Net Zero Teesside Project

Planning Inspectorate Reference: EN010103

Land at and in the vicinity of the former Redcar Steel Works site, Redcar and in Stockton-on-Tees, Teesside

The Net Zero Teesside Order

Document Reference: 9.22 Written Summary of Oral Submissions for Issue Specific Hearing 3 (ISH3)

Planning Act 2008

Applicants: Net Zero Teesside Power Limited (NZT Power Ltd) & Net Zero North Sea Storage Limited (NZNS Storage Ltd)

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Author	Imogen Dewar (ID)		
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Approved By	Nick McDonald (NM)		
Signed	NM	**Date**	02.08.22
Document Owner	Pinsent Masons		

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1.0 INTRODUCTION

1.1 Overview

1.1.1 This Written Summary of Oral Submission for Issue Specific Hearing 3 (ISH3) (Document Ref. 9.22) has been prepared on behalf of Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (the 'Applicants'). It relates to the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy ('BEIS'), under Section 37 of 'The Planning Act 2008' (the 'PA 2008') for the Net Zero Teesside Project (the 'Proposed Development').

1.1.2 The Application was submitted to the SoS on 19 July 2021 and was accepted for Examination on 16 August 2021. A change request made by the Applicants in respect of the Application was accepted into the Examination by the Examining Authority on 6 May 2022.

1.2 Description of the Proposed Development

1.2.1 The Proposed Development will work by capturing CO_2 from a new the gas-fired power station in addition to a cluster of local industries on Teesside and transporting it via a CO_2 transport pipeline to the Endurance saline aquifer under the North Sea. The Proposed Development will initially capture and transport up to 4Mt of CO_2 per annum, although the CO_2 transport pipeline has the capacity to accommodate up to 10Mt of CO_2 per annum thereby allowing for future expansion.

1.2.2 The Proposed Development comprises the following elements:

- **Work Number ('Work No.') 1** – a Combined Cycle Gas Turbine electricity generating station with an electrical output of up to 860 megawatts and post-combustion carbon capture plant (the **'Low Carbon Electricity Generating Station'**);
- **Work No. 2** – a natural gas supply connection and Above Ground Installations ('AGIs') (the **'Gas Connection Corridor'**);
- **Work No. 3** – an electricity grid connection (the **'Electrical Connection'**);
- **Work No. 4** – water supply connections (the **'Water Supply Connection Corridor'**);
- **Work No. 5** – waste water disposal connections (the **'Water Discharge Connection Corridor'**);
- **Work No. 6** – a CO_2 gathering network (including connections under the tidal River Tees) to collect and transport the captured CO_2 from industrial emitters (the industrial emitters using the gathering network will be responsible for consenting their own carbon capture plant and connections to the gathering network) (the **'CO_2 Gathering Network Corridor'**);
- **Work No. 7** – a high-pressure CO_2 compressor station to receive and compress the captured CO_2 from the Low Carbon Electricity Generating Station and the CO_2

Gathering Network before it is transported offshore (the **'HP Compressor Station'**);

- **Work No. 8** – a dense phase CO_2 export pipeline for the onward transport of the captured and compressed CO_2 to the Endurance saline aquifer under the North Sea (the **'CO_2 Export Pipeline'**);
- **Work No. 9** – temporary construction and laydown areas, including contractor compounds, construction staff welfare and vehicle parking for use during the construction phase of the Proposed Development (the **'Laydown Areas'**); and
- **Work No. 10** – access and highway improvement works (the **'Access and Highway Works'**).

1.2.3 The electricity generating station, its post-combustion carbon capture plant and the CO_2 compressor station will be located on part of the South Tees Development Corporation (STDC) Teesworks area (on part of the former Redcar Steel Works Site). The CO_2 export pipeline will also start in this location before heading offshore. The generating station connections and the CO_2 gathering network will require corridors of land within the administrative areas of both Redcar and Cleveland and Stockton-on-Tees Borough Councils, including crossings beneath the River Tees.

1.3 The Purpose and Structure of this document

1.3.1 The purpose of this document is to provide a Written Summary of the submissions made orally by the Applicants at ISH3 held on Tuesday 12 July 2022 at 10am. Table 2-1 in Section 2 of this document contains the Applicants' summary and is structured so that the summary of each agenda item is on a separate row. Table 2-1 document also contains the Applicants' response to the action points arising from ISH3 [EV6-010] published on the Planning Inspectorate's website on 18 July 2022 following completion of the hearings.

2.0 WRITTEN SUMMARY OF ORAL SUBMISSIONS – ISSUE SPECIFIC HEARING 3

Table 2-1 Summary of Oral Submissions at ISH3

	AGENDA	SUMMARY OF ORAL CASE
1.	**Item 1** **Welcome, Introductions, and arrangements for the Issue Specific Hearing**	N/A
2.	**Item 2** **Purpose of the Hearing**	N/A
3.	**Item 3** **Articles of the dDCO** • The Applicants will be asked to provide a brief overview of the proposed changes to the Articles of the dDCO including the reasons for the changes, since ISH2. • The ExA will specifically ask the Applicants to address IP submissions in relation to: ○ Article 2 'permitted preliminary works'; ○ Article 8 Consent to transfer benefit of the Order; ○ Article 9 Amendment and modification of statutory provisions (and Schedule 3); ○ Article 25 Compulsory Acquisition of Rights; ○ Article 47 Arbitration; ○ Article 49 Disapplication of Interface Agreement; and ○ The issue of vertical limits of deviation. • IPs will also be invited to ask questions of clarification in relation to DCO Articles.	Nick McDonald ("NM") for the Applicants notes that ISH3 Agenda Item 3 includes a request that the Applicants address the submissions of Interested Parties in relation to Articles 2, 8, 9, 25, 47 and 49. With the exception of Article 2 in respect of permitted preliminary works, the Applicants have made changes to all of these Articles specifically to address the submissions of Interested Parties. That being the case, the Applicants would propose that it addresses the changes to these Articles as part of the discussion that is to follow on them. NM provided a brief overview of the timing of the changes to the DCO since Issue Specific Hearing 2 and the representations that they seek to address. The Applicants have made a number of changes to the Articles in the draft Development Consent Order since Issue Specific Hearing 2 on 11th May. Two versions of the drat DCO have since been submitted: A draft DCO was submitted at Deadline 2 on 9th June (Reference REP2-002]. This was accompanied by a track change version (Reference REP2-003] showing the amendments to the draft DCO since the previous version was submitted as part of the Applicant's change request dated 28th April and accepted pursuant to the Examining Authority's procedural decision dated 6th May [Reference PD-010] The draft DCO submitted at Deadline 2 included amendments to address comments raised by the Examining Authority and Interested Parties at Issue Specific Hearing 2 on the DCO, the Examining Authority's First Written Questions, as well as matters raised by Interested Parties in Relevant Representations and in discussion on the preparation of Statements of Common Ground. An updated version of the draft DCO was submitted at Deadline 4 on 7th July (Reference [REP4-002]. This was accompanied by a track change version [REP4-003] showing the amendments since the previous version of the DCO was submitted at Deadline 2. The draft DCO submitted at Deadline 4 included amendments to address matters raised in representations submitted at Deadline 2 including Written Representations and Comments from Interested Parties on responses to the Examining Authority's First Written Questions. It also responded to matters raised in representations submitted at Deadline 3 including Comments on Responses to the Examining Authority's First Written Questions, Comments on Written Representations, as well as specific comments submitted by Interested Parties on the DCO submitted at Deadline 2. It also responded to matters raised by Interested Parties in the course of preparing Statements of Common Ground.

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		The changes to the Articles, Requirements, and other Schedules (including the Deemed Marine Licences in Schedules 10 and 11) are set out in full in the Applicants Schedule of Changes documents submitted at Deadline 2 [REP2-004] and at Deadline 4 [REP4-004]. NM set out the other changes to the DCO Articles that are not referred to later in the ISH3 Agenda. There have only been a limited number of changes to the Articles since Issue Specific Hearing 2. The majority of the changes are amendments to Article 2 (Interpretation). These changes involve the insertion of new definitions or amendments to existing definitions in order to give effect to changes to other Articles or Requirements or in order to address comments from Interested Parties. A number of the changes were required as part of changes to Articles or Requirements that the Applicants are required to address in the agenda items that are to follow. The Applicants do not propose to say any more about these definitions at this stage. Aside from these definitions, the Applicants would highlight the change to the definition of "date of final commissioning". This has been changed to mean "the date on which commissioning of the authorised development is completed it commences operation on a commercial basis or, where specified in the Order, the date on which a specified Work Number commences operation on a commercial basis". The Applicants had agreed to review the definition of the "date of final commissioning" and its use throughout the DCO at Issue Specific Hearing 2. The Applicants concluded that the definition should apply generally where it is used in some parts of the draft DCO but should be specific to Work Numbers where it is used elsewhere in the draft DCO. The change to the definition seeks to achieve this. There have also been consequential changes to: Articles 19(2)(b) which specifies the time period following completion of a part of the authorised development where protective works must be carried out. Reference to the date of final commissioning has been deleted. Article 19(2)(b) now species that protective works must be carried out following completion at any time up to the end of the period of five years beginning with the date "that those works are completed". The Applicants made this change to give greater certainty to when the five year period starts and ends. Article 31(4) which specifies the period during which the undertaker may remain in possession of temporary land used for construction identified in Schedule 9 of the Order (land of which temporary possession may be taken). This period is now the earlier of: • Where Schedule 9 specifies a purpose for which possession land may be taken relating to particular Work Numbers, the end of the period of one year beginning with the date of final commissioning of those Work Nos; or • the end of the period of one year beginning with the date of final commissioning of the authorised development.

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		By including this wording in Article 31(4) land used temporarily in connection with specific works must be returned to the landowner by a deadline which may be sooner than only using a general definition of the "date of final commissioning" that applies to the development as a whole. Aside from changes related to Articles that the later agenda items address, the only other changes to the Articles involve remedying two minor points of drafting identified by the Examining Authority at Issue Specific Hearing 2: • The first is a clarify Article 12(4) by correcting the formatting (in order to clarify that the exception to the defences in respect of loss or damage resulting from any failure by the undertaker to maintain a street applies to <u>all</u> of the defences under Article 12(4) limbs a) to e)). • A change to delete the definition of "consenting authority" from Article 44. This definition has now been included under Article 2 (Interpretation). <u>Article 2: Permitted preliminary works</u> Hereward Philpott QC ("HPQC") for the Applicants explained that the Applicants had responded to the concerns raised by STDC and Sembcorp in their comments on the Written Representations [REP3-012, paragraphs 11.2.19 – 11.2.21 and section 17]. That remains the Applicants' position. The definition of "permitted preliminary works" (PPW) is a planning issue, concerning the extent to which certain requirements should apply to the defined PPW. It falls to be determined against the tests for imposing requirements, including whether those preliminary works need to be prohibited pending the discharge of the requirements in question and whether prohibiting those works is reasonable in all other respects. The list of works covered in the definition of PPW is prescriptive. Any works outside that definition would require the approval of the local planning authority and could only be approved if the works satisfied the environmental effects element of the definition (i.e. the works would not give rise to any materially new or different environmental effects). This means there is a tight constraint on the works which are allowed to take place without the discharge of relevant requirements. The Applicants require the ability to undertake these activities in advance of discharging some of Requirements. The works are necessarily required in order to provide the information to discharge the Requirements or carry out initial construction related activities which can appropriately commence in advance of discharging relevant Requirements. There is considerable precedent for provisions of this nature and there does not appear to be any controversy as to the principle of defining PPW. The only question is whether the scope of the defined works is appropriate. That is necessarily bespoke to each particular project because it depends on the site and its particular sensitivities. The Applicants consider that the scope of PPW is appropriate and has not proposed any change at Deadlines 2 or 4. HPQC addressed the representations made by STDC in its Written Representation [REP2-097a] and Sembcorp in its Deadline 3 submission [REP3-025] that the scope of PPW was different to that contained in the Eggborough Gas Fired Generating Station Order 2018 and Immingham Open Cycle Gas Turbine Order 2020.

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		The list of permitted preliminary works includes some works that are not listed in the Immingham and Eggborough Orders. However that in itself does not make such works unacceptable. As the Applicants have explained, the list of works under the definition is nevertheless prescriptive and includes works that the Applicants consider will be required for this project. The Eggborough Order includes a definition of "permitted preliminary works" that is drafted widely to refer to all of the Work Numbers in Schedule 1 (Authorised Development) to the Order but within a defined geographic area within the Order Limits. Neither STDC or Sembcorp has provided any rationale for restricting the works to a defined geographic extent within the Order Limits in the NZT DCO. There is precedent in the Eggborough Order for other "permitted preliminary works" to be carried out subject to approval from the relevant planning authority and only where that would not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement. It is important to note that the definition of PPW in Article 2 is a separate issue to protecting the private interests of parties such as STDC and Sembcorp, which is addressed through protective provisions. The protective provisions do not feature exclusions for PPW, and provide a comprehensive answer to the concerns raised by STDC and Sembcorp. *Post-hearing note: the Applicants note Action 1 of the ExA's post-hearing Action list, asking STDC and the Applicants to continue to work towards protective provisions to overcome concerns re the scope of PPW. The Applicants' position is that the protections in Part 19 of Schedule 12 of the DCO submitted at Deadline 4 provide robust protection to STDC. This includes provisions which requires approval of works details from STDC before commencing the construction of any part of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10. The authorised development must be carried out in accordance with the works details that are approved. The Applicants consider that these arrangements are reasonable and proportionate in order to protect STDC's interests whilst allowing the development to be carried out.* *The Applicants note STDC's specific concerns as expressed at the ISH3 hearing relating to appropriate control over the carrying out of PPW on land use temporarily for construction. The Applicants understand that STDC's concern would therefore relate to the area comprising Work No. 9A (Teesworks laydown) as shown on Sheet 23 of the Works Plans [AS-148]. Where the Applicants intend to take temporary possession of land for construction (including any part of the area comprising Work No. 9A) Article 31(5) and Article 32 (6) each specify that the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the land owner. Requirement 25 is also engaged which specifies that a scheme for the restoration of land taken temporarily for construction must be submitted to and approved by the relevant planning authority. STDC must be consulted by the relevant planning authority prior to it approving a restoration scheme that relates to or has the potential to impact STDC's interests. The land must be restored in accordance with the approved scheme. Whilst the undertaker is in temporary possession of land, it would also be subject to the control under Requirement 3(10) which specifies that no part of Work No. 9 may commence until details of the following for that part have been submitted to and approved by the relevant planning authority: (a) layout and heights of contractor compounds and construction staff welfare facilities; and (b) vehicle access, parking and cycle storage facilities. STDC must also be consulted by the relevant planning authority prior to it approving details under R3(10) which relate to or has the potential to impact STDC's interests. Together, the Applicants consider that there are sufficient controls over activities on temporary land, including appropriate approvals in advance of taking temporary possession under Requirements, and obligations to the relevant planning authority under the Requirements, and directly to STDC under Articles 31 and 32 to restore the land. No control is*

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		specifically required in addition in order to control permitted preliminary works (or other works) within the temporary possession land in STDC's protective provisions. *The Applicants have received STDC's comments on the draft protective provisions on 2 August and will review these, including in relation to any changes sought relating to PPWs.* *The Applicants note Action 2 of the ExA's post-hearing Action list is for the same action to be taken with respect to Sembcorp's concerns on PPW. The protective provisions in Part 16 of Schedule 12 of the DCO submitted at Deadline 4 provide equivalent protections to Sembcorp as set out above in respect of STDC. The Applicants have continued to negotiate the form of protective provisions with Sembcorp and await comments specifically on PPW.* <u>Article 8: Consent to transfer benefit of the Order</u> HPQC explained that the general approach to transferring the benefit of a DCO is familiar and can be found in a number of recent DCOs (including the Little Crow Energy Park DCO – Article 5(6); Thurrock Flexible Generation Plant DCO – Article 8(4); and the South Humber Energy Centre DCO – Article 9(4)). At Deadline 2, the Applicants modified Article 8(8) at STDC's request, to clarify the meaning of 'nominate' and Article 8(13) to require notification of the MMO and EA of any transfer of the benefit of the Deemed Marine Licence. At Deadline 4, no changes were made to Article 8, but Article 25 (Compulsory acquisition of rights) was amended so as to require the consent of the Secretary of State to transfer compulsory acquisition powers to a statutory undertaker. <u>Articles 9</u>: no comment made by the Applicants. <u>Article 25:</u> The Applicants have amended Article 25 at Deadline 4 in relation to the acquisition of rights for the benefit of statutory undertakers to specify that the powers may only be exercised by a statutory undertaker (and others with apparatus, as per Article 25(8)) where the undertaker transfers the power to them, and that this may only be done with the consent of the Secretary of State. The latter provides an appropriate control over the potential exercise of the powers in Article 25 by statutory undertakers and others with apparatus. <u>Article 27</u>: NM for the Applicant confirms they will respond in writing as to whether the heading of Article 27 ought to be changed. *Post-hearing note: the Applicants note Action 4 of the ExA's post-hearing Action list, asking the Applicants to consider whether the heading of Article 27 needs amending. The heading of Article 27 was: "Application of the Compulsory Purchase (Vesting Declarations) Act 1981". The "1981 Act" is defined under Article 2 of the Order. The Applicants have accordingly changed the heading of Article 27 to: "Application of the 1981 Act". This change has been made in the draft DCO submitted at Deadline 5.* <u>Article 31: Temporary use of land for carrying out the authorised development</u> HPQC explained that the wording of Article 31(1)(a)(ii) enabled the Applicants to take temporary possession of land over which powers of permanent acquisition existed but had not yet been exercised. That enabled a proportionate approach to be taken, with temporary powers being exercised in the first instance to allow works to be carried out

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		so that subsequent permanent acquisition could be refined and limited to the land that is ultimately needed for the project. The right to take temporary possession under Article 31(1)(a)(ii) can only be exercised in respect of land identified as subject to permanent acquisition (i.e. pink or blue land). Article 22(1) authorises the compulsory acquisition of land but is subject to Article 22(2) which provides that the Applicants may only acquire land in accordance with Articles 25 (compulsory acquisition of rights etc); Article 31 (temporary use of land for carrying out the authorised development) and Article 43 (Crown rights). Temporary possession could therefore not be taken pursuant to Article 31(1)(a)(ii) of land that was not subject to powers of compulsory acquisition under the Order. The Applicants agreed to respond in writing to the question of whether Article 44 should expressly state that it applies to the Deemed Marine Licences (DMLs). *Post-hearing note: the Applicants note Action 5 of the ExA's post-hearing Action list, which asks the Applicant to clarify the relationship between Article 44 and the DMLs. Article 44(1) specifies that it applies where an application is made to, or a request is made of, a "consenting authority". The term "consenting authority" is defined under Article 2 (Interpretation) as "the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule [12] (protective provisions)". The definition of "consenting authority" does not include the Marine Management Organisation who is responsible for approval of conditions under the DMLs in Schedules 10 and 11 of the DCO. The ordinary statutory framework for the approval of conditions of marine licences accordingly applies in respect of the DMLs.* <u>Article 47</u>: HPQC explained that the Applicants had incorporated the drafting requested by Trinity House in its Deadline 3 Submission [REP3-020] and pointed out that Trinity House has no approval function under the DCO. Trinity House confirmed that the changes to the drafting in the DCO submitted at Deadline 4 [REP4-002] addressed it concern. <u>Article 49: Disapplication of the Interface Agreement</u> HPQC addressed the ExA on three main issues: (i) an overview of the Applicants' written submissions on this issue; (ii) an overview of the current position and how it is developing in the Hornsea Project 4 (HP4) examination; and (iii) the way in which the Applicants' suggest this issue is most appropriately dealt with at this stage and in his examination, having regard to (i) and (ii). <u>Documents</u> As to the first of those issues, the Applicants' position is set out in writing in the following documents: REP1-035: Applicants' summary of oral submissions for ISH1, Appendix 6, which addresses the issue of the EIA and explains why the Applicants are not obliged by the EIA Regulations to assess the impact of the offshore works on the proposed HP4 development, but has nevertheless volunteered to do so. That assessment has now been provided at Deadline 4 [Appendix 1 of REP4-030]. REP1-035: Applicants' summary of oral submissions for ISH1, Appendix 7 (ISH1 Action 4 – Options for the Secretary of State on the Hornsea 4 application) which considers the potential outcomes of the HP4 application and explains

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		why, in all scenarios, this does not affect the acceptability and deliverability of the NZT proposed development. It also explains the lack of direct physical conflict between the development proposed in the NZT DCO and HP4, even when the necessary offshore elements are taken into account. Appendix 1 to Appendix 7 of the summary sets out an additional proposed article for the NZT DCO, disapplying the Interface Agreement (and the reasons for its inclusion) and deals with the issue of avoiding unnecessary duplication of the examination of the underlying issues. The only separate issue for this examination is identified as being whether, if disapplication of the Interface Agreement is found by the Secretary of State to be appropriate in principle on the HP4 DCO, having regard to the examination report, there is a justification for reproducing that provision in the NZT DCO. The main purpose for reproducing it in the NZT DCO is to cater for circumstances where the disapplication was found by the Secretary of State to be appropriate having regard to the HP4 Examining Authority's Report but the HP4 DCO was refused for other reasons. There is also a secondary scenario in which the HP4 DCO is granted with the disapplication of the Interface Agreement but is not implemented by Ørsted. In either of those scenarios, it is appropriate to reproduce the disapplication of the Interface Agreement in the NZT DCO because that Agreement poses a risk to the viability of the East Coast Cluster plan even in circumstances where the HP4 DCO is refused, or not implemented. REP2-060: NZT Response to Ørsted D1 submissions, section 6. These submissions address the need to avoid re-litigation of the issues currently under consideration in the HP4 examination; explain why no protective provisions are required for Ørsted in the NZT DCO; and explain why the disapplication of the Interface Agreement in the NZT DCO is appropriate. REP3-012: NZT's Response to Written Representations, section 13.0. These submissions provide a response to Ørsted's written representation. REP4-030: NZT's Deadline 4: NZT's response to Ørsted HP4 D3 Submission July 2022. These submissions provide an assessment of the impact of the exclusion area on HP4 and provide copies of NZT's response in the HP4 examination to Ørsted's technical and legal submissions. HPQC noted that the ExA did not have copies of two documents which had been submitted to the HP4 examination, namely the Interface Agreement and NZT's commentary on the Interface Agreement. Those documents are appended to this summary at Appendix 1-4. In response to a question from the ExA, HP QC explained that REP2-021: Position Statement between Hornsea Project Four and BP, provided relevant contextual information but mainly addressed the technical and viability issues that arise in the dispute between NZT and Ørsted in the HP4 examination. The Applicants have made it clear that they do not consider it necessary or appropriate for this ExA to examine or resolve those issues, which are being considered in depth in the separate HP4 examination. It would place an additional, unnecessary burden on this examination to consider and determine these same issues, which would (for example) inevitably increase the number and complexity of the written questions to be posed and answered and potentially require additional hearings to consider the detailed technical evidence of both parties. It would impose a substantial additional burden on the ExA both during and after the examination. Indeed, Ørsted's Deadline 2 submissions [REP2-092] recognise the cost and time inefficiencies of doing so. The same Secretary of State will have the benefit of the examination report from the HP4 examination before making a decision on this case, even if the HP4 decision itself is delayed for any reason. The HP4 examination is due to conclude in August 2022 and there has been no indication that it is likely to be extended beyond the statutory six month period. The three month reporting period for HP4 will conclude before the Secretary of State determines the NZT DCO and he will therefore have the benefit of the HP4 examination

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		report which will be informed by all the parties to that debate wish to say on the issues of substance. If, for any reason, the examination report for HP4 were to be delayed, that delay (and its length) would be known about well in advance of the Secretary of State's decision on the NZT DCO and the Secretary of State could ask for further written representations if he considered them to be necessary (as explained in REP2-060 at paragraph 6.2.16). <u>Overview of the current position</u> HPQC explained that there are two main aspects of the current position to address, namely (i) the technical issues related to co-location which underlie the proposal to make provision in the HP4 DCO for the exclusion area (a provision that is not reproduced in the NZT dDCO); and (ii) the issues related to the potential for the Interface Agreement to undermine the viability of the East Coast Cluster plan, which underlies the proposal to disapply the Interface Agreement (in both the HP4 and NZT DCOs). As to the technical issues, both NZT and Ørsted have submitted extensive technical evidence to the HP4 examination. Whilst Ørsted's most recent technical evidence moves helpfully towards NZT's position in a number of important respects, it is fair to say that debate continues as to whether co-location of the two projects is a practical proposition in the overlap area. The documents submitted by the Applicants to the NZT examination at Deadline 4 represent the most recent evidence on these matters. In circumstances where the Applicants are not inviting this ExA to consider those matters or reach any conclusion on them and do not suggest that the exclusion area should be addressed in the NZT DCO, there is no need for further elaboration on those issues. The written submissions that have been submitted to the HP4 examination are provided for information only. As to the disapplication of the Interface Agreement, the underlying issue with the Interface Agreement is summarised in NZT's Deadline 4 submissions [REP4-030, Appendix 1]. The exclusion area by itself is insufficient to safeguard the developability of the Endurance Store and so to preserve the viability of the East Coast Cluster Plan. In its Deadline 5 submission to the HP4 examination (REP5-091, paragraphs 3.12 – 3.21), bp explained how the existence of the Interface Agreement could give rise to a significant compensation liability, the potential for which would, in all likelihood, mean that the NEP would not elect to utilise part of the Endurance Store within the exclusion area. In turn, this would prevent the full development of the Endurance Store; the delivery of the East Coast Cluster plan; and the realisation of the important public benefits of ensuring its delivery. To remove that risk, bp initially proposed to disapply the Interface Agreement within its protective provisions. However, in response to submissions from Ørsted in the HP4 examination (REP5-076) and from the Crown Estate (REP5-123), bp has now proposed a revised approach, as set out in its Deadline 5a submissions to the HP4 examination (REP5a-025). The revised approach no longer proposes the disapplication of the Interface Agreement, but instead removes bp's liability to Ørsted pursuant to the Interface Agreement. In lieu of such liability, it provides for bp (on behalf of NEP) to make a compensation payment to Ørsted. Bp is considering appropriate drafting to reflect that approach within its protective provisions to be included in the HP4 DCO. The provision for the payment of compensation will need to take account of the various considerations that would be relevant in determining quantum, and bp intends to submit such drafting at the next HP4 examination deadline, at the end of July. The alternative approach now proposed by bp achieves the same basic objective of protecting the project in the public interest by addressing the risk that significant potential compensation liability to Ørsted under the Interface Agreement would prevent the delivery of the East Coast Cluster Plan by instead providing for a proportionate payment of compensation to Ørsted.

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		REP4-030, Appendix 2 reproduces bp's response in the HP4 examination to Ørsted's legal submissions, including by reference to the revised approach and how this addresses both the Human Rights Act and Crown consent issues that have been raised. It explains that provision is to be made for payment of proportionate compensation, addressing both the Human Rights Act and *vires* issues raised by Ørsted; and that the Crown Estate's rights under the Interface Agreement would no longer be affected such that s.135(2) of the Planning Act 2008 is not engaged. Those submissions have only recently been made to the HP4 examination and the drafting to deal with compensation is to follow. <u>Suggested approach</u> The technical and legal issues relating to the exclusion area and Interface Agreement are not matters that need to be considered in this examination at any length for the reasons summarised in the Applicants' submissions to this examination. In summary, the substantive technical and legal issues are being examined in detail by another examining authority which will report to the same decision-maker before a decision falls to be made on the NZT DCO. The only separate issue for this examination is whether, in circumstances where the Secretary of State concludes in light of the HP4 examining authority's report that a provision dealing with the Interface Agreement is appropriate, that same provision should or should not also feature in the NZT DCO. All other matters are common to the HP4 examination and that examining authority will have the benefit of all that the parties wish to say on those points. The focus of this examination should therefore be on that narrow point. *Post-hearing note: the Applicants note Action 6 of the ExA's post-hearing Action list, which asks for the Applicants to provide the ExA with a copy of the Interface Agreement, this has been included in the Appendix 1-4.* In response to submissions on behalf of Ørsted, the Applicants requested clarification on Ørsted's position as to how the Interface Agreement should be addressed in the NZT DCO in the event that the Secretary of State decides that provision should be made to address it (either in the HP4 DCO, if made, and/or the NZT DCO). In that scenario, it will be important for the ExA to understand whether Ørsted's position is that no equivalent provision should be included in the NZT DCO and, if so, why. That is the narrow issue that falls to be determined by this ExA and Ørsted's position remains unclear. Revised drafting for Article 49 has been included in the Applicants' Deadline 5 submission. As with the original drafting, it reflects the revised approach to the equivalent provisions addressing the Interface Agreement submitted into the HP4 examination at Deadline 6 (Version 4 of the protective provisions, together with their explanatory commentary (set out in paragraphs 3.13 to 3.31 of the main response submission) is provided at Appendix [ ] to the Applicants' submission to this Deadline 5 for the ExA's information/cross-reference only)), but showing minor updates necessary to adapt what is proposed to the context in which the provision would operate pursuant to the NZT DCO. By way of explanation: • Article 49 is now expressly conditioned to apply only in circumstances where either (i) the application for the Hornsea Project Four DCO has been refused (such that bp's preferred protective provisions have not been included) or (ii) where the Hornsea Project Four DCO has been granted, but has expired without the authorised development having been lawfully commenced pursuant to the terms of the Hornsea Project Four DCO;

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		• It mirrors the drafting submitted into the HP4 DCO by removing the 'Carbon Entity's' liability to the 'Wind Entity' under the terms of the Interface Agreement (reflecting paragraph 6 of the HP4 DCO protective provisions); however, for the purposes of its inclusion within the NZT DCO such liability is framed by reference to the Carbon Entity's Activities in the Exclusion Area in [Article 49] instead of the imposition of the Exclusion Area (as is provided for in the HP4 DCO protective provisions). As the Exclusion Area is not being imposed under the NZT DCO, it is necessary to adapt the drafting accordingly whilst still reflecting the underlying purpose for the removal of the liability. • In lieu of such liability, the HP4 DCO protective provisions provide (at paragraph 7) for the Carbon Entity to make a compensation payment to the Wind Entity, with two alternative forms of drafting proposed for the reasons set out in bp's cover submission to Deadline 6 of the HP4 DCO examination. The same alternative forms of drafting haves been re-produced in Article 49, with the footnote to the drafting noting which option it is submitted should be followed by the SoS depending on the particular circumstances as exist in relation to the Hornsea Project 4 DCO at the point of determining the NZT DCO. It is suggested that if, prior to the date of the NZT DCO, the Hornsea Project Four DCO has been made with a specific compensation sum included, such compensation sum should be reflected in the equivalent paragraph in the NZT DCO and the alternative drafting disregarded. The alternative drafting is only provided as potentially relevant/appropriate in circumstances where the Hornsea Project Four DCO has been refused, such that a compensation sum has not yet been determined. • The trigger for the payment of the compensation under Article [49] is specified as being by 'no later than' 1 February 2029. The equivalent drafting in the HP4 DCO allows for the earlier of that date, or the Commercial Operation Date of Hornsea Project 4. The latter is not relevant in the context of the NZT DCO provision as such provision only applies where the HP4 DCO has been refused, or not implemented, so removing the relevance of the Commercial Operation Date. • In the "alternative" compensation drafting, it is provided that in determining the compensation, the SoS is to balance the impact on the business undertaking of the Wind Entity from the Carbon Entity's proposed or actual Activities in the Exclusion Area (and the removal of the Carbon Entity's liability under the Interface Agreement) with the public interest in preserving the full developable area of the Endurance Store. This broadly reflects the equivalent drafting in the HP4 DCO, save that the first component of the balancing exercise in those provisions is expressed as instead being by reference to "the imposition of the Exclusion Area on the authorised project". As above, the 'Exclusion Area' is not being imposed under the NZT DCO and so we have adapted the wording to achieve the same effect. • The 'longstop' provision is also slightly adapted to make clear that the Carbon Entity does not need to make the payment to the Wind Entity where it has already done so pursuant to the terms of the HP4 DCO. This is included on a ‘for the avoidance of doubt’ basis. • A number of new definitions specific to the Article have also been proposed to inform its interpretation. To the extent any further amendments are made to the equivalent drafting in the HP4 DCO, the Applicants' will ensure the correlative updates are proposed to Article 49.

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		A copy of the Interface Agreement and commentary on it so the ExA can understand the ongoing risk even if the HP4 DCO is refused has also been included in Appendix 1-4. <u>Vertical limits of deviation</u> The Applicants responded to STDC's concerns relating to vertical limits of deviation in REP3-012, section 17. As that response explained, the Applicants understood that STDC's concerns related to the long tunnel option for Works 2A and 6 which was removed from the DCO following the procedural decision made by the Examining Authority on 6 May 2022 [PD-010]. In subsequent discussions with STDC, the Applicants had sought to ascertain whether there were specific work numbers or locations in respect of which this concern arises. None have been identified. In practical terms, vertical limits of deviation would not make any difference to the scope for further development on top of the utilities corridors. The pipelines in the corridor will be at a depth that means the land above them will not be suitable for development. STDC's practical concern about the sterilisation of land would not be addressed by vertical limits of deviation because whatever the limits, the pipelines will be laid at a depth that will prevent development above them. The issue of sterilisation appears to relate to the width of the utilities corridor and related powers of compulsory acquisition. *Post-hearing note: the Applicants note Action 7 of the ExA's post-hearing Action list, which asks STDC and the Applicants to continue dialogue regarding control of the vertical limits of deviation. The Applicants have provided an update on this within the STDC SoCG submitted at Deadline 5 (Document Ref 8.3).*
4.	**Item 4** **Schedule 2 of the dDCO – Requirements** • The Applicants will be asked to provide a brief overview of the proposed changes to the Requirements (R) in Schedule 2 of the dDCO including the reasons for the changes, since ISH2. • The ExA will specifically ask the Applicants to address IP submissions in relation to: ○ R2 Notice of commissioning; ○ R3 Detailed design; ○ R4 Landscaping and biodiversity protection management and enhancement; ○ R7 Highway access; ○ R8 Means of enclosure; ○ R11 Surface and foul water drainage; ○ R13 Contaminated land and groundwater; ○ R14 Access to works; ○ R16 Construction environmental management plan; ○ R18 Construction traffic management plan; ○ R21 Control of noise – construction; ○ R23 Piling and penetrative foundation design; ○ R25 Restoration of land used temporarily for construction; ○ R29 Local liaison group;	HPQC for the Applicants notes that the ISH3 Agenda Item 4 requires the Applicants to address the changes to several Requirements. The Applicants do not propose to address any of these Requirements now given the discussion that will follow. The Applicants have not made any changes to any other Requirements, save for minor changes and one new requirement at requirement 36 (Consultation with South Tees Development Corporation). The Applicants would be happy to discuss any of the other Requirements in Schedule 2 if that would assist the Examining Authority. <u>Requirement 2: Notice of start and completion of commissioning</u> HPQC explained that Requirement 2 was amended at Deadline 4 to align the notice period to that provided in Sembcorp's protective provisions. They require 14 days' advance notice of commissioning and final commissioning. The Applicants' consider that it is appropriate to reflect those notice periods in Requirement 2 in order that the relevant planning authority is afforded the same notice as Sembcorp. <u>Requirement 3: Detailed design</u> HPQC explained that Requirement 3 was amended at Deadline 4 to specify the need for the local planning authority to consult STDC in respect of detailed design. Consultation is generally at the discretion of the relevant planning authority, and it can decide whom it is appropriate to consult on a case by case basis. The Applicants have, however, specified consultees in a number of instances where there are good reasons for doing so. It has added STDC as a public authority consultee in a number of cases, at their request.

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	○ R31 Carbon dioxide capture, transfer and storage; ○ R32 Decommissioning • The ExA will specifically ask the Applicants and STDC about their position regarding STDC's request for an approval role over specified Requirements. • The ExA will specifically ask the Applicants and ClientEarth about ClientEarth's illustrative Requirement at Annex A of their Written Representation [REP2-079] and the Applicants' response [REP3-012]. • IPs will be invited to ask questions of clarification in relation to Schedule 2.	It is not considered appropriate to specify individual private landowners as consultees because protective provisions already provide for them to have an appropriate degree of consultation and control over any works directly affecting their interests so the undertaker has to engage with those landowners where relevant, in any event. Following submissions on behalf of Sembcorp that its responsibility for the operation of the pipeline corridor placed it in a unique position as a 'pipeline authority' that justified mandatory consultation by the planning authority prior to discharge of certain conditions, the Applicants agreed to consider this matter further. *Post-hearing note: the Applicants accept that Sembcorp is different to other landowners given its overall responsibility for managing the operation of the Sembcorp Pipeline Corridor. Sembcorp has been included as a party that must be consulted by the relevant planning authority prior to the discharge of Requirements 3, 4, 7, 8, 11, 16, 21, 23, 25 and 32. A new requirement has been inserted in Schedule 2 to specify that Sembcorp need only be consulted where the discharge of the Requirement relates to Sembcorp's land interest or in the relevant planning authority's opinion could affect Sembcorp's land interest. The Applicants consider that these amendments address Sembcorp's request for a consultee role on all of these Requirements in its Deadline 3 Submission [REP3-025].* <u>Requirement 4:</u> no comment made by the Applicants. <u>Requirement 7: Highways access</u> NM for the Applicants explained that at Deadline 4 STDC was added as a party that must be consulted prior to the discharge by the relevant planning authority of the programme under paragraph 7(1) and the details of the siting, design and layout of any new or modified permanent means of access to a highway. The use is intended to be flexible so as to refer to whichever body is the appropriate highways authority under the Highways Act 1980. Requirement 11: no comment made by the Applicants. <u>Requirement 13: Contaminated land and groundwater</u> HPQC explained that the Applicants had amended Requirement 13 at Deadlines 2 and 4 in order to address concerns raised by the Environment Agency. A meeting with the Environment Agency had been arranged for 20th July to ascertain whether those amendments had overcome its concerns. <u>Requirement 14:</u> no comment made by the Applicants. <u>Requirement 16: Construction Environmental Management Plan</u> HPQC explained that, at the request of the Environment Agency and STDC, Requirement 16 had been amended at Deadline 2 to include the Environment Agency and STDC as parties that must be consulted prior to the approval of a CEMP by the relevant planning authority. At Deadline 4, the word 'businesses' had been added to paragraph (2)(f) in response to STDC's request in order that a scheme for notifying parties of significant construction impacts and managing complaints would apply to "businesses" as well as "local residents". An updated version of the CEMP was also proposed to be submitted at Deadline 5. <u>Requirement 18:</u> no comment made by the Applicants.

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		Requirement 21: Control of noise – construction In response to Sembcorp's concern about the removal of the word 'vibration' from Requirement 21, HPQC explained that its removal did not mean there were no controls over vibration as such impacts would be controlled through the Framework CEMP, which is secured by Requirement 16. Requirement 23: no comment made by the Applicants. Requirement 29: Local liaison group HPQC for the Applicants confirms the recent amendments now address Sembcorp's comments. Sembcorp agreed in its submissions. *Post-hearing note: the Applicants note Action 9 of the ExA's post-hearing Action list, which asks the Applicants to consider whether or not STDC can be included in the local liaison group. STDC has been included as a party that must be invited to join the local liaison group. This change has been made in the DCO submitted at Deadline 5.* Requirement 31: the Applicants set out their position below in response to ClientEarth's representations. Requirement 32: Decommissioning HPQC explained that Requirement 32 was amended at Deadline 4 to include a requirement at paragraph (3) that where the local planning authority notifies the undertaker that the information submitted under paragraph (1) is not approved, there is a period of two months in which the undertaker must make a further submission to the local planning authority. This was to address concerns that had been made over the potential difficulty in enforcement in circumstances where an application was submitted; not approved and the undertakers failed to take any further action. In response to concerns raised on behalf of PD Teesport, HPQC explained that the Applicants did not consider it necessary to provide any definition of the words 'permanently ceases operation'. Those words, in their ordinary meaning, are sufficiently clear and precise. Attempts at further definition soon become circular. If the local planning authority forms the view that operations have permanently ceased in some part of the development and requisite steps have not been taken within 12 months of that date, it can take enforcement action. If the local planning authority is uncertain as to whether operations have permanently ceased, it can request information pursuant to an 'information notice' under s.167 Planning Act 2008 in order to make an informed judgment. STDC's request for an approval role under various requirements HPQC explained that the Applicants had responded to STDC's request for an approval role in REP3-012. The dDCO submitted at Deadline 4 continues to allocate the role of approving authority to the relevant local planning authority, in the usual way. The local planning authority has been given the task of enforcing compliance with requirements in the public interest, and should also have the related task of approval of details under those same requirements. That is the well-established model, it makes obvious sense for the local planning authority to be given both roles having regard

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		to its statutory functions, experience and expertise in development control, and there is no reason to depart from it here. There are four further points that demonstrate why STDC should not be given an approval role under the requirements: • It would not be appropriate to fetter the discretion of the local planning authority by adding a further layer of approval. • Parliament has not given STDC this role in respect of applications under the Town and Country Planning Act 1990 and there is no reason why it should be afforded such a role under the Planning Act 2008 regime. • STDC is a landowner with significant commercial interests in the Order Land. • STDC benefits from protective provisions where appropriate to protect its particular interests. <u>ClientEarth's illustrative requirement at Annex A of its written representations</u> HPQC explained that the Applicants had responded to ClientEarth's representations at REP3-012, section 5. ClientEarth's substantive concern has now been addressed by the revised terms of Requirement 31. No part of the authorised development may commence until evidence has been submitted that, amongst other things, an environmental permit has been granted for Work No.1 (the generating station with carbon capture plant) and Work Number 7 (the carbon dioxide compressors). The capture rate will be controlled via the environmental permit for the generating station, and so that matter does not need to be and should not be duplicated in the requirement (for more detail, see [REP2-016] Applicant's response to EXQ1 GEN.1.22 and 1.23, AQ.1.2). The two environmental permit applications (for the generating station and the carbon dioxide compressors) were both Duly Made by the Environment Agency on 30th June 2022. *Post-Hearing Note: the Applicants have updated the DCO at Deadline 5 to refer to both environmental permits for the generating station and for the high pressure compression station~~[.]~~. The Applicants have now received written confirmation from the Environment Agency as follows:* *"The Applicant will need to apply for a UK Emissions Trading Permit and Monitoring, Reporting & Verification requirements are addressed in the regulations and guidance for this. In addition, the Environmental Permit will require the capture plant to be built to achieve a specified capture rate (our current BAT position is a capture rate of CO2 of at least 95%). We will utilise both the Environmental Permit and the UK Emissions Trading Scheme Monitoring, Reporting & Verification to verify performance."* *The Applicants intend to formalise this position in an updated Statement of Common Ground at Deadline 6.* The generating station will also need to be operated in accordance with any Dispatchable Power Agreement (DPA) entered into. A decision by BEIS on NZT's bid is expected soon. If the bid is successful it is expected that NZT would enter into a DPA and that the operation of the generating station would have to come forward in tandem with a full chain carbon capture, transportation and storage solution. A DPA is not necessary to address ClientEarth's concerns, however, because the combination of R31 and the environmental permit provides a comprehensive answer. However, the DPA would add a further layer of strong commercial incentive to achieve a high capture rate.

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		ClientEarth's Deadline 4 submissions refer to certain tracked changes that were made to the Keadby 3 draft DCO, albeit they do not specify which tracked changes are said to be relevant; explain the effect of those changes or why their effect is through to be necessary here. The tracked changes that appear to be relevant are certain changes to the definitions in Article 2, namely the definitions of 'carbon capture and compression plant'; 'commercial use'; and 'commissioning'. The Applicants do not consider that there are any gaps in the drafting of the dDCO that need to be filled with further changes. The wording in the definition of "carbon capture and compression plant' refers to a plant "designed to capture, compress and export to the National Grid Carbon Gathering Network, a minimum rate of 90% of the carbon dioxide emissions of the generating station operating at full load". HPQC explained that the design of the development will by necessity have to be such as to enable the grant of an environmental permit and the plant cannot commence commissioning or operation until that permit has been secured. For the Applicants, Dr Richard Lowe explained that in order to secure the environmental permit, the Applicants must demonstrate Best Available Techniques ('BAT'). The minimum carbon capture rate in the Environment Agency's BAT guidance is 95%. The Applicants' Environmental Statement assumes a 90% capture rate as a worst case scenario for the purposes of the Environmental Impact Assessment. It is not necessary to secure compliance with that assumption through the DCO if there exists a separate legal constraint which adequately regulates the carbon capture rate. Parliament has provided the means by which carbon capture rates should be regulated and there is no suggestion from ClientEarth that the environmental permitting regime is somehow inadequate to do so. As such, there is no need to duplicate the controls exercised through the environmental permitting regime in the DCO. The definition of "commercial use" and "commissioning" have also been included in the Keadby 3 DCO and it would appear that ClientEarth are insisting upon the same definitions in the NZT DCO. HPQC explained that the controls under Requirement 31 secure the same controls over operating on a commercial basis only in circumstances where the carbon capture, transport and storage infrastructure is operating on a commercial basis. *Post-hearing note: the Applicants note Action 15 of the ExA's post-hearing Action list, which asks the Applicants to seek to confirm with the Environment Agency the threshold for carbon capture rates. This is addressed in the post-hearing note at page 15 above where confirmation has been received from the EA that its current BAT position is a capture rate of CO2 of at least 95%.*
5.	**Item 5** **Schedules 10 and 11 of the dDCO – Deemed Marine Licences** To obtain an update on progress between the Applicants and the Marine Management Organisation regarding draft marine licences.	HPQC for the Applicants explained that good progress is being made with the MMO in agreeing the terms of the DMLs. Most of the requests made by the MMO have been addressed in the Deadline 2 version of the dDCO. The only substantive outstanding issue from the Applicant's perspective relates to the inclusion of UXO clearance within the DML rather than having to apply for a separate ML as and when UXO may be discovered. The MMO is concerned to ensure that best available techniques are adopted, as they exist at the time UXO are discovered, are used. That has been addressed in the drafting of Condition 23 which prohibits removal or detonation of UXO until a methodology has been submitted to and approved in writing by the MMO. The methodology must include information to demonstrate best available techniques are adopted. It is plainly not desirable in the public interest that any cessation of works on the discovery of UXO should be any longer than necessary. The submission of a fresh DML application to the MMO rather than the approval of a

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		methodology pursuant to Condition 23 of the DML is not a proportionate response to ensuring the use of best available techniques. At Deadline 4, the MMO raised for the first time, a suggestion that the Applicants' Environmental Statement did not include sufficient assessment of UXO clearance. There is no detail or explanation as to what is said to be missing from the ES that gives rise to this new concern. The Applicants will seek to understand from the MMO what these concerns relate to, but considers that the clearance of UXO has adequately been addressed in the ES. *Post-hearing note: the Applicants note Action 10 of the ExA's post-hearing Action list, which asks the Applicants to seek to understand the MMO's concerns regarding UXO and whether control of UXO should be via a separate marine licence, and for the Applicants to check the position adopted by the MMO elsewhere. The Applicants note that there is precedent for the inclusion of UXO clearance activities in deemed marine licences included within recently determined development consent orders. The Examining Authority is directed to paragraph 2 of Part 1 of Schedule 13 of the East Anglia TWO Offshore Wind Farm Order 2022 and paragraph 2 of Part 1 of Schedule 13 of The East Anglia ONE North Offshore Wind Farm Order 2022. The Applicants further note that the condition at paragraph 16 of Part 2 of the Schedule 13 of The East Anglia ONE North Offshore Wind Farm Order 2022 prohibits removal or detonation of UXO until a method statement has been approved by the MMO. This condition has similar effect to condition 23 in Schedules 10 and 11 of the NZT DCO. In addition, the Applicants draw the ExA's attention to Chapter 14 (Marine Ecology and Nature Conservation) of the ES [APP-096] and in particular paragraphs 14.6 78-91, 14.6 117-123 and 14.7.5 of that chapter. It is considered that a proportionate and appropriate approach to assessment of potential effects from UXO clearance has been undertaken, recognising that an assessment at this stage is hypothetical since no specific UXO finds have been identified or encountered. The Applicants' intention is for the detailed assessment and control of any UXO clearance – should that be required – would be through the DML. This information was communicated to the MMO on the 21st July 2022 along with a request for a meeting, a further meeting request was made on the 28th July and 1st August 2022. This meeting was requested to resolve issues regarding UXO clearance.*
6.	**Item 6** **Schedule 12 Part 4 to Part 24 of the dDCO – Protective Provisions** • The Applicants and IPs will be asked to provide an update on progress regarding the bespoke protective provisions set out in Part 4 to Part 24 of Schedule 12, an explanation of any important differences of view and a timescale for resolution. • The Applicants and Ørsted Hornsea Project Four Limited will be asked to explain their respective positions as to the need for protective provisions in relation to the Hornsea Four Project with particular reference to the following submissions: [REP1-052], [REP2-060], [REP2-089] and [REP3-012]. (Note that this item is also closely related to the discussion on Article 49 Disapplication of the Interface Agreement under Agenda item 3.)	NM for the Applicants confirms that the Applicants have deleted across the dDCO protective provisions the exclusion of indirect loss or inconsequential losses from the indemnity clause. In response to comments made on behalf of Exolum Seal Sands Limited, HPQC confirms the Applicants are committed to negotiating protective provisions. HPQC also confirms the Applicants will respond to comments made by Redcar Bulk Terminals in relation to their protective provisions. *Post-hearing note: the Applicants note Action 11 of the ExA's post-hearing Action list, which asks Exolum Seal Sands and the Applicants to establish a SoCG. The Applicants have developed a draft SoCG with Exolum and submitted this at Deadline 5 (Document Ref 8.20).* Ørsted At Deadline 2 [REP2-060] the Applicants explained why no Protective Provisions are required for Ørsted. That explanation should be read together with the Deadline 1 document appended to the summary of oral submissions for ISH1 [REP1-035] (electronic page 172) which considered the different scenarios which might arise as a result of the HP4 application.

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		Nothing that has been submitted by Ørsted since then provides any satisfactory response to those points, or otherwise comes close to justifying the need for Protective Provisions in this DCO for HP4. The Applicant's position can be summarised as follows: There is no nexus between the works authorised in the NZT dDCO and HP4. The NZT DCO does not seek authorisation for any works in the overlap area. The related offshore works are subject to a separate consenting regime, pursuant to which the decision-maker can consider any submissions Ørsted wish to make about impacts on HP4 before a decision is made whether to allow those works to proceed. By clear contrast, that is not the case for Ørsted's scheme, which is all to be consented under a single Order and which does seek to authorise works on the overlap area If HP4 obtains consent, it will include appropriate Protective Provisions to regulate this issue. This can be seen through consideration of the following scenarios: If Ørsted's position is accepted by the Secretary of State, the powers in its own DCO and the Protective Provisions it has advanced to address this issue will be sufficient to protect its interests. Nothing Ørsted has said in [REP2-089] even attempts to explain why its own project would be left exposed to unacceptable risks in those circumstances without 'reciprocal' PPs in the NZT DCO (its "Scenario 3", which is the sole basis for its proposed PPs). In other words, the justification for concluding these Protective Provisions would be needed in that scenario notwithstanding all that would be (and could be) included by way of powers and protections in its own DCO is entirely absent. Ørsted has not made any submission to the HP4 ExA to suggest that its project might not be able to proceed in the absence of Protective Provisions in the NZT DCO, or to explain why that would be the case. If bp's position is accepted by the Secretary of State following the HP4 examination, he will have rejected Ørsted's case for its preferred Protective Provisions and there would be no basis for reaching an inconsistent decision in the NZT case by imposing 'reciprocal' Protective Provisions. If HP4 does not obtain consent, this issue falls away – and Ørsted does not appear to dispute this. In short, the decision on HP4's DCO will deal comprehensively with the issue of whether and if so what protection is required for Ørsted. Any separate issue (and none has been identified) would be a matter for the decision-making process for the offshore elements. If the ExA nevertheless want to explore Ørsted's Protective Provisions further, the Applicants has at Deadline 4 supplied the ExA with the written submissions made to the HP4 examination about the form and substance of the Protective Provisions they have submitted to the HP4 examination and why they are fundamentally flawed and do not provide an effective mechanism for dealing with the overlap issues in any event (REP4-030, Appendix 2, Annex 1, paragraphs 7.1 – 8.17 for an explanation of why the latest Ørsted suggestion of post-consent technical work is unrealistic and flawed; and Appendix 2, Annex 2, paragraphs 5.10 – 5.14 for an explanation of why Ørsted's Protective Provisions do not provide solutions to the technical and viability problems that the bp's suggested provisions are designed to address).

	AGENDA	SUMMARY OF ORAL CASE
		In response to submissions on behalf of Ørsted, the Applicants requested clarification as to why, in 'scenario 3' (i.e. where HP4 is consented with Ørsted's proposed Protective Provisions – see REP2-089) HP4 would be left exposed to unacceptable risks without what it described as 'reciprocal Protective Provisions. In the scenario where Ørsted has secured in the HP4 DCO the Protective Provisions which it considers to be appropriate, it is entirely unclear what risk it suggests that project would be exposed to without reciprocal protection through the NZT DCO. As such, the Applicants do not understand why such provisions could be said to be necessary in the NZT DCO. The Applicants note Ørsted's offer to consider and respond to this query in writing. *Post-hearing note: the Applicants note Action 14 of the ExA's post-hearing Action list, which asks the Applicants and Ørsted to revisit the possibility of a SoCG between HP4 and the Applicants. The Applicants and Orsted have prepared a joint position statement to address two narrow points to assist with the ExA's understanding of the issues and to inform the subsequent approach in the examination.*
7.	**Item 7** **Consents, Licences and Other Agreements** • The Applicants will be asked to provide an update of progress and timescales for completion of any other consents, licences and other agreements.	HPQC and Richard Lowe for the Applicants confirmed the following in respect of consents, licences and other agreements: Environmental permits: the Applicants were engaging with the Environment Agency on the 'duly made' process for both environmental permits. The duly made decision is expected from the Environment Agency within the next few weeks. [*Post hearing* note: The duly made decision on both *environmental permit applications has now been made by the Environment Agency – both permit applications were Duly Made on 30th June 2022].* Offshore ESIA: the application is on track for submission in September 2022, with approval expected in Q2 2023. Store permit: the application is on track for submission in November 2022, with approval after the FID has been taken. Endurance Store lease and seabed leases for infrastructure: the Agreement for Lease letter has been submitted to the Crown Estate. The Crown Estate is processing the request but will not give a timescale for its conclusion. It is expected before the financial investment decision. *Post-hearing note: the Applicants note Action 12 of the ExA's post-hearing Action list, which asks the Applicants to provide an update to the other licences and consents document by the end of the Examination.*
8.	**Item 8** **Statements of Common Ground relevant to the DCO**	The Applicants confirmed that they would consider whether a Statement of Common Ground could usefully be agreed with Ørsted. They noted Ørsted's offer to cooperate in that endeavour. *Post-hearing note: The Applicants and Orsted have prepared a joint position statement to address two narrow points to assist with the ExA's understanding of the issues and to inform the subsequent approach in the examination.*
9.	**Item 9** **Review of issues and actions arising**	N/A *Post-hearing note: the Applicants note Action 13 of the ExA's post-hearing Action list, which asks the Applicants to consider providing a summary to the ExA of commercial agreements between parties where it has relevance~~t~~ to the*

	AGENDA	SUMMARY OF ORAL CASE
		Examination. Where appropriate these have been included in the updated Compulsory Acquisition Schedule submitted at Deadline 5 (Document Ref 9.5).
10.	**Item 10** **Any other business**	N/A
11.	**Item 11** **Closure of the Hearing**	N/A

APPENDIX 1 INTERFACE AGREEMENT DATED 14 FEBRUARY 2013

Dated 14 February 2013

THE CROWN ESTATE COMMISSIONERS (1)

and

NATIONAL GRID TWENTY NINE LIMITED (2)

and

SMART WIND LIMITED (3)

INTERFACE AGREEMENT

relating to an Overlap Zone

Linklaters

Linklaters LLP
One Silk Street
London EC2Y 8HQ

Telephon[redacted]
Facsimil[redacted]

Refmbsmith

THIS AGREEMENT is made on 2013

BETWEEN:

(1) **THE CROWN ESTATE COMMISSIONERS** on behalf of Her Majesty The Queen acting in exercise of the powers of the Crown Estate Act 1961 (the **"Commissioners"**); and

(2) **NATIONAL GRID TWENTY NINE LIMITED** (Company No 08116471) a company incorporated in and existing under the laws of England having its registered office at 1 - 3 Strand, London WC2N 5EH; and

(3) **SMART WIND LIMITED** (Company No 07107382) a company incorporated in and existing under the laws of England having its registered office at 11th Floor, 140 London Wall, London, EC2Y 5DN.

WHEREAS

(A) The Commissioners have entered into the ZDA with Smart Wind Limited in respect of Zone 4.

(B) On or about the date of this Agreement the Commissioners have entered into the Carbon AfL with National Grid Twenty-Nine Limited in respect of the Lease Option Area.

(C) As Zone 4 and the Lease Option Area overlap, the Parties have agreed to entered into this Agreement to regulate and co-ordinate their activities within the Overlap Zone with a view to managing potential conflicts and resolving actual conflicts

NOW IT IS HEREBY AGREED as follows:

1 Interpretation and Definitions

In this Agreement unless the context otherwise requires:

1.1.1 words importing one gender include other genders;

1.1.2 words importing the singular include the plural and vice versa;

1.1.3 references to persons include bodies corporate and vice versa;

1.1.4 references to clauses, schedules and annexures are references to the relevant clauses in or schedules or annexures to this Agreement and references to paragraphs are to the relevant paragraphs in schedules to this Agreement;

1.1.5 the clause headings do not affect the construction of this Agreement;

1.1.6 reference to any statute, directive or regulation or other item of legislation includes any amendment, modification, extension, consolidation or re-enactment of it and includes any statutory instrument, regulation or order made under it for the time being in force;

1.1.7 any obligation on any Entity not to do or omit to do something shall be construed as including an obligation not to permit or knowingly to suffer it to be done by any other person;

1.1.8 references to the Commissioners where the context admits includes their successors or assigns;

1.1.9 a consent or approval to be given by the Commissioners is not effective for the purposes of this Agreement unless it is in writing and signed by or on behalf of the Commissioners; and

1.1.10 references to the word **"include"** or **"including"** shall be construed without limitation.

1.2 Any covenant by (or implied to be made by) Her Majesty pursuant to the terms of this Agreement is made (or implied to be made) by the Commissioners acting in exercise of the powers conferred by the Crown Estate Act 1961. No covenants, agreements or obligations are given by Her Majesty or anyone who reigns after Her. No liability is imposed on Her Majesty or anyone who reigns after Her nor on the Commissioners in any personal or private capacity.

1.3 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"Activities" means those activities that either Entity plans to undertake within the Overlap Zone (including without limitation design, surveys, construction, installation, drilling, operation and maintenance), or outside the boundary of the Overlap Zone but with a direct impact on the location of Proposed Infrastructure within the Overlap Zone or seismic surveys outside the boundary of the Overlap Zone but with a direct impact on the carrying out of the other's Activities within the Overlap Zone;

"Affected Entity" means the Entity to which the Notifying Entity gives notice;

"Affiliate" means, in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and **"holding company"** and **"subsidiary"** shall have the meaning given to them in section 1159 of the Companies Act 2006;

"Baseline" means, at any point during the term of this Agreement, the Proposed Infrastructure locations and the Programme of Activities notified by an Entity to the other Entity pursuant to the terms of this Agreement;

"Carbon AfL" means an agreement for lease of the Overlap Zone (with other areas) made between the Commissioners and the Carbon Entity on or about the date of this Agreement;

"Carbon Entity" means National Grid Twenty Nine Limited being the tenant for the time being under the Carbon AfL or Carbon Lease, as applicable;

"Carbon Lease" means a lease of rights including any part of the Overlap Zone to be granted to the Carbon Entity by the Commissioners pursuant to the Carbon AfL;

"Claims Settlement Date" means 31 January in any year;

"Consultation Process" means the consultation processes undertaken by or on behalf of an Entity in respect of its project as required by any applicable law and/or regulation but excluding any bilateral consultations between the Entity and a particular individual or organisation;

"Commercial Operation Date" means in respect of the Wind Lease, the date that the Wind Entity achieves the satisfactory completion of such procedures and tests as from time to time constitute usual industry standards and practices to demonstrate that all of the wind turbines have been fully commissioned and that all relevant tests have been carried out such that each of the wind turbines is capable of commercial operation and exporting

electricity via the connection point and in respect of the Carbon Lease, the date of Mechanical Completion;

"Demonstrably" means supported by evidence;

"Entity" means the Carbon Entity or the Wind Entity as appropriate and **"Entities"** means both of them;

"Good Industry Practice" shall, in the case of the Carbon Entity, have the meaning given to it in the Carbon AfL and shall, in the case of the Wind Entity, mean acting as a Reasonable and Prudent Operator as such term is defined in the ZDA;

"Interface Management Meetings" has the meaning given to the term in Clause 3.4;

"Lease Option Area" shall have the meaning given to it in the Carbon AfL of which the co-ordinates are set out in Part 1 of Schedule 1 and shown for identification purposes only edged red on the Plan;

"Material Adverse Effect" means Material Adverse Effect (Pre-Operational) or Material Adverse Effect (Post-Operational), as applicable;

"Material Adverse Effect (Post-Operational)" in relation to any proposed Activities means in relation to Carbon Entity's proposed Activities, Demonstrably requiring any of the Wind Entity's operational projects to reduce their power output for a period of time or in relation to Wind Entity's proposed Activities, Demonstrably requiring any of the Carbon Entity's operational projects to reduce their carbon injection or storage activities for a period of time;

"Material Adverse Effect (Pre-Operational)" in relation to any proposed Activities means Demonstrably giving rise to Relocation Costs and/or Re-programming Costs;

"Mechanical Completion" means the technical completion of the construction and integration of the physical systems of the integrated systems for carbon capture and compression, transport (including any pipelines), injection and permanent storage facilities has occurred;

"Necessary Consents" shall, in the case of the Wind Entity, have the meaning given to it in the ZDA and, in the case of the Carbon Entity, have the meaning given to it in the Carbon AfL;

"Notifying Entity" means the Entity so identified and defined for the purposes of Clause 3.2, 3.4 or 4.5, as the context shall require;

"New Entity" means an Entity which is not a party to this Agreement on the date it is entered into but becomes a party by virtue of the operation of Clause 8;

"Overlap Zone" means the area within which the Lease Option Area and Zone 4 overlap of which the co-ordinates are set out in Part 3 of Schedule 1 and shown for identification purposes only tinted pink and hatched blue on the Plan;

"Party" means any party to this Agreement including any New Entity that enters into a deed of covenant pursuant to Clause 8 and **"Parties"** shall be construed accordingly;

"Plan" means the plan annexed to this Agreement at Schedule 2;

"Programme of Activities" means the timetable of Activities which an Entity plans to carry out in relation to its project setting out the dates on which, and coordinates for where,

such Activities are planned to take place and sufficient details of the Activities for the other Entity to assess the impact on its Activities;

"Proposed Infrastructure" means any infrastructure that either Entity proposes to install for the purposes of developing an operational project on, over or immediately under the Overlap Zone including without limitation (in the case of the Wind Entity) cables, anemometry masts, sub-stations and wind turbines or (in the case of the Carbon Entity) the Carbon Storage Infrastructure (as such term is defined in the Storage AfL and includes, for the avoidance of doubt, any in field pipelines;

"Relevant Agreement" means the ZDA, any Wind AfL, the Carbon AfL, any Wind Lease and/or the Carbon Lease, as appropriate;

"Relocation Costs" means:

(a) the additional costs and/or expenses that are or would be incurred by the Affected Entity (including without limitation reasonable third party consultancy and contractor fees in modifying plans, carrying out any additional or amended surveys and implementing such modified plans and any costs) to accommodate the Notifying Entity's notified Activities; and

(b) where any part of an Entity's Proposed Infrastructure for a particular project as shown on any plan provided by that Entity to the other prior to the other's notice of its proposed Activities (in the case of the Wind Entity, the number of turbine locations being Demonstrably consistent with Good Industry Practice at the time of notification by the Wind Entity for comparable offshore wind projects):

(i) cannot reasonably and commercially be re-located within the relevant project site to enable the other's Activities to be undertaken; or

(ii) can reasonably and commercially be re-located within the project site to enable the other's Activities to be undertaken but with the result that (a) (in the case of the Wind Entity) the power output for the Wind Entity's project will be lower than would otherwise have been the case; or (b) (in the case of the Carbon Entity) the injection rate or storage capacity for the Carbon Entity's project will be Demonstrably lower than would otherwise have been the case,

then

(1) in the case of the Wind Entity, the diminution in the market value of the Wind Entity's project that will arise due to the loss of such infrastructure or reduction in power output as the case may be, such diminution being calculated at the time of: (i) the Carbon Entity's notice of its proposed Activities; or (ii) the date of grant of the relevant Wind Lease, whichever is the later. Where (ii) applies, such calculation and assessment of impact shall take into account the difference between the number of turbines on the plan provided by the Wind Entity as referred to in (b) above and the number of turbines proposed at the date of grant of the relevant Wind Lease including any proposed changes to the array and sizes of the turbines such difference shall not be definitive and the arrays must be Demonstrably consistent with Good Industry Practice for comparable constructed offshore wind projects; and

(2) in the case of the Carbon Entity, the diminution in the market value of the Carbon Entity's project that will arise due to the loss of such infrastructure or reduction in storage rate or volume as the case may be, such diminution being calculated at the

time of the Wind Entity's notice of its proposed Activities or the date of grant of the relevant Carbon Lease whichever is the later;

"Re-programming Costs" means the additional costs and/or expenses that would be incurred directly by either Entity (including reasonable third party consultancy and contractor fees) in modifying and then implementing such modified development, construction or maintenance programme including, without limitation such costs and/or expenses incurred in amending any application for any Necessary Consent and/or to make required consequential modifications to existing Necessary Consents and/or arising as a result of any reduction in or restriction in availability of any financial support mechanism available to that Entity's offshore project(s) as a result of any delay;

"Wind Entity" means Smart Wind Limited and/or any Project Company (as defined in the ZDA) established to develop projects in the Overlap Zone and any project company established to develop the grid assets in relation to the Overlap Zone including any licensed offshore transmission owner together in each case with their successors and assigns and any reference to Wind Entity shall mean any one or more of them;

"Wind AfL" means any agreement for lease granted by the Commissioners in respect of any part of the Overlap Zone in accordance with the ZDA;

"Wind Lease" means any lease granted by the Commissioners in respect of any part of the Overlap Zone in accordance with the ZDA and a Wind AfL;

"ZDA" means the zone development agreement entered into between the Commissioners and Smart Wind Limited on 22 December 2009 in respect of Zone 4 in the form in effect on the date of this Agreement; and

"Zone 4" means the offshore wind Round 3 Zone 4 (North Sea off Hornsea) as denoted by the coordinates in Part 2 of Schedule 1 and the relevant part of which is shown for identification purposes only edged and hatched blue on the Plan.

2 Commissioners' consent for location of Proposed Infrastructure and Entities' notifications of Programmes of Activities

2.1 The intent of this Agreement is to provide a mechanism to seek to ensure successful co-existence of wind and carbon storage projects on an overlapping area of the seabed, and to provide sufficient certainty to the Entities to be able to plan and implement their respective projects. The provisions for Commissioners' approval, Expert determination (as set out in Clause 6) and compensation specified herein are intended to provide a framework within which both the Carbon Entity and the Wind Entity are incentivised to work together and to plan their activities to give each other sufficient certainty to progress their respective projects. The Parties shall carry out their obligations, and exercise their rights, under this Agreement and (to the extent relevant for the operation of this Agreement) the Relevant Agreements in good faith and in a manner that does not unduly hinder the timely progress and development of wind or carbon storage projects in the Overlap Zone. Where a Material Adverse Effect has arisen, the Entities shall mitigate, to the extent reasonably practicable, the impact of such Material Adverse Effect on itself or the other Entity.

2.2 Each Entity shall consult early and fully with the other as part of any Consultation Processes it is conducting for the purpose of applying for and procuring any Necessary Consents, including without limitation under the Energy Acts 2004 and 2008, Petroleum Act 1998, Planning Acts, under the requirements of Petroleum Operation Notices, during the

production of Environmental Statements, and during the production of any development consent application. Each Entity agrees that it shall not lodge any objection or make any representation to any application of the other Entity for a Necessary Consent where such Necessary Consent is in relation to projects sited within the Overlap Zone.

2.3 The Entities further agree that they shall act in good faith in seeking to negotiate any Crossing Agreements required to facilitate each Entity's projects and that the principles set out in Schedule 3 to this Agreement shall be incorporated in any such Crossing Agreement.

2.4 The Entities acknowledge and accept that:

2.4.1 until an Entity has submitted for approval to the Commissioners under the Relevant Agreement details of its Proposed Infrastructure, the Commissioners may approve the siting of the other Entity's Proposed Infrastructure within the Overlap Zone; and

2.4.2 the Commissioners have the right to withhold consent under the Relevant Agreement to the siting within the Overlap Zone of either Entity's Proposed Infrastructure. The Commissioners have the right to withhold consent if such siting would conflict with a use which is existing at the time of such submission, or where it has already approved the siting of the other Entity's Proposed Infrastructure or Activities in, or within a significantly close distance from, the location of such Proposed Infrastructure until such time as the Entities have reached commercial agreement or the matter has been determined in accordance with the terms of this Agreement.

2.5 Where the Entities have reached commercial agreement in relation to any changes to either of their respective Activities pursuant to this Agreement and/or any compensation that may be payable, the terms of such commercial agreement will be documented in writing in an agreement between them, and the Commissioners shall withhold consent under the Relevant Agreement until such time as such agreement has been validly executed by each of the Entities and a copy provided to the Commissioners.

2.6 Where the Expert has made a determination pursuant to this Agreement the following provisions shall apply:

2.6.1 the Commissioners shall withhold consent under the Relevant Agreement to any proposed locations of Proposed Infrastructure which are the subject matter of the determination until:

(i) the Notifying Entity has accepted such determination and provided for any compensation determined in accordance with this Clause 2; and/or

(ii) where the determination requires amendment to either or both of the Entities' Activities and/or the location of an Entity's Proposed Infrastructure such amendment to reflect the determination has been agreed in writing between the Entities, which in such circumstances each Entity agrees to act reasonably in documenting such amendment; or

(iii) the Notifying Entity notifies the Commissioners that it does not intend to proceed with the locations of Proposed Infrastructure in accordance with Clause 2.6.3.

2.6.2 Where the determination relates to a Material Adverse Effect arising from a notified Programme of Activities, the Notifying Entity shall not proceed to implement the

notified Programme of Activities or notified changes to the Programme of Activities (as applicable) until:

(i) the Notifying Entity has accepted such determination and provided for any compensation determined in accordance with this Clause 2; and/or

(ii) where the determination requires amendment to either or both of the Entities' Activities and/or the location of an Entity's Proposed Infrastructure such amendment to reflect the determination has been agreed in writing between the Entities, and in such circumstances each Entity agrees to act reasonably in documenting such amendment.

2.6.3 If either Entity, acting reasonably, believes that the impact of the determination would be to make its project no longer commercially or technically viable, it may elect not to accept such determination and may reassess its proposed Activities accordingly or by notice terminate the Relevant Agreement.

2.7 Where compensation from a Notifying Entity to an Affected Entity is to be agreed or determined in relation to a Material Adverse Effect, or where an estimate of such compensation is to be agreed or determined for reassessment at a later date in the case of compensation falling within limb (b) of the definition of Relocation Costs of the affected Entity, then:

2.7.1 except in relation to compensation falling within limb (b) of the definition of Relocation Costs of the Affected Entity, in agreeing or determining the amount of compensation the Entities or the Expert (as applicable) shall also assess the type of Activities that would need to be carried out by the Affected Entity and (where applicable) identify the coordinates of the geographical area within the Overlap Zone in which such Activities would need to be carried out by the Affected Entity for the Material Adverse Effect to arise;

2.7.2 except in relation to compensation falling within limb (b) of the definition of Relocation Costs of the affected Entity and subject to Clause 2.8, the amount of such compensation shall become due and payable to the Affected Entity on the Claims Settlement Date falling immediately following the date on which the Affected Entity gives notice to the Notifying Entity that it has carried out the Activities of the type and (where applicable) within the geographical area identified in Clause 2.7.1.

2.7.3 in relation to compensation falling within limb (b) of the definition of Relocation Costs of the Affected Entity, in agreeing or determining the amount of compensation the Entities or the Expert (as applicable) shall also identify the coordinates the geographical area within the Overlap Zone that would need to be developed by the Affected Entity for the Material Adverse Effect to arise;

2.7.4 in relation to compensation falling within limb (b) of the definition of Relocation Costs of the Affected Entity and subject to Clause 2.8, the amount of such compensation shall become due and payable to the affected Entity on the Claims Settlement Date following the date on which the Affected Entity gives notice to the Notifying Entity that it has been granted the Wind Lease or Carbon Lease (as applicable) over a geographical area that includes the geographical area identified in Clause 2.7.3.

2.8 Notwithstanding any other provision of this Agreement, compensation for Relocation Costs and Reprogramming Costs shall only be payable to an Entity on the applicable Claims

Settlement Date where, and only to the extent that, the aggregate of all Relocation Costs and Reprogramming Costs of that Entity under this Agreement in the immediately preceding calendar year have exceeded £100,000.

2.9 Where a notice of Proposed Infrastructure locations or Programme of Activities has been issued pursuant to this Agreement and:

2.9.1 no Material Adverse Effect is identified as arising pursuant to this Agreement; or

2.9.2 commercial agreement or Expert determination (in accordance with Clause 6) is secured in relation to the same,

no Material Adverse Effect shall thereafter arise under this Agreement from such notified Proposed Infrastructure locations or Programme of Activities.

2.10 Where a notice of Proposed Infrastructure locations or Programme of Activities has been issued pursuant to this Agreement and compensation has been agreed or determined as becoming due and payable on the date set out in Clause 2.7.2 by one Entity to another Entity (including where an estimate of compensation has been finally agreed or determined pursuant to limb (b) (1) or (2) of the definition of Relocation Costs) such amount of compensation shall thereafter not be capable of any future reassessment for changed circumstances or otherwise except as provided for in Clause 7.3 or by agreement between the relevant Entities.

2.11 Where the Notifying Entity gives notice to the Affected Entity of its Proposed Infrastructure locations or Programme of Activities and the Affected Entity, acting reasonably considers that the proposals in such notice will give rise to a Material Adverse Effect but one which would give rise to a claim for compensation equal to or less than £100,000 in value then the following shall apply:

2.11.1 the Affected Entity shall, subject to Clause 2.12 below, give notice to the Notifying Entity advising that it considers that the proposed Activities would give rise to a Material Adverse Effect and its assessment of the impact of such Material Adverse Effect;

2.11.2 the Entities shall seek to agree on the amount that would become payable to the Affected Entity (if the terms of Clause 2.8 are satisfied for the relevant calendar year) arising from such Material Adverse Effect and/or any changes to the Programme of Activities or location of Proposed Infrastructure and mitigation strategies that may be adopted;

2.11.3 if the Entities cannot agree on the amount of compensation that may be payable, then the Affected Entity shall be entitled to refer the matter to the Expert for determination in accordance with Clause 6 within 30 days following the end of the calendar year in which the notification is given by the Notifying Entity where the Affected Entity, acting reasonably, considers that the aggregate amount of compensation due to it from the Notifying Entity due to Material Adverse Effects arising from Activities specified in notices given by the Notifying Entity in the relevant calendar year exceeds £100,000;

2.11.4 the Affected Entity shall be entitled to refer all such matters to the Expert in one application requesting that he determine the amount of compensation arising from all notices from the Notifying Party in the relevant calendar year giving rise to a Material Adverse Effect where the Entities have not reached agreement;

2.11.5 the Notifying Entity shall be entitled to proceed with such Activities pending the outcome of such determination;

2.11.6 in the event that the Expert's determination:

(i) accords fully with the Affected Entity's assessment then the Notifying Entity shall bear the costs associated with the determination.

(ii) results in compensation being payable to the Affected Entity (taken together with any sums agreed between the Entities) of less than £100,000 for the relevant calendar year then the Affected Entity shall bear the costs associated with the determination;

(iii) results in an amount of compensation being payable to the Affected Entity which does not reflect either (i) or (ii) above, the Entities shall bear the costs of the determination in the proportions determined by the Expert.

2.12 The Affected Entity shall not give notice to the Notifying Entity in terms of Clause 2.11 above where its assessment of the impact of any Activities in a notification would give rise to a Material Adverse Effect where the cost, losses and/or expenses suffered or incurred by the Affected Entity would be less than £10,000 in aggregate.

2.13 This Agreement shall apply to each project where any part of that project is within the Overlap Zone and the provisions may therefore apply to more than one project at the same time.

3 Pre-Lease phase arrangements

3.1 A project shall be considered to be in the **"consenting phase"** where one of the following conditions is satisfied:

3.1.1 with respect to the Carbon Entity, the Carbon Entity has submitted its draft Facilities Specification and draft Specification(as each term is defined in the Carbon AfL) to the Commissioners for approval together with all information that the Commissioners may reasonably have required to enable them to make a decision whether or not to approve them pursuant to the terms of the Carbon AfL including in respect of its Activities over all or a part of the Overlap Zone, and has not secured a Carbon Lease; or

3.1.2 with respect to the Wind Entity, the project has secured a Wind AfL in respect of its Activities over any part of the Overlap Zone, and has not secured a Wind Lease.

Until a project (or a phase of a project) has entered the consenting phase, it is acknowledged and agreed that there is greater flexibility in location and programming of that Entity's Activities.

3.2 This Clause 3.2 applies where only one of the Entities has a project in the consenting phase. In relation to a project that is in the consenting phase the Notifying Entity may provide details of its Proposed Infrastructure (the location of such infrastructure being Demonstrably consistent with Good Industry Practice at the time of notification by the Notifying Entity for comparable offshore projects in the relevant industry sector) and/or the Programme of Activities that it is intending to implement (the initial Baseline). The Affected Entity shall thereafter propose locations for its Proposed Infrastructure and plan its Programme of Activities in a manner that to the extent practicable minimises the impact on the initial Baseline. Each Entity may by further notice, acting reasonably, modify its

Proposed Infrastructure locations and/or its Programme of Activities, and the Entities shall assess the impact on the other Entity resulting from such changes against the then current Baseline in accordance with the terms of this Agreement.

3.3 Until both Entities have projects in the consenting phase, the Entities shall meet quarterly to discuss their respective actual and proposed Activities. In or pursuant to such quarterly meetings each Entity shall act reasonably in providing to the other Entity information (other than third party proprietary information) on its Activities, and such information shall be at a sufficient level of detail to allow the other Entity to understand the impact on its proposed Activities and locations of Proposed Infrastructure and shall be provided as early as is reasonably practicable. Where any information provided by either Entity to the other changes following a meeting and prior to the next meeting, the relevant Entity shall forthwith notify the other. Each Entity shall provide the other with such information as that other Entity may, acting reasonably, request to assess impacts.

3.4 This Clause 3.4 applies from such time as both Entities have projects that have entered the consenting phase until such time as those projects have entered the construction phase or one is in the construction phase and the other in the operational phase (from which time Clause 4 shall apply). The Entities shall meet quarterly to discuss their respective actual and proposed Activities during the consenting phase and in the construction phase. In or pursuant to such quarterly meetings each Entity shall act reasonably in providing to the other Entity information (other than third party proprietary information) on its Activities, and such information shall be at a sufficient level of detail to allow the other Entity to understand the impact on its proposed Activities and locations of Proposed Infrastructure and shall be provided as early as is reasonably practicable. Where the Notifying Entity intends to: (a) apply for consent or approval from the Commissioners in relation to its Proposed Infrastructure locations (including where this relates to the exercise of its Option to secure a lease under a Relevant Agreement); or (b) make any amendment to its Proposed Infrastructure locations and/or Programme of Activities, the Notifying Entity shall notify the Affected Entity and provide details of the Programme of Activities and (where applicable) the information it intends to submit to the Commissioners and provide further information as to its programme and methodology and other Activities (subject to the terms of Clause 12) required to construct such Proposed Infrastructure. The Notifying Entity shall make a good faith assessment of the impact against the then current Baseline and set out the steps by which it proposes to mitigate or compensate for any Material Adverse Effect (Pre-Operational). If either the Notifying Entity or the Affected Entity considers that a Material Adverse Effect (Pre-Operational) will arise from the Proposed Infrastructure locations or the Programme of Activities and the Entities do not reach commercial agreement as to the mitigation strategy or compensation for Relocation Costs and/or Reprogramming Costs arising from any Material Adverse Effect (Pre-Operational) within a reasonable period, which shall be not less than 30 days of the date of notification by the Notifying Entity, then, subject to Clauses 2.10 to 2.12, either Entity shall be entitled to refer the matter to the Expert for determination in accordance with Clause 6 provided such Entity does so within a further period of 30 days. The Notifying Entity shall not proceed with its changed Programme of Activities and/or apply for any approval for locations of its Proposed Infrastructure in terms of its Relevant Agreement (as applicable) until such time as the Entities have reached agreement or the Expert has made its determination in accordance with Clause 6. No Material Adverse Effect (Pre-Operational) shall arise under this Clause 3.4 where the application for consent from the

Commissioners specifies Proposed Infrastructure locations that have previously been notified to the Affected Entity pursuant to Clause 3.2.

4 Construction Phase

4.1 As early as reasonably practicable and no later than submission of its application for a Storage Permit (as such term is defined in the Storage AfL), the Carbon Entity shall notify the Wind Entity of its Programme of Activities and methodology for undertaking the works. As early as reasonably practicable and no later than entering into a Wind Lease, the Wind Entity shall notify the Carbon Entity of its Programme of Activities and methodology for undertaking the works to construct the Proposed Infrastructure.

4.2 The Entities shall set up an Interface Management Group comprising the project managers for each Entity's project, and such other technical person as each determines necessary, who shall meet as frequently as either Entity considers necessary to ensure a smooth co-existence of both project programmes.

4.3 The Entities shall, through the Interface Management Group, act reasonably and in good faith to determine the interfaces between the Entities' respective project programmes and methodologies and to determine a least cost solution to any programme, methodology or siting conflicts. Each Entity shall take into account the plans of the other in preparing its programmes and methodologies.

4.4 Each Entity shall provide the other with such information (other than third party proprietary information) on its programme and methodology of Activities at a sufficient level of detail to allow the other to understand the impact on the other's programmes and Activities.

4.5 Where the Notifying Entity departs from its then current notified Proposed Infrastructure locations or Programme of Activities, the Notifying Entity shall notify the Affected Entity and, prior to such application shall make a good faith assessment of the impact of such new Proposed Infrastructure locations or amended Programme of Activities on the Affected Entity and set out the steps by which it proposes to mitigate or compensate for any Material Adverse Effect (Pre-Operational). If the Affected Entity considers that a Material Adverse Effect (Pre-Operational) will arise and the Entities do not reach commercial agreement as to the mitigation strategy or compensation for Relocation Costs and/or Reprogramming Costs arising from any Material Adverse Effect (Pre-Operational) within a reasonable period, which shall be not less than 30 days of the date of notification by the Notifying Entity, then subject to Clauses 2.10 to 2.12, either Entity shall be entitled to refer the matter to the Expert for determination in accordance with Clause 6. Where any Proposed Infrastructure locations or Programme of Activities have been referred to the Expert, the Notifying Entity shall not carry out the Activities in question or apply for the new approval or variation to its approval for development for such Activities until such time as the Expert has made its determination in accordance with Clause 6 and where necessary Commissioners' consent has been obtained under Clause 2 or a commercial agreement between the Entities has been documented in writing in accordance with Clause 2 or the Notifying Entity has notified the Commissioners and the Affected Entity that, pursuant to the Expert's determination it does not intend to amend its Proposed Infrastructure locations or Programme of Activities.

5 One or both projects in operation phase

5.1 This Clause 5 shall apply in relation to each Entity's projects in the Overlap Zone where the Commercial Operation Date has been achieved.

5.2 Each Entity shall plan its Activities in a manner that to the extent practicable minimises the impact on the other Entity's operational projects.

5.3 Each Entity may offer to meet with the other Entity at six monthly intervals or at such frequency as the Entities reasonably determine necessary to discuss the respective Entities' Activities in the Overlap Zone. Each Entity shall propose locations for any further infrastructure and plan its Activities in a manner that to the extent practicable minimises the impact on the other Entity's projects. In or pursuant to such six monthly meetings each Entity shall act reasonably in providing to the other Entity information (other than third party proprietary information) on its Activities, and such information shall be at a sufficient level of detail to allow the other Entity to understand the impact on that other Entity's proposed projects and Activities within the Overlap Zone. Where any information provided by either Entity to the other changes following a meeting and prior to the next meeting, such Entity shall forthwith notify the other. Where the Entities have agreed to a programme and methodology for Activities to be undertaken in relation to operation and maintenance and/or repairs, the Entities shall adhere to such agreed programme and methodology.

5.4 Where either Entity intends to carry out Activities which may impact on the Activities of the other and/or which are emergency or unplanned repairs and/or maintenance that require to be carried out otherwise than in accordance with the agreed programme and methodology, the Notifying Entity shall notify the Affected Entity and, prior to undertaking such Activities shall make a good faith assessment of the impact of such Activities on the Affected Entity and set out the steps by which it proposes to mitigate or compensate for any Material Adverse Effect (Post-Operational). If either Entity considers that a Material Adverse Effect (Post-Operational) will arise from the Activities and the Entities do not reach commercial agreement as to the mitigation strategy or compensation for the Material Adverse Effect (Post-Operational) within a reasonable period, which shall be not less than 30 days of the date of notification by the Notifying Entity of such Activities, either Entity shall be entitled to refer the matter to the Expert for determination subject to Clauses 2.10 to 2.12. Where specified Activities have been referred to the Expert, the Notifying Entity shall not proceed with or apply to the Commissioners for consent or approval for such Activities if required in terms of the Relevant Agreement subject to Clause 5.5, until such time as the Expert has made its determination in accordance with Clause 6 and Commissioners' consent/approval has been obtained under Clause 2.

5.5 In the event that either Entity requires to carry out Activities which are not in accordance with the agreed Programme of Activities at the relevant time but are necessary as a result of an emergency or to carry out a repair, such Entity shall be entitled to carry out its Activities prior to the Expert's determination having been made but shall be required to make payment of any compensation agreed or subsequently determined to be paid by the Expert and shall have regard to its obligations under this Agreement including Clause 2.1.

6 Independent Expert Determination

6.1 The provisions of this Clause 6 shall apply wherever under the terms of this Agreement any person is to be appointed as the independent expert (the **"Expert"**) or any matter is to

be referred to an Expert or where the Entities agree that a dispute between them shall be resolved by an Expert.

6.2 The procedure for the appointment of the Expert shall be as follows:

6.2.1 the Entity seeking the appointment of the Expert (the **"Applicant"**) shall give Notice to the other Entity that a disagreement exists and that it wishes an Expert to be appointed to resolve the dispute, which Notice shall state:

(i) reasonable details of the dispute the Applicant proposes to be resolved by the Expert; and

(ii) the proposed terms of reference setting out the scope of the dispute to be referred to the Expert (and including remuneration of the Expert);

6.2.2 the Entities shall endeavour to agree upon:

(i) a single Expert with relevant commercial experience and expertise to resolve the matter in dispute; and

(ii) the terms of reference setting out the scope of the dispute to be referred to the Expert (and including remuneration of the Expert);

6.2.3 if, within the seven (7) days immediately following the date a Notice is given, the Entities have not agreed upon the identity of the Expert and his terms of reference, the matter shall be referred by the Applicant to the President of Energy Institute (the **"Appointing Authority"**) or its successors who shall be requested to select the Expert, together with a list of two alternative candidates in a strict order of preference clearly stating which alternative candidate is to be preferred over the other, ensuring that the Expert and the alternative candidates have the relevant commercial experience and expertise to resolve the dispute, and, if willing to do so, to the extent not already settled, settle the terms of reference of such Expert within thirty (30) days of the request and, in so doing, may take such independent advice as he thinks fit;

6.2.4 upon an Expert being agreed upon or selected under this Clause 6.2, the Applicant shall give notice to such Expert of his selection and of the proposed terms of reference for his appointment and shall request him, within fourteen (14) days of such notice, to confirm to the Entities whether he is willing and able to accept the appointment on the terms proposed and whether he has any conflict preventing him from doing so;

6.2.5 if the Expert:

(i) is unwilling or unable to accept the appointment or the terms proposed; or

(ii) has not confirmed his willingness and ability to accept such appointment within such fourteen (14) day period,

then (unless the Entities are able to agree upon the appointment of another Expert), the Entities or either of them shall forthwith notify the first alternative candidate of his selection and request him to confirm whether he accepts appointment as Expert in accordance with Clause 6.2.4, and if the first alternative candidate shall be either unwilling or unable to accept such appointment or shall not have confirmed his willingness and ability to accept such appointment within the said period of fourteen (14) days then (unless the Entities are able to agree

upon the selection of another Expert) the Entities or any of them shall forthwith notify the second alternative candidate of his selection and request him to confirm whether he accepts appointment as Expert in accordance with Clause 6.2.4, and if the second alternative candidate shall be either unwilling or unable to accept such appointment or shall not have confirmed his willingness and ability to accept such appointment within the said period of fourteen (14) days then (unless the Entities are able to agree upon the selection of another Expert) the matter may again be referred by the Applicant to the Appointing Authority, who shall be requested to make a further selection and the process shall be repeated until an Expert is found who accepts an appointment in accordance with the proposed terms of reference; and

6.2.6 if there is any dispute between the Entities on the amount of remuneration to be offered to the selected Expert or any other term of his terms of reference, then such amount or other term shall be determined by the Appointing Authority within twenty-one (21) days after the referral of that matter to it, whose decision shall be final and binding on the Entities. The appointment of the Expert shall be deemed to have been made upon his signing the terms of reference.

6.3 Restrictions

Any person duly appointed as an Expert under this Clause 6:

6.3.1 shall be entitled to act in such capacity, notwithstanding that at the time of the appointment or at any time before he gives his determination, he or his employer or any person directly or indirectly retaining him as a consultant has or may have some interest or duty that materially conflicts or may materially conflict with his function under this Agreement if he shall, before accepting such appointment, have disclosed any interest or duty of which he is aware that conflicts or may conflict with his function under such appointment and no Entity after such disclosure shall have reasonably objected to his appointment. If either Entity reasonably objects to such appointment within seven (7) days after such disclosure or within seven (7) days of becoming aware of any interest or duty described above on the grounds that it considers that there is a material risk of such interest or duty prejudicing the decision of the Expert, then the Expert shall be discharged from his office immediately upon receipt of a notification and shall immediately cease to act as Expert, and either Entity may apply to the Appointing Authority to make a further selection in accordance with the provisions of Clause 6.2.3. Upon the discharge of the Expert, all written submissions served by any Entity at any time before the discharge of the Expert shall stand as if the Expert had not been discharged but any oral hearings which may have been, or are currently being heard by the Expert shall be reheard by the replacement Expert; and

6.3.2 shall not, at the time of the appointment, be a director, an office holder or an employee of, or directly or indirectly retained as a consultant to, either of the Entities or any Affiliate of either of them nor shall it hold any significant financial interest in an Entity nor shall it hold a shareholding equal to or more than one percent (1%) of the issued share capital of any class in an Entity or an Affiliate of an Entity.

6.4 Terms of Reference

The terms of reference of the Expert shall provide that:

6.4.1 within the fourteen (14) days immediately following the confirmation of his appointment, the Expert shall determine any dispute between the Entities as to the scope of the dispute that has been referred to him, give directions as to the future conduct of the matter and from time to time give such further directions as he shall see fit. In the event of any dispute as to the procedural rules the Expert shall have the power to determine the procedure, and such determination shall be final and binding on the Entities;

6.4.2 Each Entity shall submit to the Expert with a copy to the other within thirty (30) days immediately following the confirmation of appointment of the Expert, its Proposed Infrastructure locations or Programme of Activities, any Material Adverse Effect (including without limitation taking into account likely availability of goods, equipment, materials and/or vessels) and mitigating steps it believes could reasonably be taken together with any documentation to support that view and its assessment of compensation that should be payable. The Expert shall take into account the intent of this Clause, as specified herein, and be entitled to obtain such independent professional and technical advice as it may reasonably require.

6.4.3 The Expert shall within thirty (30) days thereafter, or if earlier thirty (30) days from receipt of the last submission from either Entity, provide written conclusions specifying whether in his view the proposed locations of its Proposed Infrastructure and/or Programme of Activities will cause a Material Adverse Effect, and if so may specify:

(i) any reasonable changes to either Entity's Proposed Infrastructure locations and/or Programme of Activities that he requires to remove or mitigate the Material Adverse Effect; and

(ii) any material and unavoidable Relocation Costs and/or Re-programming Costs or other compensation (in the case of a Material Adverse Effect (Post-Operational)) that he believes should be payable by the Notifying Entity to the Affected Entity arising from the Material Adverse Effect that cannot be mitigated.

6.4.4 The Expert may request oral submissions to be made by either Entity. In the event that the Expert shall request oral submissions to be made, the Entity requested to make such submissions shall give the other Entity not less than seven (7) days' notice of the time and place where such submissions are to be made and shall promptly afford the other Entity the opportunity to be present. The Entity shall arrange for a transcript of any oral hearing to be made. The Expert may order disclosure of any information provided by one Entity to the other Entity, other than:

(i) any price sensitive data, documents or information; or

(ii) any data, documents or information which is not relevant to the dispute in question, the relevancy of such data, documents or information being as the Expert may determine

6.4.5 In the event that one or other of the Entities defaults in complying with any procedural direction made by the Expert, the Expert may after the expiry of the deadline given for compliance with that procedural direction (and any extension which the Expert may, at his discretion, provide), the Expert may continue with his determination notwithstanding the default of such Entity.

6.4.6 The Expert shall:

(i) give a written determination and shall give full written reasons for his determination; and

(ii) make available to the Entities a draft of his determination and draft written reasons for his determination together with a statement of the facts he has relied on and any assumptions he has made at least seven (7) days before formal delivery of his determination for the purpose of affording the Entities an opportunity to draw to his attention any factual error or manifest misconception.

6.4.7 If within a reasonable period (which shall not without the prior written consent of the Entities exceed sixty (60) days after the acceptance by an Expert of the appointment) the Expert shall not have rendered a determination then (at the request of any Entity, copied to the Expert) a new Expert shall be appointed under the provisions of Clause 6.2.3 and upon the acceptance of the appointment by such new Expert, such acceptance to be notified to the previous Expert as soon as is practicable, the appointment of the previous Expert shall cease provided that if the previous Expert shall have rendered a determination prior to the date upon which the new Expert accepts the appointment such determination shall be binding upon the Entities and the instructions to the new Expert shall be withdrawn.

6.4.8 Not an Arbitrator

The Expert shall act as an expert and shall not act as an arbitrator and accordingly the provisions of English law relating to arbitration shall not apply to such Expert or his determination or the procedure by which he reaches his determination.

6.4.9 Immunity from suit

Save for circumstances where the Expert has acted in bad faith, or where the Expert has failed to render a determination within a reasonable time or at all, the Expert shall have no liability to the Entities arising out of or in connection with his appointment as Expert under this Agreement.

6.4.10 Expert's Decision Final

The determination of the Expert shall be final and binding upon the Entities except in the case of fraud or manifest error or failure by the Expert to disclose any interest or duty which conflicts with his functions under his appointment as Expert.

6.4.11 Costs

Subject to Clause 2.11, each of the Entities shall bear its own costs of providing all data, information and submissions given by it and the costs and expenses of all counsel, witnesses and employees retained by it but the costs and expenses of the Expert and any independent advisers to the Expert and (if he is appointed by the Appointing Authority) any costs of his appointment shall be borne as the Expert may determine having regard to the outcome of the determination and, if the fees are to be borne in different proportions, this will be stated as part of the determination.

6.4.12 Communications

(i) All communications between either Entity and the Expert shall be made in writing and a copy provided simultaneously to the other Party and no meeting between the Expert and either Entity shall take place unless both Entities receive at least five (5) days prior written Notice thereof.

(ii) All data, information or documentation disclosed or delivered to the Expert in connection with his appointment as Expert shall be treated as confidential and Expert shall not disclose to any person or company any such data, information or documentation. All such data, information and documentation shall remain the property of the Entity disclosing or delivering the same and shall (together with all copies thereof) be returned to that Entity on completion of the Expert's work provided that the Expert may disclose solely for the purpose of the determination any data, information or documentation to employees of the Expert or his firm or company (if any) of the Expert or his or its professional advisers if such employees or subsidiary or professional advisers have prior to that disclosure entered into specific undertakings to maintain the confidentiality of that information, data and documentation.

7 Interaction with Relevant Agreements

7.1 The Entities further agree that they shall not bring any claim, action, proceeding and/or demand against the Commissioners, under a Relevant Agreement or otherwise, in relation to any matter that has been determined (by the Expert (in accordance with Clause 6) or by agreement) pursuant to the terms of this Agreement.

7.2 Any Entity's rights under any Relevant Agreement shall be subject to, and each Relevant Agreement shall take effect subject to, such rights or Activities in favour of or for the benefit of any other Entity as are determined (by the Expert (in accordance with Clause 6) or by agreement) pursuant to the terms of this Agreement.

7.3 The Parties shall resolve any matters, which fall to be resolved under this Agreement, in accordance with the provisions of this Agreement and accordingly:

7.3.1 no Party shall have any liability to any other Party for a breach of a Relevant Agreement to the extent such liability is a consequence of a determination or agreement made pursuant to this Agreement.

7.3.2 no Party shall bring a claim against any other Party under a Relevant Agreement in respect of any matter which is capable of determination under this Agreement.

7.4 Where either:

7.4.1 a Wind Entity ceases to be party to a Relevant Agreement; or

7.4.2 a Carbon Entity ceases to be party to a Relevant Agreement,

(the "**Exiting Entity**"), then save where the Exiting Entity's interest in the Relevant Agreement is being assigned to a New Entity, an Entity may notify the other Entities that it wishes the amount of compensation due as at that date to or from the Exiting Entity to be reassessed to remove any compensation for costs that will no longer arise, and the Entities shall in good faith seek to agree such reassessed compensation within 30 Business Days, failing which the matter may be referred by any Entity to the Expert for determination.

7.4 The amount of any compensation due to or from the Exiting Entity shall become due and payable within 10 Business Days of the later of the event described in Clause 7.4.1 or 7.4.2 as applicable and the agreement or determination of compensation pursuant to this Agreement where a Material Adverse Effect has been notified prior to the occurrence of the event described in Clause 7.4.1 or 7.4.2 and agreement or determination of any reassessed compensation pursuant to Clause 7.4. This Agreement shall cease to have effect and apply to the Exiting Entity (other than in relation to Clause 12 below) on the latest of such dates.

8 Succession

8.1 The Carbon Entity shall procure on:

8.1.1 a transfer of the Carbon AfL or the Carbon Lease to a New Entity; and

8.1.2 (if the case) on the grant of the Carbon Lease to a New Entity,

that the New Entity shall enter into a deed of covenant with the other Parties and deliver an executed deed to the other Parties by which the New Entity agrees to perform and observe the obligations on the part of the Carbon Entity contained within this Agreement. The other Parties agree that they will also execute the deed of covenant and agree to perform and observe the obligations on their respective parts contained within this Agreement so far as the New Entity is concerned

8.2 Smart Wind Limited shall procure on the grant of a Wind AfL in respect of any part of the Overlap Zone to a New Entity that the New Entity shall enter into a deed of covenant with the other Parties and deliver an executed deed to the other Parties by which the New Entity agrees to perform and observe the obligations on the part of the Wind Entity contained within this Agreement insofar as it relates to the part of the Overlap Zone which is the subject of the Wind AfL. The other Parties agree that they will also execute the deed of covenant and agree to perform and observe the obligations on their respective pats contained within this Agreement so far as the New Entity is concerned.

8.3 Each Wind Entity shall procure on:

8.3.1 a transfer of a Wind AfL or a Wind Lease to a New Entity; and

8.3.2 (if the case) on the grant of a Wind Lease to a New Entity,

that the New Entity shall enter into a deed of covenant with the other Parties and deliver an executed deed to the other Parties by which the New Entity agrees to perform and observe the obligations on the part of the Wind Entity contained within this Agreement insofar as it relates to the part of the Overlap Zone which is the subject of the relevant Wind AfL or Wind Lease. The other Parties agree that they will also execute the deed of covenant and agree to perform and observe the obligations on their respective parts contained within this Agreement so far as the New Entity is concerned.

9 Notices

9.1 Any notice, approval, instruction or other written communication required or permitted under this Agreement shall be sufficient if made or given to the other Party or Parties by personal delivery, by facsimile communication to the facsimile number set out below or by first class post, postage prepaid, to the address set out below:

9.1.1 if to the Commissioners, at:

Address: 16 New Burlington Place, London W1S 2HX

Attention: Legal Director

9.1.2 if to the Carbon Entity, at:

Address: 1 - 3 Strand, London, WC2N 5EH

Attention: Carbon Storage Manager, National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA

9.1.3 if to the Wind Entity, at:

Address: 11th Floor, 140 London Wall, London EC2Y 5DN

Attention: General Manager, Smart Wind Limited

or to such other addresses or facsimile numbers provided to the other Parties in accordance with the terms of this Clause 9.

9.2 Notices or written communications made or given by personal delivery or by facsimile shall be deemed to have been sufficiently made or given when sent (receipt acknowledged), or if posted, 5 Business Days after being placed in the post, postage prepaid, or upon receipt, whichever is sooner.

9.3 Notices by an Entity of its Proposed Infrastructure locations and Programmes of Works, or formal responses to the same, shall be identified on their face as notices submitted pursuant to this Agreement.

10 Miscellaneous

10.1 This Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by executing any such counterpart.

10.2 No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each of the Parties.

10.3 No failure or delay by any Party in exercising any right or remedy shall operate as a waiver of it, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise of it or the exercise of any other right or remedy. Any waiver of a breach of this Agreement shall not constitute a waiver of any subsequent breach.

10.4 This Agreement incorporates the entire contract between the Parties and each Entity acknowledges that it has not entered into this Agreement in reliance upon any statement or representations made by any other Party.

10.5 Except as otherwise provided herein, this Agreement may not be amended except by a written agreement executed by each Party.

10.6 Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement and if such a provision is found to be void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions of this Agreement.

11 Third Party Rights

11.1 Subject to Clause 11.2, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

11.2 The obligations of any Party are intended to be enforceable by and enure for the benefit of any New Entity subject to that New Entity delivering a deed of covenant in favour of each other Party in accordance with Clause 8.

12 Confidentiality

As between each Entity and the Commissioners the confidentiality provisions of the Relevant Agreement shall apply to this Agreement as if set out here in full.

12.1 Definitions

Confidential Information: as between the Entities, any information (however recorded, preserved or disclosed) that any person exercising reasonable business judgment, would consider to be confidential or that was described or marked "confidential" at or shortly after disclosure hereunder, whether before, on or after the date of this Agreement in connection with:

12.1.1 any information that would be regarded as confidential by a reasonable business person relating to: (a) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or of any Affiliate of the Disclosing Party; and (b) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party or of any Affiliate of the Disclosing Party;

12.1.2 any information developed by the parties in the course of carrying out this Agreement;

12.1.3 but not including any information that:

12.1.4 is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this Agreement or of any other undertaking of confidentiality addressed to the Entity to whom the information relates (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or

12.1.5 was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party; or

12.1.6 was, is or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient; or

12.1.7 was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party; or

12.1.8 the Entities agree in writing is not confidential or may be disclosed; or

12.1.9 is developed by or for the Recipient independently of the information disclosed by the Disclosing Party.

Disclosing Party: an Entity which discloses or makes available directly or indirectly Confidential Information.

Recipient: an Entity which receives or obtains directly or indirectly Confidential Information in relation to the Disclosing Party or the Disclosing Party's Project.

Representative: employees, agents, sub-contractors, professional advisers, insurers, brokers, other authorised representatives of the Recipient and/or persons specifically notified by the Recipient to, and approved by, the Disclosing Party, any bona fide proposed assignee or new Entity (including an offshore transmission owner), the Planning Inspectorate or Infrastructure Planning Commission, or any other person authorised to determine a development consent order or otherwise necessary to secure a Necessary Consent.

12.2 Obligations of confidentiality

12.2.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall not, and shall procure that its Representatives shall not: (a) use or exploit the Confidential Information in any way; or (b) disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement; or (c) copy, reduce to writing or otherwise record the Confidential Information.

12.2.2 The Recipient may only disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know this Confidential Information, provided that: (a) it informs these Representatives of the confidential nature of the Confidential Information before disclosure and ensures that its Representatives are obliged to keep the Confidential Information confidential in terms at least as extensive and binding upon the Representatives as the terms of this Agreement are upon the Entities; and (b) at all times, it is responsible for these Representatives' compliance with the obligations set out in this Agreement.

12.2.3 An Entity may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.2, it takes into account the reasonable requests of the other Entity in relation to the content of this disclosure.

12.2.4 The Recipient shall establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised access or use.

12.2.5 Unless otherwise agreed by the Entities in writing, the confidentiality obligations and limitations set forth in this Agreement shall terminate 3 (three) years after the date of termination of this Agreement.

12.3 Reservation of rights and acknowledgement

12.3.1 All Confidential Information shall remain the property of the Disclosing Party. Each Entity reserves all rights in its Confidential Information. No rights, including, but not

limited to, intellectual property rights, in respect of an Entity's Confidential Information are granted to the other Entity and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement.

12.3.2 The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.

12.3.3 The Recipient shall be liable to the Disclosing Party for the actions or omissions of the Recipient's Representatives under this Agreement, as if they were the actions or omissions of the Recipient.

13 Governing Law and Jurisdiction

13.1 This Agreement and any non-contractual obligations arising out of or in connection with it and any documents to be entered into pursuant to it shall be governed by, and construed in accordance with, English law.

13.2 The Parties irrevocably agree that the courts of England are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any proceedings arising out of or in connection with this Agreement shall be brought in such courts.

IN WITNESS whereof this Agreement has been executed as a deed on the date set out above

Schedule 1

Part 1

Lease Option Area

Lease Option Area Coordinates

Latitude	Longitude
54.043889	1.250556
54.265278	1.376111
54.378889	0.793056
54.156944	0.668611

Coordinates supplied in WGS84 decimal degrees

Part 2

Zone 4

ZDA Area Coordinates

Latitude	Longitude	Latitude	Longitude
54° 13' 19.305" N	0° 28' 34.725" E	53° 49' 52.795" N	2° 54' 19.691" E
54° 12' 17.414" N	1° 12' 18.262" E	53° 48' 53.846" N	2° 54' 37.684" E
54° 00' 18.478" N	1° 38' 37.321" E	53° 47' 54.897" N	2° 54' 55.662" E
53° 59' 31.972" N	2° 06' 34.105" E	53° 46' 55.946" N	2° 55' 13.627" E
53° 59' 19.282" N	2° 13' 34.689" E	53° 45' 56.995" N	2° 55' 31.578" E
53° 58' 42.513" N	2° 32' 43.903" E	53° 44' 58.043" N	2° 55' 49.515" E
54° 01' 22.169" N	2° 48' 41.148" E	53° 44' 12.582" N	2° 56' 03.337" E
54° 01' 25.108" N	2° 48' 55.044" E	53° 43' 25.601" N	2° 56' 17.612" E
54° 01' 25.528" N	2° 48' 57.030" E	53° 43' 00.136" N	2° 56' 25.347" E
54° 01' 37.490" N	2° 49' 53.618" E	53° 42' 01.181" N	2° 56' 43.242" E
54° 01' 49.992" N	2° 50' 54.774" E	53° 41' 02.226" N	2° 57' 01.123" E
54° 01' 42.423" N	2° 50' 56.638" E	53° 40' 03.269" N	2° 57' 18.990" E
54° 01' 26.924" N	2° 51' 00.455" E	53° 39' 55.416" N	2° 57' 21.980" E
54° 01' 24.436" N	2° 51' 01.068" E	53° 38' 56.988" N	2° 57' 44.220" E
54° 00' 43.142" N	2° 51' 11.234" E	53° 38' 46.104" N	2° 57' 48.361" E
53° 59' 43.861" N	2° 51' 25.817" E	53° 38' 28.685" N	2° 57' 54.987" E
53° 58' 44.580" N	2° 51' 40.390" E	53° 38' 03.399" N	2° 58' 04.602" E
53° 57' 45.299" N	2° 51' 54.950" E	53° 38' 26.522" N	2° 57' 02.499" E
53° 57' 44.350" N	2° 51' 55.242" E	53° 38' 27.241" N	2° 57' 00.517" E
53° 56' 45.408" N	2° 52' 13.347" E	53° 38' 27.634" N	2° 56' 59.434" E
53° 55' 46.466" N	2° 52' 31.439" E	53° 38' 35.123" N	2° 56' 38.777" E

Latitude	Longitude	Latitude	Longitude
53° 54' 47.523" N	2° 52' 49.516" E	53° 39' 15.059" N	2° 54' 30.054" E
53° 53' 48.579" N	2° 53' 07.579" E	53° 39' 18.625" N	2° 54' 18.554" E
53° 52' 49.635" N	2° 53' 25.628" E	53° 48' 23.275" N	2° 24' 43.629" E
53° 51' 50.689" N	2° 53' 43.663" E	53° 49' 58.583" N	1° 59' 54.762" E
53° 50' 51.742" N	2° 54' 01.684" E	53° 50' 00.530" N	0° 29' 15.901" E

Coordinates supplied in WGS84 degrees minutes decimal seconds.

Part 3

Overlap Zone

Overlap Zone Coordinates

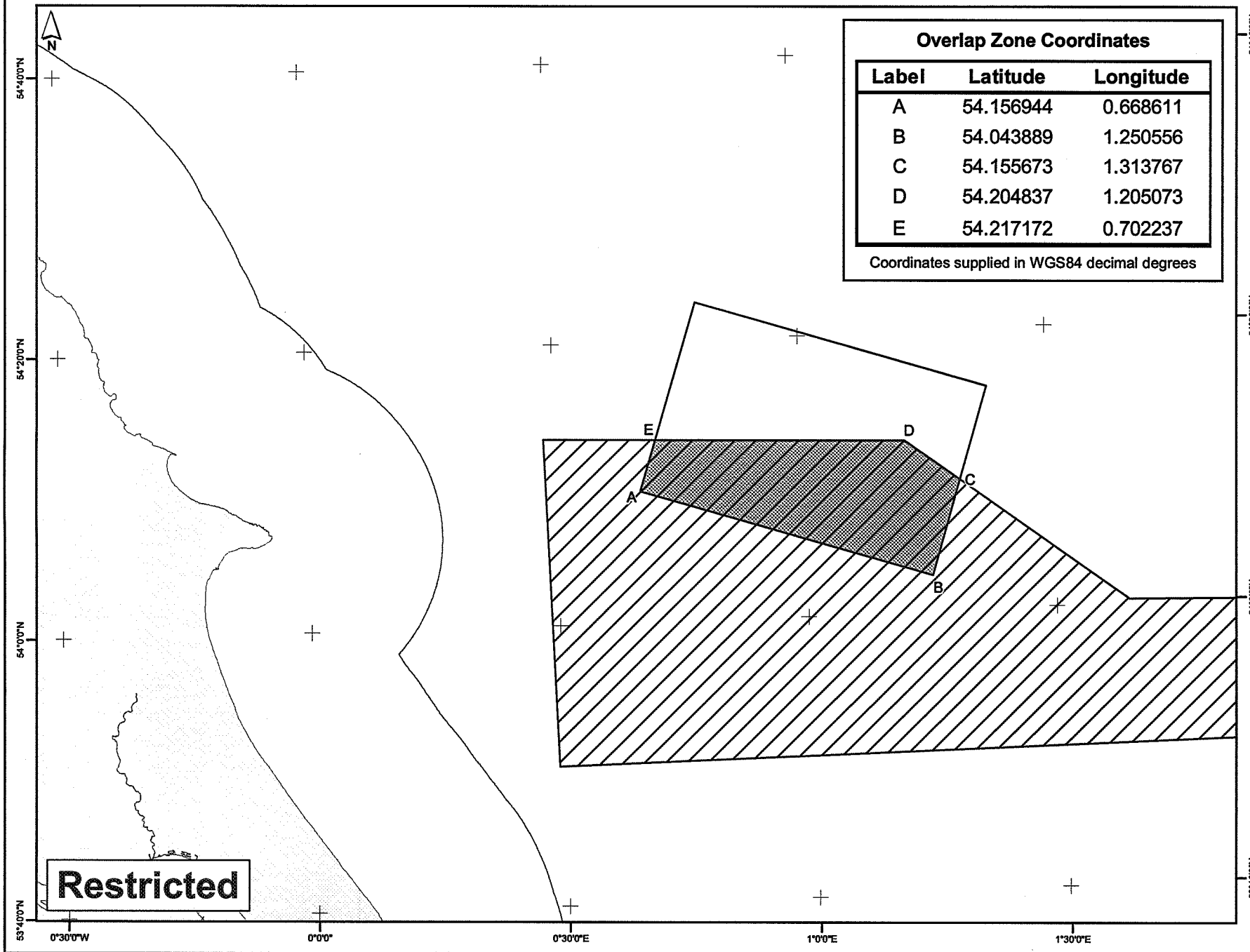
Latitude	Longitude
54.156944	0.668611
54.043889	1.250556
54.155673	1.313767
54.204837	1.205073
54.217172	0.702237

Coordinates supplied in WGS84 decimal degrees

Schedule 2

The Plan

Overlap Zone of CCS Lease Option Area and Zone 4



Overlap Zone Coordinates

Label	Latitude	Longitude
A	54.156944	0.668611
B	54.043889	1.250556
C	54.155673	1.313767
D	54.204837	1.205073
E	54.217172	0.702237

Coordinates supplied in WGS84 decimal degrees

- Overlap Zone
- CCS Lease Option Area
- Round 3 Wind Farm Zone

Base Map

- Territorial Waters Limit
- United Kingdom

0 10 20 km

MaRS
Marine Resource System

MaRS/1211/029	
26 Nov 2012	
Author : KW	
QA : KB	
Size: A4	
1:700,000	

16 New Burlington Place
[redacted]
THE CROWN ESTATE

Map Document: (S:\MARINE\Restricted\MaRS\GIS\Sectors\CCS_Gas\Carbon_Capture\CCS_InterfaceAgreementPlan_20121126_KW\3_Documents\CCS_Overlay_20121126_KW_Map.mxd)
26/11/2012 – 15:26:27

Schedule 3

Crossing Agreement principles

1. The form of crossing agreement will be based on the Oil and Gas UK Industry Model Form: Pipeline Crossing Agreement (January 2009) or such other form published by Oil and Gas UK as may be current from time to time amended as necessary to reflect crossing of a pipeline by an electricity cable or cables, or vice versa.

2. The crossing agreement will apply to the Entities (being the parties owning and/or operating the pipeline and/or electricity cable) (the "Crossing Agreement Parties") that are the subject of the crossing agreement as the case may be.

3. The crossing agreement may cover more than crossing of the pipeline or cable as may be required in relation to other matters at the crossing location.

4. The liability of the Crossing Agreement Parties under each crossing agreement shall be limited to £25m (twenty five million pounds sterling) and such limitation shall apply to the initial work and any additional work undertaken under the crossing agreement.

5. Any work to be carried out by the Crossing Agreement Parties may be carried out in more than one phase.

6. The Safety Zone will be the area within 200m on either side of the pipeline.

7. The Safety Zone will be the area within 200m on either side of the cable.

THE OFFICIAL SEAL of **THE CROWN ESTATE COMMISSIONERS** hereunto affixed was authenticated by:

.....

EXECUTED AS A DEED by for and on behalf of

NATIONAL GRID TWENTY NINE LIMITED by: .....

Print name: .....

In the presence of:

Witness name .....

Address .....

Occupation

EXECUTED AS A DEED by for and on behalf of

SMART WIND LIMITED by:

Print name:

In the presence of:

Witness name

Address

Occupation

APPENDIX 2: DEED OF ADHERENCE AND VARIATION TO THE IA DATED 12 SEPTEMBER 2016

THE CROWN ESTATE

Private & Confidential

Dated 12th September 2016

THE CROWN ESTATE COMMISSIONERS

SMART WIND LIMITED

CARBON SENTINEL LIMITED

and

SMART WIND SPC6 LIMITED

DEED OF ADHERENCE AND VARIATION
relating to an Interface Agreement dated
14 February 2013

NORTON ROSE FULBRIGHT

THIS DEED is made the 12th day of September 2016

BETWEEN:

(1) **THE CROWN ESTATE COMMISSIONERS** on behalf of Her Majesty acting in exercise of the powers of The Crown Estate Act 1961 (the **Commissioners**);

(2) **SMART WIND LIMITED** (company number 07107382) having its registered off ice at Dong Energy, 5 Howick Place, London SW1P 1WG (**Smart Wind**);

(3) **CARBON SENTINEL LIMITED** (company number 08116471) (previously known as National Grid Twenty Nine Limited) having its registered off ice at 1-3 Strand, London WC2N 5EH;

(each, an **Existing Party** and together, the **Existing Parties**); and

(4) **SMART WIND SPC6 LIMITED** (company number 08584182) having its registered off ice at Dong Energy, 5 Howick Place, London SW1P 1WG (**SPC6**)

BACKGROUND:

(A) The Existing Parties are parties to an interface agreement dated 14 February 2013 (the **Interface Agreement**). The Interface Agreement was intended to provide a mechanism to ensure successful co-existence of wind and carbon storage projects on an overlapping area of sea bed.

(B) SPC6 has entered into an agreement for lease with the Commissioners (the **HOW04 AfL**) in respect of, among other areas, part of the Overlap Zone (as that term is defined in the Interface Agreement).

(C) Clause 8.2 (*Succession*) of the Interface Agreement requires Smart Wind to procure that SPC6 enters into a deed of covenant in favour of the Existing Parties, in which it agrees to perform and observe the obligations on the part of the Wind Entity (as that term is defined in the Interface Agreement) in so far as they relate to that part of the Overlap Zone the subject of a Wind AfL.

(D) The ZDA (as that term is defined in the Interface Agreement) having terminated, the Existing Parties, with the consent of SPC6 wish to vary the Interface Agreement on the terms set out in clause 3 of this Deed.

IT IS HEREBY AGREED as follows:

1 Interpretation

1.1 Save where defined otherwise or the context otherwise requires, the words and expressions used in this Deed shall have the meanings given to them in the Interface Agreement.

1.2 The principles of construction set out in the Interface Agreement shall have effect as if set out in full in this Deed.

2 Adherence to the Interface Agreement

2.1 SPC6 acknowledges to each Existing Party that it has read and understood the Interface Agreement.

2.2 SPC6 covenants to perform and observe the obligations on the part of a Wind Entity contained within the Interface Agreement insofar as they relate to that the part of the Overlap Zone which is the subject of the HOW04 AfL.

2.3 The Existing Parties agree to perform and observe the obligations on their respective parts contained within the Interface Agreement so far as SPC6 is concerned and undertake to SPC6 that they will comply with the terms and conditions set out in the Interface Agreement all of which remain binding on the Existing Parties as if SPC6 were originally a signatory to the Interface Agreement as a Wind Entity.

2.4 The parties acknowledge and agree that, although the HOW04 AfL was not entered into in accordance with the ZDA, it shall be deemed a Wind AfL for the purposes of the Interface Agreement.

2.5 The parties acknowledge the termination of the ZDA and agree that, notwithstanding clause 3.2 below, such termination shall have no impact on the operation of the Interface Agreement.

3 Amendment of the Interface Agreement

3.1 With effect from the date of this Deed the Interface Agreement shall be varied as set out in this clause 3.

3.2 In clause 1.3 of the Interface Agreement:

(a) the definition of **Good Industry Practice** shall be amended by substituting the words "mean acting as a Reasonable and Prudent Developer as such term is defined in the Wind AfL" for the words "mean acting as a Reasonable and Prudent Operator as such term is defined in the ZDA";

(b) the definition of **Necessary Consents** shall be amended by substituting the words "Wind AfL" for the word "ZDA";

(c) the definition of **Relevant Agreements** shall be amended by deleting the words "the ZDA";

(d) the definition of **Wind Entity** shall be amended by substituting the words "project company" for the words "Project Company (as defined in the ZDA)";

(e) the definition of **Wind AfL** shall be amended by deleting the words "in accordance with the ZDA";

(f) the definition of **Wind Lease** shall be amended by deleting the words "the ZDA and"; and

(g) the definition of **ZDA** shall be deleted.

3.3 The words "Carbon AfL" shall be substituted for the words "Storage AfL" in both the definition of **Proposed Infrastructure** and clause 4.1 of the Interface Agreement.

3.4 In Schedule 1, Part 2, the heading "ZDA Area Coordinates" shall be replaced by the heading "Area Coordinates".

4 Miscellaneous

4.1 After the date of this Deed, the Interface Agreement shall be read and construed as one with this Deed so that all references in the Interface Agreement to "this Agreement" shall be references to the Interface Agreement as amended by this Deed.

4.2 The provisions of clauses 10.2, 10.5, 10.6 (*Miscellaneous*), 11 (*Third Party Rights*) and 12 (*Confidentiality*) of the Interface Agreement shall be incorporated into this Deed as if set out in full in this Deed and as if references in those clauses to "this Agreement" are references to this Deed.

4.3 This Deed may be executed in counterparts.

5 Governing law

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

6 Jurisdiction

Each party to this Deed agrees to submit to a non-exclusive jurisdiction of the English courts.

THIS DEED has been executed as a deed and it has been delivered on the date stated at the beginning of this Deed.

THE OFFICIAL SEAL of
THE CROWN ESTATE COMMISSIONERS
placed here was confirmed as authentic by:

.....

Name: [redacted]

Title:

EXECUTED as a **DEED** by
SMART WIND LIMITED

acting by:

.....

Director

in the presence of:

.....

Name of witness: .....

Address: .....

4.2 The provisions of clauses 10.2, 10.5, 10.6 (*Miscellaneous*), 11 (*Third Party Rights*) and 12 (*Confidentiality*) of the Interface Agreement shall be incorporated into this Deed as if set out in full in this Deed and as if references in those clauses to "this Agreement" are references to this Deed.

4.3 This Deed may be executed in counterparts.

5 Governing law

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

6 Jurisdiction

Each party to this Deed agrees to submit to a non-exclusive jurisdiction of the English courts.

THIS DEED has been executed as a deed and it has been delivered on the date stated at the beginning of this Deed.

THE OFFICIAL SEAL of
THE CROWN ESTATE COMMISSIONERS
placed here was confirmed as authentic by:

.....

Name:

Title:

EXECUTED as a **DEED** by
SMART WIND LIMITED

acting by:

.....

Director

in the presence of:

Name of witness:

Address:

EXECUTED as a **DEED** by
CARBON SENTINEL LIMITED

acting by:

.....

Director

in the presence of:

Name of witness: .....

Address: .....

EXECUTED as a **DEED** by
SMART WIND SPC6 LIMITED

acting by:

.....

Director

in the presence of:

.....

Name of witness: .....

Address: .....

EXECUTED as a **DEED** by
CARBON SENTINEL LIMITED

acting by:

.....

Director

in the presence of:

.....

Name of witness: .....

Address: .....

EXECUTED as a **DEED** by
SMART WIND SPC6 LIMITED

acting by:

.....

Director

in the presence of:

.....

Name of witness: .....

Address:

APPENDIX 3: DEED OF COVENANT AND ADHERENCE TO THE IA (DATED 10 FEBRUARY 2021)

EVERSHEDS SUTHERLAND

Eversheds Sutherland (International) LLP
1 Callaghan Square
Cardiff
CF10 5BT
United Kingdom

T: +44 20 7497 9797
F: +44 20 7919 4919
DX 33016 Cardiff

[redacted]

Dated: 10 February 2021

(1) The Crown Estate Commissioners

(2) Orsted Hornsea Project Four Limited

(3) Smart Wind Limited

(4) Carbon Sentinel Limited

(5) BP Exploration Operating Company Limited

Deed of Covenant and Adherence

relating to an Interface Agreement dated 14 February 2013

THIS DEED is made on 10 February 2021

BETWEEN

(1) The Crown Estate Commissioners on behalf of Her Majesty acting in exercise of the powers of The Crown Estate Act 1961 (the **"Commissioners"**);

(2) Orsted Hornsea Project Four Limited (company number 08584182) having its registered office at 5 Howick Place, London SW1P 1WG (**"Orsted"**);

(each, a **"Continuing Party"** and together, the **"Continuing Parties"**)

(3) Smart Wind Limited (company number 07107382) having its registered office at 5 Howick Place, London SW1P 1WG (**"Smart Wind"**);

(4) Carbon Sentinel Limited (company number 08116471) (previously known as National Grid Twenty Nine Limited) having its registered office at 1-3 Strand, London WC2N 5EH; (the **"Outgoing Party"**)

(the Continuing Parties, Smart Wind and the Outgoing Party each being, an **"Existing Party"** and together, the **"Existing Parties"**); and

(5) BP Exploration Operating Company Limited (registered number 00305943) whose registered office is at Chertsey Road, Sunbury-on-Thames, Middlesex TW16 7BP (the **"Incoming Party"**).

BACKGROUND

(A) At the date of this Deed, the Existing Parties are parties to an interface agreement dated 14 February 2013 between (1) the Commissioners (2) the Outgoing Party (as it was then known) and (3) Smart Wind as varied by a deed of adherence and variation dated 12 September 2016 between (1) the Commissioners (2) Smart Wind (3) the Outgoing Party (as it is now known) and (4) Orsted (the **"Interface Agreement"**). The Interface Agreement provides, among other things, a mechanism for the co-existence of wind and carbon storage projects on an overlapping area of sea bed together with compensation and dispute resolution provisions in the alternative.

(B) The Outgoing Party was the original holder and operator of the Carbon Dioxide Appraisal and Storage Licence CS001 dated 6 November 2012 granted by the Secretary of State for Energy and Climate Change under Section 18 of the Energy Act 2008 (the **"Store Licence"**).

(C) By a deed of assignment dated 30 September 2020 the Outgoing Party, the Incoming Party, Equinor New Energy Limited (**"Equinor"**) and The Oil and Gas Authority transferred the Store Licence to the Outgoing Party, the Incoming Party and Equinor.

(D) The Outgoing Party intends to assign an agreement for lease dated 14 February 2013 made between (1) Her Majesty the Queen (2) the Commissioners and (3) the Outgoing Party (the **"Agreement for Lease"**) to the Incoming Party in its capacity as operator of the Store Licence on behalf of the Outgoing Party, the Incoming Party and Equinor.

(E) Clause 8.1 of the Interface Agreement requires the Carbon Entity (as that term is defined in the Interface Agreement) to procure that the Incoming Party enters into a deed of covenant in favour of the Existing Parties, in which it agrees to perform and observe the obligations on the part of the Carbon Entity.

OPERATIVE PROVISIONS

1. **DEFINITIONS AND INTERPRETATION**

1.1 Save where defined otherwise or the context otherwise requires, the words and expressions used in this Deed shall have the meanings given to them in the Interface Agreement and the following words and expressions have the following meanings unless the context otherwise requires:

"Effective Date"	the date of this Deed;
"Obligations"	all of the covenants, undertakings, warranties, duties, liabilities, indemnities and obligations of a party under or in respect of the Interface Agreement including any obligations which are imposed by law into the Interface Agreement or arise in tort as a result of carrying out any obligations or duties pursuant to the Interface Agreement; and
"Working Day"	any day except Saturday Sunday and bank or other public holidays in England.

1.2 The principles of construction set out in Clauses 1.1.1 to 1.1.10 (inclusive) of the Interface Agreement shall have effect as if set out in full in this Deed.

2. **COVENANTS AND ADHERENCE TO THE INTERFACE AGREEMENT**

2.1 In consideration of the mutual undertakings and obligations contained in this Deed:

2.1.1 the Continuing Parties consent to the transfer of all future rights, title and interests and Obligations of the Outgoing Party in or under the Interface Agreement arising on or after the Effective Date by the Outgoing Party to the Incoming Party and that the Incoming Party will be entitled to enjoy such rights, title and interests from and including the Effective Date;

2.1.2 the Incoming Party agrees and covenants with the Continuing Parties that it will perform and observe the future Obligations of the Outgoing Party under the Interface Agreement arising on or after the Effective Date and be bound by the terms of the Interface Agreement in every way as if the Incoming Party had at all times with effect from and including the Effective Date been party to the Interface Agreement in place of the Outgoing Party; and

2.1.3 the Continuing Parties agree and covenant with the Incoming Party that they will perform and observe the future Obligations of the Continuing Parties under the Interface Agreement arising on or after the Effective Date and be bound by the terms of the Interface Agreement in every way as if the Incoming Party had at all times with effect from and including the Effective Date been party to the Interface Agreement in place of the Outgoing Party.

3. **RELEASES**

3.1 The Outgoing Party:

3.1.1 releases and discharges the Continuing Parties and Smart Wind from all future Obligations howsoever and whenever arising on or after the Effective Date owed to the Outgoing Party; and

3.1.2 will remain liable to the Continuing Parties and Smart Wind in respect of all its Obligations accrued prior to the Effective Date.

3.2 The Continuing Parties:

3.2.1 release and discharge the Outgoing Party from all future Obligations owed to the Continuing Parties howsoever and whenever arising on or after the Effective Date and from all claims and demands whatsoever and howsoever arising on or after the Effective Date;

3.2.2 accept the liability of the Incoming Party under the Interface Agreement instead of the liability of the Outgoing Party for all Obligations (whether to the Continuing Parties or any other person) accruing on or after the Effective Date;

3.2.3 acknowledge that no claim whatsoever or howsoever arising can be brought against the Outgoing Party in respect of any liability accruing on or after the Effective Date in connection with the Interface Agreement; and

3.2.4 will remain liable to the Outgoing Party in respect of all its Obligations accrued prior to the Effective Date.

3.3 Smart Wind:

3.3.1 releases and discharges the Continuing Parties and the Outgoing Party from all future Obligations howsoever and whenever arising on or after the Effective Date owed to Smart Wind;

3.3.2 will remain liable to the Continuing Parties and the Outgoing Party in respect of all its Obligations accrued prior to the Effective Date; and

3.3.3 as of the Effective Date relinquishes all future rights, title and interests in the Interface Agreement.

3.4 The Continuing Parties:

3.4.1 release and discharge Smart Wind from all future Obligations owed to the Continuing Parties howsoever and whenever arising on or after the Effective Date and from all claims and demands whatsoever and howsoever arising on or after the Effective Date;

3.4.2 acknowledge that no claim whatsoever or howsoever arising can be brought against Smart Wind in respect of any liability accruing on or after the Effective Date in connection with the Interface Agreement; and

3.4.3 will remain liable to Smart Wind in respect of all its Obligations accrued prior to the Effective Date.

4. MISCELLANEOUS

4.1 After the date of this Deed, the Interface Agreement shall be read and construed as one with this Deed so that all references in the Interface Agreement to "this Agreement" shall be references to the Interface Agreement and this Deed.

4.2 The provisions of clauses 10.2, 10.3, 10.5, 10.6, 11 and 12 (subject to clause 5 of this Deed) of the Interface Agreement shall be incorporated into this Deed as if set out in full in this Deed and as if references in those clauses to "this Agreement" are references to this Deed.

4.3 The address and other details of the Incoming Party for clause 9 of the Interface Agreement is as follows:

BP Exploration Operating Company Limited

Address: Chertsey Road, Sunbury on Thames, Middlesex, TW16 7BP

Attention:

Email address:

Copy to:

Email address:

4.4 This Deed may be signed by the Parties in counterparts, each and every one of which shall be deemed an original, notwithstanding variations in format or file designation which may result from the electronic transmission, storage and printing of copies of this Deed from separate computers or printers. Documents with signatures transmitted electronically, whether sent via facsimile or as attached files (including PDF), shall be acceptable to bind the Parties and shall not in any way affect this Deed's validity. All such counterparts taken together shall constitute one and the same instrument.

4.5 If any provision of this Deed is held to be invalid or unenforceable by any court or other competent authority, all its other provisions will remain in full force.

4.6 No person other than a contracting party may enforce any provision of this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999.

5. CONFIDENTIAL INFORMATION

5.1 For the purposes of clause 12 of the Interface Agreement, the Parties acknowledge that:

5.1.1 the Incoming Party has given notice to the Continuing Parties that the Outgoing Party is a person specifically notified to the Continuing Parties to allow disclosure of Confidential Information as a Representative of the Incoming Party; and

5.1.2 the Continuing Parties have given their approval to the disclosure of Confidential Information by the Incoming Party to the Outgoing Party pursuant to clause 12 of the Interface Agreement.

5.2 In its capacity as a Representative of the Incoming Party, the Outgoing Party agrees to be bound by the terms of clause 12 of the Interface Agreement as at the date of this Deed with respect to Confidential Information received prior to or after the date of this Deed.

6. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

7. JURISDICTION

Each party to this Deed agrees to submit to a non-exclusive jurisdiction of the English courts.

This document is executed as a deed and delivered on the date stated at the beginning of this document.

THE OFFICIAL SEAL of)
THE CROWN ESTATE COMMISSIONERS)
Hereunto affixed was authenticated by:)

Executed as a deed by)
ORSTED HORNSEA PROJECT FOUR LIMITED)
acting by two directors:)

Signature of director

Signature of director

Executed as a deed by)
SMART WIND LIMITED)
acting by two directors:)

Signature of director

Signature of director

Executed as a deed by)
CARBON SENTINEL LIMITED)
acting by one director)
in the presence of:)

Signature of director

Witness Signature:

Witness Name:

Witness Address:

Executed and delivered as a deed by **BP EXPLORATION OPERATING COMPANY LIMITED** under a power of attorney dated 19 January 2021 on being signed by ANDREW CHARLES LANE in the presence of:

.....

Duly Authorised Attorney

Name of witness: .....

Signature of witness: .....

Address: .....

.....

Occupation: .....

APPENDIX 4: BP'S SUMMARY OF THE INTERFACE AGREEMENT

	Clause summary	Commentary on proposed disapplication
1	**Recitals** The first two recitals acknowledge that the Crown Estate ('TCE') has entered into a zonal development agreement with Smart Wind Limited, and into an agreement for lease with National Grid Twenty-Nine Limited. The third recital confirms the parties entered into the agreement to regulate and co-ordinate their activities within the Overlap Zone with a view to managing potential conflicts and resolving actual conflicts.	The Interface Agreement ('IA') was entered into at a point in time in which the then parties envisaged co-development within the Overlap Zone would be possible and/or only require minor readjustments to their development programme or the intended infrastructure locations, with limited commensurate compensation payable. This presumption of the feasibility of co-development underlies the rationale for and content of the provisions of the IA. In view of the change in circumstances whereby it is now understood that such co-development is not possible (for the reasons articulated in the bp Position Statement submitted at Deadline 1 and elaborated upon in bp's Deadline 2 response), it follows that the rationale for its provisions no longer exists. Furthermore, the effect of its provisions in this context would be to frustrate the achievement of the objectives of Government Carbon Capture Use and Storage policy.
CLAUSE 1 – INTERPRETATION AND DEFINITIONS		
2	**Clause 1 – Interpretation and Definitions** This clause sets out the relevant interpretation provisions and defined terms, which inform the interpretation of the rest of the agreement. Cross-reference is made to relevant definitions as necessary in the paragraphs below. It further provides (clause 1.2) that any covenant by (or implied to be made by) Her Majesty pursuant to the terms of the Agreement is made by TCE in exercise of the powers conferred by the Crown Estate Act 1961. It confirms that nothing in the Agreement imposes any liability on Her Majesty or anyone who reigns after her, nor on the TCE in any personal or private capacity.	This is protection afforded to TCE as a signatory to the agreement, in the context of their role as counter party to the relevant AfLs (or Zone Development Agreement as was the relevant agreement with the then Wind Entity at the time, but which has now been superseded by project specific AfLs and so is not discussed further below). However, the effect of this protection is specific to the terms of the IA and so to the extent the IA were disapplied, no protection from its terms would be required. Therefore the TCE would not be prejudiced by the disapplication of this clause.
CLAUSE 2 - Commissioners' consent for location of Proposed Infrastructure and Entities' notifications of Programmes of Activities		
3	**Clause 2 – Commissioners' consent for location of Proposed Infrastructure and Entities' notifications of Programmes of Activities** Clause 2.1 –	This provision clarifies both the purpose of the IA and also confirms the context within which it was prepared – an expectation that co-development within the Overlap Zone would be possible, subject to both parties working

	Clause summary	Commentary on proposed disapplication
	a. confirms the intent of the agreement is to provide a mechanism to ensure successful co-delivery of the respective projects within the Overlap Zone and to provide sufficient certainty to the parties to plan and implement their projects; b. notes the provisions are intended to provide a framework which incentivises the parties to work together and to plan their activities to give each other sufficient certainty to progress their respective projects; c. provides for the parties to carry out their obligations/exercise their rights under the IA (and the AfLs, where relevant) in good faith and in manner which does not unduly hinder the timely progress and development of the projects within the Overlap Zone; and d. further provides that where a Material Adverse Effect (as defined, and commented upon further below) has arisen, the parties are to mitigate, to the extent reasonably practicable, the impact of such effect on itself or the other entity.	together and through comparatively minor changes to the programme or the location of the infrastructure where necessary. bp has explained to the ExA that despite extensive engagement between the parties and refinements to the NEP design/footprint, such co-development across the entirety of the Overlap Zone is not feasible for delivering the ECC plan. The agreement is therefore not fit for its intended purpose.
4	**Clause 2.2** provides for each party to consult with the other early and fully as part of any consultation process for any of its Necessary Consents (as defined). It also provides that neither party may lodge any objection or make any representation to any application of the other party for a Necessary Consent within the Overlap Zone.	It was clearly not contemplated that substantial, in-principle, objections would be necessary on the basis that co-existence/development was assumed. A waiver of this provision has now been entered into between bp and Orsted to ensure that both parties can fully participate in the relevant consent processes.
5	**Clause 2.3** notes the parties agree to act in good faith in the negotiation of any necessary Crossing Agreement (as defined).	bp has re-produced this provision in the terms of its protective provisions (para 10 (see Annex 3 of bp's Deadline 2 submissions (REP2-062)) and so there is no wider consequence to its disapplication as part of the IA.
6	**Clause 2.4** notes the discretion open to TCE under the respective AfLs to approve, or withhold approval of, the siting of the parties' respective Proposed Infrastructure (as defined).	This provision assists with the read-across between the IA and the relevant AfLs. It does not impose any new legal obligation, or bestow any greater power on TCE in its role as the approving body under the AfLs, and so its disapplication has no wider practical or legal consequence – the relevant provisions will continue to exist under the respective AfLs.

	Clause summary	Commentary on proposed disapplication
7	**Clauses 2.5 and 2.6** apply to circumstances where the entities have reached commercial agreement in relation to any changes to their Activities (as defined) or the payment of any compensation pursuant to the IA or the Expert (as defined) has made a determination pursuant to the IA, and clarify the subsequent procedural/documentation implications.	These are ancillary provisions, and so it is appropriate to disapply their effect for the same reasons advocated in respect of the primary provisions to which they relate (discussed below).
8	**Clauses 2.7 to 2.12** - these provisions set out certain procedural steps to follow in assessing, and depending on, the level of compensation resulting from a Material Adverse Effect as a result of the notifying party's activities.	For immediate purposes, these procedural steps are of less relevance than the calculation of the compensation figure and how it is to be determined which is covered subsequently in the IA. We comment substantively against such provisions below, and no further commentary is considered necessary against their ancillary provisions in these specific clauses other than to recognise that the thresholds referenced of £100,000 (clauses 2.8 (more than)) and 2.11 (less than) and £10,000 (clause 2.12 (less than)) again recognise the disparity between the circumstances/mitigation envisaged at the time the IA was entered into and the present day reality where no co-development is considered possible across the entirety of the Overlap Zone.
9	**Clause 2.13 –** confirms that the IA applies to any project, or part of a project, within the Overlap Zone and can apply to more than one project at the same time.	This is a discrete provision and is no longer required to the extent the IA is disapplied.
CLAUSE 3: PRE-LEASE PHASE ARRANGEMENTS		
10	**Clause 3.1** – clarifies when projects are considered to be in the 'consenting phase' for the purpose of the IA, which has implications for the subsequent provisions in clause 3.	To confirm, Orsted (as Wind Entity) are in their 'consenting phase'; however, bp are still to reach their 'consenting phase' as defined under the terms of the IA. This is not reflective of any greater maturity in the Orsted development or advancement in the consenting process, but rather it is simply reflective of the trigger points in the IA being confusingly linked to inconsistent milestones within the respective AfLs (with Orsted considered to be in the consenting phase upon the securing of its AfL, but bp (as the Carbon Entity) not considered to be in the consenting phase until they have submitted draft documentation for approval from the TCE pursuant to the terms of its AfL). It is noted the final sentence in this clause references a project having greater flexibility in location and programming of activities when not in its 'consenting phase'. bp has explained in Section 10 of its deadline 1

	Clause summary	Commentary on proposed disapplication
		submission (REP1-057 (Appendix 2, electronic page number 134) that it has carried out technical optimisation to reduce safety zones and vessel turning circles to the minimum permissible, but that further technical optimisation is not feasible due to the immovability of the Endurance Store. The flexibility anticipated by the IA does not exist in reality, and is a further example of the principles of the IA being at odds with the present day project reality.
11	**Clause 3.2 –** this applies in circumstances where only one project is in the 'consenting phase' and enables such party to provide details of its Proposed Infrastructure and/or Programme of Activities (each as defined) that it is intending to implement. This sets the "Initial Baseline". The other party is then obliged to develop its Proposed Infrastructure and Programme of Activities in a way which minimises, to the extent practicable, the impact on the Initial Baseline. It further provides for modifications to the Baseline.	Many of the submissions bp makes against clause 3.4 below apply equally to this clause 3.2, but are not repeated here, to avoid duplication. It is clear though that, as set out above, the flexibility envisaged for the project not in the 'consenting phase' (in present circumstances, bp as the Carbon Entity) does not exist, and so the assumption that the affected project has the ability to simply design their scheme around the Initial Baseline is flawed.
12	**Clause 3.3** – provides for the parties to meet regularly to discuss their proposed projects and provide necessary associated information until the time that both projects are in the 'consenting phase'.	As explained in bp's Deadline 1 submission (REP1-057, Appendix 2), this engagement has been occurring and the effect of this provision has been replicated by bp in para 7 to 9 of the protective provisions to ensure on-going engagement between the parties (where necessary) going forward.
13	**Clause 3.4** – this clause applies when both parties are in their 'consenting phase' and until such time as the parties enter their construction phase, or beyond. It provides that: a. the parties are to meet regularly to discuss their proposed projects/provide necessary information. This continues the practice established under prior clause 3.3 (described above) and its effect is also provided for under para 7 to 9 of bp's protective provisions; b. where a party (the Notifying Entity) intends to (a) apply for consent/approval from TCE in relation to its Proposed Infrastructure locations, or (b) make any amendment to such locations and/or Programme of Activities, it must first notify the other party (the Affected Entity) and provide specified details; c. the Notifying Entity is to make a "good faith assessment" of the impact against the then current Baseline and set out the steps by which it	Set in the context of a scenario where both projects could co-exist, the provisions in clause 3.4 are understandable and could provide the framework through which development solutions and modest compensation payments are agreed. However, in the present circumstances, where co-development across the entirety of the Overlap Zone is not feasible for delivering the ECC plan and one project may need to proceed at the expense of the other, its provisions introduce too great an uncertainty/risk to regulate the matter. Whilst it is considered the risk/uncertainty applies to both parties, regardless of which one acts as the 'Notifying Entity', we focus the submissions below purely through the prism of the uncertainty applying to bp in its promotion of NEP: a. whilst bp considers Orsted would be able to adequately re-locate its infrastructure in the residue of its AfL area (for the

	Clause summary	Commentary on proposed disapplication
	proposes to mitigate or compensate for any Material Adverse Effect. A "Material Adverse Effect (Pre-Operational)" is defined to mean anything which demonstrably gives rise to Relocation Costs or Re-programming Costs; d. Relocation Costs are extensively defined, but broadly capture any additional costs/expenses that would be incurred by the Affected Entity to accommodate the Notifying Entity's Activities (e.g. the expenses necessary to incur in order to implement the revised plans), but also, where it is either not possible (reasonably and commercially) to relocate their affected infrastructure within the relevant project site to accommodate the other party's Activities, or where it is possible, but the performance of the project will be impacted (e.g. in the case of wind turbines, through a reduced power input), then the diminution of market value of the project (with the basis of the calculation set out in the definition); e. Reprogramming Costs mean the additional costs/expenses incurred in modifying and implementing the modified development; f. If either party considers that a Material Adverse Effect will arise from the Proposed Infrastructure locations or the Programme of Activities and the parties do not reach commercial agreement as to the mitigation strategy or compensation necessary then either party can refer the matter to an Expert for determination. The Expert provisions are discussed further below; g. The Notifying Entity shall not proceed with its Programme of Activities or apply for approval of its Proposed Infrastructure locations from TCE under its AfL until the parties have reached agreement or the Expert has made its determination; and h. No Material Adverse Effect can be claimed where the application for approval from TCE is consistent with the Proposed Infrastructure locations previously notified to the Affected Entity under clause 3.2.	reasons set out in bp's Deadline 1 submission (REP1-057, Appendix 2, Section 13 (electronic page numbers 137 to 139)), it is possible that an Expert may determine otherwise and find for a significant compensation claim reflecting a perceived diminution of market value of Hornsea Project Four. b. the financing model for NEP (discussed in bp's Deadline 1 submission (REP1-057, Appendix 2, Section 9 (electronic page numbers 132 to 134)) means that NEP will have limited ability to cover additional exceptional costs such as a compensation payment. c. In theory an Expert might determine a compensation payment in an amount which did not threaten the viability of the NEP project. However, in the event Orsted claimed a significant amount, an Expert might determine a substantial amount should be paid as compensation. The risk of a significant amount being claimed, and awarded by an Expert, jeopardises the investability and financiability of the project for the reasons set out in bp's Deadline 1 submission (REP1-057, Appendix 2, Section 9 (electronic page numbers 132 to 134)). With regard to the provision summarised in (h) in the adjoining column, it is inappropriate to provide that no such adverse effect can occur in these circumstances. Given that there is no requirement for the parties to agree the initial baseline, and no ability for bp (as the Affected Entity) to adapt its project in view of such baseline, in circumstances where co-location in the entirety of the Overlap Zone is impossible this could effectively sterilise bp's development without offering an opportunity for bp to challenge this.
CLAUSE 4 – CONSTRUCTION PHASE		

	Clause summary	Commentary on proposed disapplication
14	**Clause 4 – Construction Phase** Clause 4 applies to when the respective projects enter their construction phase. It provides for: a. the notification of the Programme of Activities and methodology for undertaking the relevant works to construct the corresponding Proposed Infrastructure; b. the creation of an Interface Management Group; c. through such group, for both parties to act reasonably and in good faith to determine interfaces between the respective project programmes and methodologies and to determine a least cost solution where conflict exists (with each entity taking into account the plans of the other); d. the exchange of relevant information to allow each party to understand the impact of the other's programmes and Activities; and e. the steps to be followed when a Notifying Entity departs from its then notified Proposed Infrastructure locations or Programme of Activities (replicating the steps discussed at clause 3.4 above, with the same submissions applying (as appropriate)).	bp have provided for the creation of an interface management group and the sharing of information pursuant to paragraphs 7 to 9 of the protective provisions. These are considered to still be useful in the event that there is co-development in the wider area of the Southern North Sea; however, the rest of the provisions in this Clause 4 are unnecessary to the extent co-development within the Overlap Zone is no longer proposed for the reasons set out in the submissions above.
CLAUSE 5 – ONE OR BOTH PROJECTS IN OPERATION PHASE		
15	**Clause 5 – One or both projects in operation phase** Clause 5 applies in relation to each party's project in the Overlap Zone where their respective Commercial Operation Dates (as defined) have been achieved. It broadly provides for: a. each party to plan their Activities in a manner that to the extent practicable minimises the impact on the other's operational project; b. regular meetings and sharing of information to minimise the impact (to the extent practicable) of the projects on one another;	bp would refer to its submissions against clause 4 above, which are considered to apply equally to this clause 5.

	Clause summary	Commentary on proposed disapplication
	c. where any further Activities are planned (e.g. emergency or maintenance, beyond those previously agreed), then a similar process to that set out in clause 3.4 is to be followed in their respect.	
CLAUSE 6 – INDEPENDENT EXPERT DETERMINATION		
16	**Clause 6 – Independent Expert Determination** Clause 6 sets out the procedure to be followed in the event that an Expert is to be appointed under the IA, principally to determine a dispute between the parties pursuant to its terms, as well as certain associated provisions. **Clause 6.2** provides that the parties are to endeavour to agree upon a single Expert with relevant commercial experience/expertise; however, if it's not been possible to do so within 7 days then the matter is to be referred to the President of the Energy Institute who is to select the Expert (with provisions for alternatives also provided where the selection is unwilling, or fails to confirm, their appointment). **Clause 6.3** sets out potential restrictions on the appointment of the Expert. **Clause 6.4** then goes on to describe the process which the Expert will follow in determining the dispute, the associated timescales and minor associated provisions not material to this current matter.	The Expert provisions may be appropriate in the context of a dispute between the parties that was limited in terms of the impact on practical delivery of, or commercial implications to, one party's project. However, set in the context of the present reality where co-development across the entirety of the Overlap Zone is not feasible for delivering the ECC plan, the Expert provisions are not suitable and attempting to resolve such a dispute through application of the Expert provisions would not be appropriate or in the public interest. Additionally, finding any person with the necessary commercial experience or expertise to resolve a dispute such as this which has no precedent, is significantly technical in nature and involves two very different sectors (offshore wind and carbon capture) would be extremely difficult if not impossible (for the parties and the President of the Energy Institute). As such, there is a very significant risk that any person appointed would not have the requisite experience, expertise and skills to properly assess and determine the referred matter, thereby compromising the Expert's decision. This has the potential to prevent the delivery of both schemes (e.g. in circumstances where the amount that the Expert determines would be payable to the Affected party is such that the party liable to pay instead chooses (as contemplated by the IA) not to implement their scheme). In circumstances where the IA is retained, and a party attempted to follow the process (so acting as Notifying Party), a dispute and Expert determination is almost inevitable and so the identified risk is actual, as opposed to potential. In bp's view this risk is such that it requires the disapplication of the IA to preserve the viability of NEP, particularly in the context of its regulatory model that is still uncertain.
CLAUSE 7 – INTERACTION WITH RELEVANT AGREEMENTS		

	Clause summary	Commentary on proposed disapplication
17	**Clause 7 – Interaction with Relevant Agreements** Clause 7 addresses the interaction between the IA and the parties' respective AfLs. **Clause 7.1** provides that neither party may bring a claim against TCE under their AfLs or otherwise in relation to any matter determined pursuant to the terms of the IA. **Clause 7.2** provides that each party's rights under their AfL are subject to any agreement reached or Expert determination pursuant to the terms of the IA. **Clause 7.3** states that no party shall have any liability to the other party for a breach of their AfL where it is a consequence of a determination or agreement made pursuant to the IA, and no party shall bring a claim against the other under their AfL where it is capable of being determined under the IA. **Clause 7.4** provides for the potential re-assessment of compensation due in circumstances where either party ceases to hold the AfL.	To the extent that the IA is disapplied then there is no longer a requirement to clarify its interaction with the AfLs. Specifically, there is no loss to TCE by the proposed disapplication of this clause 7, as there will no longer be any matter determined by the IA which may give rise to any potential claim under the AfLs. Were the ExA, and the SoS, satisfied with bp's submissions in relation to the need to disapply the key operative provisions applying earlier in the IA, then it is submitted that the same rationale applies for the disapplication of their associated, minor resulting provisions set out in this clause and those that follow.
CLAUSE 8 - SUCCESSION		
	Clause 8 imposes obligations on the parties in circumstances where they transfer their interest in their respective projects to a new entity.	This process has been followed and reflects how bp and Orsted have come to engage on the IA; however, it is not material for the purpose of this submission and so no further comment is made in its respect.
CLAUSE 9 - NOTICES		
	Clause 9 stipulates how notices required pursuant to the IA are to be issued.	Whilst not material to the submissions made in this document as to why the IA requires to be disapplied, bp have provided for an equivalent notice provision in paragraph 11 of the protective provisions and so there is no practical or legal consequence to its disapplication.
CLAUSES 10 AND 11 – MISCELLANEOUS		
	Clauses 10 and 11 – Miscellaneous and Third Party Rights	Clauses 10 and 11 contain standard contractual provisions which are not relevant to this submission, nor necessary to be carried into the protective

	Clause summary	Commentary on proposed disapplication
		provisions, as their purpose is linked to the existence of the IA itself as a form of legal agreement rather than to the substance of its provisions.
CLAUSE 12 - CONFIDENTIALITY		
	Clause 12 sets out the confidentiality obligations and confirms that the confidentiality provisions of the AfLs shall apply to the IA.	The value of this provision is linked to the information being disclosed. Much of the information shared between the parties to date is reflected in their respective application documents and so a matter of public record already. Further, in view of the reality of the position of the projects and their mutual incompatibility, it is not anticipated that further sensitive information will be necessary to be shared between the parties; however, were it necessary to do so, then separate confidentiality agreements could be readily entered into. It is not necessary for this provision to survive in order to facilitate such an exchange.
CLAUSE 13 – GOVERNING LAW AND JURISDICTION		
	Clause 13 confirms the IA is to be governed by, and construed in accordance with, English law and the courts of England have jurisdiction.	Whilst the protective provisions have been drafted in a manner to avoid scope for ambiguity/dispute from occurring, to the extent there was a need for dispute resolution pursuant to their terms then the relevant articles to the Hornsea Project Four DCO would apply and so no separate provision is required.
SCHEDULES		
	Schedule 1 sets out the relevant coordinates which contextualises the extent of the Overlap Zone and the parties respective AfL interests. **Schedule 2** contains a plan delineating the same. **Schedule 3** then contains principles to be applied to the negotiation of any Crossing Agreement.	bp's protective provisions contains a table of coordinates to inform the 'Exclusion Area' and 'Notification Area', which act in lieu of Schedule 1 (such coordinates having been updated as necessary to reflect the different areas) and a 'Protective Provisions Plan' which replicates the function of that plan contained at Schedule 2. bp have confirmed in the para 10 of the protective provisions that any crossing agreement required to facilitate each other's projects should be based on the Oil and Gas UK Industry Model Form, and updated the version reference to refer to the current 2015 version. No further principle from Schedule 3 was considered appropriate or necessary for inclusion in

	Clause summary	Commentary on proposed disapplication
		the protective provisions, but can be considered as part of any future crossing agreement where necessary.

Herbert Smith Freehills LLP