



SHEPHERD+ WEDDERBURN

Crossing Agreement  
Relating to Vitol Gas Pipeline, Immingham

Between

(1) VPI Immingham LLP

and

(2) [ ] Limited

201[ ]

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THIS DEED is made the                    day of                    201[]

BETWEEN

- (1) VPI Immingham LLP (Company No. OC300980) whose registered office is at Belgrave House 76 Buckingham Palace Road, London, SW1W 9TQ (the "**Grantor**") and
- (2) [ ] Limited (Company Number [ ]) whose registered office is at [ ] ("the **Grantee**")
- together the "**Parties**"

### **Recitals**

- (i) The Grantor has a right to retain a pipeline ("the Pipeline") by virtue of a lease dated 7<sup>th</sup> January 2005 and made between (1) John Martin Greetham and (2) Immingham CHP LLP (the "Lease")
- (ii) The Grantee wishes to lay the Permitted Cable (as hereinafter defined) within the cable corridor ("the Cable Corridor") shown coloured blue and numbered 421 on the plan annexed to this Deed (the "Plan") which will cross the Pipeline and it has been agreed by the Grantor that the Grantee shall subject as hereinafter mentioned be entitled to lay the Permitted Cable through the Property (as hereinafter defined) with the intent that the same will cross the Pipeline

## **1. Definitions and Interpretation**

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1.1

"Grantee's Solicitors"	means Shepherd and Wedderburn LLP of Condor House, 10 St Paul's Churchyard, London EC4M 8AL or such other solicitors as the Grantee may from time to time nominate;
["Grantor's Solicitors"	[●] or such other firm of solicitors as the Grantor may from time to time nominate;]
"Group Company"	means in relation to a company, that company, any subsidiary or holding company of that company and any subsidiary of a holding company of that company where holding company and subsidiary mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006;
"OFTO"	means the offshore transmission licence holder appointed by the Gas and Electricity Markets Authority (as created pursuant to Section 1 of the Utilities Act 2000 or any successor authority thereto) pursuant to a tender process governed by regulations made under Section 6C of the Electricity Act 1989 as amended;
"Permission"	means any permission to be granted by the appropriate authority (or authorities) for the construction and operation of the Permitted Cable or any part thereof;
"Permitted Cable"	means an electricity supply for up to 1000kV in one or more sub-ducts comprising one or more cables and telephone signalling and fibre optic cables for use only for purposes ancillary to the use of the cable for the import and export and generation of electricity and associated apparatus to include joints marking bands protective tiles sheaths tubes or similar and cable markers as have been laid or are to be laid and includes any apparatus and works associated therewith and all signal and other cable and all wrapping and any other equipment constructed on or about or adjacent to the cables and any manhole covers and any ancillary apparatus and works

“the Property”	means the land demised by the Lease and comprised in registered title number HS321554:
“Works”	means all works carried out by the Grantee to construct lay render operational maintain repair renew inspect and replace the Permitted Cable or any part thereof including without limitation ancillary works of excavation, resurfacing, protecting, testing and drainage works

## 1.2 Interpretation

Unless there is something in the subject or context inconsistent with the same:-

- 1.2.1 the single shall include the plural and the masculine shall include the feminine and the neuter;
- 1.2.2 words importing persons include firms companies and corporations and vice versa;
- 1.2.3 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.4 a reference to any party shall include that party's personal representatives, successors and permitted assigns;
- 1.2.5 the schedules and annexes to this Deed shall be deemed to be incorporated into this Deed;
- 1.2.6 the headings to the clauses and schedules shall not affect the interpretation of this Deed;
- 1.2.7 any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.8 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.9 any obligation on a party not to do something includes an obligation to not to agree or allow that thing to be done; and
- 1.2.10 the expression "Grantor" and "Grantee" shall include their respective successors in title and assigns

## 2. Agreement to Crossing

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The Grantee wishes to lay the Permitted Cable and it has been agreed by the Grantor that in consideration of the covenants and conditions given by the Grantee contained in this Deed the Grantee is hereby granted the rights to carry out the Works and after completion of the Works to retain, inspect, maintain, repair, and replace the Permitted Cable for the import and export and generation of electricity.

## 3. Procedures and Conduct of the Work

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- 3.1 The Permitted Cable shall as far as reasonably practicable be located within the Cable Corridor particularly allowing for any engineering methods utilised, physical obstacles or soil conditions encountered during the carrying out of Works and any stipulations imposed by any Permission as to the position of the Permitted Cable.
- 3.2 The Grantee shall **no less than 28 days** prior to the commencement of the construction of the Works provide to the Grantor plans and sections of the Works setting out its intentions in respect of the installation of the Works and such further particulars as the Grantor may, within 28 days from the day on which such plans and sections are submitted pursuant to this clause 3.2 reasonably require.

- 3.3 The Grantor shall examine documents submitted pursuant to clause 3.2 and where necessary request further information of the design, or request meetings to discuss the design in relation to the proposed methodology and/or constructions works. The Grantee giving reasonable time for meetings to take place to discuss the design and impact on the Grantor giving its consent when the points have been fully resolved if any, (such consent not to be unreasonably withheld or delayed) or acting reasonably and in good faith propose amendments to the plans and sections within the later of (i) 28 days from the day on which the plans and sections are submitted and (ii) 28 days from the day on which further particulars are submitted to the Grantee following the Grantee's reasonable request pursuant to clause 3.2.
- 3.4 The Grantee shall not be entitled to exercise its rights under the terms of this Deed until the Grantor has confirmed to its approval in writing of such statement save in an emergency or where the Grantor has failed to provide consent in accordance with clause 3.2 & 3.3.
- 3.5 The Grantee shall give the Grantor not less than 28 days' notice in writing of its intention to start the Works which notice may be given prior to approval being provided under clause 3.2 above.
- 3.6 The Grantee will carry out the Works :
- 3.6.1 in accordance with the approved plans and sections;
- 3.6.2 with all reasonable speed ensuring compliance with all VPI procedures for the working in proximity of a H.P. Gas pipeline;
- 3.6.3 in a good and workmanlike manner;
- 3.6.4 using suitable materials of good quality which shall be free in all respects from defects according to normal construction practice generally accepted at the date of the execution of the Works; and
- 3.6.5 in accordance with all statutory and other relevant requirements and to the satisfaction of all competent authorities.
- 3.7 At all times the Grantee shall and shall procure that its contractors and subcontractors take all reasonable and proper precautions, submitting all relevant documentation for the working in vicinity of Nat Gas pipelines (local & Statutory regulations) in carrying out the Works to ensure that no damage, obstruction or interference is caused to the Pipeline in the immediate vicinity or the wider adjacent construction area along the pipeline route and as little damage, obstruction or interference as reasonably practicable is caused to any adjacent or adjoining land and the existing facilities over or in which the Grantor has an interest and that any such damage, obstruction or interference is made good forthwith to the reasonable satisfaction in all respects of the Grantor (acting reasonably)
- 3.8 During the construction the Grantor requires that a suitable appointed body is employed working for the Grantor to monitor and check the works as it progresses and to ensure that all the documentation is completed and signed off in a timely manner, before any works are carried out. The costs of this consultant employed by the Grantor shall be accounted for by the Grantee in stage payments over the course of the construction works around the pipeline.
- 3.9 The Grantee shall before entry onto the Property obtain prior consent of the landowners and any other persons with any interest whatsoever in the land from whom consent is required.
- 3.10 For the avoidance of doubt it shall be for the Grantee to satisfy the requirements of any third parties affected by the Works and no obligations actual or implied under this Deed on the part of the Grantor shall be construed as obligations to obtain the consent of any such parties.
- 3.11 The Grantee shall notify the Grantor as soon as practicable of completion of the Works.
- 3.12 The Grantee shall maintain the Works in a safe condition at all times and comply with all statutory and Vitol Proximity working requirements relating to them.
- 3.13 If following commencement of the Works the location of the Permitted Cable notified to the Grantor in accordance with clause 3.1 is required to be varied to reflect the as laid position of the Permitted Cable the Grantee shall provide an amended plan to the Grantor, discussing any implications showing the location of the Permitted Cable.

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#### 4. Entry and Additional Work

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- 4.1 The Grantee shall not carry out any further works to the Works (including without prejudice to the generality of the foregoing for the purposes of carrying out site soil and environmental surveys and environmental mitigation measures and geotechnical archaeological and site investigations and any ancillary excavation resurfacing protecting and testing maintenance and drainage work) (the “**Additional Works**”) without having first given the Grantor at least ~~28~~ days’ notice (save in case of emergency) and the Grantee shall carry out the Additional Works:
- 4.1.1 with all reasonable speed **ensuring compliance with all VPI procedures for the working in proximity of a H.P. Gas pipeline;**
  - 4.1.2 in a good and workmanlike manner;
  - 4.1.3 using suitable materials of good quality which shall be free in all respects from defects according to normal ~~construction and investigative~~ practice generally accepted at the date of the execution of the Additional Works;
  - 4.1.4 in accordance with all statutory and other relevant requirements and to the satisfaction of all competent authorities.
- 4.2 The Grantee shall maintain the Additional Works in a safe condition at all times and comply with all statutory requirements relating to them.

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#### 5. Pipeline, Property and Grantor’s Works

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- 5.1 The Grantor shall not carry out any works to the Pipeline and/or Property (including without prejudice to the generality of the foregoing any maintenance work) without having first given the Grantee at least ~~28~~ days’ notice (save in case of emergency) and shall carry out such works:
- 5.1.1 with all reasonable speed **ensuring compliance with all VPI procedures for the working in proximity of a H.P. Gas pipeline;**
  - 5.1.2 in a good and workmanlike manner;
  - 5.1.3 using suitable materials of good quality which shall be free in all respects from defects according to normal building practice generally accepted at the date of the execution of the works; and
  - 5.1.4 in accordance with all statutory and other relevant requirements and to the satisfaction of all competent authorities
- 5.2 The Grantor shall and shall procure that that its contractors and subcontractors take all reasonable and proper precautions in carrying out any works to the Pipeline and/or Property to ensure that no damage, obstruction or interference is caused to the Permitted Cable and as little damage, obstruction or interference as reasonably practicable is caused to any adjacent or adjoining land and the existing facilities over or in which the Grantor has an interest and that any such damage, obstruction or interference is made good forthwith to the reasonable satisfaction in all respects of the Grantor (acting reasonably).
- 5.3 The Grantor shall maintain the Pipeline and Property in a safe condition at all times and comply with all statutory requirements relating to them.

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#### 6. Costs and Liability

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- 6.1 The Grantee shall following receipt of reasonable evidence of the same pay the Grantor’s reasonable and proper surveyors and legal fees, **and Consultants costs for the specialists review and comments on the design of the crossing works and for the period of the supervision by the Consultants during the work being undertaken by the contractors in connection with this Deed not exceeding £[\*\*\*\*\*].**
- 6.2 The Grantee shall in relation to any payment to the Grantor pursuant to the provisions of this Deed pay VAT thereon if so demanded by the Grantor on receipt of a valid VAT invoice addressed to the Grantee and any payment to be made under the terms of this Deed shall be deemed to be exclusive of VAT

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- 6.3 This Deed and any approval, consent, instruction or certification, granted or given by or on behalf of the Grantor under this Deed :-
  - 6.3.1 are granted or given without any liability on the part of the Grantor and its surveyor and their agents for the Works;
  - 6.3.2 imply no responsibility for any of the Works or for their design, execution or existence;
  - 6.3.3 do not imply, warrant or constitute any representation that it is lawful to execute the Works; and
  - 6.3.4 do not limit or discharge any of the obligations of the Grantee under this Deed.
- 6.4 Subject to clauses 6.6, 6.7, 6.8 and 6.9 if by reason or in consequence of the construction of the Works or the Additional Works any damage is caused to any apparatus or property of the Grantor or there is any interruption in any service provided by the Grantor or in the supply of any goods by the Grantor the Grantee shall bear and pay the cost reasonably incurred by the Grantor in making good such damage or restoring the supply and make reasonable compensation to the Grantor for any other expenses loss damages penalty or costs incurred by the Grantor
- 6.5 Subject to clauses 6.6, 6.7, 6.8 and 6.9 if by reason of any breach of the Grantor's obligations under this deed the Grantee is subject to any actions proceedings claims demands costs expenses loss and liabilities or sustains any loss or liability or becomes liable for any such loss or liability the Grantor shall bear and pay the cost reasonably incurred by the Grantee and make reasonable compensation for any other expenses loss damages penalty or costs so incurred by the Grantee
- 6.6 Nothing in clause 6.4 imposes any liability on the Grantee with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the Grantor its officers servants contractors or agents.
- 6.7 Nothing in this Deed shall exclude or limit the liability for death or personal injury resulting from the negligence of either party or any of their officers employees or agents and the party liable shall indemnify and keep indemnified the other party its officers employees or agents from and against all such and any loss or liability which the other party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the party liable or any of its officers employees or agents

6.8 The Grantee and/or its Contractor shall be liable for all and any costs and losses suffered by VPI Immingham CHP LLP as a result of the Construction Works being under taken by the Grantee and/or its Contractor. For the avoidance of doubt, such costs and losses shall include, without limitation, the following:

- of (i) any loss of profit, loss of revenue, loss of use, loss of contract. Loss of goodwill, or increased costs of working;
- (ii) any indirect or consequential loss;
- (ii) physical damage to the property on the Power Station Site including without limitation, the Main Natural Gas Line;
- (iii) liability (at law) to any other person for loss in respect of physical damage to the property of, or the death or personal injury of, such other person (in the case of death or personal injury only, resulting from the negligence of the breaching party) and;
- (iv) any and all costs and losses suffered by VPI Immingham CHP LLP from the Power Stations inability to generate, or a reduction in its rate of generating, electricity and steam. Such costs and losses shall include, without limitation, any losses that VPI

**Deleted:** <#>Neither party to this Deed nor any of its officers employees or agents shall in any circumstances whatsoever be liable to the other party for:  
 <#>any loss of profit loss of revenue loss of use loss of contract or loss of goodwill; or  
 <#>any indirect or consequential loss; or  
 <#>any loss resulting from the liability of such other party to any other person however and whenever arising.

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Immingham CHP LLP suffered and/or compensation paid in failing to meet its obligations under the Energy Services Agreements with Humber Refinery (p66) and Lindsey Oil Refinery (TOTAL).

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- 6.9 The total liability of the party liable shall be limited to the sum of [ ] pounds sterling (£ [ ]) for any one event or series of connected events.

## **7. Termination**

- 7.1 This Deed shall come into effect on the date first above written and shall continue in force until (whichever is the later):-

- 7.1.1 the Works have been completed; or  
 7.1.2 any Additional Work (if any) under the terms of Clause 4 of this Deed has been carried out and completed; or  
 7.1.3 the completion of decommissioning or removal of the Works

provided that notwithstanding any such termination, the obligations and liabilities of the Parties pursuant to Clauses 6 and 12 shall survive termination and furthermore, that such termination shall be without prejudice to the rights and obligations of the Parties accrued before the date of such termination

- 7.2 For the avoidance of doubt the Grantee shall not be under any obligation to carry out and complete the Works or any part thereof and the Grantee may at any time terminate this agreement by serving 28 days' notice in writing upon the Grantor and for the avoidance of doubt the Grantor shall not be required to repay to the Grantee any sums paid to the Grantor or the Grantor's professional advisers under this Deed.

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- 7.3 In the event that the Works have been abandoned this Deed shall terminate.

- 7.4 If termination occurs before completion of the Works the Grantee shall make good or pay compensation to the Grantor in respect of any loss or damage or disturbance which may have been caused to the Property or the Pipeline by the exercise of any of the rights conferred upon the Grantee by this Deed.

## **8. Matters to which this Deed is Subject**

- 8.1 The Deed is granted subject to all matters in the nature of easements and quasi or purported easements rights and privileges (if any) affecting the Property
- 8.2 The Grantor shall at the request and cost of the Grantee use reasonable endeavours to and shall co-operate with the Grantee to provide all necessary consents and/or additional documentation as may be required in relation to any registration formalities pertaining to the grant of this Deed or the exercise of the rights granted by it.

## **9. Payments**

- 9.1 All payments made by the Grantee under this Deed shall be made by cheque or (if the Grantor so elects) by direct credit transfer to an account in England or Wales nominated in advance by the Grantor for that purpose.

- 9.2 In the event that any payment is not made by the Grantee within fourteen (28) days of the due date (which in the case of any compensation shall be the date of exchange of written agreements or in default of agreement the date of determination by expert or arbitrator) then the Grantor shall be entitled to interest on the outstanding balance (excluding any payments made by the Grantee to the Grantor on account) at a rate of 4% above the base rate for the time being of HSBC Bank plc from the due date until the date payment is actually made.

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## **10. Notices**

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- 10.1 Any notice or other communication to be served or given pursuant to this Deed shall be deemed to be sufficiently served:-
- 10.1.1 if it is delivered personally at or sent by registered or recorded delivery prepaid first class post to the Grantor's Solicitors or the Grantee's Solicitors (or the Grantee's nominated surveyor) (as the case may require) at their respective addresses as set out in the Definitions clause of this Deed or such other address (if any) as they may have previously notified in writing from time to time to the other party's solicitors and in each case for such notice or other communication quoting their correspondence reference
- 10.2 Any notice shall be deemed to have been served:-
- 10.2.1 if delivered in person at the time of delivery; or
- 10.2.2 if posted before 5pm on a Working Day the Working Day after it was put in the post; and
- 10.2.3 each notice served by the Grantor on the Grantee shall also be served in the same manner and at the same time to the Grantee's Solicitors.

## **11. Confidentiality**

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The Grantor shall not make or permit or suffer the making of any announcement or publication of the terms of this Deed nor any comment or statement relating thereto without the prior consent of the Grantee or unless such disclosure is required by the rules of any recognised Stock Exchange on which shares of the Grantor are quoted or pursuant to any duty imposed by law on the Grantor or unless such disclosure is made to a professional advisor, consultant, or a bank or financial institution which the Grantor intends to involve in the financing of its business or institution which the Grantor intends to involve in the financing of its business or disclosing to a prospective bona fide assignee subject to the Grantor before disclosing procuring that the proposed recipient is made aware of the terms of this Deed and is bound to the Grantor to keep confidential the terms of this Deed on terms no less onerous than those set out in this Deed.

## **12. Jurisdiction**

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This Deed and any matter arising from it shall be governed by and construed in accordance with the laws of England and Wales in all respects and the Parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.

## **13. Invalidity of Certain Provisions**

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If any term of this Deed or the application of it to any person or circumstances shall to any extent be invalid or unenforceable such term shall be separable and the remainder of this Deed or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term provision of this Deed shall be valid and enforced to the fullest extent permitted by law.

## **14. Disputes**

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- 14.1 Any dispute arising under this Deed shall be determined in default of agreement by a single arbitrator (or if the Parties consider it more appropriate an expert) to be agreed upon between the Parties to this Deed or failing agreement to be appointed on the application of either party (after notice in writing to the other party) by the President of the Royal Institution of Civil Engineers and save as aforesaid the provisions of the Arbitration Act 1996 and of any statutory modification or re-enactment thereof for the time being in force shall apply to any such reference and determination by an arbitrator PROVIDED NEVERTHELESS THAