

Qualification to Tender Document 2009 Transitional Tenders

**Document type: Qualification to Tender
Document**



Date of publication: 24 September 2009

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 Qualification to Tender (QTT) Document is issued by the Authority pursuant to Regulation 9(2) of the Tender Regulations and applies to the first Tender Round for the grant of Offshore Transmission Licences under the Transitional Regime

The Office of Gas and Electricity Markets

Offshore Electricity Transmission

**Qualification to Tender Document
Transitional Tender Round 1
2009**

IMPORTANT NOTICE

Introduction

This Qualification to Tender (QTT) Document is issued by the Authority pursuant to regulation 9(2) of the Tender Regulations and applies to the first Tender Round for the grant of Offshore Transmission Licences under the Transitional Regime.

By accepting and participating in the Tender Process each Qualifying Applicant agrees to be bound by, and to comply with, the rules and requirements set out in the Tender Regulations, the QTT Document and the Tender Rules, issued by the Authority.

A material breach of the Tender Regulations, QTT Document or the Tender Rules would give Ofgem the right, under the Tender Regulations, to disqualify a 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 QTT Submission.

While information provided by Ofgem and/or its Related Parties in this QTT 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 QTT Document or otherwise in relation to the Tender Round or any information provided by Ofgem or Developers through Information Memoranda, 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 QTT Document has been prepared and issued to set out the requirements for QTT Submissions.

This QTT 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 QTT 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 QTT 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 QTT 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 QTT 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.

BravoSolution UK Ltd, on behalf of 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 QTT Submission and before Ofgem publishes the short list of those Qualifying Applicants who have been selected for the Invitation to Tender (ITT) Stage, there are any material changes or proposed changes to the information provided in the relevant QTT 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 QTT Submission(s) in light of that material change or proposed change.

By participating in the Tender Round, each Qualifying Applicant 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 Round by that Qualifying Applicant.

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 Round.

Confidentiality and publicity

Qualifying Applicants will be required (before receiving the relevant Information Memoranda at the QTT Stage) to sign a Confidentiality Agreement with the Developer of each relevant Qualifying Project. 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.

The Confidentiality Agreements signed by the Qualifying Applicants will cover information received during the QTT stage and any subsequent Tender stage.

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 the 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 supplementary documentation issued by Ofgem during the Tender Round will be deemed to form part of this QTT 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 Qualifying Applicant.

If a Qualifying Applicant 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 Qualifying Applicant or any of their Related Parties.

Nothing in this QTT 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 this QTT Document inevitably describe certain matters which are dealt with in the Tender Regulations but the Tender Rules and this QTT Document are not, and should not be seen as, a substitute for a proper understanding of the Tender Regulations. All Qualifying Applicants are strongly encouraged to become conversant with the Tender Regulations in addition to reading the Tender Rules, the Pre-Qualification (PQ) Document and the QTT Document.

In the event of any conflict between this QTT Document and the Tender Regulations, the Tender Regulations take precedence.

TABLE OF CONTENTS

THE OFFICE OF GAS AND ELECTRICITY MARKETS.....	1
1. INTRODUCTION TO THE TENDER PROCESS.....	7
1.1 Tender framework.....	7
1.2 Amendments to the Tender Rules.....	7
2. INSTRUCTIONS TO QUALIFYING APPLICANTS	7
2.1 Documents and correspondence	7
2.2 Timetable.....	7
2.3 Preliminary requirements.....	8
2.4 Changes arising since PQ Submission	9
2.5 Consortium changes post QTT Stage.....	11
2.6 QTT Submission	11
2.7 Evaluation of Submissions	11
2.8 Notification of which Qualifying Applicants have been selected to proceed to ITT Stage	14
2.9 Withdrawal, cancellation and disqualification.....	14
2.10 Unsuccessful Qualifying Applicant feedback.....	15
APPENDIX A: QTT QUESTIONNAIRE.....	16
APPENDIX B: GLOSSARY.....	25

1. INTRODUCTION TO THE TENDER PROCESS

1.1 Tender framework

The Tender Regulations and Tender Rules set out the rules and requirements that govern the Tender Process and are available on the Ofgem website and via the Portal.

