DATED 30th November **2015**

THE DEPARTMENT OF INFRASTRUCTURE (1)

AND

(2)

DONG ENERGY ISLE OF MAN (UK) LIMITED

AND

DONG ENERGY WIND POWER A/S (3)

AGREEMENT FOR LEASE

of
Windfarm Site upon Bed of the Sea at
IMW01
(Single Site Project)

Isle of Man
Government
Reiltys Ellan Vannin

H.M. Attorney General's Chambers

Douglas

THIS AGREEMENT is made on 30th November 2015

BETWEEN:

(1) **THE DEPARTMENT OF INFRASTRUCTURE** ("the Department") (a Department of the Isle of Man Government) of Sea Terminal Building Douglas Isle of Man IM1 2RF and

(2) **DONG ENERGY ISLE OF MAN (UK) LIMITED** a company incorporated in the Isle of Man (Company No 013051V) having its registered office situated at 33-37 Athol Street, Douglas, IM1 1LB, Isle of Man ("**the Tenant**" which expression includes any person to whom the benefit of this Agreement is assigned under clause 13) and

(3) **DONG ENERGY WIND POWER A/S** a company incorporated in Denmark having its registered office at Kraftvaerksvej 53, DK-7000 Fredericia Denmark (Company Number 31849292) ("**the Guarantor**")

NOW IT IS HEREBY AGREED as follows:

1 Interpretation

1.1 In this Agreement unless the context otherwise requires:-

1.1.1 words importing one gender include other genders

1.1.2 words importing the singular include the plural and vice versa

1.1.3 references to persons include body corporate and vice versa

1.1.4 obligations of a party comprising more than one person are obligations of such persons jointly and severally

1.1.5 an obligation of the Department is an obligation of the Department acting in exercise of the powers without imposing liability in any personal or private capacity

1.1.6 any obligation on the Tenant not to do or omit to do something shall be construed as including an obligation not to permit or knowingly to suffer it to be done by any other person

1.1.7 reference to a statute directive or regulation includes any amendment modification extension consolidation or re-enactment of it and references to any statute or directive includes any statutory instrument regulation or order made under it for the time being in force

1.1.8 references to the Department where the context admits includes their assigns

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

1.1.10 the clause headings do not affect the construction of this Agreement

1.1.11 references to clauses schedules and annexures are references to the relevant clause in or schedule or annexure to this Agreement

1.1.12 references to £ amounts are to UK pound sterling (ISO 4217 Code: GBP)

1.2 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"**Authority**" means an authority whether statutory public local European government department or agency or otherwise

"**Acceptable CfD**" means a contract for difference entered into by the Tenant and The Low Carbon Contracts Company Limited in respect of the Development, in a form acceptable to the Tenant (acting reasonably)

"**Acceptable Delaying Factors**" means a delay outside the Tenant's control which the Tenant is unable to resolve within a reasonable period of time or reasonably mitigate

"**Completion Date**" means the date for completion of the grant of the Lease as ascertained under clause 9.3

"**Data**" means primary data observations and metadata gathered and stored by or on behalf of the Tenant in relation to meteorological (including, without limitation, wind resource), geotechnical, geophysical, bathymetric, oceanographic, sedimentological, environmental, cultural and heritage investigations modelling and monitoring on the Site the Designated Area or surrounding areas

"**Designated Area**" means the seabed in which the turbines and cables between the Site and the shore or adjoining jurisdiction are to be located and part of which is to be the Designated Area under the Lease (subject to the provisions for diversion contained in the Lease)

"**Development**" means the installation by or on behalf of the Tenant upon the Site of an offshore windfarm including (without limitation) wind turbine generators, cables between them, ancillary structures, and cables between the Site and the shore or the boundary of an adjoining offshore jurisdiction of territorial waters and having an installed capacity in the order of 700 MW to 800 MW

"**EIA**" means an Environmental Impact Assessment required to be submitted by the Tenant in accordance with clause 4.8 in the form and manner set out in the Appendix

"**First Option Fee**" means the sum of £70,000 (exclusive of VAT)

"**Guarantee**" means a deed of guarantee to be entered into by the Guarantor with the Department

"**Lease**" means the lease of the Site or the part of it ascertained under clause 7.3 to be granted by the Department and accepted by the Tenant which shall be in the form of the attached agreed draft subject to any alterations made pursuant to this Agreement

"**Longstop Date**" has the meaning set out in clause 4.3;

"**Necessary Consents**" means all consents licences permissions orders exemptions and approvals required from any Authority (and shall include for the avoidance of doubt all assessments which may be required to be undertaken before the issue of any of the foregoing) or required in consequence of any of the matters referred to in the First Schedule

"**Option Fees**" means the First Option Fee, the Second Option Fee and the Third Option Fee

"**Option Notice**" means written notice served by the Tenant on the Department within the Option Period pursuant to clause 6 signed by the Tenant requiring the grant of the Lease to take place

"**Option Period**" means the period of 7 years from and including 30th day of November 2015 and up to and including 30th day of November 2022

"**Projected Output**" means the anticipated annual electricity production of the Specified Works expressed in megawatt hours ascertained in accordance with clause 7.4

"**Second Option Fee**" means the sum of £40,000 (exclusive of VAT)

"**Site**" means (subject to clause 12.1) the area shown for the purpose of identification coloured pink on the plan and more particularly described in the co-ordinates both as set out in the Second Schedule hereto, or as otherwise agreed by the parties in writing, but only in so far as that seabed from time to time lies within waters in or adjacent to the Isle of Man which are between mean low water and the seaward limit of the territorial seas

"**Specified Works**" means the works which are to be the Specified Works under the Lease

"**Specification**" means the specification of the Specified Works to be attached to the Lease

"**Target Necessary Consent Date**" has the meaning set out in clause 4.3

"**Third Option Fee**" means the sum of £100,000 (exclusive of VAT)

"**Working Day**" means any day except Saturday Sunday and bank or other public holidays in the Isle of Man

2 Option Fees

2.1 The Tenant shall pay to the Department:

2.1.1 the First Option Fee on the date of this agreement;

2.1.2 the Second Option Fee within 20 Working Days following receipt by the Tenant of all Necessary Consents for the Development; and

2.1.3 the Third Option Fee within 20 Working Days following completion by the Tenant of an Acceptable CfD

2.2 The Option Fees shall not form part of or be deductible from any rent payable under the Lease

3 Anemometry Equipment

3.1 The Department grant to the Tenant licence to enter the Site to erect maintain use and remove anemometry equipment and to carry out tests and site investigations (which do not entail the temporary or permanent installation of any works or structures on the seabed) for the purpose of complying with the Tenant's obligations under clause 4 or otherwise reasonably required in connection with the Development but for no other purpose

3.2 The Tenant shall not exercise the licence granted under clause 3.1 unless it has first obtained all Necessary Consents for the purpose for which the licence is to be exercised and shall then only exercise the licence in accordance with such Necessary Consents

3.3 The licence granted under clause 3.1 is granted subject to the public rights of navigation and fishing the matters referred to in the First Schedule and all other rights easements and quasi easements now exercisable over the Site

3.4 The Licence under clause 3.1 shall determine on the earlier of:-

3.4.1 the expiry of the Option Period or, if a valid Option Notice is served in accordance with clause 6, the Completion Date; and

3.4.2 determination of this Agreement

3.5 The Tenant may erect an anemometry mast upon the Site

3.6 If the Tenant wishes to retain any of the anemometry equipment upon the premises demised by the Lease after the Completion Date then it may include that equipment in the Specified Works and (for the avoidance of doubt) retention and alteration of that equipment shall not give rise to the Implementation Date under the Lease

3.7 The Tenant shall restore the seabed to a safe and (allowing for the presence of the anemometry equipment) proper condition and in accordance with the requirements of any Necessary Consents and of any Authority as soon as is reasonably practicable following any disturbance of it caused in the exercise of the licence granted under clause 3.1 of this Agreement

3.8 The Tenant shall indemnify and keep the Department indemnified against all actions proceedings claims and demands brought or made and all proper costs and expenses and all losses damage and liabilities incurred suffered or arising directly or indirectly in connection with

3.8.1 the existence of any anemometry equipment installed by the Tenant pursuant to this clause 3

3.8.2 the exercise of the licence given under clause 3.1 of this Agreement

3.8.3 any breach of the Tenant's obligations under this clause 3

except to the extent that any such actions proceedings claims and demands are brought or made or loss damage costs expenses and liabilities are incurred or suffered as a result of the default or negligence of the Department or their servants agents and contractors and/or amount to loss of profit loss of opportunity loss of revenue loss of use loss of contracts and/or any other indirect losses of the Department and subject in the case of any loss of the Department to the Department taking such reasonable steps to mitigate the loss as the Tenant may reasonably request

3.9 Prior to the determination of the licence granted under clause 3.1 (unless the Lease is granted and the equipment is included in the Specified Works pursuant to clause 3.6) the Tenant shall remove all anemometry equipment and restore the Site to a safe and proper condition to the Departments' reasonable satisfaction

4 Necessary Consents

4.1 The Tenant shall apply for all Necessary Consents for the Development by 31 December 2018, or such later date as the Tenant and Department may agree (each acting reasonably) ("the Applications" and each an "Applicaton"), and shall use reasonable endeavours to comply with all requirements of the Authority or other person to which each Application is made to enable it to determine that Application

4.2 The plans showing the layout and route of the works comprising the Development submitted with each of the Applications for the Development and any amendments or variations to such plans shall be capable of complying with the criteria in clause 7.3 and shall first be approved in writing by the Department (such approval not to be unreasonably withheld or delayed) provided that the approval of the Department under this clause 4.2 shall not be required for minor amendments or variations to plans previously approved by the Department under this clause 4.2

4.3 The Tenant shall use all reasonable endeavours to obtain all the Necessary Consents for the Development within the period of 2 years following the date on which the last of the Applications is made (the "Target Necessary Consent Date"). In circumstances where the Tenant is unable to obtain all the Necessary Consents for the Development by the Target Necessary Consent Date, the Tenant shall use all reasonable endeavours to obtain them as soon as practicable thereafter, and in any event shall obtain all the Necessary Consents by the last day of the Option Period (the "Longstop Date").

4.4 The Tenant shall provide:

4.4.1 such information as the Department shall reasonably require from time to time in respect of the progress of the applications for the Necessary Consents for the Development and shall forward a copy of any decision notice to the Department within 5 Working Days of receipt by the Tenant; and

4.4.2 to provide the Department with:

(a) on each anniversary of this Agreement, a plan setting out the development actions that the Tenant proposes to take in

furtherance of its obligations under clauses 4.1 and 4.3 (the "Annual Update Plan"); and

(b) on a quarterly basis, such other relevant and non-confidential information from the Tenant's internal reports in relation to the status, changes and progress of the Development (including where the Tenant has departed from the latest Annual Update Plan submitted to the Department) as the Department may reasonably require for the purposes of assessing whether the Tenant is complying with its obligations under clauses 4.1 and 4.3

4.5 The Tenant shall use reasonable endeavours to procure that each Necessary Consent for the Development (which does not automatically enure for the benefit of the land) is granted on terms which permit that Necessary Consent (or the rights granted under it) to be transferred without the consent of any Authority to any person including an assignee hereunder to whom an agreement for lease or a lease is granted by the Department in respect of the Site

4.6 The Tenant shall not do or omit to do anything which may cause any Necessary Consent for the Development which has been obtained to be modified or revoked without the consent of the Department (which is not to be unreasonably withheld or delayed)

4.7 The Department shall use all reasonable endeavours to cooperate with any Authority (whether in the Isle of Man or the United Kingdom) where reasonably required to enable the Tenant to comply with its obligations in this clause 4.

4.8 The Tenant shall prepare an EIA in the form and manner, and in accordance with the process, and containing such content and detail, as is set out in the Appendix to this Agreement. The Tenant shall provide such EIA to the Department as soon as reasonably practicable following completion of its preparation.

5 Data

5.1 The Tenant shall provide the Data to the Department

5.2 The Data shall be provided as follows:-

5.2.1 in reports provided at such intervals as the Department may from time to time require (but no more frequently than six monthly in the case of meteorological oceanographic and geotechnical Data and annually in the case of other Data)

5.2.2 the Data shall be provided in each report in any format which the Department reasonably require from time to time and which:-

(a) uses appropriate standards and protocols for data (including metadata) handling and archiving;

(b) is in digital format which can be transmitted electronically;

(c) can be entered into geographical information systems; and

(d) is either geographically or library referenced

and for the avoidance of doubt the Tenant acknowledges and agrees that it has no interest or right (including copyright and database rights) in any format or database in which Data is put stored or processed whether by the Tenant pursuant to its obligation under this clause 5.2.2 or by the Department or any third party

5.3 The Department shall not disclose any of the Data provided under this clause 5 relating to wind resources to any third party for a period of 5 (five) years after the date on which that Data was gathered except:-

5.3.1 to employees of the Department and to government departments, statutory boards, agencies or other government bodies and their employees;

5.3.2 to national data repositories provided that any such repository does not publish or distribute the Data in its entirety or only uses the Data in aggregation with other data for the production of charts or for the purposes of research and keeps the source of the Data confidential;

5.3.3 as required by law or in response to any questions from a Committee of Tynwald;

5.3.4 where, in the absolute discretion of the Department , disclosure is required under the Code of Practice on Access To Government Information July 1996 and any amendment modification extension consolidation or re-enactment of it and the Tenant acknowledges and agrees that the Department may, acting in accordance with the said Codes of Practice, disclose such data following consultation with the Tenant and taking its views into account in accordance with the Codes of Practice;

5.3.5 in so far as already in the public domain through no default of the Department ; or

5.3.6 as agreed by the Tenant

5.4 Where disclosure is made under clauses 5.3.1 or 5.3.2 the Department shall notify the person to whom the information is disclosed of the confidentiality of the information and shall take reasonable steps to ensure that such person observes the restrictions on disclosure in clause 5.3

5.5 Subject to clause 5.3 the Tenant grants to the Department (and shall procure all necessary third party consents to enable it to do so) a perpetual non-exclusive right and licence to use and make publicly available for any purpose or in any manner or form Data provided to them pursuant to this clause 5

6 Option

6.1 In consideration of the Option Fees the Department grant to the Tenant the option and right to require the Department to grant to the Tenant the Lease on the terms of this Agreement

6.2 The Department and the Tenant agree that if the Option Notice is validly served in accordance with this clause 6 the Department (subject to clauses 10 and 12.1) shall grant and the Tenant shall accept the Lease on the terms of this Agreement

6.3 The Option Notice shall only be valid if it:-

6.3.1 is served after

(a) the Tenant has obtained all Necessary Consents for the Development (and, in obtaining the Necessary Consents, has complied with its obligations under clause 4 (*Necessary Consents*)); and

(b) the layout and route of the works comprising the Development have been approved by the Department under clause 4; and

6.3.2 is served upon the Department at the address stipulated and is received by the Department within the Option Period (time being of the essence)

6.4 If the Tenant has not served a valid Option Notice in accordance with this clause 6 within the Option Period (time being of the essence) then the provisions of clause 10.4 shall apply

6.5 The Tenant shall provide such evidence as the Department may reasonably require that all Necessary Consents for the Development have been obtained

7 Specified Works, Specification, Premises Designated Area and Projected Output

7.1 The Specified Works shall be the works comprising the Development for which the Tenant has obtained all Necessary Consents and the layout and route of which have been approved by the Department under clause 4.2

7.2 The Specification shall:-

7.2.1 include the layout drawing approved by the Department under clause 4.2; and

7.2.2 be submitted by the Tenant to the Department for approval (such approval not to be unreasonably withheld or delayed)

7.3 The premises to be demised by the Lease shall be the part of the Site upon which the Specified Works (other than any cables between the wind turbine generators and the shore) are located and shall be determined by the Department (acting reasonably) as soon as reasonably practicable after approval of the Specification in accordance with the following criteria:-

7.3.1 the premises to be demised shall not include any part of the seabed which is not comprised within the Site; and

7.3.2 the distance between the centre of the tower of each wind turbine generator comprised within the Specified Works and the boundary of the premises to be demised shall be at least 100 metres

7.4 The route of the Designated Area shall be that shown for identification on the attached plan and more particularly described in the attached co-ordinates or such other route as the Tenant requests and the Department approve (such approval not to be unreasonably withheld) The following provisions shall apply to the determination of the Projected Output:-

7.4.1 the Tenant shall provide to the Department such evidence and analysis of that evidence as the Department reasonably require of the Projected Output;

7.4.2 if the Tenant produces to the Department an independent assessment of the Projected Output which has bona fide satisfied its funders then the Tenant shall not be required under clause 7.4.1 to obtain further analysis of the evidence of Projected Output;

7.4.3 clause 7.4.2 is without prejudice to the Department's right to require the production of further evidence and/or to require the Projected Output to be determined under clause 7.4.4 and

7.4.4 any difference arising between the Department and the Tenant as to the Projected Output may be referred by either the Department or the Tenant on notice to the other for determination by an independent electrical engineer acting as an expert as provided in clause 8.2 of the Lease and who shall be nominated by the Department and approved by the Tenant (such approval not to be unreasonably withheld) or in default of agreement be nominated by the President of the Institution of Electrical Engineers or other acting chief officer for the time being on the application of either the Department or the Tenant

8 Title

8.1 The Department covenants with the Tenant that the Department holds the legal and beneficial title of the Premises and has good right full power and lawful authority to let and grant the rights over the Premises in accordance with this Lease. The Tenant shall admit without requisition or enquiry the Department's title to the Site and no title guarantee will be given

8.2 The premises demised by the Lease will be let subject to the matters referred to in clause 3.5 of the Lease and clause 12 and the First Schedule to this Agreement

9 Grant of the Lease

9.1 This clause 9 shall take effect upon the service of a valid Option Notice in accordance with clause 6

9.2 The Department shall procure that engrossments of the Lease and the counterpart of it are prepared and delivered to the Tenant or its Advocates

9.3 The Department will grant and the Tenant will accept and execute a counterpart of the Lease on the date which is the later of the following dates:-

9.3.1 20 Working Days after the Option Notice is served in accordance with clause 6; and

9.3.2 5 Working Days after the Projected Output is ascertained pursuant to clause 7.4

9.4 Completion of the grant of the Lease shall take place at the Attorney General's Chambers, 3rd Floor, St Mary's Court, Hill Street, Douglas, Isle of Man, or at such other place as they shall reasonably require

9.5 The Commencement Date (as defined in the Lease) shall be the Completion Date and the blank space in the Lease shall be completed accordingly

9.6 The figure for the Projected Output shall be inserted in the blank space in the definition of Specified Works in the Lease

9.7 Schedule 3 of the Lease shall contain the matters listed in the First Schedule and such other matters as are added pursuant to clause 12

9.8 On completion of (and as a pre-condition to) the grant of the Lease the Tenant shall:

9.8.1 arrange for the execution of and deliver the Guarantee to the Department; and

9.8.2 procure that a legal opinion letter in respect of the execution of the Guarantee from Kromann Reumert or other such Advocates or Attorneys to the Guarantor as from time to time may be appointed and approved by the Department in the form of the attached draft with such amendments as the Department may reasonably require is delivered to the Department; and

9.8.3 arrange for the execution of and delivery of the counterpart Lease to the Department where it shall be held in escrow pending completion of the same.

Section 30

10 Determination

10.1 The Department may determine this Agreement by written notice to the Tenant if:

10.1.1 the Tenant fails to apply for and obtain all Necessary Consents for the Development in accordance with its obligations in clause 4 *(Necessary Consents)*, subject to allowance for Acceptable Delaying Factors (time being of the essence);

10.1.2 the Tenant materially fails to perform or observe any of its obligations in this Agreement and such failure or event is incapable of remedy or it is capable of remedy and the Department have served on the Tenant written notice specifying the failure or event and requiring it to be remedied within a reasonable time (to be specified in the notice and taking into account the nature of the obligation in question) and the Tenant has failed so to do; or

10.1.3 the Tenant becomes Insolvent

10.2 The Tenant may determine this Agreement at any time prior to service of an Option Notice by giving 20 Working Days written notice to the Department if the Tenant has fully discharged its obligations under clause 3.9

10.3 In clause 10.1 "Insolvent" means:-

10.3.1 in relation to a company that:-

(a) it is deemed unable to pay its debts as defined in Section 163 of the Companies Act 1931 ("the Act");

(b) a voluntary winding up is entered into under Section 214 of the Act;

(c) a provisional liquidator is appointed under Section 178 of the Act and not discharged within 20 Working Days;

(d) it is wound up in terms of Part V of the Act (except a voluntary winding up solely for the purpose of amalgamation or reconstruction while solvent);

(e) proposes a compromise or arrangement with its creditors in terms of section 152, 153 and 154 of the Companies Act 1931

10.3.2 in relation to an individual that:-

(a) a bankruptcy order is made under Part I of the Bankruptcy Code 1892 ; or

(b) the individual enters into a deed of arrangement in terms of Part VII of the Bankruptcy Code 1892

10.3.3 any event or proceedings are taken with respect to the Tenant in any jurisdiction in which it is incorporated or resident or to which it is otherwise subject which has an effect equivalent or similar to any of the events mentioned in this clause 10.3

10.4 If this Agreement is determined under this clause 10 (or this clause 10.4 is applied by clauses 6.4 or 12.1) then:-

10.4.1 this Agreement shall cease to have effect but without prejudice to:-

(a) the rights and remedies in respect of any antecedent breach by either party of this Agreement; and

(b) clauses 3.7, 3.8, 3.9, 4.6, 5 (other than clause 5.3 which shall cease to have effect insofar as it imposes any restriction on the Department) and this clause 10.4 which shall remain in full force and effect

10.4.2 the Tenant shall at its own expense promptly cancel any entry which it may have made at the Land Registry in respect of this Agreement and promptly produce evidence of cancellation to the Department

10.4.3 if so required by the Department at any time the Tenant shall use reasonable endeavours (subject to reimbursement of its reasonable costs of so doing) to procure that any Necessary Consent for the Development and its operation and use (which does not automatically enure for the benefit of the land) is transferred (in so far as it is transferable) to or reissued or amended so as to be in favour of any person to whom a lease or agreement for lease is granted by the Department for the Site

11 Direct Agreement

11.1 The Department acknowledge that the Tenant may require funding from a bank or other financial institutions ("Funders") to implement the Development and in arranging such finance the Funders may require as a condition of the availability of that finance to enter into a direct agreement with the Department to cover (without limitation) the following principal matters:

11.1.1 an acknowledgement by the Department of any security taken by the Funders over the Tenant and its assets (including but not limited to any security taken over the Lease)

11.1.2 an obligation to give notice to the Funders in the terms of clause 5.2 of the Lease

11.1.3 an obligation on the Department not to take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Tenant without first giving a prescribed period of notice to the Funders

11.1.4 a step in right (without giving rise to any express or implied assignment) to allow the Funders to ensure that the obligations of the Tenant are complied with so as to prevent any circumstances arising under which the Department could seek to forfeit the Lease

11.1.5 provisions regulating the application of insurance proceeds in the event that all or a part of the Works (as defined in the Lease) is destroyed or damaged which provisions will permit the Funders to recalculate financial ratios and conduct other economic tests approved by the Department (such approval not to be unreasonably withheld) relating to the fundamental financial viability of the Development and fundamental ability of the Development to meet debt service after the occurrence of a major insurable event and will further provide that if the specified economic tests are not satisfied, then any insurance proceeds received in respect of such insurable event shall be applied in repayment of amounts owing under the Funding Agreements rather than reinstatement of the relevant part or parts of the Works

11.2 The Department further acknowledge that they will act in good faith (at the cost and expense of the Tenant) to negotiate such a direct agreement where reasonably requested by the Tenant

12 Dealings affecting Site and Designated Area

12.1 The Department is entitled at its absolute discretion to grant leases licences and consents for Oil and Gas Works (as defined in the Lease) in on over or under the Site prior to the grant of the Lease provided that:

12.1.1 following the grant of any such lease the Department shall notify the Tenant of that grant and:-

(a) the lease licence or consent shall be deemed to be added to the First Schedule and the Lease shall be granted subject to it

(b) the granting of such rights will not prevent the reasonable development and operation of the wind farm

(c) where that grant is a lease of premises (as opposed to a lease of rights which includes a part or parts of the Site), the part or parts of the Site demised shall cease to be part of the Site for the purposes of this Agreement and shall be excluded from the premises demised by the Lease and

(d) where that grant is a lease of premises (as opposed to a lease of rights) which includes the whole of the Site then the provisions of clause 10.4 (other than clause 10.4.3) shall apply; and

12.1.2 prior to any exercise by the Department of its right pursuant to this clause 12.1 to grant any such grant leases licences and/or consents to a prospective developer of Oil and Gas Works, the Department shall ensure that appropriate compensation had been paid by the prospective developer of the Oil and Gas Works to the Tenant, or that a binding agreement had been entered into by the prospective developer of the Oil and Gas Works with the Tenant to pay such compensation. In the practical application of this clause 12.1.2, the Tenant and the Department shall have regard to: (1) Out of Scope [redacted] (2) the guidance on procedures for independent valuation set out in the Isle of Man Government Oil and Gas Ministerial Statement, a copy of which is set out at the Third Schedule hereto.

12.2 The Department is entitled in its absolute discretion prior to the grant of the Lease to carry out and grant leases licences and consents for the dredging or removal of materials and the construction of works for any purpose within the area for the Designated Area shown on the attached plan and co-ordinates or any variation of it pursuant to clause 7.4 provided that

12.2.1 before granting any such lease licence or consent for the construction of works the Department shall notify the Tenant

12.2.2 following the grant of any such lease licence or consent for the construction of works the Department shall notify the Tenant of that grant and the lease licence or consent shall be deemed to be added

to the First Schedule and the Lease shall be granted subject to it (but the Department shall reserve the right in such lease licence or consent to grant the rights under Schedule 1 of the Lease)

12.2.3 any such lease licence or consent relating to dredging is terminated by the Commencement Date under the Lease in so far as it relates to the Designated Area and Dredging Restriction Zone under the Lease and

12.2.4 the Departments covenants under clause 4 of the Lease shall apply from the Commencement Date under the Lease

12.3 The First Schedule contains details of all leases licences or consents for works on in over or under the Site granted by the Department and details of which are contained on the Department's Geographical Information System but no representation or warranty is made or given by the Department as to the accuracy of any information given by the Department as to the as laid position of works referred to in the First Schedule or as to whether there are any leases licences or consents granted which are not contained on that system

13 Assignment

13.1 The Tenant shall not assign or in any way deal or part with this Agreement or any interest under it and shall itself take up the Lease except as provided in clause 13.2

13.2 The Tenant may assign the whole benefit of this Agreement prior to the service of an Option Notice with the Department's prior written consent which may not be unreasonably withheld or delayed provided that:

13.2.1 the Department shall not be regarded as unreasonably withholding its consent if it withholds it on the ground of any of the circumstances set out in clause 13.3

13.2.2 the Department shall not be regarded as giving its consent subject to unreasonable conditions if it gives its consent subject to any of the conditions set out in clause 13.4

13.3 The circumstances referred to in clause 13.2.1 are:

13.3.1 where in the reasonable opinion of the Department the proposed assignee is not of sufficient financial standing to enable it to comply with the Tenant's obligations under this Agreement and under the Lease

13.3.2 where the proposed assignee is not resident in the Isle of Man or the United Kingdom or in a jurisdiction to which the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 applies the Department will be entitled to withhold consent

13.4 The conditions referred to in clause 13.2.2 are:

13.4.1 prior to the assignment the Tenant pays all arrears of sums made payable under this Agreement

13.4.2 the proposed assignee executes and delivers a covenant by deed with the Department in such form as the Department may reasonably require to observe and perform the obligations of the Tenant under this Agreement until released by operation of law

13.4.3 where the proposed assignee is not incorporated in the Isle of Man or the United Kingdom the proposed assignee procures a legal opinion letter from a firm of advocates/solicitors in the relevant jurisdiction addressed to and approved by the Department (acting reasonably) and provides to the Department an irrevocable address for service in the Isle of Man for notices under this Agreement and the Lease and proceedings with Advocates or other agents approved by the Department (acting reasonably)

13.4.4 that any Necessary Consents for the installation and operation of the Development which have been granted are transferred or granted to the proposed assignee on or before completion of the proposed assignment

13.4.5 prior to the Assignment the Tenant and the proposed assignee take such steps and agree to make such variations to clause 11 of the Lease as, in the reasonable opinion of the Department , are necessary to ensure that the agreement to be contained in clause 11 of the Lease will be valid notwithstanding the Assignment

14 Miscellaneous

14.1 The Tenant's obligations under this Agreement shall continue notwithstanding the grant of the Lease insofar as they remain to be performed and observed

14.2 This Agreement is an executory agreement only and is not to operate or be deemed to operate as a demise of the Site

14.3 The Tenant shall subject to receipt of a valid Value Added Tax invoice pay to the Department Value Added Tax at the appropriate rate on all payments due to the Department under this Agreement

14.4 This Agreement incorporates the entire contract between the parties and the Tenant acknowledges that it has not entered into this Agreement in reliance on any statement or representations made to the Tenant by or on behalf of the Department

14.5 Any instalment of the Option Fee or any other sum due from the Tenant to the Department under this Agreement which is not paid when it is due (or within any period specifically allowed by this Agreement) shall bear interest at the rate set out in clause 3.1.2 of the Lease for the period from (but not including) the date when it fell due to the date of payment

14.6 On the date of this Agreement the Tenant shall pay to the Department the sum of £1500.00 (plus VAT) by way of contribution to the legal fees incurred by the Department in the preparation of this Agreement and on the date of completion of the grant of the Lease the Tenant shall pay to the Department the

reasonable legal fees (plus VAT) incurred by the Department in connection with the completion of the grant of the Lease

14.7 Any notice to be served pursuant to this agreement shall be served in accordance with the terms of section 23 of the Tenancies (Implied Terms) Act 1954 subject to any notice to be served pursuant to section 13 of the Landlord and Tenant Act 1954.

15 Guarantee

15.1 Subject to clause 15.3, the Guarantor covenants with the Department as a principal debtor that:

15.1.1 the Tenant shall comply with its obligations contained in clause 3; and

15.1.2 if the Tenant is in default of its obligations referred to in clause 3 the Guarantor shall comply with the obligations in respect of which the Tenant is in default and make good to the Department on demand and indemnify the Department against all losses, damages, costs and expenses arising from such default or incurred by the Department.

15.2 The liability of the Guarantor shall not be affected in any way by:

15.2.1 any neglect or forbearance of the Department in enforcing observance or performance of the obligations in clause 3;

15.2.2 any time or indulgence given to the Tenant by the Department; or

15.2.3 anything else by which but for this provision the Guarantor would have been released.

15. Section 30

16 Proper Law

16.1 This Agreement shall be governed by and construed in accordance with the Laws of the Isle of Man and the Site and the Designated Area are part of the Isle of Man.

16.2 The Tenant irrevocably agrees for the exclusive benefit of the Department that the Isle of Man courts shall have jurisdiction over any claim or matter arising under or in connection with this Agreement and that accordingly any proceedings in respect of any such claim or matter may be brought in such courts. Nothing in this clause shall limit the right of the Department to take proceedings against the Tenant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction or jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction or jurisdictions

16.3 The Guarantor irrevocably appoints the Tenant as its agent (the "Agent") to receive on its behalf in the Isle of Man service of any notice or proceedings arising out of or in connection with this Agreement. Such service shall be

deemed completed on delivery to the Agent (whether or not it is forwarded to and received by the Guarantor). If for any reason the Agent ceases to be able to act as agent or no longer has an address in the Isle of Man, the Guarantor shall forthwith appoint a substitute acceptable to the Department and deliver to the Department the new agent's name, address and fax number and evidence of their acceptance of such appointment in terms acceptable to the Department

16.4 The Guarantor irrevocably consents to any process or any notice or legal action or proceedings arising out of or in connection with this Agreement being served on the Agent (or any other agent appointed under clause 16.3 above) in accordance with the provisions of this Agreement relating to service of notices. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by the laws of the country in which service is to be effected

This Agreement is executed by the parties hereto as a deed on the date first above written

FIRST SCHEDULE

Part 1 – Reservations

The following are licences and leases granted by the Department where the Department has given undertakings/covenants to obtain the consent of the licensees/tenants specified below (which consents must be obtained by the Tenant under this Agreement) before the Specified Works are carried out in the vicinity of the works specified below:-

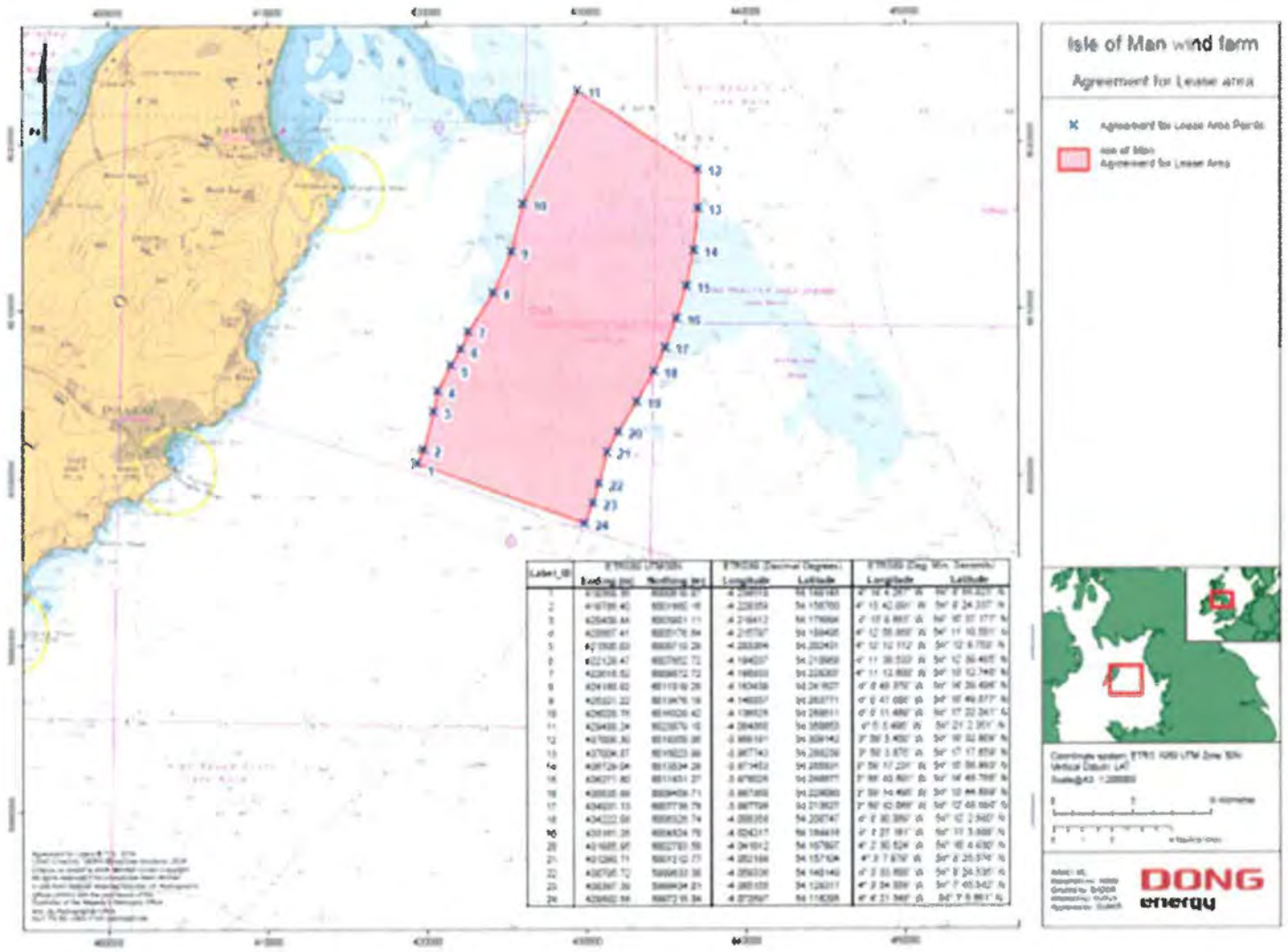
Date	**Licensee/Tenant**	**Works**

Part 2 – Isle of Man Consents

The consents which are required in the Isle of Man for the purposes of this Agreement shall include (but not be limited to):-

1. All or any consents or permissions or approvals referred to and contained within the Guide to Developers November 2014 with any such amended or superseded guidelines issued by the Department or other competent Authority;
2. All other consents which shall be required to carry out the Specified Works within the Isle of Man and specifically the Site
3. Planning permission or approval or any other approval from the Department of Environment Food and Agriculture in the Isle of Man;
4. The concurrence of the Council of Ministers of Tynwald in the Isle of Man;

SECOND SCHEDULE



THIRD SCHEDULE

Oil and Gas Ministerial Statement by the Minister for Economic Development

Guidance on procedures for independent valuation where necessary

Isle of Man
Government

1. Background to the Guidance

A. Under the terms of the Department of Infrastructure offshore renewable leases and agreements for lease, The Department of Infrastructure may determine the lease or agreement for lease in whole or in part, following a request from the Minister for Economic Development, for the purposes of allowing an oil or gas development to proceed. This is known as the "*oil and gas clause*".

B. The Minister for Economic Development, has now set out his policy that a necessary condition to be met before he would be prepared to make such a request is that appropriate compensation had been paid by an oil or gas developer to the affected offshore renewable energy developer, or that a binding agreement had been entered into with the oil or gas developer to pay such compensation.

C. The Minister for Economic Development also said "*My officials will discuss with the interested parties suitable practical arrangements to give effect to this policy, including a process for appointing a suitable person or body to undertake the independent third party valuation where that might be necessary. Suitable guidance will be developed in consultation with leaseholders or prospective leaseholders and the oil and gas industry*".

D. This document sets out that Ministerial Statement guidance.

2. Introduction

2.1 There may be situations where development interests of oil or gas developers and offshore renewables developers come into conflict as they seek to develop the same or adjoining areas of the seabed. In the majority of cases the Minister for Economic Development expects that the parties will be able to come to a private, commercial agreement which will allow the parties to accommodate their respective development aims.

2.2 Under the terms of leases and agreements for lease the Department of Infrastructure may determine a lease or agreement for lease, in whole or in part, following a request from the Minister for Economic Development, for the purposes of allowing an oil or gas development to proceed.

2.3 The Minister for Economic Development will only request that the Department of Infrastructure determine a lease or agreement for lease after appropriate compensation has been paid by an oil or gas developer to the affected offshore renewable developer, or after a binding agreement has been entered into with an oil or gas developer to pay such compensation. This applies to all leases or agreements for lease irrespective of the date they were signed and irrespective of whether or not there is a physical overlap between the lease or agreement for lease area and the oil or gas development area.

3. Applications to the Minister for Economic Development

3.1 Where it emerges that the plans of an oil or gas developer and those of an offshore renewables developer may be in conflict, the Minister for Economic Development expects the parties to make every reasonable effort to reach a commercial agreement at the earliest stage.

3.2 The oil or gas developer may make an application to the Minister for Economic Development if:

a) determination in full or in part of an offshore renewable lease or agreement for lease is necessary in order for the oil or gas development to go ahead; **and**

b) the parties are unable to reach a commercial agreement on compensation.

3.3 This guidance sets out the process and indicates how the Minister for Economic Development would generally expect to approach any application. However, in all such cases, the Minister for Economic Development will take due account of the specific circumstances which may apply.

3.4 In the application the oil or gas developer should set out the following information:

a) details of the lease and/or agreement for lease area for which determination in full or in part is sought, including maps;

b) evidence of why the oil or gas development cannot go ahead without the

determination of the lease and/or agreement for lease in full or in part. This should include information on alternative locations, options for co-existence and technical solutions which have been assessed and the reasons for ruling these out;

c) confirmation that the determination sought is for the smallest area reasonably necessary for the oil or gas development to proceed; and

d) evidence of discussions (bilateral or mediated) which have taken place between the parties in order to reach a commercial agreement.

3.5 The application should also include details on how the costs of the Independent Valuer's work will be met by the oil and gas developer. Arrangements for the oil or gas developer paying the agreed fees of the Independent Valuer, and/or for meeting any additional costs which the Department of Economic Development may incur in the appointment of the independent Valuer, and for resolving any disputes relating to the process, must be agreed between the oil or gas developer and the Department of Economic Development before the appointment of the Independent Valuer is made.

3.6 The parties will, in the absence of an agreement between the parties to the contrary, bear their own costs.

3.7 The oil or gas developer should notify the relevant offshore renewable developer and the Department of Infrastructure that he is making an application to the Minister for Economic Development. He should do this before he submits his application to the Minister for Economic Development. The oil and gas developer should provide a copy of the application to the relevant offshore renewable developer and the Department of Infrastructure at the same time as he submits his application to the Minister for Economic Development.

3.8 The Minister for Economic Development may seek any relevant further information from the oil or gas developer.

3.9 When considering each application, the Minister for Economic Development will seek a view from the relevant offshore renewable developer and the Department of Infrastructure.

3.10 The Minister for Economic Development will consider each application on a case by case basis and it should not be assumed that he will agree to appoint an independent Valuer or request that the Department of Infrastructure determine a lease or agreement for lease. In weighing these considerations the Minister for Economic Development will take account of any matters which he deems to be relevant. These will include, but are not limited to, consideration of the potential impacts of determining the lease and/or agreement for lease upon:

a) the UK's legally binding 2020 renewable energy target;

b) any relevant longer term decarbonisation goals or targets;

c) maximising the economic recovery of the United Kingdom Continental Shelf's indigenous oil and gas resources;

d) the UK Government's energy policies;

e) the UK or Isle of Man Government's wider objectives;

f) consumer bills;

g) third parties;

h) The Department of Infrastructure;

i) investor confidence; and

j) the offshore renewable supply chain.

3.11 If the oil or gas developer cannot demonstrate that determination is necessary for the oil or gas development to proceed, the application will be rejected.

3.12 If the Minister for Economic Development considers that there has been insufficient effort to reach a commercial agreement, he may ask the parties to resume negotiations before considering the application.

4. Appointment of an independent valuer

4.1 Before taking any decision to appoint an independent Valuer the Minister for Economic Development will notify the parties and the Department of Infrastructure if he considers that the oil or gas development seems a technically viable development based upon the information which has been submitted by the oil or gas developer. Any decision by the Minister for Economic Development to appoint an independent Valuer will not be made without some consideration of the significance of the matters set out in section 47A of the UK Petroleum Act 1998. Any such appointment may therefore be taken as an indication that he does not object in principle to the exercise of the oil and gas clause and a possible reduction in the generation capacity of the offshore renewables project.

4.2 If the Minister for Economic Development agrees to the application he will, subject to agreement of the matters set out in paragraph 8, notify the parties and the Department of Infrastructure and invite the parties to propose appropriate persons to act as the independent Valuer. If the parties can agree upon an independent Valuer that is acceptable to the Minister for Economic Development, that person will be appointed to undertake the valuation. Any proposals submitted to the Minister for Economic Development should demonstrate that the parties have followed transparent and non-discriminatory procedures in reaching the preferred nomination.

4.3 If the parties cannot agree, the Minister for Economic Development will, following a transparent and non-discriminatory process, appoint an independent Valuer of his choice. The independent Valuer will submit his or her report to the Minister for Economic Development.

4.4 For the avoidance of doubt the agreement of the Minister for Economic Development to appoint an independent Valuer and his preliminary view on technical viability will be without prejudice to any later decision on the technical assessment of the Field Development Plan.

5. Principles in assessing the level of compensation

5.1 As set out in the Ministerial Statement, the Minister for Economic Development will expect the independent Valuer to assess compensation for the relevant categories of loss on the basis of the principle of equivalence as applied in circumstances of compulsory purchase, which aims to put the claimant in the same position, so far as financial compensation can do so, as if the lease or agreement for lease had not in fact been determined.

5.2 The level of compensation payable should take into account the maturity of the affected offshore renewable development. So, for example, determining an agreement for lease that has only recently been granted may result in a smaller payment compared to an agreement for lease that has been held for longer and where the relevant offshore renewable development may be further advanced.

6. Valuation

6.1 The independent Valuer is expected to:

a) consider the estimated change in the market value of the offshore renewable development represented by the lease and/or agreement for lease, due to the effects of the determination;

b) disregard the existence of the oil and gas clause but may take into account other restrictions in the lease and/or agreement for lease which might be present;

c) consider actions in mitigation of the effects of the determination which may reasonably be expected of the holder of the lease and/or agreement for lease;

d) consider any costs likely to be incurred in re-planning the offshore renewables development;

e) consider if the determination makes the offshore renewables development no longer economically viable; and

f) consider any other factors which he regards to be relevant.

6.2 In estimating the change in the market value of the offshore renewable development, the independent valuer will be expected to take account all material factors, which may include, but are not limited to:

a) losses incurred on the remainder of the lease and/or agreement for lease area including costs of any remedial works such as removal of cables or turbines;

b) any loss in efficiency in the remainder of the lease and/or agreement for lease area;

c) whether the change in the lease and/or agreement for lease area makes the offshore renewables development not economically viable;

d) costs for disturbance and removal of any equipment and decommissioning costs (this should include consideration of any uncertainties around decommissioning costs);

e) costs which may be recouped by re-sale or re-use of any equipment;

f) penalties or costs incurred due of cancellation of contracts or arising from other liabilities;

g) loss of revenue or profits; and

h) any other factors he considers relevant under the principles of compulsory purchase.

6.3 The independent Valuer is expected to take into account the degree of uncertainty which may attach to any estimate of costs or revenues.

6.4 Once the Minister for Economic Development has agreed to appoint an independent Valuer and has notified the parties of this, the offshore renewables developer will be expected to take reasonable steps to mitigate his losses from that point onwards, consistent with normal practice in cases of compulsory purchase. There is no expectation that the offshore renewables developer needs to take any steps to mitigate losses before this point.

7. Process after appointment of the independent Valuer

7.1 The independent Valuer will write to the parties requesting them to send him a written submission and supporting evidence within 30 working days. The independent Valuer will specify the date so that there is no ambiguity. The written submissions will be shared by the independent Valuer with the other party.

7.2 The parties may agree a statement of common ground to bind the independent Valuer's work. Where the parties are able to reach agreement on issues, the independent Valuer will exclude these from his considerations. If necessary, the independent Valuer may extend the

30 working days submission deadline to accommodate this statement of common ground.

7.3 The independent Valuer will hold an oral hearing if this is requested by either party. The other party will be invited to any such hearing. At the oral hearing, both parties will have the opportunity to put their case and to respond to the other party.

7.4 The independent Valuer will have discretion to request further information from the parties and to seek advice to inform his valuation from other sources (for example, technical or engineering advice) if he considers this necessary. The independent Valuer will confirm which information has been provided from other sources and who provided the information.

7.5 The independent Valuer will have three calendar months from the receipt of the written submissions OR the close of the oral hearing (whichever is the later) to complete a draft valuation. If the independent Valuer requires more time, he will inform the Minister for Economic Development, in writing, of the reasons why and with a revised deadline. The Department will notify the parties of any change of date.

8. Process after the independent Valuer's assessment

8.1 When the draft valuation is complete, the independent Valuer will send a copy simultaneously to the parties who will have ten working days, from receipt, to notify the independent Valuer of any factual corrections or apparent errors.

8.2 The independent Valuer will then have ten working days to finalise the valuation. He will send the final valuation to the Minister for Economic Development and the parties simultaneously.

8.3 The parties will have fifteen working days from receipt of the final valuation to notify the Minister for Economic Development in writing if they are not satisfied that the procedure in reaching the valuation has been followed correctly or if they consider there has been a manifest error. This should be supported by evidence.

8.4 If the Minister for Economic Development agrees the procedure has not been followed correctly or that there has been a manifest error, he will ask the independent Valuer to repeat the process or part of the process as he deems necessary or appoint another independent Valuer to do so. Any costs associated with repeating any part of the process or undertaking another valuation should be met by the oil and gas developer as set out under paragraph 8.

8.5 When the Minister for Economic Development is satisfied that the procedure has been followed correctly and there has been no manifest error on the part of the independent Valuer, he will notify the parties of this and ask the oil or gas developer to confirm if he intends to pay the compensation. The oil or

gas developer will have twenty working days, from receipt of the Minister for Economic Development's letter, to confirm whether or not he intends to pay the compensation.

8.6 The Minister for Economic Development may provide a letter of assurance to the oil and gas developer stating that, at the point in time when compensation is paid, he is not aware of any reason why consent to the Field Development Plan (FDP) should be refused, subject to a satisfactory technical assessment by the Department of Economic Development of the FDP when it is submitted; and that in particular, he is not, at that point in time, aware of any reason why he may refuse consent to the FDP for wider policy reasons, such as increasing or securing renewable energy supply.

8.7 If the oil or gas developer confirms that he does not intend to pay the compensation, or does not respond within the twenty working days, the Independent Valuer's assessment will lapse and the Minister for Economic Development will notify the parties and the Department of Infrastructure that he will not request that the Department of Infrastructure determine the lease and/or agreement for lease.

8.8 If the oil or gas developer confirms that he intends to pay the compensation, he must confirm this in writing to the Department. The Minister for Economic Development will then ask the Department of Infrastructure to determine the relevant parts of the lease and/or agreement for lease.

8.9 The parties should agree the arrangements for when compensation will be paid and executing the arrangements. This could involve the compensation payment being made simultaneously with the effecting of the determination. Alternatively, if the oil or gas developer proposes deferred payment, the principle of deferral and the form of security must be acceptable to the offshore renewables developer.

8.10 Compensation should be paid (or other binding legal agreements should be in place) within three calendar months of the oil or gas developer notifying the Minister for Economic Development that he intends to pay the compensation or the Independent Valuer's assessment will lapse. In these circumstances, the Minister for Economic Development will notify the parties and the Department of Infrastructure that he will not request that the Department of Infrastructure determine the lease and/or agreement for lease.

8.11 If, after this process has been completed and compensation has been paid, the oil or gas development does not proceed (for example, because it does not receive development consent or for commercial or other reasons), the offshore renewables developer is not required to pay back the compensation because part of the lease and/or agreement for lease will have been determined.

9. Interpretation of the terms used in the guidance

"Application to the Minister for Economic Development" means an application made by an oil or gas developer asking the Minister for Economic Development to appoint an independent Valuer and request that the Department of Infrastructure determine a lease or agreement for lease. An offshore renewables developer may not make an application.

"Compensation" means the sum of money to be paid by an oil or gas developer to an offshore renewables developer for determination of a lease or agreement for lease. It is a sum of money and not a requirement to carry out an action or to give any undertakings.

"Department" means the Isle of Man Government Department of Economic Development .

"Determination" means termination in whole or in part of a lease or agreement for lease. References to "determine", "determining" and "determined" in this guidance should be construed accordingly as meaning in whole or in part.

"Independent valuer" means a person (independent of an oil or gas developer or offshore renewables developer) appointed by the Minister for Economic Development to assess the amount of compensation.

"Lease and/or Agreement for Lease" means a lease and/or agreement for lease with the Department of Infrastructure relating to property forming part of the Isle of Man Territorial Sea, for the purpose of exploitation of water or winds for the purpose of energy generation or purposes connected to such exploitation.

"Notify" means notification in writing which can be by hard copy letter or in electronic form.

"Offshore renewables developer" means the developer and/or owner and operator of offshore transmission assets and/or offshore renewables generation assets.

"Offshore renewables development" means an offshore renewable energy electricity generating project and/or an offshore transmission project.

"Oil or gas developer" means the petroleum licence holder and/or operator of an oil and gas development.

"Oil or gas development" includes the drilling of an exploration well.

"Parties" means the oil or gas developer and the offshore renewables developer.

"Minister for Economic Development" means the Isle of Man Government Minister for Economic Development.

"Working day" means a day (other than a Saturday or a Sunday) on which banks are open for general business in the Isle of Man.

Signed for Department of Economic Development
by the Minister

Signature 

Name Minister Lawrence Skelly MHR

Date 21 July 2015

FOURTH SCHEDULE

TABLE OF INDICATIVE NGET CHARGES

Application Fees for Connection and Use of System Agreements

Application fees are payable in respect of applications for new connection agreements, certain use of system agreements and for modifications to existing agreements based on reasonable costs incurred by National Grid including where appropriate, charges from the Transmission Owners (TO's) in accordance with their charging statements. The application process and options available are set out in the Statement of the Use of System Charging Methodology which is included in Section 14 of the Connection and Use of System Code (CUSC).

The application fee is dependent upon size, type and location of the applicant's scheme as shown on the map and tables on the next page. Users can opt for a variable price application and pay an advance of the Engineering Charges based on the fixed prices shown, which will be reconciled once the actual costs have been calculated using the charge out rates contained in Schedule 3. Alternatively, onshore Users can opt to pay a fixed price application fee in respect of New and Modified Bilateral Agreements. In some circumstances, where a given application is expected to involve significant costs over and above those normally expected (e.g. substantial system studies, special surveys, investigations, or where a Transmission Owner varies the application fee charged to National Grid from the standard fee published in their charging statements) to process an offer of terms, National Grid reserves the right to remove the option for a fixed price application fee.

The map divides GB into three zones based on the Boundary of Influence map defined in Schedule 4 of the STC (SO-TO Code). Zone A maps onto the area NGC South, Zone B maps to NGC North and SPT South, and Zone C maps to SPT North, SHETL South and SHETL North.

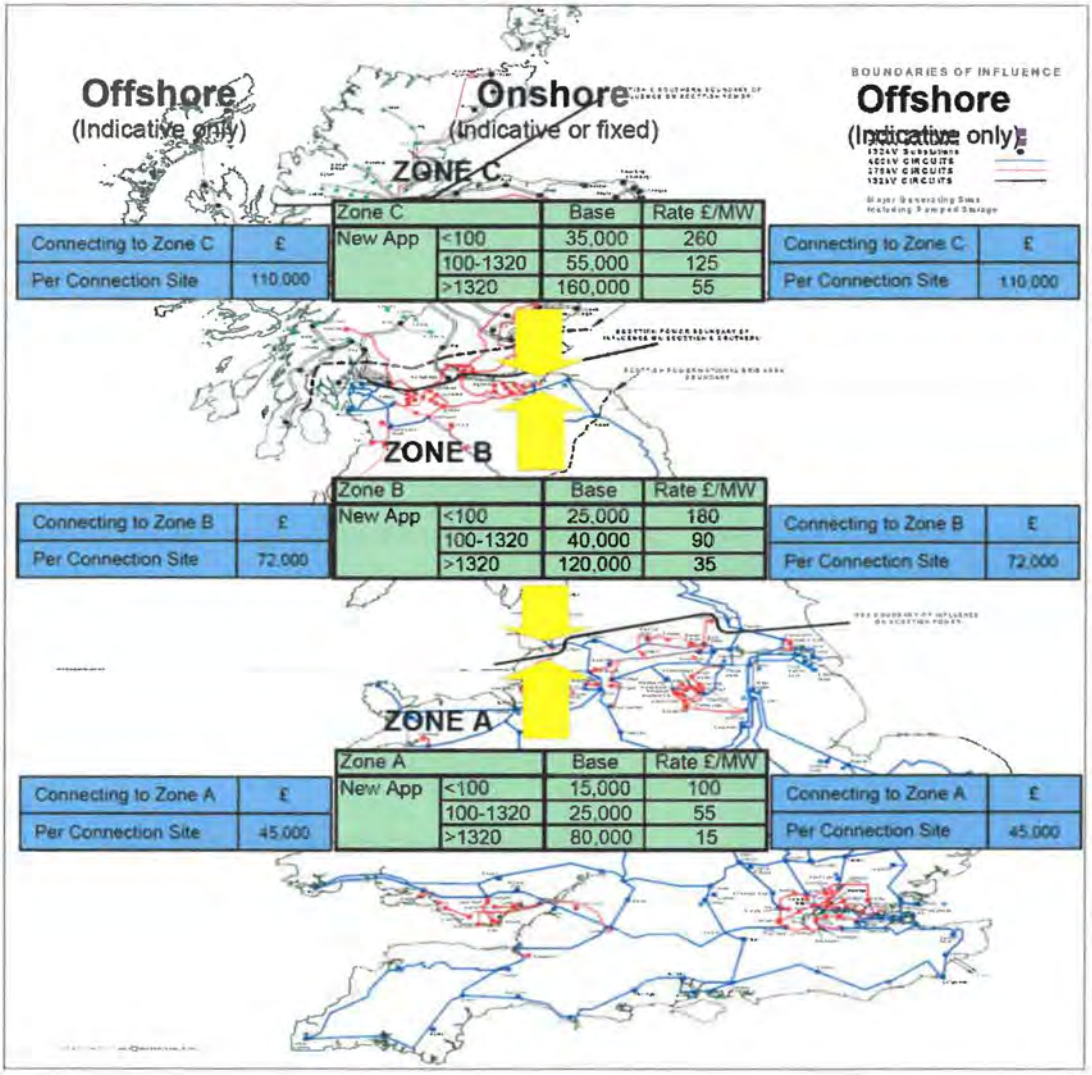
The application fees indicated will be reviewed on an annual basis and reflect any changes to the Boundaries of Influence. It should be noted that the zone to which a particular user is applying is determined by the location of the connection to the National Electricity Transmission System and not by the geographical location of the User's plant and equipment.

All application fees are subject to VAT and are capped at £400,000 + VAT.

Reconciliation and Refunding of Application Fees for Connection and Use of System Agreements

Application Fees will be reconciled and / or refunded In accordance with Section 14 of the Connection and Use of System Code (CUSC).

Entry Application Fees for New Bilateral Agreements



Zone C		Base	Rate £/MW
New App	<100	35,000	260
	100-1320	55,000	125
	>1320	160,000	55

Connecting to Zone C	£
Per Connection Site	110,000

Connecting to Zone C	£
Per Connection Site	110,000

Zone B		Base	Rate £/MW
New App	<100	25,000	180
	100-1320	40,000	90
	>1320	120,000	35

Connecting to Zone B	£
Per Connection Site	72,000

Connecting to Zone B	£
Per Connection Site	72,000

Zone A		Base	Rate £/MW
New App	<100	15,000	100
	100-1320	25,000	55
	>1320	80,000	15

Connecting to Zone A	£
Per Connection Site	45,000

Connecting to Zone A	£
Per Connection Site	45,000

1. New Onshore Application Fee = Base + (MW * Rate)
2. TEC Increase[1] = Base + (TEC Increase * Rate)
3. New Offshore Application Fee = Number of offshore Connection Sites * Fee

[1] The base value and Rate used are the values associated with the change in TEC not the resulting total TEC being applied for.

APPENDIX

Environmental Impact Assessment

The Environmental Impact Assessment Definition will follow EU EIA Regulations as transposed in to UK regulations as a model process.

The EIA Regulations transpose the EIA requirements of the EU Directive (EIA Directive) 85/337/EEC, as amended by Directive 97/11/EC and Directive 2003/35/EC ("the EIA Directive").

The EIA Regulations require an EIA to be completed in support of an application for development consent for certain types of project. As an offshore wind farm development, the proposed project is considered under Schedule 2 of the EIA Regulations as 'industrial (energy) installations for the production of electricity, steam and hot water (projects not included in Schedule I)' and Annex II of the EIA Directive, as 'installations for the harnessing of wind power for energy production (wind farms)'. Schedule 2 NSIPs require an EIA where they are likely to have significant impact or significant effects on the environment by virtue of factors such as their nature, size or location.

The Tenant submits Screening Request to determine the need for EIA

The Tenant prepares Community Consultation Overview and submits to Relevant Authority

The Tenant Prepares Scoping Report to determine the issues that the EIA should address and submits request for scoping opinion to Relevant Authority

Relevant Authority consults relevant consultees

Relevant Authority collates scoping responses and writes scoping opinion and agrees Community Consultation Overview

Relevant Authority provides scoping opinion and agrees SOCC with The Tenant within 48 days after 28 days consultation

Planning of studies for data collection and baseline surveys where necessary to fill data gaps

Baseline surveys, all surveys should be complete within 2 years of commencement date

Impact Identification and evaluation

Identification of mitigation and residual impacts

Identification of monitoring requirements

Completion of Environmental Statement and submit with Application for relevant consent(s) and permits(s)

Relevant Authority to issue Consent decision within 12 months of The Tenant submitting Consent Application and Environmental statement

The structure of the Environmental Statement will be as follows:

1. Introduction
2. Policy, Legislative and Consenting Framework
3. The Environmental Impact Assessment Process
4. Description of the project
    1. Description of actual project and site description
    2. Break the project down into its key components, i.e. construction, operations, decommissioning
    3. For each component list all of the sources of potential environmental disturbance

4. An estimate, by type and quantity, of expected residues and emissions (Water, air and soil pollution, noise, vibration, heat, etc.) resulting from the operation of the development

5. Site Selection and alternatives that have been considered

6. Consultation Report

7. Description of the environment

    1. List of all aspects of the environment that may be affected by the development

    2. Example: populations, fauna, flora, air, soil, water, climatic factors, humans, landscape, cultural heritage, material assets, socio-economic, fisheries, shipping, aviation, landscape and the inter-relationship between the above factors

8. Description of the likely significant effects on the environment

9. Mitigation; a description of the initial measures to prevent, reduce and where possible offset any significant adverse effect on the environment

10. Non-technical summary

The Tenant submits Screening Request to determine the need for EIA

The Tenant prepares Community Consultation Overview and submits to Relevant Authority

The Tenant Prepares Scoping Report to determine the issues that the EIA should address and submits request for scoping opinion to Relevant Authority

Relevant Authority consults relevant consultees

Relevant Authority collates scoping responses and writes scoping opinion and agrees Community Consultation Overview

Relevant Authority provides scoping opinion and agrees SOCC with The Tenant within 48 days after 28 days consultation

Planning of studies for data collection and baseline surveys where necessary to fill data gaps

Baseline surveys, all surveys should be complete within 1 year of commencement date

Impact Identification and evaluation

Identification of mitigation and residual impacts

Identification of monitoring requirements

Completion of Environmental Statement and submit with Application for relevant consent(s) and permits(s)

Relevant Authority to issue Consent decision within 12 months of The Tenant submitting Consent Application and Environmental statement

The structure of the Environmental Statement will be as follows:

11. Introduction
12. Policy, Legislative and Consenting Framework
13. The Environmental Impact Assessment Process
14. Description of the project
    1. Description of actual project and site description
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    3. For each component list all of the sources of potential environmental disturbance
    4. An estimate, by type and quantity, of expected residues and emissions (Water, air and soil pollution, noise, vibration, heat, etc.) resulting from the operation of the development
15. Site Selection and alternatives that have been considered
16. Consultation Report
17. Description of the environment
    1. List of all aspects of the environment that may be affected by the development
    2. Example: populations, fauna, flora, air, soil, water, climatic factors, humans, landscape, cultural heritage, material assets, landscape and the inter-relationship between the above factors
18. Description of the likely significant effects on the environment
19. Mitigation; a description of the initial measures to prevent, reduce and where possible offset any significant adverse effect on the environment
20. Non-technical summary

EXECUTED by or on behalf of the Department by the Minister or a person authorised by the Minister for Infrastructure in the presence of :

Section 25

Section 25

:

:

:

EXECUTED by the Tenant in the presence of:- :

Section 25

:

Section 25

EXECUTED by the Guarantor,

a company incorporated in Denmark, by)

Section 25

)

)

being persons who, in)

accordance with the laws of that territory,)

are acting under the authority of the)

company

Authorised Signatories:

Section 25

DATED **2015**

THE DEPARTMENT OF INFRASTRUCTURE (1)
AND

DONG ENERGY ISLE OF MAN (UK) LIMITED (2)

AND

DONG ENERGY WIND POWER A/S (3)

LEASE

of
Windfarm Site upon Bed of the Sea at
IMW01
(Single Site Project)

Isle of Man
Government
Reiltys Ellan Vannin

Lease – Agreed form – 27/11/2015

H.M. Attorney General's Chambers

Douglas

THIS LEASE made the day of 2015

BETWEEN

(1) **THE DEPARTMENT OF INFRASTRUCTURE** (a Department of the Isle of Man Government) of Sea Terminal Buildings Douglas Isle of Man IM1 2RF ("the Department")

(2) **DONG ENERGY ISLE OF MAN (UK) LIMITED** a company incorporated in the Isle of Man (Company No 013051V) having its registered office situated at 33-37 Athol Street, Douglas, IM1 1LB, Isle of Man ("**the Tenant**" which expression includes any person to whom the benefit of this Agreement is assigned under clause 3.10) and

(3) **DONG Energy Wind Power A/S** a company incorporated in Denmark having its registered office at Kraftvaerksvej 53, DK-7000 Fredericia Denmark (Company Number 31849292) ("**the Guarantor**")

WITNESSES as follows:-

1 Definitions and interpretation

In this Lease unless the context otherwise requires:-

1.1 "Authority" means an authority whether statutory public local or otherwise government department statutory board or agency or a court of competent jurisdiction in all cases whether in the Isle of Man or the United Kingdom

1.2 "Break Event" means where the Works or part of them have been destroyed or damaged by an Insured Risk and a funder has elected in accordance with the provisions of a direct agreement between the funder and the Department that the insurance monies will be applied in repayment of amounts owing under the funding agreement between the funder and the Tenant rather than in reinstating the Works or the part of them damaged or destroyed

1.3 "Commencement Date" means [*] day of [*] [

1.4 "CDM Regulations" means the Construction (Design and Management) Regulations 2003, Statutory Document SD 2003/878 and any amendments or modifications thereto as apply in the Isle of Man during the course of the Term

1.5 "Conduit" means a pipe drain sewer channel gutter cable wire or other conduit for the passage or transmission of water soil gas oil air smoke electricity communications information light or other thing and all ancillary structures and equipment

1.6 "Data" means primary data, observations and metadata gathered and stored by or on behalf of the Tenant or its predecessors in title in relation to meteorological (including without limitation wind resource), geotechnical, geophysical, bathymetric, oceanographic, sedimentological, environmental, cultural and heritage investigations, modelling and monitoring on the Premises the Designated Area or surrounding areas

1.7 "Decommissioning Principles" means the principles applied at the relevant time to the decommissioning of offshore renewable energy installations and cables under the

Energy Act 2004 (an Act of Parliament) and any amendment replacement modification extension consolidation or re-enactment of it and any statutory instrument, regulation order or guidance under it from time to time

1.8 "Decommissioning Programme" means a statement setting out:-

1.8.1 the extent nature and specification of the works of removal and/or decommissioning of the Works and restoration of the Premises required to comply with clause 3.15.1 and/or the Decommissioning Principles (as may be required in accordance with clause 3.15.4);

1.8.2 the methods and periods (which shall not be longer than is reasonably necessary in the circumstances for the purpose) for carrying them out; and

1.8.3 the measures and periods for post decommissioning monitoring maintenance and management of the Premises

as agreed by the Department and the Tenant in accordance with clause 3.15 and shall follow such form and manner as shall be required pursuant to Chapter 3 of the Energy Act 2004 (Act of Parliament in the United Kingdom) or any subsequent equivalent statutory provision as may be in force in the Isle of Man during the Term

1.9 "Department" means the Department for so long as the Reversion forms part of the Department title and thereafter the person from time to time entitled to the Reversion

1.10 "Designated Area" means (subject to variation from time to time under the provisions of Schedule 1) the part of the seabed within the strip running from the Premises to the boundary of Isle of Man territorial waters 30 metres in width located in a position approved by the Department (such approval not to be unreasonably withheld) within the area extending ● metres either side of the line shown by the ● line and the co-ordinates on the Plan, including cables laid within the Designated Area (and provided that if the cables are owned or acquired by a third party then a separate licence for the cables will be issued by the Department to the owner of the cables) and references to the Designated Area include reference to any part of it

1.11 "Determination of the Term" means determination of the Term or this Lease by expiry re-entry forfeiture notice surrender or otherwise

1.12 "Development" means the wind farm comprising the Specified Works

1.13 "Dredging Restriction Zone" means the [foreshore and] sea bed from time to time forming part of the Isle of Man Territorial waters within the areas extending to 235 metres either side of the Designated Area

1.14 "EML Consultant" means a firm of insurance advisers of international repute with experience of the offshore wind industry appointed by the Tenant in accordance with Schedule 5 and approved by the Landlord in accordance with paragraph 2.3.1 of the schedule

1.15 "EML Study" means a study performed by the EML Consultant pursuant to the terms of this Lease

1.16 "Estimated Maximum Loss" means the estimated maximum loss arising from the worst case credible scenario that could be expected to affect the Works as determined in accordance with Schedule 5

1.17 "Force Majeure" means fire storm tempest other exceptionally inclement weather conditions war hostilities rebellion revolution insurrection military or usurped power civil war labour lock-out strikes local combination of workmen and other industrial disputes riot civil commotion disorder decree of Government (whether in the Isle of Man or United Kingdom) non-availability of materials or equipment delay by an Authority or statutory undertaker (whether in the Isle of Man or United Kingdom) in carrying out work in pursuance of its statutory obligations or failure by such Authority to carry out such work unforeseen site conditions not identified in surveys or the environmental impact assessment loss or damage by any one or more of the Insured Risks or any other cause or circumstance provided that in the case of any of the foregoing events, the event

1.17.1 adversely affects the performance of the obligations in clause 3.2.2 or 3.2.7 (as the case may be) and

1.17.2 cannot be reasonably avoided or provided against by the Tenant or its contractors or professional team

1.18 "Good Industry Practice" means, at any time, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced contractor seeking in good faith to comply with its contractual obligations, complying with all applicable laws (in the Isle of Man or as extended to the Isle of Man by this Lease or by statute or by Order in Council) and engaged in the same type of undertaking and under the same or similar circumstances and conditions

1.1

Section 30

1.20 "Insured Risks" means fire lightning explosion earthquake aircraft and other aerial devices dropped from them riot civil commotion storm impact by vessels subsidence landslip heave malicious damage terrorism and mechanical breakdown and such other risks as the Tenant may insure against and such other risks as the Department may reasonably require the Tenant to insure against

1.21 "Legal Obligation" means an obligation imposed by or under or a requirement of any of the following (in so far as it relates to the Premises or to their occupation or use or to the Works or to the exercise of the Rights or to any substance or article upon in under or over the Premises but irrespective of the person on whom such obligation is imposed or such requirement is made):-

1.21.1 any present or future international convention or other international obligation or present or future legislation (whether an Act of Tynwald Parliament European Union legislation or otherwise) or

1.21.2 any statutory document by law regulation direction order requirement plan notice code of practice or guidance note made under or pursuant to any of the matters referred to in clause 1.21.1 or by any Authority or

1.21.3 any of the matters referred to in Schedule 3 or

1.21.4 any condition of a Necessary Consent

1.22 "Major Contractors" means the contractors or suppliers or lead consultants with whom the Tenant has entered into consultancy, supply and/or installation contracts in relation to the onshore electrical substation, offshore electrical substation, Supply Cables, Turbine foundations and/or Turbine generators in respect of the Specified Works (the "Material Equipment"), and the lead operation and maintenance contractors engaged with respect to the Material Equipment

1.23 consultants and contractors engaged by the Tenant and the principal suppliers of goods and services to the Tenant and the principal sub-contractors having design responsibility in connection with the Specified Works

1.24 "Necessary Consent" means all consents licences permissions orders exemptions and approvals required from any Authority (and shall include for the avoidance of doubt all assessments which may be required to be undertaken before the issue of any of the foregoing) or required in consequence of any of the matters referred to in Schedule 3

1.25 "Oil and Gas Works" means any pipelines platforms wellheads or other works for the exploration for or exploitation of oil and gas in respect of which the consents of the Department have been granted

1.26 "Plan" means the plan attached to this Lease

1.27 "Premises" means the part of the bed of the sea at ● shown for identification coloured pink on the Plan and more particularly described in the attached co-ordinates, but only in so far as that part of the bed of the sea from time to time lies inside the Territorial Limit, and references to the Premises include reference to any part of them

1.28 "Rent" means the rent ascertained and payable as provided in Schedule 4

1.29 "Reversion" means the reversion immediately expectant on the Term in respect of the Premises and the Designated Area and the cables therein as appropriate

1.30 "Rights" means the rights set out in Schedule 1

1.31 "Specification" means the specification attached to this Lease

1.32 "Specified Works" means [● number] Turbines together having a projected annual output of ● [***Note: fixed under clause 7 of Agreement***] megawatt hours [scour protection material, substation, anemometry equipment] and Conduits on the Premises and ● Supply Cable(s) in the Designated Area, the Specified Works being more particularly described in the Specification

1.33 "Supply Cables" means Conduits in on or under the Designated Area for the passage or transmission of electricity generated by the Works or otherwise required for the operation of the Works

1.34 "Tenant" where the context admits includes the Tenant's successors in title

1.35 "Term" means an initial term of 35 years commencing on (and including) the Commencement Date and expiring on [*] day of [*] and any further term as may be agreed in accordance with Schedule 6

1.36 "Territorial Limit" means the seaward limit from time to time of the territorial seas adjacent to Great Britain, Ireland and Northern Ireland

1.37 "Turbine" means a wind turbine generator including (without limitation) foundations and/or other method of attachment to the seabed, tower and blades

1.38 "VAT" means value added tax or other similar tax and unless otherwise expressly stated all Rent and other sums payable by the Tenant upon receipt of a valid VAT invoice addressed to the Tenant under this Lease are exclusive of any VAT charged or chargeable and the Tenant shall pay such VAT in addition to and at the same time as the sum in question

1.39 "Works" means the Specified Works, all renewals or replacements of them and all alterations or additions to them

1.40

Section 30

1.41 the expression "alteration" when used in respect of the Works includes (without limitation) removal of the Works or any part of them

1.42 the expression "decommission" when used in respect of the Works has the meaning given in section 104 of the Energy Act 2004 (Act of Parliament)

1.43 words importing one gender include other genders

1.44 words importing the singular include the plural and vice versa

1.45 references to persons include bodies corporate and vice versa

1.46 obligations of a party comprising more than one person are obligations of such persons jointly and severally

1.47 a covenant by the Tenant not to do something shall be construed as including a covenant not to permit or knowingly to suffer it to be done by any other person

1.48 a consent or approval to be given by the Department is not effective for the purposes of this Lease unless it is in writing and signed by or on behalf of the Department

1.49 reference to a statute directive or regulation includes any amendment modification extension consolidation or re-enactment of it and reference to any statute or directive includes any statutory instrument regulation or order made under it for the time being in force

1.50 references to numbered clauses and schedules are references to the relevant clause or schedule to this Lease and references in any schedule to numbered paragraphs are references to the numbered paragraphs of that schedule

1.51 the clause headings do not affect the construction of this Lease

1.52 the perpetuity period is one hundred and fifty years from the date of this Lease

2 Demise

2.1 The Department demises the Premises to the Tenant with no title guarantee TOGETHER with the Rights EXCEPTING AND RESERVING the matters set out in Schedule 2 TO HOLD the Premises to the Tenant for the Term SUBJECT to the public rights of navigation and fishing and all or any other matters referred to in Schedule 3 and all other rights easements and quasi-easements now exercisable over the Premises and the Designated Area YIELDING AND PAYING to the Department during the Term the Rent in accordance with the provisions of Schedule 4. The Department covenants with the Tenant that the Department holds the legal and beneficial title of the Premises and has good right full power and lawful authority to let and grant the rights over the Premises in accordance with this Lease.

3 Tenant's Obligations

The Tenant covenants with the Department to observe and perform the obligations in this clause 3

3.1 Rent and other payments

3.1.1 To pay the Rent in accordance with the terms of this Lease without deduction or set off whether legal or equitable and to observe and perform such of the provisions contained in Schedule 4 as are expressed as obligations on the Tenant's part

3.1.2 If any Rent or other sum becoming payable under this Lease by the Tenant to the Department remains unpaid for more than 21 days after becoming due (whether formally demanded or not) then the Tenant shall (if required but without prejudice to the Department's right of re-entry or any other right or remedy of the Department) as from the date on which it becomes due until the date of actual payment pay interest on it (as well after as before any judgement) at the rate of 3% per annum above the base lending rate from time to time of the Isle of Man Bank Limited (or such other bank as the Department nominates from time to time) or if such base rates cease to be published at any

time such other comparable rate of interest as the Department designates and the interest shall be deemed to be part of the Rent and recoverable in like manner as rent in arrear but shall not itself bear interest

3.1.3 To pay all existing and future rates taxes assessments impositions duties charges and outgoings whatsoever payable whether by the owner or occupier in respect of the Premises the Works or the exercise of the Rights except for taxes (other than VAT) payable by the Department on the receipt of the Rent or on any dealing with the Reversion

3.1.4 To pay and indemnify the Department against:-

(a) all VAT which is chargeable on the Rent or any other sum payable by the Tenant under this Lease upon receipt of a valid VAT invoice addressed to the Tenant; and

(b) all VAT incurred in relation to any costs or expenses which the Tenant is obliged to pay or in respect of which it is required to indemnify the Department under the terms of this Lease save where such VAT is recoverable or available for set off by the Department as input tax

3.2 Installation of Specified Works

3.2.1 To use all reasonable endeavours to procure that the Specified Works are designed using the reasonable skill care and diligence expected of appropriate professional designers experienced and competent in designing projects of a similar size scope and complexity having due regard to the industry's knowledge and standards at the time of design and installation of the Specified Works

3.2.2 Section 30

3.2.3 To give to the Department at least 7 days prior written notice of the occurrence of the Implementation Date

3.2.4 To carry out and complete the installation of the Specified Works:-

(a) in a good and workmanlike manner;

(b) using only suitable good quality materials of their several kinds;

(c) in accordance with the Specification, all of the Necessary Consents and all of the Legal Obligations; and

(d) with all reasonable speed and diligence

3.2.5 To obtain each Necessary Consent required for the installation and operation of the Specified Works as soon as it is required and to give all notices required to be given in connection with it

3.2.6 To notify the Department in writing immediately the Works Completion Date occurs and to provide the Department with such evidence as the Department may reasonably require to prove it occurred on the date notified and in accordance with clause 3.2.5

3.2.7 Section 30

3.2.8 To provide to the Department details of any event of Force Majeure as soon as it occurs and to provide immediately upon written request such evidence of the period of delay caused by such event as the Department may reasonably require

3.2.9 As soon as reasonably practicable to provide to the Department a copy of any notice which must be given by any Authority before the operation of the Specified Works may lawfully commence and not to commence the operation of the Specified Works before such notice is given

3.2.10 To provide to the Department upon initial engagement and then from time to time on reasonable written request details of the Major Contractors. Should the Major Contractors change such changes shall be notified to the Department in writing as soon as reasonably practicable

3.2.11 To provide to the Department as soon as reasonably practicable after the Works Completion Date plans and co-ordinates showing the location of the Specified Works as installed

3.3 Alterations and Signs

3.3.1 Not to construct install erect fix or place on in over or under the Premises or the Designated Area any building erection structure works Conduit or materials except:-

(a) the Specified Works;

(b) any renewal or replacement of the Specified Works (in materially the same form and layout); and

(c) any alteration or addition to the Works in accordance with clause 3.3.2

3.3.2 Not to make any alteration or addition to the Works unless:-

(a) the alteration/addition comprises the alteration or addition of Turbines and ancillary equipment structures and Conduits on the Premises and/or the alteration or addition of Supply Cables in the Designated Area;

(b) the Tenant has obtained all Necessary Consents for the alteration/addition;

(c) the alteration/addition will not result in a reduction in the output capacity of the Works below that stated in clause 1.32 other than:-

- a temporary and unavoidable reduction while the alteration/addition is carried out
- a reduction (either temporary or permanent) in order to comply with a Legal Obligation or a proper health and safety requirement which cannot otherwise reasonably be complied with or
- the removal of Works in respect of which clause 3.6.3 applies;

(d) the Tenant has submitted to the Department detailed plans and specifications showing the proposed alteration/addition; and

(e) the Tenant has obtained the Department's consent to carry out the alteration/addition (such consent not to be unreasonably withheld or delayed)

3.3.3 To comply with the provisions of clauses 3.2.1 3.2.4 3.2.5 3.2.9 and 3.2.11 (mutatis mutandis) in respect of any renewal or replacement of the Specified Works or any alteration or addition to the Works in so far as applicable

3.3.4 Not to place affix or display any sign advertisement notice flag poster or other notification whatsoever on the Premises except for such warning or other notices relating to the operation or use of the Works as may either be required under any Legal Obligation or may be approved by the Department (such approval not to be unreasonably withheld or delayed)

3.4 CDM Regulations

3.4.1 The Tenant warrants that it has the competence to perform the duties imposed on a client by the CDM Regulations

3.4.2 To comply with the provisions of the CDM Regulations in respect of the Works including without limitation all requirements relating to the provision and maintenance of a health and safety file and to provide on request to the Department a copy of the health and safety file and any documents within it

3.4.3 To supply all information to the Department that the Department reasonably requires to comply with the Department's obligations (if any) under the CDM Regulations

3.4.4 Prior to commencing any Works to make a written election that it is to be treated as the only client for the purposes of the CDM Regulations in respect of those Works and to provide a copy to the Department of the election (and the Department agrees to the election to the extent it actually is a client in respect of the Works)

3.5 Seabed Provisions

3.5.1 Not to dig extract or remove any sand stone beach shingle or other minerals or mineral substances from the Premises or the Designated Area except in so far as is reasonably necessary for the installation of the Works permitted under this Lease and the exercise of the Rights

3.5.2 Not to cause waste spoil or destruction on the Premises or the Designated Area except in so far as is reasonably necessary for the installation of the Works permitted under this Lease and the exercise of the Rights

3.5.3 As soon as reasonably practicable following any disturbance of the Premises or the Designated Area in the installation of the Works permitted under this Lease or the exercise of the Rights to restore the same to a safe and (allowing for the presence of the Works) proper condition and in accordance with all Legal Obligations

3.5.4 Not to damage or interfere with the rights granted under the licences, lease and agreements set out in Schedule 3

3.5.5 To obtain in writing all Necessary Consents and immediately produce them to the Department

3.6 Repair

3.6.1 To keep the Premises and the Works in good and safe repair and condition

3.6.2 To keep the Works properly maintained and in good working order

3.6.3 The Tenant shall not be liable to comply with clauses 3.6.1 and 3.6.2 in respect of any part of the Works which has broken down

or been damaged to the extent that and for as long as it remains the case that it would not be economic in the reasonable opinion of a prudent operator of a project of similar size scope and complexity to the Works to replace or repair the part of the Works which is broken down or damaged taking into account the remainder of the design life of that part of the Works, the unexpired residue of the Term and any notice given by the Tenant under clause 6 Provided That:-

(a) the Tenant shall not be relieved from liability by this clause 3.6.3 to the extent that the breakdown or damage is a consequence of any failure by the Tenant to comply with its obligations under this clause 3.6 prior to the date of breakdown or damage; and

(b) the Tenant shall remain liable to keep any part of the Works to which this clause 3.6.3 applies in safe repair and condition

3.7 Legal obligations

3.7.1 At the Tenant's own expense to observe and comply with all Legal Obligations and not to do or omit to do in relation to the Premises or their occupation and use or the Works or the exercise of the Rights anything by reason of which the Department may incur any liability under a Legal Obligation whether for penalties damages compensation costs or otherwise

3.7.2 To do all works and things and to bear and pay all expenses required or imposed by any Legal Obligation and to use all reasonable endeavours to obtain all Necessary Consents required from time to time in order to install or operate the Works

3.7.3 If the Tenant receives from an Authority formal notice of a Legal Obligation forthwith to produce a copy to the Department and if such Legal Obligation is in the Department's reasonable opinion contrary to the Department's interests (but without prejudice to the requirements of Clause 3.7.1 and 3.7.2) to make such objection representation or appeal against such Legal Obligation as the Department reasonably requires but at the Department's cost (except where such notice arises from the act neglect or default of the Tenant in which event any objection representation or appeal shall be made at the Tenant's cost)

3.7.4 Not to do or omit to do anything which may cause any Necessary Consent which has been obtained for the installation or operation of the Works to be modified or revoked without the consent of the Department (which shall not be unreasonably withheld or delayed)

3.7.5 Following the Determination of the Term (unless a new lease is granted to the Tenant) the Tenant shall at any time if so required by the Department use reasonable endeavours (subject to reimbursement of the Tenant's reasonable and proper costs of doing so) to procure that any Necessary Consent for the

installation and operation of the Works (which does not automatically enure for the benefit of the land) is transferred (in so far as it is transferable) to or is reissued or amended to be in favour of any person to whom a lease or agreement for lease is granted by the Department of the Premises

3.7.6 Clauses 3.7.4 and 3.7.5 shall remain in full force and effect notwithstanding the Determination of the Term

3.8 Use and Operation

3.8.1 After the Works Completion Date to keep the Works in operation for the purpose of generating electricity at all times during the Term except:-

(a) insofar as the Tenant is prevented from doing so by an event or circumstance which is beyond its reasonable control including (without limitation) unsuitable weather conditions and safety reasons;

(b) to the extent that temporary cessation of operation is necessary to carry out any inspection testing maintenance alteration repair enhancement or renewal of the Works in accordance with the terms of this Lease;

(c) in respect of any part of the Works to which clause 3.6.3 applies;

(d) during the period reasonably required by the Tenant to decommission the Works immediately prior to Determination of the Term; or

(e) during any periods where the Tenant ceases or reduces the generation of electricity in connection with the acceptance by National Grid Electricity Transmission plc (or its successors as system operator of the UK transmission system) of an offer/bid under Section Q of the Balancing and Settlement Code

Provided That in the circumstances set out in clauses 3.8.1(a) and 3.8.1(b) the Tenant shall use all reasonable endeavours to bring the Works back into operation as soon as reasonably possible

3.8.2 Not to use the Premises for any purpose except the installation of the Works permitted under this Lease and the generation of electricity by the Works and not to use the Supply Cables for any purpose other than the transmission of electricity generated by the Works and the operation of the Works

3.8.3 Not to do any act or (subject to clause 3.8.4) allow any substance or article to remain on in under or over the Premises or to exercise the Rights in a manner which:-

(a) may be or become or cause a danger nuisance (other than a nuisance which is not actionable by reason of statutory

authorisation) damage or injury to the Department or any other person or premises; or

(b) may cause pollution or harm to the environment or human health (except in so far as such pollution or harm is lawful by reason of the Necessary Consents for the purpose)

3.8.4 Without prejudice to the Tenant's other obligations under this Lease, the Tenant shall only be liable in respect of substances or articles on in under or over the Premises under clause 3.8.3 to the extent that:

(a) any substance or article having the effect set out in clause 3.8.3(a) or 3.8.3(b) is introduced by the Tenant or any person under its control; or

(b) where any substance or article having the effect set out in clause 3.8.3(a) or 3.8.3(b) is not introduced by the Tenant or any person under its control, the Tenant does not act in accordance with Good Industry Practice in respect of that article or substance having regard to the relevant circumstances

3.9 Diversion

To observe and perform the Tenant's obligations in respect of any diversion of any Supply Cables required under paragraphs 3 and 4 of Schedule 1

3.10 Alienation

3.10.1 Not to assign or charge or mortgage a part of the Premises (as distinct from the whole) nor underlet part with or share the possession of or grant any licence in respect of the whole or part of the Premises nor hold the Premises on trust for any other person

3.10.2 Not to assign the whole of the Premises without the consent of the Department such consent not to be unreasonably withheld or delayed provided that:

(a) the Landlord shall not be regarded as unreasonably withholding its consent if it withholds it on the ground of any of the circumstances set out in clause 3.10.4

(b) the Landlord shall not be regarded as giving its consent subject to unreasonable conditions if it gives its consent subject to any of the conditions set out in clause 3.10.5

3.10.3 The conditions in clause 3.10.2 shall operate without prejudice to the entitlement of the Department to withhold its consent on any other ground or grounds where such withholding of consent would not be unreasonable or to impose any further or subsequent condition or conditions upon the grant of consent

where the imposition of such condition or conditions would not be unreasonable.

3.10.4 The circumstances referred to in clause 3.10.2(a) are:-

(a) where in the reasonable opinion of the Department the proposed assignee is not of sufficient financial standing to enable it to comply with the Tenant's obligations under this Lease

(b) where the proposed assignee is not resident in the Isle of Man or the United Kingdom or in a jurisdiction to which the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 applies the Department will be entitled to withhold consent

3.10.5 The conditions referred to in clause 3.10.2(b) are:-

(a) that prior to the assignment the Tenant pays all arrears of Rent and other sums made payable under this Lease subject to the Department being required to account for any proportion of Rent paid for any period after the completion of the assignment

(b) that the proposed assignee executes and delivers a covenant by deed with the Department in such form as the Department may reasonably require to pay the Rent and observe and perform the covenants and the other provisions of this Lease to be observed and performed by the Tenant

(c) that the proposed assignee shall be incorporated in the Isle of Man and provide such third party guarantees as the Department in its sole discretion acting reasonably shall require

(d) that all Necessary Consents for the installation and operation of the Works are transferred or granted to the proposed assignee on or before the completion of the proposed assignment

3.10.6 Not to mortgage or charge (which expression includes for the purpose of this clause 3.10.6 an assignment by way of security) the whole of the Premises without the consent of the Department such consent not to be unreasonably withheld provided that the consent of the Department shall not be required for a mortgage or charge of the whole of the Premises in favour of a reputable bank or other reputable and substantial financial institution provided that any mortgagee or chargee exercising a power of sale (or otherwise dealing with the Premises) shall be subject to the same terms and conditions relating to underletting or assignment as are set out in this clause 3.10

3.10.7 Within one month from their respective dates to lodge in the Department's office for registration all assignments of the Premises orders of court and other instruments affecting the devolution of this Lease or the Term and all mortgages and

charges of them and on demand to pay the Department's reasonable registration fees

3.11 Indemnity

3.11.1 To indemnify and keep the Department indemnified against all actions proceedings claims and demands brought or made and all proper costs and expenses and all losses damages and liabilities incurred suffered or arising directly or indirectly in respect of or otherwise in connection with:-

(a) the occupation and use of the Premises and the existence and use of the Works;

(b) the installation of the Works;

(c) the exercise or purported exercise of the Rights;

(d) the state of repair and condition of the Premises and the Works;

(e) any act neglect or default of the Tenant or anyone deriving title through or under the Tenant or anyone at the Premises or the Designated Area with the express or implied authority of such persons;

(f) any breach of any covenant or other provision of this Lease to be observed and performed by the Tenant; or

(g) any Works remaining on in or under the Premises or Designated Area after the Determination of the Term (whether or not in breach of clause 3.15 and whether or not the Tenant has been negligent) including (without limitation) any removal or other disposal of those Works pursuant to clause 8.3.2

(h) the decommissioning of the Premises, Designated Area and cables as appropriate

3.11.2 The following provisions apply to clause 3.11.1:-

3.11.2.1 clause 3.11.1 shall not apply to the extent that any such actions proceedings claims and demands are brought or made or any losses damages costs expenses and liabilities are incurred or suffered as a consequence of the breach by the Department of its obligations under this Lease or the negligence of the Department or its servants agents and contractors;

3.11.2.2 the Department shall take reasonable steps to mitigate its losses in respect of which it claims an indemnity under clause 3.11.1;

3.11.2.3 the Department shall not make any admission of liability nor compromise or settle any actions proceedings claims and demands in respect of which it claims an indemnity under clause 3.11.1

without first notifying the Tenant and having due regard to the Tenant's timely representations;

3.11.2.4 the Tenant may with the consent of the Department (which shall not be unreasonably withheld) conduct on the Department's behalf any proceedings in respect of which the Department claims an indemnity under clause 3.11.1 in which case:-

(i) the Tenant shall give full indemnity to the Department in relation to all costs expenses damages and liabilities incurred suffered or arising from such proceedings and

(ii) the Tenant shall act so as to minimise any liability or other adverse effects on the Department

(a) this clause 3.11.1 shall remain in full force and effect notwithstanding the Determination of the Term; and

(b) the Department shall not be entitled under clause 3.11.1 to an indemnity in respect of the Department's loss of use loss of contracts and/or any other indirect loss of the Department but this limitation shall not apply to any other person's losses and shall not limit any other right or remedy of the Department apart from clause 3.11.1

3.12 Costs

3.12.1 To pay and indemnify the Department against all proper (and in the case of clause 3.12.1(a) reasonable) fees charges disbursements costs and expenses connected with incidental to consequent upon and (where appropriate) in proper contemplation of:-

(a) an application for the Department's consent as may be required under the terms of this lease (whether or not the consent is given or the application is withdrawn) unless such consent is unlawfully withheld or is subject to an unlawful qualification or condition because it is unreasonable or otherwise;

(b) the inspection of the Premises in accordance with paragraph 5.3.2 of Schedule 2 (where such inspection reveals a breach of the Tenant's covenants in this Lease) and the superintendence of any works required to remedy any breach of the Tenant's covenants in this Lease;

(c) the recovery of arrears of Rent or other sums payable under this Lease; or

(d) the enforcement of any covenant or obligation of the Tenant under this Lease

3.13 Insurance

3.13.1 To effect and maintain the following insurances:-

(a) insurance of the Works against destruction or damage by the Insured Risks in a sum equal to the Estimated Maximum Loss (increased each year by the same percentage as the percentage increase in the Manx Retail Prices Index during the period from the date the Estimated Maximum Loss was determined to the date the insurance is effected or renewed) in accordance with normal insurance practice for offshore windfarms from time to time with the Department's interest noted on the policy (either specifically or generically); and

(b) third party and public liability insurance in respect of the Premises the Works and the exercise of the Rights in a minimum sum of £25,000,000, or in such other sum as the Department may from time to time reasonably require, in respect of each and every claim (except for pollution and product cover which may be on an annual aggregate basis if unavailable on an each and every claim basis), on terms approved by the Department (such approval not to be unreasonably withheld) and naming the Department as an additional insured

3.13.2 The Tenant shall not be obliged to insure under clause 3.13.1(a) if and to the extent that such insurance is not available in the insurance market in the Isle of Man or in the United Kingdom on commercially reasonable terms or is only available at uneconomic rates

3.13.3 To produce to the Department upon request from time to time (but no more frequently than once every 12 months) a copy of or full details of each policy of insurance and evidence that each policy is in force

3.13.4 Except to the extent clause 3.6.3 applies, if the Works or any part of them are damaged or destroyed by an Insured Risk to apply for and use reasonable endeavours to obtain all Necessary Consents to reinstate the Works and as soon as reasonably practicable after they are obtained to apply the insurance monies received under the policy of insurance in reinstating the Works with all reasonable speed making up any shortfall in respect of re-instatement out of its own resources

3.13.5 To pay to the Department the premium and other costs which the Department may incur in effecting and maintaining any insurance which the Tenant fails to effect or maintain in accordance with the provisions of this clause 3.13

3.13.6 To observe and perform the terms of any insurance policy effected pursuant to this clause 3.13 and all requirements from time to time of the insurers and not to do or fail to do anything which shall or may cause any such policy to be void or voidable or any monies payable under it to be irrecoverable

3.14 Encroachments

To use reasonable endeavours to prevent all encroachments and unlawful acts on the Premises which may prejudice the Department's title to them and if any claim is made to the Premises or to any right profit or easement in or out of or affecting them forthwith to give notice of it to the Department and not to admit or acknowledge it in any way whatsoever

3.15 Decommissioning

3.15.1 Prior to the Determination of the Term

(a) to decommission the Works and to restore the Premises and the Designated Area in accordance with the Decommissioning Programme and in accordance with all Legal Obligations

3.15.2 unless the Department otherwise agrees in writing to remove the parts of any Supply Cables (if any) which are above the mean low water mark and restore their sites to their former or proper condition to the Department's reasonable satisfaction

3.15.3 The Tenant shall not be required to remove a part or parts of the Works where at Determination of the Term:-

(a) removal is prohibited upon decommissioning of the Works under a Legal Obligation; or

(b) removal is neither required nor prohibited upon decommissioning of the Works under a Legal Obligation and removal would be contrary to the Decommissioning Principles

3.15.4 To carry out the works of removal and restoration required under clause 3.15.1 in accordance with a Decommissioning Programme agreed by the Department and Tenant or determined in accordance with the following provisions:-

(a) the Decommissioning Programme shall provide for decommissioning of the Works and restoration of the Premises in a manner consistent with Legal Obligations or, in circumstances where there are no Legal Obligations in respect of decommissioning of the Works and restoration of the Premises by the Tenant, in accordance with the Decommissioning Principles, assuming for these purposes that they applied to the Development.

(b) the Tenant shall submit a proposed Decommissioning Programme to the Department at least 12 months before the Determination of the Term;

(c) if the Tenant fails to comply with clause 3.15.4(a) the Department may submit to the Tenant a proposed Decommissioning Programme; and

(d) any difference arising between the Department and the Tenant as to whether a proposed Decommissioning Programme is properly prepared in accordance with clause 13.4.5(a) or as to whether the period in the Decommissioning Programme for carrying out the works of removal and restoration is longer than is reasonably necessary may be referred by the Department or the Tenant on notice to the other for determination by an expert,

and the Decommissioning Programme agreed or determined under this clause 3.15.4 shall be a complete statement of the Tenant's obligations under clause 3.15.1 other than in respect of any Legal Obligations arising after the date of agreement or determination of the Decommissioning Programme.

3.15.5 To comply with the provisions of the Decommissioning Programme and all other Legal Obligations relating to the Works which continue to apply after the Tenant has complied with clause 3.15.1 (including (without limitation) those relating to post decommissioning monitoring maintenance and management of the Premises and Designated Area) and this obligation shall continue in full force and effect after the Determination of the Term for as long as any such provision of the Decommissioning Programme or Legal Obligation continues to apply

3.15.6 Upon the Determination of the Term (howsoever determined) to deliver up the Premises to the Department in good and safe order and condition in accordance with the Tenant's covenants in this Lease

3.16 Data

3.16.1 To provide the Data to the Department in the format which the Department reasonably requires from time to time (the Tenant having no interest or right (including copyright and database rights) in any format or database in which Data is put stored or processed whether by the Tenant the Department or any third party) by six monthly reports (or such other reporting interval as the Department approves, such approval not to be unreasonably withheld) the first report during the Term to contain Data gathered since the Commencement Date and the subsequent reports to contain Data gathered since the previous report

3.16.2 Subject to clause 4.4 the Tenant grants to the Department (and shall procure all necessary third party consents to enable it to do so) a perpetual non-exclusive right and licence to use and make publicly available for any purpose or in any manner or form Data provided to them pursuant to this clause 3.16

3.16.3 This clause 3.16 shall remain in full force and effect notwithstanding the Determination of the Term in respect of Data gathered in connection with monitoring carried out in connection with the Tenant's obligations under clause 3.15.3

4 Department Covenants

4.1 The Department covenants with the Tenant that the Department shall not:-

4.1.1 without the Tenant's consent which shall not be unreasonably withheld or delayed

(a) carry out or grant any lease licence or consent (other than a lease licence or consent a term of which is that the Tenant's consent shall be obtained) for the construction of any works within the Designated Area; or

(b) exercise the rights reserved in paragraph 5.2 of Schedule 2 to install Conduits; or

4.1.2 carry out or grant any licence or consent for the dredging or removal of minerals within the Designated Area or the Dredging Restriction Zone

4.2 Clause 4.1 shall not apply to the renewal of any lease, licence or consent referred to in part 1 of Schedule 3 or any lease licence or consent (or renewal of them) granted pursuant to the matters referred to in part 2 of Schedule 3

4.3 The Department covenants with the Tenant that it will not do or fail to do anything which shall or may cause any policy of insurance maintained under clause 3.13.1(b) to be void or voidable or any monies payable under it to be irrecoverable

4.4 The Department covenants with the Tenant not to disclose any Data relating to wind resource provided under clause 3.16 to any third party for a period of 5 (five) years after the date on which that Data was gathered except:-

4.4.1 to employees of the Department and to government departments agencies statutory board or other government bodies and their respective employees;

4.4.2 to national repositories for data provided that any such repository does not publish or distribute the Data in its entirety or only uses the Data in aggregation with other data for the production of charts or for the purposes of research and keeps the source of the Data confidential;

4.4.3 as required by law or questions of any committee of Tynwald;

4.4.4 where, in the absolute discretion of the Department disclosure is required under the Code Of Practice On Access To Government Information of July 1996 (Isle of Man) and any amendment, modification, extension, consolidation or re-enactment of the Code the Tenant acknowledges and agrees that the Department may, acting in accordance with the Code disclose such data either in certain circumstances as described in the Code, without consulting the Tenant, or following consultation with the Tenant and taking its views into account in accordance with the Code;

4.4.5 in so far as already in the public domain through no default of the Department ; or

4.4.6 as agreed by the Tenant

and where disclosure is made under clause 4.4.1 or 4.4.2 the Department shall notify the person to whom the information is disclosed of the confidentiality of the information and shall take reasonable steps to ensure that such person observes the restrictions on disclosure in this clause 4.4

4.5 The Department obligations under this clause 4 shall cease upon Determination of the Term

4.6 The Department acknowledge that the Tenant may require funding from a bank or other financial institutions ("Funders") to implement the Specified Works and in arranging such finance the Funders may require as a condition of the availability of that finance to enter into a direct agreement with the Department to cover (without limitation) the following principal matters:

4.6.1 an acknowledgement by the Department of any security taken by the Funders over the Tenant and its assets (including over this Lease);

4.6.2 an obligation to give notice to the Funders in the terms of clause 5.2 of this Lease;

4.6.3 an obligation on the Department not to take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Tenant without first giving a prescribed period of notice to the Funders;

4.6.4 a step in right (without giving rise to any express or implied assignment) to allow the Funders to ensure that the obligations of the Tenant are complied with so as to prevent any circumstances arising under which the Department could seek to forfeit the Lease; and

4.6.5 provisions regulating the application of insurance proceeds in the event that all or a part of the Works is destroyed or damaged which provisions will permit the Funders to recalculate financial ratios and conduct other economic tests approved by the Department (such approval not to be unreasonably withheld) relating to the fundamental financial viability of the Development and fundamental ability of the Development to meet debt service after the occurrence of a major insurable event and will further provide that if the specified economic tests are not satisfied, then any insurance proceeds received in respect of such insurable event shall be applied in repayment of amounts owing under the Funding Agreements rather than reinstatement of the relevant part or parts of the Works

4.7 The Department further acknowledge that they will act in good faith (at the cost and expense of the Tenant) to negotiate such a direct agreement where reasonably requested by the Tenant

5 Forfeiture

5.1 The Department may at any time after the occurrence of any of the following events re-enter on the Premises on giving of written notice to the Tenant whereupon this demise shall absolutely determine (but without prejudice to any right of action of the Department in respect of any arrears of Rent or any antecedent breach of covenant and the continuing operation of any provision of this Lease which is expressed to continue to apply or remain in force and effect after or notwithstanding Determination of the Term):-

5.1.1 if any Rent remains unpaid 21 days after it is due (whether formally demanded or not);

5.1.2 if any covenant or provision in this Lease which is to be observed or performed by the Tenant is not observed or performed and in the reasonable opinion of the Department will have a material adverse effect on the Department; or

5.1.3 if the Works Completion Date has not occurred by the fourth anniversary of the Implementation Date whether or not the Tenant is in breach of any covenant or provision in this Lease and whether or not there is or has been an event of Force Majeure

5.2 The Department shall not take any steps to proceed with such powers of re-entry until the expiry of 21 days (in the case of clause 5.1.1) and 3 months (in the case of clause 5.1.2) from the date on which it gives notice of its intention of doing so to the chargee under a subsisting charge over the Premises of whose identity and address for service it has been given notice prior to the date on which the event giving rise to the right of re-entry occurs

5.3 Section 30

6 Tenant's Right of Determination

6.1 The Tenant may determine this Lease at any time after the Works Completion Date on Section 30 written notice given to the Department specifying the date on which the Tenant intends this Lease to determine ("Intended Date of Determination")

6.2 The Tenant may determine this Lease after the Works Completion Date and after a Break Event occurs on Section 30 written notice given to the Department Section 30 after the Break Event occurs and specifying the date on which the Tenant intends this Lease to determine ("Intended Date of Determination")

6.3 The Tenant may determine this Lease at any time before the Works Completion Date on written notice given to the Department specifying the date on which the Tenant intends this Lease to determine ("Intended Date of Determination") provided that:-

6.3.1 Section 30 and

6.3.2 the Tenant shall be under no further obligation to comply with the provisions of clause 3.2 with effect from the date of service of a valid notice under this clause 6.3 but without prejudice to the Department's rights and remedies in respect of any antecedent breach of clause 3.2 by the Tenant

6.4 This Lease shall only determine as a result of notice given by the Tenant under clauses 6.1, 6.2 or 6.3 on the date specified in the notice as the Intended Date of Determination if on that Intended Date of Determination the Tenant has:-

6.4.1 paid all Rent due under this Lease up to (and including) the Intended Date of Determination;

6.4.2 complied with clause 3.15 decommissioning in all material respects; and

6.4.3 given vacant possession of the Premises to the Department

6.5 If a valid notice is given by the Tenant under clause 6.2 (but not clauses 6.1 or 6.3) and this Lease does not determine on the Intended Date of Determination specified in the notice because of the Tenant's failure to comply with any of the conditions set out in clause 6.4 then:-

6.5.1 the Tenant may determine this Lease on giving written notice to the Department at any time after the Intended Date of Determination specifying a revised intended date of determination ("Revised Intended Date of Determination") (which notice is not required to be of any particular length) but this Lease shall only determine as a result of notice given by the Tenant under this clause 6.5.1 if on the Revised Intended Date of Determination the Tenant has paid all Rent due under this Lease up to the Revised Intended Date of Determination and has complied with the conditions set out in clauses 6.4.2 and 6.4.3; and

6.5.2 the Department may determine this Lease with immediate effect on giving written notice to the Tenant at any time after the Intended Date of Determination specified in a notice given by the Tenant under clause 6.2

6.6 The Department may in its absolute discretion waive compliance with all or any of the conditions or obligations set out in clause 6.4 but unless otherwise expressly agreed in writing such waiver shall not release the Tenant from liability to comply with the relevant condition or obligation

6.7 Upon determination of this Lease under this clause 6 the Term shall cease and determine but without prejudice to either party's rights and remedies in respect of any antecedent breach by the other of this Lease and the continuing operation of any provision of this Lease which is expressed to continue to apply or remain in force and effect after or notwithstanding Determination of the Term

6.8 Any notice given under this clause 6 shall be irrevocable

6.9 Time is of the essence in respect of this clause 6

7 Department's Right of Determination for Oil and Gas Works

7.1 The Department may at any time and from time to time during the Term determine this Lease in respect of the Premises or any part or parts of them by giving reasonable prior written notice to the Tenant specifying the Premises or the part or the parts of them in respect of which the notice is given

7.2 The Department shall not give notice under clause 7.1 unless the Minister for Economic Development for the purposes of the Petroleum Act 1986 has requested the Department to determine this Lease in respect of the Premises or the part or parts of them specified in the notice because the Premises or the part or parts of them specified in the notice are required for Oil and Gas Works or rights are required over the Premises or the part or parts of them specified in the notice in connection with Oil and Gas Works. Prior to any exercise by the Department of its right pursuant to clause 7.1 to determine this Lease or any part or parts of it, the Department shall ensure that appropriate compensation had been paid by the prospective developer of the Oil or Gas Works to the Tenant, or that a binding agreement had been entered into by the prospective developer of the Oil or Gas Works with the Tenant to pay such compensation. In the practical application of this clause 7.2, the Tenant and the Department shall have regard to: (1) Out of Scope (2) any Oil and Gas Guidance note prepared circulated or in force from time to time in the Isle of Man. In the event of any conflict between such guidance notes, the content of the note in the Isle of Man shall prevail provided that the Tenant shall be in no worse position as a result of such guidance prevailing. A copy of the latest version of such guidance notes is attached at Schedule 8 hereto.

7.3 If notice is given under clause 7.1 then upon the expiry of that notice this Lease shall determine in respect of the Premises or the part or parts of them specified in that notice but without prejudice to:-

7.3.1 the rights and remedies of the Department in respect of any antecedent breach by the Tenant of its obligations under this Lease in respect of the Premises or the part or parts of them specified in that notice; and

7.3.2 where this Lease determines in respect of only a part or parts of the Premises, the continuing operation of this Lease in respect of the remainder of the Premises

7.4 The Tenant shall comply with the obligations under clauses 3.15.1 and 3.15.6 in respect of the Premises or such part or parts of them as are specified in a notice given under clause 7.1 prior to the expiry of that notice

7.5 Determination in accordance with this clause 7 does not give rise to any abatement of the Rent or liability of the Department to pay compensation to the Tenant for such determination

7.6 The Tenant shall enter into such deeds and documents as the Department may reasonably require to give effect to any notice given under clause 7.1

8 Miscellaneous

8.1 Except where and to the extent that any statutory provision prohibits the Tenant's right to compensation being reduced or excluded by agreement the Tenant shall not be entitled on quitting the Premises to claim from the Department any compensation

8.2 If there is any dispute or matter in this Lease expressed to be referable to an expert for determination:-

8.2.1 the relevant expert shall be instructed to accept written representations and counter representations within such time as he shall direct as being reasonable having regard to the nature of the dispute or matter and the need for its timely resolution and in any event shall be instructed to seek to reach his decision within 28 days (or such further time as he shall determine to be reasonable having regard to the nature of the dispute or matter) of his appointment;

8.2.2 the costs of the reference to the relevant expert and of his determination (including his own fees and expenses the fees and expenses of any other professional consulted in accordance with clause 8.2.3 and the costs of the Department and Tenant) shall lie in his award;

8.2.3 a relevant expert shall be entitled to seek the opinion of another professional of an appropriate different experience and qualification if he shall be concerned that he lacks relevant or sufficient experience or expertise;

8.2.4 the relevant expert shall be required to give reasons for his decision and his decision will be final and binding save in case of manifest error; and

8.2.5 if a relevant expert shall die or otherwise be incapable of resolving the dispute either the Department or the Tenant may request (in default of agreement) a replacement person and the foregoing will apply

8.3 The following provisions apply in respect of the Works:-

8.3.1 the Works are the property of the Tenant and shall remain the property of the Tenant notwithstanding Determination of the Term;

8.3.2 where any of the Works remain on in or under the Premises or the Designated Area after the Determination of the Term (whether or not in breach of clause 3.15) the Department may (save where prohibited by a Decommissioning Programme) in its absolute discretion retain remove and dispose of those Works as it sees fit without any liability whatsoever to the Tenant and without prejudice to the Department's rights and remedies in respect of any breach by the Tenant of clause 3.15 and the continuing operation of clause 3.11

8.4 The Department shall incur no liability to the Tenant by reason of any approval given to or inspection made of the Works or any drawing plan or specification of them nor shall any such approval or inspection in any way relieve the Tenant from its obligations under this Lease

8.5 It is not intended that any third party shall be entitled to enforce a term of this Lease pursuant to the Contracts (Rights of Third Parties) Act 2001

8.6 Nothing contained or implied in this Lease gives the Tenant the benefit of or the right to enforce or prevent the release or modification of any covenant agreement or condition relating to other premises

8.7 Any notice to be served pursuant to this Lease shall be served in accordance with the terms of section 23 of the Tenancies (Implied Terms) Act 1954 subject to any notice to be served pursuant to section 13 of the Landlord and Tenant Act 1954.

9 Tenancies (Implied Terms) Act 1954

The Department and the Tenant agree that section 4 and the First Schedule of the Tenancies (Implied Terms) Act 1954 do not apply to this Lease

10 Proper Law

10.1 This Lease shall be governed by and construed in accordance with the Laws of Isle of Man and the Premises and Designated Area are part of the Isle of Man

10.2 The Tenant irrevocably agrees for the exclusive benefit of the Department that the courts of the Isle of Man shall have jurisdiction over any claim or matter arising under or in connection with this Lease and that accordingly any proceedings in respect of any such claim or matter may be brought in such courts. Nothing in this clause shall limit the right of the Department to take proceedings against the Tenant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction or jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction or jurisdictions

10.3 The Guarantor irrevocably appoints the Tenant as its agent (the "Agent") to receive on its behalf in the Isle of Man service of any notice or proceedings arising out of or in connection with this Agreement. Such service shall be deemed completed on delivery to the Agent (whether or not it is forwarded to and received by the Guarantor). If for any reason the Agent ceases to be able to act as agent or no longer has an address in the Isle of Man, the Guarantor shall forthwith appoint a substitute acceptable to the Department and deliver to the Department the new agent's name, address and fax number and evidence of their acceptance of such appointment in terms acceptable to the Department

10.4 The Guarantor irrevocably consents to any process or any notice or legal action or proceedings arising out of or in connection with this Agreement being served on the Agent (or any other agent appointed under clause 16.3 above) in accordance with the provisions of this Agreement relating to service of notices. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by the laws of the country in which service is to be effected

11 Guarantor Covenants

11.1 The Guarantor covenants with the Department as a principal debtor that:

11.1.1 the Tenant shall comply with its obligations contained in this Lease; and

11.1.2 if the Tenant is in default of any of its obligations referred to in this Lease the Guarantor shall comply with the obligations in respect of which the Tenant is in default and make good to the Department on demand and indemnify the Department against all losses, damages, costs and expenses arising from such default or incurred by the Department

11.2 The liability of the Guarantor shall not be affected in any way by:

11.2.1 any neglect or forbearance of the Department in enforcing observance or performance of the obligations of this Lease;

11.2.2 any time or indulgence given to the Tenant by the Department; or

11.2.3 anything else by which but for this provision the Guarantor would have been released

11.3 The liability of the Guarantor pursuant to this Lease shall be limited to £[*] million, subject to indexation on each anniversary of the Commencement Date in line with any increase in the Manx Retail Prices Index over the preceding 12 month period. [In circumstances where security in respect of decommissioning obligations relating to the Development is required to be provided by or on behalf of the Tenant pursuant to Legal Obligations arising after the Commencement Date, the limit to the Guarantor's liability pursuant to this Lease shall be reduced by a corresponding amount].

11.4 The limit of liability pursuant to clause 11.3 hereof shall be reviewed on the fifth anniversary of the Commencement Date and every five years thereafter to reflect any change in the assumptions used to set the limit of liability at clause 11.3 or any revision thereof in accordance with this clause 11.4.

[Note to Draft: figure to be agreed prior to entry into the Lease representing

- *120% of anticipated decommissioning costs (to be agreed by both parties prior to entry into the lease, acting reasonably), unless at the time of entry into the lease the Isle of Man has introduced decommissioning legislation similar to the United Kingdom Energy Act 2004 which provides for security to be separately provided in respect of decommissioning obligations. Square bracketed wording to be retained if no such decommissioning legislation has been introduced prior to entry into the Lease; and*

- *three (3) x the sum of Certain Rental and estimated Additional Rental in a Turnover Period (for these purposes the Additional Rental to be estimated using (i) the projected output of the Specification and (ii) the best information then available regarding the likely price obtainable by the wind farm for such output, to be agreed by both parties acting reasonably)*

SCHEDULE 1

Rights

1 The following rights are granted to the Tenant:-

1.1 to use any Supply Cables now or hereafter laid by the Tenant on in or under the Designated Area; and

1.2 to enter on the Designated Area to lay inspect maintain repair renew or remove any Supply Cable and to divert any Supply Cable within the Designated Area subject to giving reasonable prior written notice to the Department where entry is for the purpose of installation renewal and major works of repair and maintenance

2 The rights granted under paragraph 1 are subject to the following:-

2.1 the right of the Department to carry out and grant leases licences and consents for the carrying out of works on in over or under the Designated Area subject only to the Department complying with the obligations under clause 4 (where relevant);

2.2 the rights of the Department under paragraph 3; and

2.3 the Tenant complying with its obligations under clauses 3.2, 3.3 and 3.4.2

3 The Department may from time to time upon giving at least six months notice to the Tenant:-

3.1 require the Tenant to divert any or all Supply Cables to such alternative position or positions within the Designated Area as the Department may reasonably require; and

3.2 alter the position of the Designated Area and require the Tenant to divert the Supply Cables within it to such alternative positions within the new Designated Area as the Department may reasonably require

4 Where the Department exercises its rights under paragraph 3:-

4.1 the Tenant shall carry out the diversion required prior to expiry of the notice given under paragraph 3;

4.2 the Department shall pay to the Tenant the costs and expenses reasonably incurred by the Tenant in carrying out such diversion and reasonable compensation for any loss of income which the Tenant sustains as a direct consequence of any such diversion and which could not have reasonably been avoided; and

4.3 where the position of the Designated Area is changed, then on expiry of the notice given under paragraph 3 the Rights shall apply to the new area in place of the former area

SCHEDULE 2

Exceptions and Reservations

5 The following are excepted and reserved to the Department and all others from time to time authorised by the Department or otherwise entitled:-

5.1 all mines minerals and mineral substances within the Premises;

5.2 the right to install Conduits and to use any Conduits (not forming part of the Works) now or hereafter on in under or over the Premises; and

5.3 the right to enter on the Premises to:-

5.3.1 install Conduits and connect into inspect maintain repair renew divert or remove any Conduits (not forming part of the Works) now or hereafter on in under or over the Premises;

5.3.2 inspect the Premises and the Works; or

5.3.3 carry out scientific research

5.4 the right to install works on the seabed outside the Premises in such manner as it sees fit irrespective of whether the works affect or diminish the light air or wind which may now or at any time be enjoyed by the Premises or the Works subject only to the Department complying with the obligations under clause 4 (where relevant)

6 The exceptions and reservations under paragraph 5 are subject to the following terms:-

6.1 in exercising the right of entry referred to in paragraph 5.3, the Department shall take all reasonable steps not to interrupt the operation of the Works and shall make good any damage caused to the Works in the exercise of the right as soon as reasonably practicable and to the reasonable satisfaction of the Tenant or if the Tenant shall reasonably require the Tenant may after giving written notice to the Department make good the damage to the Works caused by the exercise of the rights under paragraph 5.3 and the Department shall reimburse the Tenant for all reasonable costs and expenses incurred by the Tenant in making good the damage to the Works;

6.2 when exercising the right to enter under paragraph 5.3.2, the Department shall where it is reasonably practical to do so take reasonable steps to enable the Tenant to provide a representative in whose presence the inspection is to be carried out;

6.3 when exercising the right to enter under paragraph 5.3.2, the Department shall where it is reasonably practical to do so engage for the purpose one of the contractors on the approved list of contractors from time to time supplied by the Tenant to the Department or (where it is not practicable to do so or no list is provided) use all reasonable endeavours to engage a contractor experienced in offshore windfarm developments for the purpose;

6.4 the Department shall exercise the rights under paragraph 5.3.3 in accordance with a method statement which has been approved by the Tenant (such approval not to be unreasonably withheld); and

6.5 where the rights referred to in paragraph 5.3.1 are exercised in respect of a Conduit installed pursuant to a consent under clause 4.1.1(b) then the terms of the consent shall apply in place of paragraph 6.1

SCHEDULE 3

Title Matters

Part 1

The following are licences and leases granted by the Department where the Department has given undertakings/covenants to obtain the consent of the licensee/tenant specified below (which consents must be obtained by the Tenant) before any Works are carried out in the vicinity of the works specified below:-

Date	Licensee/Tenant	Works

Part 2

The following are agreements entered into by the Department for the grant of licences leases or consents for the carrying out of works which may be within the Designated Area:-

Date	Tenant/Licensee	Works

SCHEDULE 4

Rent

1. In this Schedule the following expressions shall have the following meanings:

1.1

1.1

Section 30

1.1

1.2

1.3 "Turnover Period" means the period commencing on the date of commencement of the Lease and ending 12 months later and every period of 12 months thereafter during the term of the lease

1.4 "Generation Certificate" means a certificate showing the amount of megawatt hours of electricity generated by the wind farm and the Gross Income from the generation of electricity including any support payments made by any Government Bodies or other similar agencies in respect of a Turnover Period

1.5 "Gross Income" means all income attributable to the operation of the wind farm including any support payments made by any Government Bodies or other similar agencies excluding any VAT arising from the generation of electricity

2. The Tenant shall pay to the Department the following sums:

2.1 The Certain Rental being due and payable on the date of the commencement of the Lease and annually thereafter. The Certain Rental will be subject to review on every third anniversary of the commencement of the Lease in line with any increase in the Manx Retail Prices Index when comparing the

published rate at the review date with the published rate at the commencement of the Lease. AND

2.2 The Additional Rental in respect of each Turnover Period being due and payable within one month after the end of the relevant Turnover Period

SCHEDULE 5

Determination and Review of Estimated Maximum Loss

1 **Initial Estimated Maximum Loss**

1.1 Until such time as a further EML Study is performed under paragraph 2 the Estimated Maximum Loss shall be derived from the updated EML Study carried out by [ ].

2 **Reviewing the Estimated Maximum Loss**

2.1 On one occasion during each five year period during the Term, either the Department or the Tenant may by notice in writing to the other propose an EML Consultant is appointed to perform a further EML Study to assess the Estimated Maximum Loss at that time.

2.2 Within 30 days of such a request, the Tenant shall appoint an EML Consultant to perform the further EML Study.

2.3 The appointment of an EML Consultant and the further EML study delivered by the EML Consultant will not discharge the Tenant's obligation under paragraph 2.2 unless:

2.3.1 the EML Consultant and his terms of appointment by the Tenant have been approved by the Department (such approval not to be unreasonably withheld); and

2.3.2 the EML Consultant has given a written confirmation, in such terms as the Department may reasonably require, that the Department is entitled to rely on the contents of the EML study as if it had been prepared directly for the Department instead of the Tenant.

2.4 In performing a further EML Study and deriving the Estimated Maximum Loss, the EML Consultant shall:

2.4.1 act impartially;

2.4.2 have due regard to the Works and the location of the Works;

2.4.3 use the "as low as reasonably practicable principle";

2.4.4 have due regard to "Sue and Labour", "Removal of Wreck" and "Vessel Costs"; and

2.4.5 include all ancillary costs, professional fees and VAT.

2.5 The Estimated Maximum Loss as derived from a further EML Study carried out under this paragraph 2 shall be final and binding on the Department and Tenant, save in the case of manifest error or fraud.

2.6 The cost of appointing the EML Consultant under this paragraph 2 shall be borne solely by the Party which requested that the EML Study be performed.

2.7 Following a determination under this paragraph 2, the Estimated Maximum Loss for the purposes of clause 3.13.1(a) shall be adjusted to the amount so determined by the EML Consultant.

SCHEDULE 6

EXTENSION OF TERM

1

2

Section 30

2.2 a plan (including reasonable technical detail) demonstrating the Tenant's reasonable belief that either:

2.2.1 the Turbines and other parts of the Specified Works have sufficient anticipated remaining life expectancy to continue generation for the duration of the proposed extension (less any time that is anticipated to be required for decommissioning in accordance with clause 3.15); or

2.2.2 the Tenant has a viable strategy for replacing any of the Turbines or other parts of the Specified works that do not have sufficient anticipated remaining life expectancy to continue generation for the duration of the proposed extension (less any time that is anticipated to be required for decommissioning in accordance with clause 3.15)

(the notice, request and plan referred to in 2.1 and 2.2 above being collectively referred to as the "Extension Request").

3 The Department may only withhold its consent to the proposed extension set out in the Extension Request on the basis that the plan submitted by the Tenant as part of the Extension Request does not reasonably demonstrate that the Development has sufficient anticipated remaining life expectancy to continue generation for the duration of the proposed extension (less any time that is anticipated to be required for decommissioning in accordance with clause 3.15) in accordance with paragraphs 2.2.1 and 2.2.2 above.

4 The Department shall, within two months of receipt of the Extension Request, either inform the Tenant by written notice that it consents to the proposed extension of the Term set out in the Extension Request or set out its reasons why it is withholding consent in accordance with paragraph 3 above.

5 In circumstances where the Department withholds its consent to the proposed extension:

5.1 the Department and the Tenant shall, each acting reasonably, agree a process and timeline for discussing how the Department's reasons for withholding consent can be addressed by the Tenant; and

5.2 if, following further discussions between the Tenant and the Department:

5.2.1 the Department continues to withhold its consent to the Extension Request such that six months have elapsed since receipt of the Extension Notice without consent being given; and

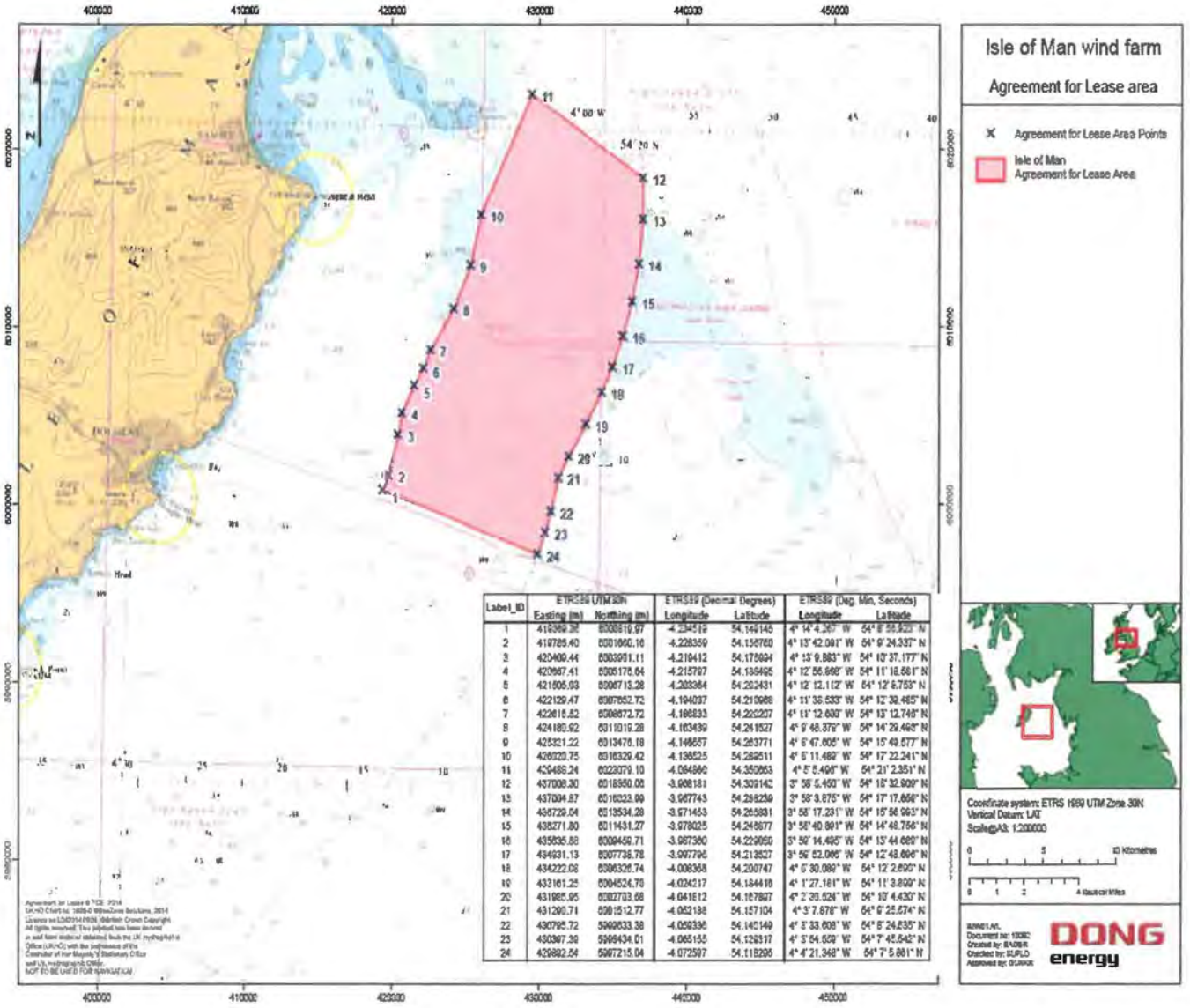
5.2.2 the Tenant does not agree to withdraw its Extension Request

the parties shall refer the matters in dispute for determination by an expert.

6 In circumstances where the Department consents to the Extension Request, the parties shall enter into such documents (if any) as either party may require in order to formalise the extension of the Term for the period set out in the Extension Request.

SCHEDULE 7

MAP AND CO-ORDINATES



Label_ID	ETRS89 UTM30N Easting (m)	ETRS89 UTM30N Northing (m)	ETRS89 (Decimal Degrees) Longitude	ETRS89 (Decimal Degrees) Latitude	ETRS89 (Deg. Min. Seconds) Longitude	ETRS89 (Deg. Min. Seconds) Latitude
1	419369.36	6003819.97	-4.234519	54.149145	4° 14' 4.267" W	54° 8' 56.923" N
2	419785.40	6001660.16	-4.228359	54.156760	4° 13' 42.091" W	54° 9' 24.337" N
3	420409.44	6003901.11	-4.219412	54.176994	4° 13' 9.883" W	54° 10' 37.177" N
4	420667.41	6005176.64	-4.215797	54.188495	4° 12' 56.868" W	54° 11' 18.581" N
5	421505.93	6006713.28	-4.203364	54.202431	4° 12' 12.112" W	54° 12' 8.753" N
6	422129.47	6007652.72	-4.194037	54.210988	4° 11' 38.533" W	54° 12' 39.485" N
7	422615.52	6008672.72	-4.186833	54.220207	4° 11' 12.600" W	54° 13' 12.746" N
8	424180.92	6011019.28	-4.163439	54.241527	4° 9' 48.379" W	54° 14' 29.495" N
9	425321.22	6013476.18	-4.146657	54.263771	4° 8' 47.606" W	54° 15' 49.577" N
10	426020.75	6016329.42	-4.136525	54.289511	4° 8' 11.489" W	54° 17' 22.241" N
11	429488.24	6023079.10	-4.084860	54.350663	4° 5' 5.496" W	54° 21' 2.351" N
12	437008.30	6018950.06	-3.968181	54.309142	3° 58' 5.450" W	54° 18' 32.909" N
13	437004.87	6016023.99	-3.967743	54.288239	3° 58' 3.875" W	54° 17' 17.666" N
14	436729.04	6013534.28	-3.971453	54.265831	3° 58' 17.231" W	54° 15' 56.993" N
15	436271.80	6011431.27	-3.978025	54.246877	3° 58' 40.891" W	54° 14' 48.756" N
16	435635.88	6009459.71	-3.987360	54.229050	3° 59' 14.495" W	54° 13' 44.689" N
17	434931.13	6007738.78	-3.997796	54.213527	3° 59' 52.066" W	54° 12' 48.696" N
18	434222.08	6006326.74	-4.008368	54.200747	4° 0' 30.089" W	54° 12' 2.690" N
19	433161.25	6004524.70	-4.024217	54.184418	4° 1' 27.181" W	54° 11' 3.899" N
20	431985.95	6002703.68	-4.041612	54.167897	4° 2' 30.524" W	54° 10' 4.430" N
21	431290.71	6001512.77	-4.052186	54.157104	4° 3' 7.878" W	54° 9' 25.574" N
22	430795.72	5999633.38	-4.059336	54.140149	4° 3' 33.608" W	54° 8' 24.535" N
23	430397.39	5998434.01	-4.065155	54.129317	4° 3' 54.559" W	54° 7' 45.542" N
24	429892.54	5997215.04	-4.072597	54.118295	4° 4' 21.348" W	54° 7' 5.861" N

SCHEDULE 8

OIL AND GAS MINISTERIAL STATEMENT BY THE MINISTER FOR ECONOMIC DEVELOPMENT

GUIDANCE ON PROCEDURES FOR INDEPENDENT VALUATION

Oil and Gas Ministerial Statement by the Minister for Economic Development

Guidance on procedures for independent valuation where necessary

Isle of Man Government

Reiltys Ellan Vannin

1. Background to the Guidance

A. Under the terms of the Department of Infrastructure offshore renewable leases and agreements for lease, The Department of Infrastructure may determine the lease or agreement for lease in whole or in part, following a request from the Minister for Economic Development, for the purposes of allowing an oil or gas development to proceed. This is known as the "*oil and gas clause*".

B. The Minister for Economic Development, has now set out his policy that a necessary condition to be met before he would be prepared to make such a request is that appropriate compensation had been paid by an oil or gas developer to the affected offshore renewable energy developer, or that a binding agreement had been entered into with the oil or gas developer to pay such compensation.

C. The Minister for Economic Development also said "*My officials will discuss with the interested parties suitable practical arrangements to give effect to this policy, including a process for appointing a suitable person or body to undertake the independent third party valuation where that might be necessary. Suitable guidance will be developed in consultation with leaseholders or prospective leaseholders and the oil and gas industry*".

D. This document sets out that Ministerial Statement guidance.

2. Introduction

2.1 There may be situations where development interests of oil or gas developers and offshore renewables developers come into conflict as they seek to develop the same or adjoining areas of the seabed. In the majority of cases the Minister for Economic Development expects that the parties will be able to come to a private, commercial agreement which will allow the parties to accommodate their respective development aims.

2.2 Under the terms of leases and agreements for lease the Department of Infrastructure may determine a lease or agreement for lease, in whole or in part, following a request from the Minister for Economic Development, for the purposes of allowing an oil or gas development to proceed.

2.3 The Minister for Economic Development will only request that the Department of Infrastructure determine a lease or agreement for lease after appropriate compensation has been paid by an oil or gas developer to the affected offshore renewable developer, or after a binding agreement has been entered into with an oil or gas developer to pay such compensation. This applies to all leases or agreements for lease irrespective of the date they were signed and irrespective of whether or not there is a physical overlap between the lease or agreement for lease area and the oil or gas development area.

3. Applications to the Minister for Economic Development

3.1 Where it emerges that the plans of an oil or gas developer and those of an offshore renewables developer may be in conflict, the Minister for Economic Development expects the parties to make every reasonable effort to reach a commercial agreement at the earliest stage.

3.2 The oil or gas developer may make an application to the Minister for Economic Development if:

a) determination in full or in part of an offshore renewable lease or agreement for lease is necessary in order for the oil or gas development to go ahead; **and**

b) the parties are unable to reach a commercial agreement on compensation.

3.3 This guidance sets out the process and indicates how the Minister for Economic Development would generally expect to approach any application. However, in all such cases, the Minister for Economic Development will take due account of the specific circumstances which may apply.

3.4 In the application the oil or gas developer should set out the following information:

a) details of the lease and/or agreement for lease area for which determination in full or in part is sought, including maps;

b) evidence of why the oil or gas development cannot go ahead without the

c) maximising the economic recovery of the United Kingdom Continental Shelf's indigenous oil and gas resources;

d) the UK Government's energy policies;

e) the UK or Isle of Man Government's wider objectives;

f) consumer bills;

g) third parties;

h) The Department of Infrastructure;

i) investor confidence; and

j) the offshore renewable supply chain.

3.11 If the oil or gas developer cannot demonstrate that determination is necessary for the oil or gas development to proceed, the application will be rejected.

3.12 If the Minister for Economic Development considers that there has been insufficient effort to reach a commercial agreement, he may ask the parties to resume negotiations before considering the application.

4. Appointment of an independent valuer

4.1 Before taking any decision to appoint an independent Valuer the Minister for Economic Development will notify the parties and the Department of Infrastructure if he considers that the oil or gas development seems a technically viable development based upon the information which has been submitted by the oil or gas developer. Any decision by the Minister for Economic Development to appoint an independent Valuer will not be made without some consideration of the significance of the matters set out in section 47A of the UK Petroleum Act 1998. Any such appointment may therefore be taken as an indication that he does not object in principle to the exercise of the oil and gas clause and a possible reduction in the generation capacity of the offshore renewables project.

4.2 If the Minister for Economic Development agrees to the application he will, subject to agreement of the matters set out in paragraph 8, notify the parties and the Department of Infrastructure and invite the parties to propose appropriate persons to act as the independent Valuer. If the parties can agree upon an independent Valuer that is acceptable to the Minister for Economic Development, that person will be appointed to undertake the valuation. Any proposals submitted to the Minister for Economic Development should demonstrate that the parties have followed transparent and non-discriminatory procedures in reaching the preferred nomination.

4.3 If the parties cannot agree, the Minister for Economic Development will, following a transparent and non-discriminatory process, appoint an independent Valuer of his choice. The independent Valuer will submit his or her report to the Minister for Economic Development.

4.4 For the avoidance of doubt the agreement of the Minister for Economic Development to appoint an independent Valuer and his preliminary view on technical viability will be without prejudice to any later decision on the technical assessment of the Field Development Plan.

5. Principles in assessing the level of compensation

5.1 As set out in the Ministerial Statement, the Minister for Economic Development will expect the independent Valuer to assess compensation for the relevant categories of loss on the basis of the principle of equivalence as applied in circumstances of compulsory purchase, which aims to put the claimant in the same position, so far as financial compensation can do so, as if the lease or agreement for lease had not in fact been determined.

5.2 The level of compensation payable should take into account the maturity of the affected offshore renewable development. So, for example, determining an agreement for lease that has only recently been granted may result in a smaller payment compared to an agreement for lease that has been held for longer and where the relevant offshore renewable development may be further advanced.

6. Valuation

6.1 The independent Valuer is expected to:

a) consider the estimated change in the market value of the offshore renewable development represented by the lease and/or agreement for lease, due to the effects of the determination;

b) disregard the existence of the oil and gas clause but may take into account other restrictions in the lease and/or agreement for lease which might be present;

c) consider actions in mitigation of the effects of the determination which may reasonably be expected of the holder of the lease and/or agreement for lease;

d) consider any costs likely to be incurred in re-planning the offshore renewables development;

e) consider if the determination makes the offshore renewables development no longer economically viable; and

f) consider any other factors which he regards to be relevant.

6.2 In estimating the change in the market value of the offshore renewable development, the independent valuer will be expected to take account all material factors, which may include, but are not limited to:

a) losses incurred on the remainder of the lease and/or agreement for lease area including costs of any remedial works such as removal of cables or turbines;

b) any loss in efficiency in the remainder of the lease and/or agreement for lease area;

c) whether the change in the lease and/or agreement for lease area makes the offshore renewables development not economically viable;

d) costs for disturbance and removal of any equipment and decommissioning costs (this should include consideration of any uncertainties around decommissioning costs);

e) costs which may be recouped by re-sale or re-use of any equipment;

f) penalties or costs incurred due of cancellation of contracts or arising from other liabilities;

g) loss of revenue or profits; and

h) any other factors he considers relevant under the principles of compulsory purchase.

6.3 The independent Valuer is expected to take into account the degree of uncertainty which may attach to any estimate of costs or revenues.

6.4 Once the Minister for Economic Development has agreed to appoint an independent Valuer and has notified the parties of this, the offshore renewables developer will be expected to take reasonable steps to mitigate his losses from that point onwards, consistent with normal practice in cases of compulsory purchase. There is no expectation that the offshore renewables developer needs to take any steps to mitigate losses before this point.

7. Process after appointment of the independent Valuer

7.1 The independent Valuer will write to the parties requesting them to send him a written submission and supporting evidence within 30 working days. The independent Valuer will specify the date so that there is no ambiguity. The written submissions will be shared by the independent Valuer with the other party.

7.2 The parties may agree a statement of common ground to bind the independent Valuer's work. Where the parties are able to reach agreement on issues, the independent Valuer will exclude these from his considerations. If necessary, the independent Valuer may extend the

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30 working days submission deadline to accommodate this statement of common ground.

7.3 The independent Valuer will hold an oral hearing if this is requested by either party. The other party will be invited to any such hearing. At the oral hearing, both parties will have the opportunity to put their case and to respond to the other party.

7.4 The independent Valuer will have discretion to request further information from the parties and to seek advice to inform his valuation from other sources (for example, technical or engineering advice) if he considers this necessary. The independent Valuer will confirm which information has been provided from other sources and who provided the information.

7.5 The independent Valuer will have three calendar months from the receipt of the written submissions OR the close of the oral hearing (whichever is the later) to complete a draft valuation. If the independent Valuer requires more time, he will inform the Minister for Economic Development, in writing, of the reasons why and with a revised deadline. The Department will notify the parties of any change of date.

8. Process after the independent Valuer's assessment

8.1 When the draft valuation is complete, the independent Valuer will send a copy simultaneously to the parties who will have ten working days, from receipt, to notify the independent Valuer of any factual corrections or apparent errors.

8.2 The independent Valuer will then have ten working days to finalise the valuation. He will send the final valuation to the Minister for Economic Development and the parties simultaneously.

8.3 The parties will have fifteen working days from receipt of the final valuation to notify the Minister for Economic Development in writing if they are not satisfied that the procedure in reaching the valuation has been followed correctly or if they consider there has been a manifest error. This should be supported by evidence.

8.4 If the Minister for Economic Development agrees the procedure has not been followed correctly or that there has been a manifest error, he will ask the independent Valuer to repeat the process or part of the process as he deems necessary or appoint another independent Valuer to do so. Any costs associated with repeating any part of the process or undertaking another valuation should be met by the oil and gas developer as set out under paragraph 8.

8.5 When the Minister for Economic Development is satisfied that the procedure has been followed correctly and there has been no manifest error on the part of the independent Valuer, he will notify the parties of this and ask the oil or gas developer to confirm if he intends to pay the compensation. The oil or

gas developer will have twenty working days, from receipt of the Minister for Economic Development's letter, to confirm whether or not he intends to pay the compensation.

8.6 The Minister for Economic Development may provide a letter of assurance to the oil and gas developer stating that, at the point in time when compensation is paid, he is not aware of any reason why consent to the Field Development Plan (FDP) should be refused, subject to a satisfactory technical assessment by the Department of Economic Development of the FDP when it is submitted; and that in particular, he is not, at that point in time, aware of any reason why he may refuse consent to the FDP for wider policy reasons, such as increasing or securing renewable energy supply.

8.7 If the oil or gas developer confirms that he does not intend to pay the compensation, or does not respond within the twenty working days, the Independent Valuer's assessment will lapse and the Minister for Economic Development will notify the parties and the Department of Infrastructure that he will not request that the Department of Infrastructure determine the lease and/or agreement for lease.

8.8 If the oil or gas developer confirms that he intends to pay the compensation, he must confirm this in writing to the Department. The Minister for Economic Development will then ask the Department of Infrastructure to determine the relevant parts of the lease and/or agreement for lease.

8.9 The parties should agree the arrangements for when compensation will be paid and executing the arrangements. This could involve the compensation payment being made simultaneously with the effecting of the determination. Alternatively, if the oil or gas developer proposes deferred payment, the principle of deferral and the form of security must be acceptable to the offshore renewables developer.

8.10 Compensation should be paid (or other binding legal agreements should be in place) within three calendar months of the oil or gas developer notifying the Minister for Economic Development that he intends to pay the compensation or the Independent Valuer's assessment will lapse. In these circumstances, the Minister for Economic Development will notify the parties and the Department of Infrastructure that he will not request that the Department of Infrastructure determine the lease and/or agreement for lease.

8.11 If, after this process has been completed and compensation has been paid, the oil or gas development does not proceed (for example, because it does not receive development consent or for commercial or other reasons), the offshore renewables developer is not required to pay back the compensation because part of the lease and/or agreement for lease will have been determined.

9. Interpretation of the terms used in the guidance

"Application to the Minister for Economic Development" means an application made by an oil or gas developer asking the Minister for Economic Development to appoint an independent Valuer and request that the Department of Infrastructure determine a lease or agreement for lease. An offshore renewables developer may not make an application.

"Compensation" means the sum of money to be paid by an oil or gas developer to an offshore renewables developer for determination of a lease or agreement for lease. It is a sum of money and not a requirement to carry out an action or to give any undertakings.

"Department" means the Isle of Man Government Department of Economic Development .

"Determination" means termination in whole or in part of a lease or agreement for lease. References to "determine", "determining" and "determined" in this guidance should be construed accordingly as meaning in whole or in part.

"Independent valuer" means a person (independent of an oil or gas developer or offshore renewables developer) appointed by the Minister for Economic Development to assess the amount of compensation.

"Lease and/or Agreement for Lease" means a lease and/or agreement for lease with the Department of Infrastructure relating to property forming part of the Isle of Man Territorial Sea, for the purpose of exploitation of water or winds for the purpose of energy generation or purposes connected to such exploitation.

"Notify" means notification in writing which can be by hard copy letter or in electronic form.

"Offshore renewables developer" means the developer and/or owner and operator of offshore transmission assets and/or offshore renewables generation assets.

"Offshore renewables development" means an offshore renewable energy electricity generating project and/or an offshore transmission project.

"Oil or gas developer" means the petroleum licence holder and/or operator of an oil and gas development.

"Oil or gas development" includes the drilling of an exploration well.

"Parties" means the oil or gas developer and the offshore renewables developer.

"Minister for Economic Development" means the Isle of Man Government Minister for Economic Development.

"Working day" means a day (other than a Saturday or a Sunday) on which banks are open for general business in the Isle of Man.

Signed for Department of Economic Development
by the Minister

Signature 

Name Minister Lawrence Skelly MHK.

Date 27 June 2025

WITNESS of which this Lease has been executed as a deed the day and year first above written

EXECUTED by or on behalf of the Department by the Minister or a person authorised by the Minister for Infrastructure in the presence of :

:

:

:

EXECUTED by the Tenant
in the presence of:- :

:

:

:

: .....
Director

:

: .....
Director/Company Secretary

EXECUTED by the Guarantor,

a company incorporated in Denmark, by)

.....)

and .....)

being persons who, in)

accordance with the laws of that territory,)

are acting under the authority of the)

company)

Authorised Signatories:

: .....

:

: .....

DATED 20 September 2017

(1) THE DEPARTMENT OF INFRASTRUCTURE

AND

(2) DONG ENERGY ISLE OF MAN (UK) LIMITED

AND

(3) DONG ENERGY WIND POWER A/S

AMENDMENT OF THE AGREEMENT FOR LEASE

of

Windfarm Site upon Bed of the Sea at IMW01
(Single Site Project)

THIS DEED is made on 20 September 2017

BETWEEN:-

(1) **THE DEPARTMENT OF INFRASTRUCTURE**, (a Department of the Isle of Man Government) of Sea Terminal Building Douglas Isle of Man IM1 2RF;

(2) **DONG ENERGY ISLE OF MAN (UK) LIMITED**, a company incorporated in the Isle of Man (company number 013051V) and having its registered office at 33-37 Athol Street, Douglas, IM1 1LB, Isle of Man; and

(3) **DONG ENERGY WIND POWER A/S**, a company incorporated in Denmark having its registered office at Kraftvaerksvej 53, DK-700 Fredericia Denmark (Company Number 31849292);

together the **"Parties"**.

WHEREAS:-

(A) Reference is made to the agreement for lease dated 30 November 2015 (the **"AfL"**) between the Parties.

(B) The Parties have agreed to amend the AfL in accordance with Clause 2 of this Deed.

IN WITNESS WHEREOF IT IS AGREED as follows:-

1. **INTERPRETATION AND DEFINITIONS**

In interpreting this Deed:-

1.1.1 Words and expressions used in this Deed shall have the same meaning as ascribed to them under the AfL, unless otherwise stated;

1.1.2 References to Clauses are to Clauses of this Deed, unless otherwise stated;

1.1.3 The Clause headings do not form part of this Deed and are not to be taken into account for the purposes of its construction or interpretation; and

The AfL shall remain in full force and effect, save as expressly amended in accordance with this Deed.

1.1.4 This Deed shall be effective on the date hereof (the **"Effective Date"**).

1.1.5 The terms of this Deed are intended to amend the terms and conditions of the AfL and accordingly after the Effective Date the provisions of this Deed shall have priority over any terms and conditions in the AfL.

2. **AMENDMENT OF THE AFL**

The Parties have agreed that the following amendments to the AfL shall take effect from the Effective Date:

2.1 A new definition of **CfD Inclusion** is inserted:

CfD Inclusion *means the date upon which the Development is no longer excluded from applying for a CfD by virtue of its geographic location as a result of a commitment from the Secretary of State for Business Energy & Industrial Strategy to introduce an Act of Parliament, or any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, or any exercise of the Royal Prerogative, or any enforceable EU right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom and (to the extent*

directly binding on and/or enforceable against private persons within the United Kingdom) or any obligations arising from a treaty or international convention to which the United Kingdom is a signatory;

2.2 Out of Scope

2.3 A new definition of **Socioeconomic Benefits Study** is inserted:

***Socioeconomic Benefits Study** means the independent report prepared by Regeneris to illustrate the potential economic benefits that could be realised by the delivery of the Development;*

2.4 A new definition of **Socioeconomic Benefits Plan** is inserted:

***Socioeconomic Benefits Plan** means a plan prepared by the Tenant outlining the benefits proposed to arise as a result of the installation of the Specified Works;*

2.5 A new definition of **Fourth Option Fee** is inserted:

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2.6 A new definition of **Fifth Option Fee** is inserted:

Section 30

*Where **X** = the number of years between 30th November 2022 and the date upon which the Option Notice is served.*

2.7 The definition of "**Option Fees**" is deleted and replaced with:

***Option Fees** means the First Option Fee, the Second Option Fee, the Third Option Fee, the Fourth Option Fee and the Fifth Option Fee*

2.8 The definition of "**Option Period**" is deleted and replaced with:

***Option Period** means the period of 15 years from and including 30th Day November 2015 and up to and including 30th Day November 2030*

2.9 Clause 2.1 is amended so that the following sub-clause 2.1.4 is added to the existing clause:

The Fourth Option Fee on the date of this agreement;

2.10 Clause 2.1 is amended so that the following sub-clause 2.1.5 is added to the existing clause:

The Fifth Option Fee 5 Working Days prior to serving the Option Notice

2.11 Clause 2 is amended so that the following sub-clause 2.3 is added to the existing clause:

The Second Option Fee and the Third Option Fee shall be subject to review and increase according to the Manx Retail Prices Index in the manner set out in this sub-clause. The increase shall be the difference between the figure for the Manx Retail Prices Index on 30th November 2015 compared with the figure on the date of payment of the Second Option Fee and the Third Option Fee respectively. The definitions of the Second Option Fee and Third Option Fee in the AfL shall be read and construed so as to include such increased sums payable in the same manner as the Second Option Fee and the Third Option Fee

2.12 Clause 4.1 is deleted and replaced with:

The Tenant shall apply for all Necessary Consents for the Development not more than 30 (thirty) months after CFD Inclusion, or such later date as the Tenant and Department may agree (each acting reasonably)) (the "Applications" and each an "Application"), and shall use reasonable endeavours to comply with all requirements of the Authority or other person to which each Application is made to enable it to determine that Application.

2.13 Clause 4.3 is deleted and replaced with:

The Tenant shall use reasonable endeavours to obtain all the Necessary Consents for the Development within the period of 2 years following the date on which the last of the Applications is made (the "Target Necessary Consent Date"). In circumstances where the Tenant is unable to obtain all the Necessary Consents for the Development by the Target Necessary Consent Date, the Tenant shall use reasonable endeavours to obtain them as soon as practicable thereafter, and in any event shall obtain all the Necessary Consents by the last day of the Option Period (the "Longstop Date")

2.14 A new clause numbered 5A shall be added after the existing clause 5 which shall read as follows:

5A Project Requirements

5A.1 The Tenant shall comply with the requirements set out in the first column of the table below by the dates set out in the second column of the table below or such later date as the Tenant and the Department may agree (each acting reasonably) and shall use reasonable endeavours to comply with all requirements in respect of each Project Milestone

5A.2 **Project Milestone Requirements**	**Project Milestone Delivery Date**
Submission of the Socioeconomic Benefits Study	30 October 2017
Submission of AfL annual report	30 September 2017
Presentation of strategy for engagement with the Department for Business, Energy & Industrial Strategy	31 March 2018
Attainment of all CfD eligibility requirements sufficient to qualify for CfD allocation process and actual entry into that allocation process.	To be no more than 60 months after CfD Inclusion
Initiate discussions with Isle of Man Government stakeholders in relation to EIA methodologies and other actions arising from the Scoping Process	To be no more than 6 months after CfD Inclusion
Presentation of initial UK grid connection options and next steps	not more than 6 months after CfD Inclusion
Initiation of UK grid connection ("CION") process	not more than 12 months after CfD Inclusion

2.15 A new clause numbered 6.3.1(c) shall be added after the existing clause 6.3.1(b) which shall read as follows:

(c) Out of Scope

3. **AFFIRMATION OF CONTRACT**

3.1 The terms of the AfL shall only be amended to the extent necessary to give effect to this Deed. The respective rights and obligations of the Parties remain as set out in the AfL the terms of which remain in full force and effect, save as expressly amended by this Deed.

4. **GUARANTOR'S CONSENT TO VARIATION OF THE AFL AND CONFIRMATION OF THE GUARANTEE**

4.1 The Guarantor confirms that:

4.1.1 it consents to the amendments made by this Deed to the obligations guaranteed by the Guarantor under Clause 15 of the AfL (the **"Guaranteed Obligations"**); and

4.1.2 the guarantee provided by it under Clause 15 of the AfL remains in full force and effect and that the Guaranteed Obligations include all obligations and liabilities of the Tenant to the Department under the AfL as amended by this Deed.

5. **ASSIGNATION AND TERMINATION**

5.1 This Deed may only be transferred by the Parties to any party to whom the AfL has been transferred under and in accordance with the AfL and references to the Parties shall include their transferees in accordance with this Clause 5.1.

6. **GENERAL**

6.1 The Parties agree and confirm that they have placed no reliance upon and shall have no claim against the other Parties in respect of any statement, representation or warranty made or given by or on behalf of any of the Parties (whether during the course of negotiations or otherwise) in respect of the amendments agreed to be made to the AfL pursuant to this Deed, which is not included as a term in this Deed.

6.2 In the event that any Clause or part of any Clause contained in this Deed is declared invalid or unenforceable that Clause or part of Clause shall be severed from the Deed and all other Clauses or parts of Clauses shall remain in full force and effect.

6.3 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 2001or otherwise).

6.4 Any dispute or difference under this Deed shall be resolved in accordance with clause 16 of the AFL.

6.5 This Deed shall be governed by the laws of the Isle of Man and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the Isle of Man.

6.6 This Deed may be executed in any number of counterparts each executed by one or more of the Parties and each of those counterparts together shall constitute this Deed.

EXECUTED AS A DEED by the Parties and delivered this Deed on the day and year first above written.

Executed as a Deed (but not delivered until dated) by:

THE DEPARTMENT OF INFRASTRUCTURE

Signed by the Minister or a person
duly authorised by the Minister for Infrastructure

Section 25

Witness Signature

Witness Full Name

Witness Address

Witness Occupation

Section 25

Executed as a Deed (but not delivered until dated) by:

DONG ENERGY ISLE OF MAN (UK) LIMITED

Acting by:

Name:

Position: Director

Signature:

Acting by:

Name:

Position: Director

Signature:

In the presence of:-

Name of witness:

Address:

Occupation:

Executed as a Deed (but not delivered until dated) by:

THE DEPARTMENT OF INFRASTRUCTURE

Signed by the Minister or a person
duly authorised by the Minister for Infrastructure .....

Witness Signature

Witness Full Name

Witness address

Witness Occupation

Executed as a Deed (but not delivered until dated) by:

DONG ENERGY ISLE OF MAN (UK) LIMITED

Acting by:

Name:

Position: Direc

Signature:

Section 25

Acting by:

Name:

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Section 25

Executed as a Deed (but not delivered until dated) by:

DONG ENERGY WIND POWER A/S

Acting by

Name:

Position:

Signature

Acting by

Name:

Position:

Signature:

Section 25

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Address:

Occupatio

Section 25