirmation of Pre-Qualification Submission

Where completing multiple QTT Questionnaires, Qualifying Applicants may complete section 1 of the QTT Questionnaire in respect of only one such Qualification to Tender Submission in order to avoid duplication.

Each Qualifying Applicant must confirm that the information provided in its Pre-Qualification Submission has not changed materially, or, to the extent that any information has materially changed (due to any reason described in paragraph 2.3.3(A) above), the Qualifying Applicant shall provide updated responses to the relevant question(s) in the Pre-Qualification Questionnaire as part of its Qualification to Tender Submission. Access to the Pre-Qualification Questionnaire will be provided via the portal.

Section 2 Relevant Qualifying Project

Qualifying Applicants should state which Qualifying Project the Qualification to Tender Submission relates to. References throughout the QTT Questionnaire to the "relevant Qualifying Project" are to the Qualifying Project nominated in response to this section 2.

Section 3 Project IRR and Tender Revenue Stream

At ITT Stage Qualifying Bidders will be required to provide a revenue stream submission for 20 years (a Tender Revenue Stream). Qualifying Applicants are therefore required to provide the following information at this stage for the purposes of financial evaluation.

- A) Qualifying Applicants must state their desired Project IRR for the relevant Qualifying Project. Project IRR means the internal post-tax, real forecast project cash flow rate of return;
- B) Using the Project IRR in A, Qualifying Applicants are required to provide an indicative Tender Revenue Stream (assuming a constant revenue stream in real terms as at asset transfer date). It should be based on a 20 year term and utilise the asset transfer date and

Ofgem's estimated transfer value for the relevant Qualifying Project as set out in the Information Memorandum.

Qualifying Applicants should also state their assumptions in arriving at the indicative Tender Revenue Stream, along with a brief statement explaining the underlying thinking behind each such assumption. The assumptions, each expressed, at least, as a percentage of Tender Revenue Stream (with the exception of Project IRR), should include, but not be limited to:

- i) Project IRR (as stated in response to A);
- ii) Operating and maintenance cost;
- iii) Insurance;
- iv) Decommissioning costs;
- v) Financing of the decommissioning fund and performance bond;
- vi) Corporation tax assumptions;
- vii) SPV and/or management costs;
- viii) Bid cost recoveries and/or development fees; and
- ix) Other items, including potential unregulated revenues, and terminal values;
- x) Any other relevant foreseen operational costs, excluding pass through items defined in the regime;
- xi) Any other relevant foreseen costs (including capital expenditure), excluding pass through items defined in the regime; and
- xii) Cost of Equity Finance and Debt Finance service costs including all interest payments and fees (to reflect the Financing strategy set out in Section 4).

Qualifying Applicants may base their assumptions on any data provided in the Information Memorandum. In addition Qualifying Applicants are free to use any other information sources available to them to inform their assumptions. Where Qualifying Applicants do not have sufficient information in order to price any element above, they should develop an assumption using their experience of similar projects and outline the basis of those assumptions.

The statement made in response to this section 3 is not required to be a binding commitment of the Qualifying Applicant for the ITT Stage. However, Qualifying Applicants should note that Ofgem is currently minded to treat Part A, the Project IRR proposed at Qualification to Tender Stage, as a cap and that Qualifying Applicants may be excluded if the implied Project IRR at ITT Stage is above that proposed at Qualification to Tender Stage.

Section 4 Financing strategy

Qualifying Applicants must set out their proposed financing strategy in support of their Project IRR and Tender Revenue Stream, and in order to deliver management and operation in respect of the relevant Qualifying Project. Qualifying Applicants should provide the information required by this section on the basis of their proposed funding solution. The response to this section should be a maximum of 6 pages (excluding any annexure attached in response to Part 1, A(v) & B), and should include the following, as appropriate:

Part 1: General

All Qualifying Applicants should provide the following:

- A) details of the Qualifying Applicant's proposed funding structure and approach (in respect of the relevant Qualifying Project) including:
 - i) how such funding will be raised (including quantum and sources of Equity, Debt and/or Corporate Finance);
 - ii) likely organisations to be targeted for any Equity, Debt and/or Corporate Finance and the reasons for their selection;
 - iii) details of any existing relationships with the proposed targets and history behind this;
 - iv) timings; and
 - v) information associated with any due diligence proposed to inform potential providers of finance (Equity, Debt or Corporate Finance) at the ITT stage (covering legal, commercial, technical and financial);
- B) details of the extent of discussions, support and approvals required and/or achieved (parent company guarantee, letters of support etc) for financing proposals including, where applicable, from any providers of Equity, Debt or Corporate Finance, and in the case of the Qualifying Applicant itself, members of its consortium and parent undertakings, the extent of internal approvals required;

Part 2: Debt Finance

Where Debt Finance is suggested, an indicative financing structure should be set out, including (in respect of the relevant Qualifying Project):

- i) the funding route proposed (including contingency proposals where appropriate);
- ii) margins;
- iii) fees (including any pre-payment terms where applicable);
- iv) gearing limitations;
- v) term of debt;
- vi) appropriate cover ratios and calculation method;
- vii) reserving requirements; and
- viii) availability;

Part 3: Equity and Corporate Finance

Where Equity Finance, Corporate Finance or other sources of finance are suggested, provision of indicative terms, including, where applicable:

- i) cost of such finance;

- ii) details of arrangement and other fees; and
- iii) availability.

Section 5 Financial and operational risk management

Part 1

All Qualifying Applicants should provide the following (A to E) in a maximum of 4 pages:

- A) details of the Qualifying Applicant's contingency approach to funding, to include potential delays in transfer of the Offshore Transmission System, citing examples of past experience, including descriptions, where possible;
- B) an outline of the Qualifying Applicant's proposals in relation to interest rate and, if appropriate, inflation rate hedging arrangements;
- C) a demonstration of the Qualifying Applicant's approach to dealing with potential liquidity constraints in relation to debt and equity;
- D) a description of how the Qualifying Applicant will manage any additional call for debt and/or equity once Ofgem's estimated transfer value is amended post construction completion; and
- E) a description of how the Qualifying Applicant would satisfy condition E17 of the Offshore Transmission Licence that an OFTO fund incremental investments of up to 20% above the asset transfer costs of the Qualifying Project.

Part 2

Qualifying Applicants should also provide the following, in a maximum of 2 pages:

- A) details of the Qualifying Applicant's understanding of the financial and commercial impact of key risks on the relevant Qualifying Project, including those identified in section 7, Part B iii), iv) and Section 8 Part C.
- B) Qualifying applicants should also indicate how they will manage any additional call for Debt/or Equity Finance in relation to the risks outlined in Section 7, Part B iii) and iv) and Section 8 Part C.

Section 6 Shareholding/consortium structure

Qualifying Applicants should provide the following, in a maximum of 5 pages (excluding any relevant annexure).

- A) details of the Qualifying Applicant's proposed shareholding/consortium organisational structure, making clear the identity of the entity that will hold the Offshore Transmission Licence for the relevant Qualifying Project and the relationship which each consortium member will have with the OFTO;
- B) where ownership of the OFTO is to be split between consortium members, the proposed ownership proportions and how the Qualifying Applicant proposes to share liability between consortium members;
- C) details and copies of any agreements already entered into between the Qualifying Applicant and any consortium members or third parties in relation to the Tender Process (including any joint venture, joint bidding, consortium or financial agreements); and

- D) a proposal for how a Qualifying Applicant intends to ensure effective decision-making between the different internal and external parties within a Qualifying Applicant's structure, referencing past experience in support of their approach, where applicable.

Section 7 Management capability statement

Qualifying Applicants must provide a management capability statement which should be no more than 20 pages. Where possible, the Qualifying Applicant should explain how its past experience informs its proposed approach, noting where this may enable new methodologies, technologies or ways of working to be introduced into the UK electricity transmission sector. The statement should include:

- A) the Qualifying Applicant's general approach to managing and operating essential services or regulated infrastructure assets of similar size and complexity in accordance with the required performance standards;
- B) details of the Qualifying Applicant's proposed approach to the delivery of electricity transmission services in accordance with the required operational performance standards for this Qualifying Project, including the following:
- i) Operation and maintenance of the underlying assets of this Qualifying Project, including the approach to avoiding and rectifying service failures;
 - ii) Obtaining and managing the necessary resources and/or contracts to deliver the transmission services for this Qualifying Project, including roles and responsibilities of any consortium members and sub-contractors; and
 - iii) An approach to identifying, monitoring and managing risks for this Qualifying Project. References to past experience should cover up to five specific examples, and should include a breakdown of the relevant asset values, dates from which the asset has been/was in ownership and/or under management, summary of the key risks and risk mitigation strategy adopted;
- C) a description of the Qualifying Applicant's proposed approach to managing managerial and operational interfaces with key stakeholders and third parties for this Qualifying Project;
- D) a description of the Qualifying Applicant's proposed approach to ensuring, on a continuing basis, compliance with the electricity industry regulatory framework including, inter alia, relevant codes, licences and regulations applicable to an OFTO including the standard and special conditions of the Offshore Transmission Licence (including condition E7 relating to ring-fencing of the OFTO);
- E) a description of the Qualifying Applicant's proposed approach to ensuring, on a continuing basis, compliance with other applicable regulatory or statutory requirements, including:
- i) the Qualifying Applicant's proposed approach to ensuring that its activities in relation to the relevant Qualifying Project are delivered in accordance with all applicable health and safety legislation, and that the relevant Qualifying Project's key health and safety risks are clearly identified and managed, addressing:
 - a) the health and safety of its relevant employees, subcontractors' employees and members of the public; and
 - b) the safety of the installations of the relevant Qualifying Project during operation, maintenance and decommissioning;

- ii) the Qualifying Applicant's proposed approach to ensuring that its activities in relation to the relevant Qualifying Project are delivered in accordance with all applicable environmental legislation;
- F) details of the Qualifying Applicant's approach to designing, procuring and delivering incremental capital expenditure if it should be required for this Qualifying Project;
- G) details of the Qualifying Applicant's approach to decommissioning if it should be required for this Qualifying Project; and
- H) details of how the Qualifying Applicant has applied the methodology statement it referred to in response to section 5 of the Pre-Qualification Questionnaire to manage conflicts of interest during the Tender Process and as an OFTO.

Section 8 Take over and operational plan

Qualifying Applicants must provide a provisional takeover and operations plan for the relevant Qualifying Project drawing on their response to section 7. The plan should be no more than 15 pages. Wherever possible, the Qualifying Applicant should explain how its past experience informs its proposed approach, how this relates to the relevant Qualifying Project and how this may enable new methodologies, technologies or ways of working to be introduced into the UK electricity transmission sector. The plan should include:

- A) an outline takeover plan covering the acquisition of the OFTO business and/or assets of the relevant Qualifying Project, including proposed resourcing and appropriate references to past experiences of M&A and/or start-up businesses in the infrastructure sector;
- B) the Qualifying Applicant's proposed operational plan for the first 3 months following asset transfer in respect of the relevant Qualifying Project, including quality assurance and how any potential interaction with the Developer may influence its operational planning;
- C) demonstration of an understanding of how the operational plan outlined in B) will develop over the following five years of operation and maintenance of the Offshore Transmission System; and
- D) Identification and description of any key risks to the fulfilment of the above and proposed mitigation actions, with regard to responses to Section 5 and Section 7, Part B, iv).

Section 9 Certificate

Each Qualifying Applicant must have a duly authorised officer of the Qualifying Applicant indicate his or her confirmation of statements (A) to (F) below by initialling next to those statements and signing where indicated below. Initialled and signed copies must then be uploaded on to the Portal as part of a Qualifying Applicant's Qualification to Tender Submission. In relation to statement (D) only, if the duly authorised officer is not able to confirm this statement then he or she need not initial this statement provided that the Qualifying Applicant provides a written description of the reasons why the duly authorised officer cannot give such confirmation.

"I, acting as a duly authorised officer of [*insert name of Qualifying Applicant (if a consortium application, the lead member of the consortium)*] and on behalf of [*insert names of Qualifying Applicant and each of the consortium members if applicable*], hereby confirm that:

- A) the information provided in the Pre-Qualification Submission remains materially true, accurate and complete or has been updated where necessary by the Qualifying Applicant to the extent that any information has materially changed by providing updated responses to the relevant question(s) in the Pre-Qualification Document;

- B) the information provided in this Qualification to Tender Submission is true, accurate and complete;
- C) neither the Qualifying Applicant, [*insert the names of each of the other consortium members if applicable*] nor any of [its / their] Related Parties has breached any applicable legislation or regulations including any provision or requirement of the Financial Services and Markets Act 2000, the Tender Regulations, the Tender Rules, the Pre-Qualification Document or the Qualification to Tender Document in preparing or making the Pre-qualification Submission or this Qualification Submission;
- D) the Qualifying Applicant is not aware of any application to place the Qualifying Applicant, any other consortium member or the shareholders of any of the foregoing in liquidation, administration or receivership, or to commence any analogous process or proceeding in any jurisdiction, and that no such process has been commenced;
- E) the Qualifying Applicant is acting as a principal in the Tender Process and not as an agent for any undisclosed person and the Qualifying Applicant and each of the other consortium members (if applicable) have expressly authorised me to act on their behalf in making this Qualification to Tender Submission; and
- F) the Qualifying Applicant and each of the other consortium members (if applicable) hereby consent to the disclosure by Ofgem to Ofgem's Related Parties for the purposes of the Tender Rounds of any information given to Ofgem either before or during the Tender Process(es) by such Qualifying Applicant or consortium member.

Signed: _____

Name: _____

Position: _____

Dated: _____

Section 10 SPA Comments

All Qualifying Applicants are invited to submit comments, in the form of a mark-up in relation to the latest version of the Project-specific SPA at this time, to Ofgem as part of their submission. This is not a binding requirement and will not be evaluated but will be used to inform preparation of the final SPA for the ITT stage.

Section 11 Confidentiality

The Freedom of Information Act 2000 provides a general right of access to all information held by public authorities. Ofgem is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

The Qualifying Applicant should identify which part(s) of its Qualification to Tender Submissions are provided in confidence and provide reasons why it considers the information is eligible for exemption under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and should therefore be kept confidential. However, Ofgem is not bound by any such statement but will take them into account in considering whether an exemption applies.

APPENDIX C: QUALIFYING APPLICANT'S CHECKLIST (FOR COMPLETION)

Qualifying Applicants should tick the appropriate box for each question or provide a brief explanation where indicated.

Question		Total Allocation	Weightings	Yes	No	Not applicable (provide brief explanation)
Has the Applicant signed a Confidentiality Agreement in respect of the relevant Qualifying Project?						
Has the Applicant answered the following questions (and provided required evidence)?						
Confirmation of Prequalification Submission	1	N/A	N/A			
Relevant Qualifying Project	2	N/A	N/A			
Projected IRR and Tender Revenue Stream	3(A)	60%	25%			
	3(B)					
Financing strategy	4 Part 1		25%			
	4 Part 2					
	4 Part 3					
Financial and operational risk management	5 Part 1		10%			
	5 Part 2					
Shareholding/consortium structure	6(A)	5%				
	6(B)					
	6(C)					
	6(D)					
Management and legal capability statement	7(A)	40%	25%			
	7(B)					
	7(C)					
	7(D)					
	7(E)					
	7(F)					
	7(G)					
	7(H)					
Take over and operational plan	8(A)	10%				
	8(B)					
	8(C)					
	8(D)					
Certificate	9	N/A	N/A			
SPA	10	N/A	N/A			
Confidentiality statement	11	N/A	N/A			