

**Separation and Independence of the  
Transmission Business Compliance Statement**  
*September 2016*

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## Previous Issues

Issue	Signed	Date	Description
Final			Board Sign off

## **Separation and Independence of the Transmission Business Compliance Statement**

This statement is produced by Humber Gateway OFTO Limited, pursuant to Amended Standard Condition E12 – C2 (Separation and Independence of the Transmission Business) of the Offshore Electricity Transmission Licence granted to Humber Gateway OFTO Limited (registered in England and Wales with number 10053857) whose registered office is at 6th Floor, 350 Euston Road, London, NW1 3AX United Kingdom, Under Section 6 of the Electricity Act 1989.

## 1. Introduction and purpose

1.1. This Separation and Independence of the Transmission Business Compliance Statement (“the Statement”) has been prepared to secure compliance with paragraphs 1, 2 and 4 of Amended Standard Condition E12 – C2 (Separation and Independence of the Transmission Business) of the Offshore Electricity Transmission Licence (“the Licence”) held by Humber Gateway OFTO Limited (“HG OFTO”).

1.2. The purpose of this Statement is to describe the practices, procedures and systems which HG OFTO has adopted (or intends to adopt) to secure compliance with its obligations under:

- Amended Standard Condition E12 – C1: Conduct of the Transmission Business;
  - Standard Condition E6: Prohibition of Cross-subsidies; and
  - Standard Condition E7: Restriction on Activity and Financial Ring Fencing;
- of its Licence (together, “the Conditions”).

1.3. Additionally, the Statement sets out how HG OFTO shall comply with the requirements of the Amended Standard Condition E12-C2, whereas HG OFTO shall:

- (a) maintain appropriate managerial and operational independence of HG OFTO in undertaking its activities under its Licence, from any Associated Business;
- (b) except in so far as the Gas and Electricity Markets Authority (“the Authority”) consents to HG OFTO not doing so, ensure that:
  - (i) a transmission licensee that holds a System Operator licence and is responsible for co-ordinating and directing the flow of electricity onto or over the National Electricity Transmission System; and
  - (ii) any Associated Business of the licensee that is to generate or supply electricity shall not use or have access to:
    - (aa) premises or parts of premises occupied by persons engaged in, or engaged in respect of, the management or operation of the Transmission Business or any External Transmission Activities;
    - (bb) systems for the recording, processing or storage of data to which persons engaged in, or engaged in respect of, the management or operation of the Transmission Business or any External Transmission Activities also have access;
    - (cc) equipment, facilities or property employed for the management or operation of the Transmission Business or any External Transmission Activities; or
    - (dd) the services of persons who are (whether or not as their principal occupation) engaged in, or in respect of, the management or operation of the Transmission Business or any External Transmission Activities; and

(iii) it can and does, insofar as it is legally possible, prevent any person who has ceased to be engaged in, or in respect of, the management or operation of the Transmission Business from being engaged in, or in respect of, the activities of any Associated Business of HG OFTO until the expiry of an appropriate time from the date on which he ceased to be engaged by the Transmission Business, where that Associated Business is either

(aa) a transmission licensee that holds a System Operator licence and is responsible for co-ordinating and directing the flow of electricity onto or over the National Electricity Transmission System; or

(bb) authorised to generate or supply electricity.

1.4. HG OFTO is required to revise this Statement when circumstances change such that this Statement no longer secures compliance with the Conditions.

1.5. Any revisions to this Statement shall only become effective once the Authority has approved the revised Statement and once approved, this Statement may only be revised with the approval of the Authority.

## 2. Managerial and operational independence (Amended Standard Condition E12-C2)

- 2.1. HG OFTO has put in place an organisational and governance structure to ensure that it maintains managerial and operational independence from any Associated Business as per the requirements of Amended Standard Condition E12-C2(4)(a) and (b).
- 2.2. HG OFTO is a separate legally incorporated company with its own board of directors as per the requirements of Amended Standard Condition E12-C2(5) and E12-C2(4)(a).
- 2.3. HG OFTO produces separate ring-fenced statutory financial statements.
- 2.4. HG OFTO is owned and operated as follows:
  - (a). Balfour Beatty plc (“the Balfour Beatty Parent”), holds an indirect 20 per cent ownership interest in HG OFTO through Balfour Beatty Infrastructure Investments Limited (“BBIIL”), Balfour Beatty OFTO Holdings Limited and Humber Gateway OFTO Holdings Limited (“HGOHL”).
  - (b). Equitix Fund IV LP (acting through its manager Equitix Investment Management Limited) (“the Equitix Parent”) holds an indirect 80% ownership interest in HG OFTO through Equitix Fund Holdco 4 Limited, Equitix Capital Eurobond 4 Limited, Equitix Infrastructure 4 Limited and HGOHL.
  - (c). HGOHL holds a direct 100 per cent ownership interest in the Licensee and is owned indirectly as to 20% by the Balfour Beatty Parent and 80% by the Equitix Parent.
  - (d). Humber Gateway OFTO Intermediate Limited (“HGOIL”), a wholly owned subsidiary of HGOHL, will provide certain financing arrangements to the Licensee.
  - (e). Balfour Beatty Utility Solutions Limited (“BBUSL”), acting as agent for Balfour Beatty Group Limited (“BBGL”), will be the principal contractor of the Licensee for all operations and maintenance services, including providing a General Manager and Commercial Manager. Both BBUSL and BBGL are indirectly wholly owned subsidiaries of the Balfour Beatty Parent.
  - (f). Balfour Beatty OFTO Holdings Limited, Equitix Infrastructure 4 Limited, or any of their associated companies, will be the principal contractors of the Licensee for all management services including asset management and financial management.
  - (g). At the time this compliance statement is approved, it is envisaged that Balfour Beatty Investments (“BBIL”) will be the main principal contractor of the Licensee for all management services including asset management and financial management. Should this change, this statement will be revised accordingly.

# HUMBER GATEWAY OFTO

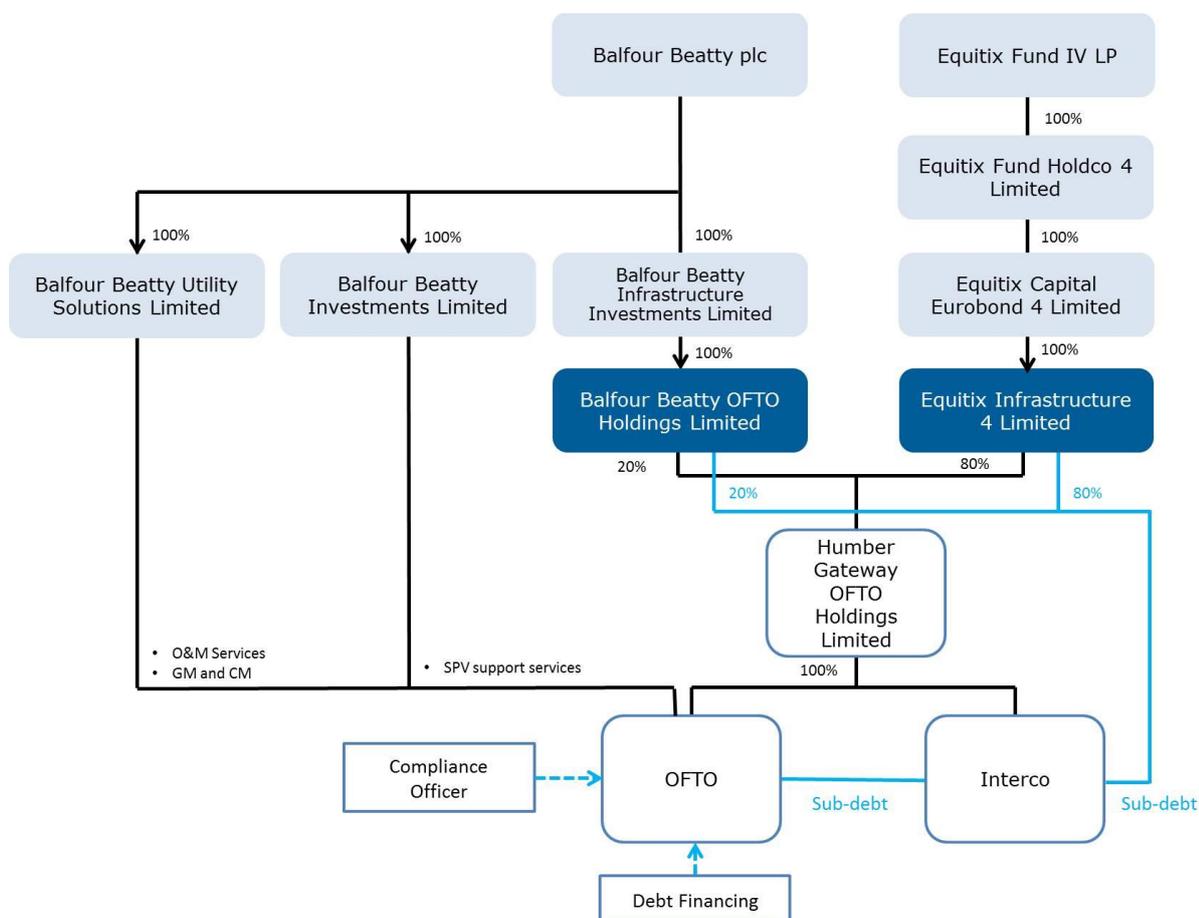


Figure 1 – Corporate Structure

- 2.5. HG OFTO's board of directors is comprised of four board members with two board members appointed indirectly by each ultimate parent company of its shareholders (the Balfour Beatty Parent, the Equitix Parent (together "Shareholder Parents")).
- 2.6. None of the Shareholder Parents controls an electricity undertaking which is a relevant producer or supplier (as those terms are defined in the Electricity Act 1989).
- 2.7. Each of the Shareholder Parents is a separate legal entity with its own board of directors. The Shareholder Parents are completely independent of each other.
- 2.8. BBUSL and BBIL are the two affiliated entities that provide services to HG OFTO. The entities have their own boards of directors which are separate from HG OFTO's board of directors.
- 2.9. None of the BBUSL directors serve or will serve as directors of HG OFTO or HGOHL.
- 2.10. One of BBIL's board members is also a member of HG OFTO's board of directors. However, the board of BBIL remains independent from HG OFTO and there are six further directors who are not members of HG OFTO's board of directors.

- 2.11. None of the HG OFTO directors are or will also be a director of an electricity undertaking which is a relevant producer or supplier (as those terms are defined in the Electricity Act 1989).
- 2.12. In order to comply with E12-C2(4)(b)(ii) and E12-C2(4)(b)(iii), HG OFTO has developed and implemented arrangements to restrict access to its premises, IT systems, equipment and staff providing services to HG OFTO to authorised persons who are engaged in the management or operation of the Transmission Business or any external transmission activity and who require access to the information for that purpose. These arrangements secure the protection of confidential information. Procedures are in place to ensure that authorisation is removed when a member of staff leaves or changes their role.
- 2.13. In order to comply with E12-C2(4)(b)(ii), BBUSL and BBIL have developed a separate Company Management System for the HG OFTO that contains a suite of documents that create a framework for the HG OFTO management and operations. These documents include a quality manual, policy statements, governance processes and operating manuals that address how authorised persons should approach various operating situations.
- 2.14. In order to comply with E12-C2(4)(b)(ii) and in accordance with Amended Standard Condition E12-C1(2), HG OFTO shall secure and procure separate premises, equipment, systems for recording and storing data, facilities, staff and property from those owned by HG OFTO and:
- Those owned by the System Operator responsible for co-ordinating and directing the flow of electricity onto or over the National Electricity Transmission System; and
  - Those owned by any Associated Business of the licensee that is authorised to generate or supply electricity.
- 2.15. BBUSL's relationship with HG OFTO is governed by an Asset Management Agreement. The agreement ensures that the General and Commercial Managers and any BBUSL staff providing services to HG OFTO work under the direction and control of HG OFTO's board of directors.
- 2.16. BBIL's relationship with HG OFTO is governed by a Secondment Agreement. The agreement ensures that BBIL's employees who are seconded to HG OFTO work under the direction and control of HG OFTO's board of directors.
- 2.17. HG OFTO's board of directors sets limits of authority for each of the BBUSL's and BBIL's staff and the "Company Board Procedures" set out levels of authority and matters reserved either to HG OFTO's board of directors or the shareholders for decision.
- 2.18. The directors of HG OFTO are required at all times to act in accordance with their fiduciary duties in relation to any decision taken as directors. They must discharge their duties and make decisions as a director of HG OFTO in accordance with all applicable laws, codes, regulations and its Licence and without regard to the interests of any other business as per the requirements of Amended Standard Condition E12-C2(6).

- 2.19. The directors receive support and training as required to ensure that they fully understand their obligations to HG OFTO and in particular the relevant Licence obligations in respect of which HG OFTO must remain compliant. The importance of business separation has been explained and reinforced to the directors and they have and will continue to be provided with regular reports on compliance.
- 2.20. Discussions regarding the importance of compliance with the obligations of the Licence generally have been held and will continue to be held between the directors of HG OFTO and the independent Compliance Officer. The role of the Compliance Officer and the Compliance Committee is explained in more detail under Monitoring, Responsibility and Reporting (Chapter 7).

### 3. Conduct of the Transmission Business (Amended Standard Condition E12-C1)

3.1. In accordance with Amended Standard Condition E12 – C1 (Conduct of the Transmission Business), HG OFTO shall conduct its Transmission Business in the manner best calculated to secure that, in complying with its obligations under the Licence:

- HG OFTO;
- Any affiliate or related undertaking of HG OFTO that is a subsidiary of or controlled by the ultimate controller of HG OFTO;
- Any user of the National Electricity Transmission System; or
- Any other transmission licensee

obtains no unfair commercial advantage including, in particular, any such advantage from a preferential or discriminatory arrangement, being, in the case of such an advantage accruing to HG OFTO, one in connection with a business other than its Transmission Business. HG OFTO is a special purpose vehicle (“SPV”) whose sole business is operating offshore transmission assets. HG OFTO has put in place systems and processes, in addition to those described above in section 2.16 and 2.17, to ensure compliance with Amended Standard Condition E12-C1 including those set out below.

3.2. Although HG OFTO does not have any direct employees, it has implemented processes to ensure that the relevant staff of its affiliates and related undertakings (including its principal contractors, BBUSL and BBIL) shall conduct the Transmission Business in the manner best calculated to ensure that it complies with its Licence obligations. These processes include requiring all such relevant personnel to comply with the Compliance Policy (the “Policy”) set out in Appendix 1, which ensures that all relevant personnel are aware that obtaining any unfair commercial advantage is not permitted. Adherence with the Policy is monitored by the Compliance Officer.

3.3. Further, the Policy issued to all authorised persons sets out the Licence restrictions on the transfer of confidential information. Breaches of the Policy are subject to disciplinary procedures as appropriate and will be reported to the Authority.

3.4. The HG OFTO board of directors, through the Compliance Committee and Compliance Officer, monitors whether BBUSL and BBIL fulfil their contractual compliance obligations to HG OFTO as outlined in the Asset Management Agreement and the Secondment Agreement, including compliance with the Licence obligations of HG OFTO.

3.5. HG OFTO has developed and implemented arrangements to restrict access to its premises, IT systems, equipment and staff providing services to HG OFTO to authorised persons who are engaged in the management or operation of the Transmission Business or any external transmission activity and who require access to the information for that purpose. These arrangements secure the protection of confidential information. Procedures are in place to ensure that authorisation is removed when a member of staff leaves or changes their role.

- 3.6. BBUSL and BBIL have developed a separate Company Management System for the HG OFTO that contains a suite of documents that create a framework for the HG OFTO management and operations. These documents include a quality manual, policy statements, governance processes and operating manuals that address how authorised persons should approach various operating situations.
- 3.7. In accordance with Amended Standard Condition E12-C1(2), HG OFTO shall secure and procure separate premises, equipment, systems for recording and storing data, facilities, staff and property from those owned by HG OFTO and:
- Those owned by the System Operator responsible for co-ordinating and directing the flow of electricity onto or over the National Electricity Transmission System; and
  - Those owned by any Associated Business of the licensee that is authorised to generate or supply electricity.
- 3.8. Where necessary and in connection with the operation of the Transmission Business, HG OFTO will provide use and access to certain of HG OFTO's premises, equipment, systems for recording and storing data, facilities, staff and property to third parties including, for example, Humber Gateway Offshore Wind Farm Limited and National Grid Electricity Transmission (UK) pursuant to the interface and other agreements executed with each of those parties.

## 4. Prohibition of Cross-subsidies (Standard Condition E6)

- 4.1. HG OFTO acknowledges the prohibition imposed on cross-subsidies pursuant to Standard Condition E6. The governance and compliance procedures set out in this Statement (including the Compliance Policy) that are adopted by HG OFTO provide the board of directors with a reasonable assurance that compliance with the conditions set out in Standard Condition E6 is and will continue to be achieved.
- 4.2. The only business which HG OFTO is engaged in is activities under its Licence. HG OFTO is a SPV and therefore the significant majority of its activities are governed by contracts and long-term debt funding requirements established at financial close. Such business activities are monitored by the board of directors and the independent funders who would require formal consultation before a significant change to the business would be allowed.
- 4.3. BBIL and BBUSL are two affiliated businesses that provide services to HG OFTO.
- 4.4. BBIL provides services to HG OFTO in accordance with the Secondment Agreement. These services are provided and priced on an "arm's length" basis at market prices, thus the arrangement does not breach Standard Condition E6. The pricing of the Secondment Agreement was established at financial close and formed part of the costing included within the tender submission for the Licence.
- 4.5. BBUSL provides services to HG OFTO in accordance with the Asset Management Agreement for an annual fee. BBUSL subcontracts with third parties in providing the O&M services, thus the pricing of the Asset Management Agreement is based on the prices offered by independent third parties, eliminating the risk of cross subsidisation.
- 4.6. Regular reviews will be undertaken by the HG OFTO board of directors through the Compliance Committee to ensure compliance with the terms of the Asset Management Agreement and the Secondment Agreement.

## 5. Restriction on Activity and Financial Ring Fencing (Standard Condition E7)

5.1. HG OFTO acknowledges that under Standard Condition E7 of its Licence it is not permitted to conduct any business or carry on any activity other than the Transmission Business with the exception of those permitted by its Licence.

5.2. The principal exceptions referred to in the paragraph above relate to:

- Investments in entities that carry out the Transmission Business of HG OFTO (as defined in Standard Condition E7(2)(a));
- Investments in subsidiaries that have the sole purpose of carrying out financing activities (as defined in Standard Condition E7(2)(b));
- Investments acquired in the normal course of HG OFTO's treasury activities, subject to HG OFTO maintaining in force, in relation to those operations, a system of internal controls (as defined in Standard Condition E7(2)(c)).

5.3. HG OFTO also understands that nothing in the Standard Condition E7 of its Licence should prevent:

- Any affiliate in which HG OFTO does not hold shares or other investments from conducting any business or carrying on any activity (as defined in Standard Condition E7(3)(a));
- HG OFTO from holding shares as, or performing the supervisory or management functions of, an investor in respect of any body corporate in which it holds an interest (as defined in Standard Condition E7(3)(b));
- HG OFTO from performing the supervisory or management functions of a holding company in respect of any subsidiary (as defined in Standard Condition E7(3)(c));
- HG OFTO from carrying on any other business activity to which the Authority has given its consent in writing (as defined in Standard Condition E7(3)(d));
- HG OFTO or an affiliate or related undertaking in which HG OFTO holds shares or other investments from conducting de minimis business (as defined in Standard Condition E7(4)(a)) provided that certain limitations are not exceeded (as specified in Standard Condition E7(4)(b)).

5.4. It is not envisaged that HG OFTO will conduct any other business apart from managing and operating transmission assets.

5.5. HG OFTO is an SPV which is established solely for the purpose of managing and operating HG offshore transmission assets. Under the financing documents and the shareholder agreement there are restrictions in place which prevent HG OFTO from carrying out any other business activities outside of managing and operating the transmission assets.

- 5.6. The directors are aware of the general prohibition relating to the carrying out of non-Transmission Business (subject to certain exceptions) and would not permit HG OFTO to engage in any prohibited activity. The Company Board Procedure document which is in place, informs the directors that Authority, funder, and shareholder consent is required prior to any acquisition of shares or other investments.
- 5.7. In accordance with Standard Condition E7, HG OFTO is ring-fenced. HG OFTO is a SPV financed through non-recourse project finance and established as a separate legal entity. The financial performance of HG OFTO is not dependent upon the financial performance of any unauthorised business.

## 6. Monitoring, responsibility and reporting

- 6.1. The board of directors of HG OFTO is responsible for ensuring that HG OFTO complies with the obligations of the Licence generally and this Statement in particular, and takes all reasonable steps to ensure compliance with the terms of this Statement.
- 6.2. HG OFTO has established a Compliance Committee (as required by Amended Standard Condition E12-C4 (4)) to specifically monitor compliance with the conditions of the Licence and the Compliance Committee reports to the board of directors for HG OFTO and HGOHL. The Compliance Committee is scheduled to meet on an annual basis and will consider any relevant reports from BBUSL, BBIL and the Compliance Officer.
- 6.3. HG OFTO has appointed Henderson Loggie as an independent Compliance Officer (as required by Amended Standard Condition E12-C4 (1)). Henderson Loggie is responsible for facilitating compliance with certain conditions of the Licence, including the conditions set out in paragraph 1 of this Statement. This will include providing relevant advice and information to HG OFTO (including individuals on the board of directors) and its Compliance Committee (as specified in Amended Standard Condition E12-C4(7)(a)).
- 6.4. The Compliance Officer is a third party independent from the operational aspects of HG OFTO. The Compliance Officer is not engaged in the management or operation of the HG OFTO's transmission system or the activities of any Associated Business. This characteristic allows the Compliance Officer to form an objective view as to HG OFTO's compliance with the Transmission Business separation requirements of the Licence, which is independent of any views that may be expressed by the management or the HG OFTO board of directors. The Compliance Officer is also able to offer independent advice in relation to ad-hoc compliance issues which may arise.
- 6.5. The duties of the Compliance Officer are described in Amended Standard Condition E12-C4(7), and include, among others, the requirement to report annually to the Compliance Committee and to the HG OFTO board of directors as to its activities which will indicate HG OFTO's compliance or otherwise with the obligations of this Statement in particular. Thereafter, HG OFTO will report to the Authority and, amongst other matters, will confirm compliance or otherwise with the obligations of this Statement.
- 6.6. The Compliance Committee, the Compliance Officer and the HG OFTO board of directors monitor the activities of HG OFTO in relation to compliance with all Licence obligations.
- 6.7. HG OFTO produces an annual report of its compliance with the relevant duties during the year and its implementation of the practices, procedures and systems adopted in accordance with Amended Standard Licence Condition E12-C2(2). The report covers the requirements outlined in Amended Standard Licence Condition E12-C4(9) and is submitted to the Authority and published on HG OFTO's website as per the requirements of Amended Standard Licence Condition E12-C4(10).

- 6.8. In the event the Compliance Officer or any member of the Compliance Committee becomes aware of a Licence breach or potential breach, then an ad-hoc meeting of the Compliance Committee will be called to consider breach or potential breach. The Compliance Committee will make a recommendation to the HG OFTO board of directors and where appropriate the HG OFTO board of directors will be convened to consider the appropriate response.

## 7. Investigation of complaints regarding compliance with this Statement

- 7.1. The Compliance Officer is also responsible for investigating all complaints in relation to compliance with this Statement and the Licence (as specified in Amended Standard Condition E12-C4(6)), and will be allocated such resources and assistance as it deems necessary to complete that investigation (as specified in Amended Standard Condition E12-C4(5)).
- 7.2. Any complaints or queries relating to business separation should be addressed in the first instance to:

The Compliance Officer  
Humber Gateway OFTO Limited  
6th Floor  
350 Euston Road  
London  
NW1 3AX

## 8. Approval

- 8.1. The board of directors of HG OFTO has endorsed this Statement prior to its submission to the Authority for approval.

## Appendix I – Compliance Policy

1. The purpose of this Compliance Policy (the “Policy”) is to ensure that the directors and other relevant personnel are aware of and comply with the obligations of the Licence granted to Humber Gateway OFTO Limited (“HG OFTO”).
2. All relevant personnel are required to confirm their acceptance of and compliance with this Policy on an annual basis.
3. Who must abide by the code?
  - 3.1. All directors of HG OFTO, and employees of its affiliates involved in any activities in relation to the Transmission Business of HG OFTO or the Transmission Business of HG OFTO's affiliates;
  - 3.2. Employees and consultants of BBUSL engaged in the management and operation of HG OFTO's Transmission Business or the Transmission Business of any of HG OFTO's affiliates;
  - 3.3. Employees and consultants of BBIL engaged in the management and operation of HG OFTO's Transmission Business or the Transmission Business of any of HG OFTO's affiliates; and
  - 3.4. Any other related businesses of those groups that may provide services for the purposes of the management and operation of the Transmission Business of HG OFTO or the Transmission Business of HG OFTO affiliates.
4. What requirements must relevant personnel abide by and where can these be found?
  - 4.1. HG OFTO's transmission licence
    - Standard Condition E6: Prohibition of Cross-subsidies;
    - Standard Condition E7: Restriction on Activity and Financial Ring Fencing;
    - Amended Standard Condition E12 - C1: Conduct of the Transmission Business; and
    - Amended Standard Condition E12 - C2: Separation and Independence of the Transmission Business;
  - 4.2. Asset Management Agreement available from HG OFTO's Shareholder Representative or its internal Compliance Officer.
  - 4.3. Secondment Agreement available from HG OFTO's Shareholder Representative or its internal Compliance Officer.
5. What are the consequences of breaching these requirements?
  - 5.1. Failure to comply could result in adverse consequences for HG OFTO, including:
    - Financial penalty;
    - Criminal prosecution;

- Liability payments to a third party for breach of contract;
- Investigations and other enforcement action by Ofgem;
- Additional and more onerous Licence conditions;
- Serious damage to HG OFTO's reputation

Breach of this Policy will be treated as a disciplinary matter and will be reported to the Authority.

## 6. What should be done if a breach is discovered?

6.1. Any breach of the Policy by relevant personnel whether deliberate or unintentional, must be immediately reported to a member of the Compliance Committee of HG OFTO.

## 7. Confidential information

7.1. Any information relating to or deriving from the management or operation of HG OFTO's Transmission Business is to be treated as confidential and should not be disclosed except where HG OFTO and its affiliates are permitted to disclose information under HG OFTO's Licence including by virtue of:

- Any requirement of a competent authority as defined in Amended Standard Condition E12 – C3 (Restriction on use of certain information) which term includes inter alia the Secretary of State, Ofgem and the Compliance Officer and would also include a stock exchange or financial regulator;
- Conditions of the transmission licence granted to HG OFTO;
- Any other requirement of law;
- The rules of the Electricity Arbitration Association or of any judicial or other arbitral process or tribunal of competent jurisdiction;
- Information being provided by or relating to any person who has notified (or otherwise agreed with) HG OFTO that it need not be treated as confidential; and
- Where information, not being provided by or relating to any person other than HG OFTO, is placed in the public domain or where such information is required for assisting the holder of a co-ordination licence (e.g. NGET), to prepare for and plan and develop the operation of the National Electricity Transmission System;

7.2. In this context Transmission Business includes the authorised businesses of HG OFTO or any affiliate or related undertaking in the planning or development or construction or operation or maintenance of a Licensee's transmission system.

7.3. It is therefore permissible to share information between authorised Transmission Businesses of HG OFTO, or any affiliate or related undertaking, with an authorised Transmission Business, for the purpose of the efficient planning or development or construction or operation or maintenance of HG OFTO's transmission system, provided that no unfair commercial advantage is obtained as stated in Amended Standard Condition E12-C1(1). Where a person is engaged in both the business of HG OFTO and is an affiliate or related undertaking participating or intending to participate in a competitive tender exercise to be appointed as an offshore transmission owner, it is not

permissible for the affiliate or related undertaking to use any information received by HG OFTO from NGET (or an analogous organisation) which is not generally available to other bidders. For the avoidance of doubt, general expertise gained from being involved in the business of HG OFTO may be used by an affiliate or related undertaking participating or intending to participate in a competitive tender exercise.

7.4. An unfair commercial advantage will be presumed where there is a financial benefit obtained by either HG OFTO or affiliate or related undertaking of HG OFTO entering into a commercial arrangement with HG OFTO since the date of licence grant and financial close where such an arrangement has not been benchmarked or market tested and is on materially different terms to any such similar arrangement entered into at licence grant and financial close and is based on the knowledge of information confidential to HG OFTO.

8. Relevant personnel must not:

8.1. Provide information that is commercially confidential to HG OFTO to any affiliate or related undertaking of HG OFTO or that of any third party, except:

- To the extent that such information is required for the affiliate or related undertaking of HG OFTO (which is not a relevant producer or supplier) or third party to perform an activity under the terms of a contract which supports the management or operation of the Transmission Business licensed to HG OFTO provided the use of such information does not confer an unfair commercial advantage as set out above and where the provision of such information is governed by suitable confidentiality restrictions; or
- To personnel of any holder of a transmission licence engaged in the External Transmission Activities of that transmission licence holder, to the extent necessary for the performance by such personnel of those External Transmission Activities, and the use by such personnel of that information for that purpose provided the use of such information does not confer an unfair commercial advantage as set out above and where the provision of such information is governed by suitable confidentiality restrictions;
- To personnel engaged in the planning or development or construction or operation or maintenance of an external transmission system provided that the use of such information does not confer an unfair commercial advantage as set out above and where the provision of such information is governed by suitable confidentiality restrictions; or
- Where otherwise permitted by HG OFTO's Licence;

8.2. Procure any cross-subsidy to or from HG OFTO or any affiliate or related undertaking of HG OFTO whether by means of direct or indirect financial assistance, or non-cost-reflective charges for services, use of facilities or otherwise; or

- 8.3. Enter into any new commercial arrangement between HG OFTO and an affiliate or related undertaking after financial close unless it is on an arm's length basis and on normal commercial terms as approved through the related party contract authorisation process by HG OFTO's board of directors.
9. Where a person is engaged in both the business of HG OFTO and is an affiliate or related undertaking participating or intending to participate in a tender for an external transmission system, it is not permissible for the affiliate or related undertaking to use any information received by HG OFTO from NGET (or an analogous organisation) which is not generally available to other bidders. For the avoidance of doubt, general expertise gained from being involved in the business of HG OFTO may be used by an affiliate or related undertaking participating in the tender process.
10. Relevant personnel must:
- 10.1. Ensure that adequate records are maintained in respect of all new services provided to HG OFTO by affiliates or related undertakings since financial close so as to demonstrate the procedures followed to ensure such arrangements do not confer an unfair commercial advantage as set out above;
- 10.2. Ensure that the reporting requirements as specified or implied by the terms of the Secondment agreement are communicated in a timely manner, including:
- Immediate notification of any actual or potential regulatory breaches; and
  - In the manner, detail and frequency as agreed following implementation of the Secondment agreement;
- 10.3. Ensure that the cost of services under any new joint contracts entered into with an affiliate or related undertaking or a third party with HG OFTO and any other Transmission Business is fairly allocated to HG OFTO and each of the Transmission Businesses such that there is no cross-subsidy given to any Transmission Business.
11. Further guidance/advice
- 11.1. If you need further guidance, in the first instance speak to HG OFTO's General Manager, OFTO representative or the Independent Compliance Officer.