

# Enhanced Pre-Qualification Document (EPQ) for Tender Round 5 (TR5)

## Tender Document

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### Overview:

We are running a competitive tender round consisting of five tender exercises to appoint Offshore Transmission Owners (OFTO) for the following projects: Dudgeon, Rampion, Race Bank, Galloper and Walney Extension.

The first stage of the tender round is an Enhanced Pre-Qualification (EPQ) Stage. This document sets out the requirements Bidders need to demonstrate in order to be invited to participate in subsequent stages. The information provided in this document pertains to EPQ Group 1 (Dudgeon, Rampion and Race Bank) only and will be updated prior to the commencement of EPQ Group 2 (Galloper and Walney Extension).

Bidders should demonstrate that they satisfy the requirements set out in this document and demonstrate how they would approach financing, operating and managing offshore transmission assets.

We will evaluate Bidders' submissions against the criteria published in this document and select a shortlist of Qualifying Bidders who will be invited to participate in the Invitation to Tender (ITT) Stage of the tender round.

# Context

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Great Britain continues to be a global leader in the development of offshore wind energy. Since 2009, Ofgem has run competitive tenders to select and licence Offshore Transmission Owners (OFTOs) to own and operate the assets that connect offshore wind farms to the onshore network.

From the outset the offshore transmission regime has encouraged innovation and attracted new sources of technical expertise and finance, whilst ensuring that grid connections are delivered efficiently and effectively. In 2014 we published a study by CEPA/BDO who found that competitive tendering saved consumers between £200m and £400m in our first tender round. We have also recently published a further study by CEPA<sup>1</sup> which evaluated the benefits of competition delivered by tender rounds two and three. This has indicated further savings of between £428m and £749m.

We have completed 15 OFTO tenders to date, which has resulted in total OFTO investment of approximately £2.9bn in offshore transmission networks. Across Tender Round 4 (TR4) and Tender Round 5 (TR5) we anticipate that another six OFTOs will be appointed, with a total value in excess of £2bn. In addition to the five TR5 projects, there is one project in TR4.

TR5 is being run under the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015. This EPQ document, together with the Tender Process Guidance Document, set out the rules for participation in the EPQ Stage of TR5.

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<sup>1</sup> <https://www.ofgem.gov.uk/publications-and-updates/evaluation-of-to-tender-round-2-and-3-benefits>

# Associated documents

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The following documents will be published on the Tender Round 5 page of Ofgem's website (<https://www.ofgem.gov.uk/electricity/transmission-networks/offshore-transmission/offshore-transmission-tenders/tender-round-5>):

- Preliminary Information Memoranda (PIM):
  - Generic PIM with information on TR5;
  - Individual project-specific PIMs;
- Tender Process Guidance Document;
- Generic Offshore Transmission Owner (OFTO) Licence (version applicable to TR5 projects) and accompanying guidance.

The following documents will be made available through the Ofgem Tendering Portal:

- The EPQ Questionnaire template, in which Bidders will need to complete their EPQ submission;
- Project-specific Information Memoranda;
- Other related material.

We also refer you to the following material published on our website:

- The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015  
([http://www.legislation.gov.uk/ukxi/2015/1555/pdfs/ukxi\\_20151555\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/1555/pdfs/ukxi_20151555_en.pdf));
- Transmission Licence Standard Conditions (02/11/2015)  
<https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>;
- Certification of transmission system operators (TSOs) under the ownership unbundling requirements of the Third Package  
<https://www.ofgem.gov.uk/publications-and-updates/certification-arrangements-great-britain-following-amendments-ownership-unbundling-requirements-gas-act-1986-and-electricity-act-1989>.

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# 1. Overview of Tender Round 5

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## Chapter Summary

This chapter provides an overview of the process we will follow during the Enhanced Pre-Qualification (EPQ) Stage for TR5.

- 1.1. Tender Round 5 (TR5) consists of five tender exercises for five generator build Qualifying Projects: Dudgeon, Rampion, Race Bank, Galloper and Walney Extension. Information about each Project is available in the relevant project-specific Preliminary Information Memorandum (PIM) as well as the relevant project-specific Information Memorandum (IM).
- 1.2. We will run two staggered EPQ stages for TR5 with the Qualifying Projects participating in either the first or second EPQ stage as follows:

Group	Projects	Anticipated EPQ commencement
1	<ul style="list-style-type: none"><li>• Dudgeon</li><li>• Rampion</li><li>• Race Bank</li></ul>	10 October 2016
2	<ul style="list-style-type: none"><li>• Galloper</li><li>• Walney Extension</li></ul>	27 February 2017

- 1.3. The Invitation to Tender (ITT) Stage for each of the five projects will run to separate timescales, to be advised to Bidders closer to commencement of this part of the tender process.

## Legal framework

- 1.4. The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 (“the Tender Regulations”) set out the legal framework for running competitive tenders for OFTO licences. Regulation 13 sets out the stages of a tender round and regulation 14 details the contents of the EPQ Document – these are covered in greater detail in the following sections.
- 1.5. As a statutory authority, we also have regard to the procurement principles prescribed in the Public Contracts Regulations 2015.
- 1.6. The Tender Process Guidance Document (TPGD) provides participants with further detail about how we will run the tender.<sup>2</sup>

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<sup>2</sup> In the event of any conflict between this document, the TPGD and the Tender Regulations, the order of precedence is the Tender Regulations first, EPQ Document second and TPGD last.

## Tender Stages for TR5

- 1.7. For TR5, we have decided to hold an EPQ Stage rather than separate Pre-Qualification and Qualification to Tender stages. We followed a similar process for Tender Rounds 3 and 4, and consider that it led to efficiencies including enabling faster tender decisions with fewer resources, while maintaining a robust and fair process.
- 1.8. As a result, the stages of TR5 will be as follows:
- a staggered EPQ Stage to identify a shortlist (for each project) of Qualifying Bidders to progress to the Invitation To Tender (**ITT**) Stage;
  - an ITT Stage to select a Preferred Bidder (**PB**) for each Qualifying Project (we will run individual ITT processes although we may choose to do so simultaneously for some projects);
  - an optional Best And Final Offer (**BAFO**) Stage; and
  - a Preferred Bidder Stage where the PB will demonstrate that it should become the Successful Bidder (**SB**).
- 1.9. We are conducting this tender process as a competitive procedure with negotiation, and we reserve the right to grant an OFTO Licence<sup>3</sup> on the basis of the ITT Stage without negotiation. We also reserve the right to re-run a tender stage should we deem it necessary to ensure an outcome that is in the interest of consumers.
- 1.10. A BAFO Stage may be conducted in the following circumstances:
- Our evaluation of the ITT Stage determines two or more Qualifying Bidders tie with the highest overall scores;
  - Our evaluation of the ITT Stage determines two or more Qualifying Bidders with overall scores that are within a small percentage of each other; or
  - We consider further value can be obtained from the tender process.
- 1.11. The SB for a Qualifying Project will be granted an OFTO Licence, which will include an entitlement to an associated 20-year revenue stream in return for purchasing the transmission assets from the Developer and owning and managing them in accordance with the obligations of the OFTO Licence.

## EPQ Document

- 1.12. This document sets out the requirements that Bidders must demonstrate, to our satisfaction, to progress to the ITT Stage. It includes:
- the timeline for the EPQ Stage, including an overview of the key activities and steps;
  - the rules for the EPQ Stage;
  - the EPQ Questionnaire;

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<sup>3</sup> The Authority grants licences under Section 6(1)(b) of the Electricity Act 1989. "Ofgem", "the Authority" and "we" are used interchangeably in this document.

- the instructions that apply to the EPQ Questionnaire;
  - the date, time and manner in which a bidder must submit the completed EPQ Questionnaire;
  - the criteria against which we will evaluate EPQ Submissions;
  - details of information available to Bidders to compile their EPQ Submissions;
  - the stages of the tender round; and
  - an overview of the award criteria for the ITT Stage.
- 1.13. Bidders should familiarise themselves fully with this document, the TPGD and the Tender Regulations.
- 1.14. For the avoidance of doubt, this document applies to the EPQ Stage for the Group 1 projects (Dudgeon, Rampion and Race Bank) only. Bidders are expected to submit a single EPQ Questionnaire response for the Qualifying Project(s) they wish to bid on. The specific Qualifying Project or Projects must be named in the submission. Ofgem will announce a separate shortlist for each project.

## Right to vary a Tender Exercise

- 1.15. Subject to the provisions of the Tender Regulations, we may vary any element of a Tender Exercise, issue supplementary documentation or make additional arrangements at any time during a Tender Exercise in order to clarify any issue or amend any aspects of the Tender Exercise.
- 1.16. Any variation to the Tender Exercise shall be effective if confirmed in writing. This includes where we determine that it is impracticable to complete any action, or to deliver or publish any document or notice, by the time, date or in the manner specified within the Tender Regulations. We reserve the right to delay such action, delivery or publication until such date as we may determine.
- 1.17. Any supplementary documentation issued by us during a Tender Exercise will be deemed to form part of this document to the extent indicated in the amendment. We may decide to extend a Tender Exercise and postpone any EPQ Submission deadline in the event of any such amendment.

## Costs and losses

- 1.18. Each Bidder will bear its own costs of participating in a Tender Exercise and the PB and SB will be responsible for meeting the costs incurred by us in administering that Tender Exercise in accordance with the Tender Regulations and as set out in the TPGD.
- 1.19. We are under no obligation and shall not accept any liability for any costs, expenses, damages or losses incurred by any Bidder, including without limitation any unsuccessful Bidder, in connection with a Tender Exercise.
- 1.20. If a Bidder withdraws or is disqualified from a Tender Exercise, or if we cancel a Tender Exercise, in each case in accordance with the Tender Regulations, we shall not incur any liability for any losses whatsoever<sup>4</sup> towards any bidder or any of their Related Parties.

## Timetable

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<sup>4</sup> Whether in contract, tort or otherwise and including direct, indirect and consequential losses.

1.21. The timetable for **Group 1 Projects** in the EPQ Stage is set out below:

Milestone	Date
TR5 launch event <sup>5</sup>	30 September 2016
EPQ Document published via the Portal along with Confidentiality Agreement and Conflicts of Interest (COI) declaration	10 October 2016
Earliest date that the IM and draft Transfer Agreement will be made available to Bidders (who have returned correctly completed and signed Confidentiality Agreements and COI declarations)	14 October 2016 (and thereafter within 2 working days of subsequent correctly completed and signed Confidentiality Agreements and COI declarations being returned to Ofgem)
Deadline for Bidders to submit clarifications	21 November 2016
Anticipated deadline for Ofgem to respond to Bidder clarifications	25 November 2016
Deadline for EPQ Submissions to be returned	2 December 2016, by 12 noon
Evaluation of EPQ Submissions (including Ofgem clarifications to Bidders)	2 December 2016–February 2017
Bidders notified of outcomes and Qualifying Bidder shortlists published	February 2017
Estimated launch of EPQ Group 2	27 February 2017
Estimated shortlist announcement for EPQ Group 2	July 2017
Estimated ITT launch date of first TR5 ITT	April 2017
Estimated PB announcement of first ITT	October 2017

1.22. We reserve the right to vary this timetable at our discretion. Any such variation will be communicated via the Portal. Further information regarding the Portal can be found in the Tender Rules.

1.23. **Further details concerning the EPQ timetable for Group 2 projects will be provided in a revised version of this document at commencement of the EPQ Stage for Group 2 projects.**

## Certification of Transmission System Operators

1.24. The Government has implemented a package of European legislation on the liberalisation of EU gas and electricity markets, namely the Third Package, through amending the Gas Act 1986 and the Electricity Act 1989. The measures of the Third Package aim to ensure that the benefits of a competitive energy market can be realised. A key requirement of the Third Package is full ownership unbundling, meaning the separation of transmission interests (ownership and operation of transmission systems) from generation, production and supply activities.

<sup>5</sup> Further details relating to this event are available at: <https://www.ofgem.gov.uk/electricity/transmission-networks/offshore-transmission/offshore-transmission-tenders/tender-round-5>

Electricity transmission licensees need to be certified by the Authority as complying with the ownership unbundling requirements.

- 1.25. All Bidders are advised to review the requirements for certification. Further information on the procedure for processing applications for certification under the ownership unbundling requirements can be found on Ofgem's website.<sup>6</sup>
- 1.26. It is important to note that any decisions we take in relation to this Tender Round are taken in our capacity as manager of the competitive tendering process pursuant to Section 6C of the Electricity Act and the Tender Regulations. Any decision we take in this capacity should not be taken as a decision, or any indication of what decision may be taken, on certification.
- 1.27. We are not able to advise Bidders as to the provisions of the detailed Third Package Regulations and strongly recommend that Bidders seek appropriate independent legal advice in this respect.
- 1.28. We note that all certification applications will be considered on a case-by-case basis by both the Authority and the European Commission.

### **Note on indexation of TR5**

- 1.29. We have taken the decision to continue using RPI as the measure for indexation in TR5. We note the recent statement by the National Statistician<sup>7</sup> supporting CPIH. However, we recognise that CPIH is not yet re-accredited as a national statistic and we note the assessment by the UK Statistics Authority (UKSA) that further work is required to establish the credibility of the measure<sup>8</sup>. In addition, the UKSA has not yet issued a full report on its consultation that ended in September 2015<sup>9</sup>. Therefore, we consider it prudent to retain use of RPI for TR5.

### **Relevant Guidance and Other Documents**

- 1.30. The list of documents provided in the Associated Documents section at the start of this document contains additional information that we expect Bidders to be aware of.
- 1.31. Bidders should also be familiar with the standard industry framework documents that underpin Great Britain's transmission market, for example the industry codes<sup>10</sup> and technical standards.
- 1.32. We may publish additional information during the EPQ Stage. Any such information will be made available to Bidders via the Portal.

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<sup>6</sup> <https://www.ofgem.gov.uk/ofgem-publications/59314/111110-open-letter-certification-post-legislation.pdf>; <https://www.ofgem.gov.uk/publications-and-updates/certification-arrangements-great-britain-following-amendments-ownership-unbundling-requirements-gas-act-1986-and-electricity-act-1989>

<sup>7</sup> <https://www.statisticsauthority.gov.uk/wp-content/uploads/2016/03/Letter-from-John-Pullinger-to-Sir-Andrew-Dilnot-090316.pdf>

<sup>8</sup> <https://www.statisticsauthority.gov.uk/news/assessment-statistics-on-consumer-price-inflation-including-owner-occupiers-housing-costs/>

<sup>9</sup> <https://www.statisticsauthority.gov.uk/reports-and-correspondence/consultations/>

<sup>10</sup> The codes establish detailed rules for industry that govern market operation, the terms for connection and access to energy markets. Further details in relation to the codes relevant to offshore transmission can be found at <http://www.ofgem.gov.uk/NETWORKS/OFFTRANS/SF/Pages/sf.aspx>

## 2. Instructions to Bidders

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### Chapter Summary

This chapter sets out the instructions to Bidders in respect of the EPQ Stage, including the EPQ Questionnaire, EPQ Submissions, draft Transfer Agreements and the clarification process.

### EPQ Questionnaire

- 2.1. The EPQ Questionnaire, which is included in Chapter 3, has been produced to enable us to evaluate each Bidder's suitability, economic and financial standing, and technical and professional ability to take over and manage the Qualifying Project(s).
- 2.2. Bidders should provide responses to each question in the EPQ Questionnaire by completing the EPQ Questionnaire template provided in the Portal.
- 2.3. In completing the EPQ Questionnaire template, Bidders should adhere to the page limits stipulated in each section of the EPQ Questionnaire. In addition to this, Bidders may provide supporting documentation which they should upload to the Portal. Any supporting documentation should be uploaded to the supporting documentation folder for the section to which it relates. Where a Bidder provides documentation in support of any response to this EPQ Questionnaire, there should be clear reference made to this documentation in the text of the Bidder's response. Where multiple documents are being provided in support of a response to a particular section, Bidders are required to collate these into one document per section. Further information on uploading supporting documentation is provided in the "Instructions to Bidders participating in Tender Round 5" document provided in the Portal. We note that bids will be evaluated on the basis of responses to the EPQ Questionnaire, within the specified page limits.

### Bidder Groups

- 2.4. Where a Bidder is formed of a Bidder Group, Sections 1, 2A, 2B and the EPQ Certificate in Section 10 must be completed by each Bidder Group member individually. Any organisations that Bidders or Bidder Groups rely on to meet the selection criteria must also complete Sections 1, 2A, 2B and the EPQ Certificate (these could be parent companies, affiliates, associates, or essential subcontractors). All other questions in the EPQ Questionnaire (Sections 3 to 9 and Section 11) should be answered by the lead member of that Bidder Group.
- 2.5. Some questions require that information be provided in relation to individual members of a Bidder Group, in which case the lead member of a Bidder Group must provide information in relation to each Bidder Group member, ensuring that such information is clearly identified as relating to that Bidder Group member.
- 2.6. We recognise that in the case of a Bidder Group not every member will, for example, be able to provide examples of experience requested. Our evaluation will look at the capabilities of the Bidder Group taken as a whole.
- 2.7. We expect the membership of and the respective interests in a Bidder Group to be finalised when that Bidder Group makes its EPQ Submission. However, if this is

not the case and a change is proposed to the membership of a Bidder Group after an EPQ Submission, each individual member should make itself aware of the requirements under regulation 32 of the Tender Regulations.

## Confidentiality Agreement & Conflicts of Interest (COI) Declaration

- 2.8. We will make available Confidentiality Agreements and COI declarations, along with instructions for those documents, including the date, time and manner that both should be returned to us. Confidentiality Agreements have already been signed by Developers and should not be amended.
- 2.9. **Each Bidder must return signed Confidentiality Agreements and COI declarations for the Qualifying Project(s) for which they intend to submit a bid.** Return of the Confidentiality Agreement and COI declaration will enable us to release the IM and draft Transfer Agreement for each relevant Project to the bidder. Both the Confidentiality Agreement and COI declaration are required to protect the confidentiality of the IM and draft Transfer Agreement and to ensure that any commercially sensitive information is not compromised.
- 2.10. More generally the COI declaration aims to avoid any distortion of competition in the tender process and to ensure the equal treatment of all Bidders. Bidders should note that they are further required to confirm in their EPQ submission whether the organisation has a conflict of interest within the meaning of regulation 24 of the Public Contracts Regulations 2015. If a bidder answers yes to that question, they are required to provide evidence of the measures that they have taken that are sufficient to demonstrate their reliability as a potential OFTO. Bidders whose responses are not sufficient to demonstrate their reliability as a potential OFTO may be excluded from the tender process at the Authority's discretion.

## Information Memoranda (IMs)

- 2.11. The Regulations require Developers to provide us with information for us to issue to Bidders Information Memoranda (IM), which contains a summary of each Qualifying Project. Bidders that have submitted satisfactory Confidentiality Agreements and COI declarations will be granted access, via the Portal, to the IM
- 2.12. Subject to our satisfaction with the completion of the Confidentiality Agreement and COI declaration by Bidders, the IM(s) and draft Transfer Agreement will be released to Bidders within two working days (but no earlier than 14 October 2016).
- 2.13. The table below sets out key information that can be used as assumptions to inform submissions:

EPQ Group	Project	Developer	Size (MW)	Initial Transfer Value (£M)
1	Dudgeon	Statoil, Masdar and Statkraft	402	377.2
1	Rampion	E.ON, Green	400.2	313.1

		Investment Bank, Enbridge		
1	Race Bank	DONG Energy	565	530.4
2	Galloper	RWE, Siemens, Green Investment Bank, Macquarie	340	329.1
2	Walney Extension	DONG Energy	660	517.0

2.14. Initial Transfer Values are based on information provided by Developers. Bidders should use the Initial Transfer Values detailed above for the purposes of completing their EPQ Submissions. We will publish the Indicative Transfer Value for each Qualifying Project during the ITT Stage.

## Draft Transfer Agreements

- 2.15. The draft Transfer Agreements set out the terms upon which the transmission assets for each project will transfer from the Developer to the OFTO.
- 2.16. We are satisfied that the draft Transfer Agreements are sufficiently advanced to share with Bidders and it is available on the Portal to Bidders who have returned Confidentiality Agreements and COI declarations.
- 2.17. Bidders should use draft Transfer Agreements to inform their EPQ Submissions. However, Bidders should be aware that draft Transfer Agreements released at the EPQ Stage are subject to further development.
- 2.18. The EPQ Questionnaire includes a section on the transfer of assets under the draft Transfer Agreement (see Section 9). **Commentary tables on the draft Transfer Agreement are optional at the EPQ Stage and will not be evaluated during the evaluation process.**
- 2.19. We will provide any commentary tables completed by Bidders to Developers on an anonymous and confidential basis to enable Developers to consider the comments as part of the ongoing development of the Transfer Agreement. The final Transfer Agreement for each Qualifying Project will be made available at the ITT Stage.
- 2.20. Bidders should note that in releasing draft Transfer Agreements to Bidders at the EPQ Stage, we do not endorse draft Transfer Agreements nor the position taken by Developers expressed in it. We also do not constrain our discretion as to the terms on which we might make a property transfer scheme under Schedule 2A to the Electricity Act in a particular case.
- 2.21. The TPGD sets out further information on the development of the Transfer Agreement after the EPQ Stage.

## EPQ Submissions

### EPQ Submission Deadline

- 2.22. All EPQ Submissions must be submitted via the Portal **no later than 12 noon on 2 December 2016 and no late EPQ Submissions will be accepted.**

## **Bids on Multiple Projects**

2.23. Bidders will note that they are invited to provide a single EPQ submission in respect of any/all of the three Qualifying Projects in EPQ Group 1. Bidders are requested to specify which project(s) the submission relates to. We strongly advise bidders to consider their ability to deliver multiple projects when making this decision. Ofgem will announce a separate shortlist for each project.

## **Content of an EPQ Submission**

2.24. All EPQ Submissions must be made in the templates provided on the Portal. We will not accept EPQ Submissions in any other form.

2.25. The EPQ Submission must be completed in English, including any supplementary supporting documentation. Further information on making EPQ Submissions via the Portal can be found in the TPGD.

2.26. A compliant EPQ Submission must contain the following:

- responses to all requirements set out in the EPQ Questionnaire, together with relevant supporting documentation. Responses must be provided in the templates available on the Portal; and
- a signed Confidentiality Agreement and COI declaration for the Qualifying Project(s) as set out in paragraphs 2.8 to 2.10.

2.27. Where page limits are indicated in the requirements for response, these refer to A4 size pages. The font style should be in 'Verdana' and must be in a font size no smaller than 10. Any such page limits must be adhered to. We reserve the right to ignore any additional information submitted in excess of these limits.

2.28. We reserve the right to amend these requirements during the EPQ Stage prior to the EPQ Submission deadline.

## **Changes arising after EPQ Submission**

2.29. Bidders should note that if, after their EPQ Submission has been submitted and prior to the publication of the Qualifying Bidder shortlist:

- there is a material change or proposed material change in the information provided in their EPQ Submission;
- or a Bidder becomes aware that information previously submitted is no longer true or accurate,

they are obliged to notify us as soon as reasonably practicable. Where a Bidder notifies us of such matters, we will be entitled to re-evaluate the EPQ Submission in light of the change.

## **Clarifications**

2.30. Our general approach to dealing with clarifications is set out in the TPGD.

## 3. EPQ Questionnaire

### Chapter Summary

This chapter sets out the information that Bidders are required to return in their EPQ Submissions for the Qualifying Project(s).

3.1. This EPQ Questionnaire sets out the information that Bidders are required to return in their EPQ Submission. All questions are numbered. Bidders should provide their response to all questions in the corresponding numbered boxes in the EPQ Questionnaire template, available on the Portal. References throughout the EPQ Questionnaire to 'you' and 'your' refer to the Bidder.

3.2. The EPQ Questionnaire is structured into the following Parts and Sections:

Part	Section	Section area
<b>Part 1</b> <i>Suitability</i>	Section 1	Identification Information
	Section 2A	Grounds for mandatory exclusion
	Section 2B	Grounds for discretionary exclusion
<b>Part 2</b> <i>Economic and Financial Standing</i>	Section 3	Economic and Financial Standing
<b>Part 3</b> <i>Technical and Professional Ability</i>	Section 4	Experience of Asset Takeover, Management and Operations and Innovation
<b>Part 4</b> <i>Limitation Criteria</i>	Section 5	Approach to Asset Takeover
	Section 6	Approach to Management and Operations
	Section 7	Funding Solution
	Section 8	Financial and Commercial Risk Management
<b>Part 5</b> <i>Other</i>	Section 9	Draft Transfer Agreement
	Section 10	EPQ Certificate
	Section 11	Confidentiality

3.3. Parts 1 to 3, sections 1 to 4 are selection criteria questions. A condition of being invited to submit a tender for the Qualifying Project(s) is that Bidders must satisfy the selection criteria questions.

3.4. Part 4, sections 5 to 8, are limitation criteria questions. Where there is a sufficient number of Bidders that satisfy the selection criteria, Ofgem anticipates that it will use the limitation criteria questions to reduce the number of Bidders to a minimum of three and a maximum of five Bidders. The three to five Bidders with the highest limitation criteria scores will be invited to tender for the Qualifying Project(s).

3.5. Part 5 (sections 9, 10 and 11) will not be scored.

- Section 9 is optional and invites Bidders to return commentary tables and/or mark-ups to the draft Transfer Agreement provided in the Portal to those who have signed and returned the Confidentiality Agreement and COI declaration.
- Section 10 (EPQ Certificate), although not scored, must be signed by a duly authorised officer of the Bidder or, if a Bidder is formed of a Bidder Group, each member of the Bidder Group. Where it is not provided a Bidder or Bidder Group will have its EPQ Submission rejected.

- Section 11 invites Bidders to identify confidential information in their EPQ Submissions for the purpose of freedom of information requests.

## **Evaluation**

- 3.6. Parts 1 to 4 will be evaluated by Ofgem with appropriate support from its Advisers at Ofgem's discretion. Part 5 will not be evaluated (although Section 10 must be satisfactory to Ofgem).
- 3.7. Parts 1,2 and 3 will be evaluated on a pass/fail basis. Bids that do not pass all of the questions in Parts 1,2 and 3 will not be evaluated on Part 4.
- 3.8. Part 5 of the EPQ Questionnaire will not be evaluated. Sections 9 and 11 are optional, but Bidders must complete Section 10 to Ofgem's satisfaction in order to submit a compliant EPQ Submission. Bidders are invited to provide commentary tables on the draft Transfer Agreement for the Qualifying Project(s) in Section 9.
- 3.9. Further information on evaluation is set out in Chapter 4.

## PART 1 – SUITABILITY

Where the Bidder is formed of a Bidder Group, please ensure that each Bidder Group member completes the table below.

### Section 1: Identification Information

Section 1	Identification information
<p><b>[1A(i)]</b> Name of Bidder/Bidder Group member:*</p> <p><i>* If the Bidder is formed of a Bidder Group, please also state the name of each Bidder Group Member and indicate the lead contact</i></p>	
<p><b>[1A(ii)]</b> Please confirm the Qualifying Project(s) for which you are bidding.</p>	
<p><b>[1B]</b> Please provide as applicable the relevant requested details in the boxes below. Where an address provided is not in Great Britain, provide an address in Great Britain for the service of documents.</p>	
Company Registration number or identification (if applicable):	
Date of registration in country of establishment	
Place of incorporation (or equivalent):	
Address of registered office (or equivalent):	
<p>Trading status (<i>please mark 'X' in the relevant box to indicate your trading status</i>)</p>	
a) Public limited company	
b) Limited company	
c) Overseas company	
d) Other body corporate	
e) Limited liability partnership	
f) Other partnership	
g) Unincorporated association	
h) Sole trader	
i) Other	
<p>Details of immediate parent company (if applicable):</p>	
<ul style="list-style-type: none"> <li>• full name of the immediate parent company</li> </ul>	
<ul style="list-style-type: none"> <li>• Registered office address (if applicable)</li> </ul>	
<ul style="list-style-type: none"> <li>• Registration number</li> </ul>	
<p>Details of ultimate parent company:</p>	
<ul style="list-style-type: none"> <li>• Full name of the ultimate parent company</li> </ul>	
<ul style="list-style-type: none"> <li>• Registered office address</li> </ul>	
<ul style="list-style-type: none"> <li>• Registration number</li> </ul>	
<ul style="list-style-type: none"> <li>• Position of Bidder (or Bidder Group member) in the group structure</li> </ul>	

**[1C]** Please provide the following, with your response not exceeding a maximum of 3 pages in total:

Details of the shareholding/Bidder Group organisational structure, making clear:

- the identity of the entity that will hold the OFTO Licence for the Qualifying Project(s);
- the relationship which each Bidder Group member will have within and/or with the OFTO, including identification of the Ultimate Controller(s) of the OFTO; and
- key contractual relationships and accountability for managing these.

In the case of a Bidder Group, outline the proposed ownership arrangements, the proposed ownership proportions, and how you propose to share liability between Bidder Group members.

**[1D]** Please provide the following details in relation to the Bidder (or Bidder Group member):

Full names and addresses of current directors in existing bidding entities including any shadow directors within the meaning of section 251 of the Companies Act 2006:	
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Authorised signatories:	
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Principal shareholders:	
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**[1E]** Where any person (other than a person whose name is given in response to question [1D] holds 20% or more of any class of shares of a Bidder (or Bidder Group member), please provide for each person:

Name of person:	
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Address:	
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Number of shares held as percentage of the aggregate number of shares of that class represented by such shareholding:	
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**[1F]** Where the Bidder (or Bidder Group member) is neither a body corporate nor a sole trader, please provide the name(s) and address(es) of the person or persons in whom effective control of the Bidder or Bidder Group member rests.

Name:	
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Address:	
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**[1G]** Where they have already been appointed, provide details of the Bidder's legal, financial, technical, communications, or other key professional advisers in relation to TR5.

Legal:	
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Financial:	
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Technical:	
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Communications:	
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Other:	
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**[1H]** Provide details of any licences held by the Bidder (or Bidder Group member) under the Electricity Act 1989 (as amended) or Gas Act 1986 (as amended).

## Section 2A: Grounds for mandatory exclusion

Bidders whose responses are not sufficient to demonstrate their reliability as a potential OFTO will be excluded from the tender process unless the Authority considers there are overriding reasons relating to the public interest for you to participate.

Where we consider the measures taken by the Bidder to be insufficient, and therefore the Bidder will be excluded from the tender process, we will give the Bidder a statement of reasons for that decision.

Where the Bidder is formed of a Bidder Group, please ensure that each Bidder Group member completes the table below.

Section 2A	Grounds for mandatory exclusion <i>Please type 'yes' or 'no' in the space provided as applicable. Where you have indicated 'yes', further details should be provided at 2.1A(b)</i>													
2.1A(a)	<p><b>Regulations 57(1) and (2) of the Public Contracts Regulations 2015</b></p> <p>The detailed grounds for mandatory exclusion of a Bidder are set out on this <a href="#">web page<sup>11</sup></a>, which should be referred to before completing these questions.</p> <p>Please indicate if, within the past five years your organisation, or any other person who has powers of representation, decision or control in the organisation has been convicted anywhere in the world of any of the offences within the summary below and listed on the same <a href="#">webpage</a>.</p> <table border="1" data-bbox="320 929 1348 1137"> <tr> <td>• Participation in a criminal organisation</td> <td></td> </tr> <tr> <td>• Corruption</td> <td></td> </tr> <tr> <td>• Fraud</td> <td></td> </tr> <tr> <td>• Terrorist offences or offences linked to terrorist activities</td> <td></td> </tr> <tr> <td>• Money laundering or terrorist financing</td> <td></td> </tr> <tr> <td>• Child labour and other forms of trafficking in human beings</td> <td></td> </tr> </table>		• Participation in a criminal organisation		• Corruption		• Fraud		• Terrorist offences or offences linked to terrorist activities		• Money laundering or terrorist financing		• Child labour and other forms of trafficking in human beings	
• Participation in a criminal organisation														
• Corruption														
• Fraud														
• Terrorist offences or offences linked to terrorist activities														
• Money laundering or terrorist financing														
• Child labour and other forms of trafficking in human beings														
2.1A(b)	<p>If you have answered yes to question 2.1A(a), please provide further details in the box below, including:</p> <ul style="list-style-type: none"> <li>• Date of conviction, specifying which of the grounds listed the conviction was for, and the reasons for conviction;</li> <li>• The identity of who has been convicted; and</li> <li>• If the relevant documentation is available electronically please provide the web address, issuing authority and precise reference of the documents.</li> </ul>													
2.2A	<p>If you have answered 'yes' to any of the points above, have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning)</p>													
2.3A(a)	<p><b>Regulation 57(3) of the Public Contracts Regulations 2015</b></p> <p>Has it been established, for you by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions?</p>													
2.3A(b)	<p>If you have answered yes to question 2.3A(a), please provide further details in the box below. Please confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines.</p>													

<sup>11</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/551130/List\\_of\\_Mandatory\\_and\\_Discretionary\\_Exclusions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf)

## Section 2B: Grounds for discretionary exclusion

Bidders whose responses are not sufficient to demonstrate their reliability as a potential OFTO may be excluded from the tender process.

Where we consider the measures taken by the Bidder to be insufficient, and therefore the Bidder will be excluded from the tender process, we will give the Bidder a statement of reasons for that decision.

Where the Bidder is formed of a Bidder Group, please ensure that each Bidder Group member completes the table below.

Section 2B	Grounds for discretionary exclusion	
	<b>Please type 'yes' or 'no' in the space provided as applicable. Where you have indicated 'yes', further details should be provided at 2.2B.</b>	
2.1B	<b>Regulation 57 (8) of the Public Contract Regulations 2015</b>  The detailed grounds for discretionary exclusion of a Bidder are set out on this <a href="#">web page<sup>12</sup></a> , which should be referred to before completing these questions.  Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation(s).	
2.1B(a)	Breach of environmental obligations?	
2.1B(b)	Breach of social obligations?	
2.1B(c)	Breach of labour law obligations?	
2.1B(d)	Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation's assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State?	
2.1B(e)	Guilty of grave professional misconduct?	
2.1B(f)	Entered into agreements with other economic operators aimed at distorting competition?	
2.1B(g)	Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure?	
2.1B(h)	Been involved in the preparation of the procurement procedure?	
2.1B(i)	Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions?	
2.1B(j)	Please answer the following statements:	
2.1B(j)-(i)	The organisation is guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria.	

<sup>12</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/551130/List\\_of\\_Mandatory\\_and\\_Discretionary\\_Exclusions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf)

2.1B(j)-(ii)	The organisation has withheld such information.	
2.1B(j)-(iii)	The organisation is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015.	
2.1B(j)-(iv)	The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.	

2.2B	If you have answered Yes to any of the above, explain what measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning)

<b>Section 2.3B</b>	<b>Grounds for discretionary exclusion: tax related offences</b> <b><i>(Please type 'yes' or 'no' in the space provided as applicable)</i></b>
We reserve the right to use our discretion to exclude a Bidder where we can demonstrate by any appropriate means the Bidder is in breach of its obligations relating to the non-payment of taxes or social security contributions.	
2.3B	For your organisation and your Bidder Group, have any of the organisation(s)' tax returns submitted anywhere in the world on or after 1 October 2012 given rise to a criminal conviction for tax related offences which is unspent, or to a civil penalty for fraud or evasion? If you have answered 'yes' to this question, please provide further details in the box below.

<b>Section 2.4B</b>	<b>Grounds for discretionary exclusion: energy licence issues</b>
2.4B	The Bidder (and where applicable each Bidder Group member) should provide details of the circumstances of any licences granted under the Electricity Act 1989 (as amended) or Gas Act 1986 (as amended) which have been revoked or where an application was not successful.
Please state to which members of the Bidder Group this question applies and list details of the supporting documentation you have provided.	
Name:	Supporting information:
Name:	Supporting information:

## PART 2: ECONOMIC AND FINANCIAL STANDING

### Section 3: Economic and Financial Standing

Please respond to all applicable questions relating to the Bidder's financial standing. If the Bidder is formed of a Bidder Group, the lead member of the Bidder group should complete all questions in Part 2 on behalf of the Bidder Group.

#### Notes to questions [3A] to [3C] of this EPQ Questionnaire:

Bidders should take into consideration the following instructions when responding to this section:

- (i) If the assessment of the Bidder or Bidder Group member (as appropriate) is to be based on the parent company/group, the Bidder or Bidder Group member will need to demonstrate that the parent company/group will further participate in the process. This should be evidenced by the provision of letters of support at an appropriate level offering unqualified guarantees.
- (ii) When submitting financial statements disclosed in foreign currencies, Bidders are required to provide their balance sheets in Pounds Sterling at the average annual exchange rate for the financial statement year presented.
- (iii) Where there has been a significant reduction in either net assets or exchange rates since the latest balance sheet date such that the net assets do not meet the 120% requirement in [3A] and [3B] the impact and reason should be disclosed.

Questions [3A] and [3B] require Bidders to demonstrate their financial capacity to finance the Qualifying Project(s) for which they are bidding.

Please note that it is expected that financing solutions will be based either upon corporate financing or project financing. In the case of **corporate financing** please answer question [3A]. In the case of **project financing** please answer question [3B]

Bidders are asked to demonstrate that they have the financial capacity to secure financing solutions that are equal to or more than 120% of the proposed investment in the Qualifying Project(s) in order to cover variation in the estimated transfer value.

If more than one Qualifying Project is being bid for (as outlined in question [1A(ii)] above), Bidders should demonstrate their financial capacity to secure financing solutions on the basis of the sum total proposed investment in all projects for which they are bidding.

Note that Section 8 requires Bidders to explain their approach for determining an appropriate funding solution. Therefore, responses to Section 3 should be limited to explaining the capability of the Bidder rather than the rationale for a particular approach.

**[3A]** Where the Bidder anticipates funding the Qualifying Project(s) using **corporate finance** please provide the following:

**(a)** evidence to demonstrate that the net assets of the Bidder are equal to or more than 120% of the proposed investment in the Qualifying Project(s). The net assets should be consistent with the latest audited accounts and adjusted for any significant changes since that balance sheet date.

**(b)** a letter from the relevant corporate entity detailing a proven track record in the last five years of funding projects from the balance sheet totalling at least 120% of the proposed investment in the Qualifying Project(s).

The letter should include, but not be limited to the following:

- The name and type of project for which the finance was put forward;
- The amount of finance put forward;
- The key funding terms and conditions;
- Details of how the corporate finance was funded, whether it was sourced from cash reserves or where corporate capital was raised. In the case of corporate capital, please include the relevant terms.

**[3B]** Where the Bidder anticipates funding the Qualifying Project(s) using **project finance**, identify the expected debt and equity split.

In addition please respond to the relevant sections below taking account of this debt and equity split. Your response should demonstrate that you have the ability to source a combination of debt and equity finance equal to at least 120% of the proposed investment in the Qualifying Project(s).

**(a)** Where **debt finance** is proposed, the Bidder must provide evidence of its track record for its anticipated funding structure using **one** of the following:

(i) A proven track record in the last five years of raising debt totalling at least 100% of its proposed debt finance requirement. Evidence of raising debt finance in the last five years should provide information as to:

- The name and type of project for which the finance was raised;
- The amount of finance raised, and when it was raised;
- Role of Bidder (or Bidder Group member) in raising finance;
- Details on the form of finance raised including, but not limited to the following:
  - The form of finance raised, including the nature of the providers of the debt finance, the term of the debt and the identified sources of repayment;
  - The timescale for the successful issue of such finance; and
  - Details of any equity provision.

**Or**

(ii) A proven track record in the last five years of investing in infrastructure assets or businesses with existing debt totalling at least 100% of its proposed debt finance.

**Or**

(iii) A comfort letter from one or more acceptable independent financial institutions (for example having at least an 'A' category credit rating (that is, at least any of A-, A or A+/A1, A2 or A3) or equivalent from a recognised credit rating agency) stating its/their intent to provide debt finance to the Qualifying Project(s) which states:

- The level of support being provided (whether for all or a proportion of the funding requirement);
- Availability of funds and period of availability;
- Source of funds, with detail of where new funds may be raised;
- Key terms and conditions of finance; and
- Any relevant approvals which have already been achieved.

**(b)** Where **equity finance** is expected, the Bidder must provide evidence of its track record for its anticipated funding structure using **one** of the following:

(i) Net assets of at least 100% of its proposed equity investment. The net assets of the

Bidder, or if applicable, the net assets of the Bidder Group members as a whole, should be reconciled to the latest audited accounts and adjusted for any significant changes since that balance sheet date.

**Or**

(ii) A proven track record in the last five years of raising equity totalling at least 100% of its proposed equity investment. Evidence of raising equity finance in the last five years should provide information as to:

- The name and type of project for which the finance was raised;
- The amount of finance raised, and when it was raised;
- Role of Bidder (or Bidder Group member) in raising finance;
- Details on the form of finance raised including, but not limited to the following:
  - The form of finance raised;
  - The timescale for the successful issue of such finance; and
  - The proportion of equity finance of the total finance raised.

**Or**

(iii) A comfort letter from acceptable entities, for example having at least a BBB credit rating or equivalent from a recognised credit rating agency, stating its/their intent to provide equity finance to the Qualifying Project(s) which states:

- The level of support being provided (whether for all or a proportion of the funding requirement);
- Availability of funds and period of availability;
- Source of funds, with detail of where new funds may be raised;
- Key terms and conditions of finance; and
- Any relevant approvals which have already been achieved.

Please indicate which items you have responded to and list details of the supporting documentation you have provided:

Questions answered. Please insert into square bracket:

[ ]

Please list supporting documentation provided:

**[3C]** The Bidder (and where applicable each Bidder Group member) should provide the following:

- (i) copies of the last three years’ audited statutory financial accounts (or equivalent) or for the period that is available if trading for fewer than three years. If the Bidder is formed of a Bidder Group, provide this information for each Bidder Group member and (where applicable) the ultimate parent company (or equivalent legal body) of each such entity;
- (ii) a statement, as at the date of the Bidder’s EPQ Submission of any contingent liability or loss (where not otherwise reported) that would require disclosure in accordance with International Accounting Standard 10; and
- (iii) if at the time of the EPQ Submission the Bidder's, or where relevant, any Bidder Group member’s, most recent audited balance sheet is more than ten months out of date, provide a copy of the Chairman’s half-yearly statement (if available) and a statement signed by the Director responsible for financial matters setting out any known significant changes in the current financial position from the last available audited balance sheet.

Please list supporting documentation provided:

## **PART 3: TECHNICAL AND PROFESSIONAL ABILITY**

### **Section 4: Experience of Asset Takeover, Management and Operations, and Innovation**

*Please provide a response, which must not exceed **15 pages** in total, outlining the following areas. Any project examples provided should be based on projects in which you have been involved within the past five years.*

*If the Bidder is formed of a Bidder Group, the lead member of the Bidder group should complete all questions in Part 3 on behalf of the Bidder Group.*

#### **[4A] Experience of Asset Takeover**

Please outline your experience of the takeover of operational infrastructure assets making specific reference to relevant examples including but not limited to mergers and acquisitions, establishing new business units in the infrastructure sector, and expanding business units. Your response should cover your legal, regulatory, commercial, technical and financial experience in this context; include management control arrangements and your approach taken to stakeholder engagement during asset takeover.

#### **[4B] Capability in Management and Operations**

Please outline your management and operational experience of infrastructure projects of a similar size and complexity to this project including, where relevant, reference to your internal policies, codes of conduct and best practice principles. In outlining your experience please use your example projects to highlight the:

- i. approach your organisation takes to managing and operating infrastructure assets;
- ii. operational outcomes that you have required senior management within your organisation to deliver in relation to operation of the relevant project; and
- iii. the approach your organisation took to ensuring best practice and compliance with internal codes of conduct and regulatory requirements of the relevant project.

#### **[4C] Experience of Delivering Innovation**

Please outline your experience of delivering innovation across all aspects of infrastructure asset ownership (for example technological improvements, use of business models, financing, contract strategy, etc) in infrastructure or related sectors. Your response should refer to examples of innovative practices which you have designed and implemented, stating the outcomes that were delivered, and whether/how these resulted in lasting benefits.

## PART 4 – LIMITATION CRITERIA

The questions contained in this section will be used to determine a Bidder's understanding of and ability to meet the requirements of the tender process, and ultimately the role of an OFTO.

The scoring of the limitation criteria questions will only be applied in the circumstances where there are greater than three Bidders who meet the selection criteria and we wish to limit the number of candidates we will invite to tender to between three and five.

If the Bidder is formed of a Bidder Group, the lead member of the Bidder group should complete all questions in Part 4 on behalf of the Bidder Group.

### Section 5: Approach to Asset Takeover

*Please provide a response, which must not exceed **5 pages** in total, outlining the following:*

**[5A]** Please outline the principles you would adopt and the approach you would follow (including your approach to technical due diligence) in taking over the following elements of an offshore transmission system:

- i. onshore substation
- ii. offshore substation
- iii. onshore cable
- iv. subsea cable

**[5B]** Please outline the approach and principles you would follow when setting up an OFTO business.

## Section 6: Approach to Management and Operations

Please provide a response outlining the following in relation to your approach for management and operations. Any project examples provided should be based on projects in which you have been involved within the past five years.

If you are bidding for more than one project, you should explain whether your approach would vary (and how) for different projects.

Your response should not exceed the following page limits (depending how many projects you are bidding for):

- One project → **20 pages**
- Two projects → **23 pages**
- Three projects → **26 pages**

**[6A]** How you would approach operating transmission assets and delivering services for an OFTO project in accordance with the required operational performance standards, including examples from your experience of managing and operating either transmission assets or other infrastructure assets where applicable.

In particular, your response should set out your approach for the full 20-year revenue period including the process and factors you intend to take into account. In particular, you should comment on the following:

- Asset maintenance, repair and inspection plans
- Spares management and procurement plans
- Outage coordination and management strategy
- Network resilience and restoration plans
- Efficient resource plans
- Innovation.

**[6B]** How you would manage and mitigate the impact of the key business and operational risks set out below, including examples from your experience managing and operating either transmission or other infrastructure assets where applicable. (Note: you are not required to detail here how you would approach dealing with the financial and/or commercial impact of the risks as this is addressed in Section 8):

- Major failure / outage of the transmission link (once you have ownership of the transmission assets);
- Asset degradation identified during inspection;
- Persistent under-performance of the transmission system sufficient to impact the availability incentive (once you have ownership of the transmission assets);
- Unavailability of vessels for maintenance work;
- Failure of supply chain member;
- Variability in insurance costs over time;
- Lack of resilience of O&M during events such as collision, extreme weather or fatality scenarios; and
- Any additional risks you have identified which could have a significant operational impact.

**[6C]** How you would approach managing managerial and operational interfaces with key stakeholders and third parties for an OFTO project, referring to past experience of your contract management capability.

**[6D]** Your understanding of the electricity industry regulatory framework applicable to

an OFTO and how you would ensure compliance in operating and managing offshore transmission assets. You should refer to documents referenced under 'Relevant Guidance and Other Documents' in Chapter 1 in considering your response to this question.

**[6E]** How your past experience with applying principles of best practice and following internal codes of conduct for infrastructure projects would help you ensure compliance when operating and managing a transmission system, in terms of:

- i. Applicable health and safety legislation in managing the key health and safety risks to your employees, subcontractors' employees, members of the public and with respect to the safety of the installations themselves; and
- ii. Applicable environmental and planning legislation.

**[6F]** How you would approach the decommissioning of OFTO assets (please refer to DECC guidance on decommissioning<sup>13</sup>).

**[6G]:** Please describe the approach and assumptions (including the rationale underlying these) that you would use to derive the operational components of the TRS for the Qualifying Project(s) in light of your proposed management and operations approach for the project(s).

In particular, please comment on how you would expect to determine the following TRS elements:

- i. Operation and Maintenance;
- ii. Insurance;
- iii. Decommissioning; and
- iv. Other foreseen operational or management costs.

Where appropriate this should include a description of how you expect the relevant items will vary over the 20-year period including any cyclical, front-ended or back-ended elements and the underlying reason for such features.

Please describe how your proposed approach would lead to robust, viable and coherent estimates of the management and operations components of an OFTO's TRS; and achieve a transparent and competitive TRS.

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<sup>13</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/80786/orei\\_guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80786/orei_guide.pdf)

## Section 7: Funding Solution

*Please explain your approach for determining a funding solution that would be appropriate for the Qualifying Project(s), including why you consider this to be an efficient and effective approach.*

*Please also describe the approach you would use to derive the financial components of the TRS for an OFTO project and the assumptions you would expect to make in light of your proposed funding solution.*

*If you are bidding for more than one project, you should explain whether your approach would vary (and how) for different projects.*

*Your response should not exceed the following page limits (depending how many projects you are bidding for):*

- One project → **12 pages**
- Two projects → **15 pages**
- Three projects → **18 pages**

**[7A]** Please explain how you would go about determining an efficient and effective funding solution for the Qualifying Project(s), including:

- i. What considerations and criteria you would take into account in determining the funding solution, and what funding source you currently anticipate you would use: Equity, Debt, and/or Corporate Finance;
- ii. What you currently consider to be a suitable funding structure, and how you arrived at this;
- iii. Why you consider this funding solution would be suitable for the Qualifying Project(s);
- iv. What alternative types of finance you have considered or would consider, and the circumstances under which you would consider these further;
- v. What external market factors have influenced your anticipated funding solution, and what further factors you would take into account when proposing a funding solution at the ITT stage;
- vi. The approach you would take to due diligence in relation to your funding solution;
- vii. From the Preferred Bidder stage onwards, please outline your approach to ensuring that your funding solution continues to be the most appropriate and remains competitive, including what arrangements you would make for external factors, such as a delay to asset transfer and change in market conditions;
- viii. Any additional information that you consider you would take into account to increase the deliverability of your proposed funding solution.

**[7B]:** Please describe the approach and assumptions (including the rationale underlying these) that you would use to derive the financial components of the TRS for the Qualifying Project(s) in light of your proposed funding solution for the project(s).

In particular, please comment on how you would expect to determine:

- i. Indexation approach;
- ii. Equity/Debt or Corporate Finance servicing costs;
- iii. Taxation;
- iv. Special Purpose Vehicle (SPV) and/or management costs;
- v. Bid Cost Recovery;
- vi. Other Income Items; and

vii. Other foreseen financial costs over the life of the Qualifying Project(s).

Where appropriate this should include a description of how you expect the relevant items will vary over the 20-year period including any cyclical, front-ended or back-ended elements and the underlying reason for such features.

Please describe how your proposed approach would lead to robust, viable and coherent estimates of the financial components of the project's TRS; and achieve a transparent and competitive TRS.

## Section 8: Financial and Commercial Risk Management

*Please provide details of how you would address potential financial and commercial risks related to operation of Transmission Assets. The equivalent technical aspects are addressed in Section 5.*

*If you are bidding for more than one project, you should explain whether your approach would vary (and how) for different projects.*

*Your response should not exceed the following page limits (depending how many projects you are bidding for):*

- One project → **8 pages**
- Two projects → **10 pages**
- Three projects → **12 pages**

**[8A]** Please describe your understanding of the following risks and what you consider would be the best approach to dealing with their financial and/or commercial impact.

Please provide the reasoning for your potential solution(s), including relevant evidence of your experience dealing with similar risks, and, where applicable, the use of insurance cover to address such risks. Your response should address the following risks:

- major failure / outage of the transmission link (post transfer of the Transmission Assets);
- persistent under-performance of the Transmission Assets sufficient to impact the availability incentive (post transfer of the Transmission Assets);
- identification of asset degradation following inspection;
- unavailability of vessels for maintenance or repair operations;
- failure of supply chain member;
- change in inflation over the lifetime of the revenue term and how you would take this into account in your approach to indexation;
- changes to decommissioning costs or requirements;
- variability in insurance costs over time; and
- any additional risks you have identified in connection with the Qualifying Project(s) which could have a significant financial and/or commercial impact.

## PART 5 – OTHER

### Section 9: Draft Transfer Agreement

Based upon your review of the information about the Qualifying Project(s), as well as information available in respect of the offshore electricity transmission regime more generally (including that referred to in paragraph 1.25), you have the option of commenting on the draft Transfer Agreement for the Qualifying Project(s).

If the Bidder is formed of a Bidder Group, the lead member of the Bidder group should complete Section 9 on behalf of the Bidder Group.

**[9]** You are invited to provide comments on the draft Transfer Agreement for the Qualifying Project(s) by way of a commentary table, using the form of template provided at Appendix 1. The commentary for the Qualifying Project(s) should focus on the potential commercial issues and risk considerations associated with achieving a transfer of assets in accordance with the draft Transfer Agreement, indicating whether the issues are:

- **High:** Significant commercial/legal impact which you expect would materially affect the Tender Revenue Stream you would bid at the ITT Stage or could materially affect the fundability of the transfer;
- **Medium:** Commercial/legal impact which could affect the Tender Revenue Stream you would bid at the ITT Stage, but not in a material way; or
- **Low:** Amendments which you expect would neither affect the Tender Revenue Stream you would bid at the ITT Stage, nor have a significant commercial impact, but which would make the transaction more desirable from your perspective.

As part of the commentary table, where an issue is identified as of high or medium significance, you are invited to explain the nature of these issues and the potential impact on the Tender Revenue Stream you would bid at the ITT Stage.

If you wish to also provide a mark-up of the draft Transfer Agreement, please provide such a mark-up as a supplementary document.

Bidders have the option of submitting commentary tables and mark-ups of the draft Transfer Agreement. **Section 9 will not be scored, nor will it be considered during the evaluation process.**

As we may make responses to this section available to the Developer (see paragraph 2.18), your responses should not contain any information (including in footnotes) which could identify or allow ready identification of you or any Bidder Group member (if relevant).

Responses which highlight issues for us to address, including issues in relation to the Tender Exercise, Offshore Transmission Licence or regulatory regime, should be raised as clarifications in accordance with the procedure set out in paragraph 2.29.

## Section 10: EPQ Certificate

Where a Bidder is formed of a Bidder Group, each Bidder Group member must complete this Certificate individually. Each certificate must be initialled and signed as indicated below by a duly authorised officer of the Bidder or Bidder Group member (as applicable) to indicate confirmation of all of the statements in Sections [10A] to [10I] below. The initialled and signed copy of the EPQ Certificate(s) must then be uploaded to the Portal as part of your EPQ Submission.

In relation to statement [10C] only, if the duly authorised officer is not able to confirm statement [10C] then he or she need not initial this statement, provided that the he or she provides a satisfactory written explanation alongside this statement.

"I, acting as a duly authorised officer of\* \_\_\_\_\_  
and on behalf of \*\* \_\_\_\_\_,  
hereby confirm that:

<b>[10A]</b> The information provided in the EPQ Submission is true, accurate, and complete; and I understand that the information will be used in the selection process to assess my Bidder/Bidder Group (as applicable)'s suitability to be invited to participate further in this tender exercise.	Initial below
<b>[10B]</b> Neither* _____ nor any of [its/their] Related Parties has breached any applicable legislation or regulations including any provision or requirement of the Tender Regulations or the EPQ Document in preparing or making this EPQ Submission.	Initial below
<b>[10C]</b> We are not aware of any application to place the Bidder/Bidder Group member (as applicable), or the shareholders of any of the foregoing in liquidation, administration or receivership, or to commence any analogous process or proceeding in any jurisdiction, and that no such process has been commenced.	Initial below
<b>[10D]</b> The Bidder/Bidder Group member (as applicable) is acting as a principal in the Tender Exercise and not as an agent for any undisclosed person and the Bidder/Bidder Group member (as applicable) has expressly authorised me to act on its behalf in making this EPQ Submission.	Initial below
<b>[10E]</b> The Bidder/Bidder Group member (as applicable) hereby consents to the disclosure by Ofgem to Ofgem's Advisers for the purposes of TR5 of any information given to Ofgem either before or during TR5 by such Bidder or Bidder Group member.	Initial below
<b>[10F]</b> The Bidder/Bidder Group member (as applicable) hereby confirms that they have considered the implications of the Electricity Act 1989 Sections 10A-O (as amended) and understands that if appointed as a transmission licensee who participates in the transmission of electricity they will be required to comply with the ownership unbundling provisions therein.	Initial below
<b>[10G]</b> In compiling this EPQ Submission, neither I personally nor the Bidder/Bidder Group member (as applicable) has obtained an unfair commercial advantage including, in particular such advantage from a preferential or discriminatory arrangement with associated parent companies or affiliates, any user of the Offshore Transmission System or Licensees.	Initial below
<b>[10H]</b> The Bidder/ Bidder Group member (as applicable) understands the obligations of an OFTO to comply with conditions in the OFTO Licence.	Initial below
<b>[10I]</b> The Bidder/Bidder Group member (as applicable) acknowledges and agrees that knowingly or recklessly making a false, incomplete, or misleading statement in support of this EPQ Submission may result in:  a) disqualification of the Bidder from the Tender Exercise; b) Licence Grant being refused or revoked if the Bidder reaches this stage in the process; and/or c) criminal proceedings being instituted under section 59 of the Electricity Act 1989 (as amended).	Initial below
In providing this statement, I have made all due enquiries on behalf of the Bidder or Bidder Group member (as applicable)."	

Signed	
Name	
Position	
Dated	

\* insert name of Bidder or Bidder Group member (as applicable)

\*\* insert name of Bidder or Bidder Group member (as applicable)

**Section 11: Confidentiality**

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

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

Section of EPQ Submission provided in confidence	Reason(s) for exemption under Freedom of Information Act 2000 and Environmental Information Regulations 2004

## 4. Evaluation of EPQ Submissions

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### Chapter Summary

This chapter sets out how we will evaluate EPQ Submissions. This includes the EPQ evaluation criteria we will apply and the process we will follow to evaluate EPQ Submissions.

### Evaluation Process

- 4.1. The purpose of the EPQ Stage is to identify a shortlist of Qualifying Bidders who will be invited to participate in the ITT Stage for the Qualifying Project(s).
- 4.2. We will conduct our evaluation over the following sequential stages:
  - an assessment of completeness;
  - an assessment of compliance; and
  - an evaluation of compliant EPQ Submissions in accordance with the evaluation criteria.

### Assessment of Completeness

- 4.3. Prior to the formal evaluation process and following receipt of the EPQ Submissions, we will undertake a completeness check of the information received. If this check identifies any omission(s) in the information required to be provided, we will notify the Bidder of the omitted information. At our discretion, the Bidder will be given a period of time, to be notified by us, in which to rectify the omission(s). In this event, we will only commence evaluation of the EPQ Submission following receipt of the requested information.
- 4.4. We may decline to consider a Bidder's EPQ Submission if the information omitted is substantial or any omitted information requested is not provided within the required time.

### Assessment of Compliance

- 4.5. Following the completeness check, we will assess whether EPQ Submissions received are compliant. An EPQ Submission will be considered compliant if all the information requested under paragraph 2.24 is provided.
- 4.6. We may decline to consider a Bidder's EPQ Submission if it does not comply in any material respect with the requirements specified in this EPQ Document.

