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**Dated** 8<sup>th</sup> December 2016

**ENI UK LIMITED**

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**DEADLINE VII SUBMISSION TO THE EXAMINATION  
OF EAST ANGLIA PROJECT 3**

**PLANNING INSPECTORATE REF NO. EN010056**

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## Introduction

1. We refer to the ExA Consultation Draft DCO of 17 November 2016 in respect of which a number of questions have been posed to, among others, Eni UK Limited (**Eni**) pursuant to Rule 17 of the Examination Procedure Rules.

The purpose of this submission is to set out Eni's position in relation to those questions.

2. We note that the ExA seeks comment on two key mechanisms to address concerns raised by the Applicant and Eni to date:
  - (a) To incorporate a balancing protective provision (**proposals 1 & 2**) under a new Schedule 8 Part 7 of the DCO.
  - (b) Alternatively a regime whereby a 'proximity plan' was prepared by the Applicant, in consultation with Eni for approval by the MMO (**proposal 3**).

## Eni's Position

3. Eni is supportive of a balancing protective provision being included in Schedule 8, Part 7 of the DCO (**PP**). Eni has engaged constructively with the Applicant to that end.

In particular, on 29 November 2016, the Applicant proposed a draft PP to Eni which built upon the ExA's Annex A draft (see **Annexure 1**).

4. On 2 December 2016, Eni exchanged a preliminary mark-up of the PP with the Applicant (see **Annexure 2**).
5. Following receipt of comments from the Applicant on 5 December 2016 (see **Annexure 3**), Eni produced a further mark-up of the PP on 6 December 2016 (see **Annexure 4**).
6. Discussions with the Applicant are continuing and Eni is optimistic of agreeing the text of the PP by Deadline VII.
7. As to the ExA's specific questions:
  - (a) Eni's preference would be for an arbitrator, as opposed to the MMO, to be the decision-maker in respect of any dispute. The arbitration regime should be incorporated into the PP.
  - (b) Eni's position remains that an appropriately-worded PP is critical in ensuring that the rights of the licensees under Licence P.1965 are, to the extent practicable, protected.

**Annexure 1**

**Applicant's draft PP of 29 November 2016**

**Draft Protective Provision for holders of Licence P1965 (29 November 2016)**

PART 7

FOR THE PROTECTION OF OIL AND GAS LICENSEES

**Application**

1. For the Protection of the Licensees from time to time of United Kingdom Petroleum Production Licence P1965<sup>1</sup>, unless otherwise agreed in writing between the Undertaker and the Licensees the provisions of this part of this Schedule shall have effect.

**Interpretation**

2. In this Part of this Schedule

"Applicable Laws<sup>2</sup>" means applicable laws, rules, orders, guidelines and regulations, including without limitation, those relating to health, safety and the environment and logistics activities such as helicopter and vessel operations;

"Good Offshore Wind Farm Construction Practice" means the application of those methods and practices customarily used in construction of wind farms in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators and contractors engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions.

"Good Oil field Practice<sup>2</sup>" means the application of those methods and practices customarily used in good and prudent oil and gas field practice in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions;

"Guidance<sup>2</sup>" means the 'Oil and gas clause in Crown Estate leases, Guidance on procedures for independent valuation where necessary' published by the then Department of Energy and Climate Change in June 2014, or any similar supplementary or replacement policy;

"Interacting works<sup>3</sup>" means interaction of the Licensees' Works and the Undertakers' Works;

"Licence<sup>2</sup>" means United Kingdom Petroleum Production Licence P.1965;

"Licensees<sup>2</sup>" means the licensees from time to time of the Licence;

"Licensees' Works<sup>3</sup>" means any infrastructure to be installed owned and occupied or maintained by or on behalf of the Licensees or exploration appraisal development and decommissioning activities (and associated logistics activities), by the Licensees in connection with the Licence within the Protected area;

"Ministerial Statement<sup>2</sup>" means the written statement given by the then Secretary of State for Energy and Climate Change to the UK Parliament regarding Crown Estate Leases for Offshore Renewables Projects on 12 July 2011, or any similar supplementary or replacement policy;

"Plan of the Licensees' Works<sup>4</sup>" means an exploration and development programme and details and location of Licensees' Works and minimum requirements such as exclusive zones in accordance with

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<sup>1</sup> The Protective Provision should benefit Licensees of Licence P1965 rather than Eni UK Limited (Eni) personally

<sup>2</sup> Other definitions (from earlier drafts of the protective provision) have been provided for "Applicable Laws", "Good Oil Field Practice", "Guidance", "Licence", "Licensees", "Ministerial Statement", "Protected Area", "Protective Provisions Plan" and "Table of Coordinates"

<sup>3</sup> New definitions are provided for "Interacting Works", "Licensees' Works", and "Undertakers' Works"

<sup>4</sup> New definitions are provided for these plans

Good Oil field Practice and applicable laws to enable the Licensees to, as applicable, explore appraise and/or develop hydrocarbon resources within the Protected area;

"Plan of the Undertakers' Works<sup>4</sup>" means a construction programme and details of location of the Undertakers' Works and minimum requirements such as safety and exclusion zones in accordance with Good offshore wind farm construction practice and Applicable Laws to enable the Undertaker to construct and operate the Undertakers' Works within the Protected area

"the Protected area<sup>2</sup>" means the area coloured green on the Protective Provisions Plan (that area coloured green being delineated by a line drawn between the points in the Table of Co-ordinates);

"the Protective Provisions Plan<sup>2</sup>" means the plan entitled Protective Provisions Plan and certified as the Protective Provisions Plan for the purposes of this Part of this Schedule;

"Proximity Agreement<sup>5</sup>" means an agreement between the Undertaker and the Licensees to reconcile and protect the interests of the parties as are known at the time to secure the implementation of the Undertakers' Works and the Licensees' Works, taking account of the matters in paragraph (6);

"the Table of Co-ordinates<sup>2</sup>" means the following table

Area	Label Point	Latitude X (European Datum 1950 UTM Zone 31N)	Longitude Y (European Datum 1950 UTM Zone 31N)
1	A	483,799.57	5,834,052.15
	B	494,193.52	5,830,959.70
	C	490,468.86	5,823,847.11
	D	483,750.96	5,823,832.51
2	E	500,000.00	5,846,795.24
	F	502,637.55	5,847,084.40
	G	500,000.00	5,842,047.75

"Undertakers' Works<sup>3</sup>" means the works permitted in this Order within the Protected Area

### Proximity Agreement

3. <sup>6</sup>Save as provided in paragraphs (5) and (7) no part of the Undertakers' Works shall commence until either
  - (i) A Proximity Agreement has been concluded between the Undertaker and the Licensees in respect of that part of the Undertakers' Works; or
  - (ii) The Undertaker and the Licensees shall have agreed in writing that no Proximity Agreement is required in respect of that part of the Undertakers' Works
4. Preparation of a Proximity Agreement must commence when either

<sup>5</sup> A new definition is provided for "Proximity Agreement"

<sup>6</sup> Paragraph (3) is shortened and clarified by use of defined terms

- (i) The Undertaker serves notice on the Licensees of the Undertakers' intention to commence any part of the Undertakers' Works (which notice must be provided within no less than [24] months of the intended commencement date of that part of the Undertakers' Works), together with a Plan of that part of the Undertaker's Works and a request to the Licensees to produce a Plan of the Licensees' Works; or
- (ii) The Licensees serve notice on the Undertaker of the Licensees' intention to commence any part of the Licensees' Works (which notice must be provided within no less than [ ] months of the intended commencement date of that part of the Licensees' Works) together with a Plan of that part of the Licensees' Works and request to the Undertaker to produce a Plan of the Undertakers' Works

and once preparation of the Proximity Agreement has commenced must be concluded within 3 months of receipt by the Licensees or the Undertaker (as the case may be) of the relevant notice.

5. <sup>7</sup>Paragraph (3) shall not apply insofar as the Plan of the Licensees' Works produced pursuant to paragraph 4(i) provides insufficient detail of
- (a) any realistic oil and gas prospect and/or
  - (b) the nature and location of the Licensees' Works in order to enable the Undertaker to define or mitigate the effects of the Undertakers' Works on the Licensees' Works and/or
  - (c) any area of sea required for the Licensees' Works having been minimised in light of (a) above

to enable a Proximity Agreement to be concluded which contains ongoing limitations on the programming siting design construction or operation of the Undertakers' Works or the Order works.

6. <sup>8</sup>The Proximity Agreement shall take account of
- (i) The nature and location of the Licensees' Works on any Plan of the Licensees' Works as known at that time
  - (ii) The location and extent of sea required for the Licensees' Works (including all applicable exclusive zones) on any Plan of the Licensees' Works as known at that time
  - (iii) All such evidence as is available at the time to support the existence of an oil and gas prospect within the Protected area
  - (iv) The ability of the Licensees to reduce or remove its sea area requirement under (ii) above in light of evidence at (iii) above, whether with immediate effect or at a specified later date
  - (v) The date by which the Licensees will seek to commence exploitation, or at which works of exploration, will cease

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<sup>7</sup> EATL has noted the ExA's comments that a traditional protective provision for the benefit of Eni could (a) provide a block over the implementation of the generating development of uncertain justification or duration (b) be unreasonable in circumstances where it is not yet known if there is a feasible oil and gas project, and if so how much sea area would be required for exploration and/or exploitation activities (c) provide no incentive to Eni to expedite its initial investigations of its prospect or to take reasonable and early steps to better define mitigate or remove its adverse effects on the generating station development. EATL has accordingly amended paragraph 6(vi) to make clear that without sufficient evidence, justification, detail, definition or mitigation, no proximity agreement is required before the Undertakers' works can commence

<sup>8</sup> In Paragraph (6) a further consideration is included at (i) – nature and location of Licensees' Works as known at that time

- (vi) The siting and design of the Undertakers' Works on any plan of the Undertakers' Works as known at that time
- (vii) The minimum feasible exclusive zones, buffer zones or safety zones required for safe construction and operation between the Undertakers' Works and the Licensees' Works
- (viii) Protocols protective of navigation communication and use of the sea by third parties
- (ix) Possible future transfer of the benefit of the Order or of the Licence
- (x) The desirability of co-existence and the ongoing commercial viability of the authorised development permitted under the Order together with exploration for and commercial exploitation of oil and gas within the Protected area

### **Arbitration<sup>9</sup>**

7. If no Proximity Agreement is concluded or the parties shall not have agreed whether paragraph (5) applies within the period specified in paragraph (4) the outstanding matters in dispute must be referred to an arbitrator and the Undertakers' Works must not commence until the determination of the arbitrator has been made and must only be implemented in accordance with the arbitrator's determination which is final and binding on the parties (save for manifest or legal error)
  - (i) The arbitration shall be decided by a sole arbitrator whose appointment shall be agreed by the parties
  - (ii) The arbitrator shall be a person (including one who has retired) with not less than ten years' experience of offshore oil and gas development or offshore wind farm development or as a lawyer or other professional advisor serving those industries
  - (iii) Where the parties fail to agree to appoint an arbitrator within 28 days of the delivery of a notice of arbitration, then upon application the Secretary of State will appoint an arbitrator within 28 days. At any time prior to the appointment by the Secretary of State the parties may make an appointment
  - (iv) The intention of the parties is that, so far as is practical, the arbitrator should make a determination within 3 months of appointment
  - (v) The seat of arbitration shall be London

### **Provision of information**

8. Without prejudice to any other rights or obligations under this Part of the Schedule the Licensees shall from time to time keep the Undertaker informed of its activities in relation to the Licence such that the Licensees and the Undertaker may seek to agree solutions to allow the Undertakers' works and the Licensees' works to successfully co-exist as far as reasonably practicable or if later until completion of activities required under any statutory decommissioning plan required under the Petroleum Act 1998 in relation to the Licence and taking place within the Protected Area

### **<sup>10</sup>Compensation**

9. Nothing in this Part of the Schedule shall affect any rights or obligations or assessment of compensation in accordance with the Ministerial Statement and the DECC Guidance (as applicable)

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<sup>9</sup> Specific arbitration provisions have been included to clarify appointment, timescale and terms of reference. No amendment to Article 33 of the Order is then required.

<sup>10</sup> A saving clause has been included (as in earlier drafts of the protective provision) in respect of compensation under the DECC Guidance

**Annexure 2**

**Eni's draft PP of 2 December 2016**

Draft Protective Provision for holders of Licence P1965 (~~29-1 December~~ November 2016)

PART 7

FOR THE PROTECTION OF OIL AND GAS LICENSEES

**Application**

1. For the Protection of the Licensees from time to time of United Kingdom Petroleum Production Licence P1965<sup>1</sup>, unless otherwise agreed in writing between the Undertaker and the Licensees the provisions of this part of this Schedule shall have effect.

**Interpretation**

2. In this Part of this Schedule

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"Good Offshore Wind Farm Construction Practice" means the application of those methods and practices customarily used in construction of wind farms in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators and contractors engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions;

"Good Oil-field Practice<sup>2n</sup>" means the application of those methods and practices customarily used in good and prudent oil and gas field practice in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions;

"Guidance<sup>2n</sup>" means the 'Oil and gas clause in Crown Estate leases, Guidance on procedures for independent valuation where necessary' published by the then Department of Energy and Climate Change in June 2014, or any similar supplementary or replacement policy;

~~"Interacting works<sup>3n</sup>" means interaction of the Licensees' Works and the Undertakers' Works;~~

"Licence<sup>2n</sup>" means United Kingdom Petroleum Production Licence P.1965;

"Licensees<sup>2n</sup>" means the licensees from time to time of the Licence;

"Licensees' Works<sup>3n</sup>" means any infrastructure ~~to~~ which may be installed owned and occupied or maintained by or on behalf of the Licensees or exploration, appraisal, development and decommissioning activities (and associated logistics activities), by the Licensees in connection with the Licence within the Protected area;

"Ministerial Statement<sup>2n</sup>" means the written statement given by the then Secretary of State for Energy and Climate Change to the UK Parliament regarding Crown Estate Leases for Offshore Renewables Projects on 12 July 2011, or any similar supplementary or replacement policy;

"Plan of the Licensees' Works<sup>4n</sup>" means an exploration and development programme and details and location of Licensees' Works and minimum requirements such as exclusive zones in accordance with

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<sup>4</sup> New definitions are provided for these plans

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Good Oil-field Practice and ~~applicable~~ Applicable laws Laws to enable the Licensees to, as applicable, explore, appraise, ~~and/or~~ develop and/or decommission hydrocarbon resources within the Protected area;

"Plan of the Undertakers' Works"<sup>4</sup> means a construction programme and details of location of the Undertakers' Works and minimum requirements such as safety and exclusion zones in accordance with Good ~~offshore~~ Offshore ~~wind~~ Wind farm ~~Farm construction~~ Construction practice Practice and Applicable Laws to enable the Undertaker to construct and operate the Undertakers' Works within the Protected area;

"the Protected area"<sup>2</sup> means the area coloured green on the Protective Provisions Plan (that area coloured green being delineated by a line drawn between the points in the Table of Co-ordinates);

"the Protective Provisions Plan"<sup>2</sup> means the plan entitled Protective Provisions Plan and certified as the Protective Provisions Plan for the purposes of this Part of this Schedule;

"Proximity Agreement"<sup>5</sup> means an agreement between the Undertaker and the Licensees to reconcile and protect the interests of the parties as are known at the time to secure the implementation of the Undertakers' Works and the Licensees' Works, taking account of the matters in paragraph (6);

"the Table of Co-ordinates"<sup>2</sup> means the following table

Area	Label Point	Latitude X (European Datum 1950 UTM Zone 31N)	Longitude Y (European Datum 1950 UTM Zone 31N)
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	F	502,637.55	5,847,084.40
	G	500,000.00	5,842,047.75

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"Undertakers' Works"<sup>3</sup> means the works permitted in this Order within the Protected ~~Area~~ area

### Proximity Agreement

3. <sup>6</sup>Save as provided in paragraphs (5) and (7) no part of the Undertakers' Works shall commence until either
- (i) A Proximity Agreement has been concluded between the Undertaker and the Licensees in respect of that part of the Undertakers' Works; or
  - (ii) The Undertaker and the Licensees shall have agreed in writing that no Proximity Agreement is required in respect of that part of the Undertakers' Works

~~4.~~ Preparation of a Proximity Agreement must commence when ~~either~~

<sup>5</sup> A new definition is provided for "Proximity Agreement"

<sup>6</sup> Paragraph (3) is shortened and clarified by use of defined terms

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~~(i) The Undertaker serves notice on the Licensees of the Undertakers' intention to commence any part of the Undertakers' Works (which notice must be provided within no less than [24] months and no more than [24] months of the intended commencement date of that part of the Undertakers' Works), together with a Plan of that part of the Undertaker's Works and a request to the Licensees to produce a Plan of the Licensees' Works; or~~

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~~(ii) The Licensees serve notice on the Undertaker of the Licensees' intention to commence any part of the Licensees' Works (which notice must be provided within no less than [ ] months of the intended commencement date of that part of the Licensees' Works) together with a Plan of that part of the Licensees' Works and request to the Undertaker to produce a Plan of the Undertakers' Works.~~

4. and once preparation of the Proximity Agreement has commenced must be concluded within ~~3~~ 6 months of receipt by the Licensees ~~or the Undertaker~~ (as the case may be) of the relevant notice.

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5. ~~Paragraph (3) shall not apply insofar as~~ To the extent that the Plan of the Licensees' Works produced pursuant to paragraph 4~~(i)~~ provides insufficient detail of

(a) ~~any the existence of an realistic~~ oil and gas prospect within the Protected area and/or

(b) the nature and location of the Licensees' Works in order to enable the Undertaker to define or mitigate the effects of the Undertakers' Works on the Licensees' Works ~~and/or~~

~~(c) any area of sea required for the Licensees' Works having been minimised in light of (a) above~~

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to enable a Proximity Agreement to be concluded which contains ongoing limitations on the programming siting construction or operation of the Undertakers' Works or the Order works, the Licensees must promptly provide such additional detail to the Undertaker.

6. <sup>8</sup>The Proximity Agreement shall take account of

(i) The nature and location of the Licensees' Works on any Plan of the Licensees' Works as known at that time

(ii) The location and extent of sea required for the Licensees' Works (including all applicable exclusive zones) on any Plan of the Licensees' Works as known at that time

(iii) All such evidence as is available at the time to support the existence of an oil and gas prospect within the Protected area

(iv) The ability of the Licensees to reduce or remove its sea area requirement under (ii) above in light of evidence at (iii) above, whether with immediate effect or at a specified later date

~~(v) The dates by which the Licensees will intend seek to commence exploitation Licensees' Works, or and at which by which such Licensees' Wworks of exploration, will are intended to cease~~

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<sup>7</sup> EATL has noted the ExA's comments that a traditional protective provision for the benefit of Eni could (a) provide a block over the implementation of the generating development of uncertain justification or duration (b) be unreasonable in circumstances where it is not yet known if there is a feasible oil and gas project, and if so how much sea area would be required for exploration and/or exploitation activities (c) provide no incentive to Eni to expedite its initial investigations of its prospect or to take reasonable and early steps to better define mitigate or remove its adverse effects on the generating station development. EATL has accordingly amended paragraph 6(vi) to make clear that without sufficient evidence, justification, detail, definition or mitigation, no proximity agreement is required before the Undertakers' works can commence

<sup>8</sup> In Paragraph (6) a further consideration is included at (i) – nature and location of Licensees' Works as known at that time

- (vi) The siting and design of the Undertakers' Works on any ~~plan~~ Plan of the Undertakers' Works as known at that time
- (vii) The minimum feasible exclusive zones, buffer zones or safety zones required for safe construction and operation between the Undertakers' Works and the Licensees' Works
- (viii) Protocols protective of navigation communication and use of the sea by third parties
- (ix) Possible future transfer of the benefit of the Order or of the Licence
- (x) The desirability of co-existence and the ongoing commercial viability of the authorised development permitted under the Order together with exploration for and commercial ly viable exploitation of oil and gas within the Protected area

### Arbitration<sup>9</sup>

7. If no Proximity Agreement is concluded or the parties shall not have agreed whether paragraph (5) applies within the period specified in paragraph (4) the outstanding matters in dispute must be referred to an arbitrator and the Undertakers' Works must not commence until the determination of the arbitrator has been made and must only be implemented in accordance with the arbitrator's determination which is final and binding on the parties (save for manifest or legal error)
- (i) The arbitration shall be decided by a sole arbitrator whose appointment shall be agreed by the parties
  - (ii) The arbitrator shall be a person (including one who has retired) with not less than ten years' experience of offshore oil and gas development or offshore wind farm development or as a lawyer or other professional advisor serving those industries
  - (iii) Where the parties fail to agree to appoint an arbitrator within 28 days of the delivery of a notice of arbitration, then upon application the Secretary of State will appoint an arbitrator within 28 days. At any time prior to the appointment by the Secretary of State the parties may make an appointment
  - (iv) The intention of the parties is that, so far as is practical, the arbitrator should make a determination within 3 months of appointment
  - (v) The seat of arbitration shall be London
  - (vi) Costs?

### Provision of information

8. Without prejudice to any other rights or obligations under this Part of the Schedule the Licensees and the Undertaker shall from time to time keep ~~the Undertaker~~ each other informed of ~~its~~ relevant activities ~~in relation to the Licence~~ such that the Licensees and the Undertaker may seek to agree solutions to allow the Undertakers' works and the Licensees' works to successfully co-exist as far as reasonably practicable or if later until completion of activities required under any statutory decommissioning plan required under the Petroleum Act 1998 in relation to the Licence and taking place within the Protected ~~Area~~ area

### <sup>10</sup>Compensation

<sup>9</sup> Specific arbitration provisions have been included to clarify appointment, timescale and terms of reference. No amendment to Article 33 of the Order is then required.

<sup>10</sup> A saving clause has been included (as in earlier drafts of the protective provision) in respect of compensation under the DECC Guidance

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9. Nothing in this Part of the Schedule shall affect any rights or obligations or assessment of compensation in accordance with the Ministerial Statement and the DECC Guidance (as applicable)

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**Annexure 3**

**Applicant's comments of 5 December 2016**

Draft Protective Provision for holders of Licence P1965 (~~29-1 December~~ November 2016)

PART 7

FOR THE PROTECTION OF OIL AND GAS LICENSEES

Application

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"Good Oil-field Practice<sup>2n</sup>" means the application of those methods and practices customarily used in good and prudent oil and gas field practice in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions;

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"Licence<sup>2n</sup>" means United Kingdom Petroleum Production Licence P.1965;

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<sup>1</sup> The Protective Provision should benefit Licensees of Licence P1965 rather than Eni UK Limited (Eni) personally

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<sup>3</sup> ~~New definitions are provided for "Interacting Works", "Licensees' Works", and "Undertakers' Works"~~

<sup>4</sup> New definitions are provided for these plans

**Comment [CR71]:** Not agreed. The ExA's comments make clear that it is Licensees' Works which are to be (and not may be) installed which may warrant EATL taking these into account in its design of the Undertakers' Works

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Good Oil-field Practice and ~~applicable~~ Applicable laws Laws to enable the Licensees to, as applicable, explore, appraise, ~~and/or~~ develop and/or decommission hydrocarbon resources within the Protected area;

"Plan of the Undertakers' Works"<sup>4</sup> means a construction programme and details of location of the Undertakers' Works and minimum requirements such as safety and exclusion zones in accordance with Good ~~offshore~~ Offshore ~~wind~~ Wind farm ~~Farm construction~~ Construction practice Practice and Applicable Laws to enable the Undertaker to construct and operate the Undertakers' Works within the Protected area;

"the Protected area"<sup>2</sup> means the area coloured green on the Protective Provisions Plan (that area coloured green being delineated by a line drawn between the points in the Table of Co-ordinates);

"the Protective Provisions Plan"<sup>2</sup> means the plan entitled Protective Provisions Plan and certified as the Protective Provisions Plan for the purposes of this Part of this Schedule;

"Proximity Agreement"<sup>5</sup> means an agreement between the Undertaker and the Licensees to reconcile and protect the interests of the parties as are known at the time to secure the implementation of the Undertakers' Works and the Licensees' Works, taking account of the matters in paragraph (6);

"the Table of Co-ordinates"<sup>2</sup> means the following table

Area	Label Point	Latitude X (European Datum 1950 UTM Zone 31N)	Longitude Y (European Datum 1950 UTM Zone 31N)
1	A	483,799.57	5,834,052.15
	B	494,193.52	5,830,959.70
	C	490,468.86	5,823,847.11
	D	483,750.96	5,823,832.51
2	E	500,000.00	5,846,795.24
	F	502,637.55	5,847,084.40
	G	500,000.00	5,842,047.75

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"Undertakers' Works"<sup>3</sup> means the works permitted in this Order within the Protected ~~Area~~ area

### Proximity Agreement

3. <sup>6</sup>Save as provided in paragraphs (5) and (7) no part of the Undertakers' Works shall commence until either
- (i) A Proximity Agreement has been concluded between the Undertaker and the Licensees in respect of that part of the Undertakers' Works; or
  - (ii) The Undertaker and the Licensees shall have agreed in writing that no Proximity Agreement is required in respect of that part of the Undertakers' Works

~~4.~~ Preparation of a Proximity Agreement must commence when ~~either~~

<sup>5</sup> A new definition is provided for "Proximity Agreement"

<sup>6</sup> Paragraph (3) is shortened and clarified by use of defined terms

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~~(i) The Undertaker serves notice on the Licensees of the Undertakers' intention to commence any part of the Undertakers' Works (which notice must be provided within no less than [24] months and no more than [24] months of the intended commencement date of that part of the Undertakers' Works), together with a Plan of that part of the Undertaker's Works and a request to the Licensees to produce a Plan of the Licensees' Works; or~~

~~(ii) The Licensees serve notice on the Undertaker of the Licensees' intention to commence any part of the Licensees' Works (which notice must be provided within no less than [ ] months of the intended commencement date of that part of the Licensees' Works) together with a Plan of that part of the Licensees' Works and request to the Undertaker to produce a Plan of the Undertakers' Works.~~

4. and once preparation of the Proximity Agreement has commenced must be concluded within ~~3~~ 6 months of receipt by the Licensees ~~or the Undertaker~~ (as the case may be) of the relevant notice.

5. ~~Paragraph (3) shall not apply insofar as~~ To the extent that the Plan of the Licensees' Works produced pursuant to paragraph 4~~(i)~~ provides insufficient detail of

(a) ~~any the existence of an realistic~~ oil and gas prospect within the Protected area and/or

(b) the nature and location of the Licensees' Works in order to enable the Undertaker to define or mitigate the effects of the Undertakers' Works on the Licensees' Works ~~and/or~~

~~(c) any area of sea required for the Licensees' Works having been minimised in light of (a) above~~

to enable a Proximity Agreement to be concluded which contains ongoing limitations on the programming siting design construction or operation of the Undertakers' Works or the Order works, the Licensees must promptly provide such additional detail to the Undertaker.

6. <sup>8</sup>The Proximity Agreement shall take account of

(i) The nature and location of the Licensees' Works on any Plan of the Licensees' Works as known at that time

(ii) The location and extent of sea required for the Licensees' Works (including all applicable exclusive zones) on any Plan of the Licensees' Works as known at that time

(iii) All such evidence as is available at the time to support the existence of an oil and gas prospect within the Protected area

(iv) The ability of the Licensees to reduce or remove its sea area requirement under (ii) above in light of evidence at (iii) above, whether with immediate effect or at a specified later date

~~(v) The dates by which the Licensees will intend seek to commence exploitation Licensees' Works, or and at which by which such Licensees' Works of exploration, will are intended to cease~~

<sup>7</sup> EATL has noted the ExA's comments that a traditional protective provision for the benefit of Eni could (a) provide a block over the implementation of the generating development of uncertain justification or duration (b) be unreasonable in circumstances where it is not yet known if there is a feasible oil and gas project, and if so how much sea area would be required for exploration and/or exploitation activities (c) provide no incentive to Eni to expedite its initial investigations of its prospect or to take reasonable and early steps to better define mitigate or remove its adverse effects on the generating station development. EATL has accordingly amended paragraph 6(vi) to make clear that without sufficient evidence, justification, detail, definition or mitigation, no proximity agreement is required before the Undertakers' works can commence

<sup>8</sup> In Paragraph (6) a further consideration is included at (i) – nature and location of Licensees' Works as known at that time

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**Comment [CR72]:** Not agreed. EATL will need the flexibility to seek certainty on their design more than 24 months before commencement.

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**Comment [CR73]:** Not agreed. In view of the criticality of timing in the process and the need for EATL to have a final determination (whether by Proximity Agreement or by arbitrator's determination) this should be 3 months.

**Comment [CR74]:** Not agreed. The reference to realistic should be retained as with the ExA's suggested draft Protective Provision in Annex A.

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**Comment [CR75]:** Not agreed. TO the extent that the Plan of the Licensees' Works provides insufficient detail, it must be clear from this paragraph that EATL should be able to proceed without a Proximity Agreement, rather than merely asking for additional detail and leaving the position open ended. That reflects the ExA's comments and the summary of those comments in footnote 6.

**Comment [CR76]:** Not agreed. The ExA's comments make clear that it is the date by which the Licensees will (not inte... [1])

**Comment [CR77]:** Not agreed. The ExA's comments make clear that it is the date by which the (... [2])

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- (vi) The siting and design of the Undertakers' Works on any ~~plan~~ Plan of the Undertakers' Works as known at that time
- (vii) The minimum feasible exclusive zones, buffer zones or safety zones required for safe construction and operation between the Undertakers' Works and the Licensees' Works
- (viii) Protocols protective of navigation communication and use of the sea by third parties
- (ix) Possible future transfer of the benefit of the Order or of the Licence
- (x) The desirability of co-existence and the ongoing commercial viability of the authorised development permitted under the Order together with exploration for and commercially viable exploitation of oil and gas within the Protected area

### Arbitration<sup>9</sup>

7. If no Proximity Agreement is concluded or the parties shall not have agreed whether paragraph (5) applies within the period specified in paragraph (4) the outstanding matters in dispute must be referred to an arbitrator and the Undertakers' Works must not commence until the determination of the arbitrator has been made and must only be implemented in accordance with the arbitrator's determination which is final and binding on the parties (save for manifest or legal error)

- (i) The arbitration shall be decided by a sole arbitrator whose appointment shall be agreed by the parties
- (ii) The arbitrator shall be a person (including one who has retired) with not less than ten years' experience of offshore oil and gas development or offshore wind farm development or as a lawyer or other professional advisor serving those industries
- (iii) Where the parties fail to agree to appoint an arbitrator within 28 days of the delivery of a notice of arbitration, then upon application the Secretary of State will appoint an arbitrator within 28 days. At any time prior to the appointment by the Secretary of State the parties may make an appointment
- (iv) The intention of the parties is that, so far as is practical, the arbitrator should make a determination within 3 months of appointment
- (v) The seat of arbitration shall be London

(vi) [Costs?]

### Provision of information

8. Without prejudice to any other rights or obligations under this Part of the Schedule the Licensees and the Undertaker shall from time to time keep ~~the Undertaker~~ each other informed of ~~its~~ relevant activities ~~in relation to the Licence~~ such that the Licensees and the Undertaker may seek to agree solutions to allow the Undertakers' works and the Licensees' works to successfully co-exist as far as reasonably practicable or if later until completion of activities required under any statutory decommissioning plan required under the Petroleum Act 1998 in relation to the Licence and taking place within the Protected ~~Area~~ area

### <sup>10</sup>Compensation

<sup>9</sup> Specific arbitration provisions have been included to clarify appointment, timescale and terms of reference. No amendment to Article 33 of the Order is then required.

<sup>10</sup> A saving clause has been included (as in earlier drafts of the protective provision) in respect of compensation under the DECC Guidance

**Comment [CR78]:** Not agreed. The issue of commercial viability of exploitation of oil and gas is a business specific issue. It is the viability of the authorised development permitted under the Order which is the key consideration: see the ExA's comments on the potential "block over the implementation of the generating development".

