

Offshore Electricity Transmission: Guidance on the Transfer Agreement

Guidance

Issue date: 30 November 2011

Contact: Mary Smith, Senior Manager, Tenders and Transactions

Team: Offshore Tenders and Transactions

Tel: 020 7901 1837

Email: tendercoordinator@ofgem.gov.uk

Overview:

The regulatory regime for offshore electricity transmission enables the Authority to grant Offshore Transmission Licences on the basis of a competitive tender process. Ofgem is responsible for managing this process.

This document sets out a guidance note on the structure and content of the Transfer Agreement to be prepared by Developers for Qualifying Projects within the tender process for the second transitional Tender Round of the offshore regime.

Document version history

Version number	Date	List of changes
1	November 2010	Guidance on the Transfer Agreement published
2	November 2011	Guidance on the Transfer Agreement updated to reflect developments relating to deferred consideration

Context

Electricity generated from offshore renewable sources is expected to make an important contribution towards the UK achieving its renewable energy targets by 2020. Fit for purpose offshore electricity transmission infrastructure is required to transfer the electricity generated offshore to the onshore network and ultimately to consumers. It is important that this infrastructure is developed in a timely, secure and cost-effective manner. It should also provide best value to present and future electricity consumers, while reflecting the requirements of generators and ensuring that, as far as possible, offshore infrastructure develops in a co-ordinated manner.

The Department for Energy and Climate Change (DECC¹) and Ofgem² have developed a regulatory regime for offshore electricity transmission. It was consulted on extensively and refined over four years, culminating in a final statement published in June 2009³.

A key part of the regime is that Offshore Transmission Licences will be granted⁴ following a competitive tender process run by Ofgem, with the Successful Bidder becoming the Offshore Transmission Owner (OFTO). The result will be that the generating assets (offshore wind farms) will be owned and operated by the

¹ And its predecessors, the Department for Trade and Industry and the Department of Business, Enterprise and Regulatory Reform.

² The Gas and Electricity Markets Authority (the Authority) is the regulator of the gas and electricity markets in Great Britain. Ofgem is the Office of the Gas and Electricity Markets. It supports the Authority in performing its statutory duties and functions. Whilst the terms "Ofgem", "Authority", "we" and "us" are used interchangeably in this Guidance, it is the Authority which is responsible for exercising the relevant statutory powers.

³ This can be found via the following link:

www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/cons2009/Documents1/Main.pdf

⁴ Under section 6(1)(b) of the Electricity Act the Authority can grant a licence authorising a person to participate in the transmission of electricity. This extends to include offshore transmission. Under section 6C of the Electricity Act, we can make regulations to run a competitive tendering process in order to determine Successful Bidders who will be granted Offshore Transmission Licences. The relevant regulations are the Tender Regulations.

generator, whilst the offshore transmission system, which connects the offshore wind farms to the onshore transmission system, will be owned and operated by the OFTO.

The Offshore Transmission Licence will place certain rights and responsibilities on OFTOs, including the right to a regulated revenue stream for a period of twenty years in return for the provision of transmission services.

The regulatory regime for offshore transmission encompasses both a transitional and an enduring regime. Under the Transitional Regime Developers are able to construct Transmission Assets which are then transferred to an OFTO appointed through the competitive tender process run by Ofgem. The Developer will transfer these Transmission Assets at a transfer value set by Ofgem following an assessment of the economic and efficient costs of developing and constructing them. OFTOs will then operate and maintain the assets in accordance with the requirements of the Offshore Transmission Licence and the wider regulatory framework (including industry codes). For transitional projects, the role of the OFTO is therefore to finance, own, operate and maintain the assets which have been transferred by the Developer.

In the Transitional Regime, Developers are required to transfer ownership of the completed Transmission Assets to an OFTO appointed through the tender process. Ofgem expects this transfer to be effected by a Transfer Agreement which is commercially agreed between these parties.

Contents

1. Executive Summary	5
2. Ofgem's role in the development of the Transfer Agreement.....	7
3. Process for development of the Transfer Agreement and Ancillary Documentation	10
4. Overarching principles relating to the drafting of the Transfer Agreement and Ancillary Documentation.....	16
5. Contents of the Transfer Agreement.....	20
Appendices	28
Appendix 1 - Glossary of Terms used in this Guidance (other than in the Example Clauses)	29
Appendix 2 – Sale and Purchase.....	33
Appendix 3 - Deferred Consideration.....	34
Appendix 4 - Third Party Consents for Transfer of Assets and Contracts.....	35
Appendix 5 - Assumed and Excluded Liabilities	40
Appendix 6 - Sites and Property Contracts	43
Appendix 7 – Completion Obligations	48
Appendix 8 – Post Completion Activities.....	51
Appendix 9 – Warranty Provisions.....	53
Appendix 10 – VAT and related Capital Allowances	71
Appendix 11 – Boilerplate Provisions	77
Appendix 12 – Definitions used in Example Clauses and Example Interpretation Clauses.....	84
Appendix 13 – The Authority’s Powers and Duties	95

1. Executive Summary

Introduction

1.1. The Transfer Agreement is a key document in the tender process. Under the Tender Regulations, which sets out the tender process to identify the Offshore Transmission Licensee, one of the conditions which must be satisfied by Developers to enable us to run a Tender Exercise for their project is that they must fill in the Transfer Agreement and undertake to us to continue to do so. Failure to do so can result in the cancellation of the project from the Tender Exercise.⁵

1.2. Whilst the Transfer Agreement is a matter for the parties to commercially agree, we have an interest in ensuring that the proposed terms of the Transfer Agreement are not inconsistent with the regulatory regime and do not affect our ability to run a tender process effectively in accordance with:

- our principal objective and general duties⁶;
- our duties under the Tender Regulations; and
- our key objectives of a competitive Tender Exercise⁷.

1.3. For the second round of tenders we are now undertaking, we have reviewed the approach to the Transfer Agreement we adopted in the first round of tenders. We have also carefully considered the feedback we received from industry participants on the approach we took. We have sought to accommodate this feedback and the lessons learned in the approach we are now adopting for the second round.

1.4. Specifically, instead of publishing a model sale and purchase agreement as we did in the first round of tenders, we are publishing this detailed Guidance at an early stage of the second round to assist the production of the Transfer Agreement as well as providing example clauses which Developers may wish to use. This Guidance covers a number of issues including:

- principles for the Transfer Agreement, setting out expectations on what should and should not be included in the Transfer Agreement;
- the process for the development of the Transfer Agreement in parallel with the tender process; and
- Ofgem's role in the development of the Transfer Agreement.

⁵ This is discussed in more detail in section 2 below.

⁶ For more detail on our principal objective and general duties, please see the Tender Rules.

⁷ See section 3 below.

1.5. We consider that this approach provides all parties with a clear and transparent roadmap for the production of the Transfer Agreement.

1.6. It should be noted that this Guidance (including the example clauses) is generic in nature; the terms of a Transfer Agreement in any particular case will reflect the specific details of that case.

2. Ofgem's role in the development of the Transfer Agreement

Introduction

2.1. This section sets out Ofgem's role in the development of the Transfer Agreement. Whilst the Transfer Agreement is a matter for the parties to commercially agree, this section also discusses Ofgem's power to make a property transfer scheme where the parties are unable to do so.

Ensuring Developers and Participants comply with the Tender Exercise process

2.2. Under the Tender Regulations, we are responsible for running the competitive tender process to identify the OFTO for a Qualifying Project⁸.

2.3. We will engage with Developers and Participants with a view to ensuring that they comply with the tender process. It is important to ensure the timely and appropriate development of the Transfer Agreement in timescales which enable us to:

- run a competitive Tender Exercise for the project; and
- ensure that we can grant an Offshore Transmission Licence to the Successful Bidder by the time an OFTO for the relevant Transmission Assets is needed.

2.4. In particular, as stated above in section 1 (Overview) it is the responsibility of Developers to develop the Transfer Agreement which is then finalised following appointment of the Preferred Bidder. Under the Tender Regulations, it is a condition which Developers must meet to enable us to run a Tender Exercise for their project that they fill in the Transfer Agreement and undertake to us to continue to fill it in with relevant information⁹.

2.5. If the Developer fails to fill in the Transfer Agreement or breaches its undertaking to continue to fill in the Transfer Agreement with all relevant information available to it, this may entitle us to disqualify the Developer and we may cancel the relevant Qualifying Project from the Tender Exercise.¹⁰

⁸ For a more detailed discussion of Ofgem's wider role and the competitive tender process, please see the Tender Rules.

⁹ Regulation 8 and paragraph 2(e) of Schedule 2 to the Tender Regulations.

¹⁰ Paragraph 2(c) of Schedule 8 and Paragraph 1(l) of Schedule 7 to the Tender Regulations.

Facilitating the development of the Transfer Agreement

2.6. In section 3 (Process for development of the Transfer Agreement and Ancillary Documentation) we set out the process for developing the Transfer Agreement which we expect to follow at each stage of the tender process and how we will engage with Developers and Participants to facilitate its development.

2.7. We also set out the process for developing other Ancillary Documentation, including the disclosure letter and interface agreements.

Checking consistency of the Transfer Agreement with this Guidance

2.8. This Guidance is intended to assist the development of a Transfer Agreement to ensure that it is consistent with the regulatory regime and does not affect our ability to run a tender process effectively in accordance with:

- our principal objective and general duties;
- our duties under the Tender Regulations; and
- our key objectives of a competitive Tender Exercise,

2.9. We encourage Developers and Participants to have regard to this Guidance in developing and agreeing the Transfer Agreement. In particular we draw parties' attention to the following sections of this Guidance:

- section 4 (Overriding principles relating to the drafting of the Transfer Agreement) - this describes certain principles which parties should seek to be consistent with in developing and agreeing the Transfer Agreement; and
- section 5 (Contents of the Transfer Agreement) - this describes the arrangements that we would expect to see in a Transfer Agreement and refers to the example clauses attached in the Appendices to this Guidance.

Property transfer scheme

2.10. Schedule 2A of the Electricity Act (inserted by the Energy Act 2008) allows Ofgem to make a property transfer scheme in respect of the Transitional Regime to achieve the transfer of property, rights and liabilities required by an OFTO to perform its functions, for example in situations where commercial agreement has not been reached.

2.11. A Preferred Bidder or Successful Bidder (as applicable) and/or Developer may at any time apply to Ofgem for a property transfer scheme pursuant to paragraph 3 of Schedule 2A to the Electricity Act. If the application were successful, Ofgem would make a scheme to transfer property, rights and liabilities from the Developer to the Successful Bidder. This transfer is given effect by operation of law rather than through the agreement of the parties.

2.12. We consider that use of this Guidance and a structured process of dialogue between the Qualifying Bidders and the Developer on the proposed terms of the Transfer Agreement throughout the tender process should facilitate its successful agreement and minimise the need for parties to seek to use the statutory transfer powers in Schedule 2A to the Electricity Act. Ofgem would only expect these property transfer scheme powers to be exercised as a last resort, with parties exhausting all possibilities to achieve commercial outcomes before applying.

2.13. Nothing in this Guidance should be taken as constraining our discretion as to the terms on which we might make a property transfer scheme under Schedule 2A to the Electricity Act in any particular case.

3. Process for development of the Transfer Agreement and Ancillary Documentation

Introduction

3.1. This section sets out our expectations of how the Transfer Agreement and Ancillary Documentation will be developed by Developers within the various stages of the tender process. It covers at what stages we expect various revisions of the Transfer Agreement and Ancillary Documentation to be made available to Participants and how their feedback is provided to Developers.

Stages of a Tender Process

3.2. For the second round of Tender Exercises we are now undertaking, we are proposing to run two tranches of exercises. The first tranche commenced on 17 November 2010. We expect to commence the second tranche of Tender Exercises in Spring 2012.

3.3. The Tender Regulations set out the various stages of a Tender Exercise and the requirements on Ofgem and those involved in the Tender Exercise. The stages are:

- the pre-qualification stage (the PQ stage);
- the qualification to tender stage (the QTT stage);
- the invitation to tender stage (the ITT stage);
- the best and final offer stage, if required (the BAFO stage);
- the preferred bidder stage (the PB stage); and
- the successful bidder stage (the SB stage).

3.4. For more detail on each of these stages, please see the Tender Regulations and the Tender Rules. The Tender Rules also give indicative timings for each of these stages. As part of running the tender process we will specify particular timescales by which certain steps (including in relation to the development of the Transfer Agreement) should be met.

3.5. To meet these timescales Developers should organise themselves internally, for example by ensuring that they obtain the necessary board approvals in time. As far as possible, we would also expect there to be continuity in the Developer teams dealing with this process.

3.6. Until the end of the ITT stage we will engage with Developers to monitor progress towards filling in the Transfer Agreement and to satisfy ourselves that the

Developer is complying with its undertaking to continue to fill in the Transfer Agreement. We will also keep the draft Transfer Agreement under review to understand the extent to which the Transfer Agreement is consistent with this Guidance. This may include:

- arranging face-to-face meetings with Developers to discuss the development of the Transfer Agreement, to discuss aspects of the offshore transmission regime or the specifics of a project that might impact the terms and conditions of the Transfer Agreement or Ancillary Documentation and to discuss feedback on drafts of the Transfer Agreement; and
- providing further written clarification in relation to this Guidance (whether by letter, supplemental guidance note or otherwise) where appropriate.

3.7. In releasing drafts of the Transfer Agreement and related Ancillary Documentation to Participants at any particular stage of the tender process, or in any other communication to Developers or Participants, Ofgem does not endorse any of the documents nor the positions taken by Developers expressed in them, or constrain its discretion as to the terms on which it might make a property transfer scheme under Schedule 2A to the Electricity Act in a particular case.

3.8. We discuss the process for developing the Transfer Agreement at each stage of the Tender Exercise in more detail below.

Up to QTT stage

3.9. One of the tender entry conditions which Developers must satisfy so that a Tender Exercise for their projects can be run is to fill in the Transfer Agreement, as far as possible with all relevant information available to the Developer, within the specified timescales.

3.10. We would expect the development of the Transfer Agreement to be structured and iterative and to hold bilateral meetings with Developers to facilitate this process.

3.11. We will assess:

- whether Developers satisfy the tender entry condition to fill in the Transfer Agreement and whether they continue to do so; and
- if the draft Transfer Agreement is in a sufficiently advanced stage to be released to Qualifying Bidders.

3.12. In order to deliver the most competitive tender process possible, it is our aim to share a draft of the Transfer Agreement filled in by the relevant Developer for each Qualifying Project with Qualifying Bidders at the QTT stage once they have signed the necessary confidentiality agreement. We expect Developers to have developed the Transfer Agreement such that it is in a form suitable for release at this time.

3.13. Qualifying Bidders would then be asked as part of their QTT Submissions to identify and comment on commercial issues associated with the Qualifying Project and the transfer of the Transmission Assets by way of the Transfer Agreement.

3.14. If the Transfer Agreement is not in a sufficiently advanced stage to be released at the start of the QTT stage, we will release it at the ITT stage. In such an event, we may request Qualifying Bidders as part of their QTT Submissions to demonstrate their understanding of the scope and considerations associated with a Transfer Agreement in the context of this Guidance and the project-specific information provided through the tender process to date.

3.15. In order to give Developers visibility of the issues raised by Qualifying Bidders, we expect to provide Developers with anonymised feedback on the Transfer Agreement obtained during the QTT stage and may arrange meetings with Developers to discuss this feedback with them. We expect Developers to consider this feedback and we encourage them to take into account the key commercial issues raised and address them to the extent appropriate in the development of the updated draft Transfer Agreement.

3.16. We may evaluate the Qualifying Bidder submissions in relation to the Transfer Agreement. If we decide to do so, this will be done in accordance with the QTT Documentation that we publish.

ITT stage

3.17. We will make available at the beginning of the ITT stage either a draft (if not previously provided at the QTT stage) or an updated draft of the Transfer Agreement. This further revision will have been amended by Developers having reviewed Qualifying Bidder feedback during the QTT stage and as a result of further internal development by Developers.

3.18. A draft of the Ancillary Documentation should also be provided by Developers at the beginning of the ITT stage.

3.19. In the first round of tender exercises, bidders were asked to provide a mark-up of these documents and/or commentary and were asked to indicate whether the issues underlying their proposed changes have high/medium/low impact. For the second round of Tender Exercises we are now undertaking, we expect to take the same approach and will set out the requirements of Qualifying Bidders in this regard in the ITT Documentation.

3.20. We propose to issue the Qualifying Bidder mark-ups and their commentary to Developers in anonymised form. We expect Developers to consider the mark-ups and commentaries and we encourage them to take the issues raised into account and address them to the extent appropriate in amending the Transfer Agreement and the Ancillary Documentation particularly with a view to ensuring the fundability of the transfer of the assets.

3.21. We will consider whether it is appropriate to facilitate discussions between Developers and Qualifying Bidders on the Transfer Agreement and Ancillary Documentation during the ITT stage (supervised by Ofgem). If we decide to permit such contact we will notify the parties with details prior to or at the start of the ITT stage.

3.22. We will liaise with Developers during the ITT stage to review the development of the Transfer Agreement. This will include reviewing the extent to which the Transfer Agreement is consistent with this Guidance and may include discussing with Developers the manner and extent to which Developers propose to address issues raised in Qualifying Bidder feedback.

3.23. Before the end of the ITT stage, we would expect to issue a final draft of the Transfer Agreement prepared by Developers. It is against this final draft that Qualifying Bidders will be making their firm Tender Revenue Stream bids and their bids should fully reflect the terms. As such the final draft of the Transfer Agreement must be as full and complete as possible. Where the Developer is not able to complete an aspect of the Transfer Agreement due to project-specific circumstances, we would expect the Developer to explain either in the Transfer Agreement or in additional documentation their proposed approach to resolving the outstanding aspects.

3.24. Developers can produce information notes to accompany any versions or revised versions of the Transfer Agreement or Ancillary Documentation (if they wish). The purpose of the notes should be solely to:

- explain any changes to the Transfer Agreement and Ancillary Documentation;
- clarify any issues which appear to be unclear to Qualifying Bidders in view of their comments on the previous drafts of the Transfer Agreement and Ancillary Documentation; and/or
- give context to the Developer's approach to specific clauses within the Transfer Agreement and Ancillary Documentation in light of Qualifying Bidder feedback where thought necessary.

3.25. In the interests of maintaining a fair and transparent tender process, the information note should not refer to individual Qualifying Bidders or address matters other than those set out above.

PB stage (including following any BAFO stage) until close

3.26. We envisage that we will continue to engage Developers on the Transfer Agreement until the end of the ITT stage. From the appointment of the Preferred Bidder we expect that most of the issues arising in the process to close will be for resolution on a commercial basis through direct discussions between the Developer, the Preferred Bidder and any other relevant parties.

3.27. The Preferred Bidder will be expected to move promptly to finalise the Transfer Agreement with the Developer together with all other transaction documents alongside securing final credit approvals, in accordance with the timescales applicable to that Qualifying Project as notified to the Preferred Bidder.

3.28. Although the ITT Submission provided by the Qualifying Bidders will be fully reflective of the final draft Transfer Agreement, Ofgem acknowledge that the Developer and Preferred Bidder will need to finalise the terms of the Transfer Agreement during the PB stage and that in certain areas, Developers may be in a position to provide updates to the Transfer Agreement.

3.29. During the PB stage, Ofgem does not propose to review or participate in the development of documents to which it is not a party, including the Transfer Agreement and Ancillary Documentation, or to act as an arbiter of disputes between the parties.

3.30. Similarly, we do not intend to review the agreed form version of the Transfer Agreement or other Ancillary Documentation although we reserve the right to request copies (whether before or after their execution).

3.31. Finalisation of the Transfer Agreement (and Ancillary Documentation) is part of the matters to be satisfied before a Preferred Bidder becomes the Successful Bidder for a project and the tender process moves to the SB stage.

Ancillary Documentation

Interface Agreement

3.32. The Developer is required under the CUSC to enter into an interface agreement with the OFTO in a form to be agreed between them but based substantially on the form set out in Exhibit O to the CUSC (a similar requirement on the OFTO is contained in the STC). The interface agreement sets out the rights and obligations between the Developer and OFTO in respect of the interface of their generation and Transmission Assets.

3.33. The interface agreement is an important document for both Developers and Qualifying Bidders. Ofgem therefore encourages Developers to start considering and preparing this document as early as possible to give Qualifying Bidders visibility of the terms proposed. Qualifying Bidders will be asked to provide commentary on the draft interface agreement(s) during the ITT stage.

Disclosure Letters

3.34. Developers should develop a draft disclosure letter alongside the Transfer Agreement in relation to the warranties given under it. We would expect to see appropriate supporting information and documentation in relation to any disclosure

against the warranties and note that, without this Qualifying Bidders may not be able to price the implications of the disclosure. For example, where the disclosure relates to a defect in the assets, the disclosure might include details of any proposed rectification, including scope, timing and impact.

3.35. The draft disclosure letter should be updated with relevant information as and when it becomes available. The Qualifying Bidders will be asked to provide a mark up and commentary on the disclosure letter at the ITT stage of the tender process.

4. Overarching principles relating to the drafting of the Transfer Agreement and Ancillary Documentation

Introduction

4.1. This section describes certain principles which parties should seek to be consistent with in developing and agreeing the Transfer Agreement. We have developed them in light of our principal objective and general duties, our duties and powers under the Tender Regulations and the stated key objectives of the tender process. Ofgem will have regard to these principles when reviewing the draft Transfer Agreement developed during the PQ, QTT and ITT stages. The principles set out below also apply to the Ancillary Documentation prepared by the Developer. This is not intended to be an exhaustive statement of all principles which may be relevant.

Principles

The Transfer Agreement should transfer to the Successful Bidder all property, rights and liabilities, in relation to the Transmission Assets for the Qualifying Project that is within the Developer's legal ability to transfer, to enable the Successful Bidder to fulfil its obligations as OFTO.

4.2. The OFTO is required under the Offshore Transmission Licence to secure that it has available to it such resources, including fixed assets, rights and consents, to ensure that it is at all times able to carry on the transmission business and comply with its obligations under the Offshore Transmission Licence and the Electricity Act.

4.3. Under the Tender Regulations, one of the Qualifying Project requirements which a Developer must satisfy to enable us to run a Tender Exercise for its project is that it has obtained all necessary consents and property rights for the Transmission Assets to be constructed and maintained and ensured that any such consents or property rights which are capable of being assignable to the Successful Bidder are so assignable.

4.4. We therefore expect that, subject to the following three paragraphs, under the Transfer Agreement all property, rights and liabilities owned by the Developer in relation to the Transmission Assets and which are capable of transfer, will be transferred to the Successful Bidder to the extent possible to support this. We expect this to include asset-related information and documents (such as test reports, drawings and manuals) as well as other records relevant to the ownership, operation and maintenance of the assets.

4.5. In particular the OFTO should receive the benefit of the construction contracts relating to the assets to be transferred, including the warranties under those contracts. Developers should work to identify the methods that they will use to transfer the benefit of these contracts to the OFTO as soon as possible in the process, for example by way of novation, assignment or collateral warranty. By the ITT stage at the latest the details of how the benefit of the contracts is going to be transferred should be included in the Transfer Agreement.

4.6. There may be certain assets which are shared between generation and transmission interests and which, rather than transferring to the Successful Bidder, might be subject to sharing arrangements under the Transfer Agreement or the interface agreement.

4.7. We recognise that there may be certain consents, licences or permits held by the Developer which relate to the Transmission Assets but where it is not possible to transfer or assign these to the Successful Bidder. These would remain with the Developer.

The Transfer Agreement should not be discriminatory to different kinds of Qualifying Bidders

4.8. Ofgem has an interest in ensuring that the tender process is conducted on a competitive basis and treats all Qualifying Bidders equally. We would therefore not expect the Transfer Agreement to contain provisions that might materially favour or disadvantage one bidder, or one kind of bidder, over another. Such provisions could affect the viability and competitiveness of the tender process from a Qualifying Bidder's perspective.

4.9. For example, we would not expect to see provisions included in or omitted from the Transfer Agreement that might:

- materially affect the risk profile of most Qualifying Bidders, but which may not impact to the same extent a Qualifying Bidder entity which is related to the Developer;
- favour or disadvantage certain sources of funding over others (e.g. a balance sheet bidder versus a bidder relying on non-recourse project finance);
- favour or disadvantage Qualifying Bidders in certain jurisdictions (e.g. through the dispute resolution arrangements); or
- be so unattractive (in terms of risk allocation or otherwise) that Qualifying Bidders may be deterred from bidding.

The Transfer Agreement should be consistent with the offshore transmission regime and the wider regulatory framework

4.10. The Transfer Agreement should not contain provisions which contradict or undermine the intent of the regulatory regime set out in the Electricity Act, Tender

Regulations, the Offshore Transmission Licence and other associated codes and documents, nor the policy considerations underpinning the regime including the tender process.

4.11. In particular, we would not expect to see obligations or remedies under the Transfer Agreement which overlap with, extend or conflict with obligations on the OFTO already set out under the Offshore Transmission Licence, Crown Estate Lease, STC and other industry codes or statute. Further, we would not expect the Transfer Agreement to contain provisions which created ongoing relationships with the OFTO in relation to issues already dealt with in other areas of the regime (or where the Developer's ongoing relationship will be with NGET under the CUSC) - for example obligations in relation to the maintenance or insurance of assets after transfer or indemnification provisions for failure to have consents and permits in place.

4.12. We would expect the provisions in the Transfer Agreement in relation to the determination and payment of the consideration for the transfer to reflect the requirements under the Tender Regulations for Ofgem to assess the economic and efficient costs of developing and constructing the Transmission Assets and to use that assessment to determine the transfer value for the assets.

4.13. Ofgem's estimates and assessment of costs under the Tender Regulations will be based on its understanding of the assets transferring to the Successful Bidder. The Developer should notify Ofgem if, as a result of developing or finalising the Transfer Agreement, the assets, property and rights transferring to the Purchaser differ from information previously provided to Ofgem as this may affect Ofgem's cost assessment.

4.14. Similar considerations apply to the interface agreement. In particular:

- Developers must be satisfied that any amendments to the form of the CUSC interface agreement do not result in the Developer being in breach of its generation licence or the CUSC;
- Qualifying Bidders must also ensure themselves that, as prospective parties to the interface agreement, they would not be in breach of the Offshore Transmission Licence or the STC; and
- we would not expect the interface agreement to include obligations or remedies which overlap with, extend or conflict with obligations on the OFTO already set out under the Offshore Transmission Licence, Transfer Agreement, Crown Estate Lease, STC and other industry codes or statute.

The Transfer Agreement should facilitate the achievement of an economic and efficient outcome to the competitive tender process

4.15. We would not expect to see clauses proposed in the Transfer Agreement which resulted in Qualifying Bidders bearing unnecessary costs or risks - for example, as a result of duplication of obligations imposed on the OFTO under the Transfer

Agreement which are already set out under other areas in the offshore regime or the imposition of, for example, unnecessary costs by having to resolve disputes in foreign jurisdictions.

4.16. We would also not expect to see clauses proposed which resulted in an unbalanced allocation of risk between the parties, the impact of which would ultimately be borne by consumers.

5. Contents of the Transfer Agreement

Introduction

5.1. This section sets out details of the provisions that Ofgem would expect Developers to include in their Transfer Agreement and (where relevant) refers to example clauses in the Appendices which have been provided to assist Developers in filling in and continuing to fill in the Transfer Agreement.

5.2. This section is by way of general explanation only and does not constitute legal, financial or tax advice from the Authority, Ofgem or its retained advisers. Developers will need to fill in their Transfer Agreement with regard to the specific circumstances relevant to their Qualifying Project.

Transfer Agreement content

Sale and purchase

5.3. Given the design of the regulatory regime, it is intended that execution of the Transfer Agreement, completion of the transfer of assets to the Successful Bidder and grant of the Offshore Transmission Licence to the Successful Bidder will occur simultaneously, once construction of the Transmission Assets (or relevant phase) is completed. The Transfer Agreement should therefore be drafted to reflect this. Appendix 2 provides example clauses that deal with the obligation to transfer the assets.

Assets

5.4. Developers (each as vendor) should provide details of all the assets, property and rights, liabilities and obligations (including fixed assets, spares, contracts and properties) to be transferred to the Successful Bidder (as purchaser).

5.5. In order to provide firm bids at the ITT stage, Qualifying Bidders will require certainty with respect to what is being transferred to them. In particular, Ofgem expects the Developer to transfer the benefit of all construction contracts related to the Transmission Assets. The Transfer Agreement should clearly set out how such benefit will be transferred, for example by way of assignment, novation or collateral warranty.

5.6. If the assets, property and rights transferring differ from the position set out in the information memoranda, we recommend Developers should clarify why the position has changed.

5.7. If relevant to their Qualifying Project, Developers should also include a comprehensive framework for the transfer (or sharing) of any applicable information technology systems and intellectual property rights.

5.8. If there are assets or contracts which are shared between the Transmission Assets and the generation assets, or different phases of Transmission Assets, the Transfer Agreement (or interface agreement where relevant) should clearly set out proposals in relation to the transfer and sharing of these assets and contracts.

5.9. Ofgem would expect the Transfer Agreement to be structured to effect a clean division of title and liability on and from the completion date such that the Developer is responsible for payables incurred or attributable to any period prior to completion and is entitled to receive and enforce any receivables accrued up to and including completion.

Payment of transfer value

5.10. The Tender Rules set out details of Ofgem's cost assessment process. Ofgem will use its assessment of costs to determine the value of the Transmission Assets transferring to the Successful Bidder in respect of a Qualifying Project. Ofgem will carry out estimates of costs during the tender process and these estimates will be included in the documentation for the ITT stages as the "indicative transfer value".

5.11. Based on our experience from previous Tender Rounds and on our interaction with bidders on the second transitional Tender Round, we have reviewed our approach to deferred consideration for the purposes of an ITT submission. Ofgem considers that removing the assumption that deferred consideration will be payable following asset transfer will allow for greater certainty and deliverability for both the Developer and potential OFTOs regarding the amount, timing and funding of the final transfer value.

5.12. It is intended that Ofgem will finalise the assessment of costs and determine the final transfer value prior to Licence grant, however in circumstances where this is not possible Ofgem has the right to determine that a proportion of the indicative transfer value should be paid to the Developer on transfer of the Transmission Assets, with deferred consideration paid thereafter. In this case, Ofgem will determine what proportion of the indicative transfer value the Developer should receive on transfer (which, subject to certain matters, will not be less than 75% of the indicative transfer value included in the ITT Documentation). On conclusion of Ofgem's assessment of costs, the deferred consideration (being the difference between the final transfer value and the proportion of the indicative transfer value received by the Developer on transfer) will then be paid by the Successful Bidder to the Developer.

5.13. Appendix 2 provides example clauses that deal with the payment of the transfer value and Appendix 3 provides clauses for the payment of deferred consideration, should it be required.

5.14. Given our experience of the first round of tender exercises, we understand that if payment of deferred consideration is required, Developers may want interest on deferred consideration. We note that where interest is allowed on analogous deferred payments under the onshore and offshore transmission licences a base rate of interest is used. We therefore expect a similar rate to be used in the Transfer Agreement as the rate of interest on deferred consideration and note that transfer agreements in the first round of tender exercises used the Barclays Bank base rate.

5.15. Should payment of deferred consideration be required, the Developer may wish to include provisions in the Transfer Agreement requiring the Successful Bidder to give security in respect of its obligations to pay the deferred consideration, for example by way of parent company guarantee, letter of credit or other acceptable form of security. Any security should be limited to the difference between the initial purchase price and 100% of the indicative transfer value provided at ITT stage. As an important part of the tender process is the consideration of the financial standing of the prospective OFTO in accordance with the conditions of the Offshore Transmission Licence, we would not expect to see security for ongoing obligations under the Transfer Agreement.

Phased completion of assets

5.16. Ofgem understands that some Qualifying Projects may have phased completion under their construction contracts. In relation to any such projects the Transfer Agreement should allow for the transfer of each phase of assets to occur as and when the construction of a particular phase is completed. This is likely to result in multiple sequential completions under the Transfer Agreement. Developers and Qualifying Bidders should note that the Offshore Transmission Licence granted to the Successful Bidder will be structured in a way which enables phased transfer of assets.

5.17. In addition, the Developer will need to consider what other provisions are required in the Transfer Agreement and/or interface agreement to reflect the phased transfer of assets. This may include:

- the warranties given by the Developer on completion of the transfer of each phase;
- what conditions are required for subsequent completions;
- the parties respective rights and obligations in the period between phases including arising from the connection and commissioning of subsequent phases once early phases are owned by the OFTO and operational;
- the liability of the Developer if subsequent phases do not complete; and
- the provisions to be included to reflect the arrangements agreed with the Crown Estate so that parties have the necessary rights and obligations on completion of each phase.

Excluded assets and contracts

5.18. The Developer may wish to set out in the Transfer Agreement details of the assets which are excluded from the transfer to the Successful Bidder (for example, the generation assets and contracts relating to them). The details of any such excluded assets and contracts will be necessarily project-specific.

Third Party Consents for transfer of assets and contracts

5.19. Ofgem would expect parties to the Transfer Agreement to have a mutual obligation to obtain any required third party consent or agreement in relation to the transfer of title of any of the assets and contracts (including property rights and contracts). The Transfer Agreement should contain provisions dealing with the situation where such consent or agreement cannot be obtained prior to completion. For example, one way of resolving this issue is for the Developer to be deemed to hold the benefit of the applicable assets in trust for the Successful Bidder pending the receipt of such consent or agreement. Appendix 4 provides example clauses.

5.20. As stated in section 4, one of the Qualifying Project requirements for running a Tender Exercise includes the requirement to ensure that all necessary consents and property rights which are capable of being assigned are assignable. The onus is therefore on the Developers to ensure that all contracts, consents, leases and rights necessary to complete the transfer of assets are in transferable form as far as possible in advance of any asset transfer. As execution and completion of the Transfer Agreement is simultaneous, Ofgem expects Developers to clearly set out, either in the Transfer Agreement or in a separate document in the Data Room, a summary of what third party consents are required including the process and timetable for obtaining such consents, and to keep this updated to reflect progress.

Permits

5.21. The Developer should assign and/or transfer any permits, licences or approvals relating to the assets to the extent possible. Appendix 4 (paragraphs 1.19 and 1.20) provides example clauses.

5.22. Ofgem is aware that some permits, licences or approvals are not assignable or transferable and will be retained by the Developer, but may still contain obligations which relate to the Transmission Assets. Similarly, a permit, licence or approval that is transferring to the Successful Bidder may contain obligations that relate to the generation assets.

5.23. Ofgem expects the Transfer Agreement to clearly set out which permits, licences or approvals are being transferred and which are being retained. The Transfer Agreement may also include provisions agreeing an appropriate allocation of risk and responsibility in respect of permits, licences or approvals that relate to both transmission and generation assets.

Assumed and excluded liabilities

5.24. The Transfer Agreement should clearly set out which liabilities of the Developer are assumed by the Successful Bidder and which are excluded from the transfer. In addition, Ofgem expects the Transfer Agreement to contain provisions dealing with liabilities and obligations relating to decommissioning and environmental matters.

5.25. Appendix 5 provides example clauses.

Sites and Property Documents

5.26. The Transfer Agreement should clearly set out details of all property rights, title and interests (including licences, easement deeds, wayleave agreements and leases) transferring to the Successful Bidder and the terms on which these are to be transferred. Appendix 6 provides example clauses.

5.27. Based on experience from the first round of tenders, Ofgem expects that the Crown Estate lease granted to the Developer in relation to a Qualifying Project would be split prior to execution of the Transfer Agreement into a lease in respect of the generation assets and a lease in respect of the Transmission Assets, with the lease in respect of the Transmission Assets being assigned to the Successful Bidder on completion. The parties should work with the Crown Estate to achieve this.

Employees and benefits

5.28. Based on experience from the first round of tenders, Ofgem considers that it is unlikely that any employees will be transferring with the Transmission Assets. However, if this is not the case in respect of a particular Qualifying Project, the Developer should include provisions in the Transfer Agreement in relation to the transferring employees and their benefits (including pensions).

Transition Plan

5.29. In order to ensure an orderly and successful transfer of the Transmission Assets to the Successful Bidder, Ofgem suggests that once a Preferred Bidder is appointed in respect of a Qualifying Project, the Developer and Preferred Bidder should discuss transition arrangements and agree a transition plan that sets out the actions, timetables and milestones that need to be met by the parties in order to ensure that the transfer is carried out in an efficient and effective manner. Ofgem expects Developers to include, either in the Transfer Agreement or in a separate document in the Data Room, details of any proposed transition arrangements.

Certification of Completion of Offshore Transmission System

5.30. As outlined above, transfer of the Transmission Assets will occur once construction of the Transmission Assets (or the relevant phase) has been completed. Ofgem encourages Developers to provide information about the commissioning process in the Data Room to give clarity to Qualifying Bidders on this important aspect. The Successful Bidder is likely to require evidence of completion of construction as a completion deliverable. Developers should also consider what comfort they can provide to the Successful Bidder in respect of the commissioning process, for example through independent verification or certification.

5.31. Ofgem considers that these provisions will be highly project-specific in that they will need to reflect the certification provisions under the relevant construction contract(s) as well as relevant processes under the Developer's construction contract with NGET and under the STC.

Completion of sale and purchase

5.32. The Transfer Agreement should clearly set out the completion obligations and deliverables on both the Developer and the Successful Bidder. Appendix 7 provides example clauses, however the items to be delivered by each party at completion will necessarily be project-specific.

5.33. Ofgem expects that the Transfer Agreement would also contain provisions detailing the obligations on each of the parties for a period of time after completion of the transfer, as is standard. Appendix 8 provides example clauses.

Warranties and indemnities

5.34. The Transfer Agreement should contain details of the warranties the Developer will give the Successful Bidder in respect of the transfer. Appendix 9 provides an example set of warranties which have been prepared having regard to the subject matter typically included in a Transfer Agreement. The warranties given by Developers will require tailoring to the project-specific circumstances and Developers should consider whether further warranties are required based on the project-specific circumstances.

5.35. The example wording provides that the warranties are subject to limitations on claims, as is standard. Appendix 9 also provides example clauses dealing with limitation of liability.

5.36. In preparing the warranties and limitations on liability provisions in the Transfer Agreement, including the disclosure letter, Ofgem encourages Developers to consider the impact that a lack of sufficient warranty protection may have on the Qualifying Bidders' tender revenue stream bids.

5.37. Based on our experience of the first round of tender exercises, it may be that Qualifying Bidders have concerns about the creditworthiness of the selling entity where it is a special purpose vehicle. If so, Developers should consider offering security for the obligations of the vendor under the Transfer Agreement.

5.38. Given the nature of the Transmission Assets and that construction will be ongoing through the tender process, the Qualifying Bidders may become aware of issues or potential issues associated with the Transmission Assets such as remedial works required on assets, cable breakages or cable reburials following completion of the ITT stage. Ofgem would therefore encourage Developers to consider including proposals, either in the Transfer Agreement or associated information note, explaining how they would propose to deal with such issues if they arose on the basis of 'most likely scenarios'. Including the scenarios does not imply the event has or will occur and would only be intended to cover issues arising in the period up to completion in respect of the relevant project. For example, the Developer may consider offering indemnities for work associated with cable breakages or reburials, in which case the Developer should provide as much information as possible as to the terms of such an indemnity. This will enable Qualifying Bidders to better understand the implications of such events and price their bids accordingly based on certain scenarios occurring. It should also allow for speedy resolution should such an event occur prior to completion.

5.39. Developers are reminded that, under the terms of their undertaking given as a tender entry condition, where new relevant information becomes available in relation to the Transmission Assets they are required to provide this to Ofgem so it can be included in the Data Room.

VAT and tax

5.40. The tax structure to be adopted, and the tax treatment to be applied, should be reviewed by the Developer on a project-specific basis, having regard to the likely tax affairs of the relevant parties and the facts and circumstances of the particular Qualifying Project and this should be reflected in the Transfer Agreement.

5.41. Ofgem has received guidance from HMRC regarding the treatment of the transfer of assets to the Successful Bidder as a going concern for VAT purposes¹¹. This guidance will be provided to both Developers and Qualifying Bidders by its inclusion in the Data Room for the projects. Appendix 10 provides example clauses that have been prepared in light of this guidance. If we receive updated guidance from HMRC on this issue, we will make Developers and Qualifying Bidders aware of this.

5.42. The Developer should put forward their proposed position on capital allowances. The sharing, or otherwise, of any tax benefits such as capital allowances is a matter for commercial agreement between the parties having regard to their

¹¹ See the letter from HMRC to Ofgem dated 14 December 2009.

specific circumstances. Therefore, we recognise that the position may be finalised after appointment of the Preferred Bidder.

5.43. Developers should note that Ofgem intends to assume for the purposes of its estimate of costs and calculation of the indicative transfer value that the Successful Bidder will obtain the full benefit of all available capital allowances. If the Developer proposes to retain the benefit of any capital allowances the final transfer value will be reduced to reflect this.

5.44. Appendix 10 also provides example clauses in relation to capital allowances and an example schedule of election.

Announcements, confidentiality and other boilerplate clauses

5.45. Ofgem expects the Transfer Agreement to include standard provisions in relation to the prohibition on announcements and disclosure of confidential information, as well as other standard provisions relating to the assignment of the benefit of the Transfer Agreement, third party rights, variation, notices and governing law. Appendix 11 provides example clauses.

Appendices

Index

Appendix	Name of Appendix	Page Number
1	Glossary of Terms used in this Guidance (other than in the Example Clauses)	29
2	Sale and Purchase	33
3	Deferred Consideration	34
4	Third Party Consents for Transfer of Assets and Contracts	35
5	Assumed and Excluded Liabilities	40
6	Sites and Property Contracts	43
7	Completion Obligations	48
8	Post Completion Activities	51
9	Warranty Provisions	53
10	VAT and related Capital Allowances	71
11	Boilerplate Provisions	77
12	Definitions used in Example Clauses and Example Interpretation Clauses	84
13	The Authority's Powers and Duties	95

Appendix 1 - Glossary of Terms used in this Guidance (other than in the Example Clauses)

'Ancillary Documentation' means the disclosure letter, the interface agreement and any other transaction documents to be entered into between the Developer and Successful Bidder under or in connection with the Transfer Agreement.

'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 Documentation' means, in respect of a particular Qualifying Project, the documentation, which will be made available to each Qualifying Bidder invited to make an BAFO Submission for that Qualifying Project and which sets out the rules and requirements of the BAFO stage.

'BAFO stage' means the period starting from the distribution by Ofgem of the BAFO Documentation to selected Qualifying Bidders, including BAFO preparation, submission and evaluation, and ending when a Preferred Bidder is selected and notified.

'Bidder' means any person who makes a PQ Submission.

'Bidder Group' means two or more persons acting together as a consortium for the purposes of any submission to Ofgem in accordance with the Tender Regulations.

'Crown Estate' means the body responsible for awarding offshore wind leases for access to the seabed to wind farm operators.

'Crown Estate Lease' means a lease or licence between the Crown Estate and the OFTO to allow the OFTO to be able to operate and maintain its Offshore Transmission System on the seabed.

'CUSC' means Connection and Use of System Code.

'Data Room' means, in respect of a Qualifying Project, a secure electronic data room populated and maintained by Ofgem with information provided by the relevant Developer, which is made available to relevant Qualifying Bidders through the electronic tendering portal.

'DECC' means the Department for Energy and Climate Change, being for the time being the government department responsible, among other things, for the introduction of the regulatory regime for offshore electricity transmission. It has responsibility for commencing the relevant sections of primary legislation and approves new and amended tender regulations.

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

'Electricity Act' means the Electricity Act 1989 as amended from time to time.

'Guidance' means this guidance note on the Transfer Agreement.

'ITT' means Invitation to Tender under Regulation 15 of the Tender Regulations.

'ITT Documentation' means, in respect of a particular Qualifying Project, the documentation, which will be made available to each Qualifying Bidder invited to make an ITT Submission for that Qualifying Project and which sets out the rules and requirements of the ITT stage.

'ITT stage' means the period starting from the distribution of the ITT Documentation to Qualifying Bidders by Ofgem, and including tender preparation, submission and evaluation, and ending when either a Preferred Bidder is selected and notified, or a BAFO stage is commenced.

'ITT Submission' means a submission by a Qualifying Bidder to Ofgem in response to the ITT Documentation.

'NGET' means National Grid Electricity Transmission PLC.

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

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

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

'Ofgem' means the Office of Gas and Electricity Markets.

'OFTO' or **'Offshore Transmission Licensee'** means the holder of an Offshore Transmission Licence.

'O&M' means operation and maintenance of the Transmission Assets.

'Participant' means a Bidder, a Bidder Group, a Qualifying Bidder, a Preferred Bidder, a Reserve Bidder or a Successful Bidder (as applicable).

'PB stage' means the period starting at the date of Ofgem's notice to a Qualifying Bidder that it has been selected as Preferred Bidder and ending at the date of Ofgem's notice to the Preferred Bidder that it has become the Successful Bidder.

'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 submissions received, 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 Documentation' means the documentation prepared and issued by Ofgem for the purpose of selecting a longlist of Qualifying Bidders to progress to the QTT Stage and which sets out the rules and requirements of the PQ Stage.

'PQ Questionnaire' means the PQ Questionnaire published by Ofgem at the PQ Stage, as part of the PQ Documentation, to entities that have registered on the electronic tendering portal.

'PQ stage' means the period starting from the publication of the PQ Documentation, including the preparation, submission and evaluation of PQ Submissions and ending once Ofgem has published the longlist of Qualifying Bidders who are invited to participate in the QTT Stage.

'PQ Submission' means a Bidder's response to the PQ Documentation.

'Qualifying Bidder' means a Bidder or Bidder Group invited to make a QTT Submission or an ITT Submission.

'Qualifying Project' means an offshore generating project in respect of which Ofgem determines that the Developer has satisfied the Qualifying Project requirements described in paragraph 5.6 of the Tender Rules or in respect of which Ofgem determines at its discretion (exercised in accordance with the Tender Regulations) that the Developer will use its reasonable endeavours to satisfy the relevant Qualifying Project requirements within a period specified by Ofgem.

'QTT' means Qualification to Tender.

'QTT Documentation' means the documentation 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.

'QTT stage' means the period starting from Ofgem publishing the longlist of Qualifying Bidders who have prequalified, including the preparation, submission and evaluation of QTT Submissions and ending once Ofgem has notified the Qualifying Bidders of its shortlist of Qualifying Bidders for Qualifying Projects to progress to the ITT Stage.

'QTT Submission' means a Qualifying Bidder's response to the QTT Documentation.

'Reserve Bidder' means the Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received, as the second choice Qualifying Bidder to which Ofgem would consider granting the Offshore Transmission Licence should Ofgem determine not to grant the Offshore Transmission Licence to the Preferred Bidder.

'SB stage' means the period starting at the date of Ofgem's notice to a Preferred Bidder that it has become the Successful Bidder and ending at the date when the Successful Bidder is granted an Offshore Transmission Licence in relation to a particular Qualifying Project.

'STC' means the System Operator Transmission Code.

'Successful Bidder' means a Preferred Bidder to which Ofgem has determined to grant an Offshore Transmission Licence.

'Tender Exercise' means the competitive process run by Ofgem in order to identify a Successful Bidder to be granted an Offshore Transmission Licence in relation to a particular Qualifying Project.

'Tender Regulations' means the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010.

'Tender Revenue Stream' means a constant revenue stream in real terms submitted by the Qualifying Bidder for the relevant Qualifying Project.

'Tender Round' means the Tender Exercises run by Ofgem in order to identify Successful Bidders to be granted Offshore Transmission Licences in relation to Qualifying Projects.

'Tender Rules' means these rules published by Ofgem pursuant to regulation 9(4) of the Tender Regulations (as amended by any documents subsequently issued by Ofgem in connection with the Tender Round or a Tender Exercise).

'Transfer Agreement' means the agreement to transfer any property interests, rights or liabilities in or relating to Transmission Assets from a Developer to a Successful Bidder in respect of a Qualifying Project subject to a transitional Tender Exercise.

'Transitional Regime' means Tender Rounds 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 Qualifying Project requirements to the satisfaction of the Authority.

'Transmission Assets' has the meaning given in paragraph 1(3)(a) of Schedule 2A to the Electricity Act.

Appendix 2 – Sale and Purchase

Sale and Purchase

1.1 Subject to Clauses [x]¹² (Third Party Consents for Transfer of Assets and Contracts¹³), the Vendor shall sell or procure to be sold and the Purchaser shall purchase the Business and the Assets as a going concern as at and with effect from the Completion Date.

Title

1.2 Subject to Clause [x] (Third Party Consents for Transfer of Assets and Contracts¹⁴), the Vendor has the right to transfer or to procure the transfer of legal and beneficial title to the Assets and sells or procures the sale of the Assets with Full Title Guarantee and free from any Encumbrance.

Consideration

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

- 1.3.1 the payment by the Purchaser to the Vendor at Completion of the [Final Transfer Value]/[Initial Purchase Price];
- 1.3.2 [the payment by the Purchaser of the Deferred Consideration (if any) in accordance with Clause [x]¹⁵;]¹⁶ and
- 1.3.3 the assumption by the Purchaser of the Assumed Liabilities pursuant to and in accordance with Clause [x]¹⁷.

Apportionment of Consideration

1.4 The Consideration payable by the Purchaser shall be apportioned in accordance with schedule of assets setting out details of apportionment.

Risk in the Assets

1.5 Risk in the Assets shall pass to the Purchaser at Completion.

¹² All square brackets containing "x" in the example clauses set out in these Appendices need to be completed by Developers in the project-specific Transfer Agreements developed for their projects.

¹³ See Appendix 4.

¹⁴ See Appendix 4.

¹⁵ See Appendix 3.

¹⁶ Ofgem expects the draft Transfer Agreements to include the "Final Transfer Value" wording. The alternative wording related to Initial Purchase Price and Deferred Consideration is provided as a reference in the event that deferred consideration is payable.

¹⁷ See Appendix 5.

Appendix 3 - Deferred Consideration

Deferred Consideration¹⁸

1.1 If the Final Transfer Value is greater than the Initial Purchase Price, the Vendor shall be entitled to receive, by way of additional consideration, the amount by which the Final Transfer Value exceeds the Initial Purchase Price.

1.2 If the Final Transfer Value is less than the Initial Purchase Price, the Deferred Consideration shall be zero and the Vendor shall not be entitled to receive any additional consideration nor shall the Vendor be required to repay to the Purchaser any amount.

1.3 Any additional consideration payable by the Purchaser under Clause 1.1 shall be payable within [X] Business Days of the date on which Ofgem notifies the Parties of the Final Transfer Value (the " Final Transfer Value Notice") and shall be paid by electronic transfer to the account of the Vendor (details of which shall be provided in writing to the Purchaser no later than [X] Business Days after the date of the Final Transfer Value Notice) in accordance with Clause [X] (Sale and Purchase) and receipt of such sum shall constitute a valid discharge of the Parties obligations under Clause [x]¹⁹ (Sale and Purchase).

1.4 Any payment payable under this Clause [x] (Deferred Consideration) shall be made in full without any set off or counter claim howsoever arising and shall be free and clear of and without deduction of, or withholding for or on account of, any amount which is due and payable by any Party under this Agreement.

¹⁸ It is intended that Ofgem will finalise the assessment of costs and determine the Final Transfer Value prior to Licence grant. However, these example clauses are included as a reference in the event that deferred consideration is payable.

¹⁹ See Appendix 2, clause 1.3.2.

Appendix 4 - Third Party Consents for Transfer of Assets and Contracts

Third Party Consents for Transfer of Assets and Contracts

Assets²⁰

1.1 If any Third Party Consent is required to transfer the benefit of any of the Assets (which, for the purposes of Clauses [1.1] to [1.4] (inclusive) only shall exclude the Contracts) and has not been obtained to the reasonable satisfaction of the Purchaser at or prior to Completion, the Vendor and the Purchaser shall use their respective reasonable endeavours to obtain such Third Party Consent as soon as possible following Completion.

Vendor as trustee

1.2 After Completion, and until such time as that consent or agreement is obtained to the reasonable satisfaction of the Purchaser and the full benefit of the Assets transferred to the Purchaser, [or the Purchaser elects as provided in Clause [1.3],] the Vendor shall be deemed to hold the benefit of the applicable Assets in trust for the Purchaser and the Purchaser shall be entitled to the use and enjoyment of those Assets as against the Vendor and to receive the income therefrom (if any) to the extent that the Vendor is not constrained by operation of law or any third party from granting such use or enjoyment or the right to receive any income to the Purchaser, subject always to the Purchaser maintaining any such Assets in a good state of repair (fair wear and tear excepted) and providing adequate insurance in respect of it noting the Vendor's interest on any applicable insurance policy effected by the Purchaser.

Exclusion of Assets

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

Property Contracts

1.4 The provisions of Clauses [1.1] to [1.16] (inclusive) shall not apply to any consent, approval or licence required in relation to the assignment, transfer or novation of any Property Contracts, which shall be governed by the provisions of

²⁰ Explanatory note: the example clauses have been drafted on the basis that the generation assets (to be retained by the Vendor) and the offshore transmission assets (to be transferred to the Purchaser) are distinguishable and separable. If necessary, separate arrangements should be documented in relation to the sharing of assets, for example, in relation to mutual access rights on the offshore platform.

Schedule [X]²¹ (Sites and Property Contracts).

Contracts²²

1.5 Save as provided in Clauses [1.6] to [1.18] (inclusive), the Purchaser shall assume responsibility as from the Completion Date for the due performance of all obligations under the Contracts and all liabilities arising or falling due for performance after the Completion Date under the Contracts.

Assignment

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

Co-operation

1.7 Insofar as the Contracts comprise the benefit and burden of contracts which cannot be effectively assigned except by novation or with Third Party Consent:

- 1.7.1 this Agreement shall not constitute an assignment or attempted assignment of the relevant Contract where such conduct would constitute a breach of the Contract; and
- 1.7.2 the Vendor and the Purchaser shall co-operate and do anything which may reasonably be required to ensure, insofar as each is able, that the relevant Contracts are novated or the necessary Third Party Consent or other agreement is obtained, in each case on terms reasonably satisfactory to the Purchaser.

Exclusion of Contracts

1.8 Subject to Clause [1.7], if any requisite novation or Third Party Consent is refused or not obtained on or before the date being [three] months after Completion (or such longer period as the Purchaser may, at its sole discretion, determine) in respect of any Contract, the relevant Contract shall, if so elected by the Purchaser by written notice to the Vendor on or before such date, be deemed to have been excluded from the sale under this Agreement (and shall thereby be deemed to be an Excluded Contract).

Vendor as trustee

1.9 Subject to Clause [1.7], after the Completion Date and until receipt of any requisite novation or Third Party Consent in respect of a relevant Contract [or, if earlier, receipt of a written election from the Purchaser pursuant to Clause [1.8]]

²¹ See Appendix 6.

²² Explanatory note: the example clauses have been drafted on the basis that separate contracts (including construction contracts and potentially also IP Licences and Information Technology Agreements) have been entered into in relation to generation assets (to be retained by the Vendor) and offshore transmission assets (to be transferred to the Purchaser). Composite contracts relevant to both the generation assets and the offshore transmission assets will need to be split or apportioned on a project-specific basis, for example, apportionment of limitations on liability and performance security obligations through bilateral or tripartite back to back arrangements.

[(and other than in respect of any Contract to the extent it relates to an Asset excluded from the sale pursuant to Clause [1.3])]:

- 1.9.1 the Vendor shall hold the benefit of that Contract and any Assets relating to it on trust for the Purchaser and shall account to the Purchaser accordingly in respect of any monies or other benefits received by the Vendor in relation to it and the Purchaser shall be entitled to the use and enjoyment of such Contracts and any Assets relating to it to the extent the Vendor is not constrained by operation of law or any third party from granting such rights or benefits and subject always to the Purchaser maintaining any Asset relating thereto in a good state of repair (fair wear and tear excepted) and providing adequate insurance in respect of it is taken out by the Purchaser, noting the Vendor's interest on any applicable insurance policy effected by the Purchaser; and
- 1.9.2 the Purchaser shall (if sub-contracting or agency is permissible under the relevant Contract) as the Vendor's sub-contractor or agent perform on behalf of the Vendor (but at the Purchaser's expense) all the obligations of the Vendor arising after the Completion Date (to the extent they have been disclosed to the Purchaser) but provided that if any Contract does not permit sub-contracting or agency, the Parties shall make such other arrangements between themselves as may be permissible to implement so far as possible the effective transfer of the benefit and burden of such Contract to the Purchaser.

Pre-Completion Date obligations

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

Liability for pre-Completion Date breach

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

Pre-Completion Date goods and services responsibility

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

Vendor indemnity against Purchaser Losses

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

Purchaser indemnity against Vendor Losses

1.14 The Purchaser shall indemnify and keep indemnified the Vendor against all Losses which may be suffered or incurred by the Vendor as a result of any act, neglect, default or omission on the part of the Purchaser to perform or comply with any obligation of the Purchaser under the Contracts arising on or after the Completion Date²³.

Vendor performance of non-assumed obligations

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

Purchaser performance of non-assumed obligations

1.16 The Purchaser may, at its sole discretion, perform any contract or other obligation which the Vendor should perform under this Clause [1] and, if it shall do so, the Vendor shall indemnify and keep indemnified the Purchaser against any Losses which may thereby be suffered or incurred by the Purchaser.

Prepayments received by the Vendor

1.17 Where anything (including any service) is to be provided or made available by, or any permission or consent is to be granted by, the Purchaser after the Completion Date but any payment (whether by way of deposit, pre-payment or otherwise) in respect of the price or cost of it has been received by the Vendor before the Completion Date, the Vendor shall pay a sum equal to the amount (a "Prepayment Amount") of that payment (excluding any amount in respect of output VAT for which the Vendor is required to account and less any Deposits in relation thereto and any amount due to the Vendor in relation thereto and transferred to the Purchaser pursuant to this Agreement as a Receivable) to the Purchaser at Completion, to the extent that such Prepayment Amount has been received by Completion, or immediately upon receipt by the Vendor, if later, and shall hold any such monies in trust for the Purchaser pending any such payment. The Purchaser may set off any Prepayment Amount (in whole or in part) against any amounts payable to the Vendor on Completion pursuant to Clause [1.18] below and/or reduce the Consideration payable on Completion by an amount equivalent to the Prepayment Amount.

Prepayments made by the Vendor

1.18 Where anything (including any service) is to be provided or made available to, or any permission or consent is to be granted to, the Purchaser after the Completion Date, but any payment (whether by way of deposit, pre-payment or otherwise) in respect of the price or cost of it has been paid by the Vendor prior to the Completion

²³ Explanatory note: any contractual commitments that need to be apportioned between the Purchaser and the Vendor may otherwise be dealt with through assignment or novation. In such circumstances, Clauses 1.13 and 1.14 may not be necessary.

Date, the Purchaser shall pay a sum equal to the amount of that payment (excluding any amount in respect of VAT) to the Vendor at Completion or immediately following any date, if later, upon which the Vendor shall produce to the Purchaser reasonable evidence of any amount so payable and the calculation thereof.

Relevant Permits

1.19 To the extent that any Relevant Permits (including Environmental Permits) are capable of assignment and/or transfer, the Vendor shall assign and/or transfer such Relevant Permits to the Purchaser on or immediately following Completion or, in the case of a Key Permit, on Completion. To the extent that any Relevant Permit cannot be assigned or transferred to the Purchaser, the Purchaser shall use all reasonable endeavours to obtain its own Relevant Permit as soon as reasonably practicable²⁴.

1.20 In relation to any application to a Governmental Agency by, or on behalf of, the Vendor or the Purchaser in relation to the transfer and/or assignment of a Relevant Permit, each Party shall use reasonable endeavours to provide promptly to the other Party such information and assistance as that other Party shall reasonably request, provided that the Purchaser shall pay the Vendor's reasonable costs and expenses of providing any information or assistance which is required later than [six] months after Completion.

²⁴ Explanatory Note: the parties will need to consider whether the provisions relating to Relevant Permits need to be amended and / or supplemented to reflect the requirements to which the full suite of permits give rise. For example there may be Environmental Permits which it is not appropriate or possible to transfer - e.g. which relate only to the construction phase and not the operational phase, or which relate to both generation and transmission. Also there is likely to be a range of different permit transfer procedures applying across the various consents which are in place. The parties may find it helpful to produce a schedule detailing the relevant permits and transfer procedures.

Appendix 5 - Assumed and Excluded Liabilities

No deemed assumption of Excluded Liabilities

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

Assumption of Assumed Liabilities

1.2 The Purchaser shall with effect from the date of this Agreement assume and duly and properly perform, pay and discharge and indemnify the Vendor against all Assumed Liabilities.

Assumed Liabilities definition

1.3 "Assumed Liabilities" for the purposes of this Agreement means (and each is an "Assumed Liability"), subject to Clauses [X]²⁵ (Third Party Consents for Transfer of Assets and Contracts) and [1.4] (Reservation of Purchaser's rights), all obligations and liabilities of the Vendor under the Contracts or in relation to the Assets arising or falling due for performance on or after the date of this Agreement and specifically excluding any Excluded Liabilities as defined below.

Reservation of Purchaser's rights

1.4 Notwithstanding Clauses [1.1] (No deemed assumption of Excluded Liabilities) and [1.3] (Assumed Liabilities definition):

- 1.4.1 the assumption by the Purchaser of the Assumed Liabilities by means of this Agreement shall be without prejudice to any rights which the Purchaser may have against the Vendor under this Agreement; and
- 1.4.2 the Assumed Liabilities shall not include any liability or obligation of the Vendor arising under this Agreement.

Excluded Liabilities definition

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

- 1.5.1 any liability or obligation of the Vendor to the extent it relates to the Excluded Assets or the Excluded Contracts;

²⁵ See Appendix 4.

- 1.5.2 any unknown or contingent creditors which are not recorded in the accounting records of the Business at the date of this Agreement;
- 1.5.3 any liability or obligation of the Vendor which arises prior to the date of this Agreement in respect of loss of profit, loss of revenue, interruption to any business or consequential or indirect loss of the Vendor;
- 1.5.4 any liability of the Vendor to the extent that the Vendor is entitled to be indemnified therefor under a policy of insurance maintained by it prior to the date of this Agreement; and
- 1.5.5 any liability for Taxation relating to the Business or the Assets for which the Vendor is or will become liable whether or not such liability has arisen or will have arisen at the date of this Agreement.

Notification of claims relating to Assumed Liabilities

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

Indemnity for Excluded Liabilities

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

Decommissioning and Environmental Matters

1.8 Without prejudice to Clauses [1.2] (Assumption of Assumed Liabilities) and [1.3] (Assumed Liabilities definition), the Parties agree and acknowledge that all past, present and future liabilities and obligations of the Vendor to any third party or Governmental Agency in relation to or arising from Decommissioning shall be assumed by the Purchaser in their entirety and the allocation of such liabilities and obligations under this Agreement is conclusive and the Purchaser shall discharge its responsibility and liability in relation thereto.

1.9 Without prejudice to Clauses [1.2] (Assumption of Assumed Liabilities), [1.3] (Assumed Liabilities definition) and [1.8], the Parties agree and acknowledge that all past, present and future liabilities and obligations to any third party or Governmental Agency in relation to Environmental Matters:

- 1.9.1 shall be retained by the Vendor to the extent that such Environmental Matters relate to any act or omission prior to the date of this

Agreement, and the Vendor shall discharge its responsibility and liability in relation thereto; and

- 1.9.2 shall be assumed by the Purchaser to the extent that such Environmental Matters relate to any act or omission following the date of this Agreement, and the Purchaser shall discharge its responsibility and liability in relation thereto.

1.10 Save in respect of any breach by the Vendor of the Environmental Warranties, neither Party shall bring any claim against the other Party (nor apply to join the other Party into proceedings commenced against the first mentioned Party) in respect of Decommissioning or any Environmental Matters for which the first mentioned Party is responsible pursuant to Clause [1.8] or [1.9].

1.11 Save to the extent that such Losses are recoverable by the Purchaser as a result of any breach by the Vendor of the Environmental Warranties, each Party shall indemnify and keep indemnified the other Party against any Losses suffered or incurred by the other Party after the date of this Agreement in relation to or arising from Decommissioning or any Environmental Matters for which the first mentioned Party is responsible pursuant to Clause [1.8] or [1.9].

1.12 In the event that any Governmental Agency seeks to impose responsibility or liability other than in accordance with the allocation of liabilities and obligations under Clauses [1.8] to [1.11], the Parties shall communicate and confirm their agreement as to such allocation in relation to Decommissioning or any Environmental Matters to the Governmental Agency and either Party shall be entitled to produce a copy of this Agreement to such Governmental Agency notwithstanding any provisions in the rest of this Agreement relating to confidentiality.

Tax filings

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

Appendix 6 - Sites and Property Contracts

1. Ancillary Property Contracts

1.1 The Vendor shall use its reasonable endeavours to obtain any Third Party Consent necessary for the assignment or novation or re-grant of the Ancillary Property Contracts to the Purchaser as soon as reasonably practicable.

1.2 If the Third Party Consent referred to in paragraph [1.1] above has not been obtained by the Completion Date then until such time as the Third Party Consent has been obtained the Vendor shall be deemed to hold the benefit of each applicable Ancillary Property Contract on trust for the Purchaser and the Purchaser shall be entitled to the use and enjoyment of the Ancillary Property Contracts as against the Vendor and to receive the income therefrom (if any) to the extent that the Vendor is not constrained by operation of law or any third party from granting such use or enjoyment or the right to receive income to the Purchaser, subject always to the Purchaser complying with the Vendor's obligations under the Ancillary Property Contracts and indemnifying the Vendor from and against any Losses which may be suffered or incurred by the Vendor as a result of a claim by a party to the Ancillary Property Contracts based on any failure by the Purchaser to comply with the aforementioned obligations.

1.3 If the Third Party Consent referred to in paragraph [1.2] above has not been obtained and the Vendor is constrained by operation of law or any third party from holding the benefit of any applicable Ancillary Property Contract on trust for the Purchaser as detailed in paragraph [1.2] above then, until such time as the Third Party Consent has been obtained the Vendor shall nevertheless be deemed to hold the benefit of the applicable Ancillary Property Contracts on trust for the Purchaser and the Purchaser shall be entitled to the use and enjoyment of the Ancillary Property Contract as against the Vendor and to receive the income therefrom (if any), subject always to the Purchaser complying with the Vendor's obligations under the Ancillary Property Contract and indemnifying the Vendor from and against any Losses which may be suffered or incurred by the Vendor as a result of a claim by a party to the Ancillary Property Contract based on any failure of the Purchaser to comply with the aforementioned obligations and subject also to the Vendor having no liability to the Purchaser in respect of any breach of the Ancillary Property Contract by virtue of the trust arrangement and the Purchaser indemnifying the Vendor from and against any Losses which may be suffered or incurred by the Vendor as a result of any claim by a party to the Ancillary Property Contract based on the trust arrangement.

1.3 The provisions of paragraph 2 of this Schedule [X](Sites and Property Contracts) shall apply to the obtaining of any Third Party Consent and completion of the assignment transfer or novation of the Ancillary Property Contract as if a Third Party Consent was a Relevant Consent and the Ancillary Property Contract were a Lease.

1.4 The assignment or transfer of any Ancillary Property Contract shall be:

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

1.4.2 prepared and executed in duplicate, the duplicate to be retained by the Vendor.

1.5 The novation of any Ancillary Property Contract shall be:

1.5.1 [in the form set out in Schedule [X] (or otherwise] on terms to be agreed between Parties (acting reasonably and without delay) and by the relevant third party who will be a party to the deed of novation)]; and

1.5.2 prepared and executed in duplicate, the duplicate to be retained by the Vendor.

1.6 [Other]

2. ASSIGNMENT OR TRANSFER OF THE LEASES

2.1 Interpretation

The definitions and rules of interpretation in this paragraph apply in this Schedule [](Sites and Property Contracts).

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

Lease Transfer Date: the day which is 10 Business Days after the date of the Relevant Consent granted in respect of the assignment or transfer of the Lease in accordance with this Schedule [X](Sites and Property Contracts).

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

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

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

2.2 Standard Commercial Property Conditions

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

- (A) apply to the assignment or transfer of the Leases only
- (B) apply to a sale by private treaty;
- (C) are applicable to leasehold land;

(D) are not inconsistent with the other Clauses in this agreement or Clauses in this Schedule [X](Sites and Property Contracts); and

(E) have not been modified by the other Clauses in this agreement or Clauses in this Schedule [X](Sites and Property Contracts).

2.2.2 The Part 2 Conditions are not incorporated into this Schedule [X](Sites and Property Contracts).

2.2.3 The following Conditions shall not apply:

(A) Condition 1.1.4(a);

(B) Condition 2;

(C) Conditions 3.1, 3.2.1 and 3.3;

(D) Conditions 6.1, 6.2, 6.3, 6.6.2, 6.6.3 and 6.6.4;

(E) Conditions 7.1.2 and 7.1.3;

(F) Condition 10.3; and

(G) Condition 11.

2.2.4 The Conditions shall be amended as follows:

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

2.3 Vacant Possession and Title Guarantee

2.3.1 The Vendor shall:

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

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

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

2.4 Matters affecting the Lease

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

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

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

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

- (C) matters discoverable by inspection of the Site;
- (D) matters disclosed, or which would have been disclosed by searches and enquiries which a reasonably prudent assignee would ordinarily make before agreeing to acquire an interest such as the Lease or Licence; and
- (E) unregistered interests of the kind referred to in Schedule 1 or Schedule 3 of the Land Registration Act 2002 other than those of which the Vendor is aware (in which case the Lease shall be assigned subject to such encumbrances only to the extent fully and fairly disclosed),

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

2.5 Assignment or transfer

2.5.1 The Vendor shall use reasonable endeavours to:

- (A) assign or procure the assignment of the Lease to the Purchaser; or
- (B) transfer or procure the transfer of the Lease to the Purchaser.

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

2.5.2 Any assignment of a Lease shall be:

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

2.5.3 Any transfer of a Lease shall be:

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

2.6 Completion

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

2.7 Landlord's Consent

2.7.1 Completion of the assignment or transfer of the Lease is conditional on every Relevant Consent required under the Lease.

2.7.2 The Vendor shall apply for and use all reasonable endeavours to obtain every Relevant Consent necessary for the assignment or transfer of the Lease.

2.7.3 The Vendor shall pay all costs associated with obtaining, or seeking to obtain, each Relevant Consent.

2.7.4 The Purchaser shall with all due speed:

- (A) supply all information, accounts and references as the Landlord may be lawfully entitled to require in connection with an application for or consideration of any Relevant Consent;
- (B) supply, procure or enter into any guarantees, rental or other deposits, direct covenants or other security for the performance of the tenant or licensee's covenants in the Lease as may be lawfully required by the Landlord; and
- (C) execute the documents containing a Relevant Consent and execute or procure the execution of the documents (if any) required to be entered into pursuant to this Schedule [X](Sites and Property Contracts) each in the form that the Landlord shall be lawfully entitled to require. The Purchaser shall return all such documents duly executed within [10] Business Days after each engrossment has been submitted to it.

Appendix 7 – Completion Obligations

Completion of Sale and Purchase

Completion Date

1. Completion shall take place immediately following the execution of this agreement.

Vendor's Obligations

2. At Completion, the Vendor shall deliver or cause to be delivered to the Purchaser the items set out in Part A of Schedule [X] (Vendor's Obligations)].

Purchaser's Obligations

3. At Completion:

3.1 the Purchaser shall deliver to the Vendor, the items set out in [Part B of Schedule 10 (Purchaser's Obligations)]; and

3.2 the Purchaser shall pay by electronic transfer to the account of the Vendor (details of which shall be provided in writing to the Purchaser no later than [five]Business Days before the date of Completion) the [Final Transfer Value]/[Initial Purchase Price]²⁶ in accordance with Clause [X] (Sale and Purchase)²⁷ and receipt of such sum shall constitute a valid discharge of the Purchaser's obligations under Clause [X].

COMPLETION OBLIGATIONS – EXAMPLE SCHEDULE

PART A VENDOR'S OBLIGATIONS

1. A copy of the minutes of a meeting of the directors of the Vendor authorising the Vendor to enter into and perform its obligations under this Agreement, certified to be a true and complete copy by a director or the secretary of the Vendor;
2. Evidence, to the Purchaser's reasonable satisfaction, that the Offshore Transmission System has been completed and commissioned;
3. Evidence, to the Purchaser's reasonable satisfaction, that all necessary agreements under the CUSC in relation to the Offshore Transmission System are in full force and effect;

²⁶ It is intended that Ofgem will finalise the assessment of costs and determine the Final Transfer Value prior to Licence grant, and Ofgem expects that draft Transfer Agreements refer to the Final Transfer Value. The alternative "Initial Purchase Price" wording is provided as a reference in the event that deferred consideration is payable.

²⁷ See Appendix 2.

4. [Such documents as the Purchaser may reasonably require to complete the sale and purchase of the Assets including, without limitation, the forms of conveyance, transfer and/or assignment specified in the following provisions of this Schedule;]²⁸
5. All deeds and documents of title (if any) relating to any of the Assets and any waivers, consents or other documents required to vest in the Purchaser the full legal and beneficial ownership of the Assets in accordance with Clause [x] (Sale and Purchase)²⁹;
6. Duly executed assignments, novations or consents in respect of all of the Key Contracts, Key Transferable Permits and Key Transferable Site Consents in the agreed terms and all forms necessary to record the change of ownership;
7. Duly executed assignments of each of the Business Intellectual Property Rights in the agreed terms and all forms necessary to record the change of ownership;
8. Duly executed assignments, novations, consents or other documents in respect of all of the Property Contracts in the agreed terms and all forms necessary to record the change of ownership;
9. [All licences, consents, permits and authorisations obtained by or issued to the Vendor in respect of the Business;]
10. Evidence, to the Purchaser's reasonable satisfaction, that the Vendor has satisfied its obligations relating to the Offshore Transmission System under the Construction Agreement entered into under the CUSC;
11. Duly executed originals of each of the Contracts;
12. The documents which the Purchaser may reasonably require to vest title in each of the Sites into the name of the Purchaser or in the name of such other person as the Purchaser may direct including in respect of the Sites written evidence, in a form reasonably satisfactory to the Purchaser, of the consent of all reversioners to the assignment contemplated by this Agreement;
13. Possession of each of the Sites and of all other Assets agreed to be sold in accordance with this Agreement;
14. The Business Records duly completed and up to date in all respects but so that, to the extent that the Vendor may be required by law to retain any of them, the Vendor may deliver copies of the appropriate documents to the Purchaser;
15. Any material books of account or references of customers and/or suppliers and other material records and all insurance policies in respect of the Business; and
16. [Others].

²⁸ Explanatory note: to be amended on a project-specific basis.

²⁹ See Appendix 2.

PART B PURCHASER'S OBLIGATIONS

1. Evidence that the Authority has issued, and not revoked, an Offshore Transmission Licence to the Purchaser in respect of the Sites in accordance with the provisions of the Electricity Act 1989 and the Tender Regulations.
2. A copy of the minutes of a meeting of the directors of the Purchaser authorising the Purchaser to enter into and perform its obligation under this Agreement, certified to be a true and complete copy by a director or the secretary of the Purchaser;
3. A copy of all interface and other agreements entered into by the Purchaser as required by STC or such other evidence to the Vendor's reasonable satisfaction that such agreements are in full force and effect;
4. A copy of the equivalent or replacement for each Key Non-Transferable Permit and each Key Non-Transferable Site Consent in the name of the Purchaser; and
5. [Others].

Appendix 8 – Post Completion Activities

1 POST COMPLETION ACTIVITIES

Access to information

1.1 For a period of [2] years from Completion and except to the extent that it may infringe competition, data-protection or other relevant laws or duties of confidentiality owed to third parties:

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

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

1.2 To the extent that inspection or copies of Business Records or books and records are required for the purpose of any tax or other similar return the duration of Clause [1.1] may be extended to cover a period of seven years from Completion provided and in a manner that such arrangements would not infringe any competition, data-protection or other relevant laws or duties of confidentiality owed to third parties.

Insurance

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

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

Correspondence

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

Notification to Secretary of State

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

Appendix 9 – Warranty Provisions

WARRANTIES – EXAMPLE CLAUSE

Power and Authority

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

Vendor's warranties

1.2 Subject to the limitations in Schedule [X] (Limitations on Liability), the Vendor warrants and represents to the Purchaser in the terms of the Warranties.

1.3 The only Warranties given:

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

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

1.4 Subject to the limitations in Schedule [X] (Limitations on Liability), the Vendor warrants and represents to the Purchaser that each of the Warranties is true, accurate and not misleading. Subject as specifically otherwise provided in this Agreement, the Warranties shall remain in full force and effect notwithstanding Completion.

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

Vendor's Knowledge

1.6 Where any of the Warranties is qualified by the expression "to the best of the knowledge, information and belief of the Vendor" or "so far as the Vendor is aware" or any similar expression, that Warranty shall be deemed to be given only on the basis of matters within the actual knowledge of [X],[X] and [X]³⁰.

1.7 The Vendor shall as soon as reasonably practicable disclose to the Purchaser any matter or thing which arises or of which it may become aware after Completion which is inconsistent with or a breach of any of the Warranties or which might render any of the Warranties untrue.

Purchaser's reliance

1.8 The Vendor acknowledges and accepts that the Purchaser is entering into this Agreement in reliance upon the Warranties.

³⁰ Explanatory Note: identity of specific individuals who are principally involved in the Offshore Transmission System and/or the Business to be included.

WARRANTIES – EXAMPLE SCHEDULE

SCHEDULE [X] WARRANTIES³¹

1. ASSETS

1.1 Sole assets

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

1.2 Title to Assets

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

1.3 Condition of assets³²

1.3.1 [];

1.3.2 [];

1.3.3 [].

1.4 Maintenance of assets

The Offshore Transmission System has been operated and maintained, and the records relating to the Offshore Transmission System have been maintained, in each case in all material respects in accordance with Good Industry Practice³³.

1.5 Past performance of the assets and fitness for purpose

Save as Disclosed, since commissioning:

³¹ Explanatory note: this Schedule sets out warranties which might be applicable in respect of all projects and others which would need to be amended on a project-specific basis. This list of warranties is not exhaustive or prescriptive.

³² Explanatory note: this warranty is only relevant if the design and/or construction contract(s) are not assigned to the Purchaser. If such contracts are not assigned, the Vendor should make all the same warranties to the Purchaser in relation to the condition of the assets as it itself receives from its contractors.

³³ Explanatory note: this warranty is only relevant if the Offshore Transmission System or any part of it has already been operated and maintained by the Vendor prior to Completion.

- 1.5.1 the Offshore Transmission System has not suffered any breakdown or failure which has caused material disruption to the transmission of electricity;
- 1.5.2 so far as the Vendor is aware, no material defect or damage has been discovered in relation to the Offshore Transmission System; and
- 1.5.3 so far as the Vendor is aware, the Offshore Transmission System has not suffered any material adverse change in its performance³⁴.