### Scoring

- 4.7. EPQ Submissions will consist of five parts, of which the first four will be evaluated.
- 4.8. **Part 1** (sections 1 and 2) of the EPQ Questionnaire focuses on suitability. Evaluation of Part 1 will be on a pass/fail basis.
- 4.9. **Part 2** (section 3) focuses on the economic and financial standing of the Bidder. Evaluation of section 3 will be on a pass/fail basis.

- 4.10. **Part 3** (section 4) focuses on the technical and professional ability of the Bidder. Evaluation of section 4 will be on a pass/fail basis, with Bidders required to pass each sub-section to pass the section as a whole.
- 4.11. A Bidder’s EPQ Submission will only be considered further if it passes sections 1 to 4. Bidders that pass sections 1 to 4 will be considered to have met the selection criteria.
- 4.12. **Part 4** (sections 5 to 8) of the EPQ Questionnaire assesses whether Bidders have a strong understanding of key aspects of the OFTO business. Part 4 will be evaluated on a scored basis. Each of these sections will be scored using the marks A to D. These will be converted to the corresponding numeric score as set out in the Evaluation Scale for Scored Sections at paragraph 4.52. The scores for Part 4 will only be used to determine which Bidders are invited to participate in the ITT stage where more than 3 applicants satisfy the selection criteria as set out in paragraph 4.11. Part 4 does not form part of the selection criteria per se but is a limitation criteria.
- 4.13. The scores for Part 4 will be weighted as set out below, to determine a score for each Bidder for the Qualifying Project(s):

Section	Multiplier
Section 5	15 per cent
Section 6	40 per cent
Section 7	25 per cent
Section 8	20 per cent

For the avoidance of doubt, each section will be scored as a whole (rather than individual questions within a section having its own score).

**Part 5** (sections 9 to 11) focuses on other areas and will not be evaluated, although Section 10 must be satisfactory in order to meet the compliance assessment.

**Determining the Shortlist**

- 4.14. All Bidders that satisfy the selection criteria (ie Sections 1-4) are eligible to be invited to tender. However, where there are more than three Bidders that satisfy the selection criteria and we wish to limit the number of Bidders that we invite to tender for the Qualifying Project(s) we will determine the shortlist of Qualifying Bidders based on the highest overall scores on Part 4 of the EPQ Submissions. The three or more Bidders with the highest limitation scores on Part 4 of the EPQ submissions will be invited to tender. We anticipate inviting between three and five Bidders to tender for the Qualifying Project(s).

**EPQ Evaluation Criteria**

- 4.15. The evaluation criteria for each section of the EPQ Questionnaire and the evaluation weighting for each scored section are as follows.

**PART 1 – SUITABILITY**

**Section 1: Identification Information (Pass/Fail)**

- 4.16. This section is used to gather the necessary details to understand the nature of each organisation and legal entity participating in the tender exercise. A Bidder

must provide details and evidence of its identity as requested in the EPQ Questionnaire.

### **Section 2A: Grounds for mandatory exclusion (Pass/Fail)**

- 4.17. A Bidder must answer yes or no to each question. If a Bidder answers yes to any of the questions in section 2.1A, the Bidder must provide evidence of the measures taken, following the relevant conviction, that are sufficient to demonstrate its reliability as a potential OFTO. The answer must also name the organisation or member being referred to.
- 4.18. In assessing whether the evidence provided by a Bidder is sufficient to demonstrate its reliability as a potential OFTO, despite the offence, we will take into account whether the Bidder has:
  - i. paid or undertaken to pay compensation in respect of damage caused by the criminal offence or misconduct;
  - ii. clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
  - iii. taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offence or misconduct.
- 4.19. We shall also take into account the gravity and particular circumstances of the criminal offence or misconduct.
- 4.20. Notwithstanding the above, we will exclude a Bidder from the tender exercise that has answered yes to a question under section 2A where we consider the Bidder has not demonstrated its reliability as a potential OFTO unless there are overriding public interest reasons not to do so.

### **Section 2B: Grounds for discretionary exclusion (Pass/Fail)**

- 4.21. A Bidder must answer yes or no to each question. If a Bidder answers yes to any of the questions in sections 2.1B and 2.3B, the Bidder must provide evidence of the measures taken, following the relevant conviction or breach of obligations, that are sufficient to demonstrate its reliability as a potential OFTO. The answer must also name the organisation or member being referred to.
- 4.22. A Bidder that answers yes to question 2.4B concerning licence issues must provide details of the circumstances in which any licences granted under the Electricity Act 1989 or Gas Act 1986 have been revoked or where an application was not successful.
- 4.23. Save for the circumstances outlined in paragraph 4.26, the Authority may exclude a Bidder from the tender exercise that has answered yes to a question under section 2B where we consider the Bidder has not demonstrated its reliability as a potential OFTO.
- 4.24. In assessing whether the evidence provided by a Bidder is sufficient to demonstrate its reliability as a potential OFTO, despite the offence, the Authority will take into account whether the Bidder has:
  - i. paid or undertaken to pay compensation in respect of damage caused by the criminal offence or misconduct;
  - ii. clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and

- iii. taken concrete technical, organisational and/or personnel measures that are appropriate to prevent further criminal offence or misconduct.
- 4.25. We shall also take into account the gravity and particular circumstances of the criminal offence or misconduct. We reserve the right to exclude a Bidder that has answered yes to a question under section 2B where we consider the Bidder has not demonstrated its reliability as a potential OFTO.
- 4.26. Bidders that have breached obligations relating to tax or social security contributions under section 2B will not be excluded from the tender process where they have fulfilled their obligations by paying, or entering into a binding agreement with a view to paying, the taxes or social security contributions due, including, where applicable, any interest accrued or fines; or where an exclusion from the tender process would be clearly disproportionate to the breach.

## **PART 2 – ECONOMIC AND FINANCIAL STANDING**

### **Section 3: Economic and Financial Standing (Pass/Fail)**

- 4.27. A Bidder must demonstrate that it has the necessary financial strength to be considered viable to support its proposed expenditure on the basis of the Initial Transfer Value for the Qualifying Project(s) for which it is bidding.
- 4.28. The financial solvency and strength of each Bidder will be assessed through consideration of its EPQ Submission, along with analysis of the Bidder's annual reports and accounts submitted for the three most recent years and any interim accounts and/or public announcements submitted.
- 4.29. Searches of news information sources and credit ratings may also be undertaken to highlight any issues that are not brought to our attention by the Bidder's responses to the EPQ Questionnaire and the supporting documents provided. Where such information raises material concerns, we reserve the right to request further information from the Bidder and/or the parent company/group (as appropriate). Where this information is not forthcoming, we reserve the right to fail the Bidder against this criterion.
- 4.30. We may request further information from the Bidder in respect of any statement provided as necessary as part of its evaluation.

## **PART 3 – TECHNICAL AND PROFESSIONAL ABILITY**

### **Section 4: Experience of Asset Takeover, Management and Operations, and Innovation (Pass/Fail)**

- 4.31. A Bidder must demonstrate it has the capability to acquire, take over and manage an infrastructure business from a third party. Bidders will be evaluated by reference to the extent to which the experience evidenced is relevant to OFTO assets and demonstrates professional capability in the areas of expertise referred to.
- 4.32. A Bidder must also demonstrate its capability to operate the Qualifying Project(s). This will be evaluated through the provision of example infrastructure projects of a similar size and complexity to the Qualifying Project(s) from within the past five years. Responses may draw on relevant experience from other sectors, in which case similarities and differences in approach should be explicitly explained and

expected mitigation strategies set to cope with significant differences should also be highlighted. Bidders will be evaluated on the basis of their demonstrated professional ability in respect of the management and delivery of operational requirements for such projects, including their approach to managing and mitigating risks.

- 4.33. A Bidder should also demonstrate experience in infrastructure or related sectors, in delivering innovative solutions that result in enhanced outcomes, for example cost savings or increased production/results/availability. Credit will be given for demonstrating implementation of innovation that has delivered results.

## **PART 4 – LIMITATION CRITERIA, Sections 5 to 8**

### **Section 5: Approach to Asset Takeover (Scored)**

- 4.34. A Bidder must demonstrate that it has a good understanding of efficient and effective processes for taking over an offshore transmission system. This must include the principles that they would employ to ensure that asset takeover is achieved both smoothly and successfully within required timescales.
- 4.35. A Bidder must also set out what they regard to be the key principles and approaches for how they would go about setting up an OFTO business. This may include a summary of any key challenges that a Bidder believes it might face in establishing an OFTO business and how these would be suitably managed to ensure successful asset takeover. Where relevant, a Bidder may draw on experience also mentioned in their response to Section 4 to highlight their understanding of the principles they would adopt in taking over the transmission assets/setting up an OFTO business.
- 4.36. Bidders will be evaluated on the basis of their degree of understanding of asset takeover and the viability of their approaches.
- 4.37. The weighting applied to the scoring of this section is **15%** of the overall score.

### **Section 6: Approach to Management and Operations (Scored)**

- 4.38. A Bidder must set out its understanding and approach to operating transmission assets, including how it would deliver fit for purpose services for an OFTO project, how this might change over the 20 year revenue term period and how the Bidder would manage such changes. A Bidder must also identify the key business and operational risks and explain how it would manage and mitigate these. Where appropriate the Bidder's response should be evidenced by experience-based management approaches, including relevant experience from other sectors.
- 4.39. A Bidder must also set out how it would approach managing the key stakeholder interfaces which might be associated with an OFTO project, including identifying who the key stakeholders are and how any specific requirements would be managed.
- 4.40. Bidders are required to explain their understanding of the electricity industry regulatory framework applicable to an OFTO and set out how they would approach compliance. Bidders should provide details of their past experience in applying principles of best practice and following internal codes of conduct for infrastructure projects. Finally, Bidders are required to explain how they would approach the decommissioning of OFTO assets, referencing their understanding in the context of DECC decommissioning guidance, where appropriate.

- 4.41. A Bidder should comment on its approach to determine the operational aspects of the TRS given its proposed management and operations approach.
- 4.42. Bidders will be evaluated on the basis of their degree of understanding of operating transmission assets and the viability of their approaches.
- 4.43. The weighting applied to the scoring of this section is **40%** of the overall score.

### **Section 7: Funding Solution (Scored)**

- 4.44. A Bidder must outline its approach for determining a funding solution that would be appropriate for the Qualifying Project(s), including why it considers this to be suitable. A Bidder must also explain what alternative approaches have been considered and provide details of how it would identify and evaluate alternative financing solutions to ensure that the approach remains competitive throughout the tender process. The Bidder will be evaluated on the basis of the viability of the expected funding strategy, and the coherence of the rationale behind such a strategy. A Bidder should comment on its approach to determine the financial aspects of the TRS given its proposed funding solution.
- 4.45. The weighting applied to the scoring of this section is **25%** of the overall score.

### **Section 8: Financial and Commercial Risk Management (Scored)**

- 4.46. A Bidder must demonstrate an understanding of the key risks that could have a financial and/or commercial implication for the operation of transmission assets and how to respond appropriately to them. Bidders will be evaluated on their understanding of these risks and the viability of their expected approach to managing and mitigating the key risks.
- 4.47. The weighting applied to the scoring of this section is **20%** of the overall score.

## **OTHER - Sections 9 to 11**

### **Section 9: Transfer Agreement**

- 4.48. This Section is optional and will not be evaluated.

### **Section 10: EPQ Certificate**

- 4.49. A duly authorised officer of the Bidder or Bidder Group is required to confirm the statements set out in the EPQ Certificate in Section 10. A Bidder or Bidder Group who does not do so will have its EPQ Submission rejected and it will not be considered further.

### **Section 11: Confidentiality**

- 4.50. Bidders are invited to identify confidential information in their EPQ Submissions for the purposes of Freedom of Information requests. This is requested for information only and will not be evaluated.

## **Evaluation scale for scored sections**

- 4.51. For all scored sections of the EPQ Questionnaire (sections 5 to 8), responses will be scored against each criterion using a four-mark evaluation scale where each mark corresponds to a range of numeric scores. Table 1 below sets out the standard of response that correlates to each mark on the scale on a generic basis.

**Table 1: Scored Evaluation (Sections 5-8)**

Evaluation mark	Range of numeric scores  (sections 5 to 8 only)	Standard of response	Guidance
A	8-10	<b>Excellent response:</b> will indicate that, in the judgement of the Authority, the response entirely or almost entirely satisfies the requirements tested by the criterion.	<p>The response entirely satisfies the requirements tested; or any issues or concerns identified with the response are considered to be immaterial.</p> <p>The response is also likely to demonstrate (where applicable):</p> <ul style="list-style-type: none"> <li>• strong understanding of relevant issues or requirements;</li> <li>• strong capability in the relevant area;</li> <li>• a viable and/or deliverable approach to the relevant project; excellent examples of relevant experience;</li> <li>• a clear understanding of considerations that are specific to offshore transmission assets; and</li> <li>• full supporting documentation.</li> </ul>
B	5-7	<b>Good response:</b> will indicate that, in the judgement of the Authority, the response substantially satisfies the requirements tested by the criterion, although the Authority has some minor reservations with regard to certain aspects of the response.	<p>Some issues or concerns identified with the response but these are considered unlikely to significantly impact upon the viability of the Bidder's approach.</p> <p>The response is also likely to demonstrate:</p> <ul style="list-style-type: none"> <li>• good understanding of relevant issues or requirements;</li> <li>• good capability in the relevant area;</li> <li>• a largely viable and/or deliverable approach to the relevant project;</li> <li>• good examples of relevant experience;</li> <li>• some recognition of considerations that are specific to offshore transmission assets; and</li> <li>• some supporting documentation is provided (where applicable).</li> </ul>

Evaluation mark	Range of numeric scores (sections 5 to 8 only)	Standard of response	Guidance
C	2-4	<p><b>Basic response:</b> will indicate that, in the judgement of the Authority, the response partially satisfies the requirements tested by the criterion and includes some of the expected supporting documentation, although the Authority either:</p> <ul style="list-style-type: none"> <li>• has a number of significant minor reservations with regard to certain aspects of the response; and/or</li> <li>• one major reservation with regard to a particular aspect of the response.</li> </ul>	<p>Significant issues or concerns identified with the response which may impact the overall viability of the Bidder's approach.</p> <p>The response is also likely to demonstrate:</p> <ul style="list-style-type: none"> <li>• a lack of understanding of relevant issues or requirements;</li> <li>• issues or concerns about the Bidder's capability in the relevant area;</li> <li>• issues or concerns about the viability and/or deliverability of the approach to the relevant project;</li> <li>• a lack of recognition of considerations that are specific to offshore transmission assets (where applicable); and</li> <li>• few or poor examples of relevant experience or supporting documentation (where applicable).</li> </ul>
D	0	<p><b>Unacceptable response:</b> will indicate that, in the judgement of the Authority, the response does not satisfy the requirements tested by the criterion in a material way, there is no supporting documentation and the Authority has, either a significant number of minor reservations with regard to certain aspects of the response or one (or more) very serious reservation(s) with regard to a particular aspect(s) of the response.</p>	<p>Significant/ fundamental issues or concerns identified with the response which are considered unlikely to be resolved without an adverse impact on the viability and/or deliverability of the Bidder's approach.</p> <p>The response wholly or largely does not answer the questions; and there is no supporting documentation (where applicable).</p>

## **Notification to Bidders and Publication of Qualifying Bidder Shortlist**

- 4.52. We will notify each Bidder (via the Portal) as to whether its EPQ Submission has been successful or unsuccessful.
- 4.53. We are sensitive to the likely level of investment which Qualifying Bidders will have to undertake during the ITT Stage and we consider that it would not be beneficial, either for Ofgem or Bidders, to take too many Bidders beyond the EPQ Stage. Therefore, we may limit the number of Bidders who will be invited to take part in the ITT Stage in relation to the Qualifying Project(s) whilst ensuring that effective competition is maintained.
- 4.54. The notices given to Bidders who are invited to the ITT stage will set out the next steps they will need to take in order to participate in the ITT Stage for the Qualifying Project(s).
- 4.55. Once all Bidders have been notified, we will publish the Qualifying Bidders shortlist in respect of the Qualifying Project(s) on the Portal and on our website. We may also make a general public announcement.

### **Bidder feedback**

- 4.56. We will provide confidential feedback to any Bidder upon request following completion of the EPQ Stage. Requests for feedback should be made within one month of the notification referred to in paragraph 4.53.

### **ITT Award Criteria**

- 4.57. The award criteria for tender submissions at the ITT Stage will be based on a 60/40 split, with 60% of marks available being awarded to the TRS bid and the remaining 40% to the quality of bid (or 'underlying assumptions') received. Details of the award criteria will be set out in the ITT Document for each relevant TR5 Project.

# Appendices

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# Appendix 1 – Table of Commentary to draft Transfer Agreement

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## Form of commentary tables

A1.1. Bidders are invited and encouraged to provide commentary tables using the information provided on the Qualifying Project(s) to prepare the commentary table using the form below and provide it in MS Word format. However it is not required that Bidders provide commentary, and any commentary provided will not be subject to evaluation. The commentary table is to be provided on an anonymous basis and not contain any information (including in footnotes) which could identify or allow ready identification of the Bidder or any Bidder Group member (if relevant).

<b>PART A: HIGH IMPACT:</b> Significant commercial and/or legal impact which will materially affect the Tender Revenue Stream being bid at the ITT Stage or could materially affect the fundability of the transfer.			
No.	Headline issue	Relevant Clause(s)	Commentary
A.1			
<b>PART B: MEDIUM IMPACT:</b> Commercial and/or legal impact which could affect the Tender Revenue Stream being bid at the ITT Stage but not in a material way.			
No.	Headline issue	Relevant Clause(s)	Commentary
B.1			
<b>PART C: LOW IMPACT:</b> Amendments which you would expect which would neither affect the Tender Revenue Stream that you would bid at the ITT Stage, nor have a significant commercial impact, but which would make the transaction more desirable from your perspective.			
No.	Headline issue	Relevant Clause(s)	Commentary
C.1			

A1.2. Comments which are issues for Ofgem to address, including issues in relation to the Tender Exercise, Tender Round, OFTO Licence or regulatory regime, should be raised as clarifications in accordance with the procedure set out in the EPQ Document.

## Appendix 2 – Disclaimer and Notices

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### **Non-reliance, Accuracy of Information and Exclusion of Liability**

- A2.1. It is the responsibility of each Bidder to ensure that it has all of the information it needs to prepare its EPQ Submission.
- A2.2. While information provided by Ofgem and/or its Advisers in this EPQ Document or otherwise in relation to the Tender Round has been prepared in good faith, neither Ofgem nor any of its Advisers make any representation or warranty (express or implied) in relation to the Tender Round or any information provided by Developers through the Portal or otherwise. Ofgem and its Advisers expressly disclaim any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, the EPQ Document (and other related documentation) or based on or relating to its use by a Bidder and/or any other interested party.

### **Use of Information**

- A2.3. This EPQ Document is not intended to provide the basis of any investment decision, nor is it intended to be considered as an investment recommendation by Ofgem or by any of its Advisers. Each Bidder and any other interested party must make its own independent assessment of the Qualifying Project(s) after making such investigation and taking such professional advice as it deems necessary.
- A2.4. The material in this EPQ Document is not and should not be regarded as legal or professional advice. Bidders and other interested parties should seek their own legal or other professional advice where appropriate.
- A2.5. Nothing in this EPQ Document is intended to, or shall be deemed to establish any partnership or joint venture between Ofgem and any Bidder.
- A2.6. Advisers acting for Ofgem in relation to the Tender Round will not regard any Bidder or other interested party as their client or be responsible to anyone other than Ofgem for providing the protections afforded to their clients or for advising any other person on the Tender Round or any matter related to it.

### **Freedom of Information**

- A2.7. The Freedom of Information Act 2000 provides a general right of access to all information held by public authorities. The Environmental Information Regulations 2004 provide a general right of access to all environmental information held by public authorities. Ofgem is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

- A2.8. Bidders should identify which parts, if any, of their submissions are provided to Ofgem in confidence and provide reasons why they consider the information to be eligible for exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and should be kept confidential. Ofgem will take any such statement of confidentiality into account in considering whether an exemption applies, but Ofgem is not bound by any such statement.
- A2.9. Although Ofgem is not under any statutory obligation to consult with a Bidder in relation to requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, Ofgem will endeavour to inform the relevant Bidder of requests wherever it is reasonably practicable to do so. However, all decisions in respect of disclosure of information will be made at the sole discretion of Ofgem regardless of whether or not a Bidder has identified any information as being in its opinion eligible for exemption. For further information and guidance, Bidders' attention is drawn to the Codes of Practice issued under Sections 45 and 46 of the Freedom of Information Act 2000<sup>14</sup>.

## **Data Protection**

- A2.10. In participating in the Tender Round, Bidders must comply with the Data Protection Act 1998 and all relevant regulations, together with any codes of conduct and guidance issued by the Information Commissioner. Bidders must not do, or cause or permit to be done, anything which may cause or otherwise result in a breach by Ofgem of such requirements. BravoSolution UK Ltd, on behalf of Ofgem, will collect, hold and use personal data obtained from and about Bidders. In order to participate in the Tender Round, Bidders must agree to such data being collected, held and used.

## **Confidentiality and Publicity**

- A2.11. Bidders must comply with their obligations under the Confidentiality Agreement they are required to sign with the Developer of the Qualifying Project(s) at the start of the EPQ Stage. Bidders must procure compliance by their directors, employees, advisers, subcontractors, etc., as provided for under such agreements.
- A2.12. Bidders shall not undertake (or permit to be undertaken) at any time during the Tender Round any publicity activity with any section of the media in relation to the Qualifying Project(s) other than with the prior written agreement of Ofgem. Such agreement shall extend to the content of any publicity. In this paragraph the word 'media' includes (without limitation) radio, television, newspapers, trade and specialist press, the internet

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<sup>14</sup> <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>

(including social media) and e-mail accessible by the public at large and the representatives of such media.

## Copyright

A2.13. The information contained within this EPQ Document is subject to Crown copyright protection unless otherwise indicated. The Crown copyright protected material may be reproduced free of charge in any format or medium provided it is reproduced accurately and not in a misleading or derogatory manner. Where any of the Crown copyright material in this EPQ Document is being published or copied to others, the source of the material must be identified and the copyright status acknowledged.

## National Audit Office

A2.14. The Comptroller and Auditor General of the National Audit Office is the auditor for central government. Ofgem and any documents and information held by Ofgem in connection with the Tender Round (including commercially sensitive information and information marked as confidential) may be subject to audit by the Comptroller and Auditor General.

A2.15. Accordingly, Bidders should be aware that for the purposes of the National Audit Act 1983 the Comptroller and Auditor General may:

- examine and take copies of documents and information held by Ofgem in connection with the Tender Round (including commercially sensitive information and information marked as confidential) and request such information as he may reasonably require; and
- has the right to publish information related to the Tender Round (including commercially sensitive information and information marked as confidential) in its report to Parliament. In this context, please refer to the report published by the National Audit Office in June 2012 on the Offshore Transmission regime<sup>15</sup>.

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<sup>15</sup> [http://www.nao.org.uk/publications/1213/offshore\\_electricity.aspx](http://www.nao.org.uk/publications/1213/offshore_electricity.aspx)

## Appendix 3 – Glossary

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### A

#### **Advisers**

In relation to Ofgem, its employees, officers, directors, officials, insurers, agents, consultants, advisers, contractors, sub-contractors (of any tier) and affiliates.

#### **Authority**

The Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000. The Authority governs Ofgem.

### B

#### **Best and Final Offer (BAFO) Submission**

A selected Bidder's response to the BAFO Document.

#### **BAFO Stage**

A stage of a Tender Exercise which the Authority may decide to run after the ITT Stage in order to determine which Bidder shall become the Preferred Bidder in respect of a Qualifying Project(s). This stage starts from the distribution by Ofgem of the BAFO Document to selected Bidders, including BAFO preparation, Submission and evaluation, and ending when a Preferred Bidder is selected and notified.