**Comment [CR79]:** Costs of the arbitration and allocation of these costs will be covered by Section 63 (the recoverable costs of the arbitration) Arbitration Act 1996

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9. Nothing in this Part of the Schedule shall affect any rights or obligations or assessment of compensation in accordance with the Ministerial Statement and the DECC Guidance (as applicable)

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**Page 3: [1] Comment [CR76] CR7 02/12/2016 16:38:00**

Not agreed. The ExA's comments make clear that it is the date by which the Licensees will (not intend to) seek to commence exploitation or at which works of exploration will (not are intended to) cease.

**Page 3: [2] Comment [CR77] CR7 02/12/2016 16:38:00**

Not agreed. The ExA's comments make clear that it is the date by which the Licensees will (not intend to) seek to commence exploitation or at which works of exploration will (not are intended to) cease.

**Annexure 4**

**Eni's draft PP of 6 December 2016**

**Draft Protective Provision for holders of Licence P1965 (+6 December 2016)**

PART 7

FOR THE PROTECTION OF OIL AND GAS LICENSEES

**Application**

1. For the Protection of the Licensees from time to time of United Kingdom Petroleum Production Licence P1965<sup>1</sup>, unless otherwise agreed in writing between the Undertaker and the Licensees the provisions of this part of this Schedule shall have effect.

**Interpretation**

2. In this Part of this Schedule

"Applicable Laws<sup>2</sup>" means applicable laws, rules, orders, guidelines and regulations, including without limitation, those relating to health, safety and the environment and logistics activities such as helicopter and vessel operations;

"Good Offshore Wind Farm Construction Practice" means the application of those methods and practices customarily used in construction of wind farms in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators and contractors engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions;

"Good Oilfield Practice<sup>2</sup>" means the application of those methods and practices customarily used in good and prudent oil and gas field practice in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions;

"Guidance<sup>2</sup>" means the 'Oil and gas clause in Crown Estate leases, Guidance on procedures for independent valuation where necessary' published by the then Department of Energy and Climate Change in June 2014, or any similar supplementary or replacement policy;

"Licence<sup>2</sup>" means United Kingdom Petroleum Production Licence P.1965;

"Licensees<sup>2</sup>" means the licensees from time to time of the Licence;

"Licensees' ~~Works~~<sup>3</sup>Works" means any infrastructure ~~which may to~~ be installed owned and occupied or maintained by or on behalf of the Licensees or exploration, appraisal, development and decommissioning activities (and associated logistics activities), by the Licensees in connection with the Licence within the Protected area;

"Ministerial Statement<sup>2</sup>" means the written statement given by the then Secretary of State for Energy and Climate Change to the UK Parliament regarding Crown Estate Leases for Offshore Renewables Projects on 12 July 2011, or any similar supplementary or replacement policy;

"Plan of the Licensees' Works<sup>3</sup>" means an exploration and development programme and details and location of Licensees' Works and minimum requirements known at that time such as exclusive zones in accordance with Good Oilfield Practice and Applicable Laws to enable the Licensees to, as applicable, explore, appraise, develop and/or decommission hydrocarbon resources within the Protected area;

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<sup>1</sup> The Protective Provision should benefit Licensees of Licence P1965 rather than Eni UK Limited (Eni) personally

<sup>2</sup> Other definitions (from earlier drafts of the protective provision) have been provided for "Applicable Laws", "Good Oilfield Practice", "Guidance", "Licence", "Licensees", "Ministerial Statement", "Protected Area", "Protective Provisions Plan" and "Table of Coordinates"

<sup>3</sup> New definitions are provided for these plans

"Plan of the Undertakers' ~~Works~~<sup>4</sup>Works<sup>3</sup>" means a construction programme and details of location of the Undertakers' Works and minimum requirements known at that time such as safety and exclusion zones in accordance with Good Offshore Wind Farm Construction Practice and Applicable Laws to enable the Undertaker to construct and operate the Undertakers' Works within the Protected area;

"the Protected area<sup>2</sup>" means the area coloured green on the Protective Provisions Plan (that area coloured green being delineated by a line drawn between the points in the Table of Co-ordinates);

"the Protective Provisions Plan<sup>2</sup>" means the plan entitled Protective Provisions Plan and certified as the Protective Provisions Plan for the purposes of this Part of this Schedule;

"Proximity Agreement<sup>4</sup>" means an agreement between the Undertaker and the Licensees to reconcile and protect the interests of the parties as are known at the time to secure the implementation of the Undertakers' Works and the Licensees' Works, taking account of the matters in paragraph (6);

"the Table of Co-ordinates<sup>2</sup>" means the following table

Area	Label Point	Latitude X (European Datum 1950 UTM Zone 31N)	Longitude Y (European Datum 1950 UTM Zone 31N)
1	A	483,799.57	5,834,052.15
	B	494,193.52	5,830,959.70
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	D	483,750.96	5,823,832.51
2	E	500,000.00	5,846,795.24
	F	502,637.55	5,847,084.40
	G	500,000.00	5,842,047.75

"Undertakers' ~~Works~~<sup>3</sup>Works<sup>3</sup> Error! Bookmark not defined." means the works permitted in this Order within the Protected area

### Proximity Agreement

3. <sup>5</sup>Save as provided in paragraphs (5) and (7) no part of the Undertakers' Works shall commence until either
  - (i) A Proximity Agreement has been concluded between the Undertaker and the Licensees in respect of that part of the Undertakers' Works; or
  - (ii) The Undertaker and the Licensees shall have agreed in writing that no Proximity Agreement is required in respect of that part of the Undertakers' Works
4. Preparation of a Proximity Agreement must commence when ~~he~~the Undertaker serves notice on the Licensees of the Undertakers' intention to commence any part of the Undertakers' Works (which notice must be provided within no less than [12] months and no more than [24] months of the intended commencement date of that part of the Undertakers' Works), together with a Plan of that part of the Undertaker's Works and a request to the Licensees to produce a Plan of the

<sup>4</sup> A new definition is provided for "Proximity Agreement"

<sup>5</sup> Paragraph (3) is shortened and clarified by use of defined terms

Licensees' Works, and once preparation of the Proximity Agreement has commenced must be concluded within 6-3 months of receipt by following the issue of the Plan of the Licensees ~~(as the case may be) of the relevant notice'~~ Works

5. <sup>6</sup>To the extent that the Plan of the Licensees' Works produced pursuant to paragraph 4 provides insufficient detail of

- (a) the existence of ~~an~~ a realistic oil and gas prospect within the Protected area and/or
- (b) the nature and location of the Licensees' Works in order to enable the Undertaker to define or mitigate the effects of the Undertakers' Works on the Licensees' Works

to enable a Proximity Agreement to be concluded which contains ongoing limitations on the programming siting design construction or operation of the Undertakers' Works or the Order works, the Licensees must promptly provide such additional detail to the Undertaker: within 28 days of a request for same by the Undertaker, failing which paragraph (3) shall not apply

6. <sup>7</sup>The Proximity Agreement shall take account of

- (i) The nature and location of the Licensees' Works on any Plan of the Licensees' Works as known at that time
- (ii) The location and extent of sea required for the Licensees' Works (including all applicable exclusive zones) on any Plan of the Licensees' Works as known at that time
- (iii) All such evidence as is available at the time to support the existence of an oil and gas prospect within the Protected area
- (iv) The ability of the Licensees to reduce or remove its sea area requirement under (ii) above in light of evidence at (iii) above, whether with immediate effect or at a specified later date
- (v) The dates date by which the Licensees ~~intend to commence Licensees' Works, and by which such Licensees' Works are intended to cease~~ will seek to commence exploitation, or at which works of exploration, will cease as known at that time
- (vi) The siting and design of the Undertakers' Works on any Plan of the Undertakers' Works as known at that time
- (vii) The minimum feasible exclusive zones, buffer zones or safety zones required for safe construction and operation between the Undertakers' Works and the Licensees' Works
- (viii) Protocols protective of navigation communication and use of the sea by third parties
- (ix) Possible future transfer of the benefit of the Order or of the Licence

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<sup>6</sup> EATL has noted the ExA's comments that a traditional protective provision for the benefit of Eni could (a) provide a block over the implementation of the generating development of uncertain justification or duration (b) be unreasonable in circumstances where it is not yet known if there is a feasible oil and gas project, and if so how much sea area would be required for exploration and/or exploitation activities (c) provide no incentive to Eni to expedite its initial investigations of its prospect or to take reasonable and early steps to better define mitigate or remove its adverse effects on the generating station development. EATL has accordingly amended paragraph 6(vi) to make clear that without sufficient evidence, justification, detail, definition or mitigation, no proximity agreement is required before the Undertakers' works can commence

<sup>7</sup> In Paragraph (6) a further consideration is included at (i) – nature and location of Licensees' Works as known at that time

- (x) The desirability of co-existence and the ongoing commercial viability of the authorised development permitted under the Order together with exploration for and ~~commercially viable~~ commercial exploitation of oil and gas within the Protected area

#### **Arbitration<sup>8</sup>**

- 7. If no Proximity Agreement is concluded or the parties shall not have agreed whether paragraph (5) applies within the period specified in paragraph (4) the outstanding matters in dispute must be referred to an arbitrator and the Undertakers' Works must not commence until the determination of the arbitrator has been made and must only be implemented in accordance with the arbitrator's determination which is final and binding on the parties (save for manifest or legal error)
  - (i) The arbitration shall be decided by a sole arbitrator whose appointment shall be agreed by the parties
  - (ii) The arbitrator shall be a person (including one who has retired) with not less than ten years' experience of offshore oil and gas development or offshore wind farm development or as a lawyer or other professional advisor serving those industries
  - (iii) Where the parties fail to agree to appoint an arbitrator within 28 days of the delivery of a notice of arbitration, then upon application the Secretary of State will appoint an arbitrator within 28 days. At any time prior to the appointment by the Secretary of State the parties may make an appointment
  - (iv) The intention of the parties is that, so far as is practical, the arbitrator should make a determination within 3 months of appointment
  - (v) The seat of arbitration shall be London

~~(vi) — [Costs?]~~

#### **Provision of information**

- 8. Without prejudice to any other rights or obligations under this Part of the Schedule the Licensees and the Undertaker shall from time to time keep each other informed of relevant activities such that the Licensees and the Undertaker may seek to agree solutions to allow the Undertakers' works and the Licensees' works to successfully co-exist as far as reasonably practicable or if later until completion of activities required under any statutory decommissioning plan required under the Petroleum Act 1998 in relation to the Licence and taking place within the Protected area

#### **<sup>9</sup>Compensation**

- 9. Nothing in this Part of the Schedule shall affect any rights or obligations or assessment of compensation in accordance with the Ministerial Statement and the DECC Guidance (as applicable)

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<sup>8</sup> Specific arbitration provisions have been included to clarify appointment, timescale and terms of reference. No amendment to Article 33 of the Order is then required.

<sup>9</sup> A saving clause has been included (as in earlier drafts of the protective provision) in respect of compensation under the DECC Guidance