2. GRANTS AND SUBSIDIES

2.1 None of the Assets has been acquired with the assistance of any governmental, local governmental, quasi governmental or regulatory grant, subsidy or aid or is held on terms that any such grant, subsidy or aid is due to be repaid or reimbursed in any circumstances.

2.2 The Vendor has not done or agreed to do anything as a result of which:

- 2.2.1 any investment grant or other grant or any subsidy received by the Vendor in relation to the Business is or may be liable to be refunded wholly or partly; or
- 2.2.2 any application made by the Vendor in relation to the Business for such a grant or subsidy shall or may be refused wholly or partly,

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

3. LICENCES AND APPLICABLE LEGISLATION

3.1 All Relevant Permits have been unconditionally obtained in writing and are in full force and effect.

3.2 The Vendor has complied with the requirements of all Relevant Permits.

3.3 So far as the Vendor is aware, there are no circumstances which could (a) require any further regulatory consents, licences, authorisations or permits to be obtained in connection with the Business; (b) lead to the revocation, cancellation, suspension, modification, variation or alteration of any Relevant Permits; or (c) necessitate any works or expenditure (other than routine maintenance) in order to continue to comply with such Relevant Permits.

³⁴ Explanatory note: this warranty is only relevant if the Offshore Transmission System or any part of it is transferring to the Purchaser having already been operated and maintained by the Vendor for a period prior to Completion.

4. COMMERCIAL ARRANGEMENTS AND CONDUCT

4.1 Disclosure

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

4.2 Key Contracts

4.2.1 Complete and accurate details of all Contracts which are necessary to carry on the Business in accordance with Good Industry Practice and are material to the Business are set out in Schedule [X] (Key Contracts and Key Permits).

4.2.2 The terms of each Key Contract [(including but not limited to design, construction, testing, commissioning and operation and maintenance)]³⁵ have been complied with by the Vendor and, so far as the Vendor is aware, the other parties to the Key Contracts (in each case) in all material respects.

4.2.3 So far as the Vendor is aware, the Key Contracts are valid and binding and no notice of termination of any Key Contract has been given.

4.3 Effect of Agreement on other agreements

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

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

4.4 Material information

4.4.1 All information relating to the Business and the Assets that is in the possession of or under the control of the Vendor (including the current and proposed operations, programmes, budgets, designs, drawings, studies and test results in respect of the Business or the Assets) has been disclosed to the Purchaser in writing.

³⁵ Explanatory note: the contents of these brackets will depend on the stage the particular project has reached at the time of Completion.

- 4.4.2 So far as the Vendor is aware, the Vendor has received and remains in possession of all information and data to which the Vendor is entitled.
- 4.4.3 No information known to the Vendor has not been supplied or made available to the Purchaser that would render misleading to a material extent any information or document that has been so supplied or made available.

5. LITIGATION, DEFAULTS AND INSURANCE

5.1 Legal proceedings

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

5.2 Unlawful acts by Vendor

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

- 5.2.1 any criminal or unlawful act, other than minor road traffic offences; or
- 5.2.2 any breach of contract or statutory duty or any tortious act which could entitle any third party to terminate any of the Contracts or could lead to a claim against the Vendor or the Business for damages, compensation or an injunction.

5.3 Official Investigations

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

6. BUSINESS RECORDS

- 6.1 All records and information belonging to the Vendor in relation to the Business, including all Business Records, (whether or not held in written form) are in its exclusive possession, under its direct control and subject to unrestricted access by it.
- 6.2 All the Business Records are true and complete in all material respects and, where applicable, are written up to date.

7. ETHICAL ISSUES

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

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

8. ENVIRONMENTAL MATTERS

8.1 The Vendor is conducting and has conducted the Business in compliance with Environmental Law.

8.2 The Vendor in relation to the Business has obtained all Environmental Permits (all of which are valid and subsisting) and the Vendor complies and has complied with all Environmental Permits in all material respects.

8.3 The Vendor in relation to the Business has not received any written notice of any regulatory or administrative action, claim, investigation or other proceeding or suit alleging any breach or liability under any Environmental Permit and/or Environmental Law.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Interests

9.1.1 Complete and accurate details are set out in Schedule [X] (Intellectual Property) of:

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

- 9.1.2 The Vendor is the sole legal and beneficial owner of all Business Intellectual Property Rights, and the sole registered proprietor of all Business Intellectual Property Rights that are Registered Intellectual Property Rights;
- 9.1.3 All application and renewal fees have been paid for the prosecution and maintenance of all Business Intellectual Property Rights that are Registered Intellectual Property Rights;
- 9.1.4 So far as the Vendor is aware, there are and have been no claims, challenges, disputes or proceedings, pending or threatened, in relation to the ownership or validity of any Business Intellectual Property Rights that are Registered Intellectual Property Rights;
- 9.1.5 So far as the Vendor is aware, all Intellectual Property Rights required to conduct the Business at the date of Completion are owned by or licensed to the Vendor.

9.2 Infringement and Breach

- 9.2.1 So far as the Vendor is aware, no person has infringed, is infringing or is threatening to infringe and nothing has been done or is being done and no circumstances exist which give or are likely to give rise to infringement of, any Business Intellectual Property Right.
- 9.2.2 So far as the Vendor is aware, the Vendor does not infringe the Intellectual Property Rights of any third party as a result of its use of the Business Intellectual Property Rights.

9.3 Confidentiality

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

10. INFORMATION TECHNOLOGY³⁶

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

10.2 So far as the Vendor is aware, use of the Information Technology Systems is and has not been in breach of any obligations to any third party and has not infringed and does not infringe the Intellectual Property Rights of any third party.

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

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

10.5 The Information Technology Systems:

10.5.1 are in good working order;

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

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

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

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

³⁶ Explanatory note: the example clauses have been drafted on the basis that:

- (a) no databases are used by the Vendor in connection with the Business. The Developer should consider including applicable warranties in the transfer agreement if any databases are used in connection with the Business and are to be transferred to the Purchaser; and
- (b) no "personal data" (as defined in the Data Protection Act 1998) is processed in connection with the Business and so will not transfer to the Purchaser. The Developer should consider including applicable warranties relating to the Vendor's compliance with its data processing obligations as a "data controller" (as defined in the Data Protection Act 1998) if any personal data is processed in connection with the Business.

10.7 So far as the Vendor is aware, the Information Technology Agreements are valid and binding and no notice of termination of any Information Technology Agreement has been given.

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

[Alternative warranty to paragraphs 8 and 9: No [Intellectual Property Rights][Information Technology Systems] are used or employed in relation to the Business or the Assets or are material to the operation of the Business or the Assets.]

11. INSURANCE

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

11.2 In respect of the policies of insurance of the Business referred to in paragraph 10.1:

11.2.1 all premiums have been paid to date; and

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

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

12. PROPERTY AND PROPERTY CONTRACTS

12.1 Particulars of Property Contracts

12.1.1 The particulars of the Property Contracts as set out Schedule [X] (Sites and Property Contracts) are true, complete and accurate.

12.1.2 The interest of the Vendor under the Property Contracts comprises the entirety of the Site³⁷.

³⁷ Explanatory note: to the extent that the Property Contracts are not all the real property used or occupied or necessary to be used or occupied by the Vendor in connection with the Business this will need to be disclosed. Additional completion deliverables may then be required.

12.2 Replies to Enquiries

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

12.3 Title to Sites

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

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

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

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

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

12.4 Compliance with covenants affecting the Property Contracts

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

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

- 12.4.3 All material outgoings and payments of principal rents and other charges and expenses due under any Property Contract have been paid when due and none are disputed.
- 12.4.4 There are no current or anticipated circumstances which (with or without taking other action) would entitle any party to exercise a right of entry to, or take possession of all or any part of the Site, or to determine any of the Property Contracts.

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

- 12.5.1 So far as the Vendor is aware, the use to which the Site is presently put is a lawful use.
- 12.5.2 So far as the Vendor is aware, the Vendor has complied in all material respects with all applicable statutory and bye-law requirements, and all regulations, rules and delegated legislation with which it is obliged to comply under the terms of the Property Contracts.
- 12.5.3 No notices or complaints have been issued or made by any competent authority or undertaking exercising statutory powers in relation to the Site and the Vendor is not aware of any matter which might reasonably be expected to lead to any such notice, complaint or requirement.

12.6 Claims and disputes

- 12.6.1 So far as the Vendor is aware, no action, claim, proceeding, demand, dispute or liability (contingent or otherwise) in respect of any of the Property Contracts is outstanding or anticipated.
- 12.6.2 So far as the Vendor is aware, no dispute with any adjoining or neighbouring owner with respect to real property adjoining or neighbouring the Site or with respect to any easement, right or means of access to any of the Site is existing.
- 12.6.3 The Vendor has had no occasion to make any claim or complaint in relation to any property neighbouring the Site or the use or occupation of that property.

12.7 Condition of the Sites

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

- 12.7.2 There has been and is no significant structural or other defect relating to the Site.
- 12.7.3 No deleterious building material or method of construction not in accordance with currently accepted good building practice has been used in the construction, alteration or repair of the Site.

13. EMPLOYEES

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

14. TAXATION MATTERS

14.1 General and compliance matters

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

14.2 VAT

- 13.4.1 The Vendor is a registered and taxable person in relation to the Business for the purposes of the VATA. The Vendor has complied with and observed in all respects the terms of such legislation and all regulations made or notices issued thereunder and has maintained and obtained full, complete, correct and up to date records, invoices and other documents (as the case may be) appropriate or requisite for the purposes thereof.
- 14.2.2 The Vendor:
- (A) is not in arrears with any payment or returns or notifications under the VATA or any regulations made or notices issued thereunder or liable to any abnormal or non routine payment or any forfeiture or penalty or interest or surcharge provisions contained therein;
 - (B) has not received a notice under paragraph 2 of Schedule 6 to the VATA (valuation – special cases);
- 14.2.3 [No claims have been or could be made by the Vendor in relation to the Business under section 36 of the VATA or any regulations made thereunder (refund of tax in cases of bad debts).]

- 14.2.4 The Vendor is not contractually committed (contingently or otherwise) to receive any supply in respect of which, in accordance with Schedule 10 to the VATA, an election to waive exemption or a real estate election has been made, or an option to tax has been exercised.
- 14.2.5 The Vendor has disclosed in writing to the Purchaser details (including the total input tax on the capital item and the percentage of input tax claimed on the item in the first interval, both as defined in Part XV of the Value Added Tax Regulations 1995 SI 1995/2518 ("the VAT Regulations")) of all land and other capital items which are used in the course or furtherance of the Business to which Part XV of the VAT Regulations could apply. No such adjustment as is referred to in regulations 112 to 116 of the VAT Regulations [has been made or should have been made and no such adjustment] is likely to have to be made in respect of the current interval in relation to any such capital items.
- 14.2.6 The Vendor has in relation to the Business not made exempt supplies such or of such amount that it is unable or would be unable if not a member of the VAT group to obtain full credit for input tax paid or suffered by it.
- 14.2.7 The Vendor (or any of the Vendor's predecessors within the meaning of paragraph 5 (5A) Sch 4 VATA 1994) was or is entitled to credit for the whole or any part of the VAT on the supply, acquisition or importation of all of the Assets (VAT: deemed supplies).

OR

The Vendor has disclosed in writing to the Purchaser details of all the Assets in respect of the supply, acquisition or importation of which neither the Vendor (nor any of the Vendor's predecessors, within the meaning of paragraph 5 (5A) Schedule 4 VATA 1994) is or was entitled to credit for input tax.

14.3 Industrial Buildings and Capital Allowances

- 14.3.1 The Vendor warrants that it has not made, nor will make any capital allowance claims in respect of expenditure incurred on the Assets.
- 14.3.2 If the Vendor has made, or will make any capital allowances claims in respect of expenditure incurred on the Assets, the Vendor has disclosed in writing to the Purchaser details of the expenditure incurred and capital allowance claims made, if any, and if so the current tax written down value in respect of:
- (A) such parts of the Site as are leasehold, of all fixtures, within the meaning of Section 173(1) of the CAA, which are treated by virtue of Part 2, Chapter 14 of that Act as belonging to the Vendor and including a breakdown of which of

those fixtures are "Integral Features" for the purpose of section 33(A)(5) of the CAA and which are not;

- (B) such parts of the Site as are freehold, of all fixtures, as aforesaid, that are treated, as aforesaid, as belonging to a person other than the Vendor;
- (C) such items of plant and machinery in relation to which it has claimed capital allowances on the basis that those items are "long life assets" within the meaning of section 91(1) CAA;
- (D) such items of plant and machinery in relation to which it has claimed capital allowances on the basis that those items are not "long life assets" within the meaning of section 91(1) CAA; and
- (E) such other items of plant and machinery expenditure in relation to which no capital allowances have been claimed by the Vendor.

13.3.3 The Vendor warrants that its qualifying expenditure on the items mentioned in paragraph 15.3.1 above is at least £[to be specified in each case].

14.4 Inheritance tax

- 14.4.1 None of the Assets is subject to an outstanding HM Revenue and Customs charge (as defined in Section 237 of the Inheritance Tax Act 1984).
- 14.4.2 No circumstances exist such that a power of sale could be exercised in relation to any of the Assets pursuant to section 212 of the Inheritance Tax Act 1984 (contingent liability of transferee for unpaid capital transfer tax or inheritance tax).

14.5 Stamp duty

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

14.6 Intangibles

The Disclosure Letter sets out full particulars of all the intangible fixed assets of the Business to which Part 8 of the CTA 2009 applies.

15. PENSIONS

The Vendor has no obligation to contribute towards or otherwise provide any relevant benefits (as defined in section 393B of the Income Tax (Earnings and Pensions) Act 2003) for or in respect of any person in relation to the Business. Nor has the Vendor given any undertaking or assurance to provide or contribute towards any such benefits.

SCHEDULE [X]

LIMITATIONS ON LIABILITY

1. DISCLOSURE

The Vendor shall not be liable in respect of a Claim to the extent that the facts and circumstances giving rise to the Claim are fairly disclosed in the Disclosure Letter.

2. NOTIFICATION OF CLAIMS AND TIME LIMITS

2.1 The Vendor shall not be liable for any Common Claim unless the Purchaser gives to the Vendor written notice containing reasonable details of the Common Claim as far as is known to the Purchaser, on or before the date being [X] years from Completion.

2.2 The Vendor shall not be liable for any Tax Claim unless the Purchaser gives to the Vendor written notice containing reasonable details of the Tax Claim as far as it is known to the Purchaser, on or before the date being [X] years from Completion.

2.3 A Claim shall not be enforceable against the Vendor and shall be deemed to have been withdrawn unless legal proceedings in respect of such Claim are commenced (by being issued but not necessarily served) within [X] months of service of notice of the Claim on the Vendor pursuant to paragraphs [2.1] and/or [2.2] above.

3. MONETARY LIMITS

3.1 The liability of the Vendor in respect of the aggregate of all Claims shall not exceed £[total amount or value or proportion of consideration under this Agreement].

3.2 The Vendor shall have no liability in respect of any Claim unless the amount of the liability of the Vendor in respect of all Claims exceeds £[de minimis] in which case the Vendor shall be liable [only for the excess over £[de minimis]/for the full amount of the Claims not just the excess].

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

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

4. PURCHASER'S ACTIONS

4.1 The Vendor shall not be liable in respect of a Claim to the extent that the Claim would not have arisen but for an act or omission of the Purchaser after Completion or to the extent that the Claim would not have arisen but for a breach of this Agreement by the Purchaser.

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

5. CHANGES IN LAW, REGULATION AND PRACTICE

5.1 The Vendor shall not be liable in respect of a Claim to the extent that the Claim arises or is increased as a result of:

5.1.1 a change in law, administrative practice or published interpretation of the law after the date of this Agreement;

5.1.2 any change in generally accepted accounting practice after the date of this Agreement;

5.1.3 any change in the accounting policies or practice of the Purchaser or its Affiliates after the date of this Agreement; or

5.1.4 the passing of any legislation, or making of any subordinate legislation after the date of this Agreement.

6. INSURANCE

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

7. SUMS RECOVERABLE FROM THIRD PARTIES

7.1 Where the Purchaser is entitled to recover from any person any sum in respect of any matter or event which gives rise to a Claim, the Purchaser shall use its reasonable endeavours to recover that sum and shall keep the Vendor informed of the conduct of such recovery. The Purchaser shall not be restricted from pursuing that or any other Claim in relation to the same subject matter against the Vendor.

7.2 Any sum recovered by the Purchaser before settlement or final determination of the Claim (less any costs and expenses reasonably incurred by the Purchaser in recovering the sum and any Taxation attributable to or suffered in

respect of the sum recovered) will reduce the amount of the Claim by an equivalent amount.

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

7.4 If the amount so recovered exceeds the amount of the Claim satisfied by the Vendor the Purchaser shall be entitled to retain the excess.

8. ACTIONS BY THIRD PARTIES

8.1 If the Purchaser becomes aware of any claim action or demand made against it by a third party (a "Third Party Claim") which may give rise to a Claim:

8.1.1 the Purchaser shall, as soon as practicable, notify the Vendor giving reasonable details, so far as are known to the Purchaser, of the relevant facts and circumstances relating to the Third Party Claim; and

8.1.2 the Purchaser shall keep the Vendor reasonably informed of all material developments in relation to the Third Party Claim within its knowledge.

9. INFORMATION PROVIDED BY THE VENDOR

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

9.1.1 any investigation carried out or made by or on behalf of the Purchaser in the course of any due diligence or other enquiry prior to the Parties entering into this Agreement; or

9.1.2 any other data, document, record or information disclosed by the Vendor to the Purchaser.

10. MITIGATION

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

11. INDIRECT AND CONSEQUENTIAL LOSS

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

Appendix 10 – VAT and related Capital Allowances

1 VAT AND CAPITAL ALLOWANCES

VAT

1.1 Where a supply for VAT purposes is made under or as contemplated by this Agreement, the recipient of the supply shall, in addition to the consideration otherwise given for such supply, pay an amount equal to the VAT (if any) which is properly chargeable in respect of such supply against the production of a valid VAT invoice.

1.2 Subject always to Clause [1.1], having seen a letter from HM Revenue and Customs to Ofgem dated [•] and on the basis of (1) the economic activity of the preparatory work already undertaken in relation to the Business and the Assets and (2) the warranties in Clause [1.3] below, the Vendor and the Purchaser consider that the sale of the Business and the Assets should be treated as a transfer of a business as a going concern and that the Business is capable of separate operation for the purposes of both section 49(1) VATA and article 5 of the Value Added Tax (Special Provisions) Order 1995 SI 1995/1268, and the Parties shall use their reasonable endeavours to procure that the sale of the Business and the Assets pursuant to this Agreement is treated by HM Revenue and Customs as such³⁸.

1.3 The Purchaser warrants:

1.3.1 that it intends to use the Business and the Assets for the purposes of and will carry on the business of the transmission and/or distribution of electricity for a period of at least 12 months commencing immediately on Completion;

1.3.2 that it, or the representative member of its VAT group, is registered for VAT and has provided the Vendor with a copy of its Certificate of Registration;

1.3.3 that it, or a relevant associate for the purposes of Part 1 of Schedule 10 to VATA, has exercised an option to tax in relation to any land comprised in the Assets to be sold pursuant to the terms of this Agreement for the purposes of Part 1 of Schedule 10 to VATA;

1.3.4 that it shall not revoke, nor allow any other person to revoke, nor allow anything to be done which could result in HM Revenue and Customs revoking the option to tax described in Clause [1.3.3] either before or after Completion to the extent that such revocation would or could prejudice the treatment described at Clause [1.2];

³⁸Explanatory Note: the parties are referred to the letter from HMRC to Ofgem dated 14 December 2009 regarding the likely VAT treatment of these transactions. The example VAT clauses are drafted on the basis that the underlying transaction will constitute a transfer of a going concern for UK VAT purposes. Parties should, however, seek their own independent tax advice regarding whether a specific transaction will qualify as a transfer of a going concern.

- 1.3.5 that it, or its relevant associate (if applicable) has given written notification of the option to tax described in Clause 1.3.3 to HM Revenue and Customs in accordance with paragraph 20 of Schedule 10 to VATA; and
- 1.3.6 that it has provided the Vendor with a copy of such notification referred to in Clause [1.3.5] and shall provide a copy of the acknowledgement by HM Revenue and Customs of such notification as and when received by the Purchaser.
- 1.4 The Purchaser hereby notifies the Vendor that paragraph 5(2B) Value Added Tax (Special Provisions) Order 1995 does not apply to the Purchaser.
- 1.5 ³⁹[The Vendor has made a written application to HM Revenue and Customs for confirmation that the sale of the Business and Assets pursuant to this Agreement will be treated as a transfer of a going concern capable of separate operation, for the purposes of VAT BUT has not, at Completion, received a response from HM Revenue and Customs.
- 1.6 The Purchaser shall at the same time as the Consideration becomes payable pursuant to this Agreement pay into the Escrow Account an amount equal to the VAT arising on the Consideration (the "Escrow Amount"). The Escrow Amount shall be held in the Escrow Account to the Purchaser's order.
- 1.7 In the event that a response from HM Revenue and Customs to the written application to be made under Clause [1.5] is received after the Completion Date but before the VAT due date⁴⁰, the parties hereby agree as soon as practicable to instruct the Escrow Bank to deal with the Escrow Amount in the following manner:
- 1.7.1 to pay the Escrow Amount (including any accrued interest) to the Purchaser in the event that HM Revenue and Customs confirm that the sale of the Business and Assets pursuant to this Agreement will be treated as a transfer of a going concern capable of separate operation, for the purposes of VAT; or
- 1.7.2 to pay the Escrow Amount (including any accrued interest) to the Vendor in the event that HM Revenue and Customs confirm that the sale of the Business and Assets pursuant to this Agreement does not in their view constitute a transfer of a going concern capable of separate operation, for the purposes of VAT (whereby the Vendor agrees to provide the Purchaser with a valid VAT invoice).
- 1.8 In the event that a response from HM Revenue and Customs to the written application to be made under Clause [1.5] is not received by the VAT due date the Vendor may, in its sole discretion, seek the Purchaser's agreement (such agreement not to be unreasonably withheld) to instruct the Escrow Bank to pay the Escrow Amount (including accrued interest) to the Vendor no later than three Business Days after the VAT due date (whereby the Vendor agrees to provide the Purchaser with a valid VAT invoice).

³⁹ Explanatory Note: should the parties wish to apply to HMRC for a ruling on whether a specific transaction is a transfer of a going concern, they may wish to use the example clauses 1.6 to 1.10 to set out the procedure that they will follow.

⁴⁰ Explanatory Note: if VAT is chargeable by reference to the transfer of the Business and Assets, the parties may wish to restructure the transaction in such a way as to reduce or eliminate the costs of funding the VAT.

1.9 If a payment is made to the Vendor pursuant to Clause [1.10] and HM Revenue and Customs subsequently confirm, in response to the written application to be made under Clause [1.5] that the sale of the Business and Assets pursuant to this Agreement will be treated as the transfer of a going concern capable of separate operation, for the purposes of VAT, the Vendor shall as soon as reasonably practicable issue to the Purchaser a VAT credit note equal to the Escrow Amount.]

1.10 The Vendor shall retain and preserve all records of the Business in relation to VAT up to Completion for six years following Completion, and shall allow the Purchaser reasonable access to such records in accordance with section 49(5) VATA. Any copies of such records which the Purchaser wishes to make pursuant to section 49(5) VATA shall be made at the Purchaser's cost.

Capital Allowances⁴¹

1.11 The Vendor shall provide to the Purchaser and its professional advisers such information as is in its possession, as shall be requested in writing by the Purchaser from time to time and as shall reasonably be required to enable the Purchaser to make or substantiate a claim for capital allowances in respect of the value of plant and machinery installed and included within the Assets agreed to be sold and purchased pursuant to this Agreement. Nothing shall prevent the Vendor from making claims for capital allowances in respect of periods prior to Completion.

1.12 It is agreed by the Vendor and the Purchaser that the sum of £[•] ("the Agreed Fixtures Sum") is apportioned from the Consideration to the sale and purchase of the Fixtures pursuant to this Agreement. For the purposes of this Clause the expression "Fixtures" means all items which are so installed or otherwise fixed on or to the Site comprised in the Assets to be transferred pursuant to this Agreement as to become, in law, part of the Site, (other than plant and machinery that is an Integral Feature) and which qualify as plant or machinery for the purposes of a claim for capital allowances under the Capital Allowances Act 2001 ("CAA").

1.13 It is agreed by the Vendor and the Purchaser that the sum of £[•] ("the Agreed Integral Features Sum") is apportioned from the Consideration to the sale and purchase of the Agreed Integral Features pursuant to this Agreement. For the purposes of this Clause the expression "Integral Features" means all items which are so installed in or otherwise fixed on or to the Site comprised in the Assets to be transferred pursuant to this Agreement as to become, in law, part of the Site (which are integral features for the purposes of section 33A(5) of the Capital Allowances Act 2001) and which may qualify as machinery or plant for the purposes of a claim for capital allowances under the CAA.

⁴¹ Explanatory Note: the parties should seek their own independent advice as to the status for capital allowances purposes, of the relevant Assets being transferred, and the Purchaser may wish to apply to HMRC for clearance. Bidders may wish to seek clarification from the Vendor regarding any capital allowances which the Vendor intends to retain. Ofgem intends to assume for the purposes of its estimate of costs and calculation of the indicative transfer value that the Purchaser will obtain the full benefit of all available capital allowances. To the extent that the Vendor retains the benefit of capital allowances claimed on the Assets, the Transfer Price determined by Ofgem will be reduced by the amount of the benefit retained and in support of this they will be required to provide Ofgem with all information it considers necessary for this purpose. In relation to plant or machinery which are not Fixtures or Integral Features, the Purchaser will, broadly, be entitled to claim capital allowances by reference to the amount it pays for that plant or machinery. The parties will therefore need to allocate part of the Consideration to such plant or machinery, and should note that there may be both capital allowances and non-capital allowances consequences of agreeing that the allocation of consideration to each plant or machinery is higher than market value.

1.14 The Purchaser agrees that it shall not under any circumstances claim capital allowances in respect of expenditure incurred by it on the Fixtures or the Integral Features pursuant to this Agreement except in respect of an amount which in aggregate is equal to the Agreed Fixtures Sum or the Agreed Integral Features Sum, respectively⁴².

1.15 The Vendor and the Purchaser agree that they shall, provided that they are so entitled, jointly make an election pursuant to Section 198 CAA that the Agreed Fixtures Sum and the Agreed Integral Features Sum shall be fixed as the portion of the Consideration which shall be treated as expenditure incurred by the Purchaser on the provision of the Fixtures and the Integral Features (respectively) for the purposes of Sections 198 CAA and that they shall give notice of such election in the form, or substantially in the form, of the draft annexed hereto and thereupon the Vendor shall, (with the authority of the Purchaser which is hereby given by the Purchaser) submit such notice to the Vendor's Inspector of Taxes⁴³.

1.16 The parties agree, in making the election referred to in Clause [1.17], to comply with all the requirements of Section 201 CAA and other requirements of legislation and HM Revenue & Customs practice from time to time in force and shall comply with all relevant time limits. In particular, but without prejudice to the generality of the foregoing, the Vendor and the Purchaser shall each provide a notice of election to HM Revenue & Customs as in the form required by Sections 198 and 201 CAA in the agreed terms and shall ensure that a copy of the notice shall accompany its return for its "relevant period" for the purposes of Section 201(4) CAA. The Vendor and the Purchaser shall take such other action as the Vendor shall reasonably require to give effect to an election.

1.17 To the extent that the Consideration exceeds the aggregate of the Agreed Fixtures Sum and the Agreed Integral Features Sum the Parties agree that it shall be apportioned to the items comprised in the Assets other than Fixtures or the Integral Features.

⁴² Explanatory Note: the parties should consider carefully the amounts which will constitute the Agreed Fixtures Sum and the Agreed Integral Features Sum, depending on their respective capital allowances positions. If the Vendor agrees that all capital allowances previously claimed by it should be clawed back, so that the Purchaser takes the benefit of all capital allowances, the amounts fixed should be the maximum permitted under section 198(3) CAA. If the parties agree that the Vendor will retain the benefit of any capital allowances it has claimed, but subject to that, the Purchaser should be entitled to the maximum available allowances, the amounts should be fixed at the tax written down value. If the Vendor has not claimed and will not claim capital allowances, the parties should agree a just and reasonable apportionment for the amounts.

⁴³ Explanatory Note: the parties should note that if the Purchaser has not claimed capital allowances in respect of the Fixtures and/or the Integral Features, they will not be entitled to make an election pursuant to section 198 CAA as envisaged by this clause. In those circumstances, the parties should apportion value to those assets on a just and reasonable basis, and amend the clauses which refer to an election under section 198 CAA accordingly.

NOTICE OF ELECTION

(Form of joint election)

HM Inspector of Taxes,

[Address - one letter to each local inspector]

[Date]

Dear Sirs,

[] ("THE VENDOR")

- [TAX DISTRICT AND REFERENCE NUMBER]

[] ("THE PURCHASER")

- [TAX DISTRICT AND REFERENCE NUMBER]

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

For the purposes of this notice:

1. "Fixtures" means all items of machinery and plant, expenditure in respect of which qualifies or has qualified for capital allowances, so installed or otherwise fixed on or to the Property which is the subject of the Sale (as defined below), as to become, in law, part of the Property, and which are no Integral Features (as defined below) and details of which are as follows: [].
2. "Integral Features" means all items of machinery and plant that are integral features for the purposes of section 33A(5) of the Capital Allowances Act 2001, expenditure in respect of which qualifies or has qualified for capital allowances and which are comprised in the Property which is the subject of the Sale (as defined below) and details of which are as follows: [].
3. The "Property" means [full description of the interest in the property which is to be acquired by the Purchaser. If there is more than one property being acquired, the parties will need to make a separate election in respect of the Fixtures and Integral Features at each property].
4. The "Sale" means the sale of the Property by the Seller to the Buyer pursuant to an Agreement dated [] and the sale is the disposal in respect of which this election applies.
5. The "Sale Price" means £[].



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

[Seller] [tax district and reference]

[Buyer] [tax district and reference]

.....

For and on behalf of

[]

.....

For and on behalf of

[]

Appendix 11 – Boilerplate Provisions

1. ANNOUNCEMENTS AND CONFIDENTIALITY

Announcements

1.1 No Party shall release any announcement or, except as provided in this Agreement, despatch any announcement or circular relating to this Agreement unless the form and content of such announcement or circular have been submitted to, and agreed by, the other Party (such approval not to be unreasonably withheld or delayed). Nothing in this Clause [1.1] shall prohibit any Party from making any announcement or despatching any circular as required by law or any regulatory body in which case, the announcement shall only be released or despatched after consultation with the other Party and after taking into account the reasonable requirements of the other Party as to the content of such announcement.

Confidentiality

1.2 Each Party undertakes to the other that, subject to Clause [1.3], unless the prior written consent of the other Party shall first have been obtained (such consent not to be unreasonably withheld or delayed) it shall, and shall procure that its officers, employees, advisers and agents shall, keep confidential and shall not by failure to exercise due care or otherwise by any act or omission disclose to any person whatever, or use or exploit commercially for its or their own purposes, any of the confidential information of the other Party. For the purposes of this Clause [1], "confidential information" includes the contents of this Agreement and any other agreement or arrangement contemplated by this Agreement and:

1.2.1 information of whatever nature concerning the business, the assets, liabilities, dealings, transactions, Know-how, customers, suppliers, processes or affairs of the other Party and its Affiliates; and

1.2.2 information which is expressly indicated to be confidential in relation to the Party disclosing it or its Affiliates,

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

1.3 The restrictions imposed by Clause [1.2] shall not apply to the disclosure of any information by a Party (the "disclosing party"):

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

1.3.2 to its officers, employees, advisers and agents, in each case, to the extent required to enable such Party to carry out its obligations under this Agreement and who shall in each case be made aware by such Party of its

obligations under this Agreement and shall be required by such Party to observe the same restrictions on the use of the relevant confidential information as are contained in this Clause;

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

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

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

1.3.6 pursuant to the terms of this Agreement.

Continuance of Obligations

1.4 The obligations in this Clause shall continue to apply after Completion or termination of this Agreement without limit in time.

2. MISCELLANEOUS

Joint and several liability

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

Assignment

2.2 Neither Party may assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of this Agreement and neither Party may sub contract or delegate in any manner whatsoever its performance under this Agreement, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

2.3 In the event of an assignment consented to pursuant to Clause [2.2], the original contracting Party remains liable to procure the performance of its obligations under the Agreement by the assignee.

2.4 Notwithstanding any other provisions of this Agreement or any of the other agreements entered into by the Vendor and the Purchaser under or in connection with this Agreement (together, the "Acquisition Agreements") the Purchaser may grant security over or assign by way of security all or any of its rights under any of the Acquisition Agreements (the "Rights") for the purposes of or in connection with the financing (whether in whole or in part) by the Purchaser of:

2.4.1 the acquisitions contemplated by this Agreement; or

2.4.2 its working capital or any other requirements of the Purchaser and its Affiliates, and

its liquidator or administrator, or any receiver or other person or entity entitled to enforce any of such security may enter into any other assignments or transfers of any of the Rights.

Entire agreement

2.5 Each of the Parties confirms that this Agreement together with the documents in the agreed terms, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

2.6 Each Party confirms that:

2.6.1 in entering into this Agreement it has not relied on any representation or warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement or the documents in the agreed terms; and

2.6.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement or with any of the documents in the agreed terms are those pursuant to this Agreement or such document in the agreed terms, and without limitation, no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or, save as expressly provided for in this Agreement, for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement).

Unenforceable provisions

2.7 The invalidity, illegality or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect the validity, legality or enforceability of:

2.7.1 any other provision of this Agreement under the law of that jurisdiction; or

2.7.2 any provision of this Agreement under the law of any other jurisdiction.

Further assistance

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

Completion

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

Third party rights

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

Taxation of payments

2.11 All payments made by or due from any person (the "Payer") under, or pursuant to the terms of, this Agreement to another person (the "Recipient") shall be free and clear of all deductions or withholdings for or on account of Tax (a "Tax Deduction") save only for any Tax Deduction required by law.

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

2.13 If a payment which any person is entitled to receive pursuant to this Agreement is increased by the operation of Clause [2.12] above, and the Recipient determines (in its discretion, acting reasonably) that it has obtained a Tax credit, repayment or other Tax benefit as a result of the increased payment, the Recipient shall pay to the Payer an amount which it determines (in its discretion, acting reasonably) will leave it (after the making of that payment) in the same after-Tax position as it would have been in had no Tax Deduction been required to be made by the Payer, or the payment had not been liable for Taxation in the hands of the Recipient.

Waiver

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

Counterparts

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

Variation

2.16 No variation of this Agreement (or any of the documents referred to in it) shall be valid unless it is in writing and signed by or on behalf of each of the Parties. The expression "variation" includes any variation, supplement, deletion or replacement however effected.

No set off, deduction or counterclaim

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

Powers of the Authority

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

3. COSTS

The Parties shall pay their own costs in connection with the preparation and negotiation of this Agreement and any matter contemplated by it.

4. NOTICES

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

4.1.1 must be in writing;

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

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

Vendor

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

Facsimile:

Attention:

Purchaser

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

Facsimile:

Attention:

4.1.3 must not be sent by electronic mail.

4.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause [4.3].

4.3 Subject to Clause [4.4], a notice is deemed to be received:

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

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

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

4.4 A notice received or deemed to be received in accordance with Clause [4.3] on a day which is not a Business Day or after 5 p.m. on any Business Day, according to local time in the place of receipt, shall be deemed to be received on the next following Business Day.

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

5. GOVERNING LAW AND JURISDICTION

5.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

5.2 Each Party irrevocably agrees that the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).

5.3 Each Party irrevocably waives any right that it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum or to claim that those Courts do not have jurisdiction.

5.4 Each Party agrees that without preventing any other mode of service, any document in an action (including, but not limited to, a claim form or any other document to be served under the Civil Procedure Rules) may be served on any Party by being delivered to or left for that Party at its address for service of notices under Clause [4] and each Party undertakes to maintain such an address at all times in the United Kingdom and to notify the other Party in advance of any change from time to



time of the details of such address in accordance with the manner prescribed for service of notices under Clause [4].

Appendix 12 – Definitions used in Example Clauses and Example Interpretation Clauses

DEFINITIONS AND INTERPRETATION

1. INTERPRETATION

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

"**the 2006 Act**" means the Companies Act 2006;

"**Affiliate**" means:

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

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

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

"**Assets**" means all property, assets and rights which are necessary to carry out the Business in accordance with Good Industry Practice (including the Sites and the rights of the Vendor under any Property Contracts) and which are agreed to be sold and purchased pursuant to this Agreement, as listed in Schedule [X] (Assets) and Schedule [X] (Sites and Property Contracts);⁴⁴⁴⁵

"**Assumed Liabilities**" has the meaning set out in Clause [X] (Assumed Liabilities definition)⁴⁶;

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

⁴⁴ Explanatory note: whether the assets to be transferred include leases or licences of the Designated Area (as defined in the Round 1 and Round 2 Leases) and whether a deed of variation has been entered into under which the Designated Area has been removed from the Site will be project-specific.

⁴⁵ Explanatory note: the example clauses have been drafted on the basis that the generation assets (to be retained by the Vendor) and the offshore transmission assets (to be transferred to the Purchaser) are distinguishable and separable. If necessary, separate arrangements should be documented in relation to the sharing of assets, for example, in relation to mutual access rights on the offshore platform.

⁴⁶ See Appendix 5.

decisions of the Authority through Ofgem, "Ofgem", "GEMA" and the "Authority" may be used interchangeably in this Agreement and in various other documents relating to this Agreement;

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

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

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

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

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

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

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

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

"Completion" means completion of the sale and purchase of the Business in accordance with Clause [X] (Completion of Sale and Purchase)⁴⁷;

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

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

"Construction Agreement" has the meaning set out in the CUSC;

"Contracts" means all contracts, undertakings, arrangements, understandings and agreements entered into prior to Completion by the Vendor to the extent the foregoing relate exclusively to the Offshore Transmission System and/or to the Business, (except the Excluded Contracts and to the extent a Contract relates to the

⁴⁷ See Appendix 7.

Excluded Assets) in each case to the extent that on the Completion Date the same remain to be completed or performed (including IP Licences and Information Technology Agreements);⁴⁸

"**CTA 2010**" means the Corporation Tax Act 2010;

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

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

["**Deferred Consideration**" means that part of the Consideration to be determined and paid by the Purchaser following Completion in accordance with Clause [X]⁴⁹ and Clause [X] (Deferred Consideration)^{50 51};

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

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

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

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

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

⁴⁸ Explanatory note: the example clauses have been drafted on the basis that separate contracts (including construction contracts and potentially also IP Licences and Information Technology Agreements) have been entered into in relation to generation assets (to be retained by the Vendor) and offshore transmission assets (to be transferred to the Purchaser). Composite contracts relevant to both the generation assets and the offshore transmission assets will need to be split or apportioned on a project-specific basis, for example, apportionment of limitations on liability and performance security obligations through bilateral or tripartite back to back arrangements.

⁴⁹ Explanatory note: reference to be to the second sub-clause under the clause entitled "Consideration".

⁵⁰ See Appendix 3.

⁵¹ It is intended that Ofgem will finalise the assessment of costs and determine the Final Transfer Value prior to Licence grant. This example definition is included as a reference in the event that deferred consideration is payable.

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

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

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

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

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

"Environmental Warranties" means the warranties given in paragraph [X] of Schedule [X] (Warranties)⁵²;

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

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

"Escrow Bank" means [X];

"Excluded Assets" means the property and assets which are not necessary to carry out the Business in accordance with Good Industry Practice and which are not to be transferred to the Purchaser pursuant to this Agreement as listed in Schedule [X] (Excluded Assets and Contracts);

⁵² See Appendix 9.

"Excluded Contracts" means the contracts which are not necessary to carry out the Business in accordance with Good Industry Practice and which are not to be assigned or novated to the Purchaser pursuant to this Agreement as listed in Schedule [X] (Excluded Assets and Contracts);

"Excluded Liabilities" means the liabilities referred to in Clause [X] (Excluded Liabilities definition)⁵³ and which are not to be transferred to the Purchaser pursuant to this Agreement;

"Final Transfer Value" means the value of the Business and the Assets determined by Ofgem following completion of the Offshore Transmission System in accordance with the Tender Regulations and notified to the Parties;

"Fixed Assets" means the fixed assets and plant and equipment that form part of, or relate to, the Offshore Transmission System and/or form part of, or are annexed to, the Sites at the Completion Date, including, without limitation, the assets of which brief particulars are set out in Schedule [X] (Fixed and Moveable Assets);

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

"General Warranties" means the warranties given in Schedule [X]⁵⁴ (Warranties), other than the Tax Warranties;

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

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

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

"Indicative Transfer Value" means the estimate of the economic and efficient costs of constructing and developing the Assets calculated by Ofgem in accordance with the Tender Regulations and included in the ITT document as the 'indicative transfer value' for the project;

⁵³ See Appendix 5.

⁵⁴ See Appendix 9.

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

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

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

[**"Initial Purchase Price"** means the amount equal to 75 per cent. of the Indicative Transfer Value, as adjusted in accordance with the terms of this Agreement⁵⁵;

"ITA" means the Income Tax Act 2007;

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

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

"Key Contracts" mean the Contracts (including IP Licences and Information Technology Agreements) which are necessary to carry out the Business in accordance with Good Industry Practice and are material to the Business, as listed in Part A of Schedule [X] (Key Contracts and Key Permits);

"Key Non-Transferable Permit" means those Key Permits which are incapable of being transferred, assigned or novated to the Purchaser, as listed in Part C of Schedule [X] (Key Contracts and Key Permits);

"Key Non-Transferable Site Consent" means those Key Site Consents which are incapable of being transferred, assigned or novated to the Purchaser, as listed in Part C of Schedule [X] (Sites and Property Contracts);

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

⁵⁵ It is intended that Ofgem will finalise the assessment of costs and determine the Final Transfer Value prior to Licence grant. This example definition is included as a reference in the event that deferred consideration is payable.

"Key Transferable Permit" means those Key Permits which are capable of being transferred, assigned or novated to the Purchaser, as listed in Part B of Schedule [X] (Key Contracts and Key Permits);

"Key Transferable Site Consent" means those Key Site Consents which are capable of being transferred, assigned or novated to the Purchaser, as listed in Part B of Schedule [X] (Sites and Ancillary Property Contracts);

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

"Leases" means the leases and/or underleases of seabed or shore or onshore or offshore substations and other premises vested in the Vendor in connection with the Business brief particulars of which are set out in Part A(2) of Schedule [X] (Sites and Property Contracts) and "Lease" shall mean any one of them;⁵⁶

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

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

"NETSO" means National Electricity Transmission System Operator;

"NGET" means National Grid Electricity Transmission plc (company number 2366977) whose registered office is situated at 1-3 Strand, London, WC2N 5EH;

⁵⁶ Explanatory note: the example clauses have been drafted on the basis that the Sites are leasehold interests. The Developer will need to include clauses in the transfer agreement on a project-specific basis if any freehold title is to be transferred.

"Notice of Election" means the notice of election substantially in the form set out in Schedule [X] (Notice of Election);

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

"Offshore Transmission System" means the offshore and onshore interface and transmission system from [X] to [X], known as the [X] Project.⁵⁷

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

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

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

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

"Purchaser" means the party acquiring the Business pursuant to the terms of the [transfer agreement].

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

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

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

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

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

⁵⁷ Explanatory note: the contents of these brackets will depend on the stage the particular project has reached at the time of Completion.

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

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

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

"Taxation" means all forms of tax, duty, rate, levy or other imposition whenever and by whatever authority imposed and whether of the United Kingdom or elsewhere, including (without limitation) income tax (including income tax required to be deducted or withheld from or accounted for in respect of any payment), corporation tax, advance corporation tax, capital gains tax, capital transfer tax, inheritance tax, development land tax, petroleum revenue tax, VAT, customs duties, excise duties, rates, stamp duty, capital duty, stamp duty reserve tax, stamp duty land tax, national insurance and other similar contributions, any liability arising under section 698 ITA or section 746 CTA 2010 and any other taxes, levies, duties, charges, imposts or withholdings corresponding to, similar to, replaced by or replacing any of them together with any interest, penalty or fine in connection with any such Taxation and regardless of whether any such taxes, levies, duties, imposts, charges, withholdings, penalties or interest are chargeable directly or primarily against or attributable directly or primarily to the Vendor or the Business or any other person and of whether any amount in respect of any of them is recoverable from any other persons;

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

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

"Tax Warranties" means the warranties given in paragraph [X] of Schedule [X] (Warranties)⁵⁸;

"Tender Regulations" means the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 as amended from time to time;

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

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

⁵⁸ See Appendix 9.

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

"**Vendor**" means the seller of the Business pursuant to the [transfer agreement];

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

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

Example Interpretation Clause

1.1 In this Agreement, words and expressions defined in the 2006 Act shall bear the same meaning as in the 2006 Act unless expressly stated otherwise.

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

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

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

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

1.2.4 references to one gender include other genders;

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

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

1.2.7 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;

1.2.8 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;

1.2.9 a person shall be deemed to be connected with another if that person is connected with another within the meaning of section 839 of the Taxes Act;

1.2.10 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;

1.2.11 a reference to a balance sheet or profit and loss account shall include a reference to any note forming part of it;

1.2.12 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";

1.2.13 references to documents "in the agreed terms" or any similar expression shall be to documents agreed between the Parties, annexed to this Agreement and initialled for identification by the Vendor and the Purchaser;

1.2.14 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation; and

1.2.15 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms.

Appendix 13 – The Authority’s Powers and Duties

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

1.2. The Authority’s powers and duties are largely provided for in statute (such as the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Acts of 2004, 2008 and 2010) as well as arising from directly effective European Community legislation.

1.3. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of those Acts⁵⁹. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly.⁶⁰

1.4. The Authority’s principal objective is to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases and in the security of the supply of gas and electricity to them.

1.5. The Authority is generally required to carry out its functions in the manner it considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or commercial activities connected with,

- the shipping, transportation or supply of gas conveyed through pipes;
- the generation, transmission, distribution or supply of electricity; and
- the provision or use of electricity interconnectors.

1.6. Before deciding to carry out its functions in a particular manner with a view to promoting competition, the Authority will have to consider the extent to which the interests of consumers would be protected by that manner of carrying out those functions and whether there is any other manner (whether or not it would promote competition) in which the Authority could carry out those functions which would better protect those interests.

⁵⁹ Entitled ‘Gas Supply’ and ‘Electricity Supply’ respectively.

⁶⁰ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

1.7. In performing these duties, the Authority must have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them⁶¹; and
- the need to contribute to the achievement of sustainable development.

1.8. In performing these duties, the Authority must have regard to the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.⁶²

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

- promote efficiency and economy on the part of those licensed⁶³ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and secure a diverse and viable long-term energy supply, and shall, in carrying out those functions, have regard to the effect on the environment.

1.10. In carrying out these functions the Authority must also have regard to:

- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.11. The Authority may, in carrying out a function under the Gas Act and the Electricity Act, have regard to any interests of consumers in relation to communications services and electronic communications apparatus or to water or sewerage services (within the meaning of the Water Industry Act 1991), which are affected by the carrying out of that function.

⁶¹ Under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Acts in the case of Electricity Act functions.

⁶² The Authority may have regard to other descriptions of consumers.

⁶³ Or persons authorised by exemptions to carry on any activity.

1.12. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation⁶⁴ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission

⁶⁴ Council Regulation (EC) 1/2003.