1.2 Amendments to the Tender Rules

This QTT Document, except where indicated, does not amend anything in the Tender Rules, but provides a greater level of detail in relation to the specific requirements for the QTT Stage.

2. INSTRUCTIONS TO QUALIFYING APPLICANTS

2.1 Documents and correspondence

All documents will be made available to Qualifying Applicants via the Portal, unless explicitly advised otherwise by Ofgem.

All correspondence to Qualifying Applicants, including variations to any Tender Document and clarifications, will be made via the Portal, unless explicitly advised otherwise by Ofgem.

All correspondence from Qualifying Applicants to Ofgem, including clarifications and submissions, must be made via the Portal, unless explicitly advised otherwise by Ofgem.

2.2 Timetable

The timetable for the QTT Stage is set out below. This timetable is an update to that contained in the Tender Rules.

Key Stage / Event	Date
QTT document made available to Qualifying Applicants	24 September 2009
Qualifying Applicants return signed Confidentiality Agreement(s)	25 September 2009
Information Memoranda made available to Qualifying Applicants following return of signed Confidentiality Agreement(s)	28 September 2009 onwards
Clarification questions to Ofgem (if required)	28 September 2009 to 12 October 2009
Deadline for QTT Submission	27 October 2009
Clarification of QTT Submission by Ofgem (if required)	27 October 2009 to end November 2009
Notify Qualifying Applicants and publish Qualifying Bidder short list	By 14 December 2009

Ofgem reserves the right to vary this timetable at its discretion.

2.3 Preliminary requirements

2.3.1 Confidentiality Agreement

Qualifying Applicants are required to sign and return a Confidentiality Agreement in relation to each Qualifying Project for which they wish to receive the Information Memorandum at QTT Stage and subsequently wish to be invited to bid for at ITT stage.

A QTT Submission in respect of any particular Qualifying Project will be deemed to be non-compliant if the Qualifying Applicant has not signed a Confidentiality Agreement in relation to the relevant Qualifying Project.

Further instructions on how the Confidentiality Agreement should be completed and submitted are provided at the front of the Confidentiality Agreement document.

2.3.2 Information Memoranda on Qualifying Projects

Qualifying Applicants will be provided with access to Information Memoranda relating to each of the Qualifying Projects upon receipt of a signed Confidentiality Agreement in respect of each Qualifying Project.

2.3.3 Other Documents

Ofgem has developed a generic Information Memorandum, which provides an overview of aspects of the regime common to all projects and should be read in conjunction with the Information Memoranda relating to the Qualifying Projects.

Qualifying Applicants will also have access to the Standard Licence Conditions applicable to all Transmission Owners and draft generic Special Licence Conditions applicable to OFTOs. These are available on Ofgem's website. Additionally, Ofgem will shortly be publishing a number of tender guidance documents on its website covering areas such as (i) Special Licence Conditions, (ii) OFTO of Last Resort and (iii) Process to Asset Transfer.

Ofgem may publish additional information during the QTT stage.

2.3.4 Clarifications from Qualifying Applicants

Any queries from Qualifying Applicants in relation to any aspect of the QTT Document or its QTT Submission must be submitted by no later than 12 October 2009.

Ofgem will endeavour to provide responses as soon as reasonably possible, although the timeframe within which Ofgem will respond will vary on a case-by-case basis depending on the nature of the clarification requested.

Ofgem's response to an individual Qualifying Applicant's query may be made available to all Qualifying Applicants. However, in

such cases the identity of the Qualifying Applicant that raised the query will remain confidential.

If Ofgem believes that a Qualifying Applicant's query is sufficiently specific and confidential to that Qualifying Applicant, Ofgem may, at its discretion, provide its response solely to that Qualifying Applicant.

Direct interface between Qualifying Applicants and Developers is not permitted and would be deemed a breach of the Tender Rules.

Qualifying Applicants must not attempt to contact Ofgem for clarification other than via the Portal.

2.4 Changes arising since PQ Submission

A Qualifying Applicant is required to confirm in Section 1 of the QTT Questionnaire that the information provided in its PQ Submission has not changed. To the extent that there have been changes to

- (i) Consortium configuration and/or membership
- (ii) Changes to qualifying projects
- (iii) Any other changes to the Qualifying Applicant's circumstances

Qualifying Applicants must provide updated responses to the relevant question(s) in the PQ questionnaire as part of its QTT Submission. Access to the PQ Questionnaire will be provided via the Portal.

2.4.1 Qualifying Applicant configuration and/or membership changes since PQ Submission

Qualifying Applicants (and each entity within a Qualifying Applicant's consortium) should note that changes to its configuration and/or membership are permitted at the QTT Stage under the Tender Regulations.

For example, single entity Qualifying Applicant organisations may make QTT Submissions, or may wish to form a consortium with other Qualifying Applicant organisations, Qualifying Applicant consortia or new entities, with a lead organisation or special purpose vehicle ultimately being issued the Offshore Transmission Licence.

Similarly, it is also anticipated that where a Qualifying Applicant is a consortium, that consortium may wish to adjust its configuration and/or membership.

The formation or entry into consortia by single entity Qualifying Applicant organisations, or a change in membership of a Qualifying Applicant consortium, requires that a consortium must provide a resubmission of the PQ Submission to reflect the

new consortium membership. Where such changes are proposed, Ofgem will re-assess whether the revised consortium meets the criteria set out in the PQ Document as part of its QTT Submission.

It should be noted that where a Qualifying Applicant consortium has qualified through the PQ Stage, the single entities within that consortia are not deemed by Ofgem to be single entity Qualified Applicants for the purpose of QTT submissions. Where such single entities wish to make a QTT submission without the other members of their original Qualifying Applicant consortium, they will be required to demonstrate that their single entity organisation meets the PQ Stage evaluation criteria as part of their QTT Submissions.

Consortium Qualifying Applicants are required to appoint a lead member/organisation who is authorised to make QTT 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.

It is expected that the configuration and membership of a consortium Qualifying Applicant to be finalised when it submits its QTT Submissions.

If a consortium Qualifying Applicant proposes that 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.

2.4.2 Changes in Qualifying Project Appetite

A Qualifying Applicant may at the QTT Stage alter the Qualifying Project(s) it wishes to be invited to bid for at the ITT Stage from those it expressed an appetite in at the PQ Stage, provided it can demonstrate that it still meets the PQ Stage evaluation criteria.

Where a Qualifying Applicant wishes to make QTT Submissions for a total value of Qualifying Projects beyond the total value of the appetite for which it Qualified at the PQ Stage then it must resubmit Section 3 of the PQ Questionnaire to demonstrate it is able to meet the Economic and financial standing evaluation criteria.

2.4.3 Any Other Changes to the Qualifying Applicant's Circumstances

A Qualifying Applicant must notify Ofgem of any other changes to its circumstances since the PQ Stage by resubmitting the relevant sections of the PQ questionnaire.

2.5 Consortium changes post QTT Stage

Any changes post QTT submission must be notified immediately to Ofgem.

Where there is an unforeseen or unexpected change to a consortium Qualifying Bidder following the conclusion of the QTT Stage (which is represented by the announcement of the ITT Stage shortlist per project), Ofgem will determine on a case-by-case basis whether permitting the 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.

Ofgem reserves the right to exclude a consortium from the Tender Process where it believes the consortium can no longer fulfil the criteria which led to its inclusion on the longlist at the conclusion of the PQ Stage and the shortlist at the conclusion of the QTT Stage.

2.6 QTT Submission

A separate QTT Questionnaire must be completed in respect of each Qualifying Project for which they wish to be invited to bid for at the ITT Stage.

The QTT Questionnaire must be completed in English.

2.6.1 Deadline

As per the Timetable, QTT Submissions must be submitted no later than 12 noon on 27 October 2009 via the Portal. QTT Submissions will be received in accordance with Ofgem's procurement procedures.

2.6.2 Contents of QTT Submission

QTT Submissions must contain the following:

- (A) a completed QTT Questionnaire, together with required supporting documentation and any optional supporting documentation, in the form set out at Appendix A to this QTT Document; and
- (B) PQ Re-Submission (if applicable) together with required supporting documentation.

No other documents or information are to be submitted with the completed QTT Submission.

2.7 Evaluation of Submissions

2.7.1 Further Information and Compliance

Following receipt of the QTT Submissions, Ofgem will undertake a completeness check. If through this check, any omissions in the information that must be provided by a Qualifying Applicant

are identified, the relevant Qualifying Applicant will be notified and given 48 hours to rectify the omission. Ofgem reserves the right to disqualify a Qualifying Applicant's QTT Submission if the information requested is not provided within the required time. Evaluation of the QTT Submission will only commence following receipt of the requested information within the required time.

A QTT 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 Applicant's Checklist at Appendix C.

2.7.2 **Ofgem Clarifications**

Ofgem may also require Qualifying Applicants to clarify their QTT Submission at any time during the QTT evaluation. Applicants must respond to clarifications issued by Ofgem and within a reasonable time; failure to do so may risk the response being excluded from consideration in the evaluation.

2.7.3 **QTT Evaluation Criteria**

Ofgem will evaluate and score the Qualifying Applicant's QTT Submissions, on a per Qualifying Project basis.

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

Section 1 – Confirmation of PQ Submission

The Qualifying Applicant must provide a statement confirming that the information provided in its PQ Submission has not changed, or, to the extent that any information has changed, provide updated responses to the relevant question(s) in the PQ Questionnaire.

Where Qualifying Applicants have resubmitted their PQ Questionnaire, Ofgem will assess the revised PQ Submission in accordance with the PQ evaluation criteria on a pass/fail basis.

Section 2 – Relevant Qualifying Project

The Qualifying Applicant must provide a statement clearly identifying the relevant Qualifying Project the QTT Submission relates to.

Section 3 - Project IRR and Tender Revenue Stream (25% Weighting)

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 the Tender Revenue Stream.

Section 4 - Financing strategy (25% Weighting)

The Qualifying Applicant must provide its proposed financing strategy. Qualifying Applicants will be evaluated on the basis of

the coherence, deliverability and viability of the proposed financing strategy in support of their Project IRR and Tender Revenue Stream. The response should include evidence of support including, where appropriate, indicative terms.

Section 5 – Financial and commercial risk management (10% Weighting)

The Qualifying Applicant must demonstrate an understanding of the key risks that could have a financial and/or commercial implication for the relevant Qualifying Project. Qualifying Applicants will be evaluated on the basis of their understanding and proposed approach to managing and mitigating these.

Section 6 - Shareholding/consortium structure (5% Weighting)

The Qualifying Applicant will be evaluated on the basis of the robustness and clarity of its proposed shareholding/consortium organisational and contractual structure.

Section 7 - Management capability statement (20% Weighting)

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.

Qualifying Applicants will be evaluated on the basis of their understanding of the requirements and the coherence and viability of their proposals in relation to the relevant Qualifying Project.

Section 8 - Take over and operational plan (10% Weighting)

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 and developing and evolving an operations plan for newly acquired assets.

Qualifying Applicants will be evaluated on the basis of the coherence and deliverability of their approach in relation to the relevant Qualifying Project.

Section 9 – Sale & Purchase Agreement (5% Weighting)

The Qualifying Applicant must demonstrate its understanding of the scope and considerations associated with the Model SPA in the context of the project specific information provided through the tender process to date. The Qualifying Applicant will be evaluated based on their clear and considered identification of key commercial issues associated with the Qualifying Project and its transfer via an SPA. A legal mark up of the Model SPA is not required.

Section 10 - Certificate

A duly authorised officer of the Qualifying Applicant or consortium Qualifying Applicant is required to confirm the statements set out in the certificate in Section 10. A Qualifying Applicant or consortium Qualifying Applicant who does not do so will have its QTT Submission rejected and it will not be considered further.

Section 11 - Confidentiality

The Qualifying Applicant must identify all part(s) of its QTT Submission that are provided in confidence, including the reasons why it considers that the information is eligible for exemption under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. This section will not be evaluated.

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

- (A) The objective of the evaluation process is to assess the QTT Submissions in order to identify the most suitable Qualifying Applicants to proceed to the ITT Stage in respect of each Qualifying Project.
- (B) Ofgem is sensitive to the likely level of investment which Qualifying Bidders will have to undertake during the ITT Stage and considers that it would not be beneficial, either for Ofgem or Qualifying Bidders, to take too many Qualifying Applicants beyond the QTT 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 five.
- (C) Ofgem will notify the Qualifying Applicants of the outcome of the evaluation by publishing a shortlist of those Qualifying Applicants who have been selected as Qualifying Bidders to proceed to the ITT Stage for each Qualifying Project.

2.9 Withdrawal, cancellation and disqualification

2.9.1 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 from a Tender Process, any particular Tender Process may be cancelled and the circumstances under which a Qualifying Applicant may be disqualified from the Tender Round, and the consequences of such withdrawal, cancellation or disqualification.

2.9.2 Ofgem reserves the right to:

- (A) Include additional QTT Qualifying Applicants in the ITT stage in the event of the withdrawal of a Qualifying Bidder prior to ITT commencement;

- (B) reject any QTT Submission that, in Ofgem's opinion, fails to comply with the requirements for QTT Submissions set out in the QTT Document; and/or
- (C) exclude any Qualifying Applicant that fails to comply with the Tender Regulations or the Tender Rules,

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

2.10 Unsuccessful Qualifying Applicant feedback

In the event that a QTT 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 within a reasonable timeframe to any unsuccessful Qualifying Applicant who requests it.

APPENDIX A: QTT QUESTIONNAIRE

The QTT Questionnaire contains the following sections:

- 1. Confirmation of PQ Submission**
- 2. Relevant Qualifying Project**
- 3. Project IRR and Tender Revenue Stream**
- 4. Financing Strategy**
- 5. Financial and Commercial Risk Management**
- 6. Shareholding/Consortium Structure**
- 7. Management Capability Statement**
- 8. Proposed Takeover and Operational Plan**
- 9. Sale and Purchase Agreement**
- 10. Certificate**
- 11. Confidentiality**

Note:

References throughout the QTT Questionnaire to the "relevant Qualifying Project" are to the Qualifying Project nominated in response to section 2.

References throughout the QTT Questionnaire to "you" and "your" are to the Qualifying Applicant.

The QTT Documents require Qualifying Applicants to provide an indication of proposed approach to the specific Qualifying Project for which they wish to be considered for shortlisting at the ITT stage. The expectation is that in providing responses to the Questionnaire that Qualifying Applicants will focus their answers on proposed approaches, using citations of relevant experience only to substantiate/evidence the viability or robustness of the proposed approach. Qualifying Applicants should not provide responses that solely comprise citations.

Section 1 Confirmation of PQ Submission

You must confirm that the information provided in your PQ Submission has not changed, or, to the extent that any information has changed, you must provide updated responses to the relevant question(s) in the PQ Questionnaire as part of your QTT Submission. Access to the PQ Questionnaire will be provided via the Portal.

Section 2 Relevant Qualifying Project

You should state which Qualifying Project the QTT Submission relates to.

Section 3 Project IRR and Tender Revenue Stream

You are required to provide the following information:

- A) the desired Project IRR (to two decimal places) 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, an indicative annual Tender Revenue Stream. This must assume a constant revenue stream in real terms as at the Estimated Transfer Date and should be based on the Default Availability Standard and assuming no deductions. It should be based on a 20 year term and utilise Ofgem's Estimated Transfer Value for the relevant Qualifying Project.
- C) identify the specific assumptions used in deriving the indicative annual Tender Revenue Stream. This must also include a brief statement explaining the underlying thinking behind each such assumption.

Note that answers in relation to questions 3B and 3C must be provided in the template provided (this template shall be made available via the Portal).

Assumptions may be based on any information provided at the QTT Stage including, but not limited to, the Information Memoranda, draft generic Special Licence Conditions applicable to OFTOs and various guidance notes. It is acknowledged that this may not provide any relevant information for certain cost items. Where you feel that you do not have sufficient information in order to price any element, you should develop an assumption based on your experience of similar projects and outline the basis of those assumptions.

The assumptions, expressed both in real terms and as a percentage of total Tender Revenue Stream, must include:

- i. Operating and maintenance costs
- ii. Insurance
- iii. Decommissioning costs
- iv. Operational performance security package for the last five years of the project (in accordance with Part 2, Special Licence Condition C4)
- v. Corporation tax assumptions
- vi. SPV and/or management costs

- vii. Bid cost recoveries and/or development fees
- viii. Other income items, including any potential unregulated revenue and terminal values (to be expressed as a “negative cost”);
- ix. Cost of Equity Finance, Corporate Finance and Debt Finance service costs including all interest payments and fees (to reflect the Financing Strategy set out in your response to Section 4); and
- x. Any other relevant foreseen costs.

The statements made in response to this Section 3 are not required to be a binding commitment for the ITT Stage. However, it should be noted that Ofgem is currently minded to treat Part A, the Project IRR proposed at QTT Stage, as a cap and that you may be excluded if the implied Project IRR at ITT Stage is above that proposed at QTT Stage.

Section 4 Financing Strategy

In relation to financing strategy, it should be noted that it is expected that proposals provided at the next stage (ITT) will be firm subject only to our conditions precedent associated with the transfer of the asset. Details will shortly be published in the tender guidance documents.

You are required to set out your proposed financing strategy in support of your Project IRR and Tender Revenue Stream (as provided in Section 3). This financing strategy must reflect the proposed management and operation approach in respect of the relevant Qualifying Project.

The response to this section should be a maximum of six pages overall (excluding any annexes).

All Qualifying Applicants should answer Part 1.

Part 1: General

You must provide the following in respect of the relevant Qualifying Project:

- A) details of the proposed funding structure and approach, including:
 - i. how the funding will be sourced (including quantum and sources for each of Equity, Debt and/or Corporate Finance);
 - ii. likely organisations to be targeted for each of Equity, Debt and/or Corporate Finance and the reasons for their selection; and
 - iii. an outline of your proposed due diligence plan, including a list of due diligence items you would expect to review at the ITT stage.
- B) details of the:
 - i. extent of discussions, support and approvals achieved (e.g. letters of support from parent companies and/or funders) for financing proposals including, Equity, Debt or Corporate Finance; and
 - ii. support and approvals that are still required from parent companies and/or funders for financing proposals including, where applicable, from any providers of Equity, Debt or Corporate Finance.

- C) an outline of the your proposals, as appropriate, in relation to interest rate and/or inflation rate hedging arrangements following asset transfer.

Depending on your finance structure, Qualifying Applicants must answer Part 2 and/or Part 3 as appropriate

Part 2: Debt Finance

- A) Where Debt Finance is proposed, the indicative financing structure must be set out, including details and assumptions for the following:
- i. the preferred nature of the funding plus any alternative proposals;
 - 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; and
 - vii. any likely reserving requirements.

Part 3: Equity and Corporate Finance

- A) Where Equity Finance, Corporate Finance or other sources of finance are proposed, indicative terms must be provided, including, where applicable:
- i. cost of such finance;
 - ii. details of arrangement and other fees; and
 - iii. availability and any associated constraints.
- B) Where Equity Finance or other sources of finance are to be provided through a fund, the following details must be provided: (i) the current status of the fund, including the ability of the fund to invest the required equity from existing committed investable capital, or (ii) where the equity capital is yet to be raised, the status of the fund raising and expected timing.
- C) Where Corporate Finance is to be used, the proposed breakdown between pinpoint equity and other financial instruments such as shareholder loans, must be provided, including the ability to fund from current corporate cash reserves, or where corporate capital (equity or debt) is yet to be raised status of the capital raising and the expected timing.

Section 5 Financial and Commercial Risk Management

Part 1

You must provide the details, in a maximum of two pages, of your understanding of the key risks that could have a financial and/or commercial impact on the relevant Qualifying Project and how you would approach dealing with those impacts.

Part 2

You must provide the following, in a maximum of two pages:

- A) details of your approach to funding contingency related events, such as potential delays to the Estimated Transfer Date and potential liquidity constraints, citing examples of past experience, including descriptions, where possible;
- B) a description of how you would manage any additional call for debt and/or equity based on Ofgem's determination of the final transfer value post asset transfer; and
- C) a description of your approach to satisfying Standard Licence Condition E17 of the Offshore Transmission Licence that an OFTO fund incremental investments at any point over the period of the licence, at a value of up to 20% of the final Transfer Value of the Qualifying Project.
- D) a description of your approach to satisfying Standard Licence Condition E7 of the Offshore Transmission Licence (Restriction on Activity and Financial Ring Fencing).

Section 6 Shareholding/Consortium Structure

Provide the following, in a maximum of three pages:

- A) details of the 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 roles, decision-making responsibilities and relationship which each consortium member will have within and/or with the OFTO;
- B) in the case of a consortium, the proposed ownership arrangements, the proposed ownership proportions and how you propose to share liability between consortium members; and

Where there are agreements/documents that you wish to submit as part of your QTT Submission to substantiate your responses to A and B, please provide these as separate annexes.

Section 7 Management Capability Statement

You must provide a management capability statement which should be no more than 20 pages and outline how you propose to approach the management requirements described below.

In providing these proposals, you should explain how your past experience informs your proposed approach, noting where this may enable new methodologies, technologies or ways of working to be introduced into the GB electricity transmission sector.

You must outline the following:

- A) your general approach to managing and operating essential services or regulated infrastructure assets of similar size and complexity in accordance with the required operational performance standards;
- B) details of your proposed approach to the delivery of the services for the relevant Qualifying Project in accordance with the required operational performance standards, 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. Management of key business and operational risks for this Qualifying Project.
- C) a description of your proposed approach to managing managerial and operational interfaces with key stakeholders and third parties for this Qualifying Project;
- D) a description of your proposed approach to ensuring compliance with the electricity industry regulatory framework applicable to an OFTO including, the conditions of the Offshore Transmission Licence;
- E) a description of your proposed approach to ensuring compliance with other applicable regulatory or statutory requirements, including:
 - i) ensuring that all activities are delivered in accordance with all applicable health and safety legislation, and that key health and safety risks are clearly identified and managed, addressing:
 - a) the health and safety of your 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) ensuring that all activities are delivered in accordance with all applicable environmental and planning legislation;
- F) details of your approach to decommissioning; and

- G) details of any existing conflicts of interest of which you are aware or any potential conflicts of interest which could arise if you are selected as a Qualifying Bidder, Preferred Bidder, Reserve Bidder or Successful Bidder.

In addition, details of how the methodology statement referred to in your response to Section 5A of the PQ Questionnaire will be **applied** to manage these conflicts if you were selected as an OFTO.

Where additional conflicts have been identified since the submission of the PQ Questionnaire, you must provide an updated methodology statement.

All Qualifying Applicants should be aware of the EU Third Package (in particular Directive 2009/72/EC of the European Parliament and the Council of 13 July 2009). As such, you are advised to consider the requirements of the Third Package as necessary.

Section 8 Proposed Takeover and Operational Plan

Provide your proposed takeover and operational plan for the relevant Qualifying Project drawing on your response to Section 7. The plan should be no more than 10 pages. Wherever possible, you should explain how your past experience informs your 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 GB electricity transmission sector. The plan must 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 mergers and acquisitions and/or start-up businesses in the infrastructure sector;
- B) your proposed operational plan for the first three 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 your understanding of how the operational plan outlined in B) will develop over the first five years of operation and maintenance including, with respect to handling routine maintenance, life cycle management, liaising with generators on outage management and crisis management.

Section 9 Sale and Purchase Agreement

Ofgem has previously provided a draft Model SPA at the PQ stage. At the QTT stage Ofgem will provide, via the Portal, a range of information including, the project specific Information Memorandum, generic regime information, guidance notes and other project specific information.

Based on your review of this information and the Model SPA, you are required to provide:

- A) A maximum of four pages outlining what you consider at this stage may be the potential key commercial issues associated with achieving a transfer of the asset.
- B) A maximum of six pages of your thoughts on project specific changes you would expect to see to the Model SPA in order to address the issues identified in A) and any other risk considerations.

Section 10 Certificate

Each Qualifying Applicant must have a duly authorised officer of the Qualifying Applicant or consortium Qualifying Applicant indicate his or her confirmation of all of the statements (A) to (H) below by initialling at the base of each individual page and signing where indicated below.. An initialled and signed copy of the certificate must then be uploaded on to the Portal as part of your QTT Submission.

"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 PQ Submission remains materially true, accurate and complete or has been updated where necessary to the extent that any information has materially changed by providing updated responses to the relevant question(s) in the PQ Document;
- B) the information provided in this QTT 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 PQ Document or the QTT Document in preparing or making the PQ Submission or this QTT Submission;
- D) we are 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 QTT 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.

- G) In compiling this QTT Submission, neither I personally nor the Qualifying Applicant or Qualifying Applicant consortium has obtained an unfair commercial advantage including, in particular such advantage from a preferential or discriminatory arrangement with associated parent companies or affiliates, any user of the national electricity transmission system or transmission licensees.
- H) In providing this statement I have made all due enquiries on behalf of the Qualifying Applicant or Qualifying Applicant consortium.

Signed: _____

Name: _____

Position: _____

Dated: _____

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 QTT 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 B: GLOSSARY

"Applicant" means an entity that submitted 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 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;

"Default Availability Standard" means 98% asset availability including planned/unplanned outages which is the default availability standard applicable under the tender process.

"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 has requested that Ofgem commences a Tender Process in respect of a Qualifying 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;

"Estimated Transfer Date" means the expected date of transfer as set out in the Information Memorandum in relation to each Qualifying Project.

"Estimated Transfer Value" means Ofgem's estimate of the efficient and economic costs which ought to be incurred in connection with the development and construction of the transmission assets for each Qualifying Project.

"Final Transfer Value" means Ofgem's assessment of the efficient and economic costs which ought to have been incurred in connection with the development and construction of the transmission assets for each Qualifying Project.

"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 QTT Stage providing they have entered into the applicable Confidentiality Agreement;

"ITT" means Invitation to Tender stage of a Tender Process;

"Invitation to Tender 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;

"Invitation to Tender 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 and 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;

"PQ" means Pre-Qualification stage of a Tender Process;

"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 QTT Stage and which sets out the rules and requirements of the PQ 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 QTT 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" means the Qualification to Tender stage of a Tender Process;

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

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

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

"Qualifying Project" means any offshore project in respect of which Ofgem determines that the Developer has satisfied the pre-conditions described in Schedule 2 of the Tender Regulations;

"Qualification to Tender Document (QTT 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 QTT Stage;

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

"Qualification to Tender Submission (QTT 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 constant revenue stream in real terms submitted by Qualifying Applicants for the relevant Qualifying Project;

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

"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.