#### **Bid**

The submission made by a Bidder to Ofgem in response to the EPQ Document.

#### **Bidder**

Any person or Bidder Group that makes a PQ Submission or an EPQ Submission, a Bidder, a Preferred Bidder, a Reserve Bidder or a Successful Bidder (as applicable).

#### **Bidder Group**

Two or more persons acting together as a consortium for the purposes of any PQ, EPQ, QTT, ITT or BAFO Submission to Ofgem in accordance with the Tender Regulations.

### C

#### **Certification**

The process for demonstrating compliance with ownership unbundling requirements as set out in the Third Package.

### **Confidentiality Agreement**

The agreement between a Developer and a Bidder or Bidder in respect of confidential information disclosed in connection with a Tender Exercise.

### **Corporate Finance**

Any finance provided by the company without recourse to external parties, e.g. intercompany loans, where the shareholders or parent company are the sole source of finance.

## **D**

### **Data Room**

In respect of a Qualifying Project(s), a secure electronic data room populated and maintained by Ofgem with information provided by Ofgem, the relevant Developer and other third parties, which is made available to Bidders through the Portal.

### **Debt Finance**

Any non-recourse or limited recourse senior debt finance including any enhancement or mezzanine structures.

### **Default Availability Standard**

98% asset availability including planned/unplanned outages which is the default availability standard applicable under the Tender Exercise.

### **Developer**

The Tender Regulations define a 'developer' as 'any person within section 6D(2)(a) of the 1989 Act or within a developer group'. Section 6D(2)(a) of the Electricity Act 1989 defines such person as 'the person who made the connection request for the purposes of which the tender exercise has been, is being or is to be, held'. In practice, such person is also the entity responsible for the construction of the generation assets and, under Generator Build, the transmission assets. Under Generator Build, this is the person who requests that Ofgem commences a Tender Exercise in respect of a proposed Qualifying Project(s).

## **E**

### **Electricity Act**

The Electricity Act 1989 as amended from time to time.

## **Enduring Regime**

The regulatory regime for offshore transmission for any project qualifying for a Tender Exercise after 31 March 2012. This regime allows Developers to choose between Generator Build and OFTO Build for the construction of offshore Transmission Assets.

## **Enhanced PQ (EPQ) Stage**

An extended version of the PQ stage of a Tender Exercise that can be used for Generator Build Tender Exercises where the Authority decides not to run a QTT Stage. At the end of this 'enhanced' PQ stage, the Authority will determine which Bidders become Qualifying Bidders and will be invited to participate in the ITT Stage of the Tender Exercise.

## **EPQ Document**

The document prepared and issued by Ofgem for the purpose of selecting a shortlist of Bidders to progress to the ITT Stage, and which sets out the rules and requirements of the EPQ Stage.

## **EPQ Questionnaire**

The questionnaire that forms part of the EPQ Document.

## **EPQ Submission**

A Bidder's response to the EPQ Document.

## **G**

### **Generator Build**

A model for the construction of offshore transmission assets. Under the generator build option, the Developer carries out the preliminary works, procurement and construction of the Transmission Assets. The OFTO operates, maintains and decommissions the Transmission Assets.

## **I**

### **Indicative Transfer Value**

Ofgem's estimate of the economic and efficient costs which ought to be incurred in connection with:

- (a) for a Generator Build Tender Exercise, the development and construction of the relevant Transmission Assets; or
- (b) for an OFTO Build Tender Exercise, obtaining the relevant preliminary works.

### **Initial Transfer Value**

The initial transfer value for a Qualifying Project(s) based on information provided by the relevant Developer.

### **Invitation to Tender (ITT) Stage**

The stage of a Tender Exercise during which the Authority may determine which Bidder becomes the Preferred Bidder or whether to hold a BAFO stage. This stage starts from the distribution of the ITT Document to Bidders by Ofgem, and includes the preparation, submission and evaluation of ITT Submissions.

## **L**

### **Licence Grant**

Following its determination to grant an OFTO Licence to the Successful Bidder, the Authority confirms such determination in accordance with regulation 28(6) of the Tender Regulations and grants such OFTO Licence to the Successful Bidder pursuant to section 6(1)(b) of the Electricity Act 1989.

## **N**

### **NGET**

National Grid Electricity Transmission Plc. NGET owns and maintains the transmission system in England and Wales. It is also the national electricity transmission system operator (NETSO) for GB.

## **O**

### **Offshore Transmission Owner Licence (OFTO Licence)**

The licence awarded under section 6(1)(b) of the Electricity Act 1989 following a Tender Exercise authorising an OFTO to participate in the transmission of electricity in respect of the relevant Offshore Transmission System. The licence sets out an OFTO's rights and obligations as the offshore transmission asset owner and operator.

### **Offshore Transmission Owner (OFTO)**

The holder of an OFTO Licence.

### **Offshore Transmission System**

A Transmission System made up of Transmission Assets that is used for purposes connected with 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 under section 84(4) of the Energy Act 2004.

### **Ofgem**

Office of Gas and Electricity Markets. Ofgem, “the Authority” and “we” are used interchangeably in this document.

### **OFTO Build**

A model for the construction of offshore assets. Under the OFTO build option, the Developer obtains the connection offer and undertakes high level design and preliminary works. The OFTO constructs, operates, maintains and decommissions the Transmission Assets.

### **Ownership Unbundling**

The separation of the ownership and operation of a transmission system from the activities of electricity generation, gas production and energy supply. Ownership unbundling is set out in the Third Package and demonstrated through a certification process.

## **P**

### **PB Matters**

The matters to be resolved by the Preferred Bidder to the Authority’s satisfaction as specified in regulation 20(4)(a) or (b) of the Tender Regulations, as the case may be, before that Preferred Bidder becomes the Successful Bidder in accordance with regulation 27(a) of the Tender Regulations.

### **PB Stage**

The stage of a Tender Exercise during which the Preferred Bidder has to resolve certain matters in order that Ofgem may grant the OFTO Licence. This stage starts at the date of Ofgem’s notice to a Bidder that it has been selected as Preferred Bidder and ending at the date Ofgem determines that the Preferred Bidder has become the Successful Bidder and publishes a notice to that effect in accordance with regulation 27(2) of the Tender Regulations.

### **Portal**

The electronic tendering Portal described in the Tender Process Guidance Document.

### **Preferred Bidder (PB)**

In relation to a Qualifying Project/Projects, the Bidder determined by Ofgem following its evaluation of the submissions received, to which Ofgem intends to grant the OFTO Licence subject to the satisfaction of the conditions specified by Ofgem in accordance with the Tender Regulations in force at that time.

### **Preliminary Information Memorandum (PIM)**

The document which may be issued by Ofgem via the Portal at the PQ/EPQ Stage containing high level information in relation to a Qualifying Project/Projects.

### **Pre-Qualification (PQ) Stage**

The stage of a Tender Exercise starting from the publication of the PQ Document, including the preparation, submission and evaluation of PQ Submissions and ending once Ofgem has published the longlist of Bidders who have been invited to participate in the QTT Stage. Ofgem may instead decide to run an EPQ stage.

### **Project Finance**

Financing based upon a non-recourse or limited recourse financial structure where project debt and equity are used to finance the project.

### **Public Contracts Regulations**

The Public Contracts Regulations 2015 as amended from time to time.

## **Q**

### **Qualification to Tender (QTT) Stage**

The stage of a Tender Exercise starting from the distribution by Ofgem of the QTT Document to Bidders, including the preparation, submission and evaluation of the QTT Submissions and ending once Ofgem has published the shortlist of Bidders who are invited to participate in the ITT Stage. Ofgem may instead decide to run an EPQ stage.

### **Qualifying Project**

An offshore transmission project in respect of which Ofgem determines that the Developer has satisfied the requirements described in:

- (a) for Generator Build projects, paragraph 2 of Schedule 1 to the Tender Regulations, or will use its reasonable endeavours to satisfy the Qualifying Project requirements within a period specified by Ofgem; or
- (b) for OFTO Build projects, paragraph 1 of Schedule 1 to the Tender Regulations.

## **S**

### **SB Stage**

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 OFTO Licence in relation to a particular Qualifying Project/Projects.

## **Security**

Includes a charge over a bank account or any other asset, a deposit of money, a performance bond or bank guarantee, an insurance policy or a letter of credit.

## **Submission(s)**

A Bidder's or Qualifying Bidder's response to the requirements and criteria set out in the relevant stage specific tender document.

## **Successful Bidder (SB)**

The Preferred Bidder in a Tender Exercise who has resolved the PB Matters to the Authority's satisfaction, such that the Authority intends to grant to it an OFTO Licence.

## **T**

### **Tender Entry Conditions**

The requirements that a Developer must meet before commencement of a Tender Exercise, as described in paragraph 1 (for OFTO Build projects) or paragraph 2 (for Generator Build projects) of Schedule 2 to the Tender Regulations.

### **Tender Exercise**

The competitive process run by Ofgem in accordance with the Tender Regulations in order to identify a Successful Bidder to whom a particular OFTO is to be granted.

### **Tender Regulations**

The Electricity (Competitive Tenders for Offshore Transmission Licences) 2015.

### **Tender Revenue Stream (TRS)**

The revenue established through the tender process, which is the value set out in paragraph 4 of amended standard condition E12-J2 (Restriction of Transmission Revenue: Revenue from Transmission Owner Services) of the OFTO Licence.

### **Tender Revenue Stream**

A constant revenue stream in real terms submitted by the Qualifying Bidder for the Qualifying Project(s).

### **Tender Round**

One or more Tender Exercises being held or to be held by Ofgem with a view to determining the Successful Bidders to whom OFTO Licences are to be granted for each Qualifying Project subject to such Tender Exercises.

### **Tender Round 5 (TR5)**

The fifth competitive Tender Round for the grant of an OFTO Licence for the Dudgeon, Rampion, Race Bank, Galloper and Walney Extension Qualifying Projects.

### **Tender Process Guidance Document**

Guidance on the tender process published by Ofgem.

### **The Crown Estate**

The body that manages Crown property and that is responsible for awarding offshore wind leases for access to the seabed to wind farm operators. Each OFTO must enter into a lease or licence with The Crown Estate to be able to operate and maintain its Offshore Transmission System on the seabed.

### **Third Package**

A package of European Union legislation on European electricity and gas markets that entered into force on 3 September 2009.

### **Third Package Regulations**

The Electricity and Gas (Internal Markets) Regulations 2011 (as amended).

### **Transfer Agreement**

The agreement to transfer any:

- (a) property interests, rights or liabilities in relation to Transmission Assets;
- (b) shares or other interests in an undertaking in which any property interests, rights or liabilities in relation to Transmission Assets are vested; or
- (c) beneficial interest in any property interests, rights or liabilities or shares or other interests relating to Transmission Assets;

from a Developer to a Successful Bidder in respect of a Qualifying Project/Projects subject to a Tender Exercise.

### **Transmission Assets**

Are defined in paragraph 1(3)(a) of Schedule 2A of the Electricity Act 1989 as 'the transmission system in respect of which the OFTO Licence is (or is to be) granted or anything which forms part of that system'. The Transmission System is expected to include subsea export cables, onshore export cables, onshore and offshore substations, and any other assets, consents, property arrangements or permits required by an incoming OFTO in order for it to fulfil its obligations as a transmission operator.

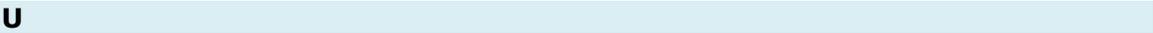
### **Transmission System**

Is defined in Section 4(4) of the Electricity Act 1989 as 'a system which consists (wholly or mainly) of high voltage lines and electrical plant, and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another'.

### **Transmission Services**

Those services which are provided or are to be provided to the system operator by another transmission licensee pursuant to standard condition E15 (Obligation to provide transmission services) of the OFTO Licence.

## **U**



### **Ultimate Controller**

Is defined in the standard conditions of the OFTO Licence.