

FOR THE PROTECTION OF HORNSEA 2

Application

1. For the protection of Hornsea 2 referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Hornsea 2, have effect.

Interpretation

2. In this Part of this Schedule-

“Hornsea 2” means Optimus Wind Limited (registered number 07883284), Breesea Limited (registered number 07883217), Sonningmay Wind Limited (registered number 10722635) and Soundmark Wind Limited (registered number 10721881) [and in substitution therefor their successors to Hornsea 2’s interests and/or the Hornsea 2 apparatus];

“Hornsea 2 apparatus” means any conduit cables ducts pipes or other apparatus or equipment belonging to or maintained by Hornsea 2 for the purposes of the transmission of electricity and includes any structure in which such apparatus is lodged and where such apparatus is or is to be maintained [within Plots X];

“Hornsea 2’s interests” means any interest or right in land held by Hornsea 2 or which Hornsea 2 has the right or power to obtain [within Plots X];

“in” in a context referring to rights, interests or apparatus in land includes a reference to under, over, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“protected area” means the area within 10 metres in all directions of each point from the Hornsea 2 apparatus or Hornsea 2 interests;

“works” means any future works undertaken by or on behalf of the undertaker to install, maintain, alter, inspect, repair, renew, decommission or remove in whole or in part land or apparatus in the protected area.

Acquisition of land

3. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or cables of Hornsea 2 other than by agreement, such agreement not to be unreasonably withheld.

Protection of Hornsea 2 from works

4. (1) Before any works are commenced the undertaker must submit to Hornsea 2 plans and sections of the proposed works and such further particulars as Hornsea 2 may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

(2) The undertaker must not commence any works to which sub-paragraph 1 applies until Hornsea 2 has given written approval of the plan so submitted.

(3) Any approval of Hornsea 2 required under sub-paragraph 2 —

- (a) may be given subject to reasonable conditions; and,
- (b) must not be unreasonably withheld.

Costs

5. (1) The undertaker must repay to Hornsea 2 all reasonable fees, costs, charges and expenses properly and reasonably incurred by them in relation to these protective provisions, in respect of-

- (a) the consideration and approval of the works under paragraph 4; and
- (b) the attendance of a representative of Hornsea 2 during the undertaking of any works in the protected area.

(2) Hornsea 2 must provide the undertaker with such estimates of and evidence in relation to any fees, costs, charges or expenses to which sub-paragraph (1) does or may apply as the undertaker may reasonably request.

(3) The undertaker will indemnify and keep Hornsea 2 indemnified against all reasonable costs, charges, damages, expenses, loss, demands, proceedings, claims or penalty which may be reasonably incurred by Hornsea 2-

- (a) by reason of the works or the failure of them; and/or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the works.

(4) Hornsea 2 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (3) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

Access

6. If in consequence of the powers granted under this Order the access to any Hornsea 2 apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Hornsea 2 to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expert determination

7.—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;

(e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;

(f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;

(g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;

(h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;

(i) the constructability notes; and

(j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.