



**SCOTTISHPOWER
RENEWABLES**

East Anglia ONE North and East Anglia TWO Offshore Windfarms

Applicants' Comments on SEAS' Complaint

Applicant: East Anglia TWO and East Anglia ONE North Limited
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Applicable to East Anglia ONE North and East Anglia TWO



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Description of Revisions			
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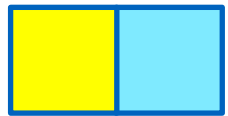


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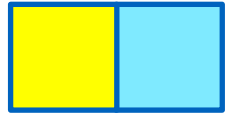
Glossary of Acronyms

APP	Application Document
AS	Additional Submission
DCO	Development Consent Order
ES	Environmental Statement
PD	Procedural Decision
SEAS	Suffolk Energy Action Solutions



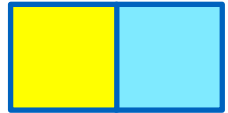
Glossary of Terminology

Applicant	East Anglia TWO Limited / East Anglia ONE North Limited and for the purposes of this submission includes ScottishPower Renewables (UK) Limited
East Anglia ONE North project	The proposed project consisting of up to 67 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure.
East Anglia ONE North windfarm site	The offshore area within which wind turbines and offshore platforms will be located.
East Anglia TWO project	The proposed project consisting of up to 75 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure.
East Anglia TWO windfarm site	The offshore area within which wind turbines and offshore platforms will be located.



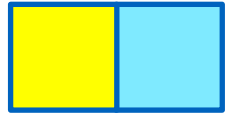
1 Introduction

1. This document presents the Applicants' response to Suffolk Energy Action Solutions (SEAS) Deadline 8 Submissions for ISH14-1A (Negotiation with Affected Persons (REP8-237)).
2. The Applicants' response to the SEAS submission will comprise four sections- Heads of Terms, Option Agreement, [REDACTED] and Conclusions. In terms of Agreements the Applicants' parent Company ScottishPower Renewables (UK) Ltd would enter into the Agreements (for the purpose of this response the word Applicants includes the parent Company as well). The Applicants have reviewed the SEAS submission and do not accept that it presents an accurate description of the legal contracts nor their legal status. This is important in that the Applicants in negotiating with Affected Persons seek to ensure that the Affected Persons have appropriate legal advice and advice of appropriate surveyors. This is to ensure that Affected Persons are able to ask appropriate questions of suitably qualified individuals relating to the potential negotiation and entering into of important long term contracts. The Applicants have sought to engage with all those potentially Affected Persons as early in the process as possible. This is to explain the Projects and also the potential implications of the Projects on the landholding. This early engagement often enables the Applicants to gain useful and relevant information regarding potential sensitivities and issues associated with landholdings.
3. The Applicants' formal negotiations seek to proceed on the basis of what are called Heads of Terms. This is followed by a negotiation period with solicitors and agents and finally the formal execution of a legally binding Option Agreement. The Option Agreement itself will generally have, at the instance of the grantee, the ability to form a legal contract either to purchase land or for a Deed of Grant of Easement to be granted over the land in question. The Applicants have extensive experience in negotiating Option Agreements with landowners and Affected Persons. They appoint both external solicitors and surveyors to assist in the process. The Examination has heard regularly from the surveyors at Dalcour Maclaren and in particular, [REDACTED]. The individuals from Dalcour Maclaren have been extensively involved in meeting with both Affected Persons and their agents throughout this process. The team have remained consistent and the Applicants' feedback from external parties is that they have presented an extremely professional and appropriate channel of communication. At the same time the Applicants have recognised that the COVID-19 pandemic has introduced challenges to individuals both in running their businesses, managing their landholdings and also engaging with professional advisors. Against that background, the negotiation of agreed terms has taken longer than in relation to other projects. The Applicants have allowed



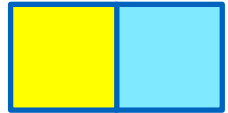
this process to take its course to recognise the challenging circumstances that everyone has had to work under in the last twelve months. The Applicants consider that the description of events portrayed by SEAS' submissions do not represent an accurate or fair depiction of their engagement with Affected Persons. Furthermore, when the detail of the submissions is examined, it is clear that it is based on a misunderstanding of the framework and of the contracts involved.

4. The Applicants will also respond to the specific matters raised by Dr Gimson. It is important at the outset to recognise that Dr Gimson has appeared before the Examination representing different interests. On one hand, he has a Power of Attorney for a relative who owns land within the Order limits and over which the Applicants would seek rights. In addition, Dr Gimson is also a Trustee of the Wardens Trust. It is important in considering his position to understand which interest he is representing at any particular time. The two are separate and distinct. Again, in terms of the SEAS submission, there is considerable confusion at various points as to which interest is being represented at any particular time.
5. This document is applicable to both the East Anglia TWO and East Anglia ONE North Development Consent Order (DCO) applications, and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's procedural decisions on document management of 23rd December 2019 (PD-004). Whilst this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it for the other project submission.



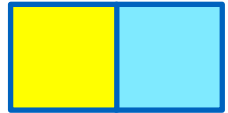
2 Heads of Terms

6. SEAS made considerable play of the role and nature of the document known as the Heads of Terms. This is a document which sets out the key terms of a future formal agreement to be entered into between the parties. It is not a binding contract. In ***Applicants' Response to Letters Submitted in relation to Suffolk Energy Action Solutions (SEAS) Complaint*** (REP7-061), the Applicants attached as Appendix 2 RICS guidance in relation to negotiation of renewables options and leases. It is noted that the technical author for this document is a [REDACTED] from Strutt & Parker. He has been assisted by a wider working group which involves other surveyors and legal input. At section 5.2 of the document, it discusses the concept of Heads of Terms and how they are likely to be helpful in seeking to define a future legal contract. It is clear from the terms of this text that the authors consider that it is good practice for Heads of Terms to be provided. Furthermore, it acknowledges that Heads of Terms will not generally be binding and "should be headed up "subject to contract". It goes on to say they form the principal basis of an agreement. The first point to note is that the version of the Heads of Terms which has been submitted by SEAS at Appendix 5 of their Deadline 8 submission (***Post Hearing Submission – Issue Specific Hearing 14, Item 1A*** (REP8-237)) includes the quote on page 1 "*Without Prejudice Confidential Subject to Planning & Contract*". Those words are important and make it abundantly clear that the signing of the Heads of Terms is a starting point to the negotiation of a subsequent contract. This is extremely standard throughout property transactions and indeed will be familiar to anyone who has bought a house. In addition, at the end of the agreement, there is another specific statement in the following terms, "*The above Heads of Terms represent the main terms for the Option/Deeds of Grant of Easement, but are not supposed to be fully inclusive and are subject to additions to or amendments by the Grantor, the Grantee and their respective solicitors*".
7. In terms of the document which has been submitted by SEAS, unfortunately there appears to have been aspects removed which mean nature of the Heads of Terms cannot properly understood. On page 56 out of 115 of the submission, page 2 starts with some definitions. Text has been omitted above the definitions. This would have given an indication about a heading "*Option Agreement Terms*". Without this text the subsequent Heads of Terms do not really make sense (the Applicants enclose as annex 1 a copy of the relevant page.) The document provides in numbers 1 to 46 clauses or terms which would form the potential basis of an Option Agreement. This is the document which would be in place before a longer term land agreement is called for. In the context of the particular option Heads of Terms in question, the option is to secure what is known as a Deed of Easement. Paragraphs 47 onwards then go on to deal with the terms that would be relevant to the formal Deed of Easement which would



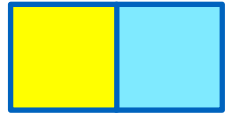
be entered into if the Option Agreement were to be triggered. The Heads of Terms are not legally binding and, in accordance with RICS guidance, appropriate words have been added to make that clear. Any of the Affected Persons who had obtained legal advice would have been given confirmation of that position. SEAS claim the Heads of Terms are legally binding as opposed to setting out potential future contractual terms which would be freely negotiated between parties. The Applicants are aware of Affected Persons who have signed Heads of Terms and made representations to the Examination. At no point have the Applicants suggested that this was somehow a breach of the Heads of Terms. It is not.

8. The Heads of Terms submitted by SEAS contains provisions which are unique to one set of landowners. The landholding has certain unique aspects which mean that forward planning is required to minimise the impact on the landowners in question. This has resulted in extensive negotiations to achieve this. The first Heads of Terms were circulated on 14 January 2020 and a version 4 was finally signed on behalf of the Landowners by their Agent on 21 August 2020. If a full version of the document had been submitted it would have disclosed that the landowners were being represented by a very experienced surveyor from a very highly regarded firm of surveyors and also represented by a senior lawyer at a Regional law firm. This provides a good example of the Applicants trying to work with landowners to minimise the impact of the Projects. This has been achieved by spending the time to understand the needs of the individual landholding. There has been extensive negotiation between agents. The issues relating to landholding have been explained and the Option Agreement will help to mitigate the effects of the Projects.



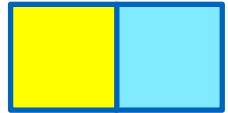
3 Option Agreement

9. In paragraph 31 of the Deadline 8 submission by SEAS, there is a claim that parties have supposedly taken legal advice and that “*their agreements*” prevent them from speaking to SEAS or the ExA. This is under the heading of “*The Option Agreement*”. The Applicants would reiterate that no Option Agreements have been signed and therefore that cannot be accurate. Furthermore, if the claim is being made about the Heads of Terms, it is very clear from the terms of the document itself that it is not a legally binding contract and represents terms to be subsequently negotiated. The position of SEAS on this point is simply incorrect.
10. In terms of the Option Agreement which has been included in SEAS Deadline 8 submission, the first point to note is that it is a generic Option Agreement that has been negotiated between the Applicants’ solicitors and another firm of solicitors. That firm of solicitors represents a number of land interests affected by the Projects. Accordingly, it was agreed between solicitors that a template Option Agreement would be drafted so that the legal terms of that agreement may be agreed and settled. It was the intention that property specific Option Agreements would then be produced based on that template for each of the relevant land interests and to take account of property specific requirements. The respective solicitors agreed this was a sensible and efficient way to progress the preparation of the Option Agreements.
11. The claim that has been made is that this template Option Agreement has been submitted for people to sign. As far as the Applicants are concerned, the document has been circulated by the solicitors to their clients for comment, discussion, advice and instruction. The document itself lacks critical aspects which would allow it to be finalised. For example, Schedule 1 which is a critical part of agreement has yet to be drafted. This demonstrates that it has not been developed to such an extent that it is directly applicable to any individual property. It would have to be updated in due course in negotiation between solicitors. Furthermore, in the context of each individual property, there may well be different aspects which arise over and above the terms of the generic Option Agreement.
12. The Option Agreement deals with matters required by Applicants, but also provides rights and benefits to the landowners. As an example, the Applicants would highlight clause 6 which provides a regime for pre-works drainage and clause 7 which provides for post works drainage. These clauses reflect one of the lessons learnt from East Anglia One. This was that early engagement with landowners and their drainage contractors can be very positive for the forward planning of drainage, both pre works and in the post works drainage regime. In addition there is flexibility in the way compensation can be calculated. Whilst



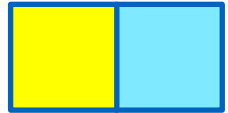
commercial terms have been agreed, clause 10 allows that if at the point of the execution of the actual Option Agreement the particular landowner considers that the valuation is not fair or reflective of the Compulsory Acquisition value, they are afforded a further opportunity to value the compensation. These are all provisions which significantly improve the landowners' position.

13. The Applicants consider it is important to understand that the Option Agreement is far more than just a series of payments, but reflects the long term relationship that is to be established during the option period and for the long term if the option is exercised. This is critical to how the landholding will be managed by the respective parties going forward.
14. In terms of other clauses, SEAS make claims regarding clause 16 which references the requirement not to make further representations or to withdraw submissions already made. The Applicants do not want to rehearse arguments they have already submitted, but these are standard provisions and are reflected in sections 7.13 of the RICS guidance. The purpose and objective of entering into detailed and lengthy commercial negotiations with individual landowners is to seek to ensure that all their concerns are properly dealt with in an agreement. To characterise the Option Agreement as effectively being a series of payments to secure the withdrawal of objections is simply to misunderstand the nature and extent of the Option Agreement and any subsequent Deed of Easement that may follow thereon. This is a document which creates a potential long term relationship between the parties and it covers a wide range of matters including protection for the landowners' interests whilst also at the same time giving extensive rights to the Applicants in delivering the Projects. The whole purpose of the agreement is to ensure that all matters are comprehensively covered and that the parties reach a total agreement. Landowners (Affected Persons) are given the right to appear at any Compulsory Acquisition hearing. The purpose of an Option Agreement is to get to a position in which a landowner does not want nor need to object and appear at any Compulsory Acquisition proceedings.
15. In addition, the context of the whole agreement needs to be considered. For example, clause 38 incorporates a provision of good faith between the grantor and the grantee. If all the matters are adequately dealt with, it would not be "good faith" to enter into an agreement and then subsequently make representations which were completely counter to the agreement that had been reached. The Applicants will come on to deal with Dr Gimson's position in due course, but given the terms of the option agreement, if a party wishes to retain the ability to either object or maintain representations it is necessary for there to be a specific provision to allow that to happen. A second part of clause 16 deals with the potential requirement for the landowner to provide assistance to the grantee in obtaining permissions and consents. This may require information such as the value of crops for calculating funding information or



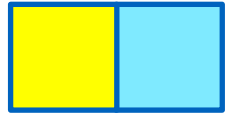
information relating to aspects on their land which would then be necessary in the applications for permission or the discharge of requirements. It is common for there to be such an obligation in an agreement in that the landowner will have information and data which may be of assistance in enabling this to happen. The reason for confidentiality is that often a landowner will not wish to have it declared that they are actively involved with a particular application because of the actions of local groups. There is nothing wrong in such contractual provision and again is standard in an Option Agreement.

16. The terms of the Option Agreement reflects a voluntary negotiated position and the document which you have before you is a generic one. It is yet to have important provisions added and these will relate to the individual property concerned and also the formal document at the end which is the formal deed of grant. It is standard for the Option Agreement to have very specific provisions relating to the individual interests and this is not reflected in the generic document which has been negotiated between the solicitors acting for a number of landowners along the route. The claims made by SEAS are not valid when the full context of the negotiations and agreements are considered. Little weight can be attached to anonymous quotes. The Applicants have demonstrated how they have dealt with landowners in a suitable and appropriate way and this reflects the individual circumstances of the particular landholding.



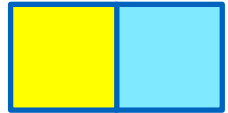
4 Dr Gimson

17. It is important to draw the distinction of Dr Gimson acting under Power of Attorney and Dr Gimson acting as a Trustee of the Wardens Trust. The SEAS submission fails to draw this distinction and again, falls into mistakes as to this position. This is dealt with in paragraphs 82 to 98 of their submission.
18. In the first instance, the Applicants would wish to deal with Dr Gimson as Attorney for the owner of Ness House. The Applicants in their Deadline 7 submission (***Applicants' Response to Letters Submitted in relation to Suffolk Energy Action Solutions (SEAS) Complaint*** (REP7-061)) provided factual background (see pages 2, 3 and 4-the initial negotiations who was involved etc.). Dr Gimson has set out a position in Appendix 1 to the SEAS Deadline 8 Submission (REP8-243).
19. The Applicants have previously dealt with the issue of matters relating to paragraphs 13 and 14 which was effectively the land agent acting on behalf of Dr Gimson as Attorney sending him a copy of a generic document. Dr Gimson signed the first draft of Heads of Terms in January 2020 (although he dated the agreement 2019. This happens frequently in the month of January). Dr Gimson has tried to give the impression of how difficult the negotiations have been. The Applicants attach as annex 2 an email for Dr Gimson to his agent sending back the signed Heads of Terms. The panel can draw their own inferences from what was said. The reference to [REDACTED] is to Dr Gimson's brother in law who is a senior consultant in land management with Strutt and Parker.
20. The timing of the circulation of the draft Option Agreement was not related to his appearance at any hearing, but reflected the fact that after an extensive period of time the generic document which had been negotiated between solicitors had reached a stage where the solicitors acting for the landowners had circulated copies to their clients.
21. Paragraph 15 of Appendix 1 of SEAS' submission reflects commercial terms offered not from just moving fencing and stables, but the whole of an Option Agreement involving two separate projects. Furthermore, the Option Agreement would have been with the party that owned the particular subjects, i.e. the individual who Dr Gimson holds a Power of Attorney on behalf of. In that respect, a clear distinction needs to be drawn between Dr Gimson acting as Power of Attorney and Dr Gimson acting as a Trustee of the Wardens Trust. Any agreement entered into with the party for whom Dr Gimson has Power of Attorney for is an agreement between that party and the Applicants.
22. The Applicants previously narrated how concerns raised by Dr Gimson's agents were responded to with proposed drafting because that was the issue that had been raised in relation to the particular interest that Dr Gimson was representing



as Power of Attorney. The concerns expressed on behalf of that individual related to water. Dr Gimson also made representations on behalf of that interest at a hearing relating to trees. The retention of the trees has been confirmed by the Applicants. It appears that there is confusion between Dr Gimson's various interests. If Dr Gimson signed an Option Agreement on behalf of the party that he was acting as Power of Attorney for, it would have no relevance to submissions that had been made by him on behalf of Wardens Trust. In terms of paragraph 19 of Dr Gimson's position, he claims that they were only offered a narrow carve out. The facts are that at the end of the email of 10 February 2021, [REDACTED] on behalf of the Applicants suggested that agents should discuss the matter with the lawyers acting for Dr Gimson to see if the wording was satisfactory. Since then the Applicants' agents have been contacted by Strutt and Parker on a number of occasions. On 4th March 2021 an email was received from [REDACTED] asking whether an Option Agreement could be entered into whilst retaining the submissions that had been made. There was a further discussion between agents on the 11 and 30th March 2021. It has been made clear that the Applicants will continue with discussions. The ball is in Dr Gimson's court as far as any "exclusion" is concerned. The Applicants do not propose to negotiate with Dr Gimson through submissions to the Examination. He has Agents appointed and the appropriate course of action is for him to provide them with proper instructions. It appears that this has not happened yet.

23. It is not clear from Dr Gimson's statement whether at certain points he is speaking on behalf of himself, on behalf of the interest he has Power of Attorney for or indeed the Wardens Trust as Trustee. This is critical in that they are different interests. This clear failure to recognise these different interests is highlighted in paragraph 37 of his statement. There he states that if he had signed the Option Agreement all the evidence would have to have been withdrawn and these voices silenced. That is not a correct interpretation of the situation. The provisions in relation to the Option Agreement only relate to the interest which Dr Gimson represents as Attorney of the owner of Ness House. The entering into of an Option Agreement only bind the party for whom he has Power of Attorney. It would have no impact upon his ability to carry on making representations in relation to the Wardens Trust or indeed matters which could be agreed to be excluded from the agreement in respect of his Power of Attorney interest.
24. The Applicants would confirm that at all stages they have sought to treat Dr Gimson appropriately and fairly in terms of his interests in respect of which he has Power of Attorney. They have negotiated in good faith with his appointed solicitors and agents and also responded to concerns expressed by them in relation to matters that he has raised.
25. During the Examination process, the Applicants have had ongoing direct dialogue with Dr Gimson in respect of the Wardens Trust. These discussions



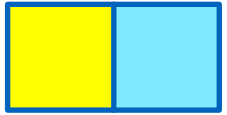
have been undertaken in good faith and with the intention of gaining a better understanding the Wardens Trust's concerns and how they can be managed effectively. The Applicants will continue to have dialogue with Dr Gimson on this matter.

26. In addition to responding directly to Dr Gimson's comments, the Applicants would also wish to respond to the section of paragraphs 82 to 99 of the SEAS submission regarding Dr Gimson. It fundamentally misunderstands Dr Gimson's various roles and the agreements in play. In essence, the whole section proceeds upon the assumption that if Dr Gimson entered into a contract on behalf of the party that he had a Power of Attorney for, it would somehow restrict his ability to give evidence on behalf of the Wardens Trust. The terms of paragraph 91 reflect what was requested by Dr Gimson's agents and the concerns that he expressed at the time. The drafting on this point sits with Dr Gimson and his professional advisors. This again demonstrates that SEAS do not have a basic understanding of the legal framework. The difficulty with responding to these matters is that the claims proceed upon a complete misinterpretation of the basic facts. For example, Dr Gimson in a personal capacity has been offered absolutely nothing. Any arrangements have been offered to the party that has the property interest. It is clear from paragraph 92, that SEAS do not understand the basic premise of the different legal interests that Dr Gimson represents.
27. Paragraph 95 represents a conversation about the Wardens Trust and has nothing to do with Dr Gimson as Power of Attorney.



5 Conclusions

28. The Applicants have conducted their negotiations with Affected Persons in an entirely appropriate manner. The process has been one where parties have been provided with appropriate representation to ensure that they enter into any contract having been properly advised of the implications. The process has not been one which seeks to pressurise individuals. That is obvious from the fact that no Option Agreement has been concluded. No Option Agreements have been executed and therefore no option fees in relation to any of the contracts have been paid. Again, SEAS have misinterpreted the information before the Examination. They have claimed that £24.42m has been paid as “*incentive payments to induce landowners to enter into gagging and non-opposition obligations*”. This statement is just a further example of the inaccuracy prevalent throughout the SEAS submission. In addition, the submissions made by Dr Gimson fail to distinguish between the interests he represents and also the fact that he has not responded to the material submitted to his agents back in February 2021.



Appendix 1 Heads of Terms

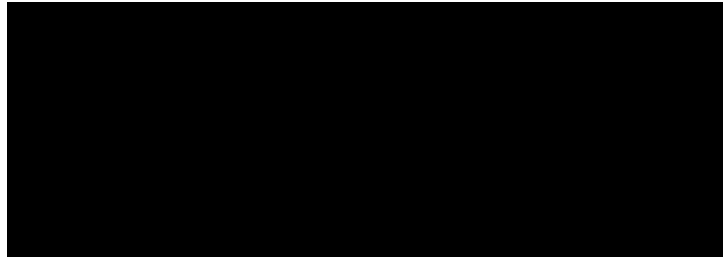


HEADS OF TERMS
in Respect of an Option Agreement and Deeds of Grant of Easement
at [REDACTED]

Without Prejudice
Confidential Subject to Planning & Contract

Date and version 22nd May 2020

Grantor



Other Interests

TO BE CONFIRMED there are no tenants, occupiers, lessees, or other rights affecting the Option Land and no third-party consents are required for the Option Agreements, Easements or Leases.

Grantee

SCOTTISHPOWER RENEWABLES (UK) LIMITED

Projects:

EA1N

(Offshore Wind Farm):

East Anglia One North Limited (Company Number 11121800)
3rd Floor
1 Tudor Street
London
EC4Y 0AH

EA2

(Offshore Wind Farm):

East Anglia Two Limited (Company Number 11121842)
3rd Floor
1 Tudor Street
London
EC4Y 0AH

Grantor's Agent:





Grantor's Solicitor:



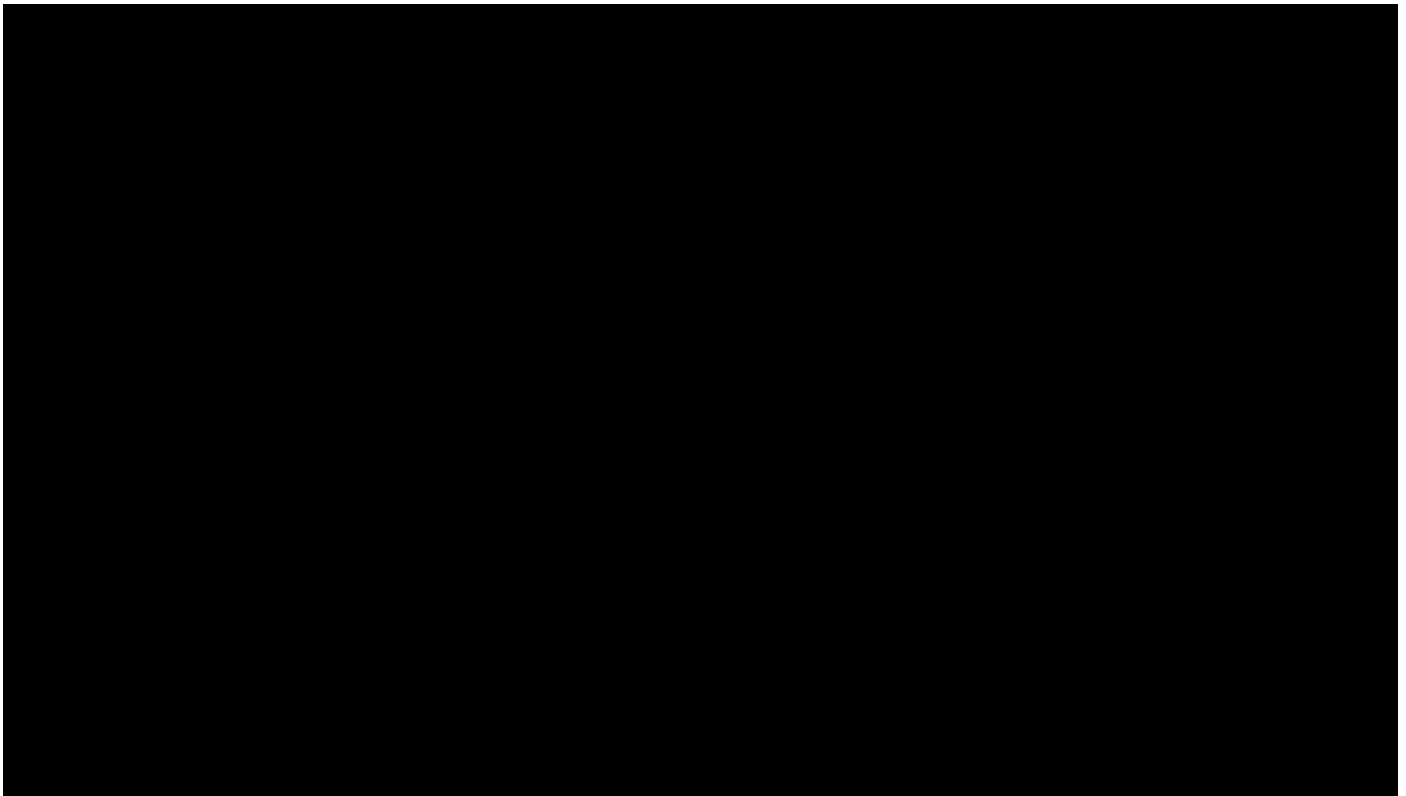
Grantee's Agent:

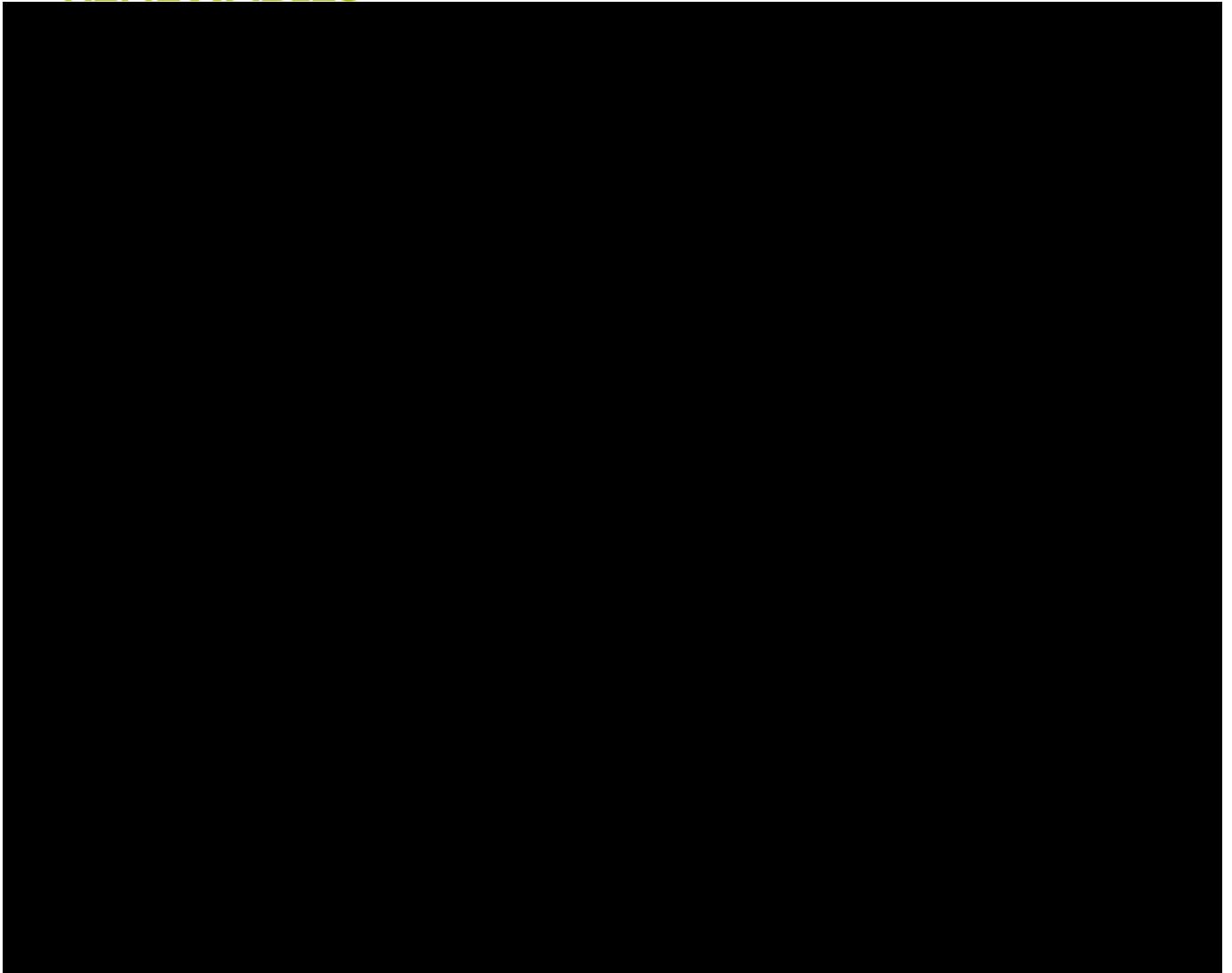
Rob Lees MRICS
Dalcour Maclaren
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The Quadrangle
Crewe Hall
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CW1 6UY

Grantee's Solicitor:

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Condor House
10 St. Paul's Churchyard
London
EC4M 8AL

Revision	Issued On	Issued By
1	14 th January 2020	Rob Lees
2	27 th May 2020	Harry Hyde
3	7 th August 2020	Rob Lees
4	21 st August 2020	Rob Lees

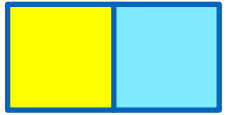




Option Agreement Terms:

The Grantee may call for up to two Easements (one for EA1N and one for EA2) to be granted over all or part of the Option Land. Each Easement will be in accordance with these Terms:

1.	Grantor's Property	The land belonging to the Grantor contained within HM Land Registry Title(s) [REDACTED]
2.	Option Land	The land shown [REDACTED]
3.	Initial Option Period	10 years from the date of the Option Agreement.
4.	Extended Option Period	The Grantee may extend the Initial Option Period by a further 3 years by serving on the Grantor not less than one month before the expiry of the Initial Option Period a written notice on the Grantor and paying to the Grantor the Option Extension Fee.



Appendix 2 Dr Gimson's Email

From: [REDACTED]

Sent: 21 January 2020 18:30

To: Sam JENNINGS <[REDACTED]> 'Gimson, Alexander'

<[REDACTED]>; Christopher Orme <[REDACTED]>

Subject: RE: Scottish Power - EA One North & Two - Gimson - Terms for Signature

Sam,

Herewith the HOT signed in two places incl the Plan

Christopher will be reading the document in full, so unless you hear anything before 11.00 tomorrow morning, please send it off to the Solicitors

Thanks for your help and hope the skiing is good

BW

Alexander
