Offshore Wind Farms

EAST ANGLIA ONE NORTH

PINS Ref: EN010077

and

EAST ANGLIA TWO

PINS Ref: EN010078

SEAS's Response to the Applicants' Comments [REP10-031] on SEAS's complaint about gagging and non-participation and opposition clauses

Deadline 13 - 5 July 2021

The final Deadline before the nine month examination closes at midday 6 July 2021

by

SEAS (Suffolk Energy Action Solutions)

Unique Ref. No. EA1(N): 2002 4494

Unique Ref. No. EA2: 2002 4496

https://www.suffolkenergyactionsolutions.co.uk/

info@suffolkenergyactionsolutions.co.uk

SEAS's Response to the Applicants' Comments [REP10-031] on SEAS's complaint about gagging and non-participation and opposition clauses

Deadline 13 - 5 July 2021

1. SEAS submits this short response to the one page submission of SPR at Deadline 10.

2. SEAS's main submission was submitted at Deadline 8 [REP8-237]. We will not repeat what was said there.

3. The position can be summarised as follows:

   - SPR put in place a system with the express objective of preventing landowners from giving evidence and participating in the inquiry.
   - This, overwhelmingly, has been successful; with a notable exception (Dr Gimson), landowners have not participated.
   - These same landowners are, as a category, those most likely to be adversely affected by the grant of a development consent which covers the on-shore element of the planning applications and it was, obviously, for this reason that they were targeted by SPR.
   - To persuade landowners to sign up to gagging and non-participation terms SPR has misused powers under the compulsory purchase regime which, in principle, has nothing to do with the public planning processes.
   - Complaint has been made to the ExA about this.
   - The ExA has a duty in law to guarantee a fair procedure. The duty includes ensuring that everyone with an interest in the procedure has a fair and transparent chance to make submissions to the Authority so as to ensure that, in turn, it is possessed of full fair and comprehensive evidence.
   - The ExA has taken no steps to investigate or to address the complaint or seek further evidence from SPR or to verify the facts. This is notwithstanding the fact that having initially stated that it would provide full evidence to the Authority SPR has deliberately refrained from doing so ("*all parties should ensure that the Examining Authorities have the fullest and most accurate information*" - SPR's letter to the Planning Inspectorate 4th March 2021 [REP7-061]). This is also notwithstanding that the Local MP, The Rt Hon Dr Therese Coffey, described SPR's conduct as involving "sharp" practice.

- The law in this area is settled: If a public decision maker permits a procedure to be unfair then it will be set aside. The ExA has now presided over an unfair procedure.
- Any recommendation made in favour of SPR which consents the on-shore applications will be tainted by that unfairness.
- The courts will set aside any administrative act of a public body that is generated by procedural unfairness. A recommendation to consent the on-shore applications by a planning authority based upon such unfairness falls within the principle, as would any decision of the Secretary of State following such a recommendation.
- An administrative act, such as a recommendation for a decision is unfair, irrespective of whether that unfairness had any material effect. However, in this case the facts speak for themselves and the exclusion of a potentially huge volume of evidence adverse to SPR can hardly be said to be immaterial. The example of Dr Gimson demonstrates that powerful opposing evidence can be given by even one landowner.

4. SPR has failed (i) to engage in the arguments advanced by SEAS and reasoned arguments have been met by bland assertion (ii) to place any evidence before the ExA (iii) to come clean about the form and extent of heads of terms agreements (in fact it sought to mislead the ExA in citing a clause upon which it relies without stating other versions of the document did not contain the clause) and (iv) to provide any legal authorities in support of its position notwithstanding that SEAS cited relevant authorities on the applicable principles of public law.

5. SEAS invites the members of the ExA to reread SEAS's complaint and supporting evidence. In particular the ExA is invited to re-read the legal analysis which sets out long standing and settled law which applies to planning procedure.

6. In its Deadline 10 response SPR argued that the Heads of Terms were not legally binding but advanced no argument in support of that contention. It makes no response whatsoever to SEAS's detailed case articulated in our deadline 9 submission. SPR's position is hopeless and misses the point:

a. 4 out of 5 of the Heads of Terms seen by SEAS do not contain the words on which SPR sought to rely in an earlier submission.
b. Those words are "None of the contents of this document are intended to form any part of any contract that is binding on any Scottish Power group Company". There is no statement that the document does not

bind the other party. SPR must have intended that the document would bind the landowner alone or to give that impression. No explanation has been offered as to why the clause did not simply say "…binding on any party."

c. The legally binding nature of at least parts of the Heads of Terms is self-evident [SEAS Deadline 9 submission REP9-86] but ultimately this is a red-herring: what matters is the effect of the agreement in stifling opposition to the planning applications.

7. The conduct of solicitors in relation to the gagging and non-opposition clauses and certain aspects of representation made before the ExA (at Shepherd and Wedderburn and any in-house solicitors at SPR relevant to the issues) is now the subject of a formal complaint to the Solicitors Regulatory Authority. [See Appendix A]

8. There are two further matters of relevance to this issue.

East Suffolk Council and "Incentive Payments"

9. The first concerns the failure of East Suffolk Council to disclose the communications it has had with SPR concerning the payments made by SPR to the Council which led it to switch from being in opposition to being "neutral". SEAS issued FOIA requests to the Council seeking communications between the Council and SPR over the context of the payments. As SEAS has established in its complaint SPR uses "Incentive Payments" to neutralise opposition to its applications. Despite SPR saying to the ExA that it would provide full information in response to this complaint it has refused to provide evidence of the criteria it uses to determine who and what is paid. Nonetheless, it is clear from the evidence, including the Heads of Terms and the Option Agreements, that this fighting fund is used by SPR as part of its strategy of gagging potential opponents to its applications.

10. The object behind the FOIA request was to determine whether the payments of funds to the Council was in any way conditional upon it changing its position away from one of outright opposition. It is the position of SEAS that in discussions and negotiations over the sums to be paid, SPR pressurised the Council into switching its position. In the overall scheme of things the sums offered by SPR were miniscule and it is very hard to see how, as a matter of economic logic, they could ever come remotely close to dissipating or neutralising the vast economic damage

that the developments will cause to the area. So far as SEAS can see the Council did not conduct any sort of a detailed cost benefit analysis.

11. The Council has now however refused to provide the information which would demonstrate the connection between the payments and SPR's pressure upon the Council to change its position, seeking to argue: (i) that there is no sufficient public interest in disclosure; (ii) that the exercise would be disproportionate. Neither excuse withstands scrutiny.

12. As to the first, in the context of this case, if a local authority alters its submission to a public inquiry because it is pressurised to do as a condition of receiving funds, then it is a matter of real public importance and affects the integrity of the public inquiry and the value of the evidence and submissions then made by the local authority. It also goes to the heart of the integrity of the decision making of the local authority. As a matter of elementary accountability, the Council's refusal raises a matter of high public interest.

13. The ExA will be aware that the switch of the Council to a position of neutrality led a number of councillors to resign in protest and at recent hustings for new Councillors not one of the candidates said that they supported SPR's applications; all opposed it.

14. This goes directly to the weight that can be attached by the ExA to the Council's evidence and its switch of position to one of neutrality. The issue is important.

15. SPR expressly relies upon the new position of the Council in these proceedings as is evident from SPR's letter (sent following the request made by the ExA at the instigation of the Secretary of State) addressing the issue of the extension of time for the examination when SPR made specific reference to the Council neutrality as an important factor supporting its case.

16. As to the suggestion that it is too burdensome to provide the information this is an excuse and nothing more. The use of search words and other techniques means that it is easy to locate relevant communications. And, moreover, it is perfectly clear to the Council what the object of the exercise is. It is to unearth the truth about the pressure exerted by SPR to persuade

the Council to switch its stance. The position adopted by the Council is one of obfuscation and prevarication.

17. As we have stated above the ExA has not addressed the SEAS complaint, but this episode indicates that the use of SPR money aimed at suppressing opposition is capable of extending well beyond landowners.

Extension of the Examination

18. The second matter concerns the continued failure of the ExA to address the complaint relating to the extension of the examination in any meaningful manner. The effect of the extension has been to permit SPR to adduce a substantial volume of new material.

19. Throughout this extended 3 month period the effect of the SPR policy of gagging opponents and preventing participation in the Examination has thus continued unabated; and during this period the resources available to those in opposition has been hugely depleted. The ExA has lost the chance to hear from many opposing voices and appears unconcerned at this.

20. By its failure to act the ExA has deepened substantially the procedural unfairness that has beset this inquiry from start to finish. The evidence submitted during this extension period has predominantly concerned on-shore matters and, as such, would have been of primary relevance to the entire category of landowners who have been gagged and prevented from participating.

Appendix A

a threat hanging over coastal suffolk

17 June 2021

Attn: Assessment & Early Resolution Team

Solicitors Regulation Authority
The Cube, 199 Wharfside Street, Birmingham B1 1RN
0370 606 2555
www.sra.org.uk

Dear Assessment & Early Resolution Team

Thank you for your response dated 19 February 2021

Introduction

1. We apologise for not getting back to you earlier.

2. We of course understand that the SRA does not regulate ScottishPower Renewables (SPR). We can clarify that it is only those who act as legal advisers and representatives for SPR against whom we are complaining. In this case the solicitors are Shepherd & Wedderburn and any in-house solicitors who are relevant to the issue.

3. The central point of the complaint can be described very concisely: it concerns whether it is a breach of the SRA Code for solicitors to draft, promote and enforce provisions in agreements and Memorandum of Understanding that are designed, expressly to undermine a public planning inquiry.

4. Since we last communicated a great deal of additional evidence has come to light. It is set out in documents that we attach with this letter. The issues and the evidence that we rely upon speak for themselves.

5. We attach the central documents that we have submitted to the Examining Authority and to the Secretary of State which set out the relevant facts. These include

(i) Submission of SEAS dated 14 February 2021 (Attachment *(i) SEAS Campaign formal complaint to PINS 20210214-2.pdf (138K)*) and associated Redacted Options Agreement (Attachment *(iA) Option Agreement - REDACTED.pdf*);

(ii) further submission of SEAS dated 22 February 2021 (Attachment *(ii) ISH9 1A - Additional submission Deadline 22.02.21 5pm.docx*);

(iii) response of SPR dated 4 March 2021 (Attachment *(iii) Applicants_Response_04032021.pdf*);

(iv) SEAS letter to the Secretary of State for Business, Energy and Industrial Strategy The Rt Hon Kwasi Kwarteng, MP, on 29th March 2021 (Attachment *(iv) SEAS - letter to SOS Kwasi Kwarteng - 29.3.pdf*)

(v) further submission of SEAS dated 15 April 2021 (Attachment *(v) SEAS Response to the submission of SPR at Deadline 8 re NDAs 20210415.pdf*);

(vi) further submission of SEAS dated 15 April 2021 (Attachment (vi) *ISH15 Item 1A NDA - SEAS Oral & Written submission - DEADLINE 8.pdf*);

(vii) further response of SPR dated 6 May 2021 (Attachment (vii) Applicants'_Comments_on_SEAS_Complaint_060521.pdf)

6. The facts demonstrate that SPR's legal advisers have put in place a system and network of agreements and arrangements with landowners who are most directly affected by the possible development which gag them and compel them not to participate in the planning inquiry. If they do however participate by, for instance, submitting evidence contrary to SPR then under these arrangements they are compelled formally to withdraw that evidence so that the Inspectors cannot use it against the lawyer's client, SPR. Our submissions set out the analysis as a matter of public law.

7. The issue for the SRA is different and is, in the context of a public inquiry it is a breach of the SRA Code for solicitors actively to use as part of a legal strategy designed to obtain planning consent such clauses and devices.

8. It is our submission that it is a clear and serious breach of the Code for solicitors to deploy as part of their legal strategy such tactics and devices.

The complaint in summary

9. Our complaint concerns the propriety of solicitors drafting contracts such as these for clients to use in relation to public investigations, such as planning inquiries. It is our submission that solicitors should not be assisting clients to undermine a public inquiry, intended to be conducted in the public interest, in this manner. We consider that it is the professional duty of a solicitor to further the impartiality and objectivity of a

public inquiry, and this is a duty that is entirely consistent with acting in the best interest of a client.

10. Our complaint also concerns the conduct of solicitors in the course of making representations to planning inquiries. The conduct of the hearings by those advising SPR is, we suggest, a matter of serious concern calling for investigation. Included amongst the issues which we invite the SRA to investigate are the following:

(i) The failure of legal advisers to make available in a fair and open way documents evidencing the relevant gagging and non-opposition clauses so that the Inspectors can form their own views and conclusions on the impact that they have upon the fairness of the proceedings.

(ii) The conduct of solicitors in criticising opposing persons during public oral hearings as vexatious, inaccurate and as misleading, when it was suggested that SPR had entered into such agreements. This criticism was made in circumstances, when at the time that these criticisms were made, it is proper to infer from the evidence that the legal advisers knew full well that the allegations were true.

(iii) The making of submissions to the Inspectors that the silence of landowners and their non-attendance at hearings was a telling and significant point in favour of SPR and supported its applications because silence indicated support and acquiescence when at the time that the submission was being made the legal advisers knew that the true reason why landowners had not opposed the applications and had not appeared to give evidence was because they were prohibited from so doing under arraignments agreed with SPR.

The SRA Code

11. We suggest that, at the least, the following provisions of the Code are relevant and have been breached:

(i) Paragraph 1.1 "*You do not abuse your position by taking unfair advantage of clients or others*".

(ii) Paragraph 1.4 "*You do not mislead or attempt to mislead … the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your client)*."; and

(iii) Paragraph 3.11: "*You do not attempt to prevent anyone from providing information to the SRA or any other body exercising regulatory, supervisory, investigatory or prosecutory functions in the public interest*."

12. The Conduct complained of by SPRs legal advisers violates the Code in the following ways:

(i) Paragraph 3.11: In drafting, promoting, operating and defending before the Authority the agreements and arrangements which gag landowners and prohibit them from giving evidence during the public inquiry and which require them to withdraw evidence already given, the solicitors conduct is expressly designed to "… *prevent [all affected landowners] from providing information to a body exercising regulatory, supervisory, investigatory functions [the Examining Authority] in the public interest*.". It is beyond dispute that the Inspectors are public bodies required to act in the public interest.

(ii) Paragraph 1.4: By representing to the Inspectors that landowners supported the case of SPR and that this was the reason that those landowners had not attended to give evidence the legal adviser acted in a way which could "*mislead or attempt to mislead others* " ie the Inspectors. It is a reasonable inference to draw that when those statements were advanced to the Inquiry as part of legal argument by the lawyers for SPR it was known full well that the real reason that landowners had neither opposed the applications of SPR for development consent nor had turned up to give evidence, was because they had been required not to do so by arrangement with SPR. SPRs solicitors thus actively used the gagging and non-participation arrangements to enable them to advance submissions about the weight of the evidence and the strength of their case which they must have known was inaccurate.

(iii) Paragraph 1.1: This prohibits solicitors from abusing their position as a solicitor by taking unfair advantage of clients or others. In this case the abuse has been of others ie: landowners, the Inspectors and those opposing SPR. SPRs lawyers have been able to compel landowners to enter into gagging and non-opposition arrangements because SPR has the ability to use compulsory purchase powers under statute. Those powers were never contemplated by Parliament as being capable of being used to undermine and subvert planning inquiries. However, in this case SPRs advisers have used contractual documents and other arrangements

(iv) to gag potential opponents and deprive the Authority of directly relevant evidence and unfairly tilt the entire planning process in its favour.

<u>Conclusion</u>

13. We would suggest that this issue arising is one of real public significance. At one point SPR suggested that these were normal commercial practices and approved by RICS. As is explained in the submissions made by SEAS nothing could be further from the truth.

14. Given SPR's stance it is reasonable to assume that they have used these clauses, with the support and assistance of their legal advisors, in *other* planning and public inquiries.

15. If that is so, and solicitors are drafting and promoting such contracts and arrangements as a matter of course, then this is a matter of grave public importance. We would respectfully suggest that clarification by the SRA of the position of solicitors under the Code is a matter of some urgency.

16. We stand ready to provide additional information if we are able.

Yours

Suffolk Energy Action Solutions (SEAS)

From: SEAS Campaign: info@suffolkenergyactionsolutions.co.uk

To: PINS Examination Team, for the attention of Rynd Smith, Lead Examiner

CC:
Secretary of State for HC&LG: [redacted]ommunities.gov.uk
Secretary of State for BEIS: [redacted]@beis.gov.uk;
[redacted]eis.gov.uk; [redacted]@beis.gov.uk
Solicitors Regulatory Authority:
Dr Therese Coffey MP PC: [redacted]@parliament.uk
Leader of Suffolk County Council: [redacted]@suffolk.gov.uk
Leader of East Suffolk Council: s[redacted]@eastsuffolk.gov.uk

14 February 2021

Dear Mr Smith

Introduction: The Complaint

1. This complaint is made on behalf of Suffolk Energy Action Solutions (SEAS).

2. It concerns efforts being made by Scottish Power Renewables (SPR) to prevent persons who would otherwise have a reason to object and provide support to groups and associations opposing SPR's application in respect of EA1N and EA2, from opposing the application for consent.

3. The nub of the complaint concerns the fact that in the course of concluding agreements with landowners, SPR is including a clause which makes agreement conditional upon the individual landowner concerned not opposing the application and withdrawing any evidence already given. The clause is as follows:

> "The Grantor shall not make a representation regarding the EA1N DCO Application nor the EA2 DCO Application (and shall forthwith withdraw any representation made prior to the date of this Agreement and forthwith provide the Grantee with a copy of its withdrawal) nor any other Permission associated with the EA1N Development or the EA2 Development and shall take reasonable steps (Provided that any assistance is kept confidential) to assist the Grantee to obtain all permissions and consents for the EA1N Works and the EA2 Works on the Option Area (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and completion of such permissions and consents)."

4. This clause has the effect of undermining the integrity of the planning process. Further, the object and effect of this clause is to substantially undermine the efforts of those opposing consent.

5. This clause contains a prohibition on making any representation regarding the application. The word "representation" is very broad. A person could not speak to a friend, or relative or neighbour about their concerns over the application. They could not speak to or support an association or organisation opposing the application. They could not speak to the press or an MP or a local authority planning officer. And it clearly prohibits a person from submitting evidence to the Examination.

6. It also means that if a person has already made a representation, including that given before

the agreement is signed, it must be withdrawn. So, a letter of complaint to an MP must be withdrawn. A complaint to a friend must be taken back. Any evidence given to the Examination must be withdrawn.

7. SPR will no doubt argue that this is a "normal commercial term".

8. It is clearly normal to pay landowners for land otherwise subject to compulsory purchase, often in advance of the statutory purchase process occurring. It is also normal for a developer to pay a landowner for access to carry out appropriate test and surveys etc. Payments to secure these ends are directly related to the development.

9. But it cannot be argued to be legitimate, even if commonplace and commercial, for a developer to impose a condition upon the grantor of a right over land related to the development which is specifically designed to undermine the planning process. There is no proper connection between the two.

10. The clause set out above in effect: (i) prevents the giving of evidence to the inquiry; (ii) prevents the person concerned from supporting associations opposing the application by giving support; (iii) requires the person if they have already given evidence formally to withdraw that evidence and provide proof to SPR that this has been done.

Impact upon planning process

11. There can be **no** justifiable planning basis for the making of payments and/or the imposing of conditions which undermine a statutory planning inquiry conducted in accordance with public law principles. If, for instance a person to criminal proceedings were to pay a witness to refuse to support the prosecution or to withdraw evidence this would amount to the crime of perverting the course of justice. If in civil proceedings a litigant paid an opposing witness to withdraw their evidence this might amount to contempt of court.

12. The present proceedings are statutory and governed by ordinary public law principles.

13. The Examining Authority is in charge of this process and has a duty in law to guarantee that it is fair, transparent and objective.

14. The effect upon those individuals and groups seeking to oppose this application is substantial. The volume of material that SPR has submitted, and continues to submit, very late on in the process, is enormous and imposes a near intolerable strain upon the resources of those who oppose the application. To mount opposition to this development requires considerable human and financial resources.

15. The DCO procedure is one which, by its nature, supports applicants. The effect has been to undermine the ability of legitimate objectors to put forward evidence and submissions, in particular by instructing and paying for legal and technical experts. This clause has had a chilling effect. Many individuals have stopped talking to our organisation. They do not reply to emails. They do not respond to calls.

16. The Examination Authority will know that those who are most affected by the proposed development, and accordingly in principle the most likely to wish to object, are also those most likely to be the subject of SPR compulsory purchase and other powers. By linking discussions over legitimate matters with payments to undermine the process, SPR maximises its ability to prevent opponents obtaining support and putting evidence before the

Examination Authority.

17. The Examining Authority cannot permit an applicant to use the leverage that it has in relation to the compulsory planning rules to undermine the investigation. It is unacceptable that this already difficult process should be made even more difficult by the deep pockets and financial muscle of the applicant.

The facts

18. The information that forms the basis of this complaint concerns the case of Dr Alexander Gimson, who represents his mother, Mrs EP Gimson, who lives at Ness House, near Thorpeness and over whose land the cable trench may pass.

19. SEAS has been aware for some considerable time that potential opponents to the application have been persuaded, by the offer of substantial payments from SPR, to enter agreements which compel them to withdraw opposition and refrain from commenting in public. It is understood that a part of the payment which is then recorded in the formal agreement is attributable to the non-opposition clause set out above. But in any event, there can be no proper basis for developers suppressing evidence in this way.

20. Until Dr Gimson brought the attached documentation to the attention of SEAS, it has not been possible to make this complaint.

21. The Option Agreement that SPR seeks to have with Dr Gimson relates to land at Ness House, a property which is situated on the cliffs near Thorpeness.

22. Dr Gimson believes that the overall payments, which he has been offered under the Option Agreement, amount to thousands of pounds. But quite regardless Dr Gimson objects to the agreement upon the basis that it is conditional upon him not being able to oppose the application. Dr Gimson is a vociferous opponent of SPR's proposed Onshore development plans and has spoken twice at the Examination Hearings, on 21 and 22 January 2021. Under the agreement he would have to withdraw that evidence and provide support for SPR even though its application will, if consented, severely impact his elderly mother's home.

23. Dr Gimson is determined not to be silenced.

Next Steps

24. The consenting process is now moving towards its latter stages. SEAS is of the view that the integrity of the process has already been badly compromised. We ask you to respond to this complaint as a matter of urgency. We invite the Examination Authority to take the following steps:

    24.1. Convene a special hearing to enable all affected parties to put their case on this matter.

    24.2. Take immediate steps to investigate fully what has occurred.

    24.3. Inform SEAS and all other parties of the steps it intends to take to investigate.

    24.4. Place its decision on this complaint on the PINS EA1N and EA2 website.

Conclusion

25. Those who oppose the application have no equality of arms with SPR, whose war chest appears unlimited. The ability of opponents to contest the process has been substantially hindered by the withdrawal and non-cooperation of persons who otherwise would have been active supporters and funders. Financial and human resources are strictly limited and massively overstretched.

26. This inability is exacerbated by the fact that SPR's application keeps changing and mountains of new, complex, material is lodged on a more or less rolling basis and on occasion at the eleventh hour.

27. Our complaint is therefore a very practical one. SPR's policy undermines the ability to represent those who oppose the application and undermines the integrity of the statutory planning process.

28. We therefore await your urgent response.

The wider public interest

29. This is an issue of public significance. It is our intention to refer this to the Secretaries of State who have overall statutory responsibility for the integrity of the planning process, and of course for the decision on the DCO application.

30. We also intend to refer the same material to The Rt Hon Dr Therese Coffey MP PC and ask her to make inquiries including asking relevant questions in the House of Commons.

31. Given that the contractual clause in question has been drafted by the legal advisers acting for SPR we intend further to refer the same material to the Solicitors Regulatory Authority to invite them to conduct an investigation into the facts and to decide whether, in the light of any findings they make, it is proper for legal advisors to promote the use of these clauses. If this practice is commonplace, then because of its effect which is to undermine a statutory investigation conducted in the public interest, it is an issue of high importance.

Yours sincerely

[redacted]

Fiona Gilmore

For and on behalf of

Suffolk Energy Action Solutions

Please send your response to: info@suffolkenergyactionsolutions.co.uk

SHEPHERD+WEDDERBURN

OPTION AGREEMENT
between
[]
and
ScottishPower Renewables (UK) Limited

relating to: the grant of easements for cables at Land at []

[ ] 2021

Shepherd and Wedderburn LLP
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10 St. Paul's Churchyard
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CONTENTS

OPTION AGREEMENT is made on the 2021

between

[](the "**Grantor**"); and

ScottishPower Renewables (UK) Limited (company number NI028425) whose registered office is The Soloist, 1 Lanyon Place, Belfast, Northern Ireland BT1 3LP (the "**Grantee**") (care of Legal Director, ScottishPower Renewables (UK) Limited, 320 St Vincent Street, Glasgow, G2 5AD).

1. Definitions and interpretation

1.1 In this Agreement the following definitions shall apply:

"Affiliate"	means in relation to a company, that company, any subsidiary or holding company of that company and any subsidiary of a holding company of that company where holding company and subsidiary mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of: (a) another person (or its nominee), by way of security or in connection with the taking of security; or (b) its nominee;
"Cable"	shall have the meaning defined in the Deed of Grant;
"Cable Inspection Boxes"	shall have the meaning defined in the Deed of Grant;
"Challenge"	means a challenge under section 118(2), or under section 118(6), Chapter 9 of the Planning Act 2008 in respect of the EA1N DCO or the EA2 DCO;
"Compensation Code"	means the methods and procedures for assessing compensation for compulsory acquisition of rights in land comprising the Land Compensation Acts of 1961 and 1973 and the Compulsory Purchase Act 1965 and any other applicable Acts of Parliament, case law and established practice as modified by the DCO or any subsequent development consent order for the Project;
"Compensation Code Notice"	means a notice to be served on the Grantee by the Grantor specifying the Compulsory Acquisition Value as determined by the Grantor and accompanied by all reasonable documentary evidence sufficient to support such determination;
"Compensation Provisions"	means the Compensation Provisions in Schedule 2 of this Agreement;
"Completion Date"	means the first Working Day after expiry of twenty eight days from the date of service of an Option Notice;
"Compulsory Acquisition Value"	means the compensation that would be payable on the EA1N Entry Date and/or the EA2 Entry Date (as the case may be) for the grant of the Rights in perpetuity as determined in accordance with the Compensation Code;

“Construction Drainage Report”	means the written report prepared by the Grantee’s Drainage Contractor pursuant to clause 7.2 and agreed pursuant to clause 7;
"Deed of Grant"	means a EA1N Deed of Grant and/or EA2 Deed of Grant (as the case may be) in the form of the draft annexed at Schedule 1 mutatis mutandis and incorporating the relevant Easement Plan;
"EA1N DCO"	means a development consent order made by the Secretary of State under section 114 of the Planning Act 2008 in response to the DCO EA1N Application;
"EA1N DCO Application"	means EA1N Limited’s application made to the Secretary of State on 24 October 2019 for a development consent order for East Anglia One North Offshore Windfarm and ancillary development or any amendment or re-submission thereof;
“EA1N Deed of Grant”	means the Deed of Grant granted in relation to the EA1N Development;
“EA1N Deed of Grant Payment”	means the sum (Index Linked to the date on which the payment is made) which is the Easement Strip Actual Area multiplied by £2.47 less any EA1N Entry Payment and less any EA1N Enabling Works Payment received by the Grantor;
“EA1N Development”	means the construction, operation, maintenance and decommissioning of infrastructure to facilitate the connection of electricity from East Anglia One North Offshore Wind Farm to the National Grid (including but not limited to substation compounds, switchgear, transformers, reactive compression equipment, metering, control building and associated plant) including as reasonably required to facilitate connection of electricity from East Anglia One North Offshore Wind Farm to the National Grid the construction, operation, maintenance and decommissioning of ancillary apparatus, services and facilities;
“EA1N Easement Consideration”	means the sum (Index Linked to the date on which the payment is made) which is the Easement Strip Actual Area multiplied by £2.47;
“EA1N Enabling Works”	means those Enabling Works undertaken for the purpose of the EA1N Development;
“EA1N Enabling Works Payment”	means the sum (Index Linked to the date on which payment is made) which is 9% of the Easement Strip Standard Area multiplied by £2.47;
"EA1N Entry Date"	means the date upon which the Grantee first enters the Grantor’s Property pursuant to clause 5.1.3 for the purpose of commencing the EA1N Works;
“EA1N Entry Payment”	means the sum (Index Linked to the date on which payment is made) which is 90% of the Easement Strip Standard Area multiplied by £2.47 less any EA1N Enabling Works Payment;
“EA1N Limited”	means East Anglia One North Limited (company number 11121800) whose registered office is at 3rd Floor, 1 Tudor Street, London EC4Y 0AH;

“EA1N Notice of Entry”	means the notice given pursuant to clause 4.2;
“EA1N Overrun Payment”	means such sum as is equal to the greater of: (i) A x B x C; and (ii) £500 x C where A = £1 and where B = the length of the Easement Strip in linear metres and where C = the number of calendar months in the EA1N Overrun Period;
“EA1N Overrun Period”	means the period commencing on and including the day after the expiry of the EA1N Works Period and ending on and including the day before the EA1N Works Completion Date;
“EA1N Works”	means those Works undertaken for the purpose of the EA1N Development;
“EA1N Works Completion Date”	means the date of completion of the EA1N Works;
“EA1N Works Period”	means the period of 36 months from and including the EA1N Entry Date;
"EA2 DCO"	means a development consent order made by the Secretary of State under section 114 of the Planning Act 2008 in response to the EA2 DCO application;
"EA2 DCO Application"	means EA2 Limited’s application made to the Secretary of State on 24 October 2019 for a development consent order for East Anglia Two Offshore Windfarm and ancillary development or any amendment or re-submission thereof;
“EA2 Deed of Grant”	a Deed of Grant granted in relation to the EA2 Development;
"EA2 Deed of Grant Payment"	means the sum (Index Linked to the date on which the payment is made) which is the Easement Strip Actual Area multiplied by £2.47 less any EA2 Entry Payment and less any EA2 Enabling Works Payment received by the Grantor;
“EA2 Development”	means the construction, operation, maintenance and decommissioning of infrastructure to facilitate the connection of electricity from East Anglia Two Offshore Wind Farm to the National Grid (including but not limited to substation compounds, switchgear, transformers, reactive compression equipment, metering, control building and associated plant) including as reasonably required to facilitate connection of electricity from East Anglia Two North Offshore Wind Farm to the National Grid the construction, operation, maintenance and decommissioning of ancillary apparatus, services and facilities;
“EA2 Easement Consideration”	means the sum (Index Linked to the date on which the payment is made) which is the Easement Strip Actual Area multiplied by £2.47;
“EA2 Enabling Works”	means those Enabling Works undertaken for the purposes of the EA2 Development;

“EA2 Enabling Works Payment”	means the sum (Index Linked to the date on which payment is made) which is 9% of the Easement Strip Standard Area multiplied by £2.47;
“EA2 Entry Date”	the date upon which the Grantee first enters upon the Grantor’s Property pursuant to clause 5.1.3 for the purposes of commencing the EA2 Works;
“EA2 Entry Payment”	means the sum (Index Linked to the date on which payment is made) which is 90% of the Easement Strip Standard Area multiplied by £2.47 less any EA2 Enabling Works Payment;
“EA2 Limited”	means East Anglia Two Limited (company number 11121842) whose registered office is at 3rd Floor, 1 Tudor Street, London EC4Y 0AH;
“EA2 Notice of Entry”	means the notice given pursuant to clause 4.3;
“EA2 Overrun Payment”	means such sum as is equal to the greater of: (i) A x B x C: and (ii) £500 x C where A = £1 and where B = the length of the Easement Strip in linear metres and where C = the number of calendar months in the EA2 Overrun Period;
“EA2 Overrun Period”	means the period commencing on and including the day after the expiry of the EA2 Works Period and ending on and including the day before the EA2 Works Completion Date;
“EA2 Works”	means those Works undertaken for the purposes of the EA2 Development;
“EA2 Works Completion Date”	means the date of completion of the EA2 Works;
“EA2 Works Period”	means the period of 36 months from and including the EA2 Entry Date;
"Easement Plan"	means the plan to be annexed to a Deed of Grant containing the information required by clause 2.6;
"Easement Strip"	means a strip of land: (a) within the Option Area; and (b) part of which is located within the Working Area, through which the relevant Electric Circuits have been or will be laid as identified in the Easement Plan;
"Easement Strip Actual Area"	means the actual surface area of the Easement Strip measured in square metres subject to the Easement Strip having a minimum (even if it is not in fact the case) uniform width of 20 metres along the entirety of its length;
"Easement Strip Standard Area"	means the surface area of the Easement Strip measured in square metres assuming the Easement Strip has a uniform width of 20 metres along the entirety of its length;
"Electric Circuits"	shall have the meaning defined in the Deed of Grant;
"Electricity Act"	means the Electricity Act 1989 as amended;
“Enabling Works”	means any preliminary works required to be undertaken on the Option Area to facilitate the EA1N Works and/or EA2 Works including but not limited to site clearance

	works, demolition works, pre–planting of landscaping works, ecological mitigation, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of temporary means of enclosure, creation of site accesses, footpath creation, highway alterations, erection of welfare facilities and the temporary display of site notices or advertisements and for the avoidance of doubt does not include the Works;
“Energisation Notice”	means a notice to be served on the Grantor by the Grantee confirming the date of energisation of each of the Electric Circuits;
"Expert Determination"	means a determination made by an independent expert as may be agreed between the parties acting reasonably with substantial experience of issues similar to the issue in question and who in default of agreement shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors;
“Extension Payment”	means the sum (Index Linked to the date of payment) which is equal to five percent (5%) of the total of the EA1N Entry Payment and the EA2 Entry Payment;
"Financiers"	means (if applicable) any bank, export credit agency or other entity from time to time providing or arranging finance (whether by way of loan, letter of credit, guarantee, bond issue or otherwise) to the Grantee for the Cable or part of the Cable including any agent or trustee for any of the foregoing;
“Grantee’s Drainage Contractor”	means such drainage expert with relevant and practical experience of work in Suffolk as the Grantee nominates from time to time and notifies to the Grantor in writing;
"Gas and Electricity Markets Authority"	means the Gas and Electricity Markets Authority as created pursuant to Section 1 of the Utilities Act 2000 or any successor authority thereto;
"Grantee"	means the party referred to as such above and the expression shall include its successors in title and assigns;
"Grantor"	means the party referred to as such above and the expression shall include its successors in title and assigns;
“Grantor’s Construction Drainage Requirements”	means the Grantor’s requirements (if any) in respect of the Initial Drainage Works;
“Grantor’s Drainage Contractor”	means such drainage expert as the Grantor nominates from time to time and notifies the Grantee of in writing;
"Grantor's Property"	means the property known as land at [] shown edged red on the Plan[s] being [the whole] of the land comprised within title number [] and [part of] the land comprised within title number [] and including the Option Area;
“Grantor’s Subsequent Drainage Requirements”	means the Grantor’s requirements (if any) in respect of the Subsequent Drainage Works;
"Hazardous Material"	shall have the meaning defined in the Deed of Grant;
"Immune from Challenge"	means that the statutory period within which a Challenge can be made has expired without a Challenge having actually been made;

"Index"	means the Retail Price Index ("**RPI**") issued by the Office for National Statistics provided that (a) if after the date on which any calculation is carried out using RPI the basis of computation of the index shall have changed from that subsisting at the date of the last such calculation, any official reconciliation between the two bases of computation published by the Office for National Statistics shall be binding upon the parties and in the absence of such official reconciliation, such adjustment shall be made to the figure of the index on the date of any such calculation to make it correspond as nearly as possible to the previous method of computation and any such adjusted figure shall be considered for the purposes of this Agreement to the exclusion of the actual published figure and any dispute regarding such adjustment shall be referred to an independent Chartered Accountant to be agreed between the parties or, failing agreement, nominated on application by either party by the President (or other senior office holder) of the Institute of Chartered Accountants in England and Wales (**"the Independent Chartered Accountant"**), and (b) if the RPI ceases to exist, there shall be substituted for it the Consumer Prices Index, unless the Consumer Prices Index has also ceased to exist in which case there shall be substituted such other reasonably equivalent index or means of indexation as the parties shall agree, or failing agreement, as shall be determined by the Independent Chartered Accountant, in each case whose decision shall be final and binding on the parties;
"Index Linked"	means increased by the same percentage as the increase in the Index between the month hereof and the month for which the Index was last published prior to the month when the relevant sum is to be increased and for the avoidance of doubt no decrease in the Index shall result in a reduction in the amount of any sum which is Index Linked;
“Initial Drainage Works”	means the land and/or natural drainage (including flood and alleviation) works required to be undertaken on the Grantor’s Property in connection with the EA1N Works and/or EA2 Works;
“Initial Option Period”	means the period of ten (10) years from and including the date of this Agreement to [ ] 2031;
"Non-disturbance Agreement"	an agreement in a reasonable form between the Grantee and any Prior Party which provides that in the event of default by the Grantor in the obligation owed to the Prior Party, the Prior Party shall not disturb the Grantee’s use of the Grantor's Property under the terms of this Agreement and under the terms of the Deed of Grant;
"Offshore Transmission Licence"	has the meaning given to that term in Section 6C(5) of the Electricity Act;
"OFTO"	means the Offshore Transmission Licence holder appointed by the Gas and Electricity Markets Authority pursuant to a tender process governed by regulations made under Section 6C of the Electricity Act;
"Option"	has the meaning given to it in clause 2.1;
"Option Area"	means the land shown shaded blue on the Plan[s];

"Option Fee"	means the sum of £[**This will be the Incentive Payment**];
"Option Notice"	means notice in writing of the Grantee's intention to take one or more Deeds of Grant;
"Option Period"	means the Initial Option Period together with any additional period pursuant to clause 2.2;
"Permission"	means any permission to be granted by the appropriate authority (or authorities) for the construction and operation of the Cable or any part thereof;
"Plans"	means the plans annexed hereto;
"Planning Agreement"	means: (a) any agreement bond or guarantee required by a competent authority; or (b) any undertaking bond or guarantee offered to a competent authority in connection with the grant of Permission (whether under Sections 106 or 299 Town and Country Planning Act 1990 Section 33 Local Government (Miscellaneous Provisions) Act 1982 Section 38 or Section 278 Highways Act 1980 Section 18 Public Health Act 1936 Section 104 Water Industry Act 1991 Section 39 of the Wildlife and Countryside Act 1981 or otherwise);
"Projects"	means the EA1N Development and/or the EA2 Development;
"Project Zone Plan"	means the plan with drawing no [ ] and annexed hereto;
"Rights"	has the meaning given to it in the Deed of Grant;
“Schedule of Condition”	means the schedule to be prepared in accordance with clause 5.2;
“Subsequent Drainage Report”	means the report prepared by the Grantee’s Drainage Contractor pursuant to clause 7.2 and agreed pursuant to clause 7 or determined pursuant to clause 7.5;
“Subsequent Drainage Works”	means land and/or natural drainage (including flood and alleviation) works required for the restoration of the land and/or natural drainage systems or irrigation systems on the Grantor’s Property;
"Survey Area"	means the land shown shaded green on the Plans (including the Option Area) [other than the land as shown hatched green on the Plans]; [***DN:*** *Excluded from such Survey Area must be the curtilage of any residential property within the Grantor’s Property. Such areas to be shown hatched green on the Plans].*
“Survey Licence”	means the letter agreement relating to access to the Grantor’s Property for the purpose of carrying out surveys and other investigative works dated [ ] and made between [ ];
"Termination"	means the termination of this Agreement either by the expiry of the Option Period or pursuant to clause 18;
“Top Up Payment”	means such sum as is equal to the amount by which the Compulsory Acquisition Value specified in the Compensation Code Notice exceeds the EA1N Easement

	Consideration and/or EA2 Easement Consideration (as the case may be);
"Value Added Tax"	means value added tax as defined in the Value Added Tax Act 1994 or any tax of a similar nature substituted for or levied in addition to such value added tax;
"Working Area"	means such area within the Option Area as the Grantee may reasonably require for the Works forming a strip of land on the surface of the Option Area embracing the relevant Cable having a standard width of 32 metres for each of the EA1N Works and the EA2 Works save where a greater or lesser width within the Option Area is required by the Grantee due to engineering issues where the Grantee shall be entitled to a total Working Area of no more than 70 metres in respect of such area for the purpose of either the EA1N Works or the EA2 Works (but if the EA1N Works and EA2 Works take place simultaneously the total width of the Working Area shall be no more than 70 metres), unless a wider area is otherwise approved by the Grantor;
"Working Day"	means any day (other than a Saturday or Sunday) on which clearing banks in the City of London are open to the public for the transaction of business;
"Works"	means the activities described in clause 5.1.3 and for the avoidance of doubt does not include the activities referred to in clause 5.1.1 or 5.1.2;

1.2 In this Agreement unless the context otherwise requires:

1.2.1 every covenant by a party comprising more than one person shall be deemed to be made by such party jointly and severally;

1.2.2 words importing persons shall include firms companies and corporations and vice versa;

1.2.3 where the context so requires words importing the singular shall include the plural and vice versa;

1.2.4 any covenant by a party not to do any act or thing shall include an obligation not to knowingly permit or suffer such act or thing to be done by their respective servants agents employees licensees workmen and contractors;

1.2.5 any reference to the right of the Grantee to have access to or to enter the Grantor's Property, Easement Strip, Option Area or any adjoining or neighbouring land owned or occupied by the Grantor shall be construed as extending to all persons authorised by them including agents professional advisers contractors workmen and others and where reasonably necessary shall be exercisable (a) with motor or other vehicles (using routes of access approved by the Grantor, such approval not to be unreasonably withheld or delayed) and (b) so as to bring on to the relevant land plant, apparatus and materials Provided That such plant, apparatus and materials shall be removed as soon as reasonably practical;

1.2.6 any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of it for the time being in force and all instruments orders notices regulations directions bye-laws permissions and plans for the time being made issued or given under it or deriving validity from it;

1.2.7 all agreements and obligations by any party contained in this Agreement (whether or not expressed to be covenants) shall be deemed to be and shall be construed as covenants by such party;

1.2.8 the words "including" and "include" shall be deemed to be followed by the words "without limitation";

1.2.9 the titles or headings appearing in this Agreement are for reference only and shall not affect its construction;

1.2.10 any reference to a clause shall mean a clause in this Agreement;

1.2.11 if in order to comply with any obligation in this Agreement the Grantor or the Grantee shall require the consent of a third party such obligation shall be deemed to be subject to the obtaining of such consent which the Grantor and the Grantee or either as appropriate shall use its reasonable endeavours to obtain that consent.

2. Option

2.1 In consideration of the payment referred to in clause 2.3 below the Grantor grants to the Grantee for the Option Period an option to take a maximum of two Deeds of Grant (a maximum of one for each of the EA1N Development and the EA2 Development) each Deed of Grant permitting the installation of a maximum of two (2) Electric Circuits on the terms of this Agreement (the "**Option**").

2.2 In the event that at the end of the Initial Option Period the Grantee has not in accordance with the terms of this agreement yet commenced both the EA1N Works and the EA2 Works or completed both the EA1N Deed of Grant and the EA2 Deed of Grant the Grantee may extend the Option Period by serving on the Grantor not less than one month before the expiry of the Initial Option Period a written notice extending the Option Period by 36 months (from and including [ ] 2031 to [ ] 2034) and paying to the Grantor the Extension Payment within 45 days of the date of service of the written notice extending the Option Period in accordance with this clause.

2.3 The Grantee shall pay to the Grantor the Option Fee on the date of this Agreement.

2.4 The Option may be exercised by the Grantee at any time during the Option Period by the Grantee serving an Option Notice on the Grantor, Provided Always That any Option Notice in respect of the EA1N Development shall only be served after the making of the EA1N DCO and any Option Notice in respect of the EA2 Development shall only be served after the making of the EA2 DCO.

2.5 The Grantee may exercise the Option on two occasions only (and on one occasion only for each of the EA1N Development and the EA2 Development), but following service of an Option Notice the Grantee may at any time prior to completion of the Deed(s) of Grant provide the Grantor with an amended Easement Plan or Easement Plans.

2.6 An Option Notice shall state:

2.6.1 the number of Deeds of Grant required by the Grantee (being a maximum of two and a maximum of one for each of the EA1N Development and the EA2 Development);

2.6.2 the start and end date of the EA1N Works Period and/or EA2 Works Period (as the case may be) and where the EA1N Entry Date and/or the EA2 Entry Date (as the case may be) has occurred prior to the date of the Option Notice this shall be the start date of the EA1N Works Period and/or EA2 Works Period (as the case may be) as notified to the Grantor in accordance with clause 4.1 and/or clause 4.3 (as the case may be)

and shall be accompanied by an Easement Plan for each Deed of Grant which shall in each case identify the following:

2.6.3 the Easement Strip for the purposes of that Deed of Grant shown tinted pink which shall comprise part of the Option Area as defined in this Agreement but no land outside the Option Area unless the Grantor has agreed otherwise and which shall comply with the requirements of clause 2.9;

2.6.4 the locations of the land required for Cable Inspection Boxes for the purposes of that Deed of Grant shown edged brown and the Grantee shall use all reasonable but commercially prudent endeavours to procure that the Cable Inspection Boxes are located on or adjacent to field boundaries;

2.6.5 the Grantor's Property shown edged red which shall be the same as the Grantor's Property as shown on the Plans unless the Grantor has agreed otherwise;

2.6.6 if applicable the access shown coloured yellow which shall be any land which the Grantor has agreed pursuant to clause 13.1 may be used as an access;

2.7 Following service of an Option Notice the provisions of clause 9 below shall apply to the Deed of Grant to which the Option Notice relates.

2.8 The Grantee may require the Grantor to grant each Deed of Grant to the Grantee or a third party listed in clause 20 as the Grantee may direct (and the third party may be different for each Deed of Grant) subject to the Grantee complying with the requirements of clause 20.1.7 where applicable.

2.9 The parties agree that the Grantee shall be entitled to take a total Easement Strip under each Deed of Grant of no more than 20 metres in width (save in respect of the part of the Option Area where a greater width is required due to engineering issues or where the cable(s) are installed using horizontal directional drilling or similar technique) and the width shall be measured from the outside edge to the nearest point on the other outside edge of the Easement Strip.

3. Title matters

3.1 The Grantor shall upon request following the date of this Agreement (and to the extent that it has not done so already) deduce its title to the Grantor's Property such deduction of title including where appropriate:

3.1.1 in the case of registered land official copies of the title(s) of the Grantor to the Grantor's Property in accordance with Section 110 Land Registration Act 2002;

3.1.2 in the case of unregistered land an epitome of title showing a good root or roots of title being not less than fifteen (15) years old;

3.1.3 such further information as the Grantee reasonably requires including replies to enquiries and statutory declarations; and

3.1.4 subject to clause 1.2.11 and at the cost of the Grantee (subject to such costs being properly incurred and approved by the Grantee in advance (such approval not to be unreasonably withheld or delayed)) the unconditional written consent(s) of any mortgagees and any person with the benefit of any encumbrance or charge over the Grantor's Property.

3.2 The Grantor warrants to the Grantee that so far as the Grantor is aware:

3.2.1 he is fully empowered to grant the Option; and

3.2.2 there are no tenancies or other rights of occupation affecting the Grantor's Property save for [*insert details*].

3.3 The Grantor shall upon request and at the cost of the Grantee (subject to such costs being reasonably and properly incurred and approved by the Grantee in advance (such approval not to be unreasonably withheld or delayed)) use reasonable endeavours to and shall co-operate with the Grantee to remedy any defects in the Grantor's title to the Grantor's Property which could obstruct the Rights.

3.4 In addition to the obligation at clause 3.3, the Grantor covenants with the Grantee that the Grantor shall at the Grantee’s cost (subject to such costs being reasonably and properly incurred and approved by the Grantee in advance (such approval not to be unreasonably withheld or delayed)) use reasonable endeavours to obtain as soon as reasonably possible following a request from the Grantee a Non-disturbance Agreement from each party ("Prior Party") that holds a mortgage deed or trust or other similar lien on the Grantor's Property which arose prior to the date of this Agreement.

3.5 The Grantee may following the date hereof register a notice, caution or other protective entry against the Grantor's title to the Grantor's Property in relation to this Agreement (Provided That any copy of this Agreement submitted to the Land Registry shall be redacted as to the financial details) and the Grantor shall at the cost of the Grantee provide such assistance to the Grantee as the Grantee reasonably requires to enable it do so. Following completion of such application the Grantee shall supply to the Grantor an up to date copy of the Grantor's title to the Grantor's Property.

4. Works commencement and Works Period

4.1 Without prejudice to the obligations in clause 4.2 and 4.3, the Grantee shall use all reasonable but commercially prudent endeavours to keep the Grantor appraised of progress of the Projects

and give as much advance notice as is reasonably possible (and shall use all reasonable but commercially prudent endeavours to provide no less than six months' advance notice) of the anticipated date upon which the Grantee is likely to serve the EA1N Notice of Entry or EA2 Notice of Entry (as the case may be).

4.2 Where the EA1N Works Period occurs prior to the date of completion of the EA1N Deed of Grant the Grantee shall give the Grantor not less than 28 days' written notice of the start date of the EA1N Works Period.

4.3 Where the EA2 Works Period occurs prior to the date of completion of the EA2 Deed of Grant the Grantee shall give the Grantor not less than 28 days' written notice of the start date of the EA2 Works Period.

5. Entry pending completion of Deed

5.1 From the date of this Agreement the Grantee shall be entitled with its surveyors, architects, engineers, contractors, agents and servants at all reasonable times to enter on to:

5.1.1 the Survey Area upon giving not less than 28 days prior written notice of such entry to the Grantor for the purposes of carrying out site soil and environmental surveys and environmental mitigation measures and geotechnical archaeological and site investigations on any unbuilt parts of the Survey Area (including the pruning, trimming or removal of plants and vegetation to the extent reasonably necessary to carry out such surveys and investigations) subject to the Grantee making good any physical damage as soon as reasonable practicable and to the reasonable satisfaction of the Grantor or at the option of the Grantee paying compensation in accordance with the Compensation Provisions for any such damage (including crop loss) and subject to the following payments (Index Linked to the date on which the payment is made) being made to the Grantor;

(i) £325 in respect of each borehole and/or trial pit dug and £50 per window sample;

(ii) in the event that a borehole is open for more than 7 days or if subsequent water monitoring is required in respect of any borehole, an additional payment of £150 for a 12 month period or any part thereof and a further payment of £150 in respect of any further 12 month period or part thereof;

(iii) £5.83 per square metre in respect of any trench dug in connection with archaeological investigations subject to a minimum payment of £350

5.1.2 the Grantor's Property upon giving not less than 28 days prior written notice of such entry (such notice to specify whether entry is being taken for the purpose of the EA1N Enabling Works and/or the EA2 Enabling Works and also to contain sufficient information regarding such works to enable the parties to determine in accordance with clause 6.11 whether prior to commencement of the EA1N Enabling Works and/or the EA2 Enabling Works a Construction Drainage Report is required to be prepared and provided to the Grantor pursuant to clause 6) and paying to the Grantor within 30 days of the date of service of notice of entry the EA1 Enabling Works Payment and/or the EA2 Enabling Works Payment (as the case may be) for the purpose of carrying out the EA1N Enabling Works and/or the EA2 Enabling Works on the Option Area PROVIDED ALWAYS:

(i) the Grantee shall use all reasonable but commercially prudent endeavours to commence the EA1N Works and/or EA2 Works as soon as reasonably practicable after entry pursuant to this clause 5.1.2;

(ii) where works for the diversion of irrigation systems are required as part of the EA1N Enabling Works and/or EA2 Enabling Works such diversion works shall only be carried out with the Grantor's prior written consent (such consent not to be unreasonably withheld or delayed) and the Grantee shall with the Grantor's prior written consent (such consent not to be unreasonably withheld or delayed) be permitted to undertake such diversion works on the Grantor's Property and any adjoining or neighbouring land owned by the Grantor PROVIDED FURTHER that the Grantee shall use all reasonable but commercially prudent endeavours to maintain irrigated water supplies to any areas of the Grantor's Property

and any adjoining or neighbouring land owned by the Grantor that are affected by the EA1N Enabling Works and EA1N Works and/or the EA2 Enabling Works and EA2 Works (as the case may be);

(iii) where vegetation removal is required as part of the EA1N Enabling Works and/or EA2 Enabling Works the Grantee will be permitted to remove, fell, cut and lop any tree, shrubs and vegetation on the Option Area (such works to be communicated in advance in writing to the Grantor for their information) which in the reasonable opinion of the Grantee may interfere with the EA1N Works and/or the EA2 Works. The Grantee will only remove any trees necessary to enable the EA1N Works and/or the EA2 Works and after consultation between the Grantee and the Grantor. All timber shall remain the property of the Grantor or in the Grantor's sole discretion be cut and disposed of in accordance with the reasonable requirements of the Grantor;

(iv) the Grantee shall pay compensation in accordance with the Compensation Provisions for any damage (including crop loss) resulting from or from the carrying out of the EA1N Enabling Works and/or the EA2 Enabling Works;

(v) the Grantee's rights of entry pursuant to this clause 5.1.2 shall be capable of being exercised independently in respect of the EA1N Enabling Works and the EA2 Enabling Works.

5.1.3 (subject to clause 4) any part of the Grantor's Property as permitted by the Deed of Grant for the purposes of carrying out all onshore infrastructure and associated works required for the EA1N Development and/or EA2 Development (as the case may be) in the Option Area including (but not limited to) to construct lay and render operational the Cables, cable transmission and jointing bays and Cable Inspection Boxes in accordance with the EA1N DCO and/or EA2 DCO (as the case may be) Provided That such works in the Option Area shall be carried out in accordance with clause 9 hereof and the provisions of the relevant Deed of Grant (including any limitations as to what activities may be carried out on any particular part of the Grantor's Property and the Cables being laid in the centre of the Easement Strip) as if the same had been granted and the Grantee will keep the Grantor indemnified against all losses, liability, proceedings, costs, claims, demands and expenses incurred or arising as a direct result of such works and indemnified against all losses and liabilities referred to in Paragraph 8 of Schedule 2.

5.2 Prior to commencement of any Works (other than where the Rights are exercised after initial construction in order to carry out emergency works) and/or the activities referred to in clause 5.1.2 a record of the state or condition of any part of the Grantor's Property likely to be affected thereby shall be prepared by the Grantee or some other person or persons authorised by the Grantee (the most recent version of such record of condition relevant to any particular area of land being the applicable Schedule of Condition for the purposes of the Deed of Grant) and:

5.2.1 a copy of the Schedule of Condition (or any updated Schedule of Condition from time to time) shall be supplied to the Grantor;

5.2.2 the Schedule of Condition (or any updated Schedule of Condition from time to time) shall, for agricultural land, include as a minimum photographs of the relevant land, basic information on soil composition and topsoil depths (and for the avoidance of doubt soil surveys shall be undertaken at a maximum distance of every 50 metres along the Easement Strip and in each field or agricultural enclosure, where appropriate); and

5.2.3 the Grantor shall be entitled to make representations regarding the adequacy of the Schedule of Condition and the Grantee shall give due and proper regard to any such representations which are raised in writing during the period of 10 working days after receipt of the Schedule of Condition by the Grantor and where necessary the Grantee shall take reasonable steps to remedy any reasonable inadequacy identified by the Grantor.

5.3 Until the end date of the EA1N Works Period and/or EA2 Works Period (as the case may be) or, if later, until completion of the Deed(s) of Grant, the Grantee must not carry out any Works on any part of the Grantor's Property that is outside of the Working Area.

5.4 The Grantee will as soon as reasonably practicable reinstate the Grantor's Property to a standard no worse than its original condition in accordance with the Schedule of Condition for any damage caused to the Grantor's Property by its employees or anyone acting on behalf of or at the direction of the Grantee in exercise of the rights and obligations in this Agreement.

Payment of entry payment

5.5 On or before the earlier of:

5.5.1 the date which is 30 days of the date of service of notice of entry pursuant to clause 4.2; and

5.5.2 the date of completion of the EA1N Deed of Grant,

the Grantee shall pay to the Grantor the EA1N Entry Payment.

5.6 On or before the earlier of:

5.6.1 the date which is 30 days of the date of service of notice of entry pursuant to clause 4.3; and

5.6.2 the date of completion of the EA2 Deed of Grant;

the Grantee shall pay to the Grantor the EA2 Entry Payment.

Survey Licence

5.7 To the extent that any payments to be made pursuant to the Survey Licence remain outstanding and/or to be paid (including without limitation the advance compensation payment in paragraph [1.2] of the Survey Licence which shall, unless paid before the date of this Agreement, remain to be paid) as at the date of this Agreement the Grantee shall pay, or shall procure payment of, such sums in accordance with the terms of the Survey Licence and for such purpose (but no other) the terms of the Survey Licence shall be deemed incorporated herein as if the same were set out in full. This obligation shall apply notwithstanding that the Grantee is not a party to the Survey Licence.

5.8 Notwithstanding any provision in the Survey Licence to the contrary:

5.8.1 any record of condition of the Grantor's property prepared in accordance with paragraph [6.1] of the Survey Licence shall form part of and be included in the Schedule of Condition to be prepared in accordance with this Agreement;

5.8.2 to the extent that any repair works pursuant to paragraph [8.2] of the Survey Licence remain outstanding as at the date of this Agreement the Grantee shall at the Grantee's cost carry out the repair works in accordance with the terms of the Survey Licence and for such purpose (but no other) the terms of the Survey Licence shall be deemed incorporated herein as if the same were set out in full. This obligation shall apply notwithstanding that the Grantee is not a party to the Survey Licence;

5.8.3 to the extent that any repair works pursuant to paragraph [9.2] of the Survey Licence remain outstanding as at the date of this Agreement the Grantor may at the Grantee's cost carry out the repair works in accordance with the terms of the Survey Licence and for such purpose (but no other) the terms of the Survey Licence shall be deemed incorporated herein as if the same were set out in full. This obligation shall apply notwithstanding that the Grantee is not a party to the Survey Licence; and

5.8.4 to the extent that any reinstatement works pursuant to paragraph [11] of the Survey Licence remain outstanding as at the date of this Agreement the Grantee shall at the Grantee's cost carry out the repair works in accordance with the terms of the Survey Licence and for such purpose (but no other) the terms of the Survey Licence shall be deemed incorporated herein as if the same were set out in full. This obligation shall apply notwithstanding that the Grantee is not a party to the Survey Licence.

6. Pre-Works Drainage

6.1 Prior to commencement of any Works and/or (subject to clause 6.11) the activities referred to in clause 5.1.2 on the Option Area the Grantee shall cause the Grantee's Drainage Contractor to attend the Grantor's Property for the purpose of carrying out a pre-construction assessment

of the impact of the Works on the Grantor's Property land and/or natural drainage (including flood and alleviation) systems and irrigation systems.

6.2 Before commencing any Works and/or (subject to clause 6.11) the activities referred to in clause 5.1.2 on the Option Area that will or may affect the land and/or natural drainage (including flood and alleviation) systems or irrigation systems on the Grantor's Property and/or any adjoining or neighbouring land owned by the Grantor, the Grantee shall consult with the Grantor and the Grantor's Drainage Contractor (if any) on the design of any Initial Drainage Works. Contemporaneously with such consultation the Grantee shall provide the Grantor with a report ("Construction Drainage Report") setting out the Grantee's Drainage Contractor's recommendations in respect of the Initial Drainage Works.

6.3 The Grantor shall, as soon as reasonably practicable but in any event within 21 Working Days of receipt of the Construction Drainage Report confirm to the Grantee any Grantor's Construction Drainage Requirements. If the Grantor does not respond within such 21 Working Day period, it shall be deemed to have accepted the Construction Drainage Report.

6.4 The Grantee shall have due and proper regard to any Grantor's Construction Drainage Requirements communicated to it pursuant to clause 6.3. If the Grantee accepts the Grantor's Construction Drainage Requirements the Construction Drainage Report shall be amended to incorporate the Grantor's Construction Drainage Requirements.

6.5 The Initial Drainage Works are to be undertaken:

6.5.1 as soon as practicably possible by professionally qualified contractors with relevant and practical experience in drainage works of the type in the Construction Drainage Report and in Suffolk;

6.5.2 only in accordance with the Construction Drainage Report; and

6.5.3 so far as reasonable and proportionate to ensure that the land drainage system and natural drainage on the Grantor's Property and/or any adjoining or neighbouring land owned by the Grantor, are left in no worse condition than they are in prior to commencement of the works.

6.6 To facilitate the Initial Drainage Works, the Grantor shall allow the Grantee and the Grantee's drainage contractors (with or without motor or other vehicles, necessary plant, apparatus and materials) to enter at reasonable times and on reasonable prior notice onto and undertake such works on the Grantor's Property and where necessary any adjoining or neighbouring land owned by the Grantor as may be identified in the Construction Drainage Report subject to the Grantee making good any physical damage as soon as reasonably practicable and to the reasonable satisfaction of the Grantor at the Grantee's costs or at the option of the Grantor paying compensation in accordance with the Compensation Provisions for any such damage (including crop loss).

6.7 Subject to the Compensation Provisions nothing in this clause 6 shall restrict the Grantor's right to claim compensation for losses which arise after completion of the Initial Drainage Works and which are attributable to defects in the design or installation of the Initial Drainage Works Provided That the Grantee shall not be responsible for any defects caused by the Grantor's wilful act or default.

6.8 Upon reasonable request and subject to the Grantee's reasonable and proper requirements notified to the Grantor and the Grantor's Drainage Consultant, the Grantor and the Grantor's Drainage Consultant shall be afforded the opportunity to inspect the Initial Drainage Works as they progress.

6.9 The Grantee shall cause records of the Initial Drainage Works carried out on the Grantor's Property and any adjoining or neighbouring land owned by the Grantor as may be identified in the Construction Drainage Report to be made at the Grantee's cost and for copies of such records to be provided to the Grantor following completion of the Initial Drainage Works.

6.10 The Grantee shall be responsible for and shall pay to the Grantor's Drainage Contractor the reasonable fees properly incurred by the Grantor's Drainage Contractor in connection with the Initial Drainage Works up to a maximum sum of £500. If the Grantor's Drainage Contractor's costs exceed £500 the Grantee shall only be responsible for and required to pay the same if the approval of the Grantee (such approval not to be unreasonably withheld or delayed) to such increase was sought and obtained before such costs were incurred and it is demonstrated to the Grantee's reasonable satisfaction (such expression of satisfaction not to be unreasonably withheld or delayed) that such additional costs were reasonably and properly incurred.

6.11 As soon as practicable (and in any event within fifteen Working Days) after receipt by the Grantor of the notice given pursuant to clause 5.1.2, the Grantor and Grantee shall both acting reasonably agree whether the EA1N Enabling Works and/or the EA2 Enabling Works (details of which are sufficiently set out in the notice given pursuant to clause 5.1.2) require the carrying out of a pre-construction assessment and preparation of a Construction Drainage Report in accordance with the terms of this clause 6.

7. Post Works Drainage

7.1 As soon as reasonably practicable following completion of the Works on the Option Area, the Grantee shall cause the Grantee's Drainage Contractor to attend the Grantor's Property for the purpose of carrying out a post construction assessment of the impact of the Works on the Grantor's Property's land and/or natural drainage (including flood and alleviation) systems and irrigation systems.

7.2 Following the Grantee's Drainage Contractor's attendance pursuant to clause 7.1 the Grantee shall consult with the Grantor and the Grantor's Drainage Contractor (if any) on the design of any Subsequent Drainage Works. Contemporaneously with such consultation the Grantee shall provide the Grantor with a report ("Subsequent Drainage Report") setting out the Grantee's Drainage Contractor's recommendations in respect of the Subsequent Drainage Works.

7.3 The Grantor shall, as soon as reasonably practicable but in any event within 60 days of receipt of the Subsequent Drainage Report confirm to the Grantee any Grantor's Subsequent Drainage Requirements. If the Grantor does not respond within such 60 day period, it shall be deemed to have accepted the Subsequent Drainage Report.

7.4 The Grantee shall have due and proper regard to any Grantor's Subsequent Drainage Requirements communicated to it pursuant to clause 7.3. If the Grantee accepts the Grantor's Subsequent Drainage Requirements the Subsequent Drainage Report shall be amended to incorporate the Grantor's Subsequent Drainage Requirements.

7.5 If the Grantee does not accept the Grantor's Subsequent Drainage Requirements, the matter shall be referred at the request of either party for decision to a single independent drainage expert (who shall have not less than ten (10) years relevant and practical experience in Suffolk and of dealing with agricultural drainage issues associated with large scale infrastructure and civil engineering projects) or in the absence of such agreement either party may apply to the President for the time being of the Institution of Civil Engineers for the appointment of such independent drainage expert who shall act as expert and whose decision shall (save in the case of manifest error or fraud) be final and binding between the parties and the Subsequent Drainage Report shall be amended to incorporate the determination of such independent drainage expert. The Grantee shall pay the costs of the expert.

7.6 The Subsequent Drainage Works are to be undertaken:

7.6.1 as soon as practicably possible by professionally qualified contractors with relevant and practical experience in drainage works of the type set out in the Subsequent Drainage Report and in Suffolk;

7.6.2 only in accordance with the Subsequent Drainage Report; and

7.6.3 so far as reasonable and proportionate to ensure that the land drainage system and natural drainage on the Grantor's Property and/or any adjoining or neighbouring land owned by the Grantor, are left in no worse condition than they are in prior to commencement of the works.

7.7 To facilitate the Subsequent Drainage Works, the Grantor shall allow the Grantee and the Grantee's drainage contractors (with or without motor or other necessary vehicles, plant, apparatus and materials) to enter at reasonable times and on reasonable prior notice onto and undertake such works on the Grantor's Property and where necessary any adjoining or neighbouring land owned by the Grantor as may be identified in the Subsequent Drainage Report subject to the Grantee making good any physical damage as soon as reasonably practicable and to the reasonable satisfaction of the Grantor at the Grantee's costs or at the option of the Grantor paying compensation in accordance with the Compensation Provisions for any such damage (including crop loss).

7.8 Subject to the Compensation Provisions nothing in this clause 7 shall restrict the Grantor's right to claim compensation for losses which arise after completion of the Subsequent Drainage Works and which are attributable to defects in the design or installation of the Subsequent Drainage Works.

7.9 Upon reasonable request and subject to the Grantee's reasonable and proper requirements notified to the Grantor and the Grantor's Drainage Consultant, the Grantor and the Grantor's Drainage Consultant shall be afforded the opportunity to inspect the Subsequent Drainage Works as they progress.

7.10 The Grantee shall cause records of any Subsequent Drainage Works carried out on the Grantor's Property and any adjoining or neighbouring land owned by the Grantor as may be identified in the Subsequent Drainage Report to be made at the Grantee's cost and for copies of such records to be provided to the Grantor following completion of the Subsequent Drainage Works.

7.11 The Grantee shall be responsible for and shall pay to the Grantor's Drainage Contractor the reasonable fees properly incurred by the Grantor's Drainage Contractor in connection with the Subsequent Drainage Works up to a maximum sum of £500. If the Grantor's Drainage Contractor's costs exceed £500 the Grantee shall only be responsible for and required to pay the same if the approval of the Grantee (such approval not to be unreasonably withheld or delayed) to such increase was sought and obtained before such costs were incurred and it is demonstrated to the Grantee's reasonable satisfaction (such expression of satisfaction not to be unreasonably withheld or delayed) that such additional costs were reasonably and properly incurred.

8. Execution of Works

8.1 In the event that the Grantee exercises its right to execute Works on the Option Area prior to completion of the Deed(s) of Grant in accordance with clause 5.1.3 hereof the Grantee shall be entitled to:

8.1.1 make use of the Working Area; and

8.1.2 make use of an Easement Strip (only to the extent this falls within the Working Area) which is no larger than the Easement Strip which would be permitted had the relevant Deed of Grant been completed.

8.2 Where the Works relating to a set of Electric Circuits are carried out in advance of completion of the Deed(s) of Grant the Grantee shall notify the Grantor as soon as practicable after the occurrence of the completion of the Works in relation to those Electric Circuits.

8.3 The Grantee shall within 60 days of commissioning each Electric Circuit serve the Energisation Notice in respect of that Electric Circuit.

9. Completion matters

9.1 Following service of an Option Notice this Agreement shall constitute an agreement by the Grantor to grant and by the Grantee to accept the Deed(s) of Grant to which the Option Notice relates.

9.2 Completion of the Deed(s) of Grant shall take place on the Completion Date.

9.3 The Grantor shall prior to the Completion Date use reasonable endeavours to obtain the consent of any mortgagee or chargee of the Grantor's Property to the Deed(s) of Grant in such form as the Grantee may reasonably require. The Grantee will assist with obtaining such consents where reasonably practical and, provided that the approval of the Grantee (such approval not to be unreasonably withheld or delayed) is obtained before such costs are incurred, pay to the Grantor the costs properly incurred by the Grantor in obtaining such consents.

9.4 The value of the consideration to be inserted in the definition of Price in clause 1.1 of each Deed of Grant shall be the EA1N Deed of Grant Payment or the EA2 Deed of Grant Payment (as the case may be) and the Price shall be due on completion of the Deed(s) of Grant and if any additional payment is due under clause 10 it will be paid after completion of the Deed(s) of Grant in accordance with the provisions of that clause.

9.5 The Easement Plan as defined in and to be incorporated in each Deed of Grant shall be the Easement Plan for that Deed of Grant as attached to the Option Notice (or where relevant as varied in accordance with clause 2.5).

9.6 The Project Zone Plan as defined in and to be incorporated in each Deed of Grant shall be the Project Zone Plan attached to this Agreement unless the Grantee notifies the Grantor prior to completion of a Deed of Grant that an alternative plan showing a smaller area (within the Project

Zone as identified on the Project Zone Plan attached to this Agreement) is to be used in its place.

9.7 The Grantee shall notify the Grantor of the approximate location of the Substation as defined in each Deed of Grant (and which for the avoidance of doubt may vary from one Deed of Grant to another) prior to the Completion Date.

9.8 The Works Period as defined in the Deed of Grant shall be either the EA1N Works Period or the EA2 Works Period (as the case may be) as stated in the Option Notice.

9.9 The EA1N Entry Payment and/or EA2 Entry Payment (as the case may be) shall be paid on completion of the Deed(s) of Grant where it has not already been paid and it therefore falls due under clause 5.5 or clause 5.6 (as the case may be).

10. Price and top up payments

10.1 If the Grantor considers the EA1N Easement Consideration and/or EA2 Easement Consideration to be less than the Compulsory Acquisition Value the Grantor shall no later than the period of 90 days from and including the date of completion of the EA1N Deed of Grant and/or the date of completion of the EA2 Deed of Grant (as the case may be) be at liberty to serve the Compensation Code Notice.

10.2 If the Grantee agrees the Compulsory Acquisition Value specified in the Compensation Code Notice it shall within the period of 90 days from and including the date of receipt of the Compensation Code Notice pay to the Grantor the Top Up Payment and the Grantor's reasonable and proper agent's, surveyor's and solicitor's costs reasonably and properly incurred in connection with the Compensation Code Notice including but not limited to the preparation and service of the Compensation Code Notice.

10.3 If the Grantee does not (acting reasonably) agree the Compulsory Acquisition Value specified in the Compensation Code Notice the matter shall be determined in accordance with the provisions of clause 27 of this Agreement.

11. Overrun Payment

11.1 The Grantee shall use reasonable endeavours to complete the EA1N Works within the EA1N Works Period and if the EA1N Works are not completed within the EA1N Works Period the Grantee shall pay to the Grantor at the end of every three calendar month period of the EA1N Overrun Period an interim payment equivalent to the EA1N Overrun Payment applicable to that period and within 60 days after the EA1N Works Completion Date the balance of the EA1N Overrun Payment due since the last payment.

11.2 The Grantee shall use reasonable endeavours to complete the EA2 Works within the EA2 Works Period and if the EA2 Works are not completed within the EA2 Works Period the Grantee shall pay to the Grantor at the end of every three calendar month period of the EA2 Overrun Period an interim payment equivalent to the EA2 Overrun Payment applicable to that period and within 60 days after the EA2 Works Completion Date the balance of the EA2 Overrun Payment due since the last payment.

12. Variation

12.1 If following completion of a Deed of Grant the Grantee wishes to alter the Easement Plan attached to the Deed of Grant to reflect the as laid position of the Electric Circuits the Grantee shall provide an amended Easement Plan to the Grantor showing the information required by clause 2.6.

12.2 Following service of a revised plan on the Grantor pursuant to clause 12.1 the Grantor and the Grantee (or third party who is entitled to the benefit of the Deed of Grant acting at the direction of the Grantee) shall (at the cost of the Grantee subject to all costs being reasonably and properly incurred) enter into a deed of variation substituting the amended plan into the relevant Deed of Grant. The said deed of variation shall be completed 30 days after the Grantee has served the amended plan on the Grantor and on completion of the deed of variation the Grantee shall pay to the Grantor any additional payments due under this Agreement (credit being given for any such additional payments that were paid on completion of the relevant Deed of Grant).

13. Access

13.1 During the Option Period in order to comply with any of the Grantee's obligations or exercise any rights of the Grantee under this Agreement the Grantee its officers employees agents and nominees may enter onto the Grantor's Property from the nearest adopted highway and/or any other land adjoining the Grantor's Property in third party ownership by such route as the Grantor and the Grantee (both acting reasonably) shall agree for the purpose of exercising the Grantee's rights pursuant to the terms of this Agreement (and to the extent agreed as at the date of this Agreement such route to be used for pre-construction traffic is shown coloured yellow on the Plan) provided always that the Grantee shall make good to the reasonable satisfaction of the Grantor all damage caused to the Grantor's Property as a result of the exercise of such rights of entry and paying compensation in accordance with the Compensation Provisions for any such damage (including crop loss).

13.2 To facilitate the right of access referred to in clause 13.1 and subject to clauses 13.3 and 13.4 and the access route first being agreed pursuant to clause 13.1 the Grantee may on reasonable prior written notice:

13.2.1 repair, alter or amend any existing access tracks on the Grantor's Property; and/or

13.2.2 lay and use a new access road on the Grantor's Property.

13.3 Prior to exercising the rights set out in clause 13.2 the Grantee shall take a photographic schedule of that part of the Grantor's Property so affected and:

13.3.1 submit a copy of the schedule to the Grantor and the Grantor's agent and if the Grantor does not object within 20 working days of receipt of a copy of the photographic schedules the Grantor shall be deemed to accept it;

13.3.2 if the Grantor does not agree to the photographic schedule then the Grantor and the Grantee (both acting reasonably) shall as soon as reasonably practicable work together to amend the photographic schedule to incorporate the Grantor's requirements; and

13.3.3 the photographic schedule shall, for agricultural land, include as a minimum photographs of the relevant land, basic information on soil composition and topsoil depths (and for the avoidance of doubt soil surveys shall be undertaken at a maximum distance of every 50 metres along the Easement Strip and in each field or agricultural enclosure, where appropriate).

13.4 If required to do so by the Grantor, as soon as reasonably practicable after cessation of use of any part of the existing access track referred to in clause 13.2.1 and/or the new access track referred to in clause 13.2.2 the Grantee shall reinstate that part of the Grantor's Property so affected to the Grantor's reasonable satisfaction but in no worse or better condition than evidenced by the schedule of condition referred to in clause 13.3.

13.5 If any new access roads are created pursuant to clause 13.2.2 outside of the Working Area to provide access to and egress from the Working Area to the adopted highway the Grantee shall pay to the Grantor the sum of Fifty Pounds (£50) per linear metre of such access road (subject to a minimum payment of Two Thousand Five Hundred Pounds (£2,500)) such linear length being the length of the centre line of the access road measured from the boundary of the Working area to the boundary of the adopted highway.

13.6 The Grantor shall not be entitled to more than one payment pursuant to clause 13.5 but such one-off payment shall be without prejudice to the Grantor's right to claim compensation pursuant to the Compensation Provisions for any damage and crop loss on such of the Grantor's Property as is taken out of production as a result of the construction and use of any new access road by the Grantee.

14. Dealings with the Grantor's Property

14.1 The Grantor agrees that this Agreement binds itself and its successors in title to the Grantor's Property.

14.2 With the exception of the matters in clause 14.5, the Grantor agrees with the Grantee that for the period from the date of this Agreement to the date being the earlier of:

14.2.1 the date on which completion of the Deed of Grant for each of the EA1N Development and the EA2 Development has taken place following service of an Option Notice;

14.2.2 the date of termination of this Agreement pursuant to clause 19; or

14.2.3 the expiry of the Option Period,

that the Grantor will not create nor permit or suffer to be created any encumbrance over the Grantor's Property save where the Grantor complies with this clause 14.

14.3 With the exception of the matters in clause 14.5, the Grantor shall not deal with its interest in the Grantor's Property nor grant any rights to any third party (including but not limited to the creation of any new tenancies) nor do anything that has the effect of varying any existing rights unless the prior consent of the Grantee has been obtained (such consent not to be unreasonably withheld or delayed).

14.4 It is agreed that it shall be reasonable for the Grantee to withhold consent referred to in clause 14.3 above if:

14.4.1 in the Grantee's reasonable opinion the proposed new or varied rights would materially interfere with the exercise of the rights granted to the Grantee by this Agreement or a Deed of Grant or the Grantee's application for any Permission;

14.4.2 the Grantor has not procured and delivered to the Grantee an unconditional consent (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and completion of such consent) in a form acceptable to the Grantee (acting reasonably and without delay) from any new tenant, other occupier, grantee, mortgagee or any person who will or could acquire an interest in the Grantor's Property or the benefit of the encumbrance in writing to the exercise of the rights in this Agreement and the grant of the Deed(s) of Grant; or

14.4.3 where the dealing is a disposal (within the meaning contained in section 205(1)(ii) of the Law of Property Act 1925 but excluding the grant of a lease for a term of less than 7 years) of the Grantor's interest in the whole or in any part of the Grantor's Property the Grantor has not procured that the disponee has executed and delivered to the Grantee a deed of covenant (the Grantee paying the reasonable and proper professional fees incurred by the Grantor (including but not limited to any proper and reasonable third party's professional fees) in connection with the preparation and completion of such deed of covenant) obliging the disponee to comply with the obligations on the part of the Grantor contained in this Agreement in a form approved by the Grantee such approval not to be unreasonably withheld or delayed.

14.5 The Grantor shall not require the consent of the Grantee but shall notify the Grantee in writing within 28 days of the grant, renewal, amendment or termination of the following licence agreements in so much as they affect the Option Area. Provided Always that such licence agreements do not grant any rights of exclusive possession or control over the whole or any part or parts of the Option Area.

14.5.1 Grazing Agreement

14.5.2 Shooting Licence

14.5.3 Fishing Licence

14.5.4 Metal Detecting Licence

14.5.5 Annual Cropping Licence

14.5.6 Parking Licence

14.5.7 Storage Licence

15. Construction on the Grantor's Property

15.1 Subject to clause 15.3, the Grantor agrees with the Grantee that until the earlier of the expiry of the Option Period or the termination of this Agreement pursuant to clause 19 the Grantor shall not:

15.1.1 erect construct or place any new building or structure or carry out any excavation or plant any new trees or lay any new surface on the Option Area; nor

15.1.2 materially raise or lower or suffer to be raised or lowered the existing level of the surface of the Option Area,

in either case unless it has first obtained the consent in writing of the Grantee such consent not to be unreasonably withheld or delayed provided that the Grantee is satisfied (acting

reasonably) that there will be no material adverse effect on its ability to exercise the rights granted by this Agreement or the Deed of Grant.

15.2 During the Option Period the Grantor is not to carry out activities on over or within the Option Area that may prejudice the rights to be acquired pursuant to the EA1N DCO Application or the EA2 DCO Application, unless it has the prior written consent of the Grantee (such consent not to be unreasonably withheld or delayed).

15.3 The Grantor will have no restrictions on normal agricultural operations and cultivations including the planting, maintenance and harvesting of agricultural crops and the growing of grasses or other herbaceous forage for livestock purposes.

16. Permissions

16.1 The Grantor shall not make a representation regarding the EA1N DCO Application nor the EA2 DCO Application (and shall forthwith withdraw any representation made prior to the date of this Agreement and forthwith provide the Grantee with a copy of its withdrawal) nor any other Permission associated with the EA1N Development or the EA2 Development and shall take reasonable steps (Provided That any assistance is kept confidential) to assist the Grantee to obtain all permissions and consents for the EA1N Works and the EA2 Works on the Option Area (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and completion of such permissions and consents).

17. Planning agreements

17.1 The Grantee shall obtain the Grantor's approval (such approval not to be unreasonably withheld or delayed) in accordance with clause 17.4 in connection with any Planning Agreement or Planning Agreements to which the Grantor is required to be a party and which may be requisite or conducive to obtaining the EA1N DCO or the EA2 DCO or any Permission or any consent relating to the Grantor's Property before agreeing the form of the Planning Agreement or Planning Agreements and subject to obtaining the Grantor's approval the Grantor will enter into and consent to the Grantee entering into such Planning Agreement or Planning Agreements provided that if the Grantor is requested to enter into any Planning Agreement or Planning Agreements the Grantee shall (and the Grantor shall give the Grantee all rights necessary to enable the Grantee to) observe and perform all of the obligations on the part of the landowner contained in the Planning Agreement or Planning Agreements.

17.2 The Grantee will use all reasonable but commercially prudent endeavours to procure that any Planning Agreement or Planning Agreements contain stipulations that:

17.2.1 the Planning Agreement or Planning Agreements will not come into effect until the EA1N DCO or the EA2 DCO or any other Permission or consent required for the EA1N Works or the EA2 Works is granted;

17.2.2 any obligation imposed by the Planning Agreement or Planning Agreements will be conditional upon the commencement of the development authorised by the EA1N DCO or the EA2 DCO or any other Permission or consent relating to the Grantor's Property;

17.2.3 the Grantor will be released from all liability under the Planning Agreement or Planning Agreements if the Grantor dispose of their interest in the land subject to the Planning Agreement or Planning Agreements; and

17.2.4 the Planning Agreement or Planning Agreements will cease to bind the Grantor's Property once the Electric Circuits have been removed (or decommissioned and made safe, as the case may be) and any necessary reinstatement has taken place.

17.3 Subject to the Compensation Provisions as if the same were repeated here, the Grantee will keep the Grantor indemnified against all losses, liability, proceedings, costs, claims, demands and expenses incurred or arising under each Planning Agreement that the Grantor enters into under this Agreement including any irrecoverable Value Added Tax thereon.

17.4 In the event that a Planning Agreement is submitted to the Grantor for approval (which shall not be unreasonably withheld or delayed) the Grantor shall provide its comments on the Planning Agreement within 21 days of receipt of the same and in the event that the Grantor fails to do so the Grantor shall be deemed to have approved the said Planning Agreement. Time is of the essence in relation to this clause 17.4.

17.5 Where it is necessary for any public right of way including (but not limited to) footpaths and bridleways on the Option Area to be temporarily diverted to allow the Grantee to carry out the EA1N Works and/or the EA2 Works the Grantor shall if reasonably requested to do so (and at the expense of the Grantee (subject to any expenses including without limitation legal and surveyors' fees being reasonably and properly incurred)), and subject to the Grantee notifying the Grantor in advance of such diversion, co-operate with the Grantee and use reasonable endeavours to:

17.5.1 provide the Grantee with all reasonable assistance required in order to make the request for the said diversion to the relevant authorities;

17.5.2 agree the new route for the diverted right of way to a location which is acceptable to the relevant authorities and the Grantor acting reasonably (and the Grantor shall be obliged to make available a route which is acceptable to the relevant authorities where one exists);

17.5.3 agree unconditionally the format of and enter into any reasonable agreement required by the relevant authority for the said diversion including where relevant agreeing any new planting or fencing which is required as a result of the diversion provided that the Grantee has agreed to pay any costs which will be incurred in carrying out such planting or fencing and to carry out such planting or fencing; and

17.5.4 upon reasonable request so to do dedicate any land required for the diverted public right of way as a highway available to all persons to pass and repass and to provide written evidence of such dedication to the local highway authority,

Provided Always that

17.5.5 where any business is carried on by the Grantor at the Grantor's Property the Grantee will use all reasonable but commercially prudent endeavours to divert such public right of way(s) in such a manner so as not to adversely affect the business and/or any residential dwellings of the Grantor;

17.5.6 the Grantor shall not be required to agree to any such diversion unless and until all necessary consents from the relevant authorities for the diversion have been obtained and provided to the Grantor; and

17.5.7 the Grantee at the Grantee's cost shall once the temporary diversion is no longer operational carry out such works as may be required to reinstate that part of the Grantor's Property so affected and the route of relevant public right of way to the Grantor's reasonable satisfaction and in accordance with all necessary consents from the relevant authorities.

18. Rights to end this agreement

18.1 For the avoidance of doubt the Grantee shall not be under any obligation to carry out and complete the EA1N Works and/or the EA2 Works or any part or parts thereof and subject to it complying with its obligations under clause 19 the Grantee may at any time prior to the exercise of the Option terminate this Agreement immediately by serving notice in writing upon the Grantor.

18.2 If both the EA1N DCO Application and the EA2 DCO Application are refused or the EA1N DCO and the EA2 DCO are revoked and these refusals or revocations subsist and no Challenges to such refusals or revocations subsist on 30 April 2025, the Grantor may terminate this Agreement by service of not less than two months' written notice upon the Grantee.

18.3 If both the EA1N DCO Application and the EA2 DCO Application are refused or the EA1N DCO and the EA2 DCO revoked but a Challenge or subsequent appeal proceedings in respect of either EA1N DCO or the EA2 DCO subsists on 30 April 2025, then the Grantor's ability to terminate under 18.2 above shall be suspended and not be exercisable until the day one month after the day on which the last Challenge and the last of any subsequent appeal proceedings have been finally concluded leaving neither the EA1N DCO nor the EA2 DCO in place.

18.4 If the EA1N DCO and/or the EA2 DCO is made and on 30 April 2025 either is Immune from Challenge the Grantor shall not have the ability to terminate this Agreement.

18.5 If the EA1N DCO and/or the EA2 DCO is made and on 30 April 2025 proceedings pursuant to section 118(1) of the Planning Act 2008 in respect of the EA1N DCO and/or the EA2 DCO subsist the Grantor shall not have the ability to terminate this Agreement until one month after

the Final Determination of such proceedings by the court or on any appeal to any higher court leaving neither the EA1N DCO nor the EA2 DCO in place (meaning the date following a court making a decision on those proceedings when no further appeal to a higher court can be made).

19. Termination

19.1 If Termination occurs before the EA1N Entry Date and/or the EA2 Entry Date (as the case may be) the Grantee shall make good in accordance with the terms of this Agreement or pay compensation to the Grantor in respect of any loss or damage or disturbance which may have been caused to the land buildings crops drains sewers pipes conduits and cables of the Grantor by the exercise of any of the rights conferred upon the Grantee by this Agreement.

19.2 If Termination occurs after the EA1N Entry Date and/or the EA2 Entry Date (as the case may be) the provisions of clause [3.3.2] of the Deed of Grant shall apply or be deemed to apply (as the case may be) to any Electric Circuits which have been laid or laid in part in the Grantor's Property.

20. Assignment

20.1 The Grantee may assign or share the whole or part or parts of its rights under this Agreement or require the grant of any of the Deeds of Grant to:

20.1.1 any successor to the business undertaking of the Grantee without the prior consent of the Grantor;

20.1.2 EA1N Limited or any Affiliate of EA1N Limited which shall be of no lesser financial standing without the prior consent of the Grantor;

20.1.3 EA2 Limited or any Affiliate of EA2 Limited which shall be of no lesser financial standing without the prior consent of the Grantor;

20.1.4 National Grid Electricity Transmission plc or any Affiliate of National Grid Electricity Transmission plc or any successor to the business undertaking of the same without the prior consent of the Grantor;

20.1.5 any Affiliate of the Grantee without the prior consent of the Grantor;

20.1.6 any OFTO or any successor to the business undertaking of the same without the prior consent of the Grantor;

20.1.7 any third party not referred to in clauses **Error! Reference source not found.** to 20.1.6 with the prior written consent of the Grantor such consent not to be unreasonably withheld or delayed, provided that the proposed assignee (together with any proposed guarantor) is in the reasonable opinion of the Grantor of sufficient financial standing to enable it to comply with the Grantee's obligations in this Agreement.

20.2 The Grantor shall within 30 days of receipt of an application in writing from the Grantee for consent to assign the rights under this Agreement provide the Grantee with a written decision (the "**Decision Notice**") stating:

20.2.1 whether or not the Grantor consents to the proposed assignment; and

20.2.2 in the case of a refusal the reasons why the Grantor refuses to give consent to the assignment

provided always that time is of the essence for the purposes of this clause and in the event that the Grantor fails to serve the Decision Notice on the Grantee within the time specified it shall be deemed that the Grantor consents to the proposed assignment.

20.3 The Grantee may without the consent of the Grantor assign the benefit of this Agreement whether in whole or in part and including by way of security, to its Financiers

20.4 Within one calendar month of any assignment of this Agreement the Grantee shall give to the Grantor written notice thereof such notice to state the name and address of the assignee.

20.5 Nothing in this Agreement shall prevent the Grantee from sharing or subletting the benefit of the rights granted by this Agreement with a third party provided that the Electric Circuits may only be used for the purposes specified in clause 3.8 of the Deed of Grant and for the benefit of:

20.5.1 the Projects;

20.5.2 the Cable and the rights to have and use the Cable;

20.5.3 the Substation (as defined in the Deed of Grant); and/or

20.5.4 the business undertaking of the Grantee and any permitted assignee of this Agreement.

21. Payments

21.1 All payments made by the Grantee under this Agreement shall be made by direct credit transfer to an account in England or Wales nominated in advance by the Grantor for that purpose.

21.2 In the event that any payment is not made by the Grantee within twenty eight (28) days of the due date (which in the case of any compensation shall be the date of exchange of written agreements or in default of agreement the date of determination by expert or arbitrator) then the Grantor shall be entitled to interest on the outstanding balance (excluding any payments made by the Grantee to the Grantor on account) at a rate of 4% above the base rate for the time being of HSBC Bank plc (or any other comparable UK clearing bank reasonably specified by the Grantee and notified to the Grantor in writing) from the due date until the date payment is actually made.

21.3 All claims for compensation (whether in respect of a right to receive compensation or a breach of the terms of this Agreement or otherwise) made by the Grantor shall be subject to the conditions set out in Schedule 3 of the Deed of Grant as if the same were repeated herein (with such amendments as are required to reflect the change of context).

21.4 An action to recover any sum recoverable by virtue of this Agreement or the Deed of Grant shall not be brought after the expiration of six years from, in the case of a Deed of Grant relating to Electric Circuits which have been installed in the Option Area during the Works Period, the date of the Entry Date and, in the case of Electric Circuits which are installed after the Works Period, the date on which the Energisation Notice is served in relation to the relevant Deed of Grant.

22. Value Added Tax

22.1 Any payment to be made under the terms of this Agreement shall be deemed to be exclusive of Value Added Tax (if applicable) and the recipient of the payment shall where appropriate supply a valid Value Added Tax invoice addressed to the party making the payment provided always that the Grantee shall (subject to the foregoing provisions of this clause 22 only) be liable to pay Value Added Tax where the Grantor is unable to recover the same

22.2 If the Grantor has already elected or chooses prior to Termination to elect to waive exemption from Value Added Tax in relation to its interest in the Grantor's Property then the Grantor shall not following the date hereof or following such election (as the case may be) do anything which would disapply or render ineffective for any reason or revoke that election.

23. Notices

23.1 Any notice or other communication to be served or given pursuant to this Agreement shall be deemed to be sufficiently served if it is delivered personally at or sent by special or recorded delivery to the address of the addressee set out above or such other address (if any) as the addressee may have previously notified in writing from time to time to the other party or if the receiving party is a company to the registered office of that company marked for the attention of the Company Secretary.

23.2 Any notice shall be deemed to have been served:

23.2.1 if delivered in person at the time of delivery; or

23.2.2 if posted before 5pm on a Working Day the Working Day after it was put in the post.

23.3 In proving service of a notice of document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a pre-paid first class or recorded delivery letter.

23.4 For so long as the Grantee is ScottishPower Renewables (UK) Limited, all notices to the Grantee shall be copied to “Legal Director, ScottishPower Renewables (UK) Limited, 320 St Vincent Street, Glasgow, G2 5AD” or at such other address as the Grantee shall have notified in writing to the Grantor.

24. Non-merger

On completion of the Deed(s) of Grant this Agreement shall not merge with the Deed(s) of Grant but shall continue in full force and effect to the extent that anything remains to be performed or observed under it/them.

25. Removal of Barriers

The Grantee will be permitted to remove any buildings, structures, fencing or barriers from the Option Area necessary to properly facilitate the EA1N Works and/or the EA2 Works. The Grantee will make good any damage caused in the exercise of this right to the reasonable satisfaction of the Grantor or at the option of the Grantee pay compensation in accordance with the Compensation Provisions for any such damage. Any buildings required as a result of the exercise of this right to be reinstated will be reinstated outside of the Easement Strip but within the Option Area in location(s) to be agreed with the Grantor acting reasonably.

26. Confidentiality

The terms of this Agreement shall be confidential to the parties both before and after completion of the Deed(s) of Grant and neither party shall make or permit or suffer the making of any announcement or publication of such terms (either in whole or in part) nor any comment or statement relating thereto without the prior consent of the other or unless such disclosure is required by the rules of any recognised Stock Exchange on which shares of that party or any parent company are quoted or pursuant to any duty imposed by law on that party or disclosure is required by the Grantee in connection with or in order to obtain the EA1N DCO or the EA2 DCO or any other planning application associated with the EA1N Development or the EA2 Development or any Permission.

27. Disputes

27.1 The Grantor and the Grantee shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement through negotiations between their respective nominated representatives who have authority to settle the same. If the matter is not resolved by negotiation within fourteen (14) working days of receipt of written "invitation to negotiate" the parties will attempt to resolve the dispute in good faith in accordance with this clause 27 and shall refer the matter in dispute to an independent expert ("the **Expert**") as set out below.

27.2 The parties shall agree on the appointment of an Expert and shall agree with the Expert the terms of their appointment.

27.3 If the parties are unable to agree on an Expert or the terms of their appointment within ten working days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the president for the time being of the Royal Institution of Chartered Surveyors or the Law Society (as the case may be depending on the matter in dispute) to appoint an Expert of repute with not less than ten (10) years' experience in the subject matter of any dispute and to agree with the Expert the terms of appointment.

27.4 The Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.

27.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

27.5.1 the parties may agree to discharge the Expert; and

27.5.2 the parties may proceed to appoint a replacement Expert in accordance with this clause 27 which shall apply to the replacement Expert as if they were the first Expert to be appointed.

27.6 All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.

27.7 The parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.

27.8 To the extent not provided for by this clause, the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they

consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination.

27.9 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this clause.

27.10 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the dispute which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them and/or their terms of reference. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.

27.11 The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination shall be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Grantee or in such other proportions as the Expert shall direct.

27.12 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.

27.13 Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching their determination.

27.14 The Expert shall have no liability to the parties for any act or omission in relation to this appointment; save in the case of bad faith.

28. Jurisdiction & governing law

28.1 The parties hereby submit to the exclusive jurisdiction of the English courts.

28.2 This Agreement shall be governed by and construed in accordance with English law.

29. Invalidity of certain provisions

If any term of this Agreement or the application of it to any person or circumstances shall to any extent be invalid or unenforceable such term shall be separable and the remainder of this Agreement or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

30. Time of the essence

If the Grantor fails to perform any of its obligations under this Agreement the Grantee may by the service of fourteen days written notice on the Grantor make time of the essence in respect of such obligations.

31. Professional fees

31.1 The Grantee will pay on the date of this Agreement the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and the exchange of this Agreement in the following sums:

31.1.1 legal fees in the sum of £[x] [***DN:*** £4000 plus Value Added Tax per project];

31.1.2 surveyors' fees in the sum of £[x] [***DN:*** £4000 plus Value Added Tax per project]; and

31.1.3 accountants' fees in the sum of £[x] per project.

31.2 If the Grantor's legal fees and/ or surveyor's fees and/or accountant's fees in connection with the preparation and the exchange of this Agreement exceed £4,000 the Grantee shall only be responsible for and required to pay the same on the date of this Agreement if the approval of the Grantee (such approval not to be unreasonably withheld or delayed) to such increase was sought and obtained before such costs were incurred and it is demonstrated to the Grantee's reasonable satisfaction (such expression of satisfaction not to be unreasonably withheld or delayed) that such additional costs were reasonably and properly incurred.

32. Contracts (Rights of Third Parties) Act 1999

It is not intended that the Contracts (Rights of Third Parties) Act 1999 shall operate to confer any rights upon any person who is not a party to this Agreement.

33. Executory agreement

This Agreement is an executory agreement only and is not to operate or be deemed to operate as a demise of the Grantor's Property or any part thereof.

34. No misrepresentations

This Agreement incorporates the entire contract between the parties and the parties acknowledge that they have not entered into this agreement in reliance on any statements or representations made by or on behalf of one party to the other save those written statements contained in the written replies made by the Grantor's solicitors to enquiries raised by the Grantee's solicitors.

35. Direct agreements

35.1 The Grantor recognises that the Grantee may wish to finance or refinance its investment in the Cable and/or the Projects through limited recourse or other financing in the commercial bank debt and or capital markets and that the entering into one or more direct agreements (by which there is given to the providers of such debt finance or their agent nominee or trustee (the "**Debt Providers**") a right to step in to and/or to procure an assignment or other transfer of the Grantee's rights and obligations under this Agreement and/or a Deed of Grant) may be a pre-condition to the provision of such debt finance by the Debt Providers.

35.2 The Grantor will co-operate in good faith with the Grantee and use reasonable endeavours to satisfy the requirements of any Debt Providers in respect of such financing or refinancing.

35.3 The Grantor undertakes to use reasonable endeavours without unreasonable delay to agree unconditionally the format of and enter into a direct agreement in a reasonable form with any such Debt Providers the Grantee and any other relevant party in respect of this Agreement and/or a Deed of Grant provided that the Grantor shall not be required to agree any form of direct agreement which would have the effect of varying any material term of this Agreement.

35.4 The Grantor recognises that in entering into any direct agreement it will have to grant certain rights to any Debt Providers including a right of step-in within a specified period and/or a right to procure that the Grantee's rights and obligations under this Agreement and/or a Deed of Grant are assumed (by way of assignment or such other transfers as may be appropriate) by another person in certain specified circumstances.

35.5 The Grantee shall reimburse the Grantor for all costs reasonably and properly incurred by the Grantor in complying with its obligations under this clause 35 and such costs shall include any fees, outlays and disbursements which have been approved by the Grantee in advance.

36. Anti-corruption

36.1 Each party shall:

36.1.1 comply with all applicable laws, regulations, codes and guidance relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 ("**Relevant Requirements**"); and

36.1.2 have and shall maintain in place throughout the term of this Agreement, and enforce where appropriate, its own policies and procedures to comply with the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010.

36.1.3 ensure that any person associated with it who is performing services on its behalf in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on it in this clause 36 and each Party shall ensure the compliance by such persons with such terms; and

36.1.4 promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of its obligations under this Agreement.

36.2 In the event of a breach or suspected breach of this clause 36 by either Party (other than a breach of clause 36.1.3 in respect of which the other Party has suffered no loss and no other material adverse consequence), the other Party may either:

36.2.1 terminate this Agreement forthwith by written notice, or

36.2.2 withhold payment of any sum due under the terms of this Agreement and/or suspend the performance of any obligation on its part under this Agreement at any time and without liability for such time period as required by it.

36.3 Each Party shall be liable for all losses, liabilities, damages, judgements, penalties, fines, costs, charges and expenses (including legal expenses) incurred by reason of any breach of this clause 36 by it or any of its employees, agents or sub-contractors. This clause 36 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the relevant Party and/or any person working for it and/or any third party retained by it.

37. No partnership

This Agreement shall not operate so as to create or imply a partnership or joint venture of any kind between the Grantor and the Grantee.

38. Good faith

The Grantor and the Grantee shall at all times owe a duty of utmost good faith to each other in relation to this Agreement and shall do all such acts and things as may be required to comply with the terms and the spirit of it.

39. Severance

39.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

39.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

40. Severed Land

40.1 The Grantee shall within 3 months of expiry of the EA1N Notice of Entry and/or EA2 Notice of Entry (as the case may be), agree with the Grantor (both parties acting reasonably) any areas outside of the relevant Working Area that are either;

40.1.1 sterilised from cropping for the duration of the EA1N Works Period and/or the EA2 Works Period; or

40.1.2 restricted in terms of cropping rotation,

and pay to the Grantee in accordance with the Compensation Provisions any crop loss or disturbance resulting from the matters referred to in clause 40.1.1 and/or clause 40.1.2.

40.2 The Grantee shall provide the Grantor with an access across or over the relevant Working Area to any severed areas which are created as a result of the EA1N Works and/or EA2 Works.

41. Modern Slavery

41.1 Each Party represents and warrants that:

41.1.1 it has not been and is not engaged in any practices involving the use of child labour, forced labour, the exploitation of vulnerable people, or human trafficking (**"Slavery and Human Trafficking"**);

41.1.2 its employees and agency workers are paid in compliance with all applicable employment laws and minimum wage requirements; and

41.1.3 it will take reasonable steps to prevent Slavery and Human Trafficking in connection with its business.

41.2 Each party agrees to respond to all reasonable requests for information required by the other party for the purposes of completing the other party's annual anti-slavery and human trafficking statement as required by the UK's Modern Slavery Act 2015.

41.3 If either party has been engaged in Slavery and Human Trafficking the other party may terminate this Agreement with immediate effect.

42. Grantee's Insurance Obligations

42.1 The Grantee shall maintain throughout any period during which it is exercising its rights under this Agreement third party liability insurance cover through an insurance office of repute for a minimum amount of £10,000,000 (ten million pounds) per claim or series of related claims against all claims arising directly by reason of any wrongful act neglect or default or breach of the Grantee or its employees, agents or contractors in connection with the exercise of rights under this Agreement.

