
BP'S RESPONSE TO DEADLINE 4

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Deadline 4 submission

BP'S RESPONSE TO DEADLINE 4

1. BP'S PROTECTIVE PROVISIONS – VERSION 3

- 1.1 As part of its response to Deadline 3 (Examination Library ref: [REP3-047](#)), BP Exploration Operating Company Limited ("bp") submitted its summary of oral case and written submissions from Issue Specific Hearing 1 (ISH1) (Appendix 4, electronic page 80 of [REP3-047](#)).
- 1.2 bp's submissions related to Agenda Item 8 of ISH1, specifically the respective protective provisions separately proposed by Orsted Hornsea Project Four Limited ("Orsted") and bp and matters relating to the same.
- 1.3 During ISH1, the Examining Authority had queried whether it would be appropriate to introduce (on a without prejudice basis) conditionality to the proposed effect of the protective provisions put forward by bp (version 2 of bp's proposed protective provisions and the accompanying plan were set out in Annex 3 to bp's Deadline 2 submission ([REP2-062](#), electronic page 20).
- 1.4 This question was prompted by Orsted's proposed protective provisions (latest version shown in Part 8 of Schedule 9 of the amended Draft DCO submitted at Deadline 3, [REP3-007](#), electronic page 113) being conditional on bp's relevant Carbon Storage Licence (Carbon Dioxide Appraisal and Storage Licence CS001) not having been terminated and the Endurance consents having been obtained within four months of the coming into force of the Hornsea 4 DCO (showing an increase from the previous version of the DCO which stipulated a 'three month' period).
- 1.5 bp explained at ISH1 that it did not consider such conditionality to be appropriate or necessary in view of the advanced stage of the NEP project and, in the unlikely counter-factual scenario where the NEP project did not proceed, that the SoS may still wish to safeguard the future ability to utilise the Endurance aquifer for carbon storage, whether by bp or alternative developers, so requiring the same 'Exclusion Area' proposed by bp in its protective provisions (see paragraph 2.16 of Appendix 4 of bp's Deadline 3 submission, [REP3-047](#), electronic page number 85).
- 1.6 That remains bp's primary position; however, in acknowledgment of the ExA's request to consider alternative drafting on a without prejudice basis to inform a recommendation and/or decision in circumstances where the ExA or the SoS were to disagree with bp's position (as listed in the ExA's Action point 47 from ISH1 [here](#)), bp has prepared a revised version of its protective provisions, showing proposed amendments to give effect to such conditionality in square-brackets and tracked-changes. The revised protective provisions are included as Appendix 1 to this submission, and the changes provide for:
- 1.6.1 a longstop date of 5 years after the coming into force of the Hornsea Four DCO, within which the Necessary Consents (as defined) must have been obtained, failing which the protective provisions shall cease to have effect;
- 1.6.2 the ability for the SoS to exercise their discretion to extend this period where necessary; and
- 1.6.3 confirmation that in circumstances where the Longstop Date (as defined) is triggered, the Interface Agreement shall nevertheless remain disappplied in accordance with paragraph 6 of the provisions.
- 1.7 To elaborate on the reasoning behind each of these points in turn:

- 1.7.1 bp considers 5 years to be an appropriate longstop date building in a period of time to cater for any unforeseen delays to the consenting process for the NEP project which may emerge (be it through the examination or determination of the relevant consent applications or any resultant legal challenge), whilst still having sufficient nexus to the current NEP project proposal (if that is what the ExA/SoS considers important for the purpose of this provision).
- 1.7.2 bp has explained previously that it anticipates securing the necessary consents for the NEP project by June 2023 (see paragraph 5 of Appendix 5 to bp's Deadline 3 submission, [REP3-047](#), electronic page 89). If, however, a shorter longstop date period were to be prescribed, this would create the risk that the protection could end prematurely if unforeseen delays were experienced (e.g. where the SoS/NSTA asked for additional information, triggering additional consultation and/or any consequent legal challenge process). That risk may potentially, in turn, undermine the deliverability of (and investor confidence in) the NEP project, so frustrating the central underlying reason for bp's proposed protective provisions.
- 1.7.3 bp considers it would be appropriate in the public interest for the SoS to have the ability to extend the longstop date period further if circumstances merited without needing to vary the DCO itself. This could be required to provide for minor extensions to the 5 year period in view of any continued unforeseen delays to the NEP project, or to preserve the future viability of the Endurance aquifer for carbon storage, whether by bp or alternative developers, so requiring the same 'Exclusion Area' proposed by bp in its protective provisions. The SoS would be best placed to determine whether this is appropriate at that future point and it would be inappropriate to require a formal variation to the DCO to be obtained to give effect to such an extension. Furthermore, only the person who applied for the DCO or a successor in title (or, where relevant, any other person for whose benefit the development consent order has effect) may apply for a change to a made DCO, and in this case the impetus to change the longstop date is likely to come from a third party not falling within such criteria.
- 1.7.4 bp considers that independent of the engagement of the Longstop Date, it remains appropriate and important for the Interface Agreement (IA) to continue to be disappplied. The rationale for its disapplication has been set out in bp's previous submissions at length (e.g. Annex 2 of bp's Deadline 2 submission, [REP2-062](#), electronic page 16). It is acknowledged that the potential liability/risk to the NEP project itself and bp as its proposed operator pursuant to the terms of the IA may no longer apply in circumstances where the NEP project is not proceeding and the Longstop Date has been triggered; however, were the IA to come back into effect, it would nevertheless continue to represent an impediment to any successor carbon storage project so undermining the future viability of the Endurance aquifer for carbon capture and storage (as discussed above). That would clearly be contrary to the substantial public interest in preserving the ability to use the aquifer for those purposes in line with Government policy for addressing climate change. Further, in the counter-factual scenario where there is no foreseeable carbon storage prospect for the Endurance aquifer and the SoS is content that it is not necessary to safeguard the area for any potential future use, then there is no longer any need for the IA as there would no longer be an 'interface' between the respective carbon and wind projects in the Overlap Zone (as defined), so further supporting its continued disapplication.
- 1.8 As noted above, these submissions and the alternative form of wording included in the protective provisions at Appendix 1 to this Response to Deadline 4 are provided without

prejudice to bp's primary position that such conditionality is not necessary, nor appropriate for the reasons previously advocated.

- 1.9 Instead, bp would submit that in circumstances where the SoS is satisfied that bp's arguments in relation to the need for the Exclusion Area (as defined in the Protective Provisions) are well-founded and its protective provisions are included in circumstances where the Hornsea 4 DCO is made, any argument for dilution of that central protection would be misplaced given the geological significance of the Endurance aquifer for carbon storage, and the substantial public interest importance of preserving the potential to use it for that purpose. That significance, and its public interest importance, will not change.
- 1.10 Separately, and to make minor corrections to bp's submissions in paragraphs 2.1.1 and 2.1.2 from its "Summary of Oral Case and Written Submissions from ISH1" (Appendix 4 of bp's Deadline 3 response, [REP3-047](#), electronic page 83):
 - 1.10.1 the Exclusion Area as defined in bp's protective provisions totals 112.851km² (not 110km² as previously communicated in the above-referenced paragraph 2.1.1); and
 - 1.10.2 the Notification Area totals 20.086km², meaning the cumulative total of the Exclusion Area and the Notification Area totals 132.937km² (not 130km² as previously communicated in the above-referenced paragraph 2.1.2).
- 1.11 Orsted highlighted these minor discrepancies as part of their response to Deadline 3 ([REP3-045](#), electronic page 5), and the above confirms bp's agreement with Orsted on the size of those specified areas.
- 1.12 To confirm for completeness, no change is required to the table of coordinates defined in bp's protective provisions, which already accurately reflected the above clarified geographic areas.

2. THE INTERFACE AGREEMENT

- 2.1 As part of its response to Deadline 3, bp included a copy of the IA, together with a summary of its terms and justification for its disapplication pursuant to bp's proposed protective provisions (Appendices 2 and 3, [REP3-047](#), electronic pages 37 and 69 respectively).
- 2.2 For completeness, bp has further included as Appendices 2 and 3 to this Deadline 4 submission, copies of:
 - 2.2.1 a Deed of Adherence and Variation dated 12 September 2016 between (1) The Crown Estate Commissioners (TCE) (2) Smart Wind Limited (3) Carbon Sentinel Limited and (4) Orsted; and
 - 2.2.2 a Deed of Covenant and Adherence dated 10 February 2021 between (1) TCE (2) Orsted (3) Smart Wind Limited (4) Carbon Sentinel Limited and (5) BP Exploration Operating Company Limited.
- 2.3 These subsequent agreements were entered into to record changes to the named parties to the IA (as the relevant 'wind' and 'carbon entities' changed over time and reflecting how Orsted and bp came to be the relevant parties for the purposes of the current submissions) and also (in terms of the 2016 Agreement) to record minor updates to defined terms in the IA to reflect changes in the nomenclature of the associated agreements between Orsted and TCE, specifically the termination of Orsted's Zone Development Agreement with TCE and its replacement with project specific AfLs for each of the projects in the Hornsea Zone, including Hornsea Project Four.
- 2.4 These subsequent agreements do not vary or alter the practical effect of the key operative provisions to the IA and so are not considered relevant to the discussions/submissions made in its respect to date, other than to note their existence and so have been provided for completeness. The definition of the "interface agreement" in both Orsted's and bp's

protective provisions reference the existence of these subsequent agreements as well as the original.

APPENDIX 1
BP'S PROTECTIVE PROVISIONS – VERSION 3 (WITHOUT PREJUDICE)

**SCHEDULE [], PART []
Protection for Carbon Dioxide
Appraisal and Storage Licensee(s)**

Application:

1. For the Protection of the Licensee(s) from time to time of United Kingdom Carbon Dioxide Appraisal and Storage Licence CS001, unless otherwise [\[provided for in this Schedule or\]](#) agreed in writing between the Undertaker and the Licensee the provisions of this part of this Schedule shall have effect.

Interpretation:

2. In this Part of this Schedule—

"Activity" or "Activities" means either (i) the activity or those activities (as appropriate) that the Licensee plans to undertake within the Exclusion Area or (ii) the Undertaker's Works and/or any other activity or activities (as appropriate) which the undertaker is proposing that may have an impact on the Licensee's activities within the Exclusion Area;

"Applicable Laws" 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;

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

"BP Exploration Operating Company Limited" means BP Exploration Operating Company Limited, with Company Registration Number 00305943, whose registered office is at Chertsey Road, Sunbury On Thames, Middlesex TW16 7BP;

"Carbon Sentinel Limited" means Carbon Sentinel Limited, with Company Registration Number 08116471, whose registered office is at 1-3 Strand, London WC2N 5EH;

"Consultation Process" means the consultation processes undertaken by or on behalf of an Entity in respect of its project as required by an Applicable Law and/or regulation but excluding any bilateral consultations between the Entity and a particular individual or organisation;

"Entity" means the undertaker or the Licensee as appropriate and "Entities" means both of them;

"Exclusion Area" means any area within the area coloured yellow on the Protective Provisions Plan and as delineated in the Table of Co-Ordinates;

"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;

"Interface Agreement" means the agreement dated 14 February 2013 between (1) The Crown Estate Commissioners (2) Carbon Sentinel Limited and (3) Smart Wind Limited, as varied and adhered to by an agreement dated 12 September 2016 between (1) The Crown Estate Commissioners (2) Smart Wind Limited (3) Carbon Sentinel Limited and (4) the Undertaker and a Deed of Covenant and Adherence dated 10 February 2021 between (1) The Crown Estate Commissioners (2) the Undertaker (3) Smart

Square bracketed wording is included on a without prejudice basis as described in bp's Deadline 4 submission

Wind Limited (4) Carbon Sentinel Limited and (5) BP Exploration Operating Company Limited, or such other agreement as may be entered into by the parties in substitution for those agreements;

“Licence” means the United Kingdom Carbon Dioxide Appraisal and Storage Licence CS001;

“Licensee” means the licensee from time to time of the Licence (or any one of them);

“Longstop Date” means:

(a) the date five (5) years after the coming into force of this Order; or

(b) such later date as may be notified to the Entities in writing from time to time by the Secretary of State;]

"Necessary Consent" means all consents, licenses, permission, orders, exemptions and approvals required from any Authority in relation to the Activities and shall include, for the avoidance of doubt, all assessments that may be required to be undertaken before the issue of any of the foregoing;

"Notification Area" means any area within the area coloured turquoise on the Protective Provisions Plan and as detailed in the Table of Co-Ordinates;

“Plan of the Undertaker’s Works” means a construction programme, method and details of the proposed location of the Undertaker’s Works and minimum requirements known at that time such as safety in accordance with Good Offshore Wind Farm Construction Practice and Applicable Laws to enable the Undertaker to construct and operate the Undertaker’s Works;

“Smart Wind Limited” means Smart Wind Limited, with Company Registration Number 07107382, whose registered office is at 5 Howick Place, London, England SW1P 1WG;

“The Crown Estate Commissioners” means The Crown Estate Commissioners on behalf of Her Majesty the Queen, acting in exercise of the powers of the Crown Estate Act 1961;

"the Protective Provisions Plan" means the plan entitled Protective Provisions Plan and certified as the Protective Provisions Plan for the purposes of this Part of this Schedule;

"the Table of Co-Ordinates" means the following table:

Exclusion Area	
Latitude	Longitude
54°8'51.929"N	1°0'34.075"E
54°9'13.497"N	1°0'43.850"E
54°10'49.480"N	0°58'21.782"E
54°12'37.143"N	0°58'31.095"E
54°12'17.413"N	1°12'18.263"E
54°10'48.297"N	1°15'35.528"E
54°9'52.770"N	1°13'54.364"E
54°8'17.458"N	1°11'0.989"E
Notification Area	
Latitude	Longitude
54°7'57.201"N	1°0'9.286"E
54°8'51.943"N	1°0'34.082"E
54°8'17.458"N	1°11'0.989"E
54°9'52.770"N	1°13'54.364"E
54°7'57.603"N	1°13'55.408"E

"Undertaker's Works" means the indicative works permitted by this Order.

Square bracketed wording is included on a without prejudice basis as described in bp's Deadline 4 submission

The Undertaker's Works

3. The undertaker must not construct any of the authorised project within the Exclusion Area.
4. The undertaker must not commence construction of any of the authorised project within the Notification Area unless the undertaker has submitted to the Licensee, not less than 56 days' prior, a Plan of the Undertaker's Works within that area and must have regard to any written representation received from the Licensee on the same.
5. Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing construction, a new plan, instead of the plan previously submitted in accordance with paragraph 4 above, and having done so the provisions of this Schedule will apply to and in respect of the new plan.

Interface Agreement

6. From the date of this Order, the Interface Agreement shall no longer have effect, and no claim may be made, nor award granted, for any damages as a result of any alleged antecedent breach of the Interface Agreement prior to the date of this Order.

Collaboration

7. Each Entity shall consult early and fully with the other as part of any Consultation Process it is conducting for the purpose of applying for and procuring any Necessary Consent required in connection with their Activities (as relevant).
8. The Entities shall set up an interface management group comprising the project managers for each Entity's proposed Activities, and such other technical person as each determines necessary, who shall meet at six monthly intervals or at such frequency as the Entities reasonably determine necessary to discuss and understand the respective Entities' Activities and their impact on each other's Activities.
9. In or pursuant to such six monthly meetings held in accordance with paragraph 8 above, each Entity shall act reasonably in providing to the other Entity information (other than third party proprietary information) on its Activities, and such information shall be at a sufficient level of detail to allow the other Entity to understand the impact on their proposed Activities.
10. The Entities shall act in good faith in seeking to negotiate any crossing agreement required to facilitate each Entity's projects. The form of crossing agreement will be based on the Oil and Gas UK Industry Model Form: Pipeline Crossing Agreement (2015) or such other form published by Oil and Gas UK as may be current from time to time amended as necessary to reflect crossing of a pipeline by an electricity cable or cables, or vice versa.

[Longstop Date

11. If the Licensee has not obtained by the Longstop Date the Necessary Consents to undertake its Activities, the provisions of this Part of this Schedule shall cease to have effect, subject to paragraph 12.

12. Notwithstanding the operation of paragraph 11, paragraph 6 (Interface Agreement) shall remain in effect.]

Notices

~~13~~14. Any notice or other written communication required shall be sufficient if made or give to the other Party by personal delivery or by first class post, postage prepaid, to the address set out below:

if to the undertaker, at:

Square bracketed wording is included on a without prejudice basis as described in bp's Deadline 4 submission

[]

if to the Licensee at:

[REDACTED]

Email: [REDACTED]

Address: [REDACTED]

By way of copy to [REDACTED]

Email: [REDACTED]

Address: [REDACTED]

1412. Notices or written communications made or given by personal delivery shall be deemed to have been sufficiently made or given when sent (receipt acknowledged), or if posted, 5 business days after being placed in the post, postage prepaid, or upon receipt, whichever is sooner.

APPENDIX 2
DEED OF ADHERENCE AND VARIATION TO THE IA (DATED 12 SEPTEMBER 2016)

Dated 12th September 2016

THE CROWN ESTATE COMMISSIONERS

SMART WIND LIMITED

CARBON SENTINEL LIMITED

and

SMART WIND SPC6 LIMITED

**DEED OF ADHERENCE AND VARIATION
relating to an Interface Agreement dated
14 February 2013**

THIS DEED is made the 12th day of September 2016

BETWEEN:

- (1) **THE CROWN ESTATE COMMISSIONERS** on behalf of Her Majesty acting in exercise of the powers of The Crown Estate Act 1961 (the **Commissioners**);
- (2) **SMART WIND LIMITED** (company number 07107382) having its registered office at Dong Energy, 5 Howick Place, London SW1P 1WG (**Smart Wind**);
- (3) **CARBON SENTINEL LIMITED** (company number 08116471) (previously known as National Grid Twenty Nine Limited) having its registered office at 1-3 Strand, London WC2N 5EH;

(each, an **Existing Party** and together, the **Existing Parties**); and
- (4) **SMART WIND SPC6 LIMITED** (company number 08584182) having its registered office at Dong Energy, 5 Howick Place, London SW1P 1WG (**SPC6**)

BACKGROUND:

- (A) The Existing Parties are parties to an interface agreement dated 14 February 2013 (the **Interface Agreement**). The Interface Agreement was intended to provide a mechanism to ensure successful co-existence of wind and carbon storage projects on an overlapping area of sea bed.
- (B) SPC6 has entered into an agreement for lease with the Commissioners (the **HOW04 AfL**) in respect of, among other areas, part of the Overlap Zone (as that term is defined in the Interface Agreement).
- (C) Clause 8.2 (*Succession*) of the Interface Agreement requires Smart Wind to procure that SPC6 enters into a deed of covenant in favour of the Existing Parties, in which it agrees to perform and observe the obligations on the part of the Wind Entity (as that term is defined in the Interface Agreement) in so far as they relate to that part of the Overlap Zone the subject of a Wind AfL.
- (D) The ZDA (as that term is defined in the Interface Agreement) having terminated, the Existing Parties, with the consent of SPC6 wish to vary the Interface Agreement on the terms set out in clause 3 of this Deed.

IT IS HEREBY AGREED as follows:

1 Interpretation

- 1.1 Save where defined otherwise or the context otherwise requires, the words and expressions used in this Deed shall have the meanings given to them in the Interface Agreement.
- 1.2 The principles of construction set out in the Interface Agreement shall have effect as if set out in full in this Deed.

2 Adherence to the Interface Agreement

- 2.1 SPC6 acknowledges to each Existing Party that it has read and understood the Interface Agreement.

- 2.2 SPC6 covenants to perform and observe the obligations on the part of a Wind Entity contained within the Interface Agreement insofar as they relate to that the part of the Overlap Zone which is the subject of the HOW04 AfL.
- 2.3 The Existing Parties agree to perform and observe the obligations on their respective parts contained within the Interface Agreement so far as SPC6 is concerned and undertake to SPC6 that they will comply with the terms and conditions set out in the Interface Agreement all of which remain binding on the Existing Parties as if SPC6 were originally a signatory to the Interface Agreement as a Wind Entity.
- 2.4 The parties acknowledge and agree that, although the HOW04 AfL was not entered into in accordance with the ZDA, it shall be deemed a Wind AfL for the purposes of the Interface Agreement.
- 2.5 The parties acknowledge the termination of the ZDA and agree that, notwithstanding clause 3.2 below, such termination shall have no impact on the operation of the Interface Agreement.

3 Amendment of the Interface Agreement

- 3.1 With effect from the date of this Deed the Interface Agreement shall be varied as set out in this clause 3.
- 3.2 In clause 1.3 of the Interface Agreement:
 - (a) the definition of **Good Industry Practice** shall be amended by substituting the words "mean acting as a Reasonable and Prudent Developer as such term is defined in the Wind AfL" for the words "mean acting as a Reasonable and Prudent Operator as such term is defined in the ZDA";
 - (b) the definition of **Necessary Consents** shall be amended by substituting the words "Wind AfL" for the word "ZDA";
 - (c) the definition of **Relevant Agreements** shall be amended by deleting the words "the ZDA";
 - (d) the definition of **Wind Entity** shall be amended by substituting the words "project company" for the words "Project Company (as defined in the ZDA)";
 - (e) the definition of **Wind AfL** shall be amended by deleting the words "in accordance with the ZDA";
 - (f) the definition of **Wind Lease** shall be amended by deleting the words "the ZDA and"; and
 - (g) the definition of **ZDA** shall be deleted.
- 3.3 The words "Carbon AfL" shall be substituted for the words "Storage AfL" in both the definition of **Proposed Infrastructure** and clause 4.1 of the Interface Agreement.
- 3.4 In Schedule 1, Part 2, the heading "ZDA Area Coordinates" shall be replaced by the heading "Area Coordinates".

4 Miscellaneous

- 4.1 After the date of this Deed, the Interface Agreement shall be read and construed as one with this Deed so that all references in the Interface Agreement to "this Agreement" shall be references to the Interface Agreement as amended by this Deed.

4.2 The provisions of clauses 10.2, 10.5, 10.6 (*Miscellaneous*), 11 (*Third Party Rights*) and 12 (*Confidentiality*) of the Interface Agreement shall be incorporated into this Deed as if set out in full in this Deed and as if references in those clauses to "this Agreement" are references to this Deed.

4.3 This Deed may be executed in counterparts.

5 Governing law

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

6 Jurisdiction

Each party to this Deed agrees to submit to a non-exclusive jurisdiction of the English courts.

THIS DEED has been executed as a deed and it has been delivered on the date stated at the beginning of this Deed.

**THE OFFICIAL SEAL of
THE CROWN ESTATE COMMISSIONERS**
placed here was confirmed as authentic by:

.....

Name: _____

Title: _____

**EXECUTED as a DEED by
SMART WIND LIMITED**

acting by:

.....

Director

in the presence of:

.....

Name of witness:

Address:

4.2 The provisions of clauses 10.2, 10.5, 10.6 (*Miscellaneous*), 11 (*Third Party Rights*) and 12 (*Confidentiality*) of the Interface Agreement shall be incorporated into this Deed as if set out in full in this Deed and as if references in those clauses to "this Agreement" are references to this Deed.

4.3 This Deed may be executed in counterparts.

5 Governing law

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

6 Jurisdiction

Each party to this Deed agrees to submit to a non-exclusive jurisdiction of the English courts.

THIS DEED has been executed as a deed and it has been delivered on the date stated at the beginning of this Deed.

**THE OFFICIAL SEAL of
THE CROWN ESTATE COMMISSIONERS**
placed here was confirmed as authentic by:

.....

Name:

Title:

**EXECUTED as a DEED by
SMART WIND LIMITED**

acting by:

.....

Director

in the presence of:

.....

Name of witness:

Address:

**EXECUTED as a DEED by
CARBON SENTINEL LIMITED**

acting by: /

.....

Director

in the presence of:

Name of witness:

Address:

**EXECUTED as a DEED by
SMART WIND SPC6 LIMITED**

acting by:

.....

Director

in the presence of:

.....

Name of witness:

Address:

**EXECUTED as a DEED by
CARBON SENTINEL LIMITED**

acting by:

.....

Director

in the presence of:

.....

Name of witness:

Address:

**EXECUTED as a DEED by
SMART WIND SPC6 LIMITED**

acting by:

.....

Director

in the presence of:

.....

Name of witness:

Address:

APPENDIX 3
DEED OF COVENANT AND ADHERENCE TO THE IA (DATED 10 FEBRUARY 2021)

Dated: 10 February 2021

- (1) The Crown Estate Commissioners
- (2) Orsted Hornsea Project Four Limited
- (3) Smart Wind Limited
- (4) Carbon Sentinel Limited
- (5) BP Exploration Operating Company Limited

Deed of Covenant and Adherence

relating to an Interface Agreement dated 14 February 2013

THIS DEED is made on 10 February 2021

BETWEEN

- (1) The Crown Estate Commissioners on behalf of Her Majesty acting in exercise of the powers of The Crown Estate Act 1961 (the "**Commissioners**");
- (2) Orsted Hornsea Project Four Limited (company number 08584182) having its registered office at 5 Howick Place, London SW1P 1WG ("**Orsted**");

(each, a "**Continuing Party**" and together, the "**Continuing Parties**")
- (3) Smart Wind Limited (company number 07107382) having its registered office at 5 Howick Place, London SW1P 1WG ("**Smart Wind**");
- (4) Carbon Sentinel Limited (company number 08116471) (previously known as National Grid Twenty Nine Limited) having its registered office at 1-3 Strand, London WC2N 5EH; (the "**Outgoing Party**")

(the Continuing Parties, Smart Wind and the Outgoing Party each being, an "**Existing Party**" and together, the "**Existing Parties**"); and

- (5) BP Exploration Operating Company Limited (registered number 00305943) whose registered office is at Chertsey Road, Sunbury-on-Thames, Middlesex TW16 7BP (the "**Incoming Party**").

BACKGROUND

- (A) At the date of this Deed, the Existing Parties are parties to an interface agreement dated 14 February 2013 between (1) the Commissioners (2) the Outgoing Party (as it was then known) and (3) Smart Wind as varied by a deed of adherence and variation dated 12 September 2016 between (1) the Commissioners (2) Smart Wind (3) the Outgoing Party (as it is now known) and (4) Orsted (the "**Interface Agreement**"). The Interface Agreement provides, among other things, a mechanism for the co-existence of wind and carbon storage projects on an overlapping area of sea bed together with compensation and dispute resolution provisions in the alternative.
- (B) The Outgoing Party was the original holder and operator of the Carbon Dioxide Appraisal and Storage Licence CS001 dated 6 November 2012 granted by the Secretary of State for Energy and Climate Change under Section 18 of the Energy Act 2008 (the "**Store Licence**").
- (C) By a deed of assignment dated 30 September 2020 the Outgoing Party, the Incoming Party, Equinor New Energy Limited ("**Equinor**") and The Oil and Gas Authority transferred the Store Licence to the Outgoing Party, the Incoming Party and Equinor.
- (D) The Outgoing Party intends to assign an agreement for lease dated 14 February 2013 made between (1) Her Majesty the Queen (2) the Commissioners and (3) the Outgoing Party (the "**Agreement for Lease**") to the Incoming Party in its capacity as operator of the Store Licence on behalf of the Outgoing Party, the Incoming Party and Equinor.
- (E) Clause 8.1 of the Interface Agreement requires the Carbon Entity (as that term is defined in the Interface Agreement) to procure that the Incoming Party enters into a deed of covenant in favour of the Existing Parties, in which it agrees to perform and observe the obligations on the part of the Carbon Entity.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Save where defined otherwise or the context otherwise requires, the words and expressions used in this Deed shall have the meanings given to them in the Interface Agreement and the following words and expressions have the following meanings unless the context otherwise requires:

"Effective Date"	the date of this Deed;
"Obligations"	all of the covenants, undertakings, warranties, duties, liabilities, indemnities and obligations of a party under or in respect of the Interface Agreement including any obligations which are imposed by law into the Interface Agreement or arise in tort as a result of carrying out any obligations or duties pursuant to the Interface Agreement; and
"Working Day"	any day except Saturday Sunday and bank or other public holidays in England.

1.2 The principles of construction set out in Clauses 1.1.1 to 1.1.10 (inclusive) of the Interface Agreement shall have effect as if set out in full in this Deed.

2. COVENANTS AND ADHERENCE TO THE INTERFACE AGREEMENT

2.1 In consideration of the mutual undertakings and obligations contained in this Deed:

- 2.1.1 the Continuing Parties consent to the transfer of all future rights, title and interests and Obligations of the Outgoing Party in or under the Interface Agreement arising on or after the Effective Date by the Outgoing Party to the Incoming Party and that the Incoming Party will be entitled to enjoy such rights, title and interests from and including the Effective Date;
- 2.1.2 the Incoming Party agrees and covenants with the Continuing Parties that it will perform and observe the future Obligations of the Outgoing Party under the Interface Agreement arising on or after the Effective Date and be bound by the terms of the Interface Agreement in every way as if the Incoming Party had at all times with effect from and including the Effective Date been party to the Interface Agreement in place of the Outgoing Party; and
- 2.1.3 the Continuing Parties agree and covenant with the Incoming Party that they will perform and observe the future Obligations of the Continuing Parties under the Interface Agreement arising on or after the Effective Date and be bound by the terms of the Interface Agreement in every way as if the Incoming Party had at all times with effect from and including the Effective Date been party to the Interface Agreement in place of the Outgoing Party.

3. RELEASES

3.1 The Outgoing Party:

- 3.1.1 releases and discharges the Continuing Parties and Smart Wind from all future Obligations howsoever and whenever arising on or after the Effective Date owed to the Outgoing Party; and
- 3.1.2 will remain liable to the Continuing Parties and Smart Wind in respect of all its Obligations accrued prior to the Effective Date.

3.2 The Continuing Parties:

- 3.2.1 release and discharge the Outgoing Party from all future Obligations owed to the Continuing Parties howsoever and whenever arising on or after the Effective Date and from all claims and demands whatsoever and howsoever arising on or after the Effective Date;
- 3.2.2 accept the liability of the Incoming Party under the Interface Agreement instead of the liability of the Outgoing Party for all Obligations (whether to the Continuing Parties or any other person) accruing on or after the Effective Date;
- 3.2.3 acknowledge that no claim whatsoever or howsoever arising can be brought against the Outgoing Party in respect of any liability accruing on or after the Effective Date in connection with the Interface Agreement; and
- 3.2.4 will remain liable to the Outgoing Party in respect of all its Obligations accrued prior to the Effective Date.

3.3 Smart Wind:

- 3.3.1 releases and discharges the Continuing Parties and the Outgoing Party from all future Obligations howsoever and whenever arising on or after the Effective Date owed to Smart Wind;
- 3.3.2 will remain liable to the Continuing Parties and the Outgoing Party in respect of all its Obligations accrued prior to the Effective Date; and
- 3.3.3 as of the Effective Date relinquishes all future rights, title and interests in the Interface Agreement.

3.4 The Continuing Parties:

- 3.4.1 release and discharge Smart Wind from all future Obligations owed to the Continuing Parties howsoever and whenever arising on or after the Effective Date and from all claims and demands whatsoever and howsoever arising on or after the Effective Date;
- 3.4.2 acknowledge that no claim whatsoever or howsoever arising can be brought against Smart Wind in respect of any liability accruing on or after the Effective Date in connection with the Interface Agreement; and
- 3.4.3 will remain liable to Smart Wind in respect of all its Obligations accrued prior to the Effective Date.

4. MISCELLANEOUS

- 4.1 After the date of this Deed, the Interface Agreement shall be read and construed as one with this Deed so that all references in the Interface Agreement to "this Agreement" shall be references to the Interface Agreement and this Deed.
- 4.2 The provisions of clauses 10.2, 10.3, 10.5, 10.6, 11 and 12 (subject to clause 5 of this Deed) of the Interface Agreement shall be incorporated into this Deed as if set out in full in this Deed and as if references in those clauses to "this Agreement" are references to this Deed.
- 4.3 The address and other details of the Incoming Party for clause 9 of the Interface Agreement is as follows:

BP Exploration Operating Company Limited

Address: Chertsey Road, Sunbury on Thames, Middlesex, TW16 7BP

Attention:

Email address:

Copy to:

Email address:

- 4.4 This Deed may be signed by the Parties in counterparts, each and every one of which shall be deemed an original, notwithstanding variations in format or file designation which may result from the electronic transmission, storage and printing of copies of this Deed from separate computers or printers. Documents with signatures transmitted electronically, whether sent via facsimile or as attached files (including PDF), shall be acceptable to bind the Parties and shall not in any way affect this Deed's validity. All such counterparts taken together shall constitute one and the same instrument.
- 4.5 If any provision of this Deed is held to be invalid or unenforceable by any court or other competent authority, all its other provisions will remain in full force.
- 4.6 No person other than a contracting party may enforce any provision of this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999.

5. **CONFIDENTIAL INFORMATION**

- 5.1 For the purposes of clause 12 of the Interface Agreement, the Parties acknowledge that:
- 5.1.1 the Incoming Party has given notice to the Continuing Parties that the Outgoing Party is a person specifically notified to the Continuing Parties to allow disclosure of Confidential Information as a Representative of the Incoming Party; and
- 5.1.2 the Continuing Parties have given their approval to the disclosure of Confidential Information by the Incoming Party to the Outgoing Party pursuant to clause 12 of the Interface Agreement.
- 5.2 In its capacity as a Representative of the Incoming Party, the Outgoing Party agrees to be bound by the terms of clause 12 of the Interface Agreement as at the date of this Deed with respect to Confidential Information received prior to or after the date of this Deed.

6. **GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

7. **JURISDICTION**

Each party to this Deed agrees to submit to a non-exclusive jurisdiction of the English courts.

This document is executed as a deed and delivered on the date stated at the beginning of this document.

THE OFFICIAL SEAL of)
THE CROWN ESTATE COMMISSIONERS)
Hereunto affixed was authenticated by:)

Executed as a deed by)
ORSTED HORNSEA PROJECT FOUR LIMITED)
acting by two directors:)

Signature of director

Signature of director

Executed as a deed by)
SMART WIND LIMITED)
acting by two directors:)

Signature of director

Signature of director

Executed as a deed by)
CARBON SENTINEL LIMITED)
acting by one director)
in the presence of:)

Signature of director

Witness Signature:

Witness Name:

Witness Address:

Executed and delivered as a deed by
**BP EXPLORATION OPERATING
COMPANY LIMITED** under a power of
attorney dated 19 January 2021 on
being signed by ANDREW CHARLES
LANE in the presence of:

.....
Duly Authorised Attorney

Name of witness:

Signature of witness:

Address:

.....

Occupation: