



# **THANET OFTO LTD**

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

**16 April 2015**

Prepared pursuant to Amended Standard Condition E12 – C2 (Separation and Independence of the Transmission Business) of the Offshore Electricity Transmission Licence and the consent issued by the Gas and Electricity Markets Authority under paragraphs 4(b)(i) and 4(b)(ii) of Amended Standard Condition E12 – C2 of the Offshore Electricity Transmission Licence granted to Thanet OFTO Ltd (registered in England and Wales with number 7343534) whose registered office is at 350 Euston Road, London, United Kingdom, NW1 3AX under Section 6 of the Electricity Act 1989.

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## Previous Issues

Issue	Date	Description
1	16 April 2015	Board Sign Off <i>R. Collins</i>

## 1 Introduction and purpose

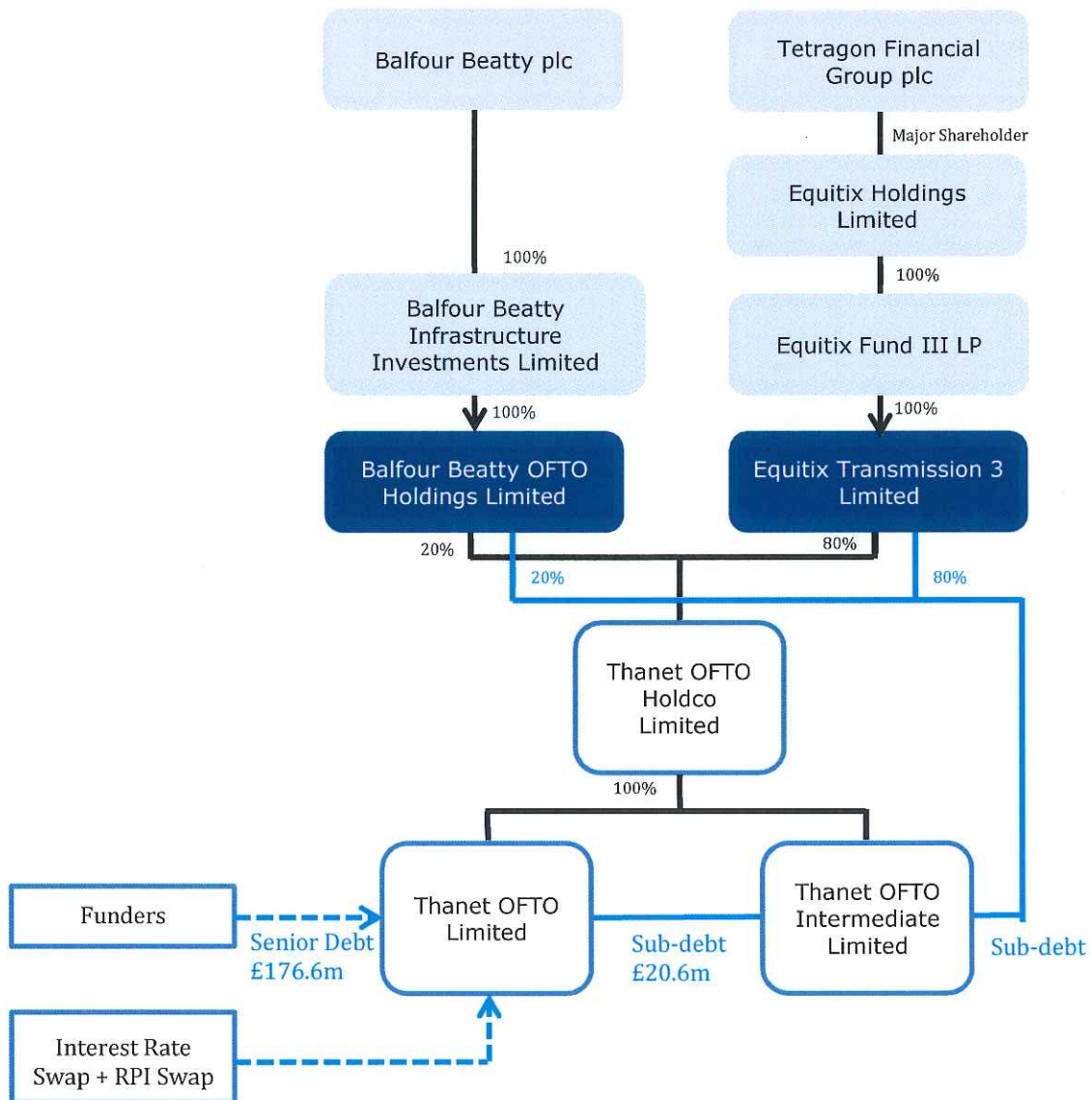
- 1.1 This Separation and Independence of the Transmission Business Statement of Compliance (“the Statement”) has been prepared to secure compliance with paragraphs 1, 2 and 4 of Amended Standard Condition E12 – C2 (Separation and Independence of the Transmission Business) of the Offshore Electricity Transmission Licence (“the Licence”) held by Thanet OFTO Ltd (“Thanet OFTO”).
- 1.2 The purpose of this Statement is to describe the practices, procedures and systems which Thanet 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 Thanet OFTO shall comply with the requirements of the Amended Standard Condition E12-C2, whereas Thanet OFTO shall:
- 1.3.1 maintain appropriate managerial and operational independence of Thanet OFTO in undertaking its activities under its Licence, from any associated business;
- 1.3.2 except in so far as the Gas and Electricity Markets Authority (“the Authority”) consents to Thanet OFTO not doing so, ensure that:
- no business of Thanet OFTO (or of any affiliate or related undertaking of Thanet OFTO), other than the transmission business or any external transmission activities, may use or have access to:
    - (i) 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;
    - (ii) 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;
    - (iii) equipment, facilities or property employed for the management or operation of the transmission business or any external transmission activities; or
    - (iv) 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;
  - 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 other business of Thanet OFTO (or of any affiliate or related undertaking of Thanet OFTO) until the expiry of an appropriate time from the date on which he ceased to be engaged by the transmission business.
- 1.4 Thanet 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 Authority consent

- 2.1 With regard to section 1.3.2, the Authority has issued consent under paragraph 4(b)(i) of Amended Standard Condition E12-C2 of the Licence granted under Section 6 of the Electricity Act 1989 to Thanet OFTO to allow associated businesses of Thanet OFTO, to use and have access to:
- premises or parts of premises occupied by Thanet OFTO;
  - systems of Thanet OFTO for the recording, processing or storage of data;
  - equipment, facilities and property employed by Thanet OFTO; and
  - services of persons who are engaged by Thanet OFTO,
- for the purpose of the management or operation of the transmission business.
- 2.2 Thanet OFTO has also obtained consent from the Authority under paragraph 4(b)(ii) of Amended Standard Condition E12-C2 to enable any person who ceases to be engaged in the management or operation of the transmission business to be engaged in, or in respect of, the activities of any other business of Thanet OFTO or any affiliate or related undertaking of Thanet OFTO specified in paragraph 2.4, notwithstanding the expiry of an appropriate time from the date on which that person ceased to be engaged by the transmission business.
- 2.3 A copy of the Authority's consent under amended standard licence condition E12-C2 is published here: [TBD]
- 2.4 For the purpose of the above the Authority's consent is provided in respect of the Thanet OFTO's shareholder, Balfour Beatty plc and each of its affiliates and related undertakings except any affiliate or related undertaking which is or becomes authorised under the Electricity Act 1989 to generate, supply, or coordinate or direct the flow of electricity. Please refer to the corporate structure of Thanet OFTO below.
- 2.5 Such consent would cease to have effect in relation to an associated business of Thanet OFTO should that undertaking become authorised under the Electricity Act 1989 to generate, supply, or coordinate or direct the flow of electricity.


### **3 Managerial and operational independence (Amended Standard Condition E12-C2)**

- 3.1 Thanet 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).
- 3.2 Thanet OFTO is a separate legally incorporated company with its own board of directors as per the requirements of Amended Standard Condition E12-C2(5).
- 3.3 Thanet OFTO produces separate ring-fenced statutory financial statements.
- 3.4 Thanet OFTO is owned and operated as follows:
  - 3.4.1 Balfour Beatty plc (“the Balfour Beatty Parent”), holds an indirect 20 per cent ownership interest in Thanet OFTO through Balfour Beatty Infrastructure Investments Limited (“BBIIL”), Balfour Beatty OFTO Holdings Limited and Thanet OFTO Holdings Limited (“Thanet OHL”).
  - 3.4.2 Tetragon Financial Group plc (“the Equitix Parent”) holds an indirect 80 per cent ownership interest in Thanet OFTO through Equitix Holdings Limited, Equitix Fund III LP, Equitix Transmission 3 Limited and Thanet OHL.
  - 3.4.3 Thanet OHL holds a direct 100 per cent ownership interest in the Licensee, of which 20 per cent is owned indirectly by the Balfour Beatty Parent and 80 per cent is owned indirectly by the Equitix Parent.
  - 3.4.4 Thanet OFTO Intermediate Limited (“Thanet OIL”), a wholly owned subsidiary of Thanet OHL, will provide certain financing arrangements to the Licensee.
  - 3.4.5 Balfour Beatty Utility Solutions Limited (“BBUS”), 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, BBUS and BBGL are indirectly wholly owned subsidiaries of the Balfour Beatty Parent,
  - 3.4.6 Balfour Beatty OFTO Holdings Limited, Equitix Transmission 3 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.
  - 3.4.7 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.
- 3.5 As specified in paragraphs 2.1 and 2.2, the Authority has issued a consent under paragraph 4(b) of Amended Standard Condition E12-C2 to allow associated businesses of Thanet OFTO to use and have access to the Thanet OFTO’s premises or parts of premises; systems for the recording, processing or storage of data; equipment, facilities and property employed or engaged in respect of the transmission business; and the services of persons who are engaged in management or operation of Thanet OFTO. The consent can be found here <https://www.ofgem.gov.uk/ofgem-publications/91992/5.thanet-fc-8-e12-c2consent.pdf>.



**Figure 1 – Corporate Structure**

- 3.6 Thanet OFTO's board of directors is comprised of [two] board members appointed indirectly by the ultimate parent company of its shareholder (the Balfour Beatty Parent).
- 3.7 The Shareholder Parent does not control an electricity undertaking which is a relevant producer or supplier (as those terms are defined in the Electricity and Gas (Internal Markets) Regulations 2011).
- 3.8 The Shareholder Parent is a separate legal entity with its own board of directors.
- 3.9 BBUS and BBIL are the two affiliated entities that provide services to Thanet OFTO. The entities have their own boards of directors which are separate from Thanet OFTO's board of directors.
- 3.10 None of the BBUS directors serve or will serve as directors of Thanet OFTO or Thanet OHL.
- 3.11 Two of BBIL's board members are also members of Thanet OFTO's board of directors. However, the board of BBIL remains independent from Thanet OFTO and there are five further directors who are not members of Thanet OFTO's board of directors.

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- 3.12 None of the Thanet 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 and Gas (Internal Markets) Regulations 2011).
  - 3.13 BBUS' relationship with Thanet OFTO is governed by an Operation and Maintenance ("O&M") agreement. The agreement ensures that the General and Commercial managers and any BBUS staff providing services to Thanet OFTO work under direction and control of Thanet OFTO's board of directors.
  - 3.14 BBIL's relationship with Thanet OFTO is governed by a Secondment agreement. The agreement ensures that BBIL's employees who are seconded to Thanet OFTO work under direction and control of Thanet OFTO's board of directors.
  - 3.15 Thanet OFTO's board of directors sets limits of authority for each of the BBUS' and BBIL's staff and the "Company Board Procedures" set out levels of authority and matters reserved either to Thanet OFTO's board of directors or the shareholder for decision.
  - 3.16 The directors of Thanet 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 Thanet 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).
  - 3.17 The directors receive support and training as required to ensure that they fully understand their obligations to Thanet OFTO and in particular the relevant Licence obligations in respect of which Thanet 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.
  - 3.18 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 Thanet 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).

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

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

- Thanet OFTO;
- any affiliate or related undertaking of Thanet 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 Thanet OFTO, one in connection with a business other than its transmission business. Thanet OFTO is a special purpose vehicle (SPV) whose sole business is operating offshore transmission assets. Thanet OFTO has put in place systems and processes, in addition to those described above in section 3.17 and 3.18, to ensure compliance with Amended Standard Condition E12-C1 including those set out below.

4.2 Although Thanet 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, BBUS 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.

4.3 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.


4.4 The Thanet OFTO board of directors, through the Compliance Committee and Compliance Officer, monitors whether BBUS and BBIL fulfil their contractual compliance obligations to Thanet OFTO as outlined in the O&M agreement and the Secondment agreement, including compliance with the Licence obligations of Thanet OFTO.

4.5 Thanet OFTO has received consent from the Authority to allow associated businesses of Thanet OFTO to have access to the use of premises, IT systems, equipment and staff providing services to Thanet OFTO. However, Thanet OFTO has developed and implemented arrangements to restrict access to the above to authorised persons who are engaged in 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.

4.6 BBUS and BBIL have developed a separate suite of documents that would create a framework for Thanet OFTO management and operations. These documents include policy statements and operating manuals that would address how authorised persons should approach various operating situations. Furthermore, in carrying out its activities BBUS relies on certain management systems provided by a third party subcontractor thus allowing for greater operational separation from Thanet OFTO.

4.7 In accordance with Amended Standard Condition E12-C1(2), Thanet OFTO shall secure and procure separate premises, equipment, systems for recording and storing data, facilities, staff and property from:



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- those owned by a transmission licensee that, holds a co-ordination licence, and is 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.
- 4.8 As specified in sections 2.1, 2.2 and 3.5 above, the Authority has issued a consent under paragraph 4(b) of Amended Standard Condition E12-C2 to allow associated business of Thanet OFTO to use and have access to Thanet OFTO's premises or parts of premises; systems for the recording, processing or storage of data; equipment, facilities and property employed or engaged in respect of the transmission business; and the services of persons who are engaged in management or operation of Thanet OFTO. The consent can be found here: <https://www.ofgem.gov.uk/ofgem-publications/91992/5.thanet-fc-8-e12-c2consent.pdf>
- 4.9 In addition, where necessary and in connection with the operation of the transmission business, Thanet OFTO will provide use and access to certain of Thanet OFTO's premises, equipment, systems for recording and storing data, facilities, staff and property to third parties including, for example, Thanet Offshore Winds Limited and National Grid Electricity Transmission (UK) and UK Power Networks pursuant to the interface and other agreements executed with each of those parties.

## **5 Prohibition of Cross-subsidies (Standard Condition E6)**

- 5.1 Thanet 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 Thanet OFTO provide the board of directors with a reasonable assurance that the compliance with the conditions set out in Standard Condition E6 is and will continue to be achieved.
- 5.2 The only business which Thanet OFTO is engaged in is activities under its Licence. Thanet 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.
- 5.3 BBIL and BBUS are two affiliated businesses that provide services to Thanet OFTO.
- 5.4 BBIL provides services to Thanet 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.
- 5.5 BBUS provides services to Thanet OFTO in accordance with the O&M agreement for an annual fee. BBUS subcontracts with a number of third parties, including Siemens and Natural Power, in providing the O&M services thus the pricing of the O&M agreement is based on the prices offered by independent third parties eliminating the risk of cross subsidisation.
- 5.6 Regular reviews will be undertaken by the Thanet OFTO board of directors through the Compliance Committee to ensure compliance with the terms of the O&M agreement and the Secondment agreement.

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

- 6.1 Thanet 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.
- 6.2 The principal exceptions referred to in the paragraph above relate to:
- investments in entities that carry out the transmission business of Thanet 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 Thanet OFTO's treasury activities, subject to Thanet OFTO maintaining in force, in relation to those operations, a system of internal controls (as defined in Standard Condition E7(2)(c)).
- 6.3 Thanet OFTO also understands that nothing in the Standard Condition E7 of its Licence should prevent:
- any affiliate in which Thanet 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));
  - Thanet 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));
  - Thanet 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));
  - Thanet 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));
  - Thanet OFTO or an affiliate or related undertaking in which Thanet 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)).
- 6.4 It is not envisaged that Thanet OFTO will conduct any other business apart from managing and operating transmission assets.
- 6.5 Thanet OFTO is an SPV which is established solely for the purpose of managing and operating Thanet offshore transmission assets. Under the financing documents and the shareholder agreement there are restrictions in place which prevent Thanet OFTO from carrying out any other business activities outside of managing and operating the transmission assets.
- 6.6 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 Thanet 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.
- 6.7 In accordance with Standard Condition E7, Thanet OFTO is ring-fenced. Thanet OFTO is a SPV financed through non-recourse project finance and established as a separate legal entity. The financial performance of Thanet OFTO is not dependent upon the financial performance of any unauthorised business.

## 7 Monitoring, responsibility and reporting

- 7.1 The board of directors of Thanet OFTO is responsible for ensuring that Thanet 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.
- 7.2 Thanet 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 Thanet OFTO and Thanet OHL. The Compliance Committee is scheduled to meet on an annual basis and will consider any relevant reports from BBUS, BBIL and the Compliance Officer.
- 7.3 Thanet 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 Thanet OFTO (including individuals on the board of directors) and its Compliance Committee (as specified in Amended Standard Condition E12-C4(7)(a)).
- 7.4 The Compliance Officer is a third party independent from the operational aspects of Thanet OFTO. The Compliance Officer is not engaged in the management or operation of the Thanet OFTO's transmission system or the activities of any associated business. This characteristic allows the Compliance Officer to form an objective view as to Thanet 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 Thanet OFTO board of directors. The Compliance Officer is also able to offer independent advice in relation to ad-hoc compliance issues which may arise.
- 7.5 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 Thanet OFTO board of directors as to its activities which will indicate Thanet OFTO's compliance or otherwise with the obligations of this Statement in particular. Thereafter, Thanet OFTO will report to the Authority and, amongst other matters, will confirm compliance or otherwise with the obligations of this Statement.
- 7.6 The Compliance Committee, the Compliance Officer and the Thanet OFTO board of directors monitor the activities of Thanet OFTO in relation to compliance with all Licence obligations.
- 7.7 Thanet 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 Thanet OFTO's website as per the requirements of Amended Standard Licence Condition E12-C4(10).
- 7.8 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 Thanet OFTO board of directors and where appropriate the Thanet OFTO board of directors will be convened to consider the appropriate response.



## **8 Investigation of complaints regarding compliance with this Statement**

- 8.1 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)).
- 8.2 Any complaints or queries relating to business separation should be addressed in the first instance to:

The Compliance Officer  
Thanet OFTO Ltd  
350 Euston Road  
London  
NW1 3AX



## **9 Approval**

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

## Appendix I – Compliance Policy

- 1.1. 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 Thanet OFTO Ltd (“Thanet OFTO”).
- 1.2. All relevant personnel are required to confirm their acceptance of and compliance with this Policy on an annual basis.
- 1.3. Who must abide by the code?
  - 1.3.1. all directors of Thanet OFTO, or employees of its affiliates involved in any activities in relation to the transmission business of Thanet OFTO or the transmission business of Thanet OFTO's affiliates;
  - 1.3.2. employees and consultants of BBUS engaged in the management and operation of Thanet OFTO's transmission business or the transmission business of any of Thanet OFTO's affiliates;
  - 1.3.3. employees and consultants of BBIL engaged in the management and operation of Thanet OFTO's transmission business or the transmission business of any of Thanet OFTO's affiliates; and
  - 1.3.4. any other related businesses of those groups that may provide services for the purposes of the management and operation of the transmission business of Thanet OFTO or the transmission business of Thanet OFTO affiliates.
- 1.4. What requirements must relevant personnel abide by and where can these be found?
  - 1.4.1. Thanet 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;
  - 1.4.2. O&M agreement available from Thanet OFTO's Shareholder Representative or its internal Compliance Officer.
  - 1.4.3. Secondment agreement available from Thanet OFTO's Shareholder Representative or its internal Compliance Officer.
- 1.5. What are the consequences of breaching these requirements?
  - 1.5.1. Failure to comply could result in adverse consequences for Thanet 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 Thanet OFTO's reputationbreach of this Policy will be treated as a disciplinary matter and will be reported to the Authority.
- 1.6. What should be done if a breach is discovered?

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

#### 1.7. Confidential information

1.7.1. Any information relating to or deriving from the management or operation of Thanet OFTO's transmission business is to be treated as confidential and should not be disclosed except where Thanet OFTO and its affiliates are permitted to disclose information under Thanet 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 Thanet 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) Thanet OFTO that it need not be treated as confidential; and
- where information, not being provided by or relating to any person other than Thanet 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;

1.7.2. In this context transmission business includes the authorised businesses of Thanet OFTO or any affiliate or related undertaking in the planning or development or construction or operation or maintenance of a Licensee's transmission system.

1.7.3. It is therefore permissible to share information between authorised transmission businesses of Thanet 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 Thanet 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 Thanet 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 Thanet 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 Thanet OFTO may be used by an affiliate or related undertaking participating or intending to participate in a competitive tender exercise.

1.7.4. An unfair commercial advantage will be presumed where there is a financial benefit obtained by either Thanet OFTO or affiliate or related undertaking of Thanet OFTO entering into a commercial arrangement with Thanet 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 Thanet OFTO.



1.8. Relevant personnel must not:

1.8.1. provide information that is commercially confidential to Thanet OFTO to any affiliate or related undertaking of Thanet OFTO or that of any third party, except:

- to the extent that such information is required for the affiliate or related undertaking of Thanet 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 Thanet 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 or 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 Thanet OFTO's Licence;

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

1.8.3. enter into any new commercial arrangement between Thanet 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 Thanet OFTO's board of directors.


1.9. Where a person is engaged in both, the business of Thanet 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 Thanet 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 Thanet OFTO may be used by an affiliate or related undertaking participating in the tender process.

1.10. Relevant personnel must:

1.10.1. ensure that adequate records are maintained in respect of all new services provided to Thanet 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;

1.10.2. 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

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- in the manner, detail and frequency as agreed following implementation of the Secondment agreement;
- 1.10.3. ensure that the cost of services under any new joint contracts entered into with an affiliate or related undertaking or a third party with Thanet OFTO and any other transmission business is fairly allocated to Thanet OFTO and each of the transmission businesses such that there is no cross-subsidy given to any transmission business.
- 1.11. Further guidance/advice
- 1.11.1. If you need further guidance, in the first instance speak to Thanet OFTO's General Manager or the Independent Compliance Officer.