IN WITNESS whereof the parties have executed this deed on the above date

Signed as a deed by [ ] ……

in the presence of:

Witness signature ……

Name ……

……

Address ……

……

Occupation

Executed as a Deed)
by **SCOTTISHPOWER RENEWABLES**)
(UK) LIMITED)
acting by [NAME])
in the presence of:) ……

Director

Witness Signature: ……

Name: ……

Address: ……

……

Occupation: ……

SCHEDULE 1
DEED OF GRANT

SCHEDULE 2
COMPENSATION PROVISIONS

In respect of each claim or demand for compensation (whether in respect of a right to receive compensation or a breach of the terms of this Agreement or otherwise) given under this Agreement (each a "**Claim**") the provisions set out below shall apply.

1. Mitigation

   The person making any such Claim (a "**Claimant**") shall (at the other party's cost) take all steps reasonably necessary in order to mitigate any losses liabilities or expenses being the subject of such Claim.

2. Conduct of Claims

   The Claimant shall not settle or compromise any Claim or knowingly make any admission of liability to the person making the claim or demand made by a third party without having consulted and obtained the consent of the party not being the Claimant (the "Defaulting Party") but for the avoidance of doubt the Claimant's insurers shall be entitled to settle or compromise any claim without any such consultation or consent and the Defaulting Party shall be responsible for any and all additional costs and other suits suffered or incurred by the Claimant which the Claimant would not have suffered or incurred but for the Defaulting Party's refusal to consent to any settlement compromise or admission of liability the Claimant wishes to make.

3. No Liability

   The Defaulting Party shall have no liability in circumstances where any action claim cost or expense arises out of the acts omissions neglect negligence or wilful default of the Claimant or their employees, servants, tenants, licensees or other occupiers.

4. Consequential Losses

   Save as provided in paragraph 8 of this Schedule 2 neither party its officers employees or agents shall be liable to the other party (on the basis of breach of contract indemnity warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of or in connection with this Agreement or its termination in respect of any consequential loss suffered by such other party. Each party undertakes not to sue the other party its officers, employees, agents, contractors or sub-contractors in respect of such consequential loss. For the purpose of this Agreement consequential loss shall mean any indirect or consequential loss (including loss of business opportunities whether deriving from any crop loss or otherwise loss of production loss of profit loss of revenue loss of contract loss of goodwill loss of use or liability under other agreements) resulting from the performance or non-performance of any obligation hereunder any act or omission of negligence breach of contract or otherwise by any party and whether or not such party knew or ought to have known that such indirect or consequential loss would be likely to be suffered as a result of the same.

5. Grantee Liabilities

5.1 The liability of the Grantee under the provisions of this Agreement as to the making good of or paying compensation for loss damage or injury due to the exercise of the Rights shall extend to and include claims and liabilities and loss damage or injury caused by reason of:

   5.1.1 the negligence trespass or wilful act or default of any person or persons directly employed by or under the direct control of the Grantee; and

   5.1.2 the actions of the Grantee's contractors and their subcontractors and of all persons employed in connection with the exercise of the Rights except for actions carried out expressly or impliedly at the request of the Grantor.

5.2 The overall liability of the Grantee to the Grantor under this Agreement shall be limited to:

   5.2.1 from the date of this Agreement until the day before the earlier of the EA1N Entry Date and the EA2 Entry Date the sum of £5,000,000 (five million pounds) Index Linked per claim or series of claims arising from the same incident;

   5.2.2 from the earlier of the EA1N Entry Date and the EA2 Entry Date until the day before completion of the first Deed of Grant the sum of £10,000,000 (ten million pounds) Index Linked per claim or series of claims arising from the same incident (where the EA2N Entry Date or the EA2 Entry Date occurs prior to completion of the first Deed of Grant);

5.2.3 from the date of completion of the first Deed of Grant (whether or not that is preceded by the EA1N Entry Date or the EA2 Entry Date) until expiry of the Option Period the sum of £10,000,000 (ten million pounds) for each Deed of Grant Index Linked per claim or series of claims arising from the same event.

PROVIDED THAT

5.2.4 from the date of completion of a Deed of Grant the Grantor shall not be entitled to bring any claim in respect of the Electric Circuits to which the Deed of Grant relates under this Agreement but must instead make any such claim under the terms of the relevant Deed of Grant; and

5.2.5 no reduction in liability of the Grantee under the terms of paragraph 5.2.3 shall result in any compensation previously paid to the Grantor becoming repayable.

5.3 The Grantee shall have no liability for damage or other adverse consequence caused by any Hazardous Material unless and only to the extent that:

5.3.1 such Hazardous Material has been brought on to the Grantor's Property by the Grantee; or

5.3.2 exposure to, or migration or emanation of, such Hazardous Material arises from exercise of the Rights or any activities carried out by the Grantee.

6. Grantor Liabilities

6.1 The liability of the Grantor under the provisions of this Agreement as to indemnity against claims and liabilities in respect of the Grantor's breach of any of its obligations contained in this Agreement shall extend to and include respectively claims and liabilities and loss damage or injury caused by reason of:

6.1.1 the negligence trespass or wilful act or default of any person or persons directly employed by or under the direct control of the Grantor; and

6.1.2 the actions of the Grantor's contractors and their sub-contractors and all persons employed in connection with the use of the Grantor's Property and of all tenants or occupiers of the Grantor's Property except for actions carried out expressly or impliedly at the request of the Grantee.

7. Compensation

7.1 Compensation will be paid to the Grantor on an annual basis for:

7.1.1 crop loss on any land taken out of production before or during the growing season as a consequence of the exercise of the Rights, and for losses (if any) in subsequent seasons;

7.1.2 loss of rent and all associated costs (including without limitation loss of irrigation water sales) on any land taken out of production before or during the growing season as a consequence of the exercise of the Rights;

7.1.3 the additional costs of farming any land not taken out of production arising as a result of the land aforementioned in this paragraph 7.1 being taken out of production.

The compensation for arable crops shall be assessed by reference to the sale value of the harvested crop less any savings in the costs of cultivations not undertaken and seeds, fertilisers, and chemicals not applied. The compensation for grassland shall be assessed by reference to the loss of production of hay or silage less any savings in costs or by reference to the costs of purchasing replacement fodder for pastureland not available for grazing or renting alternative land available for grazing. Cultivations shall be valued by reference to the guidance figures published by the Central Association of Agricultural Valuers. In the event of dispute the assessment of compensation shall be made by an Independent Expert to be appointed by agreement by the parties or in the absence of agreement by the President of the Royal Institution of Chartered Surveyors.

7.2 Subject to paragraph 7.3, any compensation payable to the Grantor in respect of any damage to land and crops or structures thereon or drains thereunder and any injury to stock thereon shall be deemed to be payable within three calendar months after lodgement of the claim therefor and the Grantee shall pay interest thereon such interest (if any) to be payable in respect of the period (but only if greater than three months) from the date of agreement or determination of such compensation until payment of the same at the rate of four percent (4%) per annum

above the base rate for the time being of HSBC Bank plc (or any other comparable UK clearing bank reasonably specified by the Grantee and notified to the Grantor in writing)

PROVIDED THAT

7.2.1 no interest shall be due in respect of payments of compensation made within the said period of three calendar months of the lodgement of the claim therefor; and

7.2.2 in calculating interest, no interest shall accrue in respect of any payments on account made in accordance with paragraph 7.3 after the date on which any relevant payment on account was made.

7.3 Where the precise amount of any item of compensation payable has not been agreed or determined within three calendar months after lodgement of the claim therefor the Grantee shall without prejudice to the final settlement or determination of the matter make such payment on account to the Grantor as shall represent not less than ninety percent (90%) of the amount of compensation as the Grantee shall reasonably consider payable in respect of the Grantor's claim therefor ("**Estimated Amount**"). When the precise amount of the item of compensation payable has been finally agreed, settled or determined ("**Final Amount**"):

7.3.1 if the Final Amount is more than the Estimated Amount, the Grantee shall pay the difference to the Grantor within three calendar months of such agreement, settlement or determination; or

7.3.2 if the Final Amount is less than the Estimated Amount, the Grantor shall pay the difference to the Grantee within three calendar months of such agreement, settlement or determination.

7.4 In those cases where time is spent by the Grantor in consultation as to or in supervision of works or reinstatement or other matters arising from the exercise of the Rights the Grantee will pay fair and reasonable compensation for such time of the Grantor so spent PROVIDED THAT such fair and reasonable compensation shall be a rate of Forty Five Pounds (£45) per hour AND PROVIDED FURTHER that no payment will be made (i) where the spending of such time is not reasonably necessary having regard to the Grantee's obligations, procedures and practices under those rights and (ii) in the absence of such supporting written evidence as the Grantee may reasonably require from the Grantor to substantiate any claim for compensation pursuant to this paragraph 7.4.

7.5 Any unavoidable loss or repayment of any grants or quotas and/or penalties imposed upon the Grantor relating in each case directly to the use of the land will be taken into account in the assessment of the compensation payable under the provisions of this Agreement together with any loss suffered by the Grantor as a result of the Grantor being unable to claim any further or new subsidy rights including without limitation under the Common Agricultural Policy of the European Community, Basic Payment Scheme (established by Regulation (EU) No 1307/2013), Countryside Stewardship Scheme, Environmental Land Management Scheme, Environmental Stewardship Scheme and Higher Level Stewardship Scheme or replacements thereof by reason of the Grantee exercising its rights under this Agreement.

7.6 If any livestock and/ or horse, pony or donkey is killed or injured by the exercise of the Rights the Grantee shall pay compensation to the owner of such livestock and/ or horse, pony or donkey immediately after the amount of such compensation has been agreed or determined. The Grantee may where it is reasonable to do so and at the Grantee's cost require production of a report from a veterinary expert to confirm the cause and extent of any injury, death, loss or claim related to stock Provided That the Grantee shall only reimburse the cost of such report if it so confirms the cause arises from exercise of the Rights.

7.7 The Grantor and the Grantee agree that wherever full and final settlement of compensation (or any aspect of compensation) is negotiated between the parties such settlement shall be recorded in a form reasonably required by the Grantee and shall specify what matters (if any) shall be excluded from such full and final settlement.

7.8 The Grantee shall pay the Grantor's reasonable and properly incurred costs in connection with the negotiation of any matter to be dealt with under this Schedule.

7.9 Proper and reasonable hourly rates on quantum merit basis (subject to all time being reasonably and properly incurred and recorded) for appropriately qualified surveyors must be applied to any compensation paid.

8 The Grantee shall indemnify the Grantor or any lawful occupier of the Grantor's Property against all losses and liabilities suffered if as a result of the Grantee exercising its rights under this Agreement the Grantor is unable to fulfil an existing contract for the supply of farming or agricultural produce subject to the Grantor or any occupier of the Grantor's Property providing such evidence to substantiate any claim as the Grantee may reasonably require.

Offshore Wind Farms

EAST ANGLIA ONE NORTH

PINS Ref: EN010077

and

EAST ANGLIA TWO

PINS Ref: EN010078

An additional submission to procedural decision made following Issue Specific Hearing 9, 1A Deadline – 22 February 2021, 5pm

by

SEAS (Suffolk Energy Action Solutions)

Unique Ref. No. EA1(N): 2002 4494

Unique Ref. No. EA2: 2002 4496

info@suffolkenergyactionsolutions.co.uk

https://www.suffolkenergyactionsolutions.co.uk/

An additional submission to procedural decision made following Issue Specific Hearing 9, 1A Deadline – 22 February 2021, 5pm

Dear Mr. Smith

At the hearing on Friday 19 February Mr Innes attacked SEAS's letter of 14 February as inaccurate and bordering on vexatious. Speaking on behalf of SEAS, Mr. Fincham said that SEAS did not accept that the letter was inaccurate but that SEAS would consider what Mr Innes had said and if we thought any part of the letter required correction would write to you accordingly. We stand by the letter and do not need to correct anything. Mr Innes sought to rely on the fact that his client had in negotiations conducted between its and Dr Gimson's respective agents agreed to amend the "gagging" provision to be found at clause 16 of the generic agreement. We understand that the only amendment offered covered the discrete topic of Dr Gimson's concerns over interruption to the water supply to Ness House and that, as Mr. Fincham stated, Dr Gimson was offered a sum in excess of £50,000 on the basis that he withdrew his opposition to these applications and took reasonable steps to assist SPR to obtain consent. No payment was offered free of that condition.

It may assist if SEAS confirm the terms of the request for information and disclosure made on behalf of SEAS at the hearing on Friday which was that the Applicant provides:

(1) a statement detailing all payments agreed or offered to interested or affected parties, charities, local authorities or other bodies or individuals; and

(2) disclosure of all relevant material including concluded agreements, draft agreements or other documents containing or evidencing offers and emails sent or received by SPR or those acting for it relevant to payments agreed or offered.

Yours sincerely,

Suffolk Energy Action Solutions
[redacted]@shepwedd.com

East Anglia ONE North and East Anglia TWO Offshore Windfarms

The Applicants' Response to Letters Submitted in relation to SEAS Complaint

Applicants: East Anglia ONE North Limited and East Anglia TWO Limited
Document Reference: ExA.AS-2.D7.V1
SPR Reference: EA1N_EA2-DWF-ENV-REP-IBR-001334 Rev 01

Date: 4th March 2021
Revision: Version 01
Author: Shepherd and Wedderburn LLP

Applicable to East Anglia ONE North and East Anglia TWO

04 March 2021

The Planning Inspectorate
National Infrastructure Directorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Dear Sirs

East Anglia One North Limited and East Anglia Two Limited ("the Applicants")
Application numbers: EN010077 and EN010078
Response to Procedural Decision 31 and to SEAS' letter dated 14 February 2021

The Applicants have been asked to respond to the Examining Authorities' Procedural Decision 31 made on 22 February 2021. The Applicants also wish to respond to Suffolk Energy Action Solutions' (SEAS) letter dated 14 February 2021 which SEAS describe as "the complaint". The Applicants' response is set out in detail in this submission, however, is summarised as follows:

- The Applicants' position is that SEAS, in their letter dated 14 February 2021 and in their subsequent submissions to the Examination, have not presented information in a manner which gave the Examining Authorities a full and accurate summary of the position.
- As a result, further representations have been made by other Interested Parties in support of SEAS' letter which have therefore in turn been based on partial and inaccurate information.
- The Applicants' applications for Development Consent Orders include the grant of compulsory acquisition powers in respect of the land rights required to construct and operate the projects. This is standard and the right to apply for such powers in enshrined in the Planning Act 2008. This is to ensure deliverability of Nationally Significant Infrastructure Projects. However, the Applicants' approach to land rights for these projects has from the outset been to seek to enter into voluntary contracts wherever possible. The Applicants' recognise that their relationships with landowners will be long term relationships and they have sought to take landowners' views into account in their negotiations of those voluntary land rights.
- The Applicants recognise that landowners should have access to full and proper advice on those land rights contracts, which are principally Option Agreements. The Applicants have undertaken to pay for each landowner to have independent professional advice from both solicitors and surveyors to negotiate the Option Agreements. Every landowner has employed solicitors and no landowner is unrepresented.

ScottishPower Renewables, 320 St Vincent Street, Glasgow G2 5AD
Telephone 0141 614 0000

- The Option Agreements have been prepared in line with guidance from the Royal Institution of Chartered Surveyors (RICS) specifically relating to Options and Leases for renewable energy schemes and therefore in line with the highest industry standards.
- The Applicants refute in the strongest possible terms any suggestion that their conduct has been in any way improper.
- The Applicants submit that any representation submitted to the Examinations which is knowingly or recklessly inaccurate should be treated as vexatious.

Applicants' Response to Procedural Decision 31

On 14 February 2021, SEAS submitted a letter which they describe as "the complaint". The terms of the complaint relate to the Applicants' communications with Dr Gimson who acts as a representative for his mother as an Affected Party. The Applicants submit that SEAS, in their letter of 14 February 2021 and in their subsequent submissions to the Examination, have not presented the information in a manner which gave the Examining Authorities a full and accurate summary of the position. At the time of the complaint negotiations with Dr Gimson moved forward which was not reflected in the complaint.

At ISH9 on 19th February 2021, Agenda Item 1(a) the Applicants set out the factual response to that letter. This was followed up in the Applicants' ***Written Summary of Oral Case (ISH9)*** (REP6-054) under that topic matter. That factual information is provided as Appendix 1 to this letter. In relation to the negotiations with Dr Gimson there is no further information that the Applicants can provide the Examination.

Representations from Interested Parties following SEAS' letter

It is apparent from the further correspondence submitted to the Examining Authorities following SEAS' letter, that the letter has provoked other parties to write in to the Examination. It is of serious concern to the Applicants that those representations have been made without the consideration of the full and appropriate facts being made available.

The Applicants are also concerned about the content of some of those representations. In particular, at Compulsory Acquisition Hearing 2 on 16th February 2021, Mr Stephen Hubner, a partner of Shepherd and Wedderburn LLP, confirmed to the Examining Authorities that no Option Agreements have been entered into in respect of either project. Notwithstanding that position, on 15 February 2021, Ms Fiona Cramb submitted a representation which included statements as follows:

"*I am aware of people who have been paid by SPR to accept similar clauses preventing them from objecting…. These are people who would have objected, but who are now scared to come forward for fear of being sued and are sorry they accepted the payments and agreed to the gagging clause.*".

This correspondence was followed up by further correspondence dated 18 February 2021. In that letter, Ms Cramb acknowledges that

"*My understanding is based on a fragment only of the facts. If it turns out that I am mistaken, then I will willingly amend or withdraw my letter.*".

On 26 February 2021, further letters have been accepted which repeat the claims about Option Agreements being entered into. Each of the letters has a similar first paragraph referencing the SEAS website/letter and then claiming that Option Agreements have been entered into. This information indicates that the material produced by SEAS is leading people into being mistaken about this matter. There are aspects of the submitted correspondence which strongly suggests an element of co-ordination amongst Interested Parties on this matter.

The SEAS letter has also resulted in further unfounded allegations being made. For example, the claim from Mr Collett is that 'objectors' are being "pressurised" into signing agreements. This is not accurate and the Applicants set out in their ***Written Summary of Oral Case (ISH9)*** (REP6-054) at Agenda Item 1a the procedures that have been adopted. This ensures that all negotiations are conducted with any Affected Party having proper surveyor and legal advice.

The Applicants' approach to negotiating land rights

In addition to responding to the specific circumstances regarding negotiations with Dr Gimson as set out in SEAS' letter, the Applicants would also propose to respond to the wider accusation regarding the Applicants' negotiations with Affected Persons. We submit that the central complaint is unfounded. Parties to commercial discussions are able to agree contractual provisions which would prevent another party acting in a particular manner. Furthermore, it is unsound to consider one clause of a commercial contract in isolation without having a full understanding of the broader context of the contractual arrangements in which it sits.

As identified in Appendix 1 as an example, the Applicants have sought to engage extensively with those parties and to ensure that all parties to those discussions have proper advice and representation throughout. The objective of such discussions is to reach a formal contractual position whereby an Option Agreement is executed. Such an agreement will incorporate provisions which give the Applicants immediate rights in and over land to conduct activities such as surveys and also imposes restrictions. It is standard practice for the party who is acquiring such rights to pay the Affected Party an Option Fee on the formal conclusion of the Option Agreement. This is reflective of the rights that have been granted and also reflects the potential additional burdens which has been placed on the Affected Party. The agreements are complex commercial agreements and create a long term framework. They include provisions relating to payments/compensation and the rights and duties of the parties involved. RICS have produced professional guidance in negotiating options and leases in relation to renewable energy schemes (Negotiating options and leases for renewable energy schemes 2nd edition 2018). A copy of this guidance is provided at Appendix 2. This, at pages 7 and 8, provides general guidance on concepts such as Heads of Terms, Options for Lease, Cabling Schemes and other related matters. We would also highlight section 7.13 which deals with the planning process. This confirms that it is a standard provision that the landowner may be prevented from objecting to the planning application in relation to their land. It also suggests generally that the landowner should not be obliged to "overtly" support. We construe this as being writing a letter of support in relation to the particular matter.

Clause 16 of the draft generic Option Agreement, which has been sent to you, includes a general provision requiring the party not to make any new representations and requires the withdrawal of any representation that has been made. It also obliges the landowner to "assist" the promoter in the obtaining of planning permission or the obtaining of all permissions and consents. This is standard in relation to such contractual terms because the landowner may well have information which can assist the promoter of a development in

responding either to questions raised during the application process or, alternatively, in seeking the discharge of a requirement. The RICS guidance confirms that the draft Option Agreement includes standard terms which RICS expect to be contained in an Option Agreement. There are other terms contained within the Option Agreement which oblige the parties to act in good faith. As a result, if a party wishes to continue to raise representations it would be necessary for there to be an express exclusion to that effect contained with the Option. As narrated in Appendix 1, that is exactly the approach which was offered to Dr Gimson. Furthermore, the payment of an Option Fee is in the context of the whole benefits and obligations arising from the Option Agreement and should not be characterised as being made in respect of one provision in the draft Agreement. The criticism made by SEAS does not properly reflect either the overall terms of the draft Option Agreement or of the guidance provided by RICS.

Notwithstanding Procedural Decision 31 made by the Examining Authorities on Monday 22 February 2021, SEAS have submitted a further submission requesting that the Examining Authorities ask for further information from the Applicants. They are requesting that the Applicants should be forced to provide the Examining Authorities with documents and information which is confidential. None of this has any relevance to the Examination.

Responsibilities in respect of representations submitted to the Examinations

All parties should ensure that the Examining Authorities have the fullest and most accurate information available in respect of these applications. At this point in time, the Applicants would not wish to make a motion that the conduct of any of the parties has been vexatious. The Applicants would, however, wish to record their serious concerns about partial information being submitted and also information which is false. This can be distinguished from material in the course of the Examination where there may be a genuine debate or difference of view. If parties continue to submit material which is knowingly or recklessly inaccurate then it is the Applicants' view that those submission would be vexatious. At this stage we would invite the Examining Authorities to note the Applicants' serious concerns in this regard.

We note that SEAS copied their letter to 14 February 2021 to a number of other representatives and organisations. Whilst the principle purpose of this submission is to aid the Examining Authorities understanding of matters, the Applicants would advise that this will be forwarded to those parties so they have the benefit of the Applicants' position on the matters raised in the SEAS letter.

Your faithfully

East Anglia One North Limited and East Anglia Two Limited

Appendix 1

The Applicants' *Written Summary of Oral Case (ISH9)* (REP6-054), Agenda Item 1a

2 Agenda Item 1a: Preliminary and Procedural Matters

5. The Applicants confirm the following factual material that was presented at the hearing.

6. On 14 February 2021, Suffolk Energy Action Solutions (SEAS) submitted a letter which they describe as "the complaint". The terms of the complaint relate to the Applicants' communications with Dr Alexander Gimson. Dr Gimson is not an individual who is an affected person or an interested party before the Examinations. He acts as a representative of his mother, Mrs E P Gimson for whom he holds Power of Attorney for both health and financial affairs. He has also appeared at the Examinations as a Trustee of the Wardens Trust. The complaint relates to the contact that Dr Gimson has had with the Applicants and their parent company in respect of his mother's interest in land through which the onshore cables would potentially pass through. On page 3 of the complaint, there is a section which is headed up "The Facts". The Applicants submit that this section of the letter has not accurately set out all matters that are relevant to the issues that have been raised. The Applicants' submission is that material information was not disclosed to the Examining Authority.

7. The Applicants' parent company ("Scottish Power Renewables (SPR)") has appointed Dalcour Maclaren to act as Surveyors in negotiation with affected persons in respect of both East Anglia Two and East Anglia One North projects. Mr Harry Hyde of Dalcour Maclaren leads the team there and he has been assisted by his colleagues, Robert Lees and Francesca Leach. Dr Gimson has also appointed agents. Samuel Jennings of Strutt & Parker has acted on his behalf in relation to lengthy discussions.

8. On 17 January 2020, SPR entered into Heads of Terms with Dr Gimson as Power of Attorney relating to an option to obtain the grant of easements in respect of cables associated with both projects. These Heads of Terms were subsequently amended on behalf of Dr Gimson by his agent, Mr Jennings, on 14 February 2020. The Heads of Terms are not legally binding and provide a basis on which both parties will proceed to seek to finalise binding terms through an Option Agreement. Dr Gimson has also appointed Taylor Vinters, Solicitors to act on his behalf. The purpose of appointing solicitors is to negotiate the terms of the Option Agreement. Shepherd and Wedderburn were appointed on behalf of SPR to act in the negotiation of the Option Agreement contract.

9. Taylor Vinters act on behalf of a number of parties who have interests potentially affected by the projects. It was agreed that, given those circumstances, it would

be appropriate to have a general negotiation over a generic Option Agreement which would agree general terms. Negotiations in respect of this generic document have continued throughout 2020. A version of the Option Agreement has reached a stage where we understand it is being sent out by Taylor Vinters to various of their clients. It should be noted that throughout this process SPR has undertaken to pay appropriate professional fees which will be incurred by affected parties in such negotiations. This ensures that they have appropriate advice from suitably qualified Chartered Surveyors and also have appropriate legal advice in relation to the terms of any contract.

10. It is understood that on 26 January 2021 Mr Sam Jennings forwarded to Dr Gimson a copy of the generic Option Agreement relating to the grant of easement for cables. On 27 January 2021, Mr Sam Jennings contacted Mr Harry Hyde by telephone to discuss aspects relating specifically to Dr Gimson. This was followed up with an email by Sam Jennings to Harry Hyde on the same date which identified that Dr Gimson has made representations to the hearing and wished to continue to discuss and raise issue with the water supply in respect of Ness House and Wardens before the Examination. This was followed up by a further email from Dr Gimson to Mr Jennings on Friday 5 February 2021. This email was copied in to Mr Hyde of Dalcour Maclaren. In that email Dr Gimson indicated that:

"*In short I am not prepared*, *as written in clause 16, to withdraw my objection to the proposed development. I have spoken in public on behalf of [specified property] about my opposition and now to expect me to withdraw these comments in writing is entirely unreasonable.*".

11. On the morning of 10 February 2021 there was a further conversation between Sam Jennings of Strutt & Parker and Mr Harry Hyde of Dalcour Maclaren. This discussed the correspondence that had passed between the parties. On 10 February 2021 Mr Robert Lees (Harry Hyde's colleague) sent an email to Mr Jennings in the following terms:

"*Hi Sam,*

I write further to your email below, the correspondence from Dr Gimson over the weekend (attached for reference) and your subsequent conversation with Harry this morning.

We have discussed this matter with SPR and an amendment to clause 16 of the Option Agreement has been proposed which will offer your clients absolute discretion on when and if the representations made specifically relating to the water supply and underground aquifer are to be withdrawn. There may be some tweaking required between lawyers in order to tidy it up, but as a basis on

which to proceed, the proposed clause reads as follows (additional wording is in red):

"The Granter shall not make by a representation regarding the EA1N DCO Application nor the EA2 DCO Application (and shall forthwith withdraw any representation made prior to the date of this Agreement and forthwith provide the Grantee with a copy of its withdrawal save as the Granter shall have absolute discretion over the withdrawal of all comments pertaining to the impact of the Project(s) on ground source water aquifers only in document refs REP1242, REP2-098, REP5-135 and REP5-136) nor any other Permission associated with EA1N development and EA2 development and shall take reasonable steps (Provided That any assistance is kept confidential) to assist the Grantee to obtain all permissions and consents for EA1N Works and the EA2 Works on the Option Area (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and completion of such permissions and consents."

We would be grateful if you could discuss this proposed wording with your clients and Taylor Vinters (as required).

We look forward to hearing from you in due course.

Regards

Rob

Robert Lees"

12. The Applicants note that the ExA have requested further submission on the matter at Deadline 7.

Appendix 2

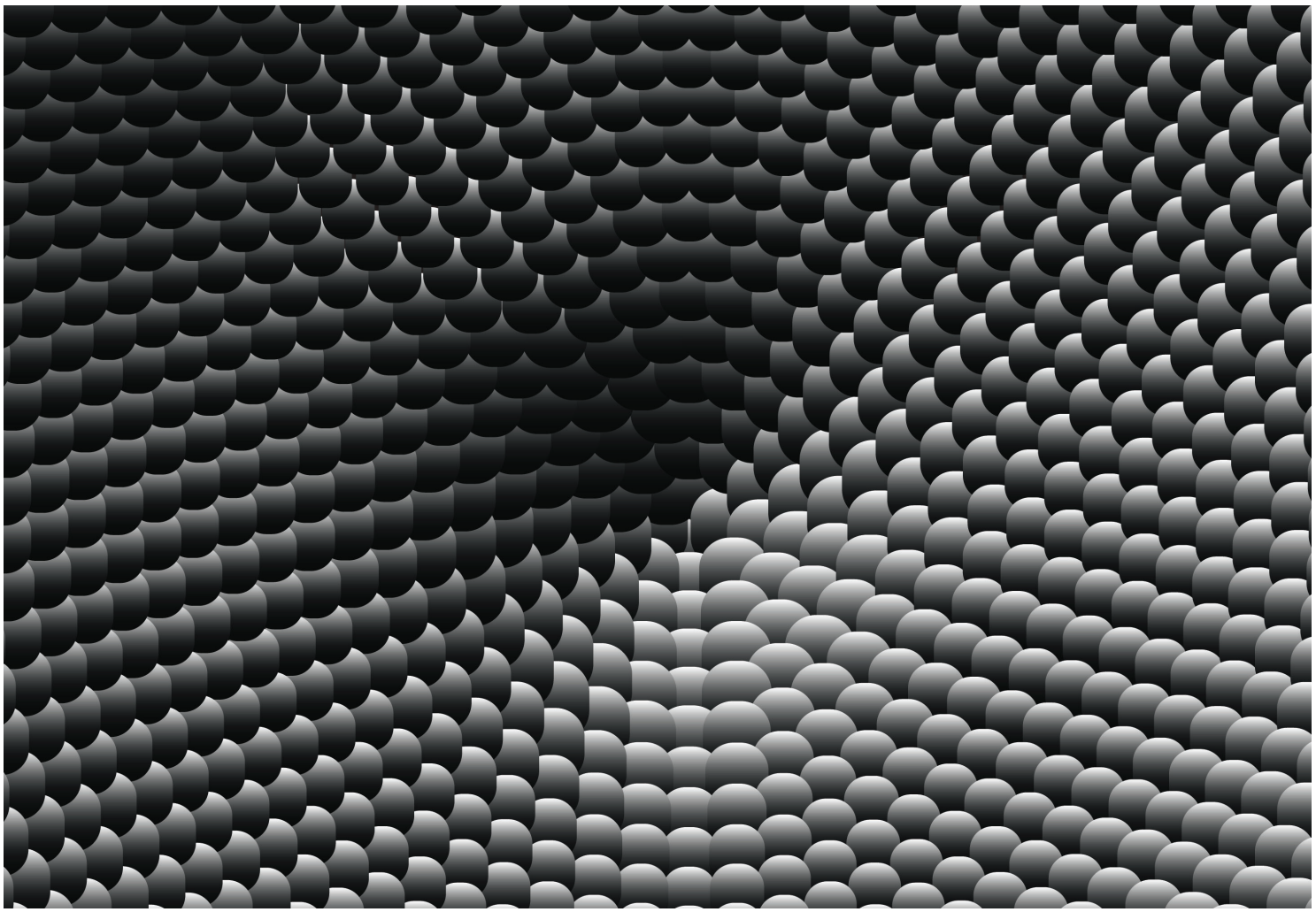
RICS Guidance "Negotiating Options and Leases for Renewable Energy Schemes", 2nd edition (2018)

RICS guidance note

RICS professional guidance, UK

Negotiating options and leases for renewable energy schemes

2nd edition, June 2018



rics.org/guidance

rics.org

Negotiating options and leases for renewable energy schemes

RICS guidance note, UK

2nd edtion, June 2018

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Contents

RICS professional standards and guidance

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Definition and scope

RICS guidance notes set out good practice for RICS members and for firms that are regulated by RICS. An RICS guidance note is a professional or personal standard for the purposes of RICS Rules of Conduct.

Guidance notes constitute areas of professional, behavioural competence and/or good practice. RICS recognises that there may be exceptional circumstances in which it is appropriate for a member to depart from these provisions – in such situations RICS may require the member to justify their decisions and actions.

Application of these provisions in legal or disciplinary proceedings

In regulatory or disciplinary proceedings, RICS will take account of relevant guidance notes in deciding whether a member acted professionally, appropriately and with reasonable competence. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS guidance notes into account.

RICS recognises that there may be legislative requirements or regional, national or international standards that take precedence over an RICS guidance note.

Document status defined

The following table shows the categories of RICS professional content and their definitions.

Publications status

Type of document	Definition
RICS Rules of Conduct for Members and *RICS Rules of Conduct for Firms*	These Rules set out the standards of professional conduct and practice expected of members and firms registered for regulation by RICS.
International standard	High-level standard developed in collaboration with other relevant bodies.
RICS professional statement (PS)	Mandatory requirements for RICS members and regulated firms.
RICS guidance note (GN)	A document that provides users with recommendations or an approach for accepted good practice as followed by competent and conscientious practitioners.
RICS code of practice (CoP)	A document developed in collaboration with other professional bodies and stakeholders that will have the status of a professional statement or guidance note.
Jurisdiction guide	This provides relevant local market information associated with an RICS international standard or RICS professional statement. This will include local legislation, associations and professional bodies as well as any other useful information that will help a user understand the local requirements connected with the standard or statement. This is not guidance or best practice material, but rather information to support adoption and implementation of the standard or statement locally.

1 Introduction

1.1 Context

The energy sector has evolved rapidly over the past ten to fifteen years. RICS members have been increasingly involved in renewable energy schemes that inevitably require the use of property. Broadly, the most common schemes originated with wind turbines and wind farms, which have subsequently become less favoured due to challenges with subsidy and planning. Conversely, a drop in manufacturing costs and government incentives has led to a rise in ground mounted solar farms, while battery storage sites have become the next wave of activity as technologies evolve.

In the interim, diesel and gas generator sites are still being used at critical times to support the grid within the capacity market. Other technologies, such as anaerobic digestion and hydroelectric, continue to be rolled out. However, energy technologies involving marine tides and waves are still mainly in the research and development stages.

Such activities and innovations have come from the necessity to lower greenhouse gas emissions and address fossil fuel depletion, as well as the pursuit of renewable energy targets. The *Energy Act* 2008 led to the introduction of Feed-In Tariffs (FITs) by the then Department of Energy and Climate Change (DECC) to work alongside the renewable obligations. At the same time, the *Climate Change Act* 2008 set a legally binding target for an 80 per cent reduction in greenhouse gas emissions below 1990 levels by 2050.

Renewable obligations used to be the main mechanisms to incentivise large-scale renewable electricity generation, but these ceased to be available for any new development schemes from 31st March 2017. Now overseen by the Department for Business, Energy and Industrial Strategy, Contracts for Difference (CfD) have now been phased in to replace Renewable Energy Certificates (ROCs). CfDs provide a guaranteed income stream to the developer who bids for a contract at a fixed level of income per MWh produced and where the government effectively pays (or receives) the difference between 'strike price' and the market price for electricity in the UK.

FITs and the Renewable Heat Incentive (RHI), all administered by Ofgem, generally provide the financial incentive for developers to pursue small-scale renewable energy schemes together with higher regard for low carbon development and increased corporate social responsibility targets and requirements for higher energy performance ratings. The levels of incentive are largely driven by political and social acceptability of technologies, e.g. offshore wind or the use of agricultural land for large scale solar or anaerobic digestion.

Such developers will apply their technical skill and experience and will inevitably require rights over land for construction, access or cabling issues. They will then often arrange for the finance and construction of such schemes. The most common approach taken by a potential developer is to seek an option granting the rights to trigger a lease. Less commonly, conditional leases are used but joint ventures between landowners and developers are becoming increasingly favoured. Extensions and changes to existing lease arrangements are being requested regularly and there is a need to be aware of the effect of changes on the lease and the financial arrangements for the landowner.

1.2 Purpose

This document provides guidance to chartered surveyors acting on behalf of landowners in relation to the negotiation of options and leases for schemes, across the full array of renewable energy technologies currently being rolled out across the UK.

1.3 Scope

The scope of this document covers the negotiation of options and leases. It is therefore assumed that the parties will have already considered the options available to them before proceeding with an option or lease.

2 Parties to a scheme

Throughout this guidance note the word 'developer' is used to refer to the party who initially approaches a landowner, obtains planning consent, installs or constructs the scheme and then continues to operate the scheme, albeit that such parties might strictly speaking be a 'tenant' once the initial developer has developed a scheme.

It is not uncommon for renewable energy schemes to involve several landowners, either acting collectively or, in some instances, in competition. With considerable sums of money and varying interests at stake, RICS members should carefully guard against situations where a conflict of interest may exist or may arise.

A protocol should therefore be agreed with the parties involved in the scheme and clear boundaries should be defined in respect of the extent of the surveyor's role. For example, a surveyor acting on behalf of a landowner in respect of the installation of wind turbines might be conflicted if also acting on behalf of a landowner over whose property electricity cables will need to run, but where no wind turbines will be installed. There can also be complications where an agent acting for a landowner in respect of one option or lease could be conflicted if also acting for another landowner in the same scheme who is considering a joint venture.

Developers may take a variety of forms, such as:

- electricity generation companies or distribution network operators (DNOs)
- specialist operators seeking to build out a scheme and sell electricity to third parties
- corporations seeking a greener image and/or satisfying contractual obligations elsewhere, such as private finance initiative contracts; or
- speculators keen to sign up options, which are traded to developers and operators.

It is important to check for 'clean title' of potential sites, with the assistance of the client's solicitor if necessary. It is not uncommon for previous owners of land to have reserved rights or to have sold rights that may impact on the ability to develop a renewable energy scheme. For example, a third party owning mineral rights over a plot of land might have cause to object to deep foundations being drilled for wind turbines, for cable laying or other activities that would potentially sterilise mineral extraction opportunities on that land. Similarly, a solar farm scheme or wind farm might inhibit the exercise of sporting rights reserved by a third party. Hydroelectric schemes might also inhibit the exercise of fishing rights and can impact on users of the water further downstream. Prospective developers should be given access to all relevant title documents so that they can undertake (and be responsible for) their own due diligence.

RICS members might also need to consider the rights of existing tenants either on land on which generating systems are to be constructed or across land on which access or cabling rights may be required. A full and early understanding of the particular tenancy or occupational rights is absolutely essential. Existing leases and rights granted for other renewable energy generation also now need to be considered.

Consent from mortgagees and banks will invariably be required if there are any charges over the land. Consideration should be given to this at an early stage and time allowed for consents to be obtained. In some instances, mortgagees may want to vary terms and again time delays may be incurred. Renewable energy schemes can potentially carry negative impacts on residential property and a good deal of justification may be required to demonstrate a positive cash flow or an increase in capital value of the security held by virtue of the renewable energy scheme.

Future ownership of the land should also be considered in conjunction with tax planning. The landowner may well be advised to consider future capital taxation and re-structure the ownership at an early stage. See section 6 *Taxation*. Some landowners may be advised to create an LLP. This can be complex and may be unattractive to a developer.

It has become increasingly common for investors and funders to become a party to the negotiation process. They will invariably want the ability to 'step in' to a lease arrangement in order to protect their investment and manage the scheme in order to extract their investment monies again. Very often landowners will be asked to consider terms which are more geared towards the requirements of the funders and investors, as well as the requirements of developers.

3 The site

Two essential ingredients for any scheme are planning permission and a grid connection to be able to export power. Regarding the latter, if the grid connection works are economically unfeasible, then the scheme is unlikely to go ahead. In the past few years, availability of grid capacity has become acutely problematic as energy schemes have been built, taking up any readily available spare grid capacity.

The characteristics of a 'suitable site' will vary depending on the technology being deployed for the type of scheme. This could include any of the following:

- **Biomass**: the use of living or recently living plant and animal material as a fuel that is burnt to generate energy, typically in the form of wood chips. This energy can then be used to power steam generators to create electricity, or the heat can be tapped and used for the heating of buildings.
- **Biogas from anaerobic digestion**: when microorganisms break down waste organic matter in the absence of oxygen, a methane-rich biogas is produced. This biogas can then be harnessed and used as a fuel to create energy.
- **Combined heat and power**: this is a means of producing and harnessing both heat and power (electricity) from the same generation process within a specialist cogeneration plant. Most traditional generation processes, such as coal fired power stations, usually only harness one form of energy (electricity), meaning that the other (heat) is often wasted. With combined heat and power it is not, making it a very efficient process.
- **Geothermal**: energy that is obtained by tapping reservoirs of heat that are stored naturally below the earth's surface. Hot water emerges from these reservoirs in the form of steam. This steam is then used to drive turbines which in turn generate power. In instances where the heat reservoirs do not produce enough heat to create steam, the hot water can still be used to heat homes and businesses.
- **Hydroelectric**: the use of free falling or flowing water to power turbines within a generator. These generators in turn create energy.
- **Landfill gas**: similar to biogas from anaerobic digestion, landfill gas is generated by household waste decomposing in an anaerobic environment. By correctly structuring the landfill site, this gas can be harnessed via a network of pipes and wells as it is released, and used to power generators.
- **Sewage gas**: this technique uses the same theory as landfill gas and anaerobic digestion, but utilises the methane gases created by microorganisms as they digest the sewage material in an anaerobic environment.
- **Solar PV**: solar photovoltaic devices use the power of the sun to free electrons from semi-conductive materials (generally silicone) stored in a flat panel. These freed electrons then travel along a gradient through an electrical circuit which creates power.
- **Tidal power**: this is a form of hydroelectric power. Large bodies of water rise and fall due to the gravitational effect of the moon as it orbits the Earth. This is known as tidal range. As this water rises and falls, its power is harnessed to power generators that are tethered below the surface of the water.
- **Wave power**: this is another form of hydroelectric power that uses the motion of waves to power turbines that are placed on the surface of the ocean.
- **Wind power**: the use of air flow over wind turbines to mechanically power electricity generators, either on land (onshore) or at sea (offshore).

To a greater extent, the take up of such schemes will be influenced by government policy and subsidy/ incentive regimes. Onshore wind is now regarded as less attractive than offshore wind, in terms of appearance, noise, disrupting the landscape, etc. Similarly, 'Genset' installations involving diesel generators are less attractive environmentally, and in terms of public perception, than battery installations in balancing the grid supplies across the country.

Each of the renewable technologies carries its own unique set of characteristics: access for construction, to feedstock and substrates, to the grid and to wind or solar resources makes renewable energy schemes location specific. The strengths of the locational attributes for the particular scheme, balanced by the constraints against that site, will determine both the developer's willingness to proceed and the level of competition for the site, as well as the likely market value.

RICS members should consider the physical and locational attributes of the site in relation to the specific technology being pursued and a full understanding of the factors required by each technology is therefore essential. For instance, a solar PV scheme might require as many as five acres per MW of installed capacity whereas a 20 MW battery or Genset site might require only one acre. For each site, RICS members should therefore consider the following:

- location
- size
- physical landscape constraints
- planning authority – e.g. stance taken on Grade I and Grade II soils being developed on
- legal or title constraints
- surrounding land uses

- ability to use heat or electricity at the point of generation
- access
- energy resource (including wind speed, water flow, insolation, etc.)
- proximity to grid connection; and
- site constraints such as:
  - residential properties (noise, flicker, visual impact)
  - planning designations (Areas of Outstanding Natural Beauty (AONB), Sites of Special Scientific Interest (SSSI), Wild Lands National Parks, etc.)
  - Ministry of Defence (MOD)/National Air Traffic Services (NATS)/local airports and aerodromes
  - telecoms line of sight links
  - highways/rights of way
  - ecology and environment
  - geology
  - landscape/cumulative impact
  - archaeology.

4 Planning and grid connection consents

Planning and grid connection consents are the two most important components of any scheme. They are equally essential and a scheme cannot progress without both being in place. The ability of the developer to actually deliver a scheme is also key, in terms of expertise and experience in securing planning and building schemes, as well as financial strength. RICS members will need to satisfy themselves and their clients in this regard.

4.1 Planning

Part of the skill of the surveyor is to assess the likely chances of planning success. If the various constraints are stacked heavily against the developer, the negotiations might focus more on option payments, with the developer's risk being reflected by lower rents during the lease stage. If there is limited chance of planning success, competition for the site will also be reduced and rental value might be affected in any event. RICS members should be aware, however, that developers should bear the risk and costs of obtaining planning and should carry out their own full feasibility assessment. Landowners may wish to share some of the cost in return for an equity stake in the project (see 5.5).

4.2 Grid connection

Unless the energy is being consumed by an adjoining user, a connection is essential to be able to export energy to the grid, be it gas or electricity. In relation to electricity, a G59 application form is usually submitted to the DNO. Such applications and any resultant offers are personal to the applicant, they do not attach to the land itself. Therefore, if a developer makes the application then the landowner could inadvertently tie themselves to that developer, where the grid capacity being sought is the last of any such capacity feasibly available in that locality.

A landowner who does not wish to sign an exclusivity agreement with a developer still effectively does so if they allow the developer to obtain the last available grid capacity when the developer has no obligation to transfer or novate that grid capacity to the landowner. If the developer does have control over the grid capacity then this can influence the stance taken in relation to negotiation of commercial terms for any option or lease. Some DNOs also require a 99-year lease for any substation that they are required to build.

Thought also needs to be given to the potential for alternative grid arrangements and the potential for the addition of battery storage to existing generation.

5 Agreement structure

The most common form of agreement is an option for lease, given that developers generally want to have total control over the schemes. This is on the basis that the majority of landowners lack the necessary expertise or appetite for risk. However, there may be benefits to a landowner where they can be more actively involved and hence joint ventures have steadily increased in proportion. Initially, developers will likely seek an exclusivity agreement and the proper parties may then agree heads of terms for the then more binding option for lease or conditional lease. The various different types of agreement that might be used are set out in the following sub-sections.

5.1 Exclusivity agreements

Most developers will request the security of an agreement that provides exclusivity of a specific site. Such agreements can carry seemingly attractive incentives. However, care should be taken as the payments are often nominal and genuine interest on the part of the developer can fade to relative apathy causing progress to slow.

Exclusivity agreements can be used by developers to effectively sterilise sites, or to tie up potentially competing schemes and to improve the chances of planning success on a nearby scheme. To prevent this, exclusivities should be short and contain milestones to ensure that terms and documents are agreed by given dates, failing which the exclusivity agreement could be terminated.

Most seriously, exclusivity agreements prevent landowners from seeking interest from alternative developers. An exclusivity agreement of two years, for example, might force a landowner keen to progress a scheme of one sort or another to compromise on terms to a greater extent than they would if dealing in an open market. The impact on the commercial offering can be dramatic and the alternative for the landowner might be to wait for the exclusivity agreement to expire; however, that could mean that they miss an opportunity if market conditions change and commercial interest subsides in the interim.

Exclusivity agreements can be argued to be unenforceable or ineffective, but a negotiated break may be costly and a breach could carry litigation repercussions if a developer has invested substantial amounts of money in site investigations and surveys. Landowners' interests might be better served by an initial assessment of the site by the surveyor and the grant of exclusivity only once the outline terms of the scheme have been agreed between the parties. Such an exclusivity agreement might only be for three to six months to allow solicitors to draft and complete legal documents.

If a joint venture is being considered, then a landowner will most certainly require a more detailed contract that sets out the co-operation agreements between the parties, allowing exclusivity to be terminated at various junctures.

If a landowner wishes to avoid granting exclusivity, then sub-section 4.2 regarding consents to submit G59 applications should be borne in mind, as this can have the same unintended effect.

5.2 Heads of terms

The heads of terms initially put forward by developers can sometimes be exceptionally brief. While there may be no desire for chartered surveyors to conduct legal work, renewable energy scheme options and leases can require vast amounts of detail, much of which might sensibly be discussed and agreed with the client's solicitor at an early stage and included in the heads of terms. This can help avoid a potentially lengthy battle at the legal stages. Time and costs may be saved if key principles are aired and agreed beforehand in the heads of terms.

While heads of terms are not generally binding, and should be headed 'subject to contract', they do form the principal basis of the agreement and still require a good deal of thought and care.

The signing of heads of terms could trigger a payment to the landowner, especially if the terms also grant some exclusivity. The size of that payment will depend on the scale and nature of the scheme in question and what can reasonably be negotiated between the parties.

Some developers might request that the parties consider option agreements without agreeing heads of terms, but given the potential problems with exclusivity agreements, heads of terms carrying exclusivity might be a preferred alternative.

5.3 Option for lease

The most common approach adopted by developers is to seek an option agreement, entitling them to trigger a lease on the grant of satisfactory planning consent. The option will set out the rights granted to a developer during the option period to enable them to compile the planning application documents, lodge an application and, if necessary, appeal a decision. The option period will depend on the particular technology being considered and the size of the scheme, both key factors in determining the timescale for obtaining planning consent, but the option period might range from 6 to 12 months and up to several years, particularly if the scheme might require a connection involving the National Grid.

The option will need to provide a balance between protecting the landowner's interests and ensuring that a scheme is ultimately developable. An overly restrictive option is more likely to result in a developer withdrawing rather than a landowner being able to negotiate further financial incentives. Finance and sign-off at board level can consequently be delayed to the frustration of all parties.

To ensure flexibility, the wording of the option agreement should be very carefully considered and compromises will need to be made by both sides.

Although key principles and commercial terms should be set out in the heads of terms, careful thought is required in the wording and RICS members should liaise closely with solicitors through the drafting stages of the option. A draft copy of the proposed lease should be attached to the option agreement and heads of terms will therefore need to cover both the option stage and the lease stage. The option should contain reference to the lease and a commitment by the parties to enter into an agreement in substantially the same form.

On signature of the option, an option fee is usually payable, although the size of the option fee is reduced for new developments due to the risk of not obtaining planning or any income for a new site. In addition, annual option fees are often payable, increasing year on year to encourage the developer to progress the scheme promptly, or alternatively such sums can be paid in a 'rolled up' sum (i.e. an upfront lump sum to cover a number of years). Option fees are sometimes linked to the projected output or target installed capacity.

Under certain circumstances the option may be extended, for example, if a planning decision is awaited, or an appeal is to be lodged, or for a judicial review. Such extensions should attract further option fees.

In some instances, it might be appropriate to have an option, followed by a lease for the construction phase and a separate lease for the period of operation.

5.4 Conditional lease

Far less common than an option for lease is a conditional lease. This involves the parties commencing negotiations on a lease document that enables the developer to progress a scheme but at a nominal rent until construction works begin (subsequent to planning consent). The lease provides the developer with the flexibility to terminate the agreement at relatively short notice and without penalty should they fail to obtain a planning consent. Essentially, the core terms remain the same as for an option for lease, except for the function of the option itself. The conditional lease reflects the fact that the commercial rent cannot be paid until the scheme is developed.

5.5 Joint venture

RICS members may be called on to advise landowners whether they should consider making a financial investment in the development, i.e. a joint venture. Not all landowners will have the financial resource or appetite for investment but the opportunity should be considered. Most developers will be agreeable to the idea of a joint venture and many of them will have template documents to use as a starting point.

The level of return achieved by a landowner will reflect the level of risk to which they are exposed and the level of investment made. Landowners can choose how much practical involvement they have and the commercial offering for the use of their land should vary accordingly. Some developers will offer improved income streams if a landowner shares in the initial costs associated with obtaining planning consent. Others will offer a share of the profit in return for a contribution to the investment of the constructed scheme.

Joint venture arrangements are becoming more commonplace on the basis that landowners can share in the returns achieved while making use of the developer's expertise in planning and developing the scheme itself. A profit share based on a landowner's investment in the costs of constructing the scheme could also produce a better return than a pure rental arrangement, but landowners wishing to avoid taking any risk will more likely accept a rental stream. Joint ventures are generally considerably more complicated than lease agreements.

5.6 Cabling schemes

Landowners may be approached solely in respect of a cabling scheme in order to allow power to be exported to the grid. Typical examples might be an offshore wind farm scheme or an interconnector cable from a foreign generating source. Where cables connect schemes that are in excess of 50MW of peak output, such schemes might be regarded as of national infrastructure importance and the developer may well be able to exercise compulsory purchase powers. In that event RICS members will need to refer to the RICS professional statement *Surveyors advising in respect of compulsory purchase and statutory compensation, UK*, 1st edition (2017). Otherwise this is a straightforward negotiation between landowner and developer, usually involving an option for a fixed-term easement.

5.7 Access arrangements

Similarly, landowners may be approached only in respect of a requirement to take access to a development site other than via the usual access for the land in question. Typical examples could include a requirement to bring heavy machinery on site; the need to carry 40-metre wind turbine blades to a remote site where road widening is required; or, an oversail required over third-party owned land. Compulsory purchase rights might exist that will prevent any ransom situation. Terms still need to be agreed for the acquisition of the necessary rights if the scheme proceeds.

5.8 Construction compounds

In some instances, the option and lease might cater for a construction compound to allow the contractor a designated area for equipment, construction materials, offices and machinery storage. Alternatively, this can be by way of a separate licence agreement and possibly on third-party owned land, a fixed term licence generally works well but landowners need to ensure that reinstatement provisions are robust.

6 Taxation

It is not within the scope of this guidance to discuss tax implications at length, however, it is worth considering that income derived through a trading DIY/self-funded or joint venture scheme may be more tax efficient than rental income.

Rental streams will be subject to income or corporation tax but the long-term implications go beyond this. If previously undeveloped land is to be used for a renewable energy scheme, the capital value of that property will increase dramatically and a change of ownership will trigger a charge for capital gains tax or inheritance tax on death.

While agricultural property relief will not be available on the land accommodating the scheme, a joint venture scheme might benefit from business property relief (BPR). An increase in trading turnover and profit might also assist arguments for BPR across a wider portfolio. Conversely, additional rental income from a lease could tilt the balance of reverse streams and undermine an argument for BPR across a broader mix of asset classes within a property portfolio.

Schemes being considered at only the heads of terms stage may carry limited 'hope value' in addition to the basic property value. As planning looks more likely, or once planning consent is granted, the capital values involved can increase significantly. Invariably, early tax planning and consideration is highly recommended. In every case, future ownership and tax planning need to be considered at an early stage.

It is also very important to consider the VAT treatment of the project. In certain circumstances, it will be worth considering making an 'option to tax' if one is not already in place over the land. Different projects will have different VAT considerations and advice should be sought.

7 The terms

It is essential that consideration is given at the outset to how any future value created by the developer might be captured. Due care and attention should be given to the drafting of any clauses in this respect which will need to be site specific.

7.1 Site layout

In respect of the design and layout of the scheme, developers will not wish to be restricted to any particular design or size of scheme. It is important, however, that landowners and RICS members have the strongest understanding possible in relation to the likely scheme once all site constraints and factors have been considered and planning policies satisfied. Developers will need flexibility and cannot expose themselves to substantial development costs only to find that they need to renegotiate terms for a minor design amendment.

Levels of certainty as to the likely final scheme will vary according to the technology being developed. For example, an anaerobic digestion plant site is unlikely to be moved far in terms of its location; similarly, a hydroelectric scheme will be location specific, however, a wind farm scheme might vary substantially in terms of the numbers of turbines as well as their individual locations, access roads and grid connection issues. Some flexibility in the exact location of turbines is recognised in the planning process by typically permitting a 50m micrositing allowance and the legal documents may well need to cater for this.

Whatever the technology, RICS members should consider setting a maximum or minimum generating capacity, to both maintain an element of control and to fully understand the likely impact on the property. Site requirements will, of course, vary enormously between technologies but endeavours need to be made to obtain an indication of the maximum possible extent of the development. RICS members should restrict the extent of the development as far as possible, where acting for a landowner, or to maximise the site and increase flexibility where acting for a developer. It is worth noting, however, that technologies develop rapidly – with an option period, turbines may become available that were not even designed at the time of the option being granted.

The full layout implications need to be considered by the surveyor, who will at least need to identify design principles and known variables. Under the option, the landowner is often given the ability to have input in the design and layout, but is likely to be given limited ability to withhold their consent or object to the overall design and will usually have even less ability to object to amendments required by local planning authorities. The principles of the design therefore need to be agreed and covered in the option and sensitive areas need to be excluded from the option area being considered.

The ability for electricity or heat generated from the scheme to be used on or near the site could carry financial advantages for a landowner. This might provide a positive benefit for planning application purposes, adding to arguments of sustainability and localism.

The position of the grid connection may also influence site location and layout.

7.2 Term

Most option periods are typically three to five years, extendable in certain circumstances, while lease terms will usually be for 25 years from project completion. The term can be linked to:

- the expected life of machinery
- the length of the power purchase agreements; or
- the duration of the subsidy or incentive underpinning the development.

Lease agreements in England and Wales will invariably fall within the security of tenure provisions of Part 2 of the *Landlord and Tenant Act* 1954 and some developers will seek to include rights to renew or extend the lease. This can provide significant additional value for the developer if the scheme is sold on.

The 1954 Act does not apply in Scotland where there is no security of tenure. Given the length of the option period and lease term, consideration needs to be given to long-term ownership and future management issues. Commercial offerings are generally unimpaired by a referral to grant security or lease extensions, but a landowner who wants to retain control will generally wish to resist any options to extend and to contract out of the 1954 Act security of tenure provisions. Presently, it is not anticipated that legislation will be introduced to protect any installed technologies, in the same way that utilities or telecommunications are protected. It might be possible that greater protection is afforded to renewable energy schemes to protect and support the nation (generating capacity).

Where lease terms have been agreed at only 25 years, developers may wish to reopen negotiations to secure an additional term if the investors should require it.

Erosion of subsidies for certain technologies is likely to result in developers seeking longer land options so that they can see if changes in factors, such as build costs and power prices, allow projects to become economically viable. Landowners will need to carefully consider the implications of longer term options compared to alternative opportunities.

RICS members should be aware of the implications of the type of agreement used. For example, where a residential property owner allows a developer to install solar panels

on the roof of the house, the lease will very likely fall within the scope of Part 2 of the *Landlord and Tenant Act* 1954 and will attract security of tenure. This could also amount to a breach of any mortgage agreement. Furthermore, attempts to create a licence for the installation might also be regarded as the 'mis-labelling' of a commercial lease, with security issues subsequently arising.

7.3 Insurance

Developers should be required to hold ample insurance cover, not only for their equipment but for public liability and employers' liability. Insurance should also be a requirement of many funding arrangements and some insurers may stipulate certain additional measures, for example, palisade fencing and 24-hour CCTV surrounding ground-based solar panels. Developers may seek to limit their insurance levels and RICS members should consider what will be appropriate both during the option and lease stages, where levels of activity and construction will be very different. The developer might also be asked if they maintain insurance to cover rent in the event of an insured risk occurring.

7.4 Indemnities

Indemnity is frequently an area of much debate between solicitors, but remains a key issue for landowners. General principles might be agreed with the client's solicitor and confirmed in heads of terms. Developers are likely to exclude consequential loss or economic loss and, while it is unusual in property transactions (except perhaps for telecommunications sites) they may seek to limit their indemnity levels. Again, such levels will need to be considered against the nature of works on the site and levels of activity. Such caps cannot legally be applied to instances of personal injury or death.

Indemnity levels will often vary between the option and lease to reflect the differing levels of activity conducted by developers. In each case, provisions will need to be made for compensation for crop loss or failure to reinstate adequately.

Landowners will generally want to be indemnified against all possible losses, costs, claims, damages, proceedings, suits, etc. arising out of the use of the site by the developer. Legal and professional costs may also be specified in the indemnity clause. Given the complexity of schemes it might be appropriate for parties to consider professional indemnity insurance of consultants involved in the project.

7.5 Assignment

Developers will need flexibility in order to transfer ownership of the scheme and to deal with the scheme within the realms of the overriding parent company. Commonly, special purpose vehicles (SPVs) are used in order to isolate liabilities, but parent companies will need the ability to trade their rights as schemes are frequently bought and sold in part or as a whole.

If funding is required, the banks may require the ability to intervene in the arrangement and run a scheme in the place of the initial developer (or to 'step in'). Any such restrictions could halt the finance and will prevent a scheme from proceeding, an issue of which developers are all too aware.

Care needs to be taken so that the assignment clause does not allow the strength of the covenant to be overly weakened. Parent company guarantees and/or authorised guarantee agreements therefore need to be considered.

Care should also be taken in relation to restrictions on assignment but a change in control of a company could have much the same effect. Authorised guarantee agreements and specific financial tests or creditworthiness criteria can be employed to safeguard the landowner's interest and maintain the quality of the covenant. Developers, on the other hand, will want total flexibility if possible.

7.6 Restoration and reinstatement

Restoration and reinstatement should be mostly controlled by the planning consent, which is likely to stipulate permission for a limited period of time, following which reinstatement should take place in accordance with conditions. Developers should also be contractually bound to reinstate in accordance with the landowner's wishes.

To safeguard the position, a restoration bond should be put in place by the developer. If this is with the local planning authority (LPA), RICS members need to satisfy themselves that the bond is both sufficient or that there are provisions for review and arbitration, and that the landowner has sufficient access to it. A further bond should be put in place with the landowner if required, but developers will usually prefer a single bond if required for the particular technology.

7.7 Community involvement and community funds

Many developers will provide a community fund into which monies are paid on an annual basis depending on the size of the scheme. Such schemes may be required by the LPA but, again, landowners can seek to stipulate such terms.

The use of the funds will be decided by the community given that they are intended as a return of benefit to the community. Some developers will enable local residents to invest in the scheme to a limited extent but with fixed annual returns, and the availability of such opportunities should be discussed with the developer. Government policy in Scotland, for instance, specifically encourages this.

Increasingly, large and small-scale generation is being sought by community groups and there may be an opportunity for the landowner to invest and receive lower cost electricity.

7.8 Tenants' rights and landlords' obligations

Developers will seek maximum flexibility to build, construct, maintain, operate, repair, renew and re-power their respective schemes. Developers will also seek maximum obligations from the landlord. A balance clearly needs to be found between the objectives of the parties, but each right or obligation needs to be considered in light of the development itself and the likely consequences and issues arising to the landlord. If, for example, the landlord's property is subject to a tenancy, the landlord should be careful not to be obligated or covenanted to do any more than they are able to do or grant any more rights than are strictly reserved out of the tenancy.

7.9 Minerals

As in section 2, mineral rights need to be considered. Schemes requiring the construction of access roads or funding for screening, etc. may require the use of borrow pits elsewhere on a landowner's property. The terms for the use of such material should be agreed, along with an appropriate mineral payment based on the tonne or cubic metre of material excavated. Provision also needs to be made for the depositing of spoil if this is not to be taken off site. The treatment of top soil might also be a relevant consideration.

7.10 Access

Routes, timing and notice periods need to be agreed for both option and lease stages, along with the extent to which the rights can be granted by the developer to third parties, the use of vehicles and machinery and of course the construction and maintenance of the access route itself. Payments for access might be considered, particularly across third party owned land or prior to the grant of an option – i.e. an access licence.

7.11 Break options

Given the level of investment made by developers, break options available to a landlord are likely to be limited to forfeiture and major breaches at both the option and lease stages. Even then, funders or investors will require 'step in rights' to remedy any breaches and take control of the assets that they have a financial interest in. Tenants will be keen to have break options for reasons of major economic change affecting the viability of the scheme or in the event some physical issue prevents the scheme from operating, such as a failure to obtain grid connection. Landlords may seek a minimum rent being paid in full for a fixed number of years in the event of an early break. Landowners who may wish to include a break option for possible alternative development purposes ought seriously to think about whether or not they wish to pursue a renewable scheme or the alternative development since the two are unlikely to be compatible.

7.12 Competing land uses/ interference

Renewable energy schemes need to be compatible with surrounding land uses. In a wider estate context, sporting, farming and forestry interests could conflict with renewable schemes and reservations need to be made as necessary. Such reservations might include, for example, a protocol for the exercise of sporting rights in relation to wind turbines and solar panels.

7.13 Planning process

In relation to the option agreement, timescales should be considered for the preparation of and submission of a planning application. Generally, developers will want to proceed as quickly as possible and the enforcement of a fixed timescale protects the landowner from a tardy approach and guards against the possibility of 'land banking' by enabling the landlord to terminate the agreement in the event of a failure to perform. The developer will seek greater flexibility, of course.

Generally, if a landowner enters into an option for lease, then the planning application will be in the name of the developer. If a joint venture is agreed, RICS members will need to consider whether the planning application should be in joint names of the developer and the landowner or on an SPV between the two.

Landowners may be prevented from objecting to any planning applications in relation to their land, but should not be obligated to overtly support the scheme as political issues may make this difficult. Any support should be on a voluntary basis, but in reality most landowners would be happy to provide support where they can. Some schemes might involve public consultation and developers will commonly run an exhibition to engage with the local community.

Large wind farm schemes may require 12 to 24 months of ecological survey work in addition to at least 12 months of anemometer testing, plus a lengthy process of consultation with the Ministry of Defence (MOD), National Air Traffic Services (NATS), Scottish Natural Heritage (SNH) or Natural England, Royal Society for the Protection of Birds (RSPB) and the Highways Authority as well as the Local Planning Authority. Similarly, solar, anaerobic digestion (AD) and hydro schemes may have significant ecological effects and an environmental impact assessment is likely to be required on any larger scheme, incurring substantial cost and delays. Impact on historic buildings is also a key planning concern.

If planning consent is granted then developers may require the ability to object or appeal against certain planning conditions in order to make the scheme developable or to improve it, but generally such submissions will be in the mutual interests of both landowner and developer. If planning permission is refused then the developer may wish to have a period of time within which they might make an appeal. The appeal process itself could easily take 6 to 12 months or more.

If a satisfactory planning consent has been granted then the developer may delay triggering a lease while they confirm they are able to satisfy certain conditions precedent, or to obtain finance or finalise procurement or construction contracts. However, landowner interests are best served by a developer triggering the lease as early as possible; RICS members will need to consider the timescale in detail and cover this adequately in the option.

Developers may require the right to tie landowners into planning agreements (Section 106 agreements in England and Wales or Section 75 agreements in Scotland), usually for habitat creation or tree planting, to mitigate an environmental impact elsewhere. Such agreements should be approved by the landowner who should be compensated for any losses incurred. Landowners may seek to influence such agreements to deliver environmental benefits which they would have in any event desired, thereby enabling the works to be done at the cost of the developer.

7.14 Costs

Unless the landowner is entering into a joint venture agreement, the general principle should remain that the developer meets all reasonable legal and professional costs incurred in the matter. An undertaking is required at the earliest stage to cover discussions over the heads of terms, completion of the option agreement and any further dealings in entering into the lease or any requests for further consents, etc.

Capped costs should be guarded against, as dealings can become protracted through no fault of the landowner, and if caps cannot be renegotiated then the landowner can be exposed to significant costs, particularly if the developer withdraws. Costs should be recovered in respect of any planning agreement, records of condition, negotiations with tenants or other third parties. Generally, developers accept this position but many will suggest that their precedent form of agreement should require no more than £1,500 to £2,000 of solicitor costs and invariably such caps are substantially exceeded. Some developers may incentivise rapid completion of legal documents.

If mortgagee's consents are required, there will likely be administrative charges and further legal costs which also need to be considered.

Landowners might also have to liaise with third-party environmental regulators in respect of environmental schemes already covering the site. The cost incurred will need to be borne by one of the parties. Further costs can be incurred in updating plans for agri-environment or subsidy schemes, unless the developer is also to provide amended plans to reflect the development.

Due to the delays that can be incurred between the heads of terms and option stage, it is recommended that costs should be settled at least on signing heads of terms but periodically thereafter until agreements are concluded. Costs also need to be recovered in respect of disturbance compensation claims, either following construction or decommissioning. Thereafter, the lease indemnity clause should then govern this issue.

7.15 User clause

User clauses and tenants' rights should be considered in tandem and the need for detail will depend on the type and size of the scheme.

7.16 Dispute resolution

While arbitration might be the normal route for dispute resolution, certain aspects of a scheme agreement may require a specialist independent expert. Fundamental differences between arbitration and the use of an independent expert are as follows:

- The arbitrator makes the decision based on the submissions made by the parties while the expert makes their own assessment and is not bound to consider any submissions.
- The arbitrator will make an award within the values contended for the parties while the expert is not bound to award between the values sought.
- The arbitrator has the power to order discovery of documents through the courts while the expert has no power to order discovery unless specifically ordered to.
- The arbitrator has the power to award costs and interest whereas the expert does not, unless specifically agreed in their remit.
- The arbitrator cannot usually be found to be negligent whereas the expert can be liable for damages if found negligent.

7.17 Rental terms and one-off payments

Reference has already been made to the payment of exclusivity, heads of terms and option fees. In addition, one-off payments can be secured on the grant of planning consent, on commencement of construction works or on commissioning the renewable energy scheme. These payments are frequently agreed on a rate per megawatt of capacity installed or can be negotiated fixed figures. The purpose of the payments is to reflect the fact that rents can otherwise be delayed while construction takes place and to reflect the various progressive stages of the development. Developers will rarely be in funds until contracts for land occupation, grid connection, equipment delivery and power purchase are all in order, and hence such payments are made within the lease stage.

Rents are linked to turnover, but minimum guarantees should also be secured, again, potentially based on a rate per megawatt of capacity installed. Turnover-based rents can be expressed as Income rents based on percentages or can be expressed as an output rent being a payment made for each kilowatt hour or megawatt hour generated and exported to the grid.

Income rents should be based on the percentage of gross revenue to include all sources of revenue including Contracts for Difference, levy exemption certificates, FITs,

renewable obligation certificates (ROCs) and any other subsidy on top of the wholesale electricity price itself. Such sums should be set out in a power purchase agreement, but this is unlikely to be provided to the landowner.

Output rents provide a safety net to either the market forces impacting on the value of renewable electricity or a developer or operator entering into a power purchase agreement, which may not have been agreed on an arm's length basis. An output rent would be based on a fixed rate per unit of electricity generated rather than as a percentage of value produced by the scheme.

Since rent is dependent on turnover, it is important to understand the mechanisms of the FITs and CfDs system. Both systems are likely to be reviewed and RICS members will need to monitor proposed changes and assess how this might impact on the income streams.

On some schemes, more often with smaller schemes, it may be possible to run the output cables to the landowner's property, allowing them to use some of the electricity produced. For example, on roof mounted solar schemes the rent might be a more nominal figure. However, the property owner might benefit from free or cheaper electricity where they might otherwise be paying 8p to 12p per unit in the retail market. In this example, electricity not used by the owner would be exported to the grid and paid for accordingly through a power purchase agreement. In any event, the developer would receive the generation element of the FIT accordingly. Similarly, heat from anaerobic digestion and biomass schemes can be used on site, potentially adding significant benefit to a landowner.

Often, a very nominal rent will be offered in the final year of the lease for decommissioning purposes. Depending on the scheme, decommissioning will often only take a matter of weeks rather than anything approaching a full year. It would be the case, therefore, that the developer would benefit from use of the site for several months without having to pay a rent to the landlord. Rents should therefore be paid up to the date when the equipment is shutdown and grid export ceases.

Further rents or payments can be obtained in respect of substations, cabling, anemometers, access roads or control kiosks. Rates will vary depending on the size of installation and the alternative options available to the developer.

On the basis that an option and lease together could run for 30 years or more, all figures contained in option and lease documents should be indexed, e.g. increased in line with RPI or CPI, ideally from the date that heads of terms are signed.

8 Schedules of condition and reinstatement

It is commonplace for there to be issues with reinstatement of land following development works carried out by a developer. RICS members on both sides of a transaction should be acutely aware of this and the fact that a disturbance and the failure to reinstate can cause more frustration to a landowner than some of the key commercial terms.

The parties need to be very clear as to what format reinstatement should take and to ensure that a clear record of condition is agreed between the parties. This should be compiled by the landowner (or their advisors) and then agreed with the developer. The parties should also be clear as to what recourse will take place if there is disagreement as to the extent of the reinstatement at the end of the construction period. The same process should be followed in the event further construction works are required mid-term.

In some instances, it may be preferable for cables and foundations to be left in the ground below a certain depth. This may have a lesser impact on the land but the landowner might well want to begin any discussions on decommissioning from the assumption that all equipment will be removed.

Perhaps, more importantly, reinstatement of the site at the end of the lease is critical. In some schemes, the landowner might agree to take control over the apparatus and to act as the developer going forward. While this might come with several complications, even without any subsidy or incentive in place, the generating equipment may carry significant value at the end of the lease. In such cases, the landowner would discharge any obligation on the developer to reinstate. There can be further complications with such clauses, such as how a developer is compensated in the event they have invested significant sums of money in equipment in the final stages of a lease. Or whether such a clause provides a disincentive for the developer to maintain and repair equipment if there may be an imminent requirement to transfer ownership to the landowner. Compensation provisions can be agreed to deal with this issue.

9 Conclusions

In light of the inevitable ongoing review of subsidies and the likelihood of financial support being reduced as technology costs decrease, there is a need to progress schemes as quickly as possible in the mutual interests of both landowners and developers.

Agreements need to balance carefully the needs of the developer against the landlord's desire to protect their immediate and wider property interests and maximise revenue. The role of chartered surveyors is not only in the negotiation of terms, but also in managing the expectations of landowners and clients. RICS members should ensure they adequately understand the issues so as to respond with clear advice and specific instruction where required.

While agreements need to be tailored to the specific requirements of the site and the parties involved, the prospective landlords and tenants may be restricted by interests of outside parties and compromises should be made if schemes are to advance. If schemes cannot be physically constructed or financed they will not advance. The skill of the surveyor is in establishing a full picture of what truly constrains a scheme. RICS members need to be able to advise on those terms that pose an acceptable risk to the client and those that actually make a scheme unacceptable to the client. This while still paying due regard to the role of the agent in facilitating the transaction.

References

Legislation

Climate Change Act 2008

Energy Act 2008

Landlord and Tenant Act 1954

Publications

Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

Raupach, M. R et al 2007. 'Global and regional drivers of accelerating CO2 emissions'. *Proceedings of the National Academy of Sciences*. 104 [24], pp. 10288–10293.

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JUNE2018/RICS/UK

To: The Rt Hon Kwasi Kwarteng, MP
Secretary of State for Business, Energy and Industrial Strategy

29th March 2021

Dear Secretary of State,

We are writing in relation to an important issue of national importance about the integrity of the planning system. This concerns the misuse by developers of powers under compulsory purchase legislation to impose gagging and non-objection clauses on landowners which have the effect of preventing them from participating in public planning inquiries.

You are of course already aware of related issues surrounding the applications made by Scottish Power Renewables (SPR) for development consent in relation to wind turbines to be installed off the Suffolk coast which, after being landed, will be brought by a 9 kilometre cable to the medieval village of Friston where a series of substations each bigger than Wembley stadium is planned.

We appreciate that in relation to these particular applications (EA1N and EA2) you stand in a quasi-judicial position and we are aware of your response to this effect in your letter of 5th March 2021 to the Rt Hon Dr Therese Coffey MP who has written to raise concerns about the use of these practices in the ongoing examination.

We appreciate that you cannot comment on those applications at this stage.

The purpose of this letter is to raise the much broader issue that has emerged from evidence that is coming to light about the way in which SPR has used the power conferred upon it under compulsory purchase legislation. The use of this power for the purpose of undermining a public inquiry raises a discrete issue of national importance which cries out for immediate action.

As we explain below, we believe that there should be a general public inquiry into the use of gagging and non-objection clauses by developers who seek to bend planning processes in their favour by these devices. We strongly suspect that SPR has used this approach in its previous applications for development consent, and we also believe that SPR is not the only developer using this approach to planning inquiries. It appears to be a practice used across a range of different planning cases.

This is a wholly improper use of the powers that Parliament has conferred. That legislation enables developers to force landowners to sell them their land if and when they obtain consent. It is a draconian power because landowners have no choice to refuse to do a deal with the developer. At some point they must enter an agreement, even though they might be vehemently opposed to the development as a whole. It confers upon that developer enormous leverage to bully and intimidate landowners into entering agreement and they use that power to impose gagging and non-objection clauses.

When Parliament conferred these powers on developers it did not conceive for one moment that they could be manipulated to undermine the actual planning process. Planning processes are meant to be

fair, objective and transparent. They cannot be so if entire classes of landowners with a direct interest in opposing an application are silenced.

In the agreements SPR imposes upon landowners, using its statutory powers, it:

(i) prohibits all objections by the landowner at any stage of the planning process whether that be the investigation by the Inspectors or during subsequent deliberation by the Secretary of State; and

(ii) requires the landowner to keep absolutely secret the terms of its agreements with SPR including that it has been prevented from objecting or participating in the process.

In fact, if as Secretary of State you were to ask relevant landowners whether they had entered a gagging and non-objection arrangement with SPR those landowners would, under the SPR system, be required to mislead and dissemble and could not answer your question truthfully and candidly.

The use by developers of compulsory purchase powers in this way simply cannot be right. It is a scandal that this sort of conduct is occurring and remains unchecked. It strikes at the heart of the planning system. How can the public have confidence in planning decisions taken by Secretaries of State, which are often difficult and controversial, if developers are setting out to prevent relevant landowners from giving evidence to an investigating authority acting in the public interest?

We would invite you to open a public inquiry into the use of these practices. This should be empowered to compel developers to disclose the systems that they use in relation to compulsory purchase and should take a long and critical look at all devices and mechanisms to undermine planning investigations.

We believe that the use of these sorts of practices should be outlawed by legislation.

We thank you for your consideration of this and look forward to your response.

We have included as attachments by way of background information a briefing note and a recent submission made by SEAS to the Examining Authority in the ongoing examination for consent for EA1N and EA2. This serves to highlight why the issue is one of national importance going beyond the confines of the present applications.

Yours sincerely

Fiona Gilmore
Suffolk Energy Action Solutions (SEAS)
info@suffolkenergyactionsolutions.co.uk

SEAS Response to the submission of SPR at Deadline 8 on SEAS's complaint about gagging and non-opposition clauses

A. Introduction

1. Suffolk Energy Actions Solutions ("**SEAS**") submits this in response to the short submission of ScottishPower Renewables ("**SPR**") at Deadline 8 on issues relating to gagging and non-opposition clauses in its agreements with landowners.

2. SEAS suspects that SPR will seek, at the very last moment, to introduce new evidence. As SEAS made clear in its response submitted at Deadline 8, if SPR seeks to game the system and introduce new evidence that it hopes cannot be responded to, SEAS will respond.

B. The basic position

3. An increasing number of landowners have now provided their agreements with SPR to SEAS. These, with minor variations, contain the same gagging and non-participation clauses.

4. In the Telegraph on 28 February 2021, SPR denied that they had entered into *any* clauses of this sort.

5. In oral submissions on 19 March SPR said that there were "*many*" such agreements.

6. Now they admit that "*the majority of landowners have signed them*".

7. The truth is that the Heads of Terms entered into between SPR and landowners are ubiquitous.

8. The position is thus that SPR has concluded a network of agreements which both gag landowners and which have prevented them from participating in the examination.

9. The fact that virtually no landowner – with honourable exceptions – has participated or given evidence is proof of the effectiveness of SPR's strategy. This has been procured through misuse of compulsory purchase powers and through the offering of so-called "Incentive Payments".

10. As is set out fully in SEAS's earlier submissions, under the law:

    (i) it is the duty of the examining authority (the "**ExA**") to ensure a fair procedure;

    (ii) a procedure is unfair if affected persons are not able to give evidence;

    (iii) the test is objective, and it is irrelevant whether the decision maker is at fault or not;

    (iv) if a procedure is unfair, it will be set aside;

    (v) once the procedure has been established as unfair there is no possibility for that to be remedied; and

(vi) it is irrelevant whether the final decision would have been the same or not but for the unfair procedure.

11. In this case, SPR has neutralised an entire class or category of participant. They are amongst the most directly affected of all affected persons. They have not given evidence. This renders the procedure unfair.

12. Any recommendation or decision in favour of SPR will be unlawful.

C. Recent events

13. SPR says that it has not pursued an aggressive campaign to sign up affected persons. SEAS's submission at Deadline 8 demonstrates otherwise. Landowners who are talking to SEAS speak of being intimidated, bullied and threatened. SPR uses the threat of the exercise of draconian statutory purchase powers to force landowners into agreements they would rather not conclude.

14. By way of update, a growing number of landowners have now supplied their agreement to SEAS. SPR has been taking steps to identify the anonymous landowners who have assisted SEAS.

15. In relation to one landowner, who we refer to as "X", SPR contacted X's agent and, to use X's language, "*hit the roof*". SPR was furious that X had disclosed the Heads of Terms to SEAS. SPR threatened X that there could be financial repercussions. X was left very shaken by the experience.

16. In relation to Dr Gimson, SPR have at no point indicated that he could: (i) retain his past evidence; or (ii) be permitted to continue to make submissions and serve evidence in opposition to the applications. Moreover, even though SPR has no right to be on Dr Gimson's land, by chance, a team of SPR employees were found on his land preparing to dig a bore hole on 8 April 2021. Dr Gimson required them to leave. Had he not done so they would, without consent, have started excavations on this land. SPR has not said it made a mistake in encroaching on his land nor given any explanation.

D. SPR's arguments about legal effect

17. SPR now pins its argument upon the Heads of Terms not being legally binding. There are three points to make.

18. **First**, this is a red herring. The issue concerns effect. The Heads of Terms contain, in unequivocal terms, an express articulation of SPR's intention to gag and silence opposition. SPR included these restrictions in their Heads of Terms to bend the entire planning inquiry in its favour. SPR cannot deny this because that intent is set out in black and white clauses in the Heads of Terms itself.

19. SPR has carried out this intention vigorously and has allocated a very substantial sum of money to achieving its ends. To the law, it is irrelevant whether the Heads of Terms are legally binding or not.

20. Landowners have sought legal advice and have been told that their obligations under the Heads of Terms are binding. They have complied. Why else would SPR include

such provisions in the Heads of Terms if they did not intend and expect them to be complied with?

21. **Secondly,** in any event SPR's analysis is wrong and simplistic.

22. The Heads of Terms contain two parts, both relating to different points in time. The first relates to what will happen in the future if consent is given and SPR can then acquire the land in issue. The Heads of Terms address many such issues which arise upon that contingent event. SEAS expresses no view as to whether these clauses are legally binding.

23. However, the Heads of Terms also relate to a second and quite different matter, namely the current, real time, planning process. The gagging and non-opposition and participation clauses all relate to the present day. They are not contingent or conditional. As a matter of elementary contract law as to restrictions which apply in real time, they are intended to be binding. Indeed, it is for this reason that SPR has imposed a dispute resolution mechanism for "claims" pursuant to the Heads of Terms. There can be no claim to resolve if there is no breach of contract, and there can be no breach of contract if the contract in question is not legally binding.

24. **Thirdly,** SPR has asserted that the Heads of Terms contain language stating that they are not legally binding. In their submission, SPR state the following:

> "At the back above the signature section the following is stated*:*
>
> *"**None of the contents of this document are intended to form any part of any contract that is binding on any Scottish Power group Company.***
>
> *The above Heads of Terms represent the main terms for the Option/Deeds of Grant of Easement, but are not supposed to be fully inclusive and are subject to additions to or amendments by the Grantor, the Grantee and their respective solicitors."*"

This statement is made without qualification. SEAS is in possession of a growing number of Heads of Terms, only one of which contains the emboldened text above. This includes the copy of the Heads of Terms submitted to the ExA by SEAS on 25 March 2021 which, as the ExA will have seen, does not contain the emboldened text. SPR must have been aware of the terms of its own documents when it made this misleading submission to the ExA. SEAS notes that the language cited by SPR states that the Heads of Terms are not "binding on any Scottish Power group Company". It does not say that the Heads of Terms do not bind the landowner. At base however this is immaterial since, as already explained, what matters is effect, not legal status.

E. Conclusion

25. SPR has brought about an unlawful unfair procedure. SEAS reserves all rights.

Offshore Wind Farms

EAST ANGLIA ONE NORTH

PINS Ref: EN010077

and

EAST ANGLIA TWO

PINS Ref: EN010078

SEAS written submission for ISH14, Item 1A Negotiations with Affected Persons Deadline 8 – 25 March 2021

by

SEAS (Suffolk Energy Action Solutions)

Unique Ref. No. EA1(N): 2002 4494

Unique Ref. No. EA2: 2002 4496

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SEAS written submission
for ISH14, Item 1A
Negotiations with Affected Persons
Deadline 8 – 25 March 2021

Executive Summary

This is a short summary of the main points set out in the full submission

The complaint

On 14th February 2021 Suffolk Energy Action Solutions ("**SEAS**") submitted a short complaint to the effect that Scottish Power Renewables ("**SPR**") was seeking to pressurise landowners to enter into agreements which gagged them and prevented them from participating in the planning process.

The complaint concerned the way that SPR used compulsory purchase statutory powers to gag landowners and prevent them from objecting or participating in the inquiry. Under the legislation landowners do not have the option of not entering into an agreement. SPR exploits this statutory leverage for the improper purpose of undermining the investigation into its applications for development consent.

The complaint was based upon the evidence provided by a landowner who refused to be silenced by SPR and who provided copies of the email traffic with SPR, its agents and the agreement that SPR demanded be signed.

The agreement, that had been prepared as a "standard form" to be used by SPR, contained a suite of clauses all designed to ensure that the landowner was prevented from objecting to SPR's planning applications and which required strict silence and confidentiality.

SPR's response

When the complaint was first submitted SPR objected that it was inaccurate and vexatious. It denied in the national press that it had entered any such agreements or that it would ever seek to undermine a planning process. It said during hearings before the Authority that once the Authority had the "*full facts*" presented to it and all the relevant "*material*", then the Authority would reject the SEAS complaint. It repeatedly said that it would provide this evidence.

The Authority in a procedural decision said that the complaint raised a matter of public importance. It gave SPR a full chance to respond and to submit the relevant documents.

At the deadline for submission of its response SPR declined to put forward any evidence. Instead it submitted a four-page letter full of righteous indignation and denials.

SEAS's new evidence of the system used by SPR to supress evidence and impose secrecy

However, at the same time, landowners who object to SPR's tactics have been providing evidence to SEAS which has included copies of the agreements that SPR uses and evidence of the pressure it imposes to secure these agreements.

SEAS has now submitted detailed evidence to the Examining Authority which describes the comprehensive system used by SPR to suppress opposition to their applications and to prevent landowners from participating in the planning process.

This evidence shows that long before the Examining Authority opened proceedings, SPR had put in a place a system to secure agreement with landowners under a so called "Heads of

Terms". Some of these were signed in 2019 and others in early 2020, months before the Examining Authority issued calls for evidence.

The Heads of Terms contains a series of devastating restrictions.

It contains a total prohibition on the landowner objecting to SPR's application in any respect. The clause is so broad that it covers the proceedings before the Examining Authority but also of any future deliberations by the Secretary of State. It also demands that the landowner keep the agreement and its terms secret.

Indeed if the Authority were to ask a landowner whether they had agreed to a gagging clause or been prevented from objecting or submitting evidence to the Authority, that landowner would have to mislead and dissemble. They are prevented from cooperating with the Authority.

SPR has managed to conclude many Heads of Terms with these clauses in them. Landowners who have spoken to SEAS explain that they have been advised by their lawyers that they cannot object or participate in the planning process and they have been told also that they cannot help SEAS because this would be in breach of contract. Many are intimidated and scared to come forward.

The effect of SPR's system

The effect of these clauses has been profound. Virtually no landowner has turned up to give evidence to the Authority whether in relation to their own land or in relation to the application more broadly.

This has meant that on a wide range of really important issues SPR has managed to prevent relevant evidence coming forward. This covers matters such as offshore turbines, the landing of the cables on-shore on the fragile Suffolk coast, the impact of the many miles of corridor that will be built to bring the cable inland and the enormous and damaging impact on the ancient village of Friston where vast substations, each almost as big as Wembley Stadium, will be built. The suppressed evidence could cover such varied matters such as tourism, harm to the environment and to wildlife, noise and sound pollution, traffic, mental health and employment.

The landowners who are subject to compulsory purchase and to SPR's gagging system represent those who are most directly affected by this huge development. As a class they could have given vitally important evidence to the Authority. Their voices have been silenced.

In an extraordinary submission made by SPR during the hearings they argued that this silence from landowners was evidence that they had no concerns and that SPR has acted reasonably. They made this submission knowing full well that the true reason for this silence was not that landowners had no concerns, but that they had used their compulsory purchase powers to gag landowners and prevent their evidence being given.

Increasing numbers of landowners have been in contact with SEAS to complain about the behaviour of SPR during negotiations and the pressure put on them by SPR using the muscle it has under the statutory compulsory purchase regime.

The effect of this system has been that SPR has undermined the planning process from its very outset. It has led to the procedure being deeply unfair. SPR has ensured that landowners with a direct interest have been silenced. It has meant those who oppose the applications are deprived of evidence, support and funding from local landowners.

The public interest

It is a scandal that applicants for development consent should be able to use statutory powers in this distorted way. It strikes at the very heart of the planning system. How can anyone have confidence in the integrity of planning decisions if they are procured by developers who covertly suppress planning procedures by ensuring that those with relevant evidence are prevented from tendering it?

In recent weeks there have been reports in the press about the unfair use of NDAs (non - disclosure agreements) by builders of new houses who use gagging clauses in contracts with home buyers to prevent them from talking about defects. There has also been concerns expressed about the use of gags in contracts for cladding funding which prevent parties from speaking to journalists and the media.

The House of Commons Committee on Housing Communities and Local Government has already been critical of these types of clause and is investigating.

The clauses used by SPR go way beyond these NDAs. They misuse statutory powers to target a public planning process in a way which SPR intends will bend the process in their favour.

This simply cannot be right.

The consequences for this planning process

The Examining Authority in the present case has gone to considerable pains to ensure that the procedure it has adopted during this investigation has been fair and transparent in the difficult circumstances brought about by the Covid-19 pandemic.

SPR's secret strategy however has now caused serious unfairness.

The Examining Authority is considering the matter in the light of the submission of SEAS. It is, however, the submission of SEAS that SPR has caused deep and irreparable damage to the entire process which has been unfairly slanted in favour of SPR. This has serious consequences for the inquiry.

The law is very clear. Planning processes must be fair, objective and transparent. If a procedure is unfair, for example because an entire class of affected persons has been targeted and prevented from giving evidence and bound to secrecy, then any resultant recommendation or decision in favour of the party responsible for that unfairness will be set aside as unlawful.

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SEAS Response to the submission of SPR on SEAS's complaint about gagging and non-opposition clauses

A. Introduction and overview

1. Suffolk Energy Actions Solution ("**SEAS**") submitted its complaint on 14th February 2021.

2. At the hearing on 19th February 2021, Scottish Power Renewables ("**SPR**") stated that once the Examining Authority ("**ExA**") had seen the "*full facts*" and all the "*material*" it would reach a very different conclusion on SEAS's "*supposed complaint*":

> Colin Innes: "*All I would say is that again it should be based on full facts of the particular circumstances that have been alleged. And in my submission, once you have read that material, I believe that you will reach a very different conclusion from that which has been submitted to you by SEAS in terms of their supposed complaint.*"

3. SPR invited the ExA to consider the SEAS complaint *after* the ExA had received the full materials and facts.

4. On 28th February 2021, journalist Rachel Millard wrote an article in the Telegraph (*Appendix 2*) about the SEAS complaint. A spokesperson for SPR denied both that SPR had entered into any agreements of the sort complained about or that it would ever seek to undermine a planning process.

5. SEAS has said all along that if, SPR having disclosed the relevant material and the ExA having been able to consider the full facts, it turned out that its complaint was unfounded then it would amend or withdraw it.

6. SPR and its advisers have now thought better of enabling the ExA to read "*the material*" and understand the "*full facts*". SPR declines to place *any* material and *any* facts before the ExA.

7. At the hearing on 19th March 2021 SPR repeated that the complaint was inaccurate and that the SPR system had been misunderstood. Various new arguments were raised. All are spurious.

8. Throughout these proceedings SPR has sought to capitalise upon the fact that landowners have not come forward with relevant evidence. They have argued that this silence is "*very telling*" and "*quite unusual*". SPR actually submitted that the Authority should take silence as strong support for SPR's application. Mr Innes stated (CAH 3 Session 4):

> "*Now, one of the opportunities for compulsory acquisition hearings, is for those affected persons to come forward and express their views about the detrimental effects that the project will have on their particular interests. And I think I would say that in terms of we have now had three compulsory acquisition hearings, and insofar as the numbers of parties that have come forward to express the views have been exceptionally limited. And secondly, insofar as those parties are affected, is primarily affected, either by temporary matters relating to construction, or accesses, or temporary works. I think what*

is very interesting, that those that are affected permanently, those whose rights are actually been taken potentially, by compulsory acquisition, or rights formally taken in the land permanently, have not come and suggested that the cases are disproportionate. And I think that, in my submission, is very telling for a compulsory acquisition perspective. And certainly, in my experience, and undertaking, many cases that involve compulsory purchase, quite unusual. And I think that's something which does give an indication. Furthermore, in terms of that compelling case, when considered against those whose rights reflected insofar as those whose rights are directly affected permanently, have not chosen to avail themselves to suggest that balance has been struck. And apart from that, I say, I'm not going to dwell on the other aspects has been canvassed too many times. And I'm happy to leave it at that point. So thank you. Thank you very much."

9. When this submission was made SPR, and its advisers, knew that the true reason landowners had not given evidence was that they had been gagged and silenced.

10. SEAS has now managed – albeit with considerable difficulty – to obtain evidence of the system being used by SPR. A growing number of individuals are coming forward with copies of documents and other information relating to their interactions with SPR. The facts are becoming ever clearer – SPR has over a number of years put in place a comprehensive system which from start to finish neutralises opposition from landowners. The system goes beyond NDA/gagging clauses and compels not just silence, but also prevents participation in the planning process on all matters.

11. There are two agreements at the core of the system. The first is the Heads of Terms (*Appendix 5*) which is a template or standard form agreement that SPR concludes with landlords as a precursor to entering into the Option Agreement (*Appendix 6*). The Heads of Terms contain express gagging and non-opposition clauses. The second, the standard form Option Agreement drafted by Shepherd & Wedderburn, also contains gagging and non-opposition clauses. The two agreements are interlinked. For example, the "Incentive Payments" SPR offers and which are set out in the Heads of Terms to induce the landowner to agree to the gagging and non-opposition clauses, and which are set out in the Heads of Terms, are only actually paid when the Option Agreement is entered into, even though the gagging and non-opposition clauses apply and bite immediately on the entry into of the Heads of Terms.

12. SPR indicated at the hearing on 19th February 2021 that no one has in fact entered into the Option Agreements though it is clear that SPR has made strenuous efforts to pressurise landowners into entering such agreements. Whether this is true or not is however irrelevant to this complaint.

13. The practical effect of the agreements individually and collectively is to create a comprehensive system whereby SPR uses the enormous leverage that it enjoys under the compulsory purchase regime to impose confidentiality and gagging obligations in order to prohibit opposition during the whole planning process, which covers the ExA hearing, deliberations by Ministers and judicial proceedings.

14. The SPR system came into operation long before the planning process began. It is known that at least one Heads of Terms was signed in January 2019 and that many others were agreed in very early 2020. By the start of the ExA examination many

landowners (very possibly the vast majority) had already have been sterilised as potential objectors to SPR's applications.

B. **The SPR system**

15. A detailed analysis of the contract clauses is set out below. In summary the SPR system is simple and devastating and operates in the following way:

    (i) From long before the ExA opened the planning investigation SPR was in contact with those whose land it wishes to acquire or otherwise obtain rights over, via its agents. Landowners are shown the standard form Heads of Terms.

    (ii) The Heads of Terms contains a gagging clause and a ban on participating in the planning process. The landowner will also see that the Heads of Terms are linked to the Option Agreement and that payments will be made only if an Option Agreement is signed.

    (iii) To secure agreement SPR uses the powerful leverage bestowed upon it by the compulsory purchase regime. Although landowners can use their own lawyers to advise them there is no free negotiation in the sense of a deal between two willing counterparties with equal bargaining power. SPR and its agents inform landowners that: (i) the NSIP process means that the applications are overwhelmingly likely to be consented since that is the premise behind the NSIP system; and (ii) the choice in practice for landowners is therefore as between doing a favourable deal now or SPR using compulsory powers later and paying the bare minimum. There is no option not to do a deal. The case presented by SPR and its agents highlights their view that the decision is a foregone conclusion. Instead of settling for the low price offered by the compulsory purchase scheme landowners can instead receive a high price for their land in exchange for agreeing to be bound by the Heads of Terms, and subsequently the Option Agreement.

    (iv) The Heads of Terms is a very detailed agreement running to 65 clauses. Many of the clauses relate to matters that will later go into the Option Agreement. But the gagging and non-opposition clauses are intended to be immediately enforceable. Such clauses are not conditional and do not amount to agreements to agree. They operate for the entire period up until an Option Agreement is entered into, if ever. The agreement contains detailed provisions on enforcement which seek to keep any dispute, for instance over confidentiality, away from the courts. There would be no need for the inclusion of confidentiality provisions and dispute resolution mechanics if the agreement could not be enforced as legally binding – there would be no dispute to resolve and no confidentiality to rely upon – such provisions would only ever be included if there was an *intention* to create a legally binding and enforceable agreement.

    (v) The Heads of Terms bind the landowner until such time as the Option Agreement is entered. If it is not entered, the Heads of Terms continue in force. The Heads of Terms can therefore apply throughout an entire planning process. By their terms they cover not just the present examination but also

any further consideration of the planning application by the Secretary of State or the courts.

(vi) The Option Agreement is also a lengthy and complex document. It imposes express confidentiality obligations which prevent the landowner being candid and honest about the existence of the gagging and non-objection clauses. It contains an express prohibition on making any representations about the planning application which would cover representation to the ExA, to Ministers, to their MP or to the courts. The agreement stifles the possibility for any landowner to provide assistance to any third person opposing the applications.

(vii) The agreement contains an additional restriction to cater for the possibility that a landowner might *already* have given evidence to the Authority before the agreement is signed. It compels the withdrawal of prior submissions and evidence. If a landowner does not agree to such withdrawal, they of course do not get paid.

16. The agreements impose a straitjacket around a landowner's ability to object *in any way* during the course of the inquiry and subsequently, and they require the landowner to dissemble even when asked direct questions by the ExA or a Minister or a court.

17. SEAS sets out the analysis in law of the implications for this investigation of SPR's strategy in section J below.

18. This investigation is coming to an end. SPR's tactic has been effective. On the myriad of issues relating to the impact on the locality of these applications, those with a powerful direct interest in the proceedings have been silenced.

C. <u>The SPR system: the contract terms</u>

19. SEAS now turns to describe the relevant contractual provisions used by SPR.

The Heads of Terms

20. The prohibitions in the Heads of Terms are short, simple, and comprehensive. SEAS now has a number of copies of SPR's Heads of Terms, provided by landowners. There are minor differences between them, but the basic system is the same. For ease of reference the main clauses in issue are identified as Clauses A, B and C.

21. Clause A sets out the Incentive Payments to be paid by SPR to the landowner. These are made:

> "*... for signing Heads of Terms payable on completion of the Options Agreement.*"

Under the agreement payments are also made conditional upon the landowner agreeing a "*Statement of Common Ground*" with SPR.

22. Clause B is short and unequivocal. It prohibits objections from the landowner:

> "*Planning Matters*
>
> *The Grantor will not object to the Developer's application for Development Consent nor any other planning application(s) associated with the Projects.*"

23. Clause C imposes confidentiality. It is a classic gagging clause. It is drafted in absolute terms and it is unlimited in time:

> "*Confidentiality*
>
> *These Heads of Terms are confidential to the parties named whether or not the matter proceeds to completion save that reference to them having been entered into may be referred to with the Planning Inspectorate*."

24. The following points are made:

(i) The Incentive Payment is a payment made only upon entering the Option Agreement demonstrating the linked nature of the two agreements. A landowner only gets paid if she/he enters the Option Agreement.

(ii) Clause B prohibits the landowner from objecting. The prohibition is on the right to "*object*". This is a very a broad term which encompasses all aspects of opposing the application. It is absolute. It covers any activity which amounts to objecting such as: putting in representations or evidence against SPR; supporting any campaigning group such as SEAS who will make representations on the landowner's behalf; funding SEAS or any other opposing body or group to make representations on the landowners behalf.

(iii) Clause B is also not limited to the ExA stage of an "*application for Development Consent*" since the application remains live during consideration by the Secretary of State and during any consideration of the application by the Courts.

(iv) The words "*nor any other planning application(s) associated with the Projects*" expand the prohibition to "*associated*" applications. The word "*associated*" is not defined but by definition extends beyond the applications in issue. It ensures that the prohibition upon opposition is comprehensive.

(v) The prohibition is not limited to the land which might be the subject of a compulsory purchase power. It extends to <u>all</u> of the land and <u>all</u> activities covered by the "*application for Development Consent*". It covers in the present case everything including but not limited to: off-shore turbines, landing of the cable, installation and operation of the cable, connection in Friston, its impact upon the environment, etc.

(vi) There is no connection between the prohibition and the exercise of compulsory purchase powers which at its highest concerns one plot of land only.

(vii) Clause C goes beyond a typical gagging clause. It is drafted in virtually absolute terms. It prevents any reference being made to the Heads of Terms which therefore must be kept secret. They cannot be shown to any third party

including the Authority, or to the Secretaries of State or to a court. There is no carve out permitting the grantor to disclose the Heads of Terms even if required by law. The prohibition operates even if the *matters do not proceed to completion*. Once the Heads of Terms have been entered, they prevent the landowner from admitting that she/he has been gagged or prohibited from objecting *even if* the subsequent Option Agreement is never signed, the land is never bought or SPR abandons the broader planning application.

(viii) The expression in clause C "*save that reference to them having been entered into may be referred to with the Planning Inspectorate*" highlights its objectionable nature. If the ExA asks a landowner for details of agreements entered into, or whether they have been gagged or prevented from submitting evidence, the landowner must either refuse to respond or at best admit only the bare fact that Heads of Terms *have been entered into*. The landowner must dissemble and be uncooperative. This exception is only for the "*Planning Inspectorate*" and does not apply if, for instance, a Secretary of State were to ask a landowner whether she/he had entered into a gagging or non-objection clause. In that scenario the landowner could not even admit that the Heads of Terms had been entered into at all. She/he would have to dissemble or lie.

The Option Agreement

25. SPR said at the hearing on 19th February 2021 that no one had entered an Option Agreement. Even if true, SEAS knows that SPR is actively seeking to get landowners to sign up. They only get paid if they do. And even if true the way in which SPR has deployed the Option Agreement in relation to Dr Gimson is a vivid illustration of how SPR goes about its policy of supressing evidence.

26. However SEAS's objections do not depend upon the Option Agreement. As has become plain the main work horse in suppressing evidence is the Heads of Terms, which SPR has all along declined to place before the Authority.

27. The substance of the prohibitions in the Heads of Terms are largely replicated in the Option Agreement. The three clauses of greatest interest are as follows:

> "**Permissions**
>
> The Grantor shall not make a representation regarding the EA1N DCO Application nor the EA2 DCO Application (and shall forthwith withdraw any representation made prior to the date of this Agreement and forthwith provide the Grantee with a copy of its withdrawal) nor any other Permission associated with the EA1N Development or the EA2 Development and shall take reasonable steps (provided that any assistance is kept confidential) to assist the Grantee to obtain all permissions and consents for the EA1N Works and the EA2 Works on the Option Area (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and completion of such permissions and consents)."

"Confidentiality

The terms of this Agreement shall be confidential to the parties both before and after completion of the Deed(s) of Grant and neither party shall make or permit or suffer the making of any announcement or publication of such terms (either in whole or in part) nor any comment or statement relating thereto without the prior consent of the other or unless such disclosure is required by the rules of any recognised Stock Exchange on which shares of that party or any parent company are quoted or pursuant to any duty imposed by law on that party or disclosure is required by the Grantee in connection with or in order to obtain the EA1N DCO or the EA2 DCO or any other planning application associated with the EA1N Development or the EA2 Development or any Permission."

"No misrepresentation

This Agreement incorporates the entire contract between the parties and the parties acknowledge that they have not entered into this agreement in reliance on any statements or representations made by or on behalf of one party to the other save those written statements contained in the written replies made by the Grantor's solicitors to enquiries raised by the Grantee's solicitors."

28. As to the Permissions clause:

(i) The Grantor shall not "*make a representation regarding the EA1N DCO Application nor the EA2 DCO Application"*.

Comment: This is a direct contractual obligation prohibiting a grantor from assisting the ExA with evidence collection. It has nothing to do with normal planning considerations which might properly be the subject of an option agreement. The Grantor cannot by itself or by using a representative body or association, submit any evidence or make any representation of any sort to the ExA as part of this inquiry.

(ii) The Grantor "*shall forthwith withdraw any representation made prior to the date of this Agreement*".

Comment: This compels any person who has already objected to withdraw that objection. The object is to ensure that any evidence unhelpful to SPR is not taken into account by the ExA.

(iii) The Grantor will "*forthwith provide the Grantee with a copy of its withdrawal*".

Comment: This is part of SPR's enforcement mechanism to ensure that the ExA is deprived of relevant evidence.

(iv) The Grantor "*shall not make a representation regarding ... any other Permission associated with the EA1N Development or the EA2 Development"*.

Comment: This prevents the Grantor from objecting to any other part of the application to the cable (See the Definition of Permission and its linkage to the Cable as defined in the Grant). So, for instance, in the case of Dr Gimson, since the cable is due to be landed very close to his mother's property, he is not only

prevented from complaining to the ExA about the impact upon his own property he is also prevented from objecting about other matters of concern to him.

(v) The Grantor shall "*take reasonable steps to assist the Grantee to obtain all permissions and consents for the EA1N Works and the EA2 Works on the Option Area*".

Comments: Since permission and consent for the Option Area is contingent upon the application as a whole going ahead this would extend to compelling Grantors to assist SPR generally.

(vi) The Grantor shall keep "*confidential*" all of the steps required in (v). There is no logical reason why SPR would impose a duty of secrecy unless it was seen as part and parcel of the general gagging mechanism in the agreement.

29. In relation to the Confidentiality clause:

(i) *"The terms of this Agreement shall be confidential to the parties both before and after completion of the Deed(s) of Grant*".

Comment: This is a classic gagging clause; any disclosure of the agreement or its terms is a breach of confidence. The duty to preserve confidence post completion of the Deed of Grant is not limited in time. It extends to all stages following a recommendation made by the ExA, for example during deliberations by Ministers and during a subsequent judicial review.

(ii) "*neither party shall make or permit or suffer the making of any announcement or publication of such terms (either in whole or in part)*".

Comment: This speaks for itself: A Grantor under a gagging order cannot use third parties to circumvent the gag. It prohibits not just disclosure of the agreements but also from commenting upon it, for example to SEAS or other opposition groups or to Ministers or the courts. A landowner could not prepare a witness statement in judicial review proceedings.

(iii) Neither party shall make or permit to make or suffer to be made "*any comment or statement relating thereto without the prior consent of the other*"

Comment: This is part of the SPR enforcement mechanism whereby it controls freedom of speech and who can say what and to whom. If a Grantor wished to speak to SEAS or to the ExA it would need the prior consent of SPR.

(iv) Disclosure is allowed pursuant to any duty "*imposed by law*" on that party.

Comment: A Grantor would be permitted to give evidence to the ExA but only if the ExA imposed a *legally enforceable duty* upon that person to do so. There is no right voluntarily to proffer evidence to the ExA.

(v) Disclosure can be made by the Grantee (ie SPR) "*in connection with or in order to obtain the EA1N DCO or the EA2 DCO or any other planning application associated with the EA1N Development or the EA2 Development or any Permission*."

Comment: SPR can selectively disclose the terms of the agreement and, importantly, parts of it if it helps its case. But under the agreement it is under

no obligation to disclose the whole of the agreement since this would allow sunlight to fall upon the gagging and non-opposition clause. If the ExA makes a legally binding order against SPR then SPR can provide disclosure, notwithstanding the stated confidentiality of the agreement. The gag is accordingly one-way whereby the grantor is bound to absolute secrecy but SPR has discretion to selectively disclose the arrangements as between the parties.

30. In relation to the "*No misrepresentations*" clause this creates a fiction that SPR has not made any representations about incentives or other inducements to agree to the gagging and non-opposition clauses in order to induce the entering of the Option Agreement.

31. The "*full facts*" have not been easy to unearth. SEAS has been told by a growing number of people that they are subject to these agreements. Most wish to remain anonymous because they fear reprisals from SPR. A number have taken legal advice and been advised that their agreements prevent them from speaking to SEAS or the ExA. They are told that they cannot speak to anyone about anything.

32. In practical terms landowners who are subject to one of these agreements have taken the position that they are prohibited from communicating with anyone. SPR's strategy has worked.

D. **The role played by Incentive Payments**.

33. SPR uses Incentive Payments to induce landowners to enter gagging and non-opposition obligations. In two documents entitled "*Funding Statement*" dated 20th November 2020 (on each EAN project) SPR recognises the existence of "*Incentive Payments*". These documents were authored by Shepherd & Wedderburn. They set out details of the payments made and anticipated to be made to landowners and they record the payments made in relation to *each* of the applications which adds up to £12.21m. It would appear that the cumulative sums paid out as of November 2020 was therefore c. £24.42m.

34. On page 12 SPR sets out the general assumptions it has used. The third is of significance (in bold below):

> **"General Assumptions**
>
> • The estimate has been prepared on the basis of Current Market Value which would be payable in the event of the Applicant acquiring land and rights under the terms of the DCO rather than by voluntary agreement. Associated disturbance is included. The costs associated with surveys which will be undertaken on a voluntary basis and compensated prior to the DCO being confirmed are excluded from this assessment.
>
> • The estimate relies on assessments of buildings from vantage points and internal property inspections have not been undertaken. In addition, further research has been completed via the internet, media, aerial and ground photography and from investigations into comparable local valuation evidence.
>
> ***• No allowance has been made for any Incentive Payments which would otherwise be payable for voluntary agreements (subject to meeting various criteria).***"

35. The Incentive Payments are subject to "*various criteria*" which are nowhere set out. It is clear from the Heads of Terms that they are payments to induce landowners and others to enter into agreements containing gagging and non-opposition clauses. SPR has not disclosed these criteria in any response submitted to the ExA. It is however clear that payments are conditional upon entering the Option Agreement.

36. SPR says in the document that Incentive Payments are not accounted for as part of the statutory compensation rules. The amounts paid and the criteria for grant are concealed and opaque.

37. Incentive Payment are integral to securing agreement of landowners to the gagging and non-opposition clauses. The facts relating to Dr Gimson are illustrative. Dr Gimson is clear that Incentive Payments were offered for his silence and to enable SPR to control what evidence he gave to the ExA.

E. **The willingness of landowners to come forward / the irreparable damage done to the planning process**

38. The willingness of landowners to assist SEAS has been affected by the aggressive approach of SPR during these proceedings. When local residents complain, SPR makes vague threats, demands that they turn up to explain themselves and no doubt to be subject to attack. They have labelled complainants, such as Dr Gimson, as "*vexatious*" and employed social media agents who, it seems to SEAS, were instructed to attack and troll SEAS and whose attacks only stopped when that conduct was referred to in public hearings.

39. Local residents take note of this conduct which has a chilling effect upon the willingness of those who wish to support SEAS and speak out to the ExA.

40. The SPR approach has also had a corrosive effect on good community relations. Friends are not now speaking to each other. They refuse to answer emails or calls. Locals suspect that others have sold out.

41. Gagging and non-opposition clauses are targeted at those with a land interest. By definition these include those who would have directly relevant evidence to give to the ExA. It includes all those along the affected coast line (such as Dr Gimson), all those along the cable route and all those in and around Friston. These are people and organisations with expert local knowledge.

42. Such persons or bodies could give relevant evidence on the entire range of issues arising including: coastal erosion and the impact on local communities, traffic, employment, rare habitats, environment, villages and loss of amenities, tourism, mitigation, cumulative impact, noise, light, mental health, etc.

43. Given what is now coming to light it will come as no surprise that (with notable exceptions) virtually no one appeared at the compulsory purchase hearings to oppose SPR. Because SPR embarked upon its gagging policy well before the opening of the planning process and the evidence collection exercise it has succeeded in excluding potential objectors from the investigation, from the very start.

44. The damage has therefore been done. SPR has succeeded in undermining the planning process.

45. It is now impossible for that damage to be remedied. The ExA has structured the evidence collection exercise to address different topics. This enabled the parties to marshal their evidence and resources on an issue by issue basis as it evolved. The evidence tendered has been proactive but also reactive. All parties put forward their factual and expert cases but also responded to evidence raised by others.

46. This sensible process was facilitated by the ExA providing lists of issues and questions to focus attention.

47. This is not a process that could therefore be replicated after the event in some contrived curative exercise. The affected persons would not be up to speed with the issues or their complexities and nuances. It is, in any event, hard to imagine that they would wish to become embroiled in a controversial and highly charged exercise. They would not wish to spend money on lawyers or experts. And some might also take the view that since SPR has promised to pay them off – handsomely – they would not wish to risk losing payments when they still consider the outcome to be inevitable.

48. It is for reasons such as this that in law the courts do not look favourably upon attempts by decision makers, after the event, to seek to paper over the cracks (see analysis at section J below).

49. SPR's evidence has stood unchallenged by those who would have an intimate knowledge of local conditions and could have corrected and acted as a counterweight to it. Organisations who oppose SPR have been denied human and financial support.

50. SPR would not have gone to such lengths to impose gagging clauses unless it thought it could make a real difference to the outcome.

F. **SPR's response**

51. SPR has submitted a four-page response. Its response dated 4th March 2021 is full of self-righteous indignation. It says that the complaint is "*inaccurate"* and "*unfounded*".

52. When SPR protested in this way it was of course aware that in its Heads of Terms it imposed gagging clauses and prohibited objections. Had it been transparent and disclosed these facts then it is hard to know what it could have said in its response.

53. SEAS is entitled to infer that this is the reason why SPR has chosen not to lay the "*full facts*" and the relevant "*material*" before the Authority.

54. SEAS responds to SPR's points as follows.

55. First, SPR says it is concerned that assertions are being made "*without the consideration of the full and appropriate facts being made*". But if this is case why has SPR declined to set out those "*full and appropriate facts*", as it said it would do?

56. Secondly, SPR also says that contractual provisions must not be viewed in "*in isolation without having a full understanding of the broader context of the contractual arrangements in which it sits".* SEAS agrees, which makes it all the more inappropriate for SPR to refuse to enable the ExA to have a "*full understanding of the broader context".*

57. Thirdly, SPR says that it is not obliged to produce documents because they are confidential. This is self-serving nonsense. It has always been the case that if *genuine* confidentiality issues arise the ExA could take appropriate steps to preserve that

confidentiality. SPR now relies upon its own gagging mechanisms as a reason to claim that everything should *even now* remain secret. Yet, at the same time SPR also says that the Heads of Terms are not legally binding. But if this is so then there is, on SPR's own case, nothing in law which makes the agreements confidential and which would prevent SPR from disclosing them.

58. Fourthly, SPR says:

> "We submit that the central complaint is unfounded. ***Parties to commercial discussions are able to agree contractual provisions which would prevent another party acting in a particular manner***. Furthermore, it is unsound to consider one clause of a commercial contract in isolation without having a full understanding of the broader context of the contractual arrangements in which it sits."

59. As to the euphemistic expression "*prevent another party acting in a particular manner*" it is a statement of the obvious that a contract prevents another person from acting in a particular manner, because to do so would be a breach of the contract. But that is hardly a justification which allows SPR to use its statutory leverage to impose gagging and non-opposition clauses on landowners, using those statutory powers for an improper purpose. The fact that the objectionable clauses are in contracts is part of SEAS's core objection.

60. Fifthly, SPR relies upon RICS. This is utterly misconceived. RICS is a professional body that supports surveyors. If RICS had in fact stated that it was acceptable for applicants to use their statutory powers to prevent landowners and others from assisting a planning inquiry or Ministers or the courts, then this would have been a national scandal. RICS does not say this. The relevant paragraph in the RICs guidance is as follows:

> "*Landowners may be prevented from objecting to any planning applications in relation to their land but should not be obligated to overtly support the scheme as political issues may make this difficult. Any support should be on a voluntary basis, but in reality, most landowners would be happy to provide support where they can. Some schemes might involve public consultation and developers will commonly run an exhibition to engage with the local community.*"

61. SPR misrepresents this guidance. It says that a developer can prevent the landowner from objecting in relation to "*their land*" ie the land that is the subject of the agreement, which, of course, will be a tiny fraction of the land the subject of the overall application for consent. So, to take the case of Dr Gimson, he could, according to RICS, have entered an agreement preventing him from objecting to the application insofar as it covered his plot of land (an acre or two). RICS does not say that by virtue of a developer using compulsory purchase powers in relation to *that plot* it becomes entitled to squash all opposition to the application as a whole, and block objectors giving evidence to a public inquiry on unrelated matters.

62. Indeed RICS makes the point that efforts to prevent people from participating in inquiries raises "*political problems*". That is an understatement.

63. So far as the limited guidance of RICS that a developer can prohibit objections in relation to the landowners particular parcel of land, this must in any event be highly

questionable. A developer using statutory powers to compel a landowner to agree should not, by virtue of using the leverage attached to that power, be able to prevent the landowners saying: "*I felt compelled to agree but I still strongly object*". That however is not the issue SEAS is complaining about.

64. In the present case, SPR was, following his objection to the clauses that are the subject of this issue, willing to permit Dr Gimson to object to one aspect of his own proposed land deal (water) but was adamant that he had to withdraw all previous evidence and not object to the overall application. This is the very opposite of the RICS guidance.

65. The views of an experienced Fellow of RICS – Mr Peter Watson – have already been recorded in a letter published on the ExA website. His professional opinion will reflect the views of other experienced and honourable professionals in the field. He disagrees with SPR:

> "*I have seen from the SEAS website that a formal Complaint Letter has been sent to you regarding Scottish Power Renewable's (SPR) Option Agreement entered into with certain landowners and others, and its implications for those signing it.*
>
> *I wish to lodge my complaint and disagreement with Scottish Power's use of non-disclosure agreements within their Option Agreements.*
>
> *It cannot be right that SPR's Option Agreement contains a clause which makes an agreement for a real estate transaction conditional upon an individual landowner being contractually compelled not to oppose SPR's planning application and withdrawing any evidence already given.*
>
> *In the circumstances governing SPR's real estate acquisitions no landowner should be placed in a position whereby they are gagged from making planning representations when voluntarily selling their land to SPR, 'voluntarily' being a moot point with the alternative being compulsory purchase. Such a non-disclosure option agreement in the normal way of things might be considered to be a normal contractual term but these contracts for sale/purchase are far from normal 'open market' transactions, an 'open market' transaction by definition requiring a willing seller.*
>
> *To weight a contract so unreasonably and unfairly in favour of SPR given SPR's dominant position in the transaction is unjustifiable and inequitable. This non-disclosure clause needs to be removed from real estate sale/purchase option agreements sought by SPR.*"

66. In short, the reliance placed on RICS guidance is misplaced. Read fairly the RICS guidance condemns SPR's conduct.

67. Finally, SPR makes veiled threats that those who oppose it should be treated as "*vexatious*". The complaint is not vexatious. It raises an issue of major importance backed by appropriate evidence. Indeed in the ExA procedural decision of 22nd February 2021 the Authority stated that the SEAS complaint raised a "*general point of public importance*".

68. The fact that SPR continues to huff and puff and threaten whilst refusing to disclose the "*full facts*", rather says it all.

69. SPR's response is a mix of prevarication, obfuscation and bluster. The one thing that SPR has not done is substantiate its assertions despite its clear statement to the Authority that it would provide the full facts and relevant material and despite the Authority having given ample chance to SPR to fulfil this promise.

70. At the hearing on 19th March 2021 SPR added some additional points which can be summarised as follows:

    (i) SEAS's complaint is inaccurate and incomplete;
    (ii) SPR acts in a flexible and reasonable manner permitting those who wish to speak to do so;
    (iii) the Heads of Terms are not legally binding;
    (iv) landowners are able to receive advice from their own lawyers and agents; and
    (v) SPR acts appropriately and "*takes great pride*" in its negotiations.

71. These arguments are hopeless:

    (i) **SEAS's complaint is inaccurate and incomplete**: SEAS has the Heads of Terms and the offending clauses are there in black and white. It is SPR who to date has demonstrated a singular lack of candour and transparency. The Heads of Terms need only to be read for their object and effect to be manifest. They speak for themselves.

    (ii) **SPR is "flexible"**: As to the unsubstantiated assertion that SPR acts in a flexible and reasonable manner, permitting those who wish to speak to do so, this is disingenuous. The Heads of Terms prevents landowners speaking out *at all,* so there is nothing there that SPR is flexible about. Any need on the part of SPR to be "*flexible*" arises *only* in relation to those landowners who breach the Heads of Terms and give evidence or fails to maintain absolute secrecy. This is where the Option Agreement comes in because it compels withdrawal of past evidence. The mere fact that SPR would even include such a term in a standard form agreement is *per se* objectionable. So far as SEAS is aware it is only Dr Gimson who has refused to be silenced and in relation to him the facts speak for themselves. SPR was not flexible; they were intractable. The short answer is that the Heads of Terms prevent evidence arising in the first place, so any question of flexibility in relation to evidence is simply academic.

    (iii) **"Not legally binding": SPR has argued that the Heads of Terms are not legally binding**. It is said that the Heads concern only matters which are to be contained in the future Option Agreement and that therefore it is no more than an unenforceable "agreement to agree". This is clearly not true in relation to Clauses B and C, the non-objection clause and the gagging clause. By their terms they apply <u>immediately</u> as from the moment that the planning process commences. Their presence in the Heads of Terms is the reason why SPR was so anxious to sign up as many landowners as it could to the agreement <u>before</u> the planning process started. The restrictions bite right now, even if no Option Agreement is in place. Moreover, the Heads of Terms contains a detailed enforcement mechanism which governs "*claims*" and "*disputes*". A "*claim*" is a legal concept and in context refers to a claim for breach of

a binding contract. In this case SPR can bring a claim for breach of clauses B and/or C against a landowner who seeks to object or who does not observe strict secrecy. The dispute resolution mechanism keeps these contract claims and disputes away from the courts, and thereby hides them from transparency. The Heads clearly amount to a legally binding contract in relation to these clauses. A number of landowners that SEAS has spoken to sought independent legal advice as to whether they could discuss their position with SEAS and they were told that they could not. This is so even though many other clauses only have a future effect, when the Option Agreement is signed, for instance the obligation to pay the Incentive Payment which is stated only to arise when the Option Agreement comes into being. The fact that an agreement uses the phrase "*subject to contract*" does not in law mean that all provisions in the agreement are not binding. Indeed, the agreement does *not* say that it is not intended to be legally binding.

(iv) **What if:** Finally, even if, to test SPR's argument, the Heads of Terms were not legally binding in their entirety this is immaterial. The clauses have worked as SPR intended to them to work. They have succeeded in creating a climate of concern and fear whereby landowners will not speak out and this has been confirmed by landowners' legal advisers. What ultimately matters is the actual effect of the clauses and as to this they bite sharply; because SPR intends them to do so.

(v) **Landowners are able to receive advice from their own lawyers and agents:** Any landowner can seek advice. That is the same viz a viz agreements whereby NDAs are imposed and include the cases that the Housing Communities and Local Government Committee of the House of Commons is investigating and criticising. The fact that a lawyer advised in such cases has not prevented the clauses being subject to objection. The existence of lawyers is simply beside the point. Here there is no equality of bargaining power. SPR is the dominant and unavoidable negotiating partner who will not go away. They are unavoidable because they can use statutory power of compulsion. Moreover, they are deep pocketed and employ armies of lawyers and agents. As Dr Gimson explained during the hearing of 19th March 2021 negotiating with SPR left him, and he considers many others, feeling "*significant discomfort and distress*", the negotiations were "*very difficult*".

(vi) **SPR takes "great pride" in its negotiations:** SEAS is sure that SPR does take pride in its negotiations because SPR has been effective in achieving its stated goal of preventing evidence being given in opposition to its applications and in securing secrecy. Standing back the basis of negotiations with SPR is fixed by the unequivocal language of its Heads of Terms. Its agents and lawyers are self-evidently instructed to secure agreement to these terms. If they have pride in their work, it is because they succeed in this.

72. At base this case is quite simple. No applicant for development consent is or should be entitled to use statutory compulsory purchase power to obtain an advantage beyond that pertaining narrowly to the particular land in question. There is no connection between the use of that power in relation to a single plot of land and a collateral attack

upon an entire planning process which covers matters vastly beyond that one tiny piece of land.

73. Yet this is the very premise upon which SPR's contractual system operates. SPR has not advanced any argument which addresses this.

G. **Why this issue is so important**

74. This issue, having come to the fore, cries out to be grappled with. It is matter of national importance.

75. Green energy decisions can have adverse localised effects. The pursuit of legitimate Green policies will be undermined if the public consider that offshore projects with harmful onshore effects are being forced through under unfair procedures. Confidence in the system is fundamental to the successful roll out of Green energy and it will be dented and undermined if SPR is permitted, covertly, to prevent the investigation being fair, objective and transparent.

76. The question of NDAs and gagging clauses in the building and development sectors has recently been in the press. There is growing public anger about the use of such gagging mechanisms.

77. On 18th January 2021 Clive Betts MP, Chair of the Housing Communities and Local Government Committee of the House of Commons wrote to The Rt Hon Robert Jenrick, Secretary of State for MHCLG, concerning the inclusion in cladding funding agreements of prohibitions on recipients speaking to the press, journalists or broadcaster. The Committee has made clear its objections. The Housing Minister responded by saying that we that we live in a free country, "*let them speak*". A formal response to the issue is awaited. See Appendix 3 – the letter sent to the Secretary of State

78. Even more recently Clive Betts MP has also aired his concern at the use of gagging clauses by developers of new housing. The BBC (13th March 2021) reported an interview he had with the Money Box programme in which Mr Betts said that the practice of developers of new houses seeking to gag house purchasers from talking about defects was "*appalling*" (*Appendix 4*). The Home Builders Federation denied that the use of NDAs was widespread. However, a former CEO of the Chartered Institute for Building said that they were "*quite common*". He said that such clauses are used to silence people and it was a "*despicable practice.*"

79. The system used by SPR however goes well beyond the sorts of limited clauses being used by developers in new house build projects and in relation to cladding funding. They extend to neutralising participation in a public planning process intended to be conducted in the public interest.

80. The Authority will also be aware of the complaints already made about NDAs in relation to the HS2 development. It could be that the practice of suppressing objections to planning investigations is used in other planning cases.

81. Given that SPR has used standard form agreement and that it seeks to argue that its conduct is normal it is reasonable to infer that it might well have used this same system in relation to earlier applications for planning consent.

H. **The evidence of Dr Gimson**

82. It is helpful to an understanding of how SPR negotiates to summarise the position viz a viz Dr Gimson. A statement prepared by him which pulls together his account is included in Appendix 1.

83. The case of Dr Gimson is a microcosm of the approach adopted by SPR and its determination to prevent opposition and suppress evidence.

84. SPR's behaviour towards Dr Gimson is cynical.

85. He is illustrative of the sorts of evidence that SPR has squashed. As he has already explained to the Authority he has on his own behalf and that of his mother refused to be silenced. SPR wished to have access to his land to conduct certain tests. He signed Heads of Terms on 17th January 2019. Thereafter very little happened until early 2021.

86. He gave powerful evidence during January 2021 about the threat posed by the applications to the Wardens Trust charity. It is his evidence, supported by that of his fellow trustees, that if the applications are consented, they pose an "*existential*" threat to the Charity.

87. Within days of him giving this evidence, SPR set out to supress it and to prevent the ExA being able to rely upon it. It is not credible to say that there is no connection between the giving of this damaging evidence and SPR's almost immediate attempts to suppress it. He was shown a copy of the Option Agreement on 26th January 2021, just days after he had given evidence.

88. The draft was descibed to him as "*generic*". It had the name of another well known local landowner on it but he was told that this was a mistake. He had been sent the draft which had been used with this other person and the name should have been been removed.

89. He was offered two payments to enter the agrement. One was called a "*Gateway Payment*" and was for £1000; and a second was called an "*Incentive Payment*" and was for £7000. Dr Gimson believed that these were being offered for his cooperation and silence in relation to the planning process. He objected to the gagging, confidentialty and no misrepresentation clauses.

90. The response of SPR is significant. It remained insistent that the offending gagging and non-opposition clauses remain. SPR also wanted Dr Gimson's recent evidence formally withdrawn. However, following Dr Gimson's objection, SPR offered a very small carve out in relation to an issue concerning the water acquifer.

91. SPR sent back a revised draft agreement with the following gagging and non-opposition clause:

> "The Grantor shall not make a representation regarding the EA1N DCO Application nor the EA2 DCO Application (and shall forthwith withdraw any representation made prior to the date of this Agreement and forthwith provide the Grantee with a copy of its withdrawal ***save as the Grantor shall have absolute discretion over the withdrawal of all comments pertaining to the impact of the Project(s) on ground source water aquifers only in document refs. REP1-242, REP2-098, REP5-135 and REP5-136)*** nor any other Permission associated with the EA1N Development or the EA2 Development

and shall take reasonable steps (Provided That any assistance is kept confidential) to assist the Grantee to obtain all permissions and consents for the EA1N Works and the EA2 Works on the Option Area (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and completion of such permissions and consents)."

92. The text in bold is the new text that SPR proposed. If Dr Gimson had agreed all that he would have been allowed to do was retain his prior objections concerning the water acquifer. He would have had to bend to the yoke on everything else. He would have been forced to withdraw all of his evidence about the Wardens Trust. He could not have given future evidence about mental health or cited expert evidence from third party sources or procured the supporting evidence of third party specialists in that field.

93. If Dr Gimson had given in to SPR the impression would have been conveyed to the world at large that a once vocal opponent was now content with SPR's applications, a travesty of the truth.

94. SPR did not revert to Dr Gimson to confirm that it would conclude an agreement with him and make the relevant payments but still allow him to continue to retain his evidence and object in the future. SPR refused to deal with him because he objected to the gagging and non-opposition clauses and because he wished to persist in opposing SPR and retain the freedom to give evidence to the ExA as he did, recently, in relation to mental health.

95. There is a recent postscript to this. On the evening of 18th March 2021, the night before the hearing during which this issue was discussed, SPR contacted Dr Gimson and for the first time suggested that there might be a technical solution to his problem involving the moving of the cable route. Dr Gimsons is of course anxious to take any constructive step which might save the charity.

96. The case of Dr Gimson vividly highlights the importance of the right to object and give evidence. SPR responded, but only at the 11th hour and only in anticipation of a hearing about its gagging policy, to propose a solution to a landowner with a problem. But for this it is improbable in the extreme that SPR would have made any approach to Dr Gimson.

97. Dr Gimson has addressed what happened in his statement. His evidence is as follows:

"*There is one other matter I should mention. I wished to be heard at the hearing on 19th March 2021 when this issue arose. The night before, on Thursday 18th, I was left a message by a senior Project Manager at SPR, who said that he wished to speak to me urgently, that evening. We did have a conversation during which SPR suggested that there might be ways of shifting the position of the cable to minimise the risk to the charity. I do not know if that is technically feasible or not. During this conversation SPR did not make any concessions about my evidence or participation in the conduct of the examination.*

It seems clear to me that had I not been vocal in my opposition by submitting evidence and appearing at the oral hearings, SPR would not have contemplated

making any approach to Wardens Trust.

I have always objected to attempts to silence potential witnesses. There are many other landowners who, like me, have deep concerns about this development. I think that my experience demonstrates the vital importance of all affected persons being able to give evidence without prejudice. The groups of landowners affected by compulsory purchase powers are the most directly affected by these applications and they are also amongst the most knowledgeable about the local environment. The evidence that they could have given would have been very important.

In addition the chance to give oral evidence and to object is critical because it forces SPR to confront the myriad localised issues that landowners face. As I have said had I not been vocal in my complaints and had I not been down to speak at the hearing on 19th March 2021, then I very much doubt that SPR would have made any approach to me at all.

An overriding concern of mine is to save the Wardens Trust for the future, as all Trustees are required to under Charity Commission guidance, and for future enjoyment and healing of visitors to our unique site. I will continue to be constructive in seeking to do this. But even if a solution is found, my objection to the approach that SPR has taken remains firm. It seems to me to be simply wrong that SPR should be permitted to do this.

I make this statement upon the basis that it is true to be the best of my knowledge and belief. I would be happy to provide any additional evidence to the Examining Authority and to provide any further assistance that the Authority might seek."

98. The evidence of Dr Gimson is that of <u>one</u> person, who, at considerable financial cost, has stood up to SPR. He is <u>one</u> small case study of the effects of SPR's strategy. If he had not the courage to resist, then all of his evidence would have been silenced and lost.

99. The case of Dr Gimson, a person whose integrity SPR has challenged and who they say may be "*vexatious*", highlights just why SPR's strategy of silencing critics and opponents is so profoundly damaging to the planning process and to the public interest.

I. <u>The evidence given by local residents.</u>

100. SEAS has received evidence from those wishing to remain anonymous and who do not wish to be referenced, even in anonymous form. A number have been advised by their lawyers that they should not help SEAS. One email from a person who has however authorised SEAS to use the communication (though still in anonymised form) reads as follows:

> "*As for the matter of "negotiating" the SPR Terms of Agreement - what rubbish. We were very forcefully told at a Zoom meeting with our agent, SPR's agent and SPR's representative way back in 2020, that if we did not accept their Agreement, they would employ Compulsory Powers, and we would be entitled to only a minimum amount of compensation - we felt it was intimidation.*

The SPR comment that "no such agreements had actually been entered into" (The Telegraph) is a blatant lie. I know for definite two people who have told me they are tied up in Non-Disclosure Agreements and are barred from commentating on anything to do with SPR's applications. Regarding their so called "proven track record of positive community engagement", I am still waiting for my first communication from SPR."

101. SPR has picked upon certain local residents and criticised their evidence as inaccurate. SPR objected to all letters sent by local residents opposing SPR being placed upon the ExA website. SPR describes anyone who complains about it as vexatious. SEAS therefore sets out below excerpts from evidence of residents who have *not* (to date) been singled out by SPR for attack and criticism. Their evidence shows the real anger that is felt about SPR's approach. The full text of each letter can be seen on the website.

102. This evidence addresses the consequences of the SPR policy. It highlights:

(i) the real anger felt by residents as to the harmful effect on free speech and the integrity of the planning process;
(ii) the pressure imposed by SPR;
(iii) the absence of free negotiations and the use by SPR and its agents of the threat of compulsory powers to secure agreements;
(iv) the impression conveyed that NSIP processes are stacked in favour of applicants and that this is used in negotiations to secure agreements;
(v) the improper linkage of compulsory purchase powers to the suppression of evidence to the inquiry;
(vi) the impact of the loss of relevant evidence to the evidence collected in the inquiry;
(vii) the propriety of lawyers advising on the use of such gagging clauses in the context of planning inquiries;
(viii) the fact that in other local planning processes, such as in relation to Sizewell, the applicant is not seeking to impose equivalent gagging and non-opposition clauses;
(ix) the devastating impact on the lives on the personal lives of those who are being subjected to the threat of compulsory purchase; and
(x) the harm being done by policies such as that used by SPR to democracy and confidence in public decision making.

103. All of the following is in the public domain:

<u>From Richard Cooper:</u>

"*... These non-disclosure agreements {NDAs} are undermining the integrity of the statutory application procedure. The risk is that Examiners are not hearing the voices of many people affected, because these parties have been encouraged to sign NDAs believing that the outcome of this Examination is a foregone conclusion, because of its NSIP status. There is also pressure on everyone concerned to get on with it and there are of course, financial incentives to sign before it becomes a compulsory action.*

... ln a fair, democratic and open society it is important that all people can speak freely.

These NDAs are unfairly shifting the balance of the debate in favour of the developers and given the immense resources that they have to throw at this process, local communities are even further disadvantaged."

From CF and CH Courage:

"*In a just and democratic country like ours it is vital that everyone can speak freely. SPR's use of NDAs are unjustly shifting the balance of the debate in favour of the developers with all their huge resources*."

From Simon Seymour-Smith:

"*... Surely these NDAs are preventing legitimate comment and objection from being aired and heard by the Examiners as they should, ... The whole application procedure seems now to have been hijacked by these, and we want to complain strongly and urge you and the 'powers that be' to take action to outlaw the practice of NDAs in order to protect the integrity of the entire process. Otherwise, the whole idea and purpose of so-called public consultation is going to be unfairly and severely skewed in favour of SPR. We live in a democracy here in the UK*."

From Katherine Mackie, Chair, on behalf of the Aldeburgh Society:

"*... These non-disclosure agreements risk undermining the integrity of the statutory application procedure, preventing as they might the expression of honest and genuine opposition to SPR's application.*

The rule of law requires and provides a right of free speech. The DCO process is being undermined by these attempts to curtail that right and the resulting shift in the balance of power in favour of the developers with greater resources further disadvantages the local communities affected by the application."

From Tony Morley:

"*… This is completely unacceptable, undemocratic and dissipates the true extent of the opposition.*

Such clauses within an NDA would also appear to breach the Solicitors Regulation Authority's (SRA) warning notice and guidelines on the wording of NDAs. The SRA Standards and Regulation advice to the legal profession state "you do not abuse your position by taking unfair advantage of clients or others".

Further it says under the heading of "Duty not to take unfair advantage" by "applying undue pressure ..... in your dealings with the opposing party". It appears that SPR's legal team have completely ignored the SRA standard for NDAs in these cases."

From David Steen:

"*I am not legally trained but in my mind this smacks of heavy arm tactics and insisting that people should withdraw any evidence that they may have already*

given to the examining authority is verging on the edge of blackmail and should not be tolerated."

From Mya Manakides:

"*With regards to the purchase of lands required for the above-mentioned projects you should be aware of the intimidating tactics employed by SPR from the outset. At one of our meetings in our village hall Friston during the consultation period, a family living along the proposed cable corridor was brought to tears describing how SPR had been treating them. The home that they had lived in for years was under threat as SPR wanted to purchase some of their land for the cable corridor. SPR told the home owner that if they didn't agree to sell, that the land would none the less be compulsory purchased and the amount that they would subsequently receive would be a lot less than what they were being offered. They didn't want to sell but in essence were being bullied. It was horrible how SPR was threatening them and at such an early stage in the procedure*."

From Sally Sturridge:

"*I have faith in The Examining Authority and hope very much they will not permit SPR to use the leverage that it has in relation to the compulsory planning rules to undermine the investigation and waste tax payers and objectors time and money at such a late stage.*

While the whole DCO process is weighted in support of the applicant I feel it cannot be right that those with the most legitimate reasons to oppose this application by SPR to be apparently gagged in this way, and made to withdraw previous objections of all kinds because of financial pressure."

From Sheridan Steen:

"*At the outset SPR's behaviour has been unacceptable, they believed that the population of this quiet corner of Suffolk were uneducated, simple folk, as I have said in an earlier representation, one of their representatives said to me "you are more educated than we expected*."

From Christine Laschet:

"*These non-disclosure agreements (NDAs) are very underhand and interfere with what must be a fundamental right to protest without losing the right to due compensation if that is appropriate at a later date.*

…

This is a very sorry state of affairs where a large powerful company can silence protests by withholding or threatening to, rightful compensation. I don't know what the law says about this, but as a member of the general public, it seems outrageously unfair. It amounts to prohibition of free speech and is a form of bribery."

From Gary Waple:

> "*In a fair, democratic and open society, it is important that all people can speak freely. I believe that the actions of SPR, in requiring NDAs, dissipate the true extent of the opposition to SPR's plans and it is therefore a substantial flaw in the DCO process. These NDAs are unfairly shifting the balance of the debate in favour of the developers and given the immense resources that they have anyway to throw at this process, local communities are even further disadvantaged.*
>
> *I fervently believe that the ExA has a responsibility to address this very serious issue. It cannot be ignored.*
>
> *The added threat to the Wardens Trust cannot be justified and so I suggest that the Applicant's proposals in respect of their onshore substation facilities at Friston naturally fail any reasonable tests for consent*."

J. **Relevant principles of law**

104. There are three sets of legal implications.

105. First, there are the rules relating to the duty on decision makers to guarantee a fair objective and transparent procedure. This has implications because the effect of SPR's strategy has been to create (unwittingly for the ExA) an unfair procedure.

106. Secondly, there is the impact of this system upon the weight and value to be attached to both SPR's evidence, and the evidence of those opposing the application.

107. Thirdly, there are contract law implications. Whether these clauses are void as being contrary to public policy is not a matter that SEAS comments upon. That would be a matter between SPR and its contracting partners.

The test is objective: procedural unfairness can arise even if the decision maker is not at fault.

108. The position has now been reached whereby SPR has achieved its purpose in preventing potentially important witnesses from objecting, from providing evidence countering that of SPR, and from assisting those who oppose the granting of consent.

109. SEAS acknowledges that, in difficult and novel circumstances, the Authority has been to great pains to make this investigation fair, objective and transparent.

110. The test for procedural fairness is however objective. It arises even if the decision maker is not at fault: see eg R v CICB [1999] 2 AC 330 page 345. If the Authority were to accept SPR's arguments that its conduct is normal or commercial or irrelevant then this would be to endorse and approve of process which has become procedurally unfair in law.

Procedural unfairness does not involve proof of prejudice.

111. Procedural unfairness does not depend upon prejudice being proven. This has been established for over nearly 80 years. In GMC v Spackman [1943] AC 627 pages 644, 645 the House of Lords held that if principles of natural justice are violated it is

"*immaterial whether the same decision would have been arrived at in the absence of the departure for the essential principles of justice*".

112. This is because procedural unfairness in a public process "*strikes at the roots of justice*": R v Leicester City Justices [1991] 2 QB 260 at page 290.

113. But notwithstanding, the prejudice actually caused has been profound.

Duty on ExA to guarantee a fair, transparent and objective procedure.

114. The ExA will be familiar with the normal principles of procedural fairness that apply to planning decisions, just as they do to all decisions taken by public bodies.

115. In Hopkins Developments Ltd v Secretary of State for Communities and Local Government [2014] EWCA Civ 470 the Court held that the requirements of fairness as they applied in a case were "*acutely fact sensitive*" [para 93]. The duty of an Inspector was to conduct proceedings so that each party had a reasonable opportunity to submit evidence and make submissions on the material issues, whether identified at the outset or emerging during the course of the inquiry. A fundamental component of the duty to ensure procedural fairness is that the decision maker must ensure that all relevant persons have a right to be heard and are not silenced.

If procedural unfairness exists a resultant decision will be set aside

116. It is very long established that if procedural unfairness is established then any resultant decision which builds upon that procedural unfairness will be set aside. If there is procedural unfairness which prejudices a party to a planning inquiry that is a ground for quashing the inspector's decision (eg Hopkins para [62]).

Procedural defects cannot be cured.

117. It is also well established that once procedural unfairness arises it cannot be cured. For example the courts have rejected the argument that because the unfairness occurred at an earlier stage in a process it can be cured at a later stage of the proceedings: R(Citizens UK) *v SSHD* [2018] EWCA Civ at paragraph 94. This has been applied on a number of occasions in the planning context eg in relation to cumulative impact: See eg R(Brown) v Carlisle City Council [2010] EWCA Civ 523 at paragraph 40 where it was held that a failure to consider cumulative impact could not be cured by an assurance that it would be considered at a later stage. This was followed recently in the Vanguard judicial review.

There is no right to second chances.

118. The duty on Inspectors is to take <u>reasonable</u> steps to inform themselves of the relevant facts (Wokingham BC v SSCLG [2017] EWHC 1863). This duty has limits. If an applicant does not cooperate or take the chance given to set out its case, then there is no unfairness in the ExA proceeding to find against an applicant on that issue.

119. In Ecotricity Ltd v Secretary of State for Communities and Local Government [2015] EWHC 801 (Admin), concerning a wind turbine proposal, an issue arose as the "intensification of risk to aviation" which had been raised in a letter of objection from a flying club. The Inspectors considered that the risk was relevant. The Developer challenged the refusal of consent. The challenge failed because the applicant had been put sufficiently on notice and therefore should have addressed the issue. The Court

held that it had "*only itself to blame for not dealing with the matter head on*". There is no principle that entitles applicants to second bites at the cherry.

In this case SPR has been given the chance to put in evidence but has, for its own reasons, decided to forgo that chance. Its approach on this issue reflects its stance on other issues, such as cumulative impact. There is no obligation on the ExA to give SPR any further chances.

K. **Ways forward**

120. SEAS recognises the sensitivity of this issue for the ExA, especially given the huge efforts made to date to ensure that the procedure has been fair, objective and transparent.

121. SEAS notes that in the procedural decision the ExA has indicated that an option open to it is to address these matters in its recommendations to the Secretaries of State. SEAS considers that this is the correct approach to adopt.

122. SEAS invites the ExA to address the issue as follows:

(i) First, there is now a substantial body of evidence before the ExA which leads to the conclusion that the application should be rejected on the basis of adverse impacts outweighing the benefits. This has come from organisations such as SASES, SEAS, SOS and others. There is more than sufficient evidence (quite apart from any issue concerning gagging and non-opposition clauses) to conclude that the on-shore component of this applicant *cannot* be consented. We invite the ExA to make this the primary finding in the recommendation.

(ii) Secondly, since the issue of gagging and non-opposition clauses has been raised and must be addressed, we invite the ExA to make the finding above but also to find that the use of gagging and non-opposition clauses has meant that the procedure has become unfair due to the active efforts of SPR to undermine it. SPR's strategy is designed to ensure that the unfairness is only one way, ie in its favour. This means that evidence has been tilted unfairly in favour of SPR and unfairly against those opposing the applications. This should be relied upon to support and corroborate the conclusion in (i).

(iii) Thirdly, the ExA is invited to find, <u>in any event,</u> that the use of gagging and non-opposition clauses had the effect of giving rise to procedural unfairness in relation to the evidence collection process. This unfairness has been caused by the applicant. This amounts to an independent reason to refuse consent. This should be included in the recommendation. It would stand as a free standing reason for rejection but would sit behind the primary findings on the facts.

L. **Conclusion**

123. It is the submission of SEAS that any recommendation or decision in favour of SPR would, for all of the above reasons, be unlawful.

124. Finally, SEAS reserves all rights to respond to SPR's evidence. SPR indicated to the Authority that it would provide full evidence. That was the basis upon which

SEAS was entitled to respond. SPR cannot be permitted, now, to game the system and for the first time put in new evidence. If it does so SEAS will respond.

Appendix 1

(*Statement from Dr Gimson*)

A. Introduction

1. My name is Dr Alexander Gimson. I am a Consultant Hepatologist at Cambridge University Hospitals NHS Foundation Trust. I am a Fellow of the Royal College of Physicians. I act as an expert witness in medico-legal claims. I am Chair of the board of trustees of The Wardens Trust (*) and act on behalf of my mother Mrs Elspeth Gimson, for whom I hold power of attorney.

2. In relation to the planning inquiry into EA1N and EAN2 I became an Affected Person (AP) in relation my mother and an Interested Party (IP) in relation to the Wardens Trust with a right to make representations because I feel strongly that the application for consent should be refused.

3. I have been asked by Suffolk Energy Action Solutions (SEAS) to make this statement in support of its complaint dated 14th February 2021.

4. The Wardens Trust was established by my parents in 1988. Their vision was to offer recreational and outdoor facilities for adults and children with disabilities at a unique site. The charity continues to help people with mental and physical disabilities to fulfil a creative life. Its activities are centred upon a large building, Warden's Hall, which is on the coast south of Sizewell and a few yards to the north of my mother's home, Ness House.

5. The planned route of the cable corridor makes landfall about 400 yards (366 metres) from Warden's Hall before arcing in a north-easterly direction towards it. The main directional drilling site will be 400 yards away. I appeared on behalf of the Trust at the Issue Specific Hearing 5 on 21st January 2021 to voice my opposition to this development. I explained that the trustees saw it as constituting an existential threat to the activities of the Wardens Trust. We provide holiday accommodation for various groups, children with neurodevelopment problems, adults with severe physical disabilities and elderly people suffering from dementia. 2634 visitors came to the Trust in 2019. Further to my written representation of 28th October, I again expressed concern that the water supply might be interrupted; that the corridor construction and laying of cables would constitute a threat to the physical and mental wellbeing of our visitors; and that if we were forced to suspend the Trust's operations for a period, that would jeopardise its financial viability and might ultimately force its closure.

6. My mother, Mrs Elspeth Gimson, lives at Ness House which is also on the coast and a few yards to the south of Warden's Hall. My mother is 98. I hold a power of attorney which authorises me to act on her behalf. I appeared at Open Floor Hearing 6 on 22nd January 2021

in that capacity to oppose these applications. I drew to the attention of the inspectors a number of concerns in relation to Ness House, namely that the water supply drawn from a well might be interrupted, that trees planted after the hurricane in October 1987 would be destroyed and expressed my concern about the fragility of the coastline. Ness House and the Wardens Trust share the same water supply.

7. There are two main purposes of my statement: (i) to describe the negotiations that occurred between myself and SPR and its agents since this is relevant to my participation in this planning process; and (ii) to summarise some of the evidence that I have given to the Examining Authority because this is the sort of evidence that would not have been recorded had I agreed to be subject to the gagging clauses in the land agreements that SPR offered me.

8. I have spoken at 4 hearings during 2021 and I have submitted 8 written representations. As the Examining Authority knows I have been careful to make clear the capacity in which I have given evidence. On some occasions I have been speaking in a personal capacity, on other occasions on behalf of my mother under a power of attorney and sometimes as Chair of The Wardens Trust. All of this is clear from the transcript of the hearings.

B. Negotiations with SPR

9. SPR first contacted my mother in 2018. They wished to have access to the land to conduct various test and trials. I was shown a document entitled Heads of Terms and discussions followed about the details between SPR and its agent, on the one side, and me and the Landowner's agent on other.

10. I was put under the clear impression that the NSIP process, which would follow in 2019 or 2020, would lead to consent being granted. I did not feel that I had any real choice but to face the facts and enter an agreement with SPR. I have said during the hearings that the negotiating process with SPR is really very difficult. They have financial power and teams of lawyers and agents. There seemed no real option other than to do a deal with them, given they can use compulsory purchase powers. It is really quite distressing, and it has made me feel most uncomfortable. I explained all of this in my evidence on 19th March 2021.

11. In the event I did sign the Heads of Terms in January 2019.

12. When the planning process started in 2020 and information began to emerge about the impact of the development, I became increasingly worried about the impact on the Wardens Trust. As the Examining Authority knows I have given extensive evidence about the threat posed to the

charity. I think that this evidence is powerful and shows just how damaging to the local community the development would be if it was consented to.

13. Following my appearance at Issue Specific Hearing 5 on 21st January, I was contacted by the Landowner's agent and given a draft copy of the Option Agreement, which I was now required to sign if I was to receive any incentive payment.

14. The copy that I was shown had the name of another well-known landowner on it. When I queried this with the agents, I was told that this was a mistake and that the name of this landowner should have been removed before the draft, which was a generic document, was sent to me.

15. In discussions between agents, I was offered in excess of £50,000, some for moving fencing and stables but some were a "Gateway Payment" of £1,000 and an "Incentive Payment" of £7,000. It was clear to me that these were conditional on signing the Option Agreement which included clauses that would have resulted in my silence, for agreeing to withdraw all of my previous evidence and for agreeing not to participate in the planning investigation in the future.

16. I was very troubled by what I saw. For example, I had just given evidence on matters I felt very strongly about and I was not willing to withdraw that evidence. In fact, I wanted to continue to make submissions, for example, in relation to mental health.

17. The whole system left me feeling uncomfortable. I could not agree to being forced to enter an agreement that prevented me speaking out on such an important matter which threatened the future of the charity and which required me to withdraw the evidence that I had given to date so that the Examining Authority could not then use it. I raised these problems but I got no satisfactory response.

18. SPR agreed only to make a small amendment to the clause. The amended clause had an exception to permit me to retain my earlier evidence concerning the water aquifer:

> "The Grantor shall not make a representation regarding the EA1N DCO Application nor the EA2 DCO Application (and shall forthwith withdraw any representation made prior to the date of this Agreement and forthwith provide the Grantee with a copy of its withdrawal **save as the Grantor shall have absolute discretion over the withdrawal of all comments pertaining to the impact of the Project(s) on ground source water aquifers only in document refs. REP1-242, REP2-098, REP5-135 and REP5-136)** nor any other Permission associated with the EA1N Development or the EA2 Development and shall take reasonable steps (Provided That any assistance is kept confidential) to assist the Grantee to obtain all permissions and consents for the EA1N Works and the EA2 Works on the Option Area (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in

connection with the preparation and completion of such permissions and consents)."

19. I had objected to the clause in its entirety and the effect it would have on me and my evidence about the charity. SPR only offered the narrow carve-out for water. It held its position concerning my past and future evidence. The financial compensation offered remained subject to that gagging provision. SPR was not prepared to make any concessions on anything else and I was not willing to be silenced by SPR. I have refused to sign the current Option Agreement.

20. I was also, I should add, concerned about a clause in the Option Agreement which provides:

> "The terms of this Agreement shall be confidential to the parties both before and after completion of the Deed(s) of Grant and neither party shall make or permit or suffer the making of any announcement or publication of such terms (either in whole or in part) nor any comment or statement relating thereto without the prior consent of the other or unless such disclosure is required by the rules of any recognised Stock Exchange on which shares of that party or any parent company are quoted or pursuant to any duty imposed by law on that party or disclosure is required by the Grantee in connection with or in order to obtain the EA1N DCO or the EA2 DCO or any other planning application associated with the EA1N Development or the EA2 Development or any Permission."

21. My understanding of this clause is that I could not tell anybody about the terms agreed with SPR and if, for example, the Examining Authority or a neighbour asked me why I had withdrawn my opposition to these applications, I should have been obliged to be misleading.

22. I am aware that other energy projects within the locality have not included such onerous clauses requiring retrospective withdrawal of objections and preventing all future objections.

C. <u>Impact on Ness House</u>

23. I want to set out and reiterate the evidence that I have given since this reflects what I would have had to withdraw if I had agreed to SPR's terms. Instead of seeking to repeat all of the evidence that I have given I have instead set out excerpts from my oral evidence, taken from the transcript, which I hope is convenient.

24. As early as 28th October 2020 I had expressed concern about the water supply to Ness House, Warden's Hall and other properties nearby served by the ground source water aquifer:

> "The proposed trench, which might, with multiple cables, be present for up to ten years, is likely to have a serious adverse impact on the fresh water well which supplies water to the 5 properties at Ness House including Wardens Trust. This is a fragile water supply, regularly monitored by East Suffolk Council under The Private Water Supplies (England) Regulations 2016 - SI No. 618 and The Private Water Supplies (England) (Amendment) Regulations 2018- SI No.707) and was last tested on 6th October 2020 (Council reference 20/07667/PWATER). No mention has been made of the potential impact of these trenchworks

on this water supply, a measure of the cavalier and unfeeling attitude of the developer to local residents' basic needs."

25. In relation to the impact of the cable route on Ness House the following evidence was given at the Open floor hearing 6 on the 22nd January 2021:

"My mother and her family have lived and farmed in this area for approximately 200 years, she has been associated with Ness House where her parents lived and where she has lived for all her 98 years. She has a rather unique perspective on the coastline, on the environment and the area of outstanding natural beauty through which this cable trench is proposed to go. This house is about 400 yards from landfall and is about 200 yards from the direct drilling site. The cable corridor then seems to travel directly towards Ness House, passing about 50 yards from the edge and passing straight through the paddocks and then curving round to the north before it moves to the north west away from the property. Our first concern is we do not understand why a cable corridor has to come specifically close to where children live, rather than a course that tries to avoid going so close."

26. More recently, on the 16th February 2021 at CAH 2, I continued to express great concern that SPR in all their proposals had not taken into account the fact that there was an aquifer under their proposed drilling site, and under the trench corridor.

"It is clear they [SPR] haven't taken it into account because they didn't know about it and they were asking me for information. They did not know how deep the well is and at what level below ground the water level is. It seems to me that this falls under the category of an impact on my mother and the other residents' human rights to access to a safe water supply, which SPR are putting at significant threat."

D. Other evidence

27. I have given evidence on the impact on tourism and on Coastal erosion and the extent to which the sea has encroached during my mother's lifetime, which is by about 50 yards. I explained why I considered that inadequate consideration had been given to the possibility of further increased erosion as a consequence of this proposal.

28. In my Written submission of 28th October 2020, I said:

"This coastline is continually eroding. Cliff falls due to erosion have occurred to the north and south of the proposed landfall. We do not accept that adequate consideration has been given to the possibility of concerns further increased erosions as a consequence of this proposal.

Trustees are anxious that there has not been due consideration to the impact on the fragile cliff structure and shoreline by the proposals in their current form. We are aware that others have also expressed their concerns, including submissions from Save Our Sandlings, SEAS, SASES and the Alde and Ore Association and we strongly support their submissions."

29. I also gave evidence on the impact of the development on ground source aquifers and on

wildlife:

"From personal observations of Mrs Gimson and her husband (who died in 2018), there is a thriving ecosystem of foxes, bats, badgers, barn owls, nightingales, red deer, oystercatchers, little ringed plover, skylarks and shelduck who nest in the fields surrounding Ness House and over which the trench is planned. These habitats and their fragile biodiversity will be totally destroyed by this development."

E. **Impact on The Wardens Trust**

30. I want to set out my position in relation to the Wardens Trust that I gave in January 2021.

31. Our Charity's mission statement is:

"To help people who have mental and/or physical disabilities to lead fulfilled and creative lives within their families and wider communities, improving their quality of life."

32. At Deadline 4, in a written representation dated 11th January 2021, I gave evidence about the potential impact on The Wardens Trust of all the other projects planned for this area. I called upon the Examining Authority to take these into account in their examination by requiring SPR to undertake a full cumulative impact assessment and for this to be subject to a rigorous examination by the ExA:

"This should include not just the site of the additional substations but the landfall site and perhaps most importantly, the cable corridor. How many times will a 9 km cable corridor 60m+ wide be redug? Appendix One of SASES Response to ISH2 Action Points which looks at projects with actual or potential Grid Connections at Friston shows an Additional 8 cable trenches to be dug. This will result in substantial interruption to the amenities and activities at Wardens Trust over multiple years and is, in the view of Warden Trust Trustees an existential threat to the viability of our charity."

33. On the 21st January 2021 at Issue Specific Hearing 5 I gave further evidence about the impact of the proposed development.

"Wardens Trust delivers a range of services for frail and disabled elders, many with dementia. We serve the local area which has a surprisingly high level of rural deprivation. You may be aware that the recent Hidden Needs survey from Suffolk Community Foundation undertaken by Professor Noel Smith last year revealed worryingly that deprivation across our area has increased in the 12 years since 2007.

Our charity attempts to address that rural deprivation and social isolation by allowing frail elders to come to us where our carers offer them a bath, a hair wash, a lunch, and a chance to socialise with others in similar wheelchair bound circumstances as themselves.

We think this proposal would dramatically impact the amenity value of our trust for the duration of the works, resulting in a major interruption of services for this vulnerable group of individuals. Charities such as ours form a crucial part of the social capital in our area. If a development which may have benefits nationally and regionally also damages organisations trying to develop social capital and help improve the lives of those less fortunate, we think

that it cannot be right.

I speak for those less fortunate who cannot come and be represented on your sort of panel and your sort of public inquiry. I feel the need to speak for them.

Local authorities and I believe planning authorities are required to consider social capital when making their deliberations. We have heard incredibly powerful testimony from many local residents about the pain and anguish that they feel, and this adds to the diminution of the social capital in local areas. In this Coronavirus, pandemic year, Wardens Trust obviously had to change and adapt to meet these new circumstances. We became a Meals on Wheels service, where we delivered meals to lonely and socially isolated, local, disabled and elders in our community. We have delivered just short of 800 meals and then delivered 200 Christmas lunches on Christmas Day and Christmas Eve.

Dr Therese Coffey, our local MP, joined us in Saxmundham for that purpose to deliver those 200 meals to those people. This charity is a fundamental part of the community's local resilience and social capital. It is for that which my trustees feel there is now an existential threat."

34. The following is from the transcript of evidence given at OFH 6 on 22nd January 2021. It describes some of the work of the Wardens Trust and the impact this development will have on it:

"Children's groups such as the Big Kid foundation from London and the Paddington Children's Trust bring children from London who are at risk of school exclusion and gang culture for development sessions and personal development. Kids Go Wild bring children with neurodevelopmental issues for a week of camping and filmmaking and music making. All have mental health, physical health, and behavioural issues. They require enormously careful risk assessment of the environment into which they are coming and the amount of support and supervision they require. Having discussed SPR's proposals with our clients, they are of the opinion that this will have a devastating impact on their risk assessment, they would not be able to come to the site. Groups have supported our comments here and will not return if the current proposals go ahead. So, our first conclusion is that the proposal severely damages the amenity value of our site, and the safety for children with mental and physical disabilities.

The centre has a specially adapted flat for severely disabled individuals, which we have furnished over a number of years. There is an enormous shortage of such holiday accommodation, it includes electric beds, hoists, special baths, wet rooms, hoists to place people in baths. Individuals and their families come to relax in the beautiful clifftop surroundings and because of the peace and tranquillity of the countryside looking out west from the flat towards the Margaret wood. They do not come to look at an industrial fence 100 yards away or deal with the pollution, noise and dust of a construction site. Again, it is our view that this proposal would dramatically reduce the viability and attractiveness of this holiday location, this rare holiday location for severely disabled people.

Trustees have discussed Scottish Power Renewables' (SPR) proposal a number of times. They are a sober group of people not prone to hyperbole, but their view is unanimous. This proposal in its current form is an existential threat to this charity."

35. I also submitted a letter of 30th January 2021 from Justin Nichol, a family support practitioner, who supports the Wardens Trust's objections. He is a youth and community worker for the local county council and has used the Wardens centre. He said:

> "I am completely in support of your objections to the proposal of the windfarm transmission line cable route that will be going through or very near the Wardens Trust Centre.
>
> As a professional youth and community worker for the local authority I have used the Wardens Centre as a regular venue and residential base for working with a diverse range of people and groups over the past 15yrs. This has included working with vulnerable teenage girls from local high schools having therapeutic guidance and support with peers on a residential course. A regular base for Duke of Edinburgh's Award participants to gain leadership and groupwork training. Also a training venue for local Teachers and Volunteers to gain outdoor leadership skills.
>
> I have also used the Wardens Trust site to bring together local special needs families to have a camping experience by the sea with their extended families and children. Every year we plan and organise this camping trip with generous help and support from the Wardens Trust and enable about 20 local families to enjoy a week away together.
>
> I would also like to point out that one of the special values of the Wardens Trust is not only its residential facilities it has to offer but also the intrinsic value of the surrounding countryside and landscape that the users of the centre also greatly benefit from. It is a unique site that has wonderful walks, nature, birds and plants available for people to see in the natural environment. It would be a crime if this was to dug up and interfered with."

Health and well being

36. In relation to Health and Wellbeing, I made submissions at Issue Specific Hearing 10 on 9th March 2021.

> "I applaud the Examining Authority's decision to embrace the WHO global and holistic definition of health, which includes mental health. Humans are not made up of discrete health, cardiac health, respiratory health, or mental health, but just a single concept to which all those components interact. So even if planning guidance doesn't specifically mention mental health, it is an incontrovertible and fundamental aspect of our well-being which we must take into account. I also would want to reiterate and support what previous speakers have said that the concept of anxiety as just an apparent feeling, is an inadequate description of the very, very real physical and mental anguish that people feel who are anxious about, about their surroundings. We've heard very eloquently, I think, from Counsellor Fellows and from residents of Friston and others, that unalloyed anxiety is a real component, which we need to take into consideration. But I'd like to add one extra component, which I think does relate to a holistic view of health. And that is the concept of trust. When people feel they are in an environment that lacks trust, then their anxiety is very, very commonly exaggerated and increased, when on the other hand, they feel that they are in an environment where there is trust between different parties in their life, then their health can be allowed to flow. So, one of the questions that my trustees have been considering is whether the applicant is a trustworthy organisation.

I would like to point out that one of the organisations that undoubtedly has had a significant impact on health and wellbeing in the local community is Wardens Trust and the Wardens Trust was not actually contacted until we received an email on January the 25th 2021 after I had given a presentation on behalf of Wardens Trust to this Examining Authority. Nobody came to us before that date to inquire what we did.

I've mentioned before that I am speaking for my trustees, but in a sense, I'm speaking I hope, also, for people with mental and physical disabilities.

These are people who commonly do not have a voice in many of the major decisions that are made in our society.

And so, I urge the Examining Authority to listen closely to what people such as our charity are saying on their behalf. They don't have a voice that can be heard, many of them would be petrified at the thought of coming and speaking to an Examining Authority to a public hearing such as this. So, it is left to me to speak on their behalf."

37. If I had signed SPR's agreement all this evidence would have to have been withdrawn and these voices silenced.

38. There is one other matter I should mention. I wished to be heard at the hearing on 19th March 2021 when this issue arose. The night before, on Thursday 18th, I was left a message by a senior Project Manager at SPR, who said that he wished to speak to me urgently, that evening. We did have a conversation during which SPR suggested that there might be ways of shifting the position of the cable to minimise the risk to the charity. I do not know if that is technically feasible or not. During this conversation SPR did not make any concessions about my evidence or participation in the conduct of the examination.

39. It seems clear to me that had I not been vocal in my opposition by submitting evidence and appearing at the oral hearings, SPR would not have contemplated making any approach to Wardens Trust.

40. I have always objected to attempts to silence potential witnesses. There are many other landowners who, like me, have deep concerns about this development. I think that my experience demonstrates the vital importance of all affected persons being able to give evidence without prejudice. The groups of landowners affected by compulsory purchase powers are the most directly affected by these applications and they are also amongst the most knowledgeable about the local environment. The evidence that they could have given would have been very important.

41. In addition the chance to give oral evidence and to object is critical because it forces SPR to confront the myriad localised issues that landowners face. As I have said had I not been vocal

in my complaints and had I not been down to speak at the hearing on 19th March 2021, then I very much doubt that SPR would have made any approach to me at all.

42. An overriding concern of mine is to save the Wardens Trust for the future, as all Trustees are required to under Charity Commission guidance, and for future enjoyment and healing of visitors to our unique site. I will continue to be constructive in seeking to do this. But even if a solution is found, my objection to the approach that SPR has taken remains firm. It seems to me to be simply wrong that SPR should be permitted to do this.

43. I make this statement upon the basis that it is true to be the best of my knowledge and belief. I would be happy to provide any additional evidence to the Examining Authority and to provide any further assistance that the Authority might seek.

Dr Alexander Gimson
21/03/2021

Appendix 2

(*Telegraph article*)

ScottishPower division defends contract clause over wind farms

The current cabling route has also provoked local opposition, with campaigners claiming it will mar the coast and countryside.

By Rachel Millard
28 February 2021 • 4:02pm

ScottishPower Renewables has come under fire over contracts presented to landowners containing clauses that would prevent them speaking out about wind farm developments.

The division of Iberdrola-owned Scottish Power wants to build two new wind farms off the Suffolk coast, and will also need to build cabling and substations onshore.

The current cabling route has provoked local opposition, and campaigners claim it will mar the coast and countryside.

Campaign group Suffolk Energy Action Solutions said a clause presented by SPR in contracts while negotiating with landowners stipulating they should not make any representations about planning applications for the two developments and withdraw previous representations, undermines the integrity of the planning process.

SPR said the clause was drafted in line with Royal Institution of Chartered Surveyors guidance, adding that "all landowners are represented by solicitors and land agents and have the opportunity to negotiate the terms of the agreement". It said no such agreements had actually been entered into.

A spokesman for SPR said: "As a responsible developer with a proven track record of positive community engagement throughout the UK, we refute in the strongest possible terms that we are trying to undermine the planning process."

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Appendix 3

(*Letter to Secretary of State about NDAs in cladding funding agreements*)

Housing, Communities and Local Government Committee

House of Commons, London SW1A 0AA
Tel 020 7219 5364 Email hclgcom@parliament.uk Website www.parliament.uk

Rt Hon Robert Jenrick MP
Secretary of State
Ministry of Housing, Communities and Local Government
4th Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

18 January 2021

Dear Robert,

Non-Disclosure Agreements

The Committee is aware of the inclusion of the clause in the MHCLG funding agreements for the private sector ACM fund and the Building Safety Fund (BSF) which restricts applicants to these funds making any communication to the press or any journalist or broadcaster regarding the Project or the Agreement or the performance of it, without the prior written approval of MHCLG and Homes England/GLA.

This obviously raises concerns about applicants, in particular those running Resident Management Companies or Right to Manage companies who could well be volunteer leaseholders, being restricted from raising concerns about building safety. The Clause seemingly also restricts public interest disclosure, without first allowing Homes England/GLA and MHCLG to make representations on such proposed disclosure.

The Ministry has reportedly said that "the terms set out are standard in commercial agreements – to suggest otherwise is misleading. We want a constructive relationship with building owners who apply." When the matter was raised in the House, the Housing Minister said in response to the issue, "If those leaseholders wish to step forward and make comments themselves, who am I to say that they should not? We live in a free country; let them speak."

In light of those comments, can you inform the Committee what the exact wording of the clause is and what the purpose of the clause is? We would also like to know how the clause compares to clauses in other funding arrangements managed by the Ministry, whether the Ministry has taken any action against any applicants to the funds that have spoken to the press without permission, and in what circumstances you think you might do so?

If the Ministry has no expectation of using the clause then the Committee suggests its removal from any current or future agreements for these funds.

The Committee wants to ensure as much transparency as possible exists when it comes to issues of building safety and the spending of public money and looks forward to your response.

Clive Betts MP
Chair, Housing, Communities and Local Government Committee

Appendix 4

(*The Money Box / BBC article concerning NDAs in new house build agreements*)

House builders 'should drop appalling gagging orders'

By Dan Whitworth
Money Box reporter

13 March

JAMES THOMAS

Clive Betts MP says house developers should stop using "appalling" gagging orders

House builders that carry out repairs on newly built homes need to be more open about what work has been required, according to the chairman of Parliament's Housing Committee.

Some home owners say they were asked to sign non-disclosure agreements (NDAs) as a condition of repairs being done.

The practice was "appalling", Clive Betts MP told Radio 4's Money Box programme.

The Home Builders Federation said NDAs were "not widely used" by developers.

Mr Betts said housebuilders should be obliged to inform home owners when systematic defects were identified that might affect their property, which he said would be normal practice in other areas.

"If this kind of thing happens in the car industry, for example, car companies have to tell their customers, issue a recall and get the problem fixed.

"I don't see why it should be any different when it comes to buying houses," he said.

- **New guidance to help flat owners stuck in 'limbo'**
- **New watchdog will have power to ban rogue builders**
- **Home sellers risk losing money over quick sales**

It is hard to establish an accurate, independent picture of how common such NDAs are. People who have signed them are worried about speaking out because of the threat of legal action.

But Money Box spoke to several industry experts who said these gagging orders were used regularly.

'Despicable practice'

Chris Blythe, former chief executive of the Chartered Institute of Building, said it was "quite common" for developers to use them.

"Unfortunately, because of the nature of the agreement, ie non-disclosure, no-one knows very much about it," he said.

"But it's done for commercial reasons, because if it became known on a particular development that there are problems, other house buyers would be asking the house builder to do remedial work [for them too].

"So they use these to silence people – and it's a despicable practice."

"So they use these to silence people... and it's a despicable practice."

About 250,000 new houses were built in Britain, according to the latest annual figures, and defects in new-build houses are common.

Many are minor and fixed without any problems, but serious defects can cost thousands of pounds to put right.

These include things like poor brickwork, faulty foundations, problems with windows and external doors, structural weaknesses with roofs and issues with plumbing and sewerage systems.

When remedial works cost such large sums of money, developers sometimes delay carrying out work, Money Box was told. The programme was also told of cases where developers fought home owners for years and refused to carry out remedial works at all.

Hidden risk

Geoff Peter is a solicitor and founded Wingrove Law to help homeowners who bought houses and later discovered serious defects with their properties.

"Non-disclosure agreements... are of no practical benefit or use to homeowners," he said.

"The effects of them when they're used at scale, as they are in the [house building] industry, is really just to keep a lid on the true nature and scale of problems.

"So it's really impossible for... the buying public, to have any real idea of the risks they are taking when they buy a new build property... because there's no reliable source of information as to the nature and scale of the problems that they're likely to encounter."

When asked about NDAs industry body, the Home Builders Federation, said: "Settlement Agreements are legal contracts that are used by businesses across all sectors.

"They are not widely used by housebuilders and when they are, it tends to be with regards to details of compensation payments, sometimes at the request of the customer."

If you've been asked to sign a non-disclosure agreement as a condition of getting repair work done to your newbuild house email us in confidence at moneybox@bbc.co.uk *and tell us about your experience.*

You can hear more on BBC Radio 4's Money Box programme on Saturday at 12pm on Radio 4 or by listening again **here** *shortly after broadcast.*

Follow **Money Box** *and* **Dan** *on Twitter.*

Appendix 5

(*Heads of Terms (Anonymised)*)

SCOTTISHPOWER RENEWABLES

HEADS OF TERMS
in Respect of an Option Agreement and Deeds of Grant of Easement
[redacted]

Without Prejudice
Confidential Subject to Planning & Contract

Date and version	[redacted]
Grantor	[redacted]
Other Interests	TO BE CONFIRMED there are no tenants, occupiers, lessees, or other rights affecting the Option Land and no third-party consents are required for the Option Agreements, Easements or Leases.
Grantee	SCOTTISHPOWER RENEWABLES (UK) LIMITED
Projects:	
EA1N (Offshore Wind Farm):	East Anglia One North Limited (Company Number 11121800) 3rd Floor 1 Tudor Street London EC4Y 0AH
EA2 (Offshore Wind Farm):	East Anglia Two Limited (Company Number 11121842) 3rd Floor 1 Tudor Street London EC4Y 0AH
Grantor's Agent:	[redacted]

1.	**Grantor's Property**	The land belonging to the Grantor contained within HM Land Registry Title(s) [redacted] Referenced [redacted]
2.	**Option Land**	The land shown coloured [redacted] on the Plan referenced [redacted]
3.	**Initial Option Period**	10 years from the date of the Option Agreement.
4.	**Extended Option Period**	The Grantee may extend the Initial Option Period by a further 3 years by serving on the Grantor not less than one month before the expiry of the Initial Option Period a written notice on the Grantor and paying to the Grantor the Option Extension Fee.

SCOTTISHPOWER RENEWABLES

5.	Option Extension Fee	A separate payment of [redacted]% of the value of the Entry Payment (non-refundable and not deductible from the Easement Consideration) payable within 45 days from serving written notice on the Grantor to implement the Extended Option Period.
6.	Option Agreement	The Grantor is to grant the Grantee the exclusive right during the Option Period for the Grantee to carry out The Works for each Project and subsequently for up to two separate Easements (one for each of EA1N and EA2) to be granted over all or part of the Option Land (with a standard width of 20m) per Easement in accordance with these Terms.
7.	Incentive Payment	[redacted] (Heads of Terms Payment) for signing Heads of Terms, payable on completion of the Option Agreement. Together with the Heads of Terms Agreement Rate being [redacted] per linear meter of cable corridor on land within the ownership of the Grantor (subject to a minimum payment of [redacted]). A further [redacted] (Option Agreement Incentive) for agreeing the Option Agreement (subject to the consent of any third party who is acting outside the control of the Grantor) and agreeing a Statement of Common Ground to evidence such agreement within 20 weeks of the date of issue of the Heads of Terms, payable on completion of the Option Agreement. Together with the Option Agreement Rate, that being [redacted] per linear meter of cable corridor on land within the ownership of the Grantor (subject to a minimum of payment of [redacted]). If the Option Agreement exchanges between 20 and 28 weeks of the date of this issue of the Heads of Terms, then 50% of the Option Agreement Incentive and Option Agreement Rate is payable. After 28 weeks, a nominal payment of £1 is made.
8.	Agents Fees	The Grantee will contribute to the Grantor's reasonable Agents Fees up to a maximum of [redacted] per project plus irrecoverable VAT on production of a valid VAT receipted invoice for negotiating and agreeing Heads of Terms and the associated Option Agreement and Deeds of Grant of Easement subject to such fees being reasonably and properly incurred, such time being in proportion to the complexity of the matter, accurate time sheets being recorded and such time being mitigated, all in accordance with RICS Guidance. Any increase above the initial or any subsequent cap must have the prior written approval from the Grantee (such approval not to be unreasonably withheld or delayed if it can be demonstrated (on a case by case basis) that the fees to date have been reasonably and properly incurred). For avoidance of doubt Grantor's Agents Fees will be payable on completion of the Option Agreement. The Grantee will contribute to the Grantor's reasonable Agent Fees as part of any compensation payment for loss or damage

SCOTTISHPOWER RENEWABLES

		as result of any Surveys carried out prior to and after serving of Notice of Entry, subject to such fees being reasonably and properly incurred, such time being in proportion to the complexity of the matter, accurate time sheets being recorded and such time being mitigated, all in accordance with RICS Guidance.
9.	Legal Fees	The Grantee will pay all professional costs (solicitors) reasonably incurred on behalf of the Grantor in connection with the negotiation and exchange of the Option Agreement and Deeds of Grant of Easement (and ancillary work including without limitation title deduction and dealing with enquiries) up to an initial cap of [redacted] per project excluding VAT and disbursements, payable on the completion of the Option Agreement. This initial cap shall be apportioned by way of [redacted] for the Option Agreement and [redacted] for the Deed of Grant of Easement save as [redacted] remains the total extent of this undertaking irrespective of how the fee is apportioned. Any increase above the initial or any subsequent cap must have the prior written approval from the Grantee (such approval not to be unreasonably withheld or delayed if it can be demonstrated (on a case by case basis) that the fees to date have been reasonably and properly incurred).
10.	Top Up Payments	If the Grantor is able to prove beyond reasonable doubt that at the date of entry for construction purposes the Easement Consideration is less than the value that would have been received should the easement have been granted by compulsion and the compensation calculated under the Compensation Code, the Grantee shall pay to the Grantor the difference between the two values when based on the Easement Area. Where a successful claim for a Top Up Payment is made, the Grantee shall pay reasonable agent and legal fees incurred by the Grantor in making the claim. In the event that any claim is unsuccessful, the Grantor shall be liable for their own agent and legal fees. In the event that the parties are unable to agree (both sides acting reasonably) the matter shall be determined under Clause 36 of this agreement.
11.	The Works	All works for the construction, installation, operation, maintenance and decommissioning of the Projects including any enabling works. For each Project, all onshore infrastructure and associated works required for the construction of an electrical transmission system connecting an Offshore Windfarm to the National Grid. To include (but not limited to) the Cable(s) and underground

SCOTTISHPOWER RENEWABLES

		cable transition and jointing bays in accordance with the relevant Development Consent Order obtained for each Project and any subsequent variations thereto.
12.	Cables	Cables shall include: a) Two circuits per project and associated telecommunication cables, each of which shall be used for the purposes of transmitting electricity and related telecommunications data relating to the operation of an Offshore Wind Farm as consented under their respective DCO's for the Projects. The Cables will be located at a depth of not less than 1.20 metres to the top of the cables or ducts save where impracticable due to engineering reasons, an additional payment over and above the Easement Consideration will be made to the Grantor on presentation and vouching of sufficient evidence of loss suffered as a result of the Cables being of a depth of less than 1.20 metres. SPR shall treat any existing services equally regardless of whether they are private or not and as such shall cross any apparatus in a way as to not prejudice the ability for either party to operate and maintain their equipment (both parties acting reasonably). b) **Structures** Cable markers and manholes, manhole covers, kiosks and any ancillary apparatus and works. c) **Ducting** Shall include any "housing" for Cables which may be installed during the Construction Period.
13.	Construction Scenarios	The Grantee may carry out the Works for EA1N and/or EA2 either during the Option Period having served the relevant Notice(s) of Entry or following grant of the Easement(s) EA2 and vice versa EA1N will have the rights to carry out any part of the Works for either Project as permitted under the Development Consent Order(s). all Works for both Projects all Works for one Project only
14.	Construction Period:	The Grantee will use reasonable endeavors to complete the Works within a period of 3 years from the expiry of the Notice of Entry of each of the 2 Projects.
15.	Over Run Payment	The Grantee shall pay the Grantor [redacted] per linear metre per month subject to a minimum payment of [redacted] per month in the

SCOTTISHPOWER RENEWABLES

		event that the Works are not completed within the Construction Period. For the avoidance of doubt the Over Run Payment shall only be paid between the end of the Construction Period and the Works Completion Date.
16.	Works Completion Date	The date on which cable installation and cable testing works are completed and the Working Area (with the exception of any land which is subject to a lease between the Grantor and Grantee) has been returned to agricultural use on the Grantor's land. For the avoidance of doubt, the Grantee shall retain the right to undertake post-construction drainage works and landscape restoration works including but not be limited to: a) hedgerow reinstatement, maintenance and beating up, b) tree planting, maintenance and replacement of failed plantings; after the expiry of the Construction Period without being liable for any Over Run Payment as these activities may extend beyond the Construction Period in order for restoration to be completed in line with the Record of Condition and conditions set by the Local Planning Authority.
17.	Applicability of Easement	Where installation is carried out during the Option Period, the terms of the Easement will apply to the installation works as if the Easement had been completed. The Works are to be used for EA1N and EA2 only.
18.	Working Area	Such areas as contained within the Option Land as the Grantee may require for the Works, being a standard width of 16.1m per project, save at locations of difficult engineering where the working area may increase or decrease within the limits of the option area.
19.	Notice of Entry	For each Project, notice may be served upon the Grantor by the Grantee at any time during the Option Period giving no less than 28 days' notice of the intention to undertake The Works. However, the Grantee shall use reasonable endeavours to provide no less than 6 months' notice of their intention to serve Notice of Entry. For the avoidance of doubt this will exclude Enabling Works, which may be carried out at an earlier stage before entry for the installation works for seasonal reasons.
20.	Enabling Works	The Grantee shall, upon provision of 28 days written notice to the Grantor be permitted to undertake enabling works required for the Works within the Option Land. These works may include but not be limited to: a) Environmental Mitigation Works

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		b) Works Subject to Environmental Restrictions c) Vegetation Clearance d) Fencing e) Diversion of irrigation pipelines f) Diversion of private electricity and water supplies Where works for the diversion of irrigation systems, private electricity supplies or private water supplies are required, the Grantee shall be permitted to undertake such works on land outside of the Option Land. Such works to be undertaken with the consent of the Grantor (not to be unreasonably withheld or delayed) with both parties acting reasonably. The Grantee shall use reasonable endeavours to maintain irrigated water, private electricity, or private water supplies that cross the Grantor's Property and are directly affected by the Works. Where vegetation removal is required, the Grantee will be permitted to remove, fell, cut, and lop any trees, shrubs and vegetation on the Option Land (such works to be communicated in writing to the Grantor for their information) which in the reasonable opinion of the Grantee may interfere with The Works. The Grantee will only remove any trees necessary to enable the Works after consultation between the Grantee and the Grantor of the affected land. All timber shall remain the property of the Grantor or be cut and disposed of in accordance with the reasonable requirements of the timber owner. The Grantee shall pay the Grantor [redacted]% of the Entry Payment (being deductible from the Entry Payment) payable within 30 days of notice to take entry for any enabling works. The Grantee shall pay reasonable compensation for any losses in accordance with Clause 38 of this agreement.
21.	Option Notice	For each Project, a notice may be served in writing on the Grantor by the Grantee at any time during the Option Period notifying the Grantor of the Grantee's intention to enter into the relevant Deed of Grant of Easement. Where the Option Notice is served after completion of the Works it will be accompanied by an easement plan based on as laid information for inclusion in the relevant Easement. Where it is intended that the Works will be carried out after completion of the Easement the Option Notice will be accompanied by a plan showing the intended location of the Cable(s) for inclusion in the Easement. The Grantee will thereafter provide engrossed documents for completion of the Easement. For the avoidance of doubt, the Grantee may only be permitted to serve an Option Notice upon grant of development consent

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		for either Project or both of the Projects by the relevant authority at the time.
22.	Third Party Consents	The Grantor will use reasonable endeavours for securing the consent of any mortgagee The Grantee will assist where reasonably practical or if possible, the Grantor in terminating or obtaining any necessary consents or releases from beneficiaries of rights/restrictions, or other people with interests in the site including occupiers which consents could obstruct the delivery of the rights in this Option Agreement and Deeds of Easement to follow thereon. The Grantee will meet the Grantor's reasonable costs for complying with the terms of this clause where such costs are agreed before they are incurred.
23.	Access	The Grantee is to be granted an unrestricted vehicular and pedestrian right of access through the Grantor's Property from the nearest public adopted highway or any adjoining landholding to the Option Land, by such route to be agreed between the Grantor and Grantee both acting reasonably as is necessary to enable the Grantee to exercise its rights subject to the Grantee making good all damage caused in the exercise of such right to the reasonable satisfaction of the Grantor. The Grantee is permitted to temporarily improve existing tracks (to be reinstated to a condition no worse than before entry if required) and to construct temporary access roads over the Grantor's Property. Where any temporary access roads that are constructed outside of the Working Area during the Construction period which link the public highway to the Working area but are within the Grantor's Property, the Grantee shall pay to the Grantor a sum of [redacted] per linear meter subject to a minimum of [redacted], to be paid as a one-off payment. Crop loss shall be paid in addition and in accordance with Clause 38. Where access is taken to undertake Enabling Works or Surveys and no road is constructed, this payment shall not apply.
24.	Grantee Rights	The following rights shall be granted to the Grantee: **Surveys** - During the Option Period, the Grantee has the right to undertake intrusive and non-intrusive: surveys and site investigations over the Grantor's property (but within 250 metres of the Option Land) including environmental and engineering surveys. Any surveys to be undertaken within the curtilage of any residential property within the ownership of the Grantor shall require Grantor's consent (not to be unreasonably withheld or delayed).

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		Grantee shall be entitled to enter onto the Grantor's Property with its surveyors, architects, engineers, contractors or agents upon giving 28 days' prior written notice to the Grantor, for the purposes of undertaking intrusive, site soil and environmental surveys and environmental mitigation measures and geotechnical archaeological and site investigations subject to the following payments: • [redacted] in respect of each borehole or trial pit dug and [redacted] per window sample: • In the event that the borehole is open for more than 7 days or if subsequent water monitoring is required, an additional payment of [redacted] will be made for a 12 month period or any part thereof. A further payment of [redacted] will also be made for any further 12 month period or any parts thereof. • [redacted] in respect of any trench dug in connection with archaeological investigations subject to a minimum payment of [redacted]. The Grantee will provide no less than 48 hours' notice of the intention to undertake non-intrusive surveys. The Grantee shall pay reasonable compensation in accordance with Clause 38 of this agreement. **Public Rights of Way** - The Grantee will be permitted to temporarily divert public rights of way within the Option Land (such temporary routes to be agreed with the grantor acting reasonably communicated in writing to the Grantor for their information) as may reasonably be required in order to facilitate the Works. The Grantee shall use reasonable endeavours to divert any public rights of way in such a manner so as not to adversely affect the business of the Grantor (acting reasonably).
25.	Drainage & Field Run Off	Drainage consultants with relevant practical experience and experience of working in Suffolk will be engaged by the Grantee to carry out a pre and post construction assessment of the impact that the Works will have or has had on drainage and, prior to undertaking the proposed drainage schemes, will consult with the Grantor and their appointed drainage consultant on the design of any land drainage works required in connection with the Works and on the design of any land drainage works required for the subsequent restoration of drainage on the Grantor's retained land. Feedback on the proposals will be required within 21 days of receipt of the initial drainage plans by the Grantor and the Grantee will pay the reasonable and proper fees of the Grantor's drainage consultant to an initial maximum of [redacted] per project. Any increase above the initial cap must have the prior

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written approval from the Grantee (such approval not to be unreasonably withheld or delayed if it can be demonstrated (on a case by case basis) that the fees to date have been reasonably and properly incurred).

If there is a dispute between the parties relating to the proposed post construction drainage scheme, then it shall be referred to a third-party drainage consultant to be known as the Drainage Expert. The Drainage Expert will be jointly chosen by the parties and have relevant experience of working in Suffolk. In the event of the parties failing to agree the appointment will be made by the President of the Institution of Civil Engineers. The Grantor will bear the reasonable and proportionate costs of the determination process and in the event of any dispute over costs this is to be resolved under the Dispute Resolution Clause (35).

The decision of the Drainage Expert will be binding on the parties. However, accepting the decision of the Drainage Expert will not restrict the Grantor's right to claim compensation for losses which are attributable to ongoing drainage defects arising out of the Grantee's Works where, upon implementation of the drainage scheme, the defect is proven to be caused as a result of design or installation failure only.

The Grantee will engage suitably qualified and experienced drainage contractors to implement the requisite recommendations as soon as practicably possible (as advised by the grantee's Drainage Consultant), to ensure, where reasonable and proportionate, the agricultural land drainage systems and natural drainage on the Grantor's retained land are left in no worse condition than before the date of entry for commencement of the Works.

Where necessary the Grantor permits the drainage contractors to access and undertake any requisite drainage works on land outside of the Option Land in the interests of making best endeavours to ensure the retained land is left no worse condition than it was before commencement of the Works.

The Grantee will provide the Grantor and the Grantor's appointed drainage consultant the opportunity, subject to compliance with CDM regulations, to inspect such land drainage works as they progress. Records of existing and remedial drainage will be made available by the Grantee and copies provided to the Grantor (and the occupier if applicable) after completion of drainage works.

The provisions of Clause 38 of this agreement shall apply where any drainage works are undertaken.

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26.	Grantor's obligations	During the Option Period the Grantor and occupier if applicable are not to carry out activities within the Option Land that may prejudice the rights to be acquired by the Projects, unless they have prior written consent of the Grantee (not to be unreasonably withheld or delayed). These activities include but are not limited to, the grant of any new rights or interests in the land, opting to tax the land, construction of any buildings or structures, development of land for any purpose other than the existing agricultural use, land drainage works, tree or hedgerow planting, excavations, installation of roads or access tracks, installation of dykes, ditches or hard boundaries, piling, installation of renewable energy technology and any other work which would constitute development of the land forming the Option Land. The Grantor will have no restrictions on normal agricultural operations and cultivations including the planting, maintenance and harvesting of agricultural crops and the growing of grasses or other herbaceous forage for livestock purposes. The Grantor shall not require the consent of the Grantee but shall notify the Grantee in writing within 28 days of the grant, renewal, amendment or termination of the following licence agreements in so much as they affect the Option Land; a) Grazing Agreement b) Shooting Licence c) Fishing Licence d) Metal Detecting Licence e) Annual Cropping Licence f) Parking Licence g) Storage Licence
27.	Option Assignment	The Grantee will be able (without the consent of the Grantor) to assign or share the whole or part of the rights under the Option (providing always that the assignee is of suitable financial standing to meet the Grantee's obligations under the Option or any subsequent Deed of Grant) to or allow the use of the rights by: a successor to the business undertaking of the Grantee; any Group Company of the Grantee National Grid Electricity Transmission plc or any group company of National Grid Electricity Transmission plc or any successor to the business undertaking of the same; an Offshore Transmission Grantor (OFTO) or any successor to the business undertaking of the same. The Grantor shall be informed in writing of any assignment.

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		Assignment to any third party not referred to above will be permitted with the prior consent of the Grantor such consent not to be unreasonably withheld or delayed. In addition to the ability to assign the rights under the Option, the Grantee shall also be entitled to direct that each Deed of Easement is granted direct to a third party. Consent from the Grantor (not to be unreasonably withheld or delayed) to such an arrangement will be required only if consent would be required for an assignment to such a third party.
28.	Indexation	All payments are subject to RPI increase from the date of signing of the Option Agreement until payment (using the RPI data available at the date of payment).
29.	VAT	VAT may be charged by the Grantor on all payments made by the Grantee where a valid VAT invoice is issued, and the Grantee shall only be liable to pay any irrecoverable VAT.
30.	Planning Matters	The Grantor will not object to the Developer's application for Development Consent nor any other planning application(s) associated with the Projects. The Grantor will, at the Grantee's request enter into any planning agreements which may be requisite or conducive to such applications save as this shall apply only to the Grantor's Property. The Grantee shall indemnify the Grantor against all reasonably incurred costs, losses, claims and other liabilities arising from or under any planning agreements. The Grantor to be released from any liability to the planning obligations if the land subject to the planning agreement is sold.
31.	Grantor Disposal	The Grantor is permitted (with the Grantee's prior written consent which shall not be unreasonably withheld or delayed) to sell, lease, charge or dispose of its interest in the Grantor's Property so long as in all cases the Grantor first procures agreement from the incoming party to be formally bound by the terms of the Option Agreement. The Grantee will meet the Grantor's reasonable and properly incurred Agents and Legal costs for doing so where such costs are agreed before they are incurred.
32.	Insurance Obligation	The Grantee shall keep and maintain with an insurer of good repute corporate public liability insurance of a minimum amount of [redacted]
33.	Indemnity	The Grantee shall indemnify the Grantor against all losses and liabilities (other than consequential / indirect losses / loss of profits and subject to the Grantor using all reasonable

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		endeavours to mitigate their loss) suffered by the Grantor as a direct result of the Works. The overall liability of the Grantee to the Grantor under this Agreement shall be limited to: a) from the date of this Agreement until the expiry of the Notice of Entry the sum of [redacted] per claim. b) from the expiry of the Notice of Entry until the day before completion of the first Deed of Grant the sum of [redacted] per claim (where the expiry of the Notice of Entry occurs prior to completion of the first Deed of Grant) c) from the date of completion of the first Deed of Grant (whether or not that is preceded by the expiry of the Notice of Entry) until expiry of the Option Period the sum of [redacted] per claim. The Grantee will be liable only for contamination caused by substances brought on to the Grantor's Property by the Grantee, their contractors, agents, representatives or employees.
34.	Direct Agreements	The Option Agreement shall contain the Grantee's standard terms for providers of debt to the relevant Project to have rights to step in to and/or procure an assignment or other transfer of the Grantee's rights and obligations under the Option and/or Deed of Easement. The Grantee shall reimburse the Grantor for all costs reasonably and properly incurred by the Grantor in complying with this obligation.
35.	Dispute Resolution	In the event of a dispute or claim the Parties will attempt in good faith to resolve matters promptly within 14 days of receiving a written notice of the dispute through negotiation by their respective representatives. If any dispute cannot be resolved through negotiations, the Parties will attempt in good faith to settle matters by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by the Parties, the mediator will be nominated by CEDR. Unless otherwise agreed by the Parties, if the dispute has not been resolved by mediation within 28 days of the initiation of mediation, or if either Party will not participate in an alternative dispute resolution procedure then the dispute shall in default of agreement be referred to an arbitrator qualified and experienced the subject matter of the dispute, as appropriate.

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		to be appointed in default of agreement by application to the President of the Royal Institution of Chartered Surveyors.
36.	Records of Condition	The Grantee, having carried out a pre-entry schedule of condition, a copy of which will be provided to the Grantor who shall be entitled to make representations regarding the adequacy of the schedule of condition. The Grantee shall give due and proper regard to any such representations and take reasonable steps to remedy any justifiable inadequacy identified. The pre-entry schedule of condition shall, for agricultural land, include at minimum: photographs of the land, basic information on soil composition and topsoil depths, if appropriate. For the avoidance of doubt soil surveys shall be undertaken at a maximum distance of every 50m along the cable route and in each field or agricultural enclosure, where appropriate.
37.	Confidentiality	These Heads of Terms are confidential to the parties named whether or not the matter proceeds to completion save that reference to them having been entered into may be referred to with the Planning Inspectorate.
38.	Compensation Provisions	Compensation for damage to land which cannot be made good will be paid by the Grantee. The Grantee shall compensate the Grantor and/or any leaseholder, tenant, licensee or occupier for any reasonable and mitigated loss and temporary disturbance reasonably incurred as a direct consequence of the Works, Enabling Works, Surveys or Drainage works following receipt by the Grantee of reasonable supporting evidence from the Grantor, leaseholder, tenant, occupier or their respective agents to substantiate the amount of any such payment. The Grantee shall pay reasonable and mitigated crop loss and disturbance compensation on an annual basis (to include but not limited to the working width, severed areas and additional working costs) on an annual basis subject to the prompt provision of supporting evidence by the Grantor, leaseholder, tenant, licensee, occupier or their respective agent. For the avoidance of doubt, Crop Loss shall include any lost subsidy or stewardship payment on the same basis together with all reasonable surveyors' fees subject to such fees being reasonably and properly incurred, such time being in proportion to the complexity of the matter, accurate time sheets being recorded and such time being mitigated, all in accordance with RICS Guidance. The Grantee shall pay [redacted]per hour for Grantor's, leaseholder's, tenant's, licensee's, occupier's and employees' time incurred on

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		a reasonable and proper basis. On submission of any claim the Grantor, leaseholder, tenant, or occupier will provide appropriate evidence and justification to substantiate the claim. The Grantee will, after consultation with the Grantor and/or any leaseholder, tenant, licensee, or occupier (as appropriate), take all necessary precautions to prevent the straying of livestock and will compensate the owner of such livestock for all injury, death, loss, damage or claim arising where such straying is due to any act or omission on the part of the Grantee. The Grantee may require production of a report from a veterinary expert to confirm the cause and extent of any injury, death, loss or claim related to stock.
39.	Contract Compensation	The Grantee shall indemnify the Grantor or any occupier of the Grantor's Property against all losses and liabilities suffered if, as a result of the Grantee exercising it's rights, the Grantor is unable to fulfil an existing contract for the supply of farming or agricultural produce, turf or commercial Christmas trees subject to the Grantor or any occupier of the Grantor's Property using reasonable endeavours to mitigate their loss and providing sufficient evidence to substantiate any claim.
40.	Severance	The Grantee shall, within 3 months of the expiry of the Notice of Entry, agree with the Grantor (both parties acting reasonably) any areas outside of the Working Area that are either: a) sterilised from cropping for the duration of the works, or b) restricted in terms of cropping rotation. Any associated crop loss or disturbance compensation shall be paid to the Grantee in line with Clause 38 of this agreement. The Grantee shall use reasonable endeavours to provide the Grantor, leaseholder, tenant, licensee or occupier with access across or over the Working Area to any severed areas which are created as a direct result of the Works.
41.	Option Termination	The Grantor shall retain the right to terminate the Option: a) If the DCO Application is refused or the DCO is revoked and this refusal or revocation subsists and no Challenge to such refusal or revocation subsists on 30th April 2025, the Grantor may terminate this Agreement by service of not less than two months' written notice upon the Grantee. b) If the DCO Application is refused or the DCO is revoked but a Challenge or subsequent appeal proceedings subsist on 30th April 2025, then the Grantor's ability to terminate under 'a' above shall be

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		suspended and not be exercisable until the day one month after the day on which the Challenge and any subsequent appeal proceedings have been finally concluded leaving no DCO in place. c) If a DCO is made and on 30th April 2025 it is immune from challenge the Grantor shall not have the ability to terminate this Agreement. d) If a DCO is made and on 30th April 2025 proceedings pursuant to section 118(1) of the Planning Act 2008 subsist the Grantor shall not have the ability to terminate this Agreement until one month after the Final Determination of such proceedings by the court or on any appeal to any higher court leaving no DCO in place (meaning the date following a court making a decision on those proceedings when no further appeal to a higher court can be made).
42.	Grantee Obligations	The Grantee shall use reasonable endeavours to provide detailed construction plans no later than 6 months before the service of the Notice of Entry such plans to include the following detail: a) Working Width b) Areas of Work c) Proposed Grantor Crossing Points Upon grant of development consent and no later than 6 months before the service of Notice of Entry. the Grantee shall carry out or compensate the Grantor for undertaking any accommodation works (notwithstanding Clause 43 - Removal and Replacement of Barriers) as are reasonably required to enable the Grantor to continue to exercise their rights to enjoy the property during and after completion of the Works and any subsequent Deeds of Easement. The extent of such works to be agreed between the Grantor and Grantee with both parties acting reasonably.
43.	Removal and Replacement of Barriers	The Grantee will be permitted to remove any buildings. structures. fencing or barriers from the Option Land to facilitate the Works. The Grantee will make good any damage caused in the exercise of these rights to the reasonable satisfaction of the Grantor. Any reinstatement of buildings. structures and ancillary services which is required as a result of the works and are to be carried out by the Grantor (subject to the payment of the Planning Application Fee Payment and Replacement Building Payment) will be undertaken outside of the Easement Area but within the Grantor's property in location(s) to be agreed with the Grantee acting reasonably.

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44.	**Planning Application Fee Payment**	The Grantee shall pay the Grantor a fee [redacted] on completion of this Option agreement in respect of the Planning Application fees including any professional costs incurred through the application process.
45.	**Planning Application**	The Grantor shall, following receipt of the Planning Application Fee Payment and not before, arrange and submit a planning application for replacement animal housing and installation of necessary ancillary services to support any new buildings to the Local Planning Authority, save as the Planning Application must be submitted no earlier than 1st September 2021 and no later than 15th September 2021. The Grantee shall not submit the Planning Application without the consent of the Grantee (not to be unreasonably withheld or delayed) and as such shall provide a copy of the application to the Grantee no later than 11th August 2021.
46.	**Replacement Building Payment**	A payment of [redacted] shall be made by the Grantee to the Grantor within 30 days of confirmation of development consent from the Secretary of State for either of the Projects The Grantor shall accept this payment as 7 months notice of the Grantee's intention to undertake the removal of any buildings within the Option Land as is reasonably required to undertake Enabling Works. This payment shall be for the purposes of constructing replacement animal housing and installing the necessary ancillary services to support any new buildings. The Replacement Building Payment shall be paid in full and final settlement of any claims for replacement buildings, additional structures and ancillary services in relation to any structure which require removal or replacement as a direct result of the Works. Subject to the payment of the Replacement Building Payment by the Grantee to the Grantor, the Grantor shall not be entitled to make a claim for any losses associated with animal movements off the Grantor's property prior to and following the expiry of the Notice of Entry. In the event that the Planning Application is refused consent by the Local Planning Authority, the Grantee shall pay [redacted] in respect of a subsequent application fee and professional fees associated with submitting the application.

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Deed of Easement Terms

The Grantee may call for up to 2 Easements (one for each of EA1N and EA2) to be granted over all or part of the Option Land. Each Easement will be in accordance with these Terms:

47.	Term	In perpetuity from the date the Easement is granted.
48.	Easement Plans	Plans based on as laid information to be produced following completion of construction.
49.	Easement Area	The total area of land affected by The Works as shown coloured pink on the Easement Plan(s). To be a standard width of 20m per project, save at locations of difficult engineering or where Cables are installed using Horizontal Directional Drilling (HDD) (or similar trenchless techniques) where the width may increase or decrease.
50.	Easement Consideration	Easement consideration of [redacted]ess the Entry Payment. Should the requirement for any additional rights result in the Easement Area being wider than 20m per Project for any part of its length, then the Easement Consideration will be increased by [redacted]² for each square metre over and above the Easement Area which is more than 20m per Project in width, for the avoidance of doubt the Easement consideration will be based on minimum 20m width per project at all times.
51.	Easement Rights	The Grantor will grant permanent rights for the benefit of the relevant project over all or part(s) of the Option Land: for the Easement Area to be used to install, inspect, repair, replace, move, renew, operate, maintain, monitor, retain, decommission and remove the Cables, associated infrastructure and any ancillary apparatus leading between the option area, an Offshore Wind Farm and the infrastructure of National Grid: for the cables to be used to export electricity and telecommunications from EA1N and EA2. (telecommunications will be used for remote monitoring of the wind farm served by The Works only and not for any other purpose):
52.	Access	The Grantee is to be granted an unrestricted vehicular and pedestrian right of access through the Grantor's Property from the nearest public adopted highway or any adjoining landholding to the Easement Area, by such route as is necessary to enable the Grantee to exercise its rights subject the Grantee making good all damage caused in the exercise of such right to the reasonable satisfaction of the Grantor. The Grantee is permitted to improve, for the duration of the Works and reinstate to the

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		condition upon entry unless otherwise requested by the Grantor" existing tracks and to lay temporary access roads over the Grantor's Property.
53.	Grantor's Obligations	The Grantor shall not do or cause or permit to be done on the Easement Area anything calculated or likely to cause damage or injury to the Works and will take all reasonable precautions to prevent such damage or injury. The Grantor will covenant not to do anything which adversely affects the Grantee's ability to install, maintain and operate The Works or access thereto. The Grantor shall not without the prior consent in writing of the Grantee make or cause or permit to be made any material alteration to or any deposit of anything upon any part of the Easement Area so as to interfere with or obstruct the access thereto or to the Works by the Grantee or so as to lessen or in any way interfere with the support afforded to the Works by the surrounding soil including minerals or so as materially to reduce the depth of soil above the Works The Grantor shall not erect or install or cause or permit to be erected or installed any building or structure or permanent apparatus in through upon or over the Easement Area without prior written consent from the Grantee (not to be unreasonably withheld or delayed). The Grantor shall submit in writing any plans and supporting information showing the proposed building, structure or permanent apparatus necessary for the Grantee (acting reasonably) to be able to provide a reasoned response. The Grantor shall not plant or grow within the Easement Area any trees, shrubs or underwood without the consent in writing of the Grantee (such consent not to be unreasonably withheld or delayed). The Grantor will have no restrictions on normal agricultural operations and cultivations including the planting, maintenance and harvesting of agricultural crops and the growing of grasses or other herbaceous forage for livestock purposes but there will a requirement to ensure that any agricultural operations deeper than 0.65 metres requires prior consent from the Grantee (not to be unreasonably withheld or delayed).
54.	Third Party Consents	The Grantor will use reasonable endeavours for securing the consent of any mortgagee The Grantee will assist where reasonably practical or if possible, the Grantor in terminating or obtaining any necessary consents or releases from beneficiaries of rights/restrictions, or other people with interests in the site including occupiers which

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		consents could obstruct the delivery of the rights in this Option Agreement and Deeds of Easement to follow thereon. The Grantee will meet the Grantor's reasonable costs for doing so where such costs are agreed before they are incurred.
55.	Easement Assignment	The Grantee will be able (without the consent of the Grantor) to assign or share the whole or part of the rights under the Easement (providing always that the assignee is of suitable financial standing to meet the Grantee's obligations under the Deed of Grant) to or allow the use of the rights by: a successor to the business undertaking of the Grantee; any Group Company of the Grantee; National Grid Electricity Transmission plc or any group company of National Grid Electricity Transmission plc or any successor to the business undertaking of the same; an Offshore Transmission Grantor (OFTO) or any successor to the business undertaking of the same Assignment to any third party not referred to above will be permitted with the prior consent of the Grantor such consent not to be unreasonably withheld or delayed. In addition to the ability to assign the rights under the Option, the Grantee shall also be entitled to direct that each Deed of Easement is granted direct to a third party. Consent from the Grantor (not to be unreasonably withheld or delayed) to such an arrangement will be required only if consent would be required for an assignment to such a third party. The Grantee shall pay any costs reasonably incurred by the Grantor as a result of the assignment to any of the parties set out within this clause.
56.	Insurance Obligation	The Grantee shall keep and maintain with an insurer of good repute corporate public liability insurance of a minimum amount of £[redacted]
57.	Indemnity	The Grantee shall indemnify the Grantor against all losses and liabilities (other than consequential / indirect losses / loss of profits and subject to the Grantor using all reasonable endeavours to mitigate their loss) suffered by the Grantor as a direct result of any operation of the Easement Rights. The overall liability of the Grantee to the Grantor under this clause shall be limited to the sum of £[redacted] per claim or series of related claims.

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58.	VAT	VAT may be charged by the Grantor on all payments made by the Grantee where a valid VAT invoice is issued, and the Grantee shall only be liable to pay any irrecoverable VAT.
59.	Termination	In the event that: a) no Electric Circuits are installed in the Easement Strip in exercise of the Rights and commissioned prior to the seventeenth anniversary of the date of this Deed; or b) the Grantee has served notice of abandonment and decommissioned the Cables in accordance with clause 66, then either party shall by service of not less than 12 months' written notice on the other be entitled to require that the parties enter into a deed of surrender of the rights. Provided always that: a) if the Grantee commissions the Cables in exercise of the rights before the seventeenth anniversary of the date of the Deed then any notice served by the Grantor under this clause shall be of no effect b) the deed of surrender shall be in a form agreed between the parties acting reasonably and shall include a full release of all future liability of each party to the other under the terms of this Deed but without prejudice to any liability which may have arisen prior to the release and any costs reasonably and properly incurred by the Grantor in negotiating and completing the said deed of surrender shall be reimbursed on its completion by the Grantee
60.	Ancillary Features	At each location where Ancillary Features (to include but not be limited to permanent manholes, manhole covers, or kiosks) are located at ground level: a) a fee of [redacted] per Ancillary Feature will be paid if all the Feature is within 2m of the centre point of the closest hedge, ditch, bank or similar boundary feature. b) a fee of [redacted] per Ancillary Feature will be paid if all or any part thereof of the Feature is further than 2 metres from the centre point of the closest hedge, ditch, bank or similar boundary feature At the Grantor's request the Grantee shall erect and maintain a fence (the specification of which is to be agreed between the Grantor and the Grantee acting reasonably) around any permanent manholes, manhole covers, or kiosks which are located at ground level.

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61.	Reinstatement	Following completion of the Works, the Grantee will reinstate the Working Area and accesses to a condition that is comparable (to be agreed by both parties and the occupier, if applicable, acting reasonably) to that shown and described in the Schedule of Condition. Soil reinstatement works are to be carried out to bring agricultural soils back to their former use and condition as recorded in the Schedule of Condition. Aftercare monitoring, to include soil testing, will be undertaken by the Grantee until such time as the soil has been restored in line with the Schedule of Condition. Such testing to be undertaken for maximum period of 5 years after completion of the Works. Upon the agreement by both parties acting reasonably that soil reinstatement cannot be completed to the standard recorded in the Schedule of Condition, compensation shall be paid to the Grantor in line with Clause 62.
62.	Compensation Provisions	Compensation for damage to land which cannot be made good will be paid by the Grantee. The Grantee shall compensate the Grantor and/or any leaseholder, tenant, licensee or occupier for any reasonable and mitigated loss and temporary disturbance reasonably incurred as a direct consequence of the Works, Enabling Works, Surveys or Drainage works following receipt by the Grantee of reasonable supporting evidence from the Grantor, leaseholder, tenant, occupier or their respective agents to substantiate the amount of any such payment. The Grantee shall pay reasonable and mitigated crop loss and disturbance compensation on an annual basis (to include but not limited to the working width, severed areas and additional working costs) on an annual basis subject to the prompt provision of supporting evidence by the Grantor, leaseholder, tenant, licensee, occupier or their respective agent. For the avoidance of doubt, Crop Loss shall include any lost subsidy or stewardship payment on the same basis together with all reasonable surveyors' fees subject to such fees being reasonably and properly incurred, such time being in proportion to the complexity of the matter, accurate time sheets being recorded and such time being mitigated, all in accordance with RICS Guidance. The Grantee shall pay [redacted] per hour for Grantor's, leaseholder's, tenant's, licensee's, occupier's and employees' time incurred on a reasonable and proper basis. On submission of any claim the Grantor, leaseholder, tenant, or occupier will provide appropriate evidence and justification to substantiate the claim.

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		The Grantee will, after consultation with the Grantor and/or any leaseholder, tenant, licensee, or occupier (as appropriate), take all necessary precautions to prevent the straying of livestock and will compensate the owner of such livestock for all injury, death, loss, damage or claim arising where such straying is due to any act or omission on the part of the Grantee. The Grantee may require production of a report from a veterinary expert to confirm the cause and extent of any injury, death, loss or claim related to stock.
63.	Contract Compensation	The Grantee shall indemnify the Grantor or any occupier of the Grantor's Property against all losses and liabilities suffered if, as a result of the Grantee exercising it's rights, the Grantor is unable to fulfil an existing contract for the supply of farming or agricultural produce, turf or commercial Christmas trees subject to the Grantor or any occupier of the Grantor's Property using all reasonable endeavours to mitigate their loss and providing sufficient evidence to substantiate any claim.
64.	Dispute Resolution	In the event of a dispute or claim the Parties will attempt in good faith to resolve matters promptly within 14 days of receiving a written notice of the dispute through negotiation by their respective representatives. If any dispute cannot be resolved through negotiations, the Parties will attempt in good faith to settle matters by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by the Parties, the mediator will be nominated by CEDR. Unless otherwise agreed by the Parties, if the dispute has not been resolved by mediation within 28 days of the initiation of mediation, or if either Party will not participate in an alternative dispute resolution procedure then the dispute shall in default of agreement be referred to an arbitrator qualified and experienced the subject matter of the dispute, as appropriate, to be appointed in default of agreement by application to the President of the Royal Institution of Chartered Surveyors.
65.	Confidentiality	These Heads of Terms are confidential to the parties named whether or not the matter proceeds to completion save that reference to them having been entered into may be referred to with the Planning Inspectorate.
66.	Decommissioning	In the event that the Grantee wishes to permanently abandon the Cables it shall give written notice of such permanent abandonment to the Grantor and the Grantee will decommission or remove Cables and Structures in accordance with the Decommissioning Plan (such plan to be approved by the relevant competent authority at the time).

SCOTTISHPOWER RENEWABLES

		The Grantee will decommission or remove the Cables or Structures by: a) removing any Cables or Structures that are at a depth of less than 1.2 metres from the original surface of the Easement Area provided that such removal would not be in breach of any applicable consent or statutory requirement; b) making any Cables or Structures that are at a depth of more than 1.2 metres from the original surface of the Easement Area or which is at a lesser distance, but which is not required to be removed under part A of this clause safe in accordance with all statutory requirements; c) reinstating the Easement Area to no worse than its condition before the exercise of the Rights as evidenced by the Schedule of Condition to the Grantor's reasonable satisfaction. If the Grantee fails to decommission the cables in accordance with the Decommissioning Plan (such plan and subsequent decommissioning to be approved by relevant competent authority at the time) the Grantee will not be permitted to terminate the Deed of Easement, but the Grantor can terminate it if so wished at their discretion. Any compensation shall be paid in line with Clause 62. The Grantee shall pay the Grantee's reasonable professional and legal costs associated with the decommissioning. In the event that the Cables and Structures are decommissioned and the Deed of Grant of Easement terminated by either the Grantor or Grantee, any equipment remaining on the land shall become the property of the Grantor and the Grantee shall have no further liability in respect of it.

The above Heads of Terms represent the main terms for the Option/Deeds of Grant of Easement, but are not supposed to be fully inclusive and are subject to additions to or amendments by the Grantor, the Grantee and their respective solicitors.

[redacted]

Signature: .....

Name: .....

Date: .....

Appendix 6

(*Option Agreement (Anonymised)*)

SHEPHERD+ WEDDERBURN

OPTION AGREEMENT

between

[redacted]

and

ScottishPower Renewables (UK) Limited

relating to: the grant of easements for cables at Land at [redacted]

[ ] 2021

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CONTENTS

OPTION AGREEMENT is made on the 2021

between

[ ](the "**Grantor**"); and

ScottishPower Renewables (UK) Limited (company number NI028425) whose registered office is The Soloist, 1 Lanyon Place, Belfast, Northern Ireland BT1 3LP (the "**Grantee**") (care of Legal Director, ScottishPower Renewables (UK) Limited, 320 St Vincent Street, Glasgow, G2 5AD).

1. Definitions and interpretation

1.1 In this Agreement the following definitions shall apply:

"Affiliate"	means in relation to a company, that company, any subsidiary or holding company of that company and any subsidiary of a holding company of that company where holding company and subsidiary mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of: (a) another person (or its nominee), by way of security or in connection with the taking of security; or (b) its nominee;
"Cable"	shall have the meaning defined in the Deed of Grant;
"Cable Inspection Boxes"	shall have the meaning defined in the Deed of Grant;
"Challenge"	means a challenge under section 118(2), or under section 118(6), Chapter 9 of the Planning Act 2008 in respect of the EA1N DCO or the EA2 DCO;
"Compensation Code"	means the methods and procedures for assessing compensation for compulsory acquisition of rights in land comprising the Land Compensation Acts of 1961 and 1973 and the Compulsory Purchase Act 1965 and any other applicable Acts of Parliament, case law and established practice as modified by the DCO or any subsequent development consent order for the Project;
"Compensation Code Notice"	means a notice to be served on the Grantee by the Grantor specifying the Compulsory Acquisition Value as determined by the Grantor and accompanied by all reasonable documentary evidence sufficient to support such determination;
"Compensation Provisions"	means the Compensation Provisions in Schedule 2 of this Agreement;
"Completion Date"	means the first Working Day after expiry of twenty eight days from the date of service of an Option Notice;
"Compulsory Acquisition Value"	means the compensation that would be payable on the EA1N Entry Date and/or the EA2 Entry Date (as the case may be) for the grant of the Rights in perpetuity as determined in accordance with the Compensation Code;

“Construction Drainage Report”	means the written report prepared by the Grantee’s Drainage Contractor pursuant to clause 7.2 and agreed pursuant to clause 7;
"Deed of Grant"	means a EA1N Deed of Grant and/or EA2 Deed of Grant (as the case may be) in the form of the draft annexed at Schedule 1 mutatis mutandis and incorporating the relevant Easement Plan;
"EA1N DCO"	means a development consent order made by the Secretary of State under section 114 of the Planning Act 2008 in response to the DCO EA1N Application;
"EA1N DCO Application"	means EA1N Limited’s application made to the Secretary of State on 24 October 2019 for a development consent order for East Anglia One North Offshore Windfarm and ancillary development or any amendment or re-submission thereof;
“EA1N Deed of Grant”	means the Deed of Grant granted in relation to the EA1N Development;
“EA1N Deed of Grant Payment”	means the sum (Index Linked to the date on which the payment is made) which is the Easement Strip Actual Area multiplied by £2.47 less any EA1N Entry Payment and less any EA1N Enabling Works Payment received by the Grantor;
“EA1N Development”	means the construction, operation, maintenance and decommissioning of infrastructure to facilitate the connection of electricity from East Anglia One North Offshore Wind Farm to the National Grid (including but not limited to substation compounds, switchgear, transformers, reactive compression equipment, metering, control building and associated plant) including as reasonably required to facilitate connection of electricity from East Anglia One North Offshore Wind Farm to the National Grid the construction, operation, maintenance and decommissioning of ancillary apparatus, services and facilities;
“EA1N Easement Consideration”	means the sum (Index Linked to the date on which the payment is made) which is the Easement Strip Actual Area multiplied by £2.47;
“EA1N Enabling Works”	means those Enabling Works undertaken for the purpose of the EA1N Development;
“EA1N Enabling Works Payment”	means the sum (Index Linked to the date on which payment is made) which is 9% of the Easement Strip Standard Area multiplied by £2.47;
"EA1N Entry Date"	means the date upon which the Grantee first enters the Grantor’s Property pursuant to clause 5.1.3 for the purpose of commencing the EA1N Works;
“EA1N Entry Payment”	means the sum (Index Linked to the date on which payment is made) which is 90% of the Easement Strip Standard Area multiplied by £2.47 less any EA1N Enabling Works Payment;
“EA1N Limited”	means East Anglia One North Limited (company number 11121800) whose registered office is at 3rd Floor, 1 Tudor Street, London EC4Y 0AH;

“EA1N Notice of Entry”	means the notice given pursuant to clause 4.2;
“EA1N Overrun Payment”	means such sum as is equal to the greater of: (i) A x B x C; and (ii) £500 x C where A = £1 and where B = the length of the Easement Strip in linear metres and where C = the number of calendar months in the EA1N Overrun Period;
“EA1N Overrun Period”	means the period commencing on and including the day after the expiry of the EA1N Works Period and ending on and including the day before the EA1N Works Completion Date;
“EA1N Works”	means those Works undertaken for the purpose of the EA1N Development;
“EA1N Works Completion Date”	means the date of completion of the EA1N Works;
“EA1N Works Period”	means the period of 36 months from and including the EA1N Entry Date;
"EA2 DCO"	means a development consent order made by the Secretary of State under section 114 of the Planning Act 2008 in response to the EA2 DCO application;
"EA2 DCO Application"	means EA2 Limited’s application made to the Secretary of State on 24 October 2019 for a development consent order for East Anglia Two Offshore Windfarm and ancillary development or any amendment or re-submission thereof;
“EA2 Deed of Grant”	a Deed of Grant granted in relation to the EA2 Development;
"EA2 Deed of Grant Payment"	means the sum (Index Linked to the date on which the payment is made) which is the Easement Strip Actual Area multiplied by £2.47 less any EA2 Entry Payment and less any EA2 Enabling Works Payment received by the Grantor;
“EA2 Development”	means the construction, operation, maintenance and decommissioning of infrastructure to facilitate the connection of electricity from East Anglia Two Offshore Wind Farm to the National Grid (including but not limited to substation compounds, switchgear, transformers, reactive compression equipment, metering, control building and associated plant) including as reasonably required to facilitate connection of electricity from East Anglia Two North Offshore Wind Farm to the National Grid the construction, operation, maintenance and decommissioning of ancillary apparatus, services and facilities;
“EA2 Easement Consideration”	means the sum (Index Linked to the date on which the payment is made) which is the Easement Strip Actual Area multiplied by £2.47;
“EA2 Enabling Works”	means those Enabling Works undertaken for the purposes of the EA2 Development;
“EA2 Enabling Works	means the sum (Index Linked to the date on which

Payment”	payment is made) which is 9% of the Easement Strip Standard Area multiplied by £2.47;
“EA2 Entry Date”	the date upon which the Grantee first enters upon the Grantor’s Property pursuant to clause 5.1.3 for the purposes of commencing the EA2 Works;
“EA2 Entry Payment”	means the sum (Index Linked to the date on which payment is made) which is 90% of the Easement Strip Standard Area multiplied by £2.47 less any EA2 Enabling Works Payment;
“EA2 Limited”	means East Anglia Two Limited (company number 11121842) whose registered office is at 3rd Floor, 1 Tudor Street, London EC4Y 0AH;
“EA2 Notice of Entry”	means the notice given pursuant to clause 4.3;
“EA2 Overrun Payment”	means such sum as is equal to the greater of: (i) A x B x C: and (ii) £500 x C where A = £1 and where B = the length of the Easement Strip in linear metres and where C = the number of calendar months in the EA2 Overrun Period;
“EA2 Overrun Period”	means the period commencing on and including the day after the expiry of the EA2 Works Period and ending on and including the day before the EA2 Works Completion Date;
“EA2 Works”	means those Works undertaken for the purposes of the EA2 Development;
“EA2 Works Completion Date”	means the date of completion of the EA2 Works;
“EA2 Works Period”	means the period of 36 months from and including the EA2 Entry Date;
"Easement Plan"	means the plan to be annexed to a Deed of Grant containing the information required by clause 2.6;
"Easement Strip"	means a strip of land: (a) within the Option Area; and (b) part of which is located within the Working Area, through which the relevant Electric Circuits have been or will be laid as identified in the Easement Plan;
"Easement Strip Actual Area"	means the actual surface area of the Easement Strip measured in square metres subject to the Easement Strip having a minimum (even if it is not in fact the case) uniform width of 20 metres along the entirety of its length;
"Easement Strip Standard Area"	means the surface area of the Easement Strip measured in square metres assuming the Easement Strip has a uniform width of 20 metres along the entirety of its length;
"Electric Circuits"	shall have the meaning defined in the Deed of Grant;
"Electricity Act"	means the Electricity Act 1989 as amended;
“Enabling Works”	means any preliminary works required to be undertaken on the Option Area to facilitate the EA1N Works and/or

	EA2 Works including but not limited to site clearance works, demolition works, pre–planting of landscaping works, ecological mitigation, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of temporary means of enclosure, creation of site accesses, footpath creation, highway alterations, erection of welfare facilities and the temporary display of site notices or advertisements and for the avoidance of doubt does not include the Works;
“Energisation Notice”	means a notice to be served on the Grantor by the Grantee confirming the date of energisation of each of the Electric Circuits;
"Expert Determination"	means a determination made by an independent expert as may be agreed between the parties acting reasonably with substantial experience of issues similar to the issue in question and who in default of agreement shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors;
“Extension Payment”	means the sum (Index Linked to the date of payment) which is equal to five percent (5%) of the total of the EA1N Entry Payment and the EA2 Entry Payment;
"Financiers"	means (if applicable) any bank, export credit agency or other entity from time to time providing or arranging finance (whether by way of loan, letter of credit, guarantee, bond issue or otherwise) to the Grantee for the Cable or part of the Cable including any agent or trustee for any of the foregoing;
“Grantee’s Drainage Contractor”	means such drainage expert with relevant and practical experience of work in Suffolk as the Grantee nominates from time to time and notifies to the Grantor in writing;
"Gas and Electricity Markets Authority"	means the Gas and Electricity Markets Authority as created pursuant to Section 1 of the Utilities Act 2000 or any successor authority thereto;
"Grantee"	means the party referred to as such above and the expression shall include its successors in title and assigns;
"Grantor"	means the party referred to as such above and the expression shall include its successors in title and assigns;
“Grantor’s Construction Drainage Requirements”	means the Grantor’s requirements (if any) in respect of the Initial Drainage Works;
“Grantor’s Drainage Contractor”	means such drainage expert as the Grantor nominates from time to time and notifies the Grantee of in writing;
"Grantor's Property"	means the property known as land at [redacted] shown edged red on the Plan[s] being [the whole] of the land comprised within title number [redacted] and [part of] the land comprised within title number [redacted] and including the Option Area;
“Grantor’s Subsequent Drainage Requirements”	means the Grantor’s requirements (if any) in respect of the Subsequent Drainage Works;

"Hazardous Material"	shall have the meaning defined in the Deed of Grant;
"Immune from Challenge"	means that the statutory period within which a Challenge can be made has expired without a Challenge having actually been made;
"Index"	means the Retail Price Index ("**RPI**") issued by the Office for National Statistics provided that (a) if after the date on which any calculation is carried out using RPI the basis of computation of the index shall have changed from that subsisting at the date of the last such calculation, any official reconciliation between the two bases of computation published by the Office for National Statistics shall be binding upon the parties and in the absence of such official reconciliation, such adjustment shall be made to the figure of the index on the date of any such calculation to make it correspond as nearly as possible to the previous method of computation and any such adjusted figure shall be considered for the purposes of this Agreement to the exclusion of the actual published figure and any dispute regarding such adjustment shall be referred to an independent Chartered Accountant to be agreed between the parties or, failing agreement, nominated on application by either party by the President (or other senior office holder) of the Institute of Chartered Accountants in England and Wales (**"the Independent Chartered Accountant"**), and (b) if the RPI ceases to exist, there shall be substituted for it the Consumer Prices Index, unless the Consumer Prices Index has also ceased to exist in which case there shall be substituted such other reasonably equivalent index or means of indexation as the parties shall agree, or failing agreement, as shall be determined by the Independent Chartered Accountant, in each case whose decision shall be final and binding on the parties;
"Index Linked"	means increased by the same percentage as the increase in the Index between the month hereof and the month for which the Index was last published prior to the month when the relevant sum is to be increased and for the avoidance of doubt no decrease in the Index shall result in a reduction in the amount of any sum which is Index Linked;
“Initial Drainage Works”	means the land and/or natural drainage (including flood and alleviation) works required to be undertaken on the Grantor’s Property in connection with the EA1N Works and/or EA2 Works;
“Initial Option Period”	means the period of ten (10) years from and including the date of this Agreement to [ ] 2031;
"Non-disturbance Agreement"	an agreement in a reasonable form between the Grantee and any Prior Party which provides that in the event of default by the Grantor in the obligation owed to the Prior Party, the Prior Party shall not disturb the Grantee’s use of the Grantor's Property under the terms of this Agreement and under the terms of the Deed of Grant;
"Offshore Transmission Licence"	has the meaning given to that term in Section 6C(5) of the Electricity Act;
"OFTO"	means the Offshore Transmission Licence holder

	appointed by the Gas and Electricity Markets Authority pursuant to a tender process governed by regulations made under Section 6C of the Electricity Act;
"Option"	has the meaning given to it in clause 2.1;
"Option Area"	means the land shown shaded blue on the Plan[s];
"Option Fee"	means the sum of £[**This will be the Incentive Payment**];
"Option Notice"	means notice in writing of the Grantee's intention to take one or more Deeds of Grant;
"Option Period"	means the Initial Option Period together with any additional period pursuant to clause 2.2;
"Permission"	means any permission to be granted by the appropriate authority (or authorities) for the construction and operation of the Cable or any part thereof;
"Plans"	means the plans annexed hereto;
"Planning Agreement"	means: (a) any agreement bond or guarantee required by a competent authority; or (b) any undertaking bond or guarantee offered to a competent authority in connection with the grant of Permission (whether under Sections 106 or 299 Town and Country Planning Act 1990 Section 33 Local Government (Miscellaneous Provisions) Act 1982 Section 38 or Section 278 Highways Act 1980 Section 18 Public Health Act 1936 Section 104 Water Industry Act 1991 Section 39 of the Wildlife and Countryside Act 1981 or otherwise);
"Projects"	means the EA1N Development and/or the EA2 Development;
"Project Zone Plan"	means the plan with drawing no [ ] and annexed hereto;
"Rights"	has the meaning given to it in the Deed of Grant;
“Schedule of Condition”	means the schedule to be prepared in accordance with clause 5.2;
“Subsequent Drainage Report”	means the report prepared by the Grantee’s Drainage Contractor pursuant to clause 7.2 and agreed pursuant to clause 7 or determined pursuant to clause 7.5;
“Subsequent Drainage Works”	means land and/or natural drainage (including flood and alleviation) works required for the restoration of the land and/or natural drainage systems or irrigation systems on the Grantor’s Property;
"Survey Area"	means the land shown shaded green on the Plans (including the Option Area) [other than the land as shown hatched green on the Plans]; [***DN:*** *Excluded from such Survey Area must be the curtilage of any residential property within the Grantor’s Property. Such areas to be shown hatched green on the Plans].*
“Survey Licence”	means the letter agreement relating to access to the Grantor’s Property for the purpose of carrying out surveys

	and other investigative works dated [ ] and made between [ ];
"Termination"	means the termination of this Agreement either by the expiry of the Option Period or pursuant to clause 18;
"Top Up Payment"	means such sum as is equal to the amount by which the Compulsory Acquisition Value specified in the Compensation Code Notice exceeds the EA1N Easement Consideration and/or EA2 Easement Consideration (as the case may be);
"Value Added Tax"	means value added tax as defined in the Value Added Tax Act 1994 or any tax of a similar nature substituted for or levied in addition to such value added tax;
"Working Area"	means such area within the Option Area as the Grantee may reasonably require for the Works forming a strip of land on the surface of the Option Area embracing the relevant Cable having a standard width of 32 metres for each of the EA1N Works and the EA2 Works save where a greater or lesser width within the Option Area is required by the Grantee due to engineering issues where the Grantee shall be entitled to a total Working Area of no more than 70 metres in respect of such area for the purpose of either the EA1N Works or the EA2 Works (but if the EA1N Works and EA2 Works take place simultaneously the total width of the Working Area shall be no more than 70 metres), unless a wider area is otherwise approved by the Grantor;
"Working Day"	means any day (other than a Saturday or Sunday) on which clearing banks in the City of London are open to the public for the transaction of business;
"Works"	means the activities described in clause 5.1.3 and for the avoidance of doubt does not include the activities referred to in clause 5.1.1 or 5.1.2;

1.2 In this Agreement unless the context otherwise requires:

1.2.1 every covenant by a party comprising more than one person shall be deemed to be made by such party jointly and severally;

1.2.2 words importing persons shall include firms companies and corporations and vice versa;

1.2.3 where the context so requires words importing the singular shall include the plural and vice versa;

1.2.4 any covenant by a party not to do any act or thing shall include an obligation not to knowingly permit or suffer such act or thing to be done by their respective servants agents employees licensees workmen and contractors;

1.2.5 any reference to the right of the Grantee to have access to or to enter the Grantor's Property, Easement Strip, Option Area or any adjoining or neighbouring land owned or occupied by the Grantor shall be construed as extending to all persons authorised by them including agents professional advisers contractors workmen and others and where reasonably necessary shall be exercisable (a) with motor or other vehicles (using routes of access approved by the Grantor, such approval not to be unreasonably withheld or delayed) and (b) so as to bring on to the relevant land plant, apparatus and materials Provided That such plant, apparatus and materials shall be removed as soon as reasonably practical;

1.2.6 any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of it for the time being in force and all instruments

orders notices regulations directions bye-laws permissions and plans for the time being made issued or given under it or deriving validity from it;

1.2.7 all agreements and obligations by any party contained in this Agreement (whether or not expressed to be covenants) shall be deemed to be and shall be construed as covenants by such party;

1.2.8 the words "including" and "include" shall be deemed to be followed by the words "without limitation";

1.2.9 the titles or headings appearing in this Agreement are for reference only and shall not affect its construction;

1.2.10 any reference to a clause shall mean a clause in this Agreement;

1.2.11 if in order to comply with any obligation in this Agreement the Grantor or the Grantee shall require the consent of a third party such obligation shall be deemed to be subject to the obtaining of such consent which the Grantor and the Grantee or either as appropriate shall use its reasonable endeavours to obtain that consent.

2. Option

2.1 In consideration of the payment referred to in clause 2.3 below the Grantor grants to the Grantee for the Option Period an option to take a maximum of two Deeds of Grant (a maximum of one for each of the EA1N Development and the EA2 Development) each Deed of Grant permitting the installation of a maximum of two (2) Electric Circuits on the terms of this Agreement (the "**Option**").

2.2 In the event that at the end of the Initial Option Period the Grantee has not in accordance with the terms of this agreement yet commenced both the EA1N Works and the EA2 Works or completed both the EA1N Deed of Grant and the EA2 Deed of Grant the Grantee may extend the Option Period by serving on the Grantor not less than one month before the expiry of the Initial Option Period a written notice extending the Option Period by 36 months (from and including [ ] 2031 to [ ] 2034) and paying to the Grantor the Extension Payment within 45 days of the date of service of the written notice extending the Option Period in accordance with this clause.

2.3 The Grantee shall pay to the Grantor the Option Fee on the date of this Agreement.

2.4 The Option may be exercised by the Grantee at any time during the Option Period by the Grantee serving an Option Notice on the Grantor, Provided Always That any Option Notice in respect of the EA1N Development shall only be served after the making of the EA1N DCO and any Option Notice in respect of the EA2 Development shall only be served after the making of the EA2 DCO.

2.5 The Grantee may exercise the Option on two occasions only (and on one occasion only for each of the EA1N Development and the EA2 Development), but following service of an Option Notice the Grantee may at any time prior to completion of the Deed(s) of Grant provide the Grantor with an amended Easement Plan or Easement Plans.

2.6 An Option Notice shall state:

2.6.1 the number of Deeds of Grant required by the Grantee (being a maximum of two and a maximum of one for each of the EA1N Development and the EA2 Development);

2.6.2 the start and end date of the EA1N Works Period and/or EA2 Works Period (as the case may be) and where the EA1N Entry Date and/or the EA2 Entry Date (as the case may be) has occurred prior to the date of the Option Notice this shall be the start date of the EA1N Works Period and/or EA2 Works Period (as the case may be) as notified to the Grantor in accordance with clause 4.1 and/or clause 4.3 (as the case may be)

and shall be accompanied by an Easement Plan for each Deed of Grant which shall in each case identify the following:

2.6.3 the Easement Strip for the purposes of that Deed of Grant shown tinted pink which shall comprise part of the Option Area as defined in this Agreement but no land outside the Option Area unless the Grantor has agreed otherwise and which shall comply with the requirements of clause 2.9;

2.6.4 the locations of the land required for Cable Inspection Boxes for the purposes of that Deed of Grant shown edged brown and the Grantee shall use all reasonable but commercially prudent endeavours to procure that the Cable Inspection Boxes are located on or adjacent to field boundaries;

2.6.5 the Grantor's Property shown edged red which shall be the same as the Grantor's Property as shown on the Plans unless the Grantor has agreed otherwise;

2.6.6 if applicable the access shown coloured yellow which shall be any land which the Grantor has agreed pursuant to clause 13.1 may be used as an access;

2.7 Following service of an Option Notice the provisions of clause 9 below shall apply to the Deed of Grant to which the Option Notice relates.

2.8 The Grantee may require the Grantor to grant each Deed of Grant to the Grantee or a third party listed in clause 20 as the Grantee may direct (and the third party may be different for each Deed of Grant) subject to the Grantee complying with the requirements of clause 20.1.7 where applicable.

2.9 The parties agree that the Grantee shall be entitled to take a total Easement Strip under each Deed of Grant of no more than 20 metres in width (save in respect of the part of the Option Area where a greater width is required due to engineering issues or where the cable(s) are installed using horizontal directional drilling or similar technique) and the width shall be measured from the outside edge to the nearest point on the other outside edge of the Easement Strip.

3. Title matters

3.1 The Grantor shall upon request following the date of this Agreement (and to the extent that it has not done so already) deduce its title to the Grantor's Property such deduction of title including where appropriate:

3.1.1 in the case of registered land official copies of the title(s) of the Grantor to the Grantor's Property in accordance with Section 110 Land Registration Act 2002;

3.1.2 in the case of unregistered land an epitome of title showing a good root or roots of title being not less than fifteen (15) years old;

3.1.3 such further information as the Grantee reasonably requires including replies to enquiries and statutory declarations; and

3.1.4 subject to clause 1.2.11 and at the cost of the Grantee (subject to such costs being properly incurred and approved by the Grantee in advance (such approval not to be unreasonably withheld or delayed)) the unconditional written consent(s) of any mortgagees and any person with the benefit of any encumbrance or charge over the Grantor's Property.

3.2 The Grantor warrants to the Grantee that so far as the Grantor is aware:

3.2.1 he is fully empowered to grant the Option; and

3.2.2 there are no tenancies or other rights of occupation affecting the Grantor's Property save for [*insert details*].

3.3 The Grantor shall upon request and at the cost of the Grantee (subject to such costs being reasonably and properly incurred and approved by the Grantee in advance (such approval not to be unreasonably withheld or delayed)) use reasonable endeavours to and shall co-operate with the Grantee to remedy any defects in the Grantor's title to the Grantor's Property which could obstruct the Rights.

3.4 In addition to the obligation at clause 3.3, the Grantor covenants with the Grantee that the Grantor shall at the Grantee’s cost (subject to such costs being reasonably and properly incurred and approved by the Grantee in advance (such approval not to be unreasonably withheld or delayed)) use reasonable endeavours to obtain as soon as reasonably possible following a request from the Grantee a Non-disturbance Agreement from each party ("Prior Party") that holds a mortgage deed or trust or other similar lien on the Grantor's Property which arose prior to the date of this Agreement.

3.5 The Grantee may following the date hereof register a notice, caution or other protective entry against the Grantor's title to the Grantor's Property in relation to this Agreement (Provided That any copy of this Agreement submitted to the Land Registry shall be redacted as to the

financial details) and the Grantor shall at the cost of the Grantee provide such assistance to the Grantee as the Grantee reasonably requires to enable it do so. Following completion of such application the Grantee shall supply to the Grantor an up to date copy of the Grantor's title to the Grantor's Property.

4. Works commencement and Works Period

4.1 Without prejudice to the obligations in clause 4.2 and 4.3, the Grantee shall use all reasonable but commercially prudent endeavours to keep the Grantor appraised of progress of the Projects and give as much advance notice as is reasonably possible (and shall use all reasonable but commercially prudent endeavours to provide no less than six months' advance notice) of the anticipated date upon which the Grantee is likely to serve the EA1N Notice of Entry or EA2 Notice of Entry (as the case may be).

4.2 Where the EA1N Works Period occurs prior to the date of completion of the EA1N Deed of Grant the Grantee shall give the Grantor not less than 28 days' written notice of the start date of the EA1N Works Period.

4.3 Where the EA2 Works Period occurs prior to the date of completion of the EA2 Deed of Grant the Grantee shall give the Grantor not less than 28 days' written notice of the start date of the EA2 Works Period.

5. Entry pending completion of Deed

5.1 From the date of this Agreement the Grantee shall be entitled with its surveyors, architects, engineers, contractors, agents and servants at all reasonable times to enter on to:

5.1.1 the Survey Area upon giving not less than 28 days prior written notice of such entry to the Grantor for the purposes of carrying out site soil and environmental surveys and environmental mitigation measures and geotechnical archaeological and site investigations on any unbuilt parts of the Survey Area (including the pruning, trimming or removal of plants and vegetation to the extent reasonably necessary to carry out such surveys and investigations) subject to the Grantee making good any physical damage as soon as reasonable practicable and to the reasonable satisfaction of the Grantor or at the option of the Grantee paying compensation in accordance with the Compensation Provisions for any such damage (including crop loss) and subject to the following payments (Index Linked to the date on which the payment is made) being made to the Grantor;

(i) £325 in respect of each borehole and/or trial pit dug and £50 per window sample;

(ii) in the event that a borehole is open for more than 7 days or if subsequent water monitoring is required in respect of any borehole, an additional payment of £150 for a 12 month period or any part thereof and a further payment of £150 in respect of any further 12 month period or part thereof;

(iii) £5.83 per square metre in respect of any trench dug in connection with archaeological investigations subject to a minimum payment of £350

5.1.2 the Grantor's Property upon giving not less than 28 days prior written notice of such entry (such notice to specify whether entry is being taken for the purpose of the EA1N Enabling Works and/or the EA2 Enabling Works and also to contain sufficient information regarding such works to enable the parties to determine in accordance with clause 6.11 whether prior to commencement of the EA1N Enabling Works and/or the EA2 Enabling Works a Construction Drainage Report is required to be prepared and provided to the Grantor pursuant to clause 6) and paying to the Grantor within 30 days of the date of service of notice of entry the EA1 Enabling Works Payment and/or the EA2 Enabling Works Payment (as the case may be) for the purpose of carrying out the EA1N Enabling Works and/or the EA2 Enabling Works on the Option Area PROVIDED ALWAYS:

(i) the Grantee shall use all reasonable but commercially prudent endeavours to commence the EA1N Works and/or EA2 Works as soon as reasonably practicable after entry pursuant to this clause 5.1.2;

(ii) where works for the diversion of irrigation systems are required as part of the EA1N Enabling Works and/or EA2 Enabling Works such diversion works shall only be carried out with the Grantor's prior written consent (such consent not to be unreasonably withheld or delayed) and the Grantee shall with the Grantor's prior written consent (such consent not to be unreasonably withheld or delayed) be permitted to undertake such diversion works on the Grantor's Property and any adjoining or neighbouring land owned by the Grantor PROVIDED FURTHER that the Grantee shall use all reasonable but commercially prudent endeavours to maintain irrigated water supplies to any areas of the Grantor's Property and any adjoining or neighbouring land owned by the Grantor that are affected by the EA1N Enabling Works and EA1N Works and/or the EA2 Enabling Works and EA2 Works (as the case may be);

(iii) where vegetation removal is required as part of the EA1N Enabling Works and/or EA2 Enabling Works the Grantee will be permitted to remove, fell, cut and lop any tree, shrubs and vegetation on the Option Area (such works to be communicated in advance in writing to the Grantor for their information) which in the reasonable opinion of the Grantee may interfere with the EA1N Works and/or the EA2 Works. The Grantee will only remove any trees necessary to enable the EA1N Works and/or the EA2 Works and after consultation between the Grantee and the Grantor. All timber shall remain the property of the Grantor or in the Grantor's sole discretion be cut and disposed of in accordance with the reasonable requirements of the Grantor;

(iv) the Grantee shall pay compensation in accordance with the Compensation Provisions for any damage (including crop loss) resulting from or from the carrying out of the EA1N Enabling Works and/or the EA2 Enabling Works;

(v) the Grantee's rights of entry pursuant to this clause 5.1.2 shall be capable of being exercised independently in respect of the EA1N Enabling Works and the EA2 Enabling Works.

5.1.3 (subject to clause 4) any part of the Grantor's Property as permitted by the Deed of Grant for the purposes of carrying out all onshore infrastructure and associated works required for the EA1N Development and/or EA2 Development (as the case may be) in the Option Area including (but not limited to) to construct lay and render operational the Cables, cable transmission and jointing bays and Cable Inspection Boxes in accordance with the EA1N DCO and/or EA2 DCO (as the case may be) Provided That such works in the Option Area shall be carried out in accordance with clause 9 hereof and the provisions of the relevant Deed of Grant (including any limitations as to what activities may be carried out on any particular part of the Grantor's Property and the Cables being laid in the centre of the Easement Strip) as if the same had been granted and the Grantee will keep the Grantor indemnified against all losses, liability, proceedings, costs, claims, demands and expenses incurred or arising as a direct result of such works and indemnified against all losses and liabilities referred to in Paragraph 8 of Schedule 2.

5.2 Prior to commencement of any Works (other than where the Rights are exercised after initial construction in order to carry out emergency works) and/or the activities referred to in clause 5.1.2 a record of the state or condition of any part of the Grantor's Property likely to be affected thereby shall be prepared by the Grantee or some other person or persons authorised by the Grantee (the most recent version of such record of condition relevant to any particular area of land being the applicable Schedule of Condition for the purposes of the Deed of Grant) and:

5.2.1 a copy of the Schedule of Condition (or any updated Schedule of Condition from time to time) shall be supplied to the Grantor;

5.2.2 the Schedule of Condition (or any updated Schedule of Condition from time to time) shall, for agricultural land, include as a minimum photographs of the relevant land, basic information on soil composition and topsoil depths (and for the avoidance of

doubt soil surveys shall be undertaken at a maximum distance of every 50 metres along the Easement Strip and in each field or agricultural enclosure, where appropriate); and

5.2.3 the Grantor shall be entitled to make representations regarding the adequacy of the Schedule of Condition and the Grantee shall give due and proper regard to any such representations which are raised in writing during the period of 10 working days after receipt of the Schedule of Condition by the Grantor and where necessary the Grantee shall take reasonable steps to remedy any reasonable inadequacy identified by the Grantor.

5.3 Until the end date of the EA1N Works Period and/or EA2 Works Period (as the case may be) or, if later, until completion of the Deed(s) of Grant, the Grantee must not carry out any Works on any part of the Grantor's Property that is outside of the Working Area.

5.4 The Grantee will as soon as reasonably practicable reinstate the Grantor's Property to a standard no worse than its original condition in accordance with the Schedule of Condition for any damage caused to the Grantor's Property by its employees or anyone acting on behalf of or at the direction of the Grantee in exercise of the rights and obligations in this Agreement.

Payment of entry payment

5.5 On or before the earlier of:

5.5.1 the date which is 30 days of the date of service of notice of entry pursuant to clause 4.2; and

5.5.2 the date of completion of the EA1N Deed of Grant,

the Grantee shall pay to the Grantor the EA1N Entry Payment.

5.6 On or before the earlier of:

5.6.1 the date which is 30 days of the date of service of notice of entry pursuant to clause 4.3; and

5.6.2 the date of completion of the EA2 Deed of Grant;

the Grantee shall pay to the Grantor the EA2 Entry Payment.

Survey Licence

5.7 To the extent that any payments to be made pursuant to the Survey Licence remain outstanding and/or to be paid (including without limitation the advance compensation payment in paragraph [1.2] of the Survey Licence which shall, unless paid before the date of this Agreement, remain to be paid) as at the date of this Agreement the Grantee shall pay, or shall procure payment of, such sums in accordance with the terms of the Survey Licence and for such purpose (but no other) the terms of the Survey Licence shall be deemed incorporated herein as if the same were set out in full. This obligation shall apply notwithstanding that the Grantee is not a party to the Survey Licence.

5.8 Notwithstanding any provision in the Survey Licence to the contrary:

5.8.1 any record of condition of the Grantor's property prepared in accordance with paragraph [6.1] of the Survey Licence shall form part of and be included in the Schedule of Condition to be prepared in accordance with this Agreement;

5.8.2 to the extent that any repair works pursuant to paragraph [8.2] of the Survey Licence remain outstanding as at the date of this Agreement the Grantee shall at the Grantee's cost carry out the repair works in accordance with the terms of the Survey Licence and for such purpose (but no other) the terms of the Survey Licence shall be deemed incorporated herein as if the same were set out in full. This obligation shall apply notwithstanding that the Grantee is not a party to the Survey Licence;

5.8.3 to the extent that any repair works pursuant to paragraph [9.2] of the Survey Licence remain outstanding as at the date of this Agreement the Grantor may at the Grantee's cost carry out the repair works in accordance with the terms of the Survey Licence and for such purpose (but no other) the terms of the Survey Licence shall be deemed incorporated herein as if the same were set out in full. This obligation shall apply notwithstanding that the Grantee is not a party to the Survey Licence; and

5.8.4 to the extent that any reinstatement works pursuant to paragraph [11] of the Survey Licence remain outstanding as at the date of this Agreement the Grantee shall at the Grantee's cost carry out the repair works in accordance with the terms of the Survey Licence and for such purpose (but no other) the terms of the Survey Licence shall be deemed incorporated herein as if the same were set out in full. This obligation shall apply notwithstanding that the Grantee is not a party to the Survey Licence.

6. Pre-Works Drainage

6.1 Prior to commencement of any Works and/or (subject to clause 6.11) the activities referred to in clause 5.1.2 on the Option Area the Grantee shall cause the Grantee's Drainage Contractor to attend the Grantor's Property for the purpose of carrying out a pre-construction assessment of the impact of the Works on the Grantor's Property land and/or natural drainage (including flood and alleviation) systems and irrigation systems.

6.2 Before commencing any Works and/or (subject to clause 6.11) the activities referred to in clause 5.1.2 on the Option Area that will or may affect the land and/or natural drainage (including flood and alleviation) systems or irrigation systems on the Grantor's Property and/or any adjoining or neighbouring land owned by the Grantor, the Grantee shall consult with the Grantor and the Grantor's Drainage Contractor (if any) on the design of any Initial Drainage Works. Contemporaneously with such consultation the Grantee shall provide the Grantor with a report ("Construction Drainage Report") setting out the Grantee's Drainage Contractor's recommendations in respect of the Initial Drainage Works.

6.3 The Grantor shall, as soon as reasonably practicable but in any event within 21 Working Days of receipt of the Construction Drainage Report confirm to the Grantee any Grantor's Construction Drainage Requirements. If the Grantor does not respond within such 21 Working Day period, it shall be deemed to have accepted the Construction Drainage Report.

6.4 The Grantee shall have due and proper regard to any Grantor's Construction Drainage Requirements communicated to it pursuant to clause 6.3. If the Grantee accepts the Grantor's Construction Drainage Requirements the Construction Drainage Report shall be amended to incorporate the Grantor's Construction Drainage Requirements.

6.5 The Initial Drainage Works are to be undertaken:

6.5.1 as soon as practicably possible by professionally qualified contractors with relevant and practical experience in drainage works of the type in the Construction Drainage Report and in Suffolk;

6.5.2 only in accordance with the Construction Drainage Report; and

6.5.3 so far as reasonable and proportionate to ensure that the land drainage system and natural drainage on the Grantor's Property and/or any adjoining or neighbouring land owned by the Grantor, are left in no worse condition than they are in prior to commencement of the works.

6.6 To facilitate the Initial Drainage Works, the Grantor shall allow the Grantee and the Grantee's drainage contractors (with or without motor or other vehicles, necessary plant, apparatus and materials) to enter at reasonable times and on reasonable prior notice onto and undertake such works on the Grantor's Property and where necessary any adjoining or neighbouring land owned by the Grantor as may be identified in the Construction Drainage Report subject to the Grantee making good any physical damage as soon as reasonably practicable and to the reasonable satisfaction of the Grantor at the Grantee's costs or at the option of the Grantor paying compensation in accordance with the Compensation Provisions for any such damage (including crop loss).

6.7 Subject to the Compensation Provisions nothing in this clause 6 shall restrict the Grantor's right to claim compensation for losses which arise after completion of the Initial Drainage Works and which are attributable to defects in the design or installation of the Initial Drainage Works Provided That the Grantee shall not be responsible for any defects caused by the Grantor's wilful act or default.

6.8 Upon reasonable request and subject to the Grantee's reasonable and proper requirements notified to the Grantor and the Grantor's Drainage Consultant, the Grantor and the Grantor's Drainage Consultant shall be afforded the opportunity to inspect the Initial Drainage Works as they progress.

6.9 The Grantee shall cause records of the Initial Drainage Works carried out on the Grantor's Property and any adjoining or neighbouring land owned by the Grantor as may be identified in the Construction Drainage Report to be made at the Grantee's cost and for copies of such records to be provided to the Grantor following completion of the Initial Drainage Works.

6.10 The Grantee shall be responsible for and shall pay to the Grantor's Drainage Contractor the reasonable fees properly incurred by the Grantor's Drainage Contractor in connection with the Initial Drainage Works up to a maximum sum of £500. If the Grantor's Drainage Contractor's costs exceed £500 the Grantee shall only be responsible for and required to pay the same if the approval of the Grantee (such approval not to be unreasonably withheld or delayed) to such increase was sought and obtained before such costs were incurred and it is demonstrated to the Grantee's reasonable satisfaction (such expression of satisfaction not to be unreasonably withheld or delayed) that such additional costs were reasonably and properly incurred.

6.11 As soon as practicable (and in any event within fifteen Working Days) after receipt by the Grantor of the notice given pursuant to clause 5.1.2, the Grantor and Grantee shall both acting reasonably agree whether the EA1N Enabling Works and/or the EA2 Enabling Works (details of which are sufficiently set out in the notice given pursuant to clause 5.1.2) require the carrying out of a pre-construction assessment and preparation of a Construction Drainage Report in accordance with the terms of this clause 6.

7. Post Works Drainage

7.1 As soon as reasonably practicable following completion of the Works on the Option Area, the Grantee shall cause the Grantee's Drainage Contractor to attend the Grantor's Property for the purpose of carrying out a post construction assessment of the impact of the Works on the Grantor's Property's land and/or natural drainage (including flood and alleviation) systems and irrigation systems.

7.2 Following the Grantee's Drainage Contractor's attendance pursuant to clause 7.1 the Grantee shall consult with the Grantor and the Grantor's Drainage Contractor (if any) on the design of any Subsequent Drainage Works. Contemporaneously with such consultation the Grantee shall provide the Grantor with a report ("Subsequent Drainage Report") setting out the Grantee's Drainage Contractor's recommendations in respect of the Subsequent Drainage Works.

7.3 The Grantor shall, as soon as reasonably practicable but in any event within 60 days of receipt of the Subsequent Drainage Report confirm to the Grantee any Grantor's Subsequent Drainage Requirements. If the Grantor does not respond within such 60 day period, it shall be deemed to have accepted the Subsequent Drainage Report.

7.4 The Grantee shall have due and proper regard to any Grantor's Subsequent Drainage Requirements communicated to it pursuant to clause 7.3. If the Grantee accepts the Grantor's Subsequent Drainage Requirements the Subsequent Drainage Report shall be amended to incorporate the Grantor's Subsequent Drainage Requirements.

7.5 If the Grantee does not accept the Grantor's Subsequent Drainage Requirements, the matter shall be referred at the request of either party for decision to a single independent drainage expert (who shall have not less than ten (10) years relevant and practical experience in Suffolk and of dealing with agricultural drainage issues associated with large scale infrastructure and civil engineering projects) or in the absence of such agreement either party may apply to the President for the time being of the Institution of Civil Engineers for the appointment of such independent drainage expert who shall act as expert and whose decision shall (save in the case of manifest error or fraud) be final and binding between the parties and the Subsequent Drainage Report shall be amended to incorporate the determination of such independent drainage expert. The Grantee shall pay the costs of the expert.

7.6 The Subsequent Drainage Works are to be undertaken:

7.6.1 as soon as practicably possible by professionally qualified contractors with relevant and practical experience in drainage works of the type set out in the Subsequent Drainage Report and in Suffolk;

7.6.2 only in accordance with the Subsequent Drainage Report; and

7.6.3 so far as reasonable and proportionate to ensure that the land drainage system and natural drainage on the Grantor's Property and/or any adjoining or neighbouring

land owned by the Grantor, are left in no worse condition than they are in prior to commencement of the works.

7.7 To facilitate the Subsequent Drainage Works, the Grantor shall allow the Grantee and the Grantee's drainage contractors (with or without motor or other necessary vehicles, plant, apparatus and materials) to enter at reasonable times and on reasonable prior notice onto and undertake such works on the Grantor's Property and where necessary any adjoining or neighbouring land owned by the Grantor as may be identified in the Subsequent Drainage Report subject to the Grantee making good any physical damage as soon as reasonably practicable and to the reasonable satisfaction of the Grantor at the Grantee's costs or at the option of the Grantor paying compensation in accordance with the Compensation Provisions for any such damage (including crop loss).

7.8 Subject to the Compensation Provisions nothing in this clause 7 shall restrict the Grantor's right to claim compensation for losses which arise after completion of the Subsequent Drainage Works and which are attributable to defects in the design or installation of the Subsequent Drainage Works.

7.9 Upon reasonable request and subject to the Grantee's reasonable and proper requirements notified to the Grantor and the Grantor's Drainage Consultant, the Grantor and the Grantor's Drainage Consultant shall be afforded the opportunity to inspect the Subsequent Drainage Works as they progress.

7.10 The Grantee shall cause records of any Subsequent Drainage Works carried out on the Grantor's Property and any adjoining or neighbouring land owned by the Grantor as may be identified in the Subsequent Drainage Report to be made at the Grantee's cost and for copies of such records to be provided to the Grantor following completion of the Subsequent Drainage Works.

7.11 The Grantee shall be responsible for and shall pay to the Grantor's Drainage Contractor the reasonable fees properly incurred by the Grantor's Drainage Contractor in connection with the Subsequent Drainage Works up to a maximum sum of £500. If the Grantor's Drainage Contractor's costs exceed £500 the Grantee shall only be responsible for and required to pay the same if the approval of the Grantee (such approval not to be unreasonably withheld or delayed) to such increase was sought and obtained before such costs were incurred and it is demonstrated to the Grantee's reasonable satisfaction (such expression of satisfaction not to be unreasonably withheld or delayed) that such additional costs were reasonably and properly incurred.

8. Execution of Works

8.1 In the event that the Grantee exercises its right to execute Works on the Option Area prior to completion of the Deed(s) of Grant in accordance with clause 5.1.3 hereof the Grantee shall be entitled to:

8.1.1 make use of the Working Area; and

8.1.2 make use of an Easement Strip (only to the extent this falls within the Working Area) which is no larger than the Easement Strip which would be permitted had the relevant Deed of Grant been completed.

8.2 Where the Works relating to a set of Electric Circuits are carried out in advance of completion of the Deed(s) of Grant the Grantee shall notify the Grantor as soon as practicable after the occurrence of the completion of the Works in relation to those Electric Circuits.

8.3 The Grantee shall within 60 days of commissioning each Electric Circuit serve the Energisation Notice in respect of that Electric Circuit.

9. Completion matters

9.1 Following service of an Option Notice this Agreement shall constitute an agreement by the Grantor to grant and by the Grantee to accept the Deed(s) of Grant to which the Option Notice relates.

9.2 Completion of the Deed(s) of Grant shall take place on the Completion Date.

9.3 The Grantor shall prior to the Completion Date use reasonable endeavours to obtain the consent of any mortgagee or chargee of the Grantor's Property to the Deed(s) of Grant in such form as the Grantee may reasonably require. The Grantee will assist with obtaining such consents where reasonably practical and, provided that the approval of the Grantee (such

approval not to be unreasonably withheld or delayed) is obtained before such costs are incurred, pay to the Grantor the costs properly incurred by the Grantor in obtaining such consents.

9.4 The value of the consideration to be inserted in the definition of Price in clause 1.1 of each Deed of Grant shall be the EA1N Deed of Grant Payment or the EA2 Deed of Grant Payment (as the case may be) and the Price shall be due on completion of the Deed(s) of Grant and if any additional payment is due under clause 10 it will be paid after completion of the Deed(s) of Grant in accordance with the provisions of that clause.

9.5 The Easement Plan as defined in and to be incorporated in each Deed of Grant shall be the Easement Plan for that Deed of Grant as attached to the Option Notice (or where relevant as varied in accordance with clause 2.5).

9.6 The Project Zone Plan as defined in and to be incorporated in each Deed of Grant shall be the Project Zone Plan attached to this Agreement unless the Grantee notifies the Grantor prior to completion of a Deed of Grant that an alternative plan showing a smaller area (within the Project Zone as identified on the Project Zone Plan attached to this Agreement) is to be used in its place.

9.7 The Grantee shall notify the Grantor of the approximate location of the Substation as defined in each Deed of Grant (and which for the avoidance of doubt may vary from one Deed of Grant to another) prior to the Completion Date.

9.8 The Works Period as defined in the Deed of Grant shall be either the EA1N Works Period or the EA2 Works Period (as the case may be) as stated in the Option Notice.

9.9 The EA1N Entry Payment and/or EA2 Entry Payment (as the case may be) shall be paid on completion of the Deed(s) of Grant where it has not already been paid and it therefore falls due under clause 5.5 or clause 5.6 (as the case may be).

10. Price and top up payments

10.1 If the Grantor considers the EA1N Easement Consideration and/or EA2 Easement Consideration to be less than the Compulsory Acquisition Value the Grantor shall no later than the period of 90 days from and including the date of completion of the EA1N Deed of Grant and/or the date of completion of the EA2 Deed of Grant (as the case may be) be at liberty to serve the Compensation Code Notice.

10.2 If the Grantee agrees the Compulsory Acquisition Value specified in the Compensation Code Notice it shall within the period of 90 days from and including the date of receipt of the Compensation Code Notice pay to the Grantor the Top Up Payment and the Grantor's reasonable and proper agent's, surveyor's and solicitor's costs reasonably and properly incurred in connection with the Compensation Code Notice including but not limited to the preparation and service of the Compensation Code Notice.

10.3 If the Grantee does not (acting reasonably) agree the Compulsory Acquisition Value specified in the Compensation Code Notice the matter shall be determined in accordance with the provisions of clause 27 of this Agreement.

11. Overrun Payment

11.1 The Grantee shall use reasonable endeavours to complete the EA1N Works within the EA1N Works Period and if the EA1N Works are not completed within the EA1N Works Period the Grantee shall pay to the Grantor at the end of every three calendar month period of the EA1N Overrun Period an interim payment equivalent to the EA1N Overrun Payment applicable to that period and within 60 days after the EA1N Works Completion Date the balance of the EA1N Overrun Payment due since the last payment.

11.2 The Grantee shall use reasonable endeavours to complete the EA2 Works within the EA2 Works Period and if the EA2 Works are not completed within the EA2 Works Period the Grantee shall pay to the Grantor at the end of every three calendar month period of the EA2 Overrun Period an interim payment equivalent to the EA2 Overrun Payment applicable to that period and within 60 days after the EA2 Works Completion Date the balance of the EA2 Overrun Payment due since the last payment.

12. Variation

12.1 If following completion of a Deed of Grant the Grantee wishes to alter the Easement Plan attached to the Deed of Grant to reflect the as laid position of the Electric Circuits the Grantee shall provide an amended Easement Plan to the Grantor showing the information required by clause 2.6.

12.2 Following service of a revised plan on the Grantor pursuant to clause 12.1 the Grantor and the Grantee (or third party who is entitled to the benefit of the Deed of Grant acting at the direction of the Grantee) shall (at the cost of the Grantee subject to all costs being reasonably and properly incurred) enter into a deed of variation substituting the amended plan into the relevant Deed of Grant. The said deed of variation shall be completed 30 days after the Grantee has served the amended plan on the Grantor and on completion of the deed of variation the Grantee shall pay to the Grantor any additional payments due under this Agreement (credit being given for any such additional payments that were paid on completion of the relevant Deed of Grant).

13. Access

13.1 During the Option Period in order to comply with any of the Grantee's obligations or exercise any rights of the Grantee under this Agreement the Grantee its officers employees agents and nominees may enter onto the Grantor's Property from the nearest adopted highway and/or any other land adjoining the Grantor's Property in third party ownership by such route as the Grantor and the Grantee (both acting reasonably) shall agree for the purpose of exercising the Grantee's rights pursuant to the terms of this Agreement (and to the extent agreed as at the date of this Agreement such route to be used for pre-construction traffic is shown coloured yellow on the Plan) provided always that the Grantee shall make good to the reasonable satisfaction of the Grantor all damage caused to the Grantor's Property as a result of the exercise of such rights of entry and paying compensation in accordance with the Compensation Provisions for any such damage (including crop loss).

13.2 To facilitate the right of access referred to in clause 13.1 and subject to clauses 13.3 and 13.4 and the access route first being agreed pursuant to clause 13.1 the Grantee may on reasonable prior written notice:

13.2.1 repair, alter or amend any existing access tracks on the Grantor's Property; and/or

13.2.2 lay and use a new access road on the Grantor's Property.

13.3 Prior to exercising the rights set out in clause 13.2 the Grantee shall take a photographic schedule of that part of the Grantor's Property so affected and:

13.3.1 submit a copy of the schedule to the Grantor and the Grantor's agent and if the Grantor does not object within 20 working days of receipt of a copy of the photographic schedules the Grantor shall be deemed to accept it;

13.3.2 if the Grantor does not agree to the photographic schedule then the Grantor and the Grantee (both acting reasonably) shall as soon as reasonably practicable work together to amend the photographic schedule to incorporate the Grantor's requirements; and

13.3.3 the photographic schedule shall, for agricultural land, include as a minimum photographs of the relevant land, basic information on soil composition and topsoil depths (and for the avoidance of doubt soil surveys shall be undertaken at a maximum distance of every 50 metres along the Easement Strip and in each field or agricultural enclosure, where appropriate).

13.4 If required to do so by the Grantor, as soon as reasonably practicable after cessation of use of any part of the existing access track referred to in clause 13.2.1 and/or the new access track referred to in clause 13.2.2 the Grantee shall reinstate that part of the Grantor's Property so affected to the Grantor's reasonable satisfaction but in no worse or better condition than evidenced by the schedule of condition referred to in clause 13.3.

13.5 If any new access roads are created pursuant to clause 13.2.2 outside of the Working Area to provide access to and egress from the Working Area to the adopted highway the Grantee shall pay to the Grantor the sum of Fifty Pounds (£50) per linear metre of such access road (subject to a minimum payment of Two Thousand Five Hundred Pounds (£2,500)) such linear

length being the length of the centre line of the access road measured from the boundary of the Working area to the boundary of the adopted highway.

13.6 The Grantor shall not be entitled to more than one payment pursuant to clause 13.5 but such one-off payment shall be without prejudice to the Grantor's right to claim compensation pursuant to the Compensation Provisions for any damage and crop loss on such of the Grantor's Property as is taken out of production as a result of the construction and use of any new access road by the Grantee.

14. Dealings with the Grantor's Property

14.1 The Grantor agrees that this Agreement binds itself and its successors in title to the Grantor's Property.

14.2 With the exception of the matters in clause 14.5, the Grantor agrees with the Grantee that for the period from the date of this Agreement to the date being the earlier of:

14.2.1 the date on which completion of the Deed of Grant for each of the EA1N Development and the EA2 Development has taken place following service of an Option Notice;

14.2.2 the date of termination of this Agreement pursuant to clause 19; or

14.2.3 the expiry of the Option Period,

that the Grantor will not create nor permit or suffer to be created any encumbrance over the Grantor's Property save where the Grantor complies with this clause 14.

14.3 With the exception of the matters in clause 14.5, the Grantor shall not deal with its interest in the Grantor's Property nor grant any rights to any third party (including but not limited to the creation of any new tenancies) nor do anything that has the effect of varying any existing rights unless the prior consent of the Grantee has been obtained (such consent not to be unreasonably withheld or delayed).

14.4 It is agreed that it shall be reasonable for the Grantee to withhold consent referred to in clause 14.3 above if:

14.4.1 in the Grantee's reasonable opinion the proposed new or varied rights would materially interfere with the exercise of the rights granted to the Grantee by this Agreement or a Deed of Grant or the Grantee's application for any Permission;

14.4.2 the Grantor has not procured and delivered to the Grantee an unconditional consent (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and completion of such consent) in a form acceptable to the Grantee (acting reasonably and without delay) from any new tenant, other occupier, grantee, mortgagee or any person who will or could acquire an interest in the Grantor's Property or the benefit of the encumbrance in writing to the exercise of the rights in this Agreement and the grant of the Deed(s) of Grant; or

14.4.3 where the dealing is a disposal (within the meaning contained in section 205(1)(ii) of the Law of Property Act 1925 but excluding the grant of a lease for a term of less than 7 years) of the Grantor's interest in the whole or in any part of the Grantor's Property the Grantor has not procured that the disponee has executed and delivered to the Grantee a deed of covenant (the Grantee paying the reasonable and proper professional fees incurred by the Grantor (including but not limited to any proper and reasonable third party's professional fees) in connection with the preparation and completion of such deed of covenant) obliging the disponee to comply with the obligations on the part of the Grantor contained in this Agreement in a form approved by the Grantee such approval not to be unreasonably withheld or delayed.

14.5 The Grantor shall not require the consent of the Grantee but shall notify the Grantee in writing within 28 days of the grant, renewal, amendment or termination of the following licence agreements in so much as they affect the Option Area. Provided Always that such licence agreements do not grant any rights of exclusive possession or control over the whole or any part or parts of the Option Area.

14.5.1 Grazing Agreement

14.5.2 Shooting Licence

14.5.3 Fishing Licence

14.5.4 Metal Detecting Licence

14.5.5 Annual Cropping Licence

14.5.6 Parking Licence

14.5.7 Storage Licence

15. Construction on the Grantor's Property

15.1 Subject to clause 15.3, the Grantor agrees with the Grantee that until the earlier of the expiry of the Option Period or the termination of this Agreement pursuant to clause 19 the Grantor shall not:

15.1.1 erect construct or place any new building or structure or carry out any excavation or plant any new trees or lay any new surface on the Option Area; nor

15.1.2 materially raise or lower or suffer to be raised or lowered the existing level of the surface of the Option Area,

in either case unless it has first obtained the consent in writing of the Grantee such consent not to be unreasonably withheld or delayed provided that the Grantee is satisfied (acting reasonably) that there will be no material adverse effect on its ability to exercise the rights granted by this Agreement or the Deed of Grant.

15.2 During the Option Period the Grantor is not to carry out activities on over or within the Option Area that may prejudice the rights to be acquired pursuant to the EA1N DCO Application or the EA2 DCO Application, unless it has the prior written consent of the Grantee (such consent not to be unreasonably withheld or delayed).

15.3 The Grantor will have no restrictions on normal agricultural operations and cultivations including the planting, maintenance and harvesting of agricultural crops and the growing of grasses or other herbaceous forage for livestock purposes.

16. Permissions

16.1 The Grantor shall not make a representation regarding the EA1N DCO Application nor the EA2 DCO Application (and shall forthwith withdraw any representation made prior to the date of this Agreement and forthwith provide the Grantee with a copy of its withdrawal) nor any other Permission associated with the EA1N Development or the EA2 Development and shall take reasonable steps (Provided That any assistance is kept confidential) to assist the Grantee to obtain all permissions and consents for the EA1N Works and the EA2 Works on the Option Area (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and completion of such permissions and consents).

17. Planning agreements

17.1 The Grantee shall obtain the Grantor's approval (such approval not to be unreasonably withheld or delayed) in accordance with clause 17.4 in connection with any Planning Agreement or Planning Agreements to which the Grantor is required to be a party and which may be requisite or conducive to obtaining the EA1N DCO or the EA2 DCO or any Permission or any consent relating to the Grantor's Property before agreeing the form of the Planning Agreement or Planning Agreements and subject to obtaining the Grantor's approval the Grantor will enter into and consent to the Grantee entering into such Planning Agreement or Planning Agreements provided that if the Grantor is requested to enter into any Planning Agreement or Planning Agreements the Grantee shall (and the Grantor shall give the Grantee all rights necessary to enable the Grantee to) observe and perform all of the obligations on the part of the landowner contained in the Planning Agreement or Planning Agreements.

17.2 The Grantee will use all reasonable but commercially prudent endeavours to procure that any Planning Agreement or Planning Agreements contain stipulations that:

17.2.1 the Planning Agreement or Planning Agreements will not come into effect until the EA1N DCO or the EA2 DCO or any other Permission or consent required for the EA1N Works or the EA2 Works is granted;

17.2.2 any obligation imposed by the Planning Agreement or Planning Agreements will be conditional upon the commencement of the development authorised by the EA1N DCO or the EA2 DCO or any other Permission or consent relating to the Grantor's Property;

17.2.3 the Grantor will be released from all liability under the Planning Agreement or Planning Agreements if the Grantor dispose of their interest in the land subject to the Planning Agreement or Planning Agreements; and

17.2.4 the Planning Agreement or Planning Agreements will cease to bind the Grantor's Property once the Electric Circuits have been removed (or decommissioned and made safe, as the case may be) and any necessary reinstatement has taken place.

17.3 Subject to the Compensation Provisions as if the same were repeated here, the Grantee will keep the Grantor indemnified against all losses, liability, proceedings, costs, claims, demands and expenses incurred or arising under each Planning Agreement that the Grantor enters into under this Agreement including any irrecoverable Value Added Tax thereon.

17.4 In the event that a Planning Agreement is submitted to the Grantor for approval (which shall not be unreasonably withheld or delayed) the Grantor shall provide its comments on the Planning Agreement within 21 days of receipt of the same and in the event that the Grantor fails to do so the Grantor shall be deemed to have approved the said Planning Agreement. Time is of the essence in relation to this clause 17.4.

17.5 Where it is necessary for any public right of way including (but not limited to) footpaths and bridleways on the Option Area to be temporarily diverted to allow the Grantee to carry out the EA1N Works and/or the EA2 Works the Grantor shall if reasonably requested to do so (and at the expense of the Grantee (subject to any expenses including without limitation legal and surveyors' fees being reasonably and properly incurred)), and subject to the Grantee notifying the Grantor in advance of such diversion, co-operate with the Grantee and use reasonable endeavours to:

17.5.1 provide the Grantee with all reasonable assistance required in order to make the request for the said diversion to the relevant authorities;

17.5.2 agree the new route for the diverted right of way to a location which is acceptable to the relevant authorities and the Grantor acting reasonably (and the Grantor shall be obliged to make available a route which is acceptable to the relevant authorities where one exists);

17.5.3 agree unconditionally the format of and enter into any reasonable agreement required by the relevant authority for the said diversion including where relevant agreeing any new planting or fencing which is required as a result of the diversion provided that the Grantee has agreed to pay any costs which will be incurred in carrying out such planting or fencing and to carry out such planting or fencing; and

17.5.4 upon reasonable request so to do dedicate any land required for the diverted public right of way as a highway available to all persons to pass and repass and to provide written evidence of such dedication to the local highway authority,

Provided Always that

17.5.5 where any business is carried on by the Grantor at the Grantor's Property the Grantee will use all reasonable but commercially prudent endeavours to divert such public right of way(s) in such a manner so as not to adversely affect the business and/or any residential dwellings of the Grantor;

17.5.6 the Grantor shall not be required to agree to any such diversion unless and until all necessary consents from the relevant authorities for the diversion have been obtained and provided to the Grantor; and

17.5.7 the Grantee at the Grantee's cost shall once the temporary diversion is no longer operational carry out such works as may be required to reinstate that part of the Grantor's Property so affected and the route of relevant public right of way to the Grantor's reasonable satisfaction and in accordance with all necessary consents from the relevant authorities.

18. Rights to end this agreement

18.1 For the avoidance of doubt the Grantee shall not be under any obligation to carry out and complete the EA1N Works and/or the EA2 Works or any part or parts thereof and subject to it complying with its obligations under clause 19 the Grantee may at any time prior to the exercise of the Option terminate this Agreement immediately by serving notice in writing upon the Grantor.

18.2 If both the EA1N DCO Application and the EA2 DCO Application are refused or the EA1N DCO and the EA2 DCO are revoked and these refusals or revocations subsist and no Challenges to such refusals or revocations subsist on 30 April 2025, the Grantor may terminate this Agreement by service of not less than two months' written notice upon the Grantee.

18.3 If both the EA1N DCO Application and the EA2 DCO Application are refused or the EA1N DCO and the EA2 DCO revoked but a Challenge or subsequent appeal proceedings in respect of either EA1N DCO or the EA2 DCO subsists on 30 April 2025, then the Grantor's ability to terminate under 18.2 above shall be suspended and not be exercisable until the day one month after the day on which the last Challenge and the last of any subsequent appeal proceedings have been finally concluded leaving neither the EA1N DCO nor the EA2 DCO in place.

18.4 If the EA1N DCO and/or the EA2 DCO is made and on 30 April 2025 either is Immune from Challenge the Grantor shall not have the ability to terminate this Agreement.

18.5 If the EA1N DCO and/or the EA2 DCO is made and on 30 April 2025 proceedings pursuant to section 118(1) of the Planning Act 2008 in respect of the EA1N DCO and/or the EA2 DCO subsist the Grantor shall not have the ability to terminate this Agreement until one month after the Final Determination of such proceedings by the court or on any appeal to any higher court leaving neither the EA1N DCO nor the EA2 DCO in place (meaning the date following a court making a decision on those proceedings when no further appeal to a higher court can be made).

19. Termination

19.1 If Termination occurs before the EA1N Entry Date and/or the EA2 Entry Date (as the case may be) the Grantee shall make good in accordance with the terms of this Agreement or pay compensation to the Grantor in respect of any loss or damage or disturbance which may have been caused to the land buildings crops drains sewers pipes conduits and cables of the Grantor by the exercise of any of the rights conferred upon the Grantee by this Agreement.

19.2 If Termination occurs after the EA1N Entry Date and/or the EA2 Entry Date (as the case may be) the provisions of clause [3.3.2] of the Deed of Grant shall apply or be deemed to apply (as the case may be) to any Electric Circuits which have been laid or laid in part in the Grantor's Property.

20. Assignment

20.1 The Grantee may assign or share the whole or part or parts of its rights under this Agreement or require the grant of any of the Deeds of Grant to:

20.1.1 any successor to the business undertaking of the Grantee without the prior consent of the Grantor;

20.1.2 EA1N Limited or any Affiliate of EA1N Limited which shall be of no lesser financial standing without the prior consent of the Grantor;

20.1.3 EA2 Limited or any Affiliate of EA2 Limited which shall be of no lesser financial standing without the prior consent of the Grantor;

20.1.4 National Grid Electricity Transmission plc or any Affiliate of National Grid Electricity Transmission plc or any successor to the business undertaking of the same without the prior consent of the Grantor;

20.1.5 any Affiliate of the Grantee without the prior consent of the Grantor;

20.1.6 any OFTO or any successor to the business undertaking of the same without the prior consent of the Grantor;

20.1.7 any third party not referred to in clauses to 20.1.6 with the prior written consent of the Grantor such consent not to be unreasonably withheld or delayed, provided that the proposed assignee (together with any proposed guarantor) is in the reasonable opinion of the Grantor of sufficient financial standing to enable it to comply with the Grantee's obligations in this Agreement.

20.2 The Grantor shall within 30 days of receipt of an application in writing from the Grantee for consent to assign the rights under this Agreement provide the Grantee with a written decision (the "**Decision Notice**") stating:

20.2.1 whether or not the Grantor consents to the proposed assignment; and

20.2.2 in the case of a refusal the reasons why the Grantor refuses to give consent to the assignment

provided always that time is of the essence for the purposes of this clause and in the event that the Grantor fails to serve the Decision Notice on the Grantee within the time specified it shall be deemed that the Grantor consents to the proposed assignment.

20.3 The Grantee may without the consent of the Grantor assign the benefit of this Agreement whether in whole or in part and including by way of security, to its Financiers

20.4 Within one calendar month of any assignment of this Agreement the Grantee shall give to the Grantor written notice thereof such notice to state the name and address of the assignee.

20.5 Nothing in this Agreement shall prevent the Grantee from sharing or subletting the benefit of the rights granted by this Agreement with a third party provided that the Electric Circuits may only be used for the purposes specified in clause 3.8 of the Deed of Grant and for the benefit of:

20.5.1 the Projects;

20.5.2 the Cable and the rights to have and use the Cable;

20.5.3 the Substation (as defined in the Deed of Grant); and/or

20.5.4 the business undertaking of the Grantee and any permitted assignee of this Agreement.

21. Payments

21.1 All payments made by the Grantee under this Agreement shall be made by direct credit transfer to an account in England or Wales nominated in advance by the Grantor for that purpose.

21.2 In the event that any payment is not made by the Grantee within twenty eight (28) days of the due date (which in the case of any compensation shall be the date of exchange of written agreements or in default of agreement the date of determination by expert or arbitrator) then the Grantor shall be entitled to interest on the outstanding balance (excluding any payments made by the Grantee to the Grantor on account) at a rate of 4% above the base rate for the time being of HSBC Bank plc (or any other comparable UK clearing bank reasonably specified by the Grantee and notified to the Grantor in writing) from the due date until the date payment is actually made.

21.3 All claims for compensation (whether in respect of a right to receive compensation or a breach of the terms of this Agreement or otherwise) made by the Grantor shall be subject to the conditions set out in Schedule 3 of the Deed of Grant as if the same were repeated herein (with such amendments as are required to reflect the change of context).

21.4 An action to recover any sum recoverable by virtue of this Agreement or the Deed of Grant shall not be brought after the expiration of six years from, in the case of a Deed of Grant relating to Electric Circuits which have been installed in the Option Area during the Works Period, the date of the Entry Date and, in the case of Electric Circuits which are installed after the Works Period, the date on which the Energisation Notice is served in relation to the relevant Deed of Grant.

22. Value Added Tax

22.1 Any payment to be made under the terms of this Agreement shall be deemed to be exclusive of Value Added Tax (if applicable) and the recipient of the payment shall where appropriate supply a valid Value Added Tax invoice addressed to the party making the payment provided

always that the Grantee shall (subject to the foregoing provisions of this clause 22 only) be liable to pay Value Added Tax where the Grantor is unable to recover the same

22.2 If the Grantor has already elected or chooses prior to Termination to elect to waive exemption from Value Added Tax in relation to its interest in the Grantor's Property then the Grantor shall not following the date hereof or following such election (as the case may be) do anything which would disapply or render ineffective for any reason or revoke that election.

23. Notices

23.1 Any notice or other communication to be served or given pursuant to this Agreement shall be deemed to be sufficiently served if it is delivered personally at or sent by special or recorded delivery to the address of the addressee set out above or such other address (if any) as the addressee may have previously notified in writing from time to time to the other party or if the receiving party is a company to the registered office of that company marked for the attention of the Company Secretary.

23.2 Any notice shall be deemed to have been served:

23.2.1 if delivered in person at the time of delivery; or

23.2.2 if posted before 5pm on a Working Day the Working Day after it was put in the post.

23.3 In proving service of a notice of document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a pre-paid first class or recorded delivery letter.

23.4 For so long as the Grantee is ScottishPower Renewables (UK) Limited, all notices to the Grantee shall be copied to “Legal Director, ScottishPower Renewables (UK) Limited, 320 St Vincent Street, Glasgow, G2 5AD” or at such other address as the Grantee shall have notified in writing to the Grantor.

24. Non-merger

On completion of the Deed(s) of Grant this Agreement shall not merge with the Deed(s) of Grant but shall continue in full force and effect to the extent that anything remains to be performed or observed under it/them.

25. Removal of Barriers

The Grantee will be permitted to remove any buildings, structures, fencing or barriers from the Option Area necessary to properly facilitate the EA1N Works and/or the EA2 Works. The Grantee will make good any damage caused in the exercise of this right to the reasonable satisfaction of the Grantor or at the option of the Grantee pay compensation in accordance with the Compensation Provisions for any such damage. Any buildings required as a result of the exercise of this right to be reinstated will be reinstated outside of the Easement Strip but within the Option Area in location(s) to be agreed with the Grantor acting reasonably.

26. Confidentiality

The terms of this Agreement shall be confidential to the parties both before and after completion of the Deed(s) of Grant and neither party shall make or permit or suffer the making of any announcement or publication of such terms (either in whole or in part) nor any comment or statement relating thereto without the prior consent of the other or unless such disclosure is required by the rules of any recognised Stock Exchange on which shares of that party or any parent company are quoted or pursuant to any duty imposed by law on that party or disclosure is required by the Grantee in connection with or in order to obtain the EA1N DCO or the EA2 DCO or any other planning application associated with the EA1N Development or the EA2 Development or any Permission.

27. Disputes

27.1 The Grantor and the Grantee shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement through negotiations between their respective nominated representatives who have authority to settle the same. If the matter is not resolved by negotiation within fourteen (14) working days of receipt of written “invitation to negotiate” the parties will attempt to resolve the dispute in good faith in accordance with this clause 27 and shall refer the matter in dispute to an independent expert (“the **Expert**”) as set out below.

27.2 The parties shall agree on the appointment of an Expert and shall agree with the Expert the terms of their appointment.

27.3 If the parties are unable to agree on an Expert or the terms of their appointment within ten working days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the president for the time being of the Royal Institution of Chartered Surveyors or the Law Society (as the case may be depending on the matter in dispute) to appoint an Expert of repute with not less than ten (10) years' experience in the subject matter of any dispute and to agree with the Expert the terms of appointment.

27.4 The Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.

27.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

27.5.1 the parties may agree to discharge the Expert; and

27.5.2 the parties may proceed to appoint a replacement Expert in accordance with this clause 27 which shall apply to the replacement Expert as if they were the first Expert to be appointed.

27.6 All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.

27.7 The parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.

27.8 To the extent not provided for by this clause, the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination.

27.9 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this clause.

27.10 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the dispute which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them and/or their terms of reference. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.

27.11 The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination shall be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Grantee or in such other proportions as the Expert shall direct.

27.12 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.

27.13 Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching their determination.

27.14 The Expert shall have no liability to the parties for any act or omission in relation to this appointment; save in the case of bad faith.

28. Jurisdiction & governing law

28.1 The parties hereby submit to the exclusive jurisdiction of the English courts.

28.2 This Agreement shall be governed by and construed in accordance with English law.

29. Invalidity of certain provisions

If any term of this Agreement or the application of it to any person or circumstances shall to any extent be invalid or unenforceable such term shall be separable and the remainder of this Agreement or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

30. Time of the essence

If the Grantor fails to perform any of its obligations under this Agreement the Grantee may by the service of fourteen days written notice on the Grantor make time of the essence in respect of such obligations.

31. Professional fees

31.1 The Grantee will pay on the date of this Agreement the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and the exchange of this Agreement in the following sums:

31.1.1 legal fees in the sum of £[x] [***DN:*** £4000 plus Value Added Tax per project];

31.1.2 surveyors' fees in the sum of £[x] [***DN:*** £4000 plus Value Added Tax per project]; and

31.1.3 accountants' fees in the sum of £[x] per project.

31.2 If the Grantor's legal fees and/ or surveyor's fees and/or accountant's fees in connection with the preparation and the exchange of this Agreement exceed £4,000 the Grantee shall only be responsible for and required to pay the same on the date of this Agreement if the approval of the Grantee (such approval not to be unreasonably withheld or delayed) to such increase was sought and obtained before such costs were incurred and it is demonstrated to the Grantee's reasonable satisfaction (such expression of satisfaction not to be unreasonably withheld or delayed) that such additional costs were reasonably and properly incurred.

32. Contracts (Rights of Third Parties) Act 1999

It is not intended that the Contracts (Rights of Third Parties) Act 1999 shall operate to confer any rights upon any person who is not a party to this Agreement.

33. Executory agreement

This Agreement is an executory agreement only and is not to operate or be deemed to operate as a demise of the Grantor's Property or any part thereof.

34. No misrepresentations

This Agreement incorporates the entire contract between the parties and the parties acknowledge that they have not entered into this agreement in reliance on any statements or representations made by or on behalf of one party to the other save those written statements contained in the written replies made by the Grantor's solicitors to enquiries raised by the Grantee's solicitors.

35. Direct agreements

35.1 The Grantor recognises that the Grantee may wish to finance or refinance its investment in the Cable and/or the Projects through limited recourse or other financing in the commercial bank debt and or capital markets and that the entering into one or more direct agreements (by which there is given to the providers of such debt finance or their agent nominee or trustee (the "**Debt Providers**") a right to step in to and/or to procure an assignment or other transfer of the Grantee's rights and obligations under this Agreement and/or a Deed of Grant) may be a pre-condition to the provision of such debt finance by the Debt Providers.

35.2 The Grantor will co-operate in good faith with the Grantee and use reasonable endeavours to satisfy the requirements of any Debt Providers in respect of such financing or refinancing.

35.3 The Grantor undertakes to use reasonable endeavours without unreasonable delay to agree unconditionally the format of and enter into a direct agreement in a reasonable form with any such Debt Providers the Grantee and any other relevant party in respect of this Agreement

and/or a Deed of Grant provided that the Grantor shall not be required to agree any form of direct agreement which would have the effect of varying any material term of this Agreement.

35.4 The Grantor recognises that in entering into any direct agreement it will have to grant certain rights to any Debt Providers including a right of step-in within a specified period and/or a right to procure that the Grantee's rights and obligations under this Agreement and/or a Deed of Grant are assumed (by way of assignment or such other transfers as may be appropriate) by another person in certain specified circumstances.

35.5 The Grantee shall reimburse the Grantor for all costs reasonably and properly incurred by the Grantor in complying with its obligations under this clause 35 and such costs shall include any fees, outlays and disbursements which have been approved by the Grantee in advance.

36. Anti-corruption

36.1 Each party shall:

36.1.1 comply with all applicable laws, regulations, codes and guidance relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 ("**Relevant Requirements**"); and

36.1.2 have and shall maintain in place throughout the term of this Agreement, and enforce where appropriate, its own policies and procedures to comply with the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010.

36.1.3 ensure that any person associated with it who is performing services on its behalf in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on it in this clause 36 and each Party shall ensure the compliance by such persons with such terms; and

36.1.4 promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of its obligations under this Agreement.

36.2 In the event of a breach or suspected breach of this clause 36 by either Party (other than a breach of clause 36.1.3 in respect of which the other Party has suffered no loss and no other material adverse consequence), the other Party may either:

36.2.1 terminate this Agreement forthwith by written notice, or

36.2.2 withhold payment of any sum due under the terms of this Agreement and/or suspend the performance of any obligation on its part under this Agreement at any time and without liability for such time period as required by it.

36.3 Each Party shall be liable for all losses, liabilities, damages, judgements, penalties, fines, costs, charges and expenses (including legal expenses) incurred by reason of any breach of this clause 36 by it or any of its employees, agents or sub-contractors. This clause 36 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the relevant Party and/or any person working for it and/or any third party retained by it.

37. No partnership

This Agreement shall not operate so as to create or imply a partnership or joint venture of any kind between the Grantor and the Grantee.

38. Good faith

The Grantor and the Grantee shall at all times owe a duty of utmost good faith to each other in relation to this Agreement and shall do all such acts and things as may be required to comply with the terms and the spirit of it.

39. Severance

39.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-

provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

39.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

40. Severed Land

40.1 The Grantee shall within 3 months of expiry of the EA1N Notice of Entry and/or EA2 Notice of Entry (as the case may be), agree with the Grantor (both parties acting reasonably) any areas outside of the relevant Working Area that are either;

40.1.1 sterilised from cropping for the duration of the EA1N Works Period and/or the EA2 Works Period; or

40.1.2 restricted in terms of cropping rotation,

and pay to the Grantee in accordance with the Compensation Provisions any crop loss or disturbance resulting from the matters referred to in clause 40.1.1 and/or clause 40.1.2.

40.2 The Grantee shall provide the Grantor with an access across or over the relevant Working Area to any severed areas which are created as a result of the EA1N Works and/or EA2 Works.

41. Modern Slavery

41.1 Each Party represents and warrants that:

41.1.1 it has not been and is not engaged in any practices involving the use of child labour, forced labour, the exploitation of vulnerable people, or human trafficking (**"Slavery and Human Trafficking"**);

41.1.2 its employees and agency workers are paid in compliance with all applicable employment laws and minimum wage requirements; and

41.1.3 it will take reasonable steps to prevent Slavery and Human Trafficking in connection with its business.

41.2 Each party agrees to respond to all reasonable requests for information required by the other party for the purposes of completing the other party's annual anti-slavery and human trafficking statement as required by the UK's Modern Slavery Act 2015.

41.3 If either party has been engaged in Slavery and Human Trafficking the other party may terminate this Agreement with immediate effect.

42. Grantee's Insurance Obligations

42.1 The Grantee shall maintain throughout any period during which it is exercising its rights under this Agreement third party liability insurance cover through an insurance office of repute for a minimum amount of £10,000,000 (ten million pounds) per claim or series of related claims against all claims arising directly by reason of any wrongful act neglect or default or breach of the Grantee or its employees, agents or contractors in connection with the exercise of rights under this Agreement.

IN WITNESS whereof the parties have executed this deed on the above date

Signed as a deed by [ ] ……

in the presence of:

Witness signature ……

Name ……

……

Address ……

……

Occupation

Executed as a Deed)
by **SCOTTISHPOWER RENEWABLES**)
(UK) LIMITED)
acting by [NAME])
in the presence of:) ……

Director

Witness Signature: ……

Name: ……

Address: ……

……

Occupation: ……

SCHEDULE 1
DEED OF GRANT

SCHEDULE 2
COMPENSATION PROVISIONS

In respect of each claim or demand for compensation (whether in respect of a right to receive compensation or a breach of the terms of this Agreement or otherwise) given under this Agreement (each a "**Claim**") the provisions set out below shall apply.

1. Mitigation

   The person making any such Claim (a "**Claimant**") shall (at the other party's cost) take all steps reasonably necessary in order to mitigate any losses liabilities or expenses being the subject of such Claim.

2. Conduct of Claims

   The Claimant shall not settle or compromise any Claim or knowingly make any admission of liability to the person making the claim or demand made by a third party without having consulted and obtained the consent of the party not being the Claimant (the "Defaulting Party") but for the avoidance of doubt the Claimant's insurers shall be entitled to settle or compromise any claim without any such consultation or consent and the Defaulting Party shall be responsible for any and all additional costs and other suits suffered or incurred by the Claimant which the Claimant would not have suffered or incurred but for the Defaulting Party's refusal to consent to any settlement compromise or admission of liability the Claimant wishes to make.

3. No Liability

   The Defaulting Party shall have no liability in circumstances where any action claim cost or expense arises out of the acts omissions neglect negligence or wilful default of the Claimant or their employees, servants, tenants, licensees or other occupiers.

4. Consequential Losses

   Save as provided in paragraph 8 of this Schedule 2 neither party its officers employees or agents shall be liable to the other party (on the basis of breach of contract indemnity warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of or in connection with this Agreement or its termination in respect of any consequential loss suffered by such other party. Each party undertakes not to sue the other party its officers, employees, agents, contractors or sub-contractors in respect of such consequential loss. For the purpose of this Agreement consequential loss shall mean any indirect or consequential loss (including loss of business opportunities whether deriving from any crop loss or otherwise loss of production loss of profit loss of revenue loss of contract loss of goodwill loss of use or liability under other agreements) resulting from the performance or non-performance of any obligation hereunder any act or omission of negligence breach of contract or otherwise by any party and whether or not such party knew or ought to have known that such indirect or consequential loss would be likely to be suffered as a result of the same.

5. Grantee Liabilities

5.1 The liability of the Grantee under the provisions of this Agreement as to the making good of or paying compensation for loss damage or injury due to the exercise of the Rights shall extend to and include claims and liabilities and loss damage or injury caused by reason of:

   5.1.1 the negligence trespass or wilful act or default of any person or persons directly employed by or under the direct control of the Grantee; and

   5.1.2 the actions of the Grantee's contractors and their subcontractors and of all persons employed in connection with the exercise of the Rights except for actions carried out expressly or impliedly at the request of the Grantor.

5.2 The overall liability of the Grantee to the Grantor under this Agreement shall be limited to:

   5.2.1 from the date of this Agreement until the day before the earlier of the EA1N Entry Date and the EA2 Entry Date the sum of £5,000,000 (five million pounds) Index Linked per claim or series of claims arising from the same incident;

   5.2.2 from the earlier of the EA1N Entry Date and the EA2 Entry Date until the day before completion of the first Deed of Grant the sum of £10,000,000 (ten million pounds) Index Linked per claim or series of claims arising from the same incident (where the

EA2N Entry Date or the EA2 Entry Date occurs prior to completion of the first Deed of Grant);

5.2.3 from the date of completion of the first Deed of Grant (whether or not that is preceded by the EA1N Entry Date or the EA2 Entry Date) until expiry of the Option Period the sum of £10,000,000 (ten million pounds) for each Deed of Grant Index Linked per claim or series of claims arising from the same event.

PROVIDED THAT

5.2.4 from the date of completion of a Deed of Grant the Grantor shall not be entitled to bring any claim in respect of the Electric Circuits to which the Deed of Grant relates under this Agreement but must instead make any such claim under the terms of the relevant Deed of Grant; and

5.2.5 no reduction in liability of the Grantee under the terms of paragraph 5.2.3 shall result in any compensation previously paid to the Grantor becoming repayable.

5.3 The Grantee shall have no liability for damage or other adverse consequence caused by any Hazardous Material unless and only to the extent that:

5.3.1 such Hazardous Material has been brought on to the Grantor's Property by the Grantee; or

5.3.2 exposure to, or migration or emanation of, such Hazardous Material arises from exercise of the Rights or any activities carried out by the Grantee.

6. Grantor Liabilities

6.1 The liability of the Grantor under the provisions of this Agreement as to indemnity against claims and liabilities in respect of the Grantor's breach of any of its obligations contained in this Agreement shall extend to and include respectively claims and liabilities and loss damage or injury caused by reason of:

6.1.1 the negligence trespass or wilful act or default of any person or persons directly employed by or under the direct control of the Grantor; and

6.1.2 the actions of the Grantor's contractors and their sub-contractors and all persons employed in connection with the use of the Grantor's Property and of all tenants or occupiers of the Grantor's Property except for actions carried out expressly or impliedly at the request of the Grantee.

7. Compensation

7.1 Compensation will be paid to the Grantor on an annual basis for:

7.1.1 crop loss on any land taken out of production before or during the growing season as a consequence of the exercise of the Rights, and for losses (if any) in subsequent seasons;

7.1.2 loss of rent and all associated costs (including without limitation loss of irrigation water sales) on any land taken out of production before or during the growing season as a consequence of the exercise of the Rights;

7.1.3 the additional costs of farming any land not taken out of production arising as a result of the land aforementioned in this paragraph 7.1 being taken out of production.

The compensation for arable crops shall be assessed by reference to the sale value of the harvested crop less any savings in the costs of cultivations not undertaken and seeds, fertilisers, and chemicals not applied. The compensation for grassland shall be assessed by reference to the loss of production of hay or silage less any savings in costs or by reference to the costs of purchasing replacement fodder for pastureland not available for grazing or renting alternative land available for grazing. Cultivations shall be valued by reference to the guidance figures published by the Central Association of Agricultural Valuers. In the event of dispute the assessment of compensation shall be made by an Independent Expert to be appointed by agreement by the parties or in the absence of agreement by the President of the Royal Institution of Chartered Surveyors.

7.2 Subject to paragraph 7.3, any compensation payable to the Grantor in respect of any damage to land and crops or structures thereon or drains thereunder and any injury to stock thereon shall be deemed to be payable within three calendar months after lodgement of the claim therefor and the Grantee shall pay interest thereon such interest (if any) to be payable in

respect of the period (but only if greater than three months) from the date of agreement or determination of such compensation until payment of the same at the rate of four percent (4%) per annum above the base rate for the time being of HSBC Bank plc (or any other comparable UK clearing bank reasonably specified by the Grantee and notified to the Grantor in writing)

PROVIDED THAT

7.2.1 no interest shall be due in respect of payments of compensation made within the said period of three calendar months of the lodgement of the claim therefor; and

7.2.2 in calculating interest, no interest shall accrue in respect of any payments on account made in accordance with paragraph 7.3 after the date on which any relevant payment on account was made.

7.3 Where the precise amount of any item of compensation payable has not been agreed or determined within three calendar months after lodgement of the claim therefor the Grantee shall without prejudice to the final settlement or determination of the matter make such payment on account to the Grantor as shall represent not less than ninety percent (90%) of the amount of compensation as the Grantee shall reasonably consider payable in respect of the Grantor's claim therefor ("**Estimated Amount**"). When the precise amount of the item of compensation payable has been finally agreed, settled or determined ("**Final Amount**"):

7.3.1 if the Final Amount is more than the Estimated Amount, the Grantee shall pay the difference to the Grantor within three calendar months of such agreement, settlement or determination; or

7.3.2 if the Final Amount is less than the Estimated Amount, the Grantor shall pay the difference to the Grantee within three calendar months of such agreement, settlement or determination.

7.4 In those cases where time is spent by the Grantor in consultation as to or in supervision of works or reinstatement or other matters arising from the exercise of the Rights the Grantee will pay fair and reasonable compensation for such time of the Grantor so spent PROVIDED THAT such fair and reasonable compensation shall be a rate of Forty Five Pounds (£45) per hour AND PROVIDED FURTHER that no payment will be made (i) where the spending of such time is not reasonably necessary having regard to the Grantee's obligations, procedures and practices under those rights and (ii) in the absence of such supporting written evidence as the Grantee may reasonably require from the Grantor to substantiate any claim for compensation pursuant to this paragraph 7.4.

7.5 Any unavoidable loss or repayment of any grants or quotas and/or penalties imposed upon the Grantor relating in each case directly to the use of the land will be taken into account in the assessment of the compensation payable under the provisions of this Agreement together with any loss suffered by the Grantor as a result of the Grantor being unable to claim any further or new subsidy rights including without limitation under the Common Agricultural Policy of the European Community, Basic Payment Scheme (established by Regulation (EU) No 1307/2013), Countryside Stewardship Scheme, Environmental Land Management Scheme, Environmental Stewardship Scheme and Higher Level Stewardship Scheme or replacements thereof by reason of the Grantee exercising its rights under this Agreement.

7.6 If any livestock and/ or horse, pony or donkey is killed or injured by the exercise of the Rights the Grantee shall pay compensation to the owner of such livestock and/ or horse, pony or donkey immediately after the amount of such compensation has been agreed or determined. The Grantee may where it is reasonable to do so and at the Grantee's cost require production of a report from a veterinary expert to confirm the cause and extent of any injury, death, loss or claim related to stock Provided That the Grantee shall only reimburse the cost of such report if it so confirms the cause arises from exercise of the Rights.

7.7 The Grantor and the Grantee agree that wherever full and final settlement of compensation (or any aspect of compensation) is negotiated between the parties such settlement shall be recorded in a form reasonably required by the Grantee and shall specify what matters (if any) shall be excluded from such full and final settlement.

7.8 The Grantee shall pay the Grantor's reasonable and properly incurred costs in connection with the negotiation of any matter to be dealt with under this Schedule.

7.9 Proper and reasonable hourly rates on quantum merit basis (subject to all time being reasonably and properly incurred and recorded) for appropriately qualified surveyors must be applied to any compensation paid.

8 The Grantee shall indemnify the Grantor or any lawful occupier of the Grantor's Property against all losses and liabilities suffered if as a result of the Grantee exercising its rights under this Agreement the Grantor is unable to fulfil an existing contract for the supply of farming or agricultural produce subject to the Grantor or any occupier of the Grantor's Property providing such evidence to substantiate any claim as the Grantee may reasonably require.

East Anglia ONE North and East Anglia TWO Offshore Windfarms

Applicants' Comments on Suffolk Energy Action Solutions' NDA / Complaint

Applicant: East Anglia TWO and East Anglia ONE North Limited
Document Reference: ExA.AS-14.D10.V1
SPR Reference: EA1N_EA2-DWF-ENV-REP-IBR-001064

Date: 6th May 2021
Revision: Version 1
Author: Shepherd and Wedderburn LLP

Applicable to East Anglia ONE North and East Anglia TWO

Revision Summary				
Rev	**Date**	**Prepared by**	**Checked by**	**Approved by**
001	06/05/2021	Shepherd and Wedderburn LLP	Lesley Jamieson / Ian MacKay	Rich Morris

Description of Revisions			
Rev	**Page**	**Section**	**Description**
001	n/a	n/a	Final for Deadline 10 Submission

Table of Contents

Glossary of Acronyms

APP	Application Document
DCO	Development Consent Order
ExA	Examination Authority
NDA	Non-Disclosure Agreement
PD	Procedural Decision
SEAS	Suffolk Energy Action Solutions

Glossary of Terminology

Applicant	East Anglia TWO Limited / East Anglia ONE North Limited and for the purposes of this submission includes ScottishPower Renewables (UK) Limited
East Anglia ONE North project	The proposed project consisting of up to 67 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure.
East Anglia ONE North windfarm site	The offshore area within which wind turbines and offshore platforms will be located.
East Anglia TWO project	The proposed project consisting of up to 75 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure.
East Anglia TWO windfarm site	The offshore area within which wind turbines and offshore platforms will be located.

1 Introduction

1. This document presents the Applicants' response to Suffolk Energy Action Solutions (SEAS) Deadline 9 Submissions on ***Response to Applicant's Deadline 8 Submission re Non-Disclosure Agreements (NDA)*** (REP9-086).

2. This document is applicable to both the East Anglia TWO and East Anglia ONE North Development Consent Order (DCO) applications, and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's procedural decisions on document management of 23rd December 2019 (PD-004). Whilst this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it for the other project submission.

2 Applicants' Response

3. The Applicants invite the Examination Authority (ExA) to read the SEAS submission (***Response to Applicant's Deadline 8 Submission re Non-Disclosure Agreements (NDA)*** (REP9-086)). The tone and language is wholly unjustified. The premise of the argument is based on an improper interpretation of the Heads of Terms document. The Heads of Terms are not binding agreements and are the precursor to further negotiation between agents and solicitors. Both sets of solicitors who act on behalf of the vast majority of landowners agree with this interpretation and it is the basis on which the ongoing negotiations have been progressed. SEAS have not submitted a copy of legal advice to the contrary.

4. In terms of the "recent events", SPR did not have to take steps to identify the source of the Heads of Terms. As identified in the Applicants' response at Deadline 9 (***Applicants' Comments on Suffolk Energy Action Solutions'*** Complaint (REP9-010)) the Heads of Terms contained terms which were unique to particular landowners.

5. Paragraph 15 of the SEAS submission (***Response to Applicant's Deadline 8 Submission re Non-Disclosure Agreements (NDA)*** (REP9-086)) does not represent an accurate account of matters. First, SPR did not contact X's agent. SPR did not "hit the roof" and nor did SPR threaten X that there could be financial repercussions. These claims are incorrect.

6. The facts are as follows. On the 6 April 2021 [redacted] Lees of Dalcour Maclaren left a voicemail with [redacted] the agent for X. [redacted] returned the call and a discussion was held regarding the release of extracts of Heads of Terms and the question was asked as to whether X wished to continue to progress with the Option Agreement. [redacted] then contacted X and took instructions and called [redacted] back. [redacted] explained that X had been approached by SEAS but that they only released information X considered was not commercially sensitive and that X was keen to progress with the Option Agreement. On 23 April 2021 [redacted] again spoke with [redacted] [redacted] had been provided with a copy of paragraph 15 of the SEAS submission. [redacted] confirmed that at no point did he indicate to his client, X, that there would be any financial penalties imposed.

7. The Applicants have nothing further to add. The matters raised have been responded to in the Applicants' Deadline 9 submission (***Applicants' Comments on Suffolk Energy Action Solutions' Complaint*** (REP9-010)).