



**SCOTTISHPOWER
RENEWABLES**



East Anglia TWO Offshore Windfarm

Section 111 Agreement with East Suffolk Council

Applicant: East Anglia TWO Limited
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**Applicable to
East Anglia TWO**



SHEPHERD+ WEDDERBURN

AGREEMENT UNDER SECTION 111 OF THE LOCAL
GOVERNMENT ACT 1972 AND OTHER ENABLING POWERS
RELATING TO EAST ANGLIA TWO OFFSHORE WINDFARM

between

East Anglia TWO Limited

and

East Suffolk Council

[25/3] 2021

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THIS DEED is dated

25/3

2021

PARTIES

- 1) **East Anglia TWO Limited**, whose registered office is 3rd Floor, 1 Tudor Street, London, United Kingdom, EC4Y 0AH (Company Number 11121842) (the "Developer"); and
- 2) **East Suffolk Council**, of East Suffolk House, Station Road, Melton, Woodbridge, IP12 1RT (the "Council")

BACKGROUND

- (A) The Developer has made an Application for an Order granting development consent for the Development which was accepted for examination by the Secretary of State on 22 November 2019 pursuant to section 55 of the 2008 Act.
- (B) The Council is the local authority for areas within which part of those elements of the Development above mean low water are situated.
- (C) The Developer has agreed with the Council that this Deed will take effect under Section 111 of the Local Government Act 1972 and other enabling powers on the making of the Order as hereinafter defined.
- (D) The Developer has agreed to provide funds to support access, environmental, ecological, landscape and cultural heritage enhancements in the Council's local authority area.
- (E) The Parties have agreed to enter into this Deed in order to ensure the performance of the obligations contained within the Schedules to this Deed.

OPERATIVE TERMS

1. Definitions and Interpretation

The following definitions and rules of interpretation apply in this Deed:

1.1 Definitions:

"2008 Act"	means the Planning Act 2008 (as amended);
"Application"	means the application for the Order to authorise the Development made under section 37 of the 2008 Act by the Developer and accepted for examination by the Secretary of State on 22 November 2019 with reference number EN010078;
"AONB"	The Suffolk Coast and Heaths Area of Outstanding Natural Beauty;
"Consumer Prices Index"	means the United Kingdom (UK) domestic measure of inflation from month to month in the prices of consumer goods and services in the UK or such successor prices index as may be used as the UK and domestic measure of inflation;
"Development"	means the works for which development consent is sought and to be authorised by the Order, comprising, in summary: (i) an offshore wind turbine generating station comprising up to 75 wind turbine generators, up to one

	meteorological mast and a network of subsea inter-array cables, up to one offshore construction, operation and maintenance platform; up to four offshore electrical platforms, a network of subsea platform link cables; up to two subsea export cables, landfall connection works north of Thorpeness in Suffolk, onshore cables from the landfall to the onshore substation, an onshore substation in the vicinity of Grove Wood, Friston, ecological mitigation and landscaping, other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the Development; and (ii) overhead line realignment works in proximity to Grove Wood, Friston, including permanent realignment of a short section of the northern and southern overhead line circuits including the reconstruction and/or relocation of up to two pylons and construction of up to one additional pylon in order to realign the northern overhead lines and the reconstruction and/or relocation of up to one pylon in order to realign the southern overhead lines, temporary diversion of the northern and southern overhead line circuits, construction of up to three permanent cable sealing end compounds (one of which may include circuit breakers) and underground connections, and associated development including a new national grid substation, accesses, and other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the Development;
"East Anglia One North Agreement"	means the agreement under Section 111 of the Local Government Act 1972 and other enabling powers between the Council and East Anglia One North Limited in respect of the East Anglia One North Windfarm (an application for which was made by East Anglia One North Limited and was accepted for examination by the Secretary of State on 22 November 2019 with reference EN010077);
"Expert"	means an expert having not less than 10 years post qualification experience in the subject matter of the dispute. The expert shall be agreed by the parties to the dispute or in default of agreement appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales, or the President for the time being of the Law Society, or the President for the time being of the Royal Town Planning Institute as appropriate to the subject matter of the dispute, and in the event of a dispute as to which should apply, as decided by the President of the Law Society;
"Fund"	means the total sum of up to £1,339,250 (plus any interest earned on that sum) to be paid in accordance with Schedule 1;
"Implementation"	means beginning to carry out any material operation (as defined in Section 155 of the 2008 Act) for works within the Council's local authority area described in the Order provided that for the avoidance of doubt the carrying out of operations consisting of site clearance, demolition work, archaeological investigations, environmental

	surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, pre-planting of landscaping works, ecological mitigation, creation of site accesses, footpath creation, highway alterations, and erection of welfare facilities shall not constitute a material operation and consequently shall not individually or together constitute implementation for the purposes of this Deed and Implement and Implemented shall be construed accordingly;
"Operation"	means the energising of the Substation;
"Order"	means a development consent order to be made under the 2008 Act pursuant to the Application;
"Parties"	means the Developer and the Council and "Party" shall be construed accordingly;
"Substation"	means the onshore substation constructed under Work No. 30 described in the Order.

- 1.2 Words denoting the singular only shall include the plural and vice versa.
- 1.3 Where any one of the Parties is not a body corporate then unless the context requires otherwise neuter words shall include the masculine or feminine gender (as the case may be).
- 1.4 Words denoting one gender shall include all genders and words denoting persons shall include firms and corporations and vice versa.
- 1.5 References to any party in this Deed shall include that party's successors in title and assigns.
- 1.6 References to a body (and its successors in title) exercising statutory powers and/or functions in this Deed shall unless otherwise specified include any successor in function.
- 1.7 Every covenant in this Deed not to do a particular thing shall be deemed to include a covenant not to cause authorise or permit that thing to be done by another person.
- 1.8 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 1.9 References to any statute or statutory provision includes a reference to:
- 1.9.1 that statute or statutory provision as from time to time amended extended re-enacted or consolidated; and
- 1.9.2 all statutory instruments or orders made pursuant to it.
- 1.10 If any provision of this Deed is found to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.

2. Statutory provisions

- 2.1 This deed is made in pursuance of section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011, section 84(4) of the Countryside and Rights of Way Act 2000 and any other enabling powers.

3. Conditionality

- 3.1 This Deed is conditional upon the making of the Order save for the provisions of Clause 8.1 which shall come into effect immediately upon completion of this Deed.

- 3.2 For the avoidance of doubt this Deed shall cease to have effect (insofar only as it has not already been complied with) if the Order is quashed, cancelled, revoked or expires prior to Implementation.

4. Developer Covenants

- 4.1 The Developer covenants on behalf of itself and its assigns to perform and comply with the obligations within Schedule 1 to this Deed.
- 4.2 The Developer shall notify the Council in writing of the date of Implementation within 30 days of Implementation.
- 4.3 The Developer shall notify the Council in writing of the date of Operation within 30 days of Operation.
- 4.4 In the event of a transfer of the benefit of the provisions of the Order to the extent that they relate to Work No. 1 described in Part 1 of Schedule 1 to the Order by the Developer to any person or body prior to any of the payments within Schedule 1 of this Deed having been made, the Developer covenants with the Council to require the transferee to pay such sums to the Council as have not already been paid, on the same terms as contained in this Deed, subject to those terms not requiring such sums to be paid by the transferee to the Council in so far as the Developer subsequently pays such sums in accordance with the Deed.

5. Council Covenants

- 5.1 The Council covenants on behalf of itself and its successors in function to perform and comply with the obligations within Schedule 2 to this Deed.
- 5.2 Nothing within this Deed shall fetter the statutory rights, powers or duties of the Council as local planning authority or in the discharge of any other statutory function (as the case may be).

6. Indexation

- 6.1 Any sum referred to in Schedule 1 shall be increased by an amount equivalent to the increase in the Consumer Prices Index from the date hereof until the date on which sum is payable.

7. Interest

- 7.1 If any sum referred to in Schedule 1 is not paid by the date on which is sum is payable, the Developer shall be liable to pay interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate of the Bank of England until payment is made.

8. Legal Costs

- 8.1 The Developer hereby agrees to pay the Council on completion of this Deed their reasonably and properly incurred legal costs incurred in the negotiation and execution of this Deed.

9. Notices

- 9.1 Any notice, request, demand or other written communication of any sort to be served on any of the Parties under the terms of this Deed shall be deemed to have been properly made if sent by first class post to the Party on whom that notice, request, demand or other written communication is to be served under this Deed and addressed as follows:
- 9.1.1 the Developer at the address first set out above and marked for the attention of the East Anglia Hub Project Director; and
 - 9.1.2 the Council at the address first set out above and marked for the attention of Head of the Planning and Coastal Management.

10. Rights of Third Parties

- 10.1 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms but for the avoidance of doubt it is further agreed that the exclusion of the application of the Contracts (Rights of Third Parties) Act 1999 shall not prevent all or any future successors to any of the parties to this Deed from being able to benefit or to enforce any of the obligations in this Deed.

11. Dispute Provisions

- 11.1 In the event of any dispute or difference between any of the Parties arising out of this Deed (other than a dispute or difference relating to a question of law or in relation to the interpretation of the Deed) the Parties agree that the matter in dispute shall on the application of any Party be referred to the Expert and it is further agreed that:
- 11.1.1 the determination of the Expert shall be final and binding on the Parties save in the case of manifest or legal error;
 - 11.1.2 the Parties shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;
 - 11.1.3 the Expert's costs shall be borne in such proportions as the Expert may direct failing which the Parties shall each bear their own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of sides to the reference; and
 - 11.1.4 the Expert may be replaced by a fresh appointee in the event of becoming at any time unable or unwilling for any reason to proceed to discharge such function and such fresh appointee shall be appointed in the same manner as the Expert.

12. Governing Law

- 12.1 This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

13. Counterparts

- 13.1 This Deed may be entered into in the form of two or more counterparts each executed by one or more of the parties but taken together shall constitute one instrument.

14. Delivery

- 14.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.
- 14.2 The Developer shall cooperate with and assist the Council with the Council's use of the Fund.

SCHEDULE 1 DEVELOPER COVENANTS

The Developer covenants with the Council to pay the Council the Fund as follows:

1. Prior to or upon Implementation, to pay the Council the sum of £200,000 for the purposes specified in paragraph 2 of Schedule 2.
2. Prior to or upon Implementation, in the event that such sum has not already been paid to the Council under the East Anglia One North Agreement, to pay to the Council the sum of £355,000 for the purposes specified in paragraph 3 of Schedule 2.
3. Prior to or upon Implementation, to pay the Council the sum of £75,000 for the purposes specified in paragraph 4 of Schedule 2.
4. Prior to or upon Implementation, to pay the Council the sum of £44,250 for the purposes specified in paragraph 5 of Schedule 2.
5. Prior to or upon Operation, to pay the Council the sum of £465,000 for the purposes specified in paragraph 6 of Schedule 2.
6. Prior to or upon Operation, to pay the Council the sum of £200,000 for the purposes specified in paragraph 7 of Schedule 2.

SCHEDULE 2 COUNCIL COVENANTS

The Council covenants with the Developer and on behalf of themselves and their successors in function as follows:

1. To hold the Fund in an interest bearing account from the date of payment by the Developer and to use and transfer as required the sums for the purposes set out in this Schedule 2.
2. To use the sum paid by the Developer to the Council under paragraph 1 of Schedule 1 in the area from the landfall to the Substation including the AONB to (i) support ecological, landscape and habitat enhancements; (ii) improve the public rights of way network in the vicinity; and (iii) fund measures to strengthen the existing qualities of the AONB.
3. To use the sums paid by the Developer to the Council under paragraph 2 of Schedule 1 to provide further landscape, environmental, access and amenity improvements and enhancements to Friston and its vicinity.
4. To use the sums paid by the Developer to the Council under paragraph 3 of Schedule 1 to undertake landscape, environmental, access and amenity enhancements within 1.5 kilometres of the Substation.
5. To use the sums paid by the Developer to the Council under paragraph 4 of Schedule 1 to administer the Fund.
6. To use the sums paid by the Developer to the Council under paragraph 5 of Schedule 1 for measures to support access, environmental and ecological enhancements to the AONB which may include: (i) funding an AONB community engagement and education officer and projects; (ii) production of interpretative material, boards, leaflets and websites in relation to the AONB; (iii) improvements to public rights of way (including long distance routes); (iv) academic research on the AONB; (v) landscape and conservation enhancements; and (vi) wildlife enhancement projects.
7. To use the sums paid by the Developer to the Council under paragraph 6 of Schedule 1 as a contribution towards measures relating to the preservation and enhancement of heritage assets and their settings in Friston and its vicinity, which may include: (i) information boards and displays to assist in understanding historic landscape character and features; (ii) publications; (iii) archaeological community outreach work; and (iv) enhancements to historic buildings.
8. In the event that any of the sums paid under paragraphs 1, 2, 3, 4 and 6 of Schedule 1 are not expended for the purposes specified for each sum in paragraphs 2, 3, 4, 5 and 7 of this Schedule 2 within ten years of receipt of those sums, to use (at the Council's option) those remaining sums in paragraphs 1, 2, 3, 4 and 6 of Schedule 1 for any of the other purposes specified in paragraphs 2 to 7 of this Schedule 2.
9. Not to use the Fund for any other purposes.
10. Upon the decommissioning of the Substation, to repay to the Developer (or such other party that the Developer notifies to the Council in writing) the Fund or any part of the Fund which has not been used for the purposes for which it was paid.
11. To maintain full accounting records of the operation of the Fund, such records shall be available for inspection on reasonable notice and shall include details of measures carried out using the Fund.
12. To prepare a report on the expenditure of the Fund and issue such report to the Developer on the anniversary of the first date that a sum is paid under Schedule 1 and then annually thereafter until such time as the Fund is expended.

13. At the written request of the Developer, to provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been discharged.

IN WITNESS whereof this Deed has been executed and delivered on the above date

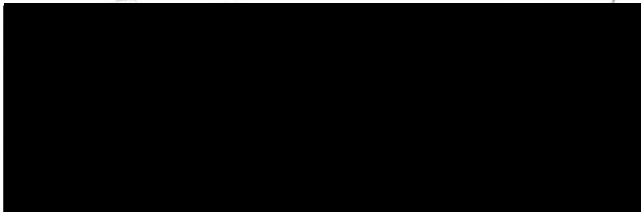
EXECUTED AS A DEED

By affixing

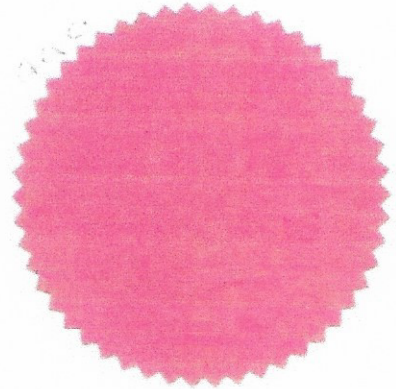
THE COMMON SEAL OF THE COUNCIL

FOR EAST SUFFOLK COUNCIL

in the presence of:-



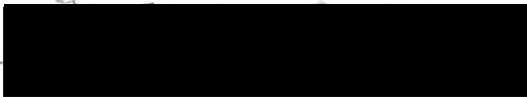
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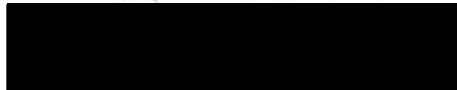
EXECUTED AS A DEED by
EAST ANGLIA TWO LIMITED

acting by

and



Director:



Director:

