

DATED _____ **201**●

HER MAJESTY THE QUEEN (1)

and

THE CROWN ESTATE COMMISSIONERS (2)

and

● (3)

and

● [(4)]

AGREEMENT FOR LEASE

relating to a gas storage site upon and under
the bed of the sea

Estates Ref: ●
Legal Ref: ●

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BETWEEN:

- (1) **HER MAJESTY THE QUEEN;**
- (2) **THE CROWN ESTATE COMMISSIONERS** on behalf of Her Majesty acting in exercise of the powers of the Crown Estate Act 1961 (the “**Commissioners**”); and
- (3) ● (Company No ●) having its registered office at ● (the “**Tenant**”); and
- (4) ● (Company No. ●) having its registered office at ● (the “**Guarantor**”)¹

WHEREAS

[Specific wording to describe project]

1. The land comprising the seabed of the Territorial Seas, and consequently the right to store and recover natural gas injected for storage purposes into the seabed within the Territorial Seas, forms part of The Crown Estate.
2. By virtue of section 1 of the Energy Act the right to store and recover natural gas injected for storage purposes into the seabed within offshore areas outside of the Territorial Seas of the United Kingdom is vested in Her Majesty.
3. By virtue of section 2 of the Energy Act, no person may carry out any of the activities set out in section 2(3) of the Energy Act within a controlled place (as defined in the Energy Act) without first obtaining a Storage Licence.
4. By virtue of section 4 of the Energy Act, the controlled place to which such Storage Licence relates, may be determined by reference to a Crown lease.
5. The Tenant wishes to undertake gas storage activities in a controlled place and therefore the Parties have agreed to enter into this Agreement.
6. This Agreement is a Crown lease, as defined in section 4(3) of the Energy Act.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires:
 - 1.1.1 words importing one gender include other genders;

¹ In relation to wholly owned tenant companies a guarantee will be required from a parent company that holds and will maintain, a credit rating equivalent to at least BBB+, and in relation to joint venture companies (whether incorporated or unincorporated) joint and several parent company guarantees will be required from each party to the joint venture, with at least one guarantor holding, and maintaining, a credit rating of at least BBB+.

- 1.1.2 words importing the singular include the plural and vice versa;
 - 1.1.3 references to persons include bodies corporate and vice versa;
 - 1.1.4 references to clauses, schedules and annexures are references to the relevant clauses in or schedules or annexures to this Agreement;
 - 1.1.5 the clause headings do not affect the construction of this Agreement;
 - 1.1.6 reference to any statute, directive or regulation or other item of legislation includes any amendment, modification, extension, consolidation or re-enactment of it and includes any statutory instrument, regulation or order made under it for the time being in force;
 - 1.1.7 any obligation on the Tenant not to do or omit to do something shall be construed as including an obligation not to permit or knowingly to suffer it to be done by any other person;
 - 1.1.8 references to the Commissioners where the context admits includes their successors or assigns;
 - 1.1.9 a consent or approval to be given by the Commissioners is not effective for the purposes of this Agreement unless it is in writing and signed by or on behalf of the Commissioners;
 - 1.1.10 references to any document or agreement include any amendment, modification, extension, reinstatement or replacement of it from time to time; and
 - 1.1.11 references to the word "include" or "including" are to be construed without limitation.
- 1.2 Any covenant by (or implied to be made by) Her Majesty pursuant to the terms of this Agreement is made (or implied to be made) by the Commissioners acting in exercise of the powers conferred by the Crown Estate Act 1961. No covenants, agreements or obligations are given by Her Majesty or anyone who reigns after Her. No liability is imposed on Her Majesty or anyone who reigns after Her, nor on the Commissioners in any personal or private capacity.
- 1.3 If there are any inconsistencies between the Tenant's obligations as set out in this Agreement and the Tenant's obligations as licensee or the terms and conditions under the Storage Licence, the Parties agree that the Storage Licence shall prevail.
- 1.4 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:
- "Acceptable Credit Rating"** means, in respect of an entity, a credit rating of at least BBB- with Standard & Poor's Rating Group (a division of the McGraw-Hill Group of Companies, Inc.) or Baa3 with Moody's Investor Services Inc;

“**Adjacent**” a location shall be Adjacent to the Lease Option Area if it is located within 150m, measured horizontally, of the Lease Option Area;

“**Agreement**” means this Agreement for Lease, as the same may be amended from time to time, and all schedules and annexures hereto;

"**Alternative Guarantor**" has the meaning set out in clause 7.3;

“**Annual Review Date**” means each anniversary of the date of signature of this Agreement;

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

“**Business Day**” means any day other than a Saturday or a Sunday when the banks are open for general business in the City of London;

“**CDM Regulations**” means the Construction (Design and Management) Regulations 2007;

“**Codes**” has the meaning given to it in Clause 17.2.5;

“**Completion Date**” means the date upon which the Lease is completed and becomes valid and binding upon the Parties pursuant to the provisions of Clause 9 of this Agreement;

“**Commissioner’s Confidential Information**” means all information disclosed by the Commissioners relating to this Agreement, the Lease and to the affairs and business of the Commissioners and anyone deriving rights or title through or under them;

“**Development**” means the [*name of project*] comprising the Facility, any Exploration Works, the Relevant Works, all Wells, platforms and all associated infrastructure and the required Pipelines;

“**Development Plan**” means the plan of the Development prepared by the Tenant and approved by the Commissioners including, inter alia, a description of the infrastructure, wells and Facility, [the location of the Facility²] and the location and layout within the Lease Option Area of:

- (a) infrastructure and Wells to be included in the Development;
- (b) the Exploration Works; and
- (c) the Relevant Works (to the extent known),

² Where known, if unknown the Development Plan should contain an indication as to the approximate location of the Facility.

in the form set out in Schedule 4, as amended from time to time in accordance with this Agreement;

“**EIRs**” has the meaning given to it in Clause 17.2.5;

“**Energy Act**” means the Energy Act 2008 (c.32);

“**Exploration Period**” has the meaning given to it in the Storage Licence, as may be extended from time to time;³

“**Exploration Works**” means those tests, investigations and works (including any Wells and other intrusive works) set out in the Work Programme and such other works performed in accordance with the Storage Licence;

“**Facility**” means the [[•] gas field, contained within Petroleum Licence [•] underlying the Lease Option Area]⁴ which is to be converted for the purpose of storing Gas, and in respect of which the Licensed Activities are to take place in accordance with the terms of this Agreement and the Storage Licence, as the same shall be defined in plans, cross sections and descriptive text in the Lease;⁵

“**FOIA**” has the meaning given to it in Clause 17.2.3;

“**Gas**” has the meaning given to it in the Storage Licence;

“**Gas Storage Development Plan**” means any plan, to which consent has been given from time to time by the Minister under the Storage Licence, and relating to Relevant Works or Relevant Operations;

“**Gas Storage Rights**” means, in respect of those parts of the Lease Option Area located outside of the Territorial Seas, those rights vested in Her Majesty pursuant to section 1 of the Energy Act, and in respect of those parts of the Lease Option Area located within the Territorial Seas, the Commissioners’ rights in respect of the storage and recovery of gas injected for storage purposes;

“**good storage practice**” has the meaning given to it in the Storage Licence;

“**Guarantee**” means a guarantee substantially in the form attached as Schedule 8;

“**Insolvent**” means that a Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

³ The Exploration Period may be extended by DECC where TCE has granted an extension to the Option Period pursuant to Clauses 4.18 to 4.21.

⁴ Applicable only to acreage subject to an existing petroleum licence.

⁵ Note - the particulars of the “Facility” will not be known at the Agreement for Lease stage – it will be the structure underlying the Lease Option Area.

- (b) becomes insolvent or is unable to pay its debts or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) either:
 - (i) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head office or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official; or
 - (ii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in paragraph (i) above, and either:
 - (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (B) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof;
- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured person take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured person maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (h) causes, or is subject to, any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (g) (inclusive); or

- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts,

provided that, for the avoidance of doubt, an event of Insolvency shall not occur in relation to a Party as a result of any proceeding, petition, process or other administrative action taken which is vexatious, frivolous or an abuse of the process of the relevant court, and “**Insolvency**” shall be construed accordingly.

“**Intellectual Property Rights**” means any patents, registered and unregistered designs, copyright, all knowhow and all other intellectual property protection wherever in the world enforceable;

“**Lease**” means the lease of the Lease Area to be granted by the Commissioners and accepted by the Tenant, which shall be in the form attached at Schedule 1 (save for the confirmation of Schedules 2 and 3 of the Lease which shall be agreed in accordance with Clause 8 of this Agreement);

“**Lease Area**” means such part of the Lease Option Area as shall be demised to the Tenant under the Lease;

“**Lease Option Area**” means the area within which the Tenant may exercise the Rights as determined from time to time in accordance with and more particularly described and set out in Schedule 2;

“**Licensed Activities**” means those activities listed in clause 2(2) of the Storage Licence;

“**Long Stop Date**” means the date which is [•] years from the date of signature of this Agreement;

“**Minister**” means the Secretary of State for the Department of Energy and Climate Change or the appropriate office at such other Authority which, from time to time, has the statutory responsibility for the administration of the rights being considered in the context of which the term is used in this Agreement;

“**Necessary Consents**” means all consents, licences, permissions, orders exemptions and approvals (including, inter alia, the Storage Licence, the Pipeline Lease, any Pipeline Works Authorisation and any Petroleum Licence and any consent or permission under any of them) required from any Authority in relation to the Development and Relevant Operations 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;

“**Operator**” means that person that is either the sole licensee under the Storage Licence, or, where the licensee is two or more persons, the person which carries out any function of organising or supervising any Licensed Activity with the written approval of the Minister, pursuant to Clause 13 of the Storage Licence;

“**Option Fee**” means £[]⁶, indexed in accordance with Schedule 7 and payable in accordance with Clause 8.2;

“**Option Notice**” means a written notice served by the Tenant on the Commissioners pursuant to Clause 8.6, requiring the grant of the Lease;

“**Option Notice Date**” means the date on which the Tenant serves an Option Notice;

“**Option Period**” means the period from the date of this Agreement until the earlier of the expiry of the Exploration Period and the Long Stop Date;

“**Party**” means any one of the Commissioners, the Tenant and the Guarantor and “**Parties**” shall mean each Party collectively;

“**Permitted Mineral Extraction**” means the processes undertaken by the Tenant of extracting of minerals and mineral substances from the Lease Option Area as is reasonably necessary for the construction, operation, maintenance, repair, testing, decommissioning, renewal, reinstatement and use of the Relevant Works permitted under this Agreement and will include any activities undertaken by the Tenant in accordance with any applicable Petroleum Licence;

“**Petroleum**” has the meaning given in the Petroleum Act 1998;

“**Petroleum Licence**” means a licence issued by the Minister relating to the exploitation of a defined area of the seabed (including the Lease Option Area or part thereof) and the subsoil granted or given effect under the Petroleum Act 1998;

“**Pipeline**” means all pipelines and ancillary electricity and telecommunications cables and all necessary wrappings, sleeves, slabs and other protective materials required as part of the Development, as more particularly described in the Development Plan;

“**Pipeline Lease**” means any lease granted by the Commissioners to the Tenant in respect of that part of any Pipeline which lies within the Territorial Sea and foreshore, including, for the purposes of this Agreement, any option to enter into such a lease;

“**Pipeline Works Authorisation**” means an authorisation granted by the Minister in respect of that part of a Pipeline which lies inside the Territorial Seas and in controlled waters” (as defined in the Petroleum Act 1998).

“**Reasonable and Prudent Operator**” means an operator seeking in good faith to perform its contractual obligations and in so doing, and in the general conduct of its undertaking, exercising good storage practice;

“**Relevant Operations**” has the meaning given to it in the Storage Licence;

⁶ Parties to agree applicable Option Fee.

“**Relevant Works**” has the meaning given to it in the Storage Licence;

“**Rights**” means the right to enter into the Lease Option Area and carry out the Exploration Works within the Lease Option Area and the right to erect, operate, maintain, repair and remove equipment and to carry out tests and investigations relating to the implementation of the Development in the Lease Option Area.

“**Specification**” means the specification to be developed pursuant to Clause 6.12 and attached to the Option Notice;

“**Storage Licence**” means the licence to explore, appraise and develop the Lease Option Area and to inject, store and extract Gas into, in and from the Facility, to be granted by the Minister in favour of the Tenant pursuant to the Energy Act and includes any document varying, supplementing or otherwise affecting the Storage Licence and any reference to a definition in or a clause of the Storage Licence shall be a reference to such definitions and clauses of the Schedule to The Offshore Gas Storage and Unloading (Licensing) Regulations 2009;

“**Tenant’s Commercial Information**” means all information disclosed by the Tenant relating to this Agreement, the Lease, the Development (whether technical or commercial) and to the affairs and business of the Tenant and its affiliates, and anyone deriving rights or title through or under it;

“**Territorial Seas**” means the internationally established area extending twelve (12) nautical miles from the baseline or low water mark of the United Kingdom;

“**The Crown Estate**” means all property, rights and interests under the management of the Commissioners pursuant to the Crown Estate Act 1961;

“**Value Added Tax**” or “**VAT**” means value added tax charged under the Value Added Tax Act 1994 or any other tax of a similar nature whether charged in the United Kingdom or elsewhere;

“**Well**” has the meaning given to it in the Storage Licence; and

“**Work Programme**” means the Work Programme, if any, attached to the Storage Licence.

2. **TERM**

This Agreement shall be effective from the date set out above and shall continue in full force and effect as between the Parties until the Completion Date in accordance with the terms of this Agreement, unless this Agreement is determined earlier in accordance with its terms and conditions.

3. CONDITIONAL AGREEMENT

- 3.1 This Agreement is conditional upon the Tenant having obtained the Storage Licence by [●]⁷.
- 3.2 The Tenant shall use all reasonable endeavours to satisfy the condition set out in Clause 3.1 as soon as is reasonably practicable and by no later than the date set out in Clause 3.1.
- 3.3 In the event that the condition set out in Clause 3.1 has not been satisfied by the date set out in Clause 3.1, then the Commissioners may, at any time thereafter (but not if such condition has been subsequently satisfied), determine this Agreement with immediate effect by serving written notice on the Tenant to that effect.
- 3.4 Upon service of a notice to determine this Agreement in accordance with Clause 3.3, this Agreement shall absolutely determine and shall be of no further effect, provided that such determination of this Agreement shall not affect the rights or liabilities of either the Commissioners or the Tenant against the respective other Party in respect of any breach of this Agreement occurring prior to such determination.
- 3.5 In the event that this Agreement is determined pursuant to Clause 3.3, the provisions of Clause 11.4 will apply to any such determination.

4. TENANT'S OCCUPATION

- 4.1 Subject to the terms and conditions of this Agreement and for the period determined pursuant to clause 4.17, the Commissioners hereby grant to the Tenant, on an exclusive basis, the Rights. For the avoidance of doubt, the granting of the Rights does not confer on the Tenant any rights, during the period of this Agreement to carry out the Relevant Works or any Relevant Operations.
- 4.2 The Tenant and anyone deriving title through or under the Tenant and any agent or sub-contractor engaged by the Tenant for the purpose of exercising the Rights shall have access to the Lease Option Area solely for the purpose of exercising the Rights, and in order to comply with the Tenant's obligations under this Agreement.
- 4.3 The Tenant shall inform the Commissioners in writing before permitting any third party to occupy the Lease Option Area.
- 4.4 The Tenant shall be responsible for all acts, omissions, defaults or neglect by its agents, sub-contractors or other third parties and hereby guarantees the performance of such parties in accordance with the terms and conditions of this Agreement.

⁷ Date to be inserted, which will be 20 Business Days from the date of the Agreement.

- 4.5 The Rights are granted subject to
- 4.5.1 all public rights of navigation and fishing;
 - 4.5.2 the rights of third states or their nationals under rules of international law;
 - 4.5.3 all other rights enforceable or exercisable over the Lease Option Area including, inter alia, those set out in Schedule 5; and
 - 4.5.4 any other rights which are exercisable over the Lease Option Area the grant of which is outside of the Commissioners' control.
- 4.6 The Tenant shall not exercise the Rights (including without limitation commencing or carrying out the Exploration Works) without first obtaining such Necessary Consents as are required for such purpose, and thereafter shall maintain all Necessary Consents as are required from time to time and complying with all requirements of each applicable Authority or other person in relation to each Necessary Consent.
- 4.7 The Tenant shall, at all times, comply with the terms of the Necessary Consents, applicable law and good storage practice as the same may be amended or be applicable from time to time.
- 4.8 To the extent that they are located in an area which is on the seaward side of the mean low water mark of the United Kingdom, the Tenant shall permit any person or persons authorised by the Commissioners at all reasonable times to enter into and upon any of the Tenant's installations or equipment used or to be used in connection with the Development to examine the Lease Option Area and the Exploration Works and the Tenant will provide conveyance to and from any installation or equipment for such purpose, subject to such persons complying with any reasonable health and safety requirements.
- 4.9 The Tenant will keep detailed and accurate records in accordance with the terms of the Necessary Consents and maintain copies of all such records at a permanent residence in the United Kingdom. The Tenant shall permit any person or persons authorised by the Commissioners at all reasonable times to access such records for the purpose of examining, taking notes from and copying them.
- 4.10 The Tenant will provide to the Commissioners copies of each Necessary Consent, and any material amendment thereto, within fifteen (15) Business Days of the grant of such Necessary Consent or amendment. Such copies may be sent by email to an address nominated from time to time by the Commissioners. At the request of the Commissioners, the Tenant will provide all information relating to the Necessary Consents as the Commissioners may reasonably request.

- 4.11 The Tenant warrants that it is, and will remain throughout the Term, the Operator.
- 4.12 The Tenant shall maintain the insurances set out in Schedule 6⁸, as amended from time to time in accordance with Clause 4.16, with a limit of indemnity of not less than the corresponding sums set against each required policy. The Tenant shall also ensure that any agent or sub-contractor occupying the Lease Option Area in accordance with Clause 4.2 shall maintain all appropriate insurances as would be expected in accordance with good storage practice in relation to the activities being undertaken by such agent or sub-contractor within the Lease Option Area.
- 4.13 At least annually and within ten (10) Business Days of any renewal or replacement, the Tenant shall produce to the Commissioners a copy of each insurance policy, listed in Schedule 6 or documentary evidence that the insurances set out in Schedule 6 have been obtained and are being properly maintained and shall ensure that the Commissioners shall be named as co-insured parties where stipulated in Schedule 6.
- 4.14 The Tenant shall observe and perform the terms of any insurance policy effected pursuant to Clauses 4.12 inclusive and all requirements from time to time of the insurers and not to do or fail to do anything which shall or may cause any such policy to be void or voidable or any monies payable under it to be irrecoverable.
- 4.15 If the Tenant at any time fails to keep the Lease Option Area insured in accordance with its obligations under this Agreement the Commissioners may effect and maintain the insurance and any money the Commissioners expend for that purpose must be repaid by the Tenant on demand and may be recovered by action.
- 4.16 The Commissioners will review the insurances listed in Schedule 6 and required to be held by the Tenant pursuant to Clause 4.12 every year following the date of this Agreement and will consult with the Tenant before notifying the Tenant of the Commissioners' revised requirements in relation to the holding of the insurances, and consequently any amendments that are required to Schedule 6.
- 4.17 The grant of Rights under Clause 4.1 shall determine on the earlier of:
- 4.17.1 the expiry of the Option Period;
 - 4.17.2 the Completion Date;
 - 4.17.3 determination of this Agreement in accordance with the terms set out herein; or
 - 4.17.4 the Long Stop Date.

⁸ To be completed.

- 4.18 Where there is a Work programme, in the event that the Tenant believes that it will not achieve completion of the Work Programme by the end of the Exploration Period or that it will not be in a position to issue the Option Notice before the end of the Option Period, the Tenant may serve a notice in writing to the Commissioners, setting out:
- 4.18.1 the reasons for the likely failure to achieve completion of the Work Programme by the end of the Exploration Period (if relevant);
 - 4.18.2 the likelihood of ultimately achieving completion of the Work Programme (if relevant) and the additional time period required if achievable;
 - 4.18.3 a remediation plan detailing the actions to be taken by the Tenant and the time periods during which such actions will be taken so as to achieve completion of the Work Programme by the end of the Exploration Period or satisfaction of the conditions required to serve the Option Notice (as relevant); and
 - 4.18.4 a revised date for the expiry of the Option Period which is not later than the Long Stop Date.
- 4.19 Upon receipt of a notice served in accordance with Clause 4.18, the Commissioners shall, within 20 Business Days, inform the Tenant whether they consent to the remediation plan proposed, such consent not to be unreasonably withheld.⁹
- 4.20 Following receipt of a notice served by the Tenant in accordance with Clause 4.18 the Commissioners may, in their absolute discretion extend the Option Period for a period no longer than that set out in such notice.
- 4.21 In the event that the Commissioners do not consent to the remediation plan, the Commissioners may, at any time following expiry of the Option Period (but not if completion of the Work Programme has subsequently been achieved), determine this Agreement by serving written notice on the Tenant to that effect.
- 4.22 The Tenant shall, in the event that this Agreement is determined, as soon as reasonably practicable restore the seabed to a safe and proper condition in accordance with the requirements of any Necessary Consents provided that if a Lease is granted to the Tenant pursuant to the terms of this Agreement this Clause 4.22 will not apply in respect of any Relevant Works.

5. NECESSARY CONSENTS

- 5.1 The Tenant shall apply for all Necessary Consents required to undertake the Development in a timely manner and shall comply with all requirements of the

⁹ Following consultation, DECC have confirmed that where an extension is required the Tenant should make the first approach to TCE. TCE will then liaise with DECC and will take DECC's comments into account when determining whether to grant an extension under clause 4.20.

Authority or other person to which each application is made to enable it to determine that application.

- 5.2 In respect of any application for a Necessary Consent (or variations or modifications thereto) that includes plans showing the layout and route of the Exploration Works, the Relevant Works or any other works comprised within the Development, the plans annexed to such Necessary Consent shall first be approved in writing by the Commissioners (such approval not to be unreasonably withheld or delayed, the Commissioners having regard, inter alia, to the optimum geological layout when granting such approval) before such plans are submitted with any relevant application for a Necessary Consent.
- 5.3 The Tenant shall provide such information as the Commissioners shall reasonably require from time to time in respect of the progress of any applications for Necessary Consents and shall forward a copy of any decision notice to the Commissioners within fifteen (15) Business Days of receipt by the Tenant.
- 5.4 The Tenant shall use all reasonable endeavours to procure that each Necessary Consent which does not automatically enure for the benefit of the land to which it relates is granted on terms which permit that Necessary Consent (or the rights granted under it) to be transferred, in so far as it is transferable, without the consent of any Authority to any person to whom an agreement for lease or a lease is granted by the Commissioners in respect of the specific area to which such Necessary Consent relates.
- 5.5 Subject to Clause 5.2, the Tenant shall not wilfully do or omit to do anything which may cause any Necessary Consent to be varied or modified to any material degree or revoked without the consent of the Commissioners (such consent not to be unreasonably withheld or delayed).

6. EXPLORATION WORKS

- 6.1 The Exploration Works shall be conducted in accordance with:
 - 6.1.1 the Work Programme, including achieving the identified milestones by the corresponding dates set out therein;
 - 6.1.2 all Necessary Consents relating to the same; and
 - 6.1.3 all applicable laws.
- 6.2 The Tenant shall:
 - 6.2.1 undertake the Exploration Works in a good and workmanlike manner, at all times acting in accordance with good storage practice;
 - 6.2.2 keep the Lease Option Area and the Exploration Works in good and safe repair and condition; and
 - 6.2.3 keep the Exploration Works properly maintained and in good working order.

- 6.3 Subject to Clause 6.12, the Tenant may amend the Development Plan subject to obtaining the prior written approval of the Commissioners, such approval not to be unreasonably withheld or delayed.
- 6.4 The Tenant will not make any alteration or addition to the Work Programme (where there is a Work Programme) or the Exploration Works which materially affects the terms of this Agreement, adversely affects the Commissioner's rights or alters the Development Plan unless:
- 6.4.1 the Tenant has submitted to the Commissioners detailed plans and specifications showing the proposed alteration or addition, including a revised Development Plan;
- 6.4.2 the Tenant has obtained the Commissioner's consent to the proposed alteration or addition and revised Development Plan (such consent not to be unreasonably withheld or delayed); and
- 6.4.3 having obtained the consent of the Commissioners under Clause 6.4.1, the Tenant has obtained the consent of the relevant Authorities to carry out the alteration or addition along with all Necessary Consents or variations to Necessary Consents as are required in relation to the alteration or addition.
- 6.5 The Tenant will comply with the provisions of Clauses 4.6 and 5.1 in respect of any renewal or replacement of the Exploration Works or any alteration or addition to the Exploration Works in so far as applicable.
- 6.6 On notice from the Commissioners, the Tenant will remove as soon as reasonably practicable, any alteration or addition to the Exploration Works made in contravention of Clauses 4.6, 4.7 or 6.4 and will restore the seabed to a safe and proper condition in accordance with the requirements of the Necessary Consents.
- 6.7 To the extent that the CDM Regulations are applicable to the Exploration Works or to any alteration or addition thereto:
- 6.7.1 the Tenant warrants that it has the competence to perform the duties imposed on a client by the CDM Regulations and that it will comply with the provisions of the CDM Regulations in respect of the Exploration Works or to any alteration or addition thereto, including without limitation all requirements relating to the provision and maintenance of a health and safety file and to provide on request to the Commissioners a copy of the health and safety file and any documents within it;
- 6.7.2 the Tenant covenants to supply all information to the Commissioners that the Commissioners reasonably require to comply with the Commissioners' obligations (if any) under the CDM Regulations; and
- 6.7.3 prior to commencing any Exploration Works or to any alteration or addition thereto, the Tenant will make a written election that it is to be treated as the only client for the purposes of the CDM Regulations in respect of the Exploration Works or to any alteration or addition thereto and to provide a copy to the Commissioners of the election (and the

Commissioners agree to the election to the extent that the Tenant actually is a client in respect of the Exploration Works or to any alteration or addition thereto);

and to the extent that the CDM Regulations are not applicable to the Exploration Works or any alteration or addition thereto, the Tenant shall comply with the CDM Regulations and the provisions of this Clause 6.7 as if the CDM Regulations were applicable to the Exploration Works or any alteration or addition thereto.

6.8 In undertaking the Exploration Works, the Tenant will not:

6.8.1 dig, extract or remove any minerals or mineral substances from the Lease Option Area other than in the process of Permitted Mineral Extraction; or

6.8.2 cause waste, spoil or destruct any minerals or mineral substances in or on the Lease Option Area other than in the process of Permitted Mineral Extraction and in accordance with any applicable Necessary Consents and any applicable law.

Notwithstanding the foregoing, the Tenant shall not have any right to use or have beneficial title to any minerals or mineral substances dug, extracted or removed from the seabed in the course of Permitted Mineral Extraction, other than Petroleum extracted pursuant to any applicable Petroleum Licence.

6.9 As soon as reasonably practicable following any disturbance of the seabed within the Lease Option Area pursuant to undertaking the Exploration Works, the Tenant will restore the same to a safe and (allowing for the presence of the Relevant Works) proper condition in accordance with all Necessary Consents and other applicable laws.

6.10 The Tenant will not perform any act, omit to do any act, allow any substance or article to remain on, in, under or over the Lease Option Area or exercise any right under this Agreement in a manner which:

6.10.1 may be, becomes or may cause a nuisance, damage or injury to the Commissioners or any other person or premises; or

6.10.2 may cause pollution or harm to the environment or human health.

6.11 In the event that a nuisance occurs the Tenant shall, as soon as reasonably practicable, take all necessary steps to abate such nuisance.

6.12 During the Option Period the Tenant shall develop a Specification which shall contain descriptions and proposed locations and routes of all major infrastructure to be located within the Lease Area including, inter alia, pipelines, platforms, sub-sea manifolds, wells, intra-field platforms and control lines, the location (including lateral boundaries and depth) and illustrative geologic cross section drawings of the Facility. The Specification will be of an equivalent standard and to an equivalent level of detail as set out in the Gas Storage Development Plan (as amended from time to time in accordance with this Agreement).

7. INDEMNITY

7.1 The Tenant hereby indemnifies and will keep the Commissioners indemnified against all actions, proceedings, claims and demands brought or made and all proper costs and expenses and all losses, damages and liabilities incurred suffered or arising directly or indirectly in respect of or otherwise in connection with:

7.1.1 the occupation and use of the Lease Option Area in accordance with this Agreement;

7.1.2 the exercise or purported exercise of Rights arising under this Agreement;

7.1.3 the construction, operation or existence of the Exploration Works (including any impact or effect on the environment);

7.1.4 Permitted Mineral Extraction;

7.1.5 any act, neglect or default of the Tenant or anyone deriving title or rights through or under the Tenant or anyone present in the Lease Option Area with the express or implied authority of either of the Tenant or anyone deriving title or rights through or under the Tenant;

7.1.6 any breach of any covenant or other provision of this Agreement to be observed and performed by the Tenant; or

7.1.7 any Exploration Works remaining on, in, over or under the Lease Option Area after the expiry of the term of this Agreement or the earlier determination in accordance with the terms and conditions of this Agreement (whether or not in breach of the terms of this Agreement and whether or not the Tenant has been negligent) including, without limitation, any removal or disposal of those Exploration Works.

7.2 The following provisions apply to the indemnities granted under Clause 7.1:

7.2.1 Clause 7.1 shall not apply to the extent that any such actions, proceedings, claims and demands are brought or made or any losses, damages, costs, expenses and liabilities are incurred or suffered as a consequence of the breach by the Commissioners of their obligations under this Agreement;

7.2.2 the Commissioners shall not make any admission of liability nor compromise or settle any actions, proceedings, claims and demands in respect of which they claim an indemnity under Clause 7.1 without first notifying the Tenant and having due regard to the Tenant's timely representations; and

7.2.3 Clause 7.1 shall remain in full force and effect notwithstanding the expiry of the term of this Agreement or the earlier determination in accordance with the terms and conditions of this Agreement.

7.3 The Commissioners acknowledge that the exercise of the Rights under this agreement carries an inherent risk that the Facility may be damaged in such a manner to wholly or partially prevent further use of the Facility as a gas storage reservoir or any other use. The Commissioners therefore release the Tenant (and anyone deriving title or rights through or under the Tenant) from any and all claims the Commissioners may have against the Tenant under this Agreement, in tort or otherwise at law in respect of loss or damage to the Facility and any use or uses that could be made of such Facility provided that nothing in this clause shall operate to prevent the Commissioners from claiming against the Tenant for an amount equal to the Rent (as defined in the Lease) that would have been payable from the date of such loss or damage until the end of the Term (as defined in the Lease, and assuming that the Completion Date had occurred on the last day of the Exploration Period) where the Facility has become damaged in such a manner as to wholly or partially prevent further use of the Facility as a gas storage reservoir due to the Tenant's failure to act as a Reasonable and Prudent Operator.

8. OPTION

8.1 Subject to Clause 3 and the remainder of this Clause 8, in consideration of payment of the Option Fee in accordance with Clause 8.2, the Commissioners will grant to the Tenant the option and right to require the Commissioners to grant to the Tenant the Lease in accordance with the terms of this Agreement.

8.2 The Tenant shall pay the Option Fee to the Commissioners in advance for each year of the Option Period, on the date of this Agreement and upon each anniversary thereof. Payment shall be made by way of wire transfer in cleared funds to the account notified by the Commissioners to the Tenant from time to time.

8.3 For the avoidance of doubt, the Option Fee shall not form part of or be deductible from any rent payable under the Lease, save that where the Completion Date occurs part way through a year in respect of which an Option Fee has been paid, an amount equal to a proportion of the Option Fee for that year shall be deducted from the first instalment of rent due from the Tenant, where such proportion is equal to the proportion that the period of time from the Completion Date to the end of that year bears to the period of a full year.

8.4 The Commissioners and the Tenant agree that if the Option Notice is served in accordance with this Clause 8 the Commissioners shall grant and the Tenant shall accept the Lease in accordance with the terms of this Agreement.

8.5 The exercise of a valid Option Notice pursuant to this Agreement is conditional upon the satisfaction by the Tenant of the following conditions:

8.5.1 the Tenant having maintained the Storage Licence in full force and effect and having complied with all of its terms;

8.5.2 the Tenant having obtained written confirmation from the Minister that the Work Programme (if any) has been carried out to his satisfaction;

8.5.3 the Tenant is not in breach of any of its obligations under this Agreement;

8.5.4 by the Option Notice Date:

- (a) the Tenant having obtained and maintained all Necessary Consents required to have been obtained by such date;
- (b) written confirmation from the Minister that a Gas Storage Development Plan has been approved in principle and the Tenant is authorised to commence the Relevant Works in the proposed Lease Area;
- (c) the Tenant having provided evidence satisfactory to the Commissioners that it has in place financing arrangements adequate for the purpose of undertaking the Relevant Works, operating the Facility, and meeting its payment obligations under the Lease;
- (d) to the extent that Relevant Works or Relevant Operations are to be performed within 150 meters of any of the property of existing rights holders listed in Schedule 5, a proximity agreement or pipeline crossing agreement being entered into with the relevant right holder;
- (e) the Specification having been approved by the Commissioners, acting reasonably; and
- (f) the Tenant having provided evidence satisfactory to the Commissioners of those items listed in Clauses 8.5.1, 8.5.2 and 8.5.4.

8.6 The Option Notice shall only be valid if it:

- 8.6.1 is served after or contemporaneously with the satisfaction of the conditions set out in Clause 8.5; and
- 8.6.2 is served upon the Commissioners at the address set out at Clause 18; and
- 8.6.3 it specifies the Lease Area to be included in the Lease by reference to the three dimensional subsea description of the Facility and the area of the seabed where the Tenant will locate the Relevant Works (including such areas reserved for expansion of the Development, if any), as agreed under the Gas Storage Development Plan. Such area of the seabed shall be:
 - (a) described by co-ordinates specified using European Datum 1950;
 - (b) the minimum area necessary for the siting of the Relevant Works and any applicable safety and works restriction zones, and in any event be entirely within the Lease Option Area under this Agreement; and
- 8.6.4 it has attached to it the “Specification” developed in accordance with Clause 6.11; and

8.6.5 is received by the Commissioners within the Option Period.

8.7 In the event that an option notice is served which is not valid in accordance with Clause 8.6, then the Commissioners must notify the Tenant of the insufficiency of such option notice (and reasons therefor) within twenty (20) Business Days of receipt and may, at any time after the expiry of the Option Period (but not if all such conditions are subsequently satisfied), determine this Agreement by serving written notice on the Tenant to that effect, and on service of such notice Clause 11.4 shall apply.

9. GRANT OF THE LEASE

9.1 This Clause 9 shall take effect upon the service of a valid Option Notice in accordance with Clause 8.

9.2 The Commissioners shall procure that its solicitors prepare the engrossment version of the Lease and the counterpart of it and deliver the counterpart Lease to the Tenant or its solicitors for execution. Schedule 2 of the Lease shall contain the information described in Clause 8.6.3 and Schedule 3 of the Lease shall contain the Specification.

9.3 The Commissioners will grant and the Tenant will accept and execute a counterpart of the Lease on the date which is twenty (20) Business Days after the Option Notice is served in accordance with Clause 8.6.

9.4 Completion of the grant of the Lease shall take place at the offices of the Commissioners' solicitors or at such other place as the Commissioners shall reasonably require and notify to the Tenant in writing.

9.5 The Commencement Date (as defined in the Lease) shall be the Completion Date and the terms of the Lease shall have effect from that date forward.

10. TITLE

10.1 The Parties acknowledge that The Crown Estate has Gas Storage Rights in the Lease Option Area and such rights form part of The Crown Estate.

10.2 No title to the rights set out in Clause 10.1 will be shown to the Tenant.

10.3 The Tenant shall accept, without requisition or enquiry, The Crown Estate's title to the Lease Option Area and no title guarantee will be given.

11. DETERMINATION

11.1 In addition to the Commissioners' rights of determination set out in other Clauses of this Agreement, the Commissioners may determine this Agreement by written notice to the Tenant if:

11.1.1 the Tenant has failed to pay any instalment of the Option Fee within ten (10) Business Days following service by the Commissioners on the Tenant of a written notice specifying that the Tenant has failed to pay the Option Fee on the due date pursuant to Clause 8.2;

- 11.1.2 the Tenant materially fails to perform or observe any of its obligations in this Agreement and such failure or event is:
 - (a) incapable of remedy; or
 - (b) capable of remedy and the Commissioners have served on the Tenant written notice specifying the failure or event, requiring it to be remedied within a reasonable time (to be specified in the notice and taking into account the nature of the obligation in question) and the Tenant has failed to remedy the failure or event accordingly;
- 11.1.3 the Tenant becomes Insolvent;
- 11.1.4 the Gas Storage Licence terminates for any reason; or
- 11.1.5 the Long Stop Date occurs.
- 11.2 The Tenant shall indemnify and keep the Commissioners indemnified against all actions, proceedings, claims and demands brought or made and all proper costs and expenses and all losses, damage and liabilities incurred suffered or arising directly or indirectly in connection with any event set out in Clause 11.1, except to the extent that any such actions, proceedings, claims and demands are brought or made or losses, damages, costs, expenses and liabilities are incurred or suffered as a result of the default of the Commissioners in respect of their obligations under this Agreement.
- 11.3 The Tenant may determine this Agreement at any time prior to service of an Option Notice by giving thirty (30) days written notice to the Commissioners, provided that at the time of serving the notice the Tenant has fully discharged its obligations under:
 - 11.3.1 the Work Programme (if any);
 - 11.3.2 this Agreement; and
 - 11.3.3 all Necessary Consents.
- 11.4 If this Agreement is determined in accordance with the terms set out herein:
 - 11.4.1 subject to Clauses 11.4.2, 11.4.3 and 11.5, this Agreement shall cease to have effect;
 - 11.4.2 such determination will not affect the rights or liabilities of any Party that have accrued in respect of this Agreement prior to such determination; and
 - 11.4.3 if so required by the Commissioners at any time, the Tenant shall use its best endeavours (subject to reimbursement of its reasonable costs of so doing) to procure that any Necessary Consent for the Development and its operation and use (which does not automatically enure for the benefit of the land) is transferred (in so far as it is transferable) to or reissued or amended so as to be in favour of any person to whom a lease or

agreement for lease is granted or intended to be granted by the Commissioners in respect of the Lease Option Area.

11.5 The rights and obligations contained in Clauses 4.9, 4.22, 7, this Clause 11, 14, 15, 16, 17, 18 and 19 shall survive any determination of this Agreement.

11.6 In the event that this Agreement is determined the Commissioners will have no obligation to repay any part of the Option Fee which has already been paid.

12. DEALINGS AFFECTING LEASE OPTION AREA

12.1 The Commissioners are entitled, acting in their absolute discretion, to grant leases, licences or other consents for works and activities to be conducted in areas Adjacent to the Lease Option Area provided that:

12.1.1 such leases, licences or other consents for works and activities will not adversely affect the rights granted to the Tenant pursuant to the terms of this Agreement; or

12.1.2 subject to Clause 12.3, the written consent of the Tenant is obtained (such consent not to be unreasonably withheld or delayed).

12.2 Details of all leases, licences and other consents for works on, in, over or under the Lease Option Area granted by the Commissioners as at the date of this Agreement are set out in Schedule 5. No representation or warranty is made or given by the Commissioners as to the accuracy of any information as to the as laid position of works referred to in Schedule 5 or as to whether there are any leases, licences or other consents granted which are not contained in Schedule 5.

12.3 The Tenant's consent under Clause 12.1 shall not be required for the grant of rights for the laying, inspecting, maintaining, repairing, renewing or relaying of cables or pipelines which cross the Lease Option Area by any lease granted after the date of this Agreement pursuant to the agreements listed in Schedule 5.

13. ALIENATION

13.1 The Tenant shall not assign, mortgage, charge, novate or otherwise transfer its rights or obligations arising under this Agreement, except as provided in Clause 13.2.

13.2 The Tenant may assign the whole benefit of this Agreement prior to the service of an Option Notice provided that it has obtained the Commissioners' prior written consent, such consent not to be unreasonably withheld or delayed and provided that:

13.2.1 the Commissioners shall not be regarded as unreasonably withholding their consent if they withhold it on the ground of any of the circumstances (which are specified for the purposes of section 19(1A) of the Landlord & Tenant Act 1927) set out in Clause 13.3;

13.2.2 the Commissioners shall not be regarded as giving their consent subject to unreasonable conditions if they give their consent subject to any of the

conditions (which are specified for the purposes of Section 19(1A) of the Landlord & Tenant Act 1927) set out in Clause 13.4;

- 13.2.3 the provisos in Clauses 13.2.1 and 13.2.2 shall operate without prejudice to the entitlement of the Commissioners to withhold their consent on any other grounds where such withholding of consent would not be unreasonable or to impose any further or subsequent conditions upon the grant of consent where the imposition of such condition or conditions would not be unreasonable.
- 13.3 The circumstances referred to in Clause 13.2.1 are:
 - 13.3.1 where in the reasonable opinion of the Commissioners the proposed assignee is not of sufficient financial standing to enable it to comply with the Tenant's obligations under this Agreement and under the Lease; or
 - 13.3.2 the proposed assignee is not resident in the United Kingdom or in a jurisdiction where reciprocal enforcement of judgments exists.
- 13.4 The conditions referred to in Clause 13.2.2 are:
 - 13.4.1 prior to the assignment the Tenant pays all arrears of sums due and payable under this Agreement;
 - 13.4.2 the proposed assignee executes and delivers a covenant by deed with the Commissioners in such form as the Commissioners may reasonably require to observe and perform the obligations of the Tenant under this Agreement until released by operation of law;
 - 13.4.3 where the proposed assignee is not incorporated in England or Wales the proposed assignee procures a legal opinion letter from a firm of solicitors in the relevant jurisdiction addressed to and approved by the Commissioners (acting reasonably) and provides to the Commissioners an irrevocable address for service in England or Wales for notices under this Agreement and the Lease and proceedings with solicitors or other agents approved by the Commissioners (acting reasonably);
 - 13.4.4 that any Necessary Consents which have been granted are transferred, replaced or granted to the proposed assignee on or before completion of the proposed assignment;
 - 13.4.5 prior to the assignment the Tenant and the proposed assignee take such steps (including, without limitation, all steps necessary to ensure that the security of tenure provisions of the Landlord and Tenant Act 1954 are excluded) and agree to make such variations to this Agreement and the Lease as, in the reasonable opinion of the Commissioners, are necessary to ensure that the Lease will be valid and binding notwithstanding the assignment; and
 - 13.4.6 that following the assignment the proposed assignee is the Operator.
- 13.5 Within one month from their respective dates to lodge in the Commissioners' office for registration all orders of court and assignments of this Agreement and

other instruments affecting devolution of this Agreement or the Term and all mortgages and charges of them and on demand to pay the Commissioners' reasonable registration fee.

- 13.6 Without prejudice to this Clause 13, the Tenant shall inform the Commissioners of the identity of those persons holding an interest in the Storage Licence and shall notify the Commissioners whenever there is a change in the identity of the those persons holding an interest in the Storage Licence, such notification to be provided in writing to the Commissioners within ten (10) Business Days of such change.

14. GUARANTEE

- 14.1 On or around the Commencement Date the Tenant shall procure that the Guarantor provide an executed Guarantee to the Commissioners.

- 14.2 The Tenant shall procure that the Guarantor or any Alternative Guarantor shall at all times hold an Acceptable Credit Rating. The Tenant shall provide written evidence, acceptable to the Commissioners acting reasonably, of the credit rating of the Guarantor or any Alternative Guarantor within twenty (20) Business Days of the issue of the Tenant's annual audited accounts. Where, at any time, there has been a deterioration of the credit rating of the Guarantor or any Alternative Guarantor such that the Guarantor or Alternative Guarantor no longer holds an Acceptable Credit Rating, the Tenant shall notify the Commissioners of such occurrence immediately upon becoming aware of the same. Upon such deterioration the Commissioners shall be entitled to exercise their rights under clause 14.4.

- 14.3 Within twenty (20) days of the earlier to occur of the Commissioners notifying the Tenant that an Alternative Guarantor is required, or the Tenant notifying the Commissioners that the Guarantor no longer holds an Acceptable Credit Rating, the Tenant shall procure either:

14.3.1 a Guarantee from an alternative entity which holds an Acceptable Credit Rating (the "**Alternative Guarantor**"); or

14.3.2 such replacement financial security from an alternative source as the Commissioners may in their absolute discretion deem acceptable.

- 14.4 If the Tenant fails to procure such a guarantee within twenty (20) Business Days, the Commissioners may give the Tenant twenty (20) Business Days written notice on or after the expiry of which, if the Tenant has failed to procure a Guarantee from an Alternative Guarantor the Commissioners may terminate this Agreement forthwith.

- 14.5 If the Tenant fails to comply with any of its material obligations under this clause 14, the Commissioners may give the Tenant twenty (20) Business Days written notice of the same, on or after the expiry of which, if the Tenant remains in default of its obligations under this clause 14, the Commissioners may terminate this Agreement forthwith.

15. GOVERNING LAW AND JURISDICTION

- 15.1 This Agreement shall be governed by and construed in accordance with the laws of [England and Wales] and the Lease Option Area is, for the purpose of all [English] laws applicable to this Agreement, to be regarded as if it was incorporated in the body of a county of [England and Wales].
- 15.2 The Tenant irrevocably agrees, for the exclusive benefit of the Commissioners, that the courts of [England and Wales] shall have jurisdiction over any claim or matter arising under or in connection with this Agreement and that, accordingly, any proceedings in respect of any such claim or matter may be brought in such courts. Nothing in this Clause 15.2 shall limit the right of the Commissioners to take proceedings against the Tenant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction or jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction or jurisdictions.
- 15.3 [The Tenant irrevocably appoints [●] of [●], fax number [●], as its agent (the “**Agent**”) to receive on its behalf in England and Wales service of any notice or proceedings arising out of or in connection with this Agreement. Such service shall be deemed completed on delivery to the Agent (whether or not it is forwarded to and received by the Tenant). If for any reason the Agent ceases to be able to act as Agent or no longer has an address within [England and Wales], the Tenant shall forthwith appoint a substitute acceptable to the Commissioners and deliver to the Commissioners the new agent’s name, address and fax number and evidence of its acceptance of such appointment in terms acceptable to the Commissioners.
- 15.4 The Tenant irrevocably consents to any process in any notice or legal action or proceedings arising out of or in connection with this Agreement being served on the Agent (or any other agent appointed under Clause 15.3 above) in accordance with the provisions of this Agreement relating to service of notices. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by the laws of the country in which service is to be effected.
]10
- 15.5 Any dispute under this Agreement may, at the option of either party, be referred to the respective Heads of Department within the Commissioners and the Tenant managing the Project to seek to agree any such matter and if such Heads of Department fail to reach agreement within one month then either party may at any time thereafter require the respective Chief Executives of the parties to seek to agree any matter requiring agreement. If within one month after referral, the respective Chief Executives have not reached agreement then the matter will be determined at any time thereafter by an independent consultant appointed on the application of either party by the Chartered Institute of Arbitrators within three months of the date of appointment. The costs of such independent consultant to

¹⁰ 15.3 and 15.4 only required if Tenant is not domiciled in the relevant jurisdiction.

be borne as determined by such independent consultant or otherwise shared equally between the parties.

16. EXCLUSION OF SECURITY OF TENURE

16.1 The Commissioners and the Tenant confirm that:

16.1.1 [not less than 14 days] before the Tenant entered into this Agreement the Commissioners served on the Tenant a notice dated [●] substantially in the form set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and which relates to the tenancy to be created by the Lease (a copy of which is annexed); and

16.1.2 before the Tenant entered into this Agreement the Tenant or someone acting on its behalf made a [statutory] declaration dated [●] substantially in the form set out in Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (a copy of which is annexed).

16.2 The Tenant confirms that the declaration referred to in Clause 16.1.2 was made by a person duly authorised to make the declaration on the Tenant's behalf.

17. CONFIDENTIALITY

17.1 Tenant's duty of confidentiality

17.1.1 Subject to this Clause 17.1.1 the Tenant shall keep the Commissioners' Confidential Information strictly confidential, not disclose it to any third party (except to the extent necessary to permit it to satisfy its obligations and execute its rights hereunder) and use it only for purposes of this Agreement.

17.1.2 The Commissioners' Confidential Information will not include information which is:

- (a) generally known to the public or is otherwise in the public domain through no default of the Tenant;
- (b) obtained from a third person who, insofar as known to the Tenant is not prohibited from transmitting the information by a contractual, legal or fiduciary obligation to the Commissioners;
- (c) already in the possession of the Tenant prior to receipt of such information from the Commissioners; or
- (d) is required by any applicable law or regulation, to be disclosed.

17.1.3 The Tenant may communicate Commissioners' Confidential Information to any regulatory or self-regulatory body having jurisdiction over that the Tenant to the extent required by such body, or to any government, agencies or other bodies of any government and their respective employees.

17.1.4 The Tenant may communicate any Commissioners' Confidential Information to its officers, directors, employees, financiers, lawyers and other advisors or consultants or any intended assignee of an interest in the Development or the Tenant, provided that such person or entity is informed of the confidential nature of such information and agrees to be bound by the restrictions contained in this Clause 17.

17.1.5 Where the Tenant discloses, or has disclosed, Commissioners' Confidential Information as permitted under Clauses 17.1.3 and 17.1.4 (inclusive), the Tenant shall notify the person to whom the information is disclosed of the confidentiality of the information and shall take reasonable steps to ensure that such person observes the restrictions on disclosure in this Clause 17.1.

17.2 Commissioner's duty of confidentiality

17.2.1 Subject to this Clause 17.2.1 the Commissioners shall keep the Tenant's Confidential Information strictly confidential, not disclose it to any third party (except to the extent necessary to permit it to satisfy its obligations and execute its rights hereunder) and use it only for purposes of this Agreement.

17.2.2 The Tenant's Confidential Information will not include information which is:

- (a) generally known to the public or is otherwise in the public domain through no default of the Commissioners;
- (b) obtained from a third person who, insofar as known to the Commissioners is not prohibited from transmitting the information by a contractual, legal or fiduciary obligation to the Tenant;
- (c) already in the possession of the Commissioners prior to receipt of such information from the Tenant;
- (d) pertaining to the location and nature of any infrastructure installed by the Tenant in the Lease Option Agreement;
- (e) is required by any applicable law or regulation, or parliamentary questions in any competent parliament to be disclosed.

17.2.3 The Commissioners may communicate the Tenant's Confidential Information to any regulatory or self-regulatory body having jurisdiction over either Party to the extent required by such body, or to any government, agencies or other bodies of any government and their respective employees.

17.2.4 The Commissioners may communicate the Tenant's Confidential Information to its officers, directors, employees, financiers, lawyers and other advisors or consultants or any intended assignee of the Commissioners' interest in this Agreement, provided that such person or

entity is informed of the confidential nature of such information and agrees to be bound by the restrictions contained in this Clause 17.2.

17.2.5 The Commissioners may communicate the Tenant's Confidential information:

- (a) to national repositories for data, provided that any such repository does not publish or distribute the disclosed part of the Tenant's Confidential Information in its entirety or only uses the Tenant's Confidential Information in aggregation with other data for the production of charts and other materials, or for the purposes of research, and keeps the source of the Tenant's Confidential Information confidential; and
- (b) where, in the absolute discretion of the Landlord, disclosure is required under the Freedom of Information Act 2000 ("FOIA"), or the Environmental Information Regulations 2004 ("EIRs") and the Tenant acknowledges and agrees that the Commissioners may, acting in accordance with the codes of practice issued and revised from time to time under s45 of the FOIA and regulation 16 of the EIRs, (the "Codes") disclose the Tenant's Confidential Information either in circumstances described in the Codes without consulting the Tenant, or following consultation with the Tenant and taking its views into account in accordance with the Codes.

17.2.6 Where the Commissioners disclose, or have disclosed, Tenant's Confidential Information as permitted under Clauses 17.2.3 to 17.2.5 (inclusive), the Commissioners shall notify the person to whom the information is disclosed of the confidentiality of the information and shall take reasonable steps to ensure that such person observes the restrictions on disclosure in this Clause 17.2.

17.3 All rights, title and interest in any Intellectual Property Rights, together with any changes, revisions, improvements or modifications to such Intellectual Property Rights, used in connection with this Agreement is, and shall remain, the exclusive property of the Party which holds such rights, title and interest and shall be held in confidence by a recipient Party to the extent that such Intellectual Property Rights are disclosed to and used by the recipient Party.

18. NOTICES

18.1 Any notice, approval, instruction or other written communication required or permitted under this Agreement shall be sufficient if made or given to the other Party or Parties by personal delivery, by facsimile communication to the facsimile number set forth below or by sending the same by e-mail (receipt confirmed) or by first class mail, postage prepaid, to the mailing address set forth below:

18.1.1 if to a the Commissioners, at:

Address: []

Attention: []

Telephone No: []

Fax No: []

18.1.2 if to the Tenant, at:

Address: []

Attention: []

Telephone No: []

Fax No: []

18.1.3 [if to the Guarantor, at:

Address: []

Attention: []

Telephone No: []

Fax No: []

or to such other addresses or facsimile numbers provided to the other Party or Parties in accordance with the terms of this Clause 18.

18.2 Notices or written communications made or given by personal delivery, e-mail or by facsimile shall be deemed to have been sufficiently made or given when sent (receipt acknowledged), or if mailed, five (5) Business Days after being deposited in the mail, postage prepaid, or upon receipt, whichever is sooner.

19. MISCELLANEOUS

19.1 The Tenant's obligations under this Agreement shall continue notwithstanding the grant of the Lease insofar as they remain to be performed and observed.

19.2 This Agreement is an executory agreement only and is not to operate or be deemed to operate as a demise of the Lease Option Area.

19.3 Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Services Act 1982 applies to notices required or authorised to be given under this Agreement provided that so long as the right to exploit the Lease Option Area for the purpose envisaged in this Agreement forms part of The Crown Estate, any notice to be given to the Commissioners shall be addressed so as to be delivered to the Commissioners at their office for the time being.

- 19.4 This Agreement incorporates the entire contract between the Parties and the Tenant acknowledges that it has not entered into this Agreement in reliance upon any statement or representations made to the Tenant by or on behalf of the Commissioners.
- 19.5 Except as otherwise provided herein, this Agreement may not be amended except by a written agreement executed by each Party.
- 19.6 If any Option Fee or other sum becoming payable under this Agreement by the Tenant to the Commissioners remains unpaid for more than twenty one (21) days after becoming due (whether formally demanded or not) then the Tenant shall (if required but without prejudice to the Commissioners' right of determination or any other right or remedy of the Commissioners) as from the date on which it becomes due until the date of actual payment pay interest on it (after as well as before and after any judgment) at the rate of 3% per annum above the base lending rate from time to time of Barclays Bank plc (or such other bank as the Commissioners nominate from time to time) provided that if the base lending rate falls below 2% then the base lending rate used to calculate interest in accordance with this Clause 19.6 shall be 2%, or if such base rates cease to be published at any time such other comparable rate of interest as the Commissioners designate and the interest shall be deemed to be part of the Option Fee and recoverable in like manner as rent in arrear but shall not itself bear interest.
- 19.7 To pay and indemnify the Commissioners against all existing and future rates, taxes, assessments, impositions, duties, charges and outgoings whatsoever payable (whether by the owner or occupier) in respect of the Lease Option Area, the Facility, the Relevant Works or the exercise of the Rights except for taxes (other than VAT) payable by the Commissioners on the receipt of the Option Fee or on any dealing by the Commissioners in its interest in this Agreement, the Lease Option Area, the Facility or the Rights in accordance with the terms of this Agreement.
- 19.8 To pay and indemnify the Commissioners against any liability for:
- 19.8.1 all and any VAT which is chargeable on the Option Fee or any other sum payable by the Tenant under this Agreement upon receipt of a valid VAT invoice addressed to the Tenant; and
- 19.8.2 all VAT incurred in relation to any costs or expenses which the Tenant is obliged to pay or in respect of which it is required to indemnify the Commissioners under the terms of this Agreement save where such VAT is recoverable or available for set off by the Commissioners as input tax. For the avoidance of doubt all or any sums referred to or specified in this Agreement are referred to or specified exclusive of VAT which is payable in addition thereto where applicable unless otherwise expressly stated.
- 19.9 Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement and if such a provision is found to be void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions of this Agreement.

- 19.10 It is not intended that any third party shall be entitled to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 19.11 In the event that this Lease becomes registrable at HM Land Registry the Tenant will co-operate fully with the Commissioners in order to perfect any necessary registration.
- 19.12 Schedule 7 shall apply to all amounts of money stated as being payable under this Agreement, unless otherwise specifically stated.

20. DIRECT AGREEMENT

- 20.1 The Commissioners acknowledge that the Tenant may require funding from a bank or other financial institutions (“**Funders**”) to implement or refinance the Development and in arranging such finance the Funders may require as a condition of the availability of that finance to enter into a direct agreement with the Commissioners to cover (without limitation) the following principal matters:
- 20.1.1 an acknowledgement by the Commissioners of any security taken by the Funders over the Tenant and its assets (including over this Agreement);
- 20.1.2 an obligation on the Commissioners not to take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Tenant without first giving a prescribed period of notice to the Funders;
- 20.1.3 a step in right (without giving rise to any express or implied assignment) to allow the Funders to ensure that the obligations of the Tenant are complied with so as to prevent any circumstances arising under which the Commissioners could seek to determine this Agreement; and
- 20.1.4 provisions regulating the application of insurance proceeds in the event that all or a part of the Development is destroyed or damaged which provisions will permit the Funders to recalculate the financial ratios and conduct other economic tests approved by the Commissioners (such approval not to be unreasonably withheld) relating to the fundamental financial viability of the Development and fundamental ability of the Development to meet debt service after the occurrence of a major insurable event and will further provide that if the specified economic tests are not satisfied, then any insurance proceeds received in respect of such insurable event shall be applied in repayment of amounts owing under the funding agreements rather than reinstatement of the relevant part or parts of the Development.
- 20.2 The Commissioners further acknowledge that they will act in good faith (at the cost and expense of the Tenant) to negotiate such a direct agreement where reasonably requested by the Tenant.

This Agreement is executed and delivered as a deed on the date first above written.

**THE OFFICIAL SEAL of THE CROWN
ESTATE COMMISSIONERS** hereunto
affixed was authenticated by:

[Tenant's signature blocks to be added]

SCHEDULE 1
LEASE

SCHEDULE 2

LEASE OPTION AREA

The Lease Option Area is bounded by the following co-ordinates:

[]

These co-ordinates were specified using "European Datum 1950".

SCHEDULE 3
PIPELINE CORRIDOR

SCHEDULE 4
DEVELOPMENT PLAN

SCHEDULE 5

EXISTING RIGHTS IN LEASE OPTION AREA

[To be limited to pre-existing rights holders within the Lease Option Area.]

SCHEDULE 6
INSURANCES

SCHEDULE 7

INDEXATION

- 1 Subject to [list any specific indexation provisions], where in this Agreement any Party is liable to pay any amount to any other Party and such amount is stated in this Agreement, such amount shall be adjusted annually (the “**Annual Review Date**”) by application of the following formula:

$$1.1 \quad A_n = A_o \times \frac{RPIX_n}{RPIX_o}$$

Where

A_n = the adjusted amount payable;

A_o = the amount as stated in this Agreement;

$RPIX_n$ = the monthly value of the index “Retail Prices Index - all items excluding Mortgage Interest Payments (RPIX)”, as published by the Office for National Statistics and any successor to the index as agreed or determined pursuant to paragraph 1 (“**RPIX**”) for the month occurring three (3) months prior to month in which the Annual Review Date occurs;

$RPIX_o$ = the monthly value of RPIX for the month occurring three (3) months immediately prior to signature of this Agreement.

- 1.2 All intermediate calculations to determine adjusted amounts pursuant to this paragraph 1 shall be made to eight decimal places without rounding, and the final product shall be rounded to the fourth (4th) decimal place. A figure of five or more in the fifth decimal shall cause a rounding up of the fourth decimal place.
- 2 If, on an Annual Review Date a value for RPIX is either:
- 2.1 temporarily unavailable, but is likely to be available at a later date; or
- 2.2 has, in the opinion of the Tenant and the Commissioners been computed or published in erroneous form;
- the Tenant and Commissioners will jointly endeavour, in good faith, to agree upon a corrected value.
- 2.3 If the Tenant and the Commissioners have been able to agree upon, or as the case may be, correct such value, it shall be used in the said calculation, and the adjusted amount determined from the said calculation shall not subsequently be amended.
- 2.4 If in either of the circumstances set out in paragraph 2.1 and 2.2 of this Schedule 7, the Tenant and the Commissioners have been unable to obtain or agree upon any value then the last available value not needing correction, or such other value as the Tenant and the Commissioners are

jointly able to agree, shall be used in the said calculation to obtain a provisional adjusted amount. In such event, when the correct value is available from the specified publication or source, the adjusted amount shall be recalculated using the correct value and the amount of any resulting adjusting payment due from either Party or Parties shall be paid by the Party owing such sum to the other Party within twenty (20) Business Days of the issue of an invoice by the other Party.

- 3 If either the Tenant or the Commissioners reasonably holds the opinion that:
- 3.1 the required values for RPIX are not available and are unlikely to become available in the foreseeable future; or
 - 3.2 any required value or values for RPIX have been computed or published in an erroneous form; or
 - 3.3 the Index is abolished or superseded or permanently discontinued,

then, the Tenant or the Commissioners shall notify the other in writing of such circumstances, and the Tenant or the Commissioners will forthwith meet together in an endeavour to agree upon an appropriate amendment to or replacement of RPIX. If, within one (1) Month from the date of the said notice, no agreement has been reached, then at the request of any Party, the matter shall forthwith be referred to an expert for determination. The costs of such expert will be borne equally by the Parties unless such expert determines that no amendment to or replacement of the Index is necessary, in which case such costs shall be borne by the Party or Parties claiming the need for such amendment or replacement.

SCHEDULE 8

GUARANTEE

1. GUARANTEE

1.1 The Guarantor hereby irrevocably and unconditionally guarantees to the Commissioners the due and proper performance by the Tenant of the Tenant's duties and obligations arising under or in connection with this Lease so that:

1.1.1 if the Tenant shall in any respect fail to perform any of its duties and/or obligations arising under or in connection with this Lease or shall commit any breach of any provision, or fail to fulfil any warranty or indemnity, set out in the Lease, then, within 10 Business Days of the Commissioners' demand, the Guarantor shall forthwith perform and fulfil in the place of the Tenant each and every duty, obligation, provision, warranty or indemnity in respect of which the Tenant has committed a breach or which the Tenant has otherwise failed to fulfil; and

1.1.2 the Guarantor shall be liable to the Commissioners for any and all losses, damages, expenses, liabilities, claims, costs or proceedings which the Commissioners may suffer or incur by reason of the said failure or breach.

1.2 Subject to the provisions of paragraph 5 and 6 the liability of the Guarantor under this paragraph 1 in respect of each failure or breach shall be limited to the extent that the Tenant would have been liable under or in connection with the Lease for such breach or failure.

2. LIABILITY UNCONDITIONAL

2.1 The Guarantor acknowledges and agrees that the liability of the Guarantor under this Guarantee shall not be impaired, reduced, discharged or otherwise affected by reason of any of the following:

2.1.1 any variation, amendment, alteration or supplement (whether formal or informal) to the Lease or to the extent, nature or method of performance of the duties and/or obligations referred to in the Lease;

2.1.2 any composition, discharge, release, waiver or other variation of liability entered into with, or granted to, the Tenant;

2.1.3 any allowance of time, waiver, forbearance, delay, forgiveness, indulgence, compromise or other dealing under or in connection with the Lease or in respect of any right or remedy arising under the Lease;

2.1.4 any settlement or arrangement made between the Commissioners and the Tenant in relation to the Lease;

2.1.5 the Lease being terminated by any means;

- 2.1.6 any disability, incapacity, legal limitation, change in ownership or change in status or constitution of the Tenant;
- 2.1.7 the occurrence of the Insolvency of the Tenant;
- 2.1.8 any forbearance or delay by or on the part of the Commissioners in asserting any of its rights against the Tenant;
- 2.1.9 the Commissioners taking, holding, varying or realising any other security for the liabilities of the Tenant under the Lease or by the Commissioners not enforcing any such security; or
- 2.1.10 any other act, omission or default which in the absence of this provision would or might have operated to discharge, reduce, exonerate or otherwise affect the liability of the Guarantor under the terms of this Schedule,

in each case whether such matters are done or omitted to be done with or without notice to, or the consent of, the Guarantor and the Guarantor hereby waives any requirement for notice of, or consent to, any such matters.

3. CONTINUITY AND DISCHARGE OF THE GUARANTEE

3.1 The Guarantor agrees that the guarantee constituted by this Schedule (the “**Guarantee**”):

- 3.1.1 shall not be revocable by the Guarantor;
- 3.1.2 shall be a continuing guarantee and accordingly shall apply in relation to all of the duties, obligations, provisions, warranties or indemnities of the Tenant under and arising out of the Lease and remain in full force and effect until all the said duties, obligations, provisions, warranties or indemnities shall have been carried out, completed and discharged in accordance with the Lease;
- 3.1.3 shall be additional to and not in substitution for any rights or remedies that the Commissioners may have against the Tenant under the Lease or at law;
- 3.1.4 shall be additional to any other guarantee or security from time to time held by the Commissioners; and
- 3.1.5 shall remain in full force and effect as long as the Tenant remains under any actual or contingent liability under the terms of the Lease.

3.2 The Guarantor agrees that the obligations of the Guarantor under this Guarantee are independent of and several to those of the Tenant under the Lease, and accordingly that the Commissioners shall not be obliged, before enforcing any of its rights or remedies under this Guarantee, to commence proceedings or take any other action against or in respect of the Tenant or enforce any other guarantee or security from time to time held by the Commissioners in respect of the duties and/or obligations of the Tenant under the Lease.

3.3 The Guarantor agrees that as long as this Guarantee remains in force and effect, it will not:

3.3.1 take any security from the Tenant in connection with this Guarantee (and, if taken, any such security shall be held by the Guarantor as security for its liability to the Commissioners under this Guarantee);

3.3.2 take any step to enforce any right or claim against the Tenant in respect of any payment made under or liability arising from or in connection with this Guarantee or claim or prove in competition with the Commissioners against the Tenant or demand or accept repayment of any monies from the Tenant or claim any right of contribution, set-off or indemnity against the Tenant; or

3.3.3 be subrogated to any right or security of the Commissioners,

and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this paragraph 3.3 shall be held by the Guarantor in trust for and shall be promptly paid to the Commissioners.

3.4 Any decision of any adjudicator, expert, arbitral tribunal and/or any court in respect of or in connection with the Lease or any agreement reached between the Tenant and the Commissioners shall be binding on the Guarantor.

4. REPRESENTATIONS AND WARRANTIES

4.1 The representations and warranties given in this paragraph 4 are given by the Guarantor to the Commissioners on the date of this Lease.

4.2 It is duly incorporated and in existence in good standing under the laws of England and Wales.

4.3 It possesses the capacity to sue and be sued in its own name and has the power to own its property and other assets and to carry on its business as it is now being conducted.

4.4 It has full power to and authority to enter into and perform all its obligations under this Lease in accordance with its terms.

4.5 This Guarantee constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms and are in full force and effect and rank at least *pari passu* with all other of its present and future unsecured and unsubordinated indebtedness (with the exception of any obligations which are mandatorily preferred by law and not by contract).

4.6 The entry into and performance by it of its obligations under this Lease have been duly authorised by all necessary corporate actions on the part of the Guarantor.

4.7 There is no litigation, dispute, arbitration or administrative proceedings current, pending or threatened against it that would have a material adverse effect on its ability to perform its obligations under this Guarantee.

- 4.8 The Guarantor is not Insolvent and no event has occurred which with the giving of notice or the passing of time may make it become Insolvent.
- 4.9 Neither the entry into this Lease nor the implementation of the obligations and transactions contemplated by it will result in:
- 4.9.1 a violation or breach of any provision of its statutes, by-laws or other constitutional documents;
- 4.9.2 a violation or breach of any applicable laws or regulations or of any order, decree or judgment of any court, governmental agency or regulatory authority applicable to it or any of its assets; or
- 4.9.3 a breach of, or a default under, any contract or other agreement to which it is a party or by which it or any of its assets are bound.
- 4.10 No consent, authorisation, licence or approval of any governmental, administrative, judicial or regulatory body, authority or organisation is required to authorise the execution, validity, enforceability or admissibility in evidence of this Guarantee, or the performance by it of its obligations under this Guarantee.
- 4.11 The choice by it of the laws of England to govern this Guarantee is valid and binding.

5. PAYMENT UNDER THE GUARANTEE

The Guarantor agrees that all sums payable by the Guarantor under this Guarantee shall be paid to the Commissioners in full without set-off or counterclaim and free of any present or future taxes, levies, duties, charges, fees, withholdings or deductions (together referred to as “**Deductions**”) which would not have been imposed if such payments had been made by the Tenant, and if the Guarantor is compelled by law to make any Deductions the Guarantor will gross up the payment so that the net sum received by the Commissioners is equal to the full amount which the Commissioners would have received had no such Deductions been made.

6. INTEREST

The Guarantor shall pay interest on any amount due under this Guarantee from the date of demand until the date of payment in full calculated on a daily basis at the rate of []% per annum, or, if greater, []% per annum above the base lending rate from time to time of Barclays Bank plc (or such other bank as the Commissioners nominates from time to time), but, for the avoidance of doubt, the Commissioners shall not be entitled to double recovery of default interest from both the Guarantor under the terms of this Schedule and from the Tenant under the Lease.

7. GUARANTEE

7.1 The Guarantor hereby irrevocably and unconditionally guarantees to the Commissioners the due and proper performance by the Tenant of the Tenant's duties and obligations arising under or in connection with this Lease so that:

7.1.1 if the Tenant shall in any respect fail to perform any of its duties and/or obligations arising under or in connection with this Lease or shall commit any breach of any provision, or fail to fulfil any warranty or indemnity, set out in the Lease, then, within 10 Business Days of the Commissioners' demand, the Guarantor shall forthwith perform and fulfil in the place of the Tenant each and every duty, obligation, provision, warranty or indemnity in respect of which the Tenant has committed a breach or which the Tenant has otherwise failed to fulfil; and

7.1.2 the Guarantor shall be liable to the Commissioners for any and all losses, damages, expenses, liabilities, claims, costs or proceedings which the Commissioners may suffer or incur by reason of the said failure or breach.

7.2 Subject to the provisions of paragraph 5 and 6 the liability of the Guarantor under this paragraph 1 in respect of each failure or breach shall be limited to the extent that the Tenant would have been liable under or in connection with the Lease for such breach or failure.

8. LIABILITY UNCONDITIONAL

8.1 The Guarantor acknowledges and agrees that the liability of the Guarantor under this Guarantee shall not be impaired, reduced, discharged or otherwise affected by reason of any of the following:

8.1.1 any variation, amendment, alteration or supplement (whether formal or informal) to the Lease or to the extent, nature or method of performance of the duties and/or obligations referred to in the Lease;

8.1.2 any composition, discharge, release, waiver or other variation of liability entered into with, or granted to, the Tenant;

8.1.3 any allowance of time, waiver, forbearance, delay, forgiveness, indulgence, compromise or other dealing under or in connection with the Lease or in respect of any right or remedy arising under the Lease;

8.1.4 any settlement or arrangement made between the Commissioners and the Tenant in relation to the Lease;

8.1.5 the Lease being terminated by any means;

8.1.6 any disability, incapacity, legal limitation, change in ownership or change in status or constitution of the Tenant;

8.1.7 the occurrence of the Insolvency of the Tenant;

- 8.1.8 any forbearance or delay by or on the part of the Commissioners in asserting any of its rights against the Tenant;
- 8.1.9 the Commissioners taking, holding, varying or realising any other security for the liabilities of the Tenant under the Lease or by the Commissioners not enforcing any such security; or
- 8.1.10 any other act, omission or default which in the absence of this provision would or might have operated to discharge, reduce, exonerate or otherwise affect the liability of the Guarantor under the terms of this Schedule,

in each case whether such matters are done or omitted to be done with or without notice to, or the consent of, the Guarantor and the Guarantor hereby waives any requirement for notice of, or consent to, any such matters.

9. CONTINUITY AND DISCHARGE OF THE GUARANTEE

- 9.1 The Guarantor agrees that the guarantee constituted by this Schedule (the “**Guarantee**”):
 - 9.1.1 shall not be revocable by the Guarantor;
 - 9.1.2 shall be a continuing guarantee and accordingly shall apply in relation to all of the duties, obligations, provisions, warranties or indemnities of the Tenant under and arising out of the Lease and remain in full force and effect until all the said duties, obligations, provisions, warranties or indemnities shall have been carried out, completed and discharged in accordance with the Lease;
 - 9.1.3 shall be additional to and not in substitution for any rights or remedies that the Commissioners may have against the Tenant under the Lease or at law;
 - 9.1.4 shall be additional to any other guarantee or security from time to time held by the Commissioners; and
 - 9.1.5 shall remain in full force and effect as long as the Tenant remains under any actual or contingent liability under the terms of the Lease.
- 9.2 The Guarantor agrees that the obligations of the Guarantor under this Guarantee are independent of and several to those of the Tenant under the Lease, and accordingly that the Commissioners shall not be obliged, before enforcing any of its rights or remedies under this Guarantee, to commence proceedings or take any other action against or in respect of the Tenant or enforce any other guarantee or security from time to time held by the Commissioners in respect of the duties and/or obligations of the Tenant under the Lease.
- 9.3 The Guarantor agrees that as long as this Guarantee remains in force and effect, it will not:

9.3.1 take any security from the Tenant in connection with this Guarantee (and, if taken, any such security shall be held by the Guarantor as security for its liability to the Commissioners under this Guarantee);

9.3.2 take any step to enforce any right or claim against the Tenant in respect of any payment made under or liability arising from or in connection with this Guarantee or claim or prove in competition with the Commissioners against the Tenant or demand or accept repayment of any monies from the Tenant or claim any right of contribution, set-off or indemnity against the Tenant; or

9.3.3 be subrogated to any right or security of the Commissioners,

and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this paragraph 3.3 shall be held by the Guarantor in trust for and shall be promptly paid to the Commissioners.

9.4 Any decision of any adjudicator, expert, arbitral tribunal and/or any court in respect of or in connection with the Lease or any agreement reached between the Tenant and the Commissioners shall be binding on the Guarantor.

10. REPRESENTATIONS AND WARRANTIES

10.1 The representations and warranties given in this paragraph 4 are given by the Guarantor to the Commissioners on the date of this Lease.

10.2 It is duly incorporated and in existence in good standing under the laws of England and Wales.

10.3 It possesses the capacity to sue and be sued in its own name and has the power to own its property and other assets and to carry on its business as it is now being conducted.

10.4 It has full power to and authority to enter into and perform all its obligations under this Lease in accordance with its terms.

10.5 This Guarantee constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms and are in full force and effect and rank at least *pari passu* with all other of its present and future unsecured and unsubordinated indebtedness (with the exception of any obligations which are mandatorily preferred by law and not by contract).

10.6 The entry into and performance by it of its obligations under this Lease have been duly authorised by all necessary corporate actions on the part of the Guarantor.

10.7 There is no litigation, dispute, arbitration or administrative proceedings current, pending or threatened against it that would have a material adverse effect on its ability to perform its obligations under this Guarantee.

10.8 The Guarantor is not Insolvent and no event has occurred which with the giving of notice or the passing of time may make it become Insolvent.

- 10.9 Neither the entry into this Lease nor the implementation of the obligations and transactions contemplated by it will result in:
- 10.9.1 a violation or breach of any provision of its statutes, by-laws or other constitutional documents;
 - 10.9.2 a violation or breach of any applicable laws or regulations or of any order, decree or judgment of any court, governmental agency or regulatory authority applicable to it or any of its assets; or
 - 10.9.3 a breach of, or a default under, any contract or other agreement to which it is a party or by which it or any of its assets are bound.
- 10.10 No consent, authorisation, licence or approval of any governmental, administrative, judicial or regulatory body, authority or organisation is required to authorise the execution, validity, enforceability or admissibility in evidence of this Guarantee, or the performance by it of its obligations under this Guarantee.
- 10.11 The choice by it of the laws of England to govern this Guarantee is valid and binding.

11. PAYMENT UNDER THE GUARANTEE

The Guarantor agrees that all sums payable by the Guarantor under this Guarantee shall be paid to the Commissioners in full without set-off or counterclaim and free of any present or future taxes, levies, duties, charges, fees, withholdings or deductions (together referred to as “**Deductions**”) which would not have been imposed if such payments had been made by the Tenant, and if the Guarantor is compelled by law to make any Deductions the Guarantor will gross up the payment so that the net sum received by the Commissioners is equal to the full amount which the Commissioners would have received had no such Deductions been made.

12. INTEREST

The Guarantor shall pay interest on any amount due under this Guarantee from the date of demand until the date of payment in full calculated on a daily basis at the rate of []% per annum, or, if greater, []% per annum above the base lending rate from time to time of Barclays Bank plc (or such other bank as the Commissioners nominates from time to time), but, for the avoidance of doubt, the Commissioners shall not be entitled to double recovery of default interest from both the Guarantor under the terms of this Schedule and from the Tenant under the Lease.

SIGNED AS A DEED by ●)
PLC/LIMITED acting by:-)

Director

Director/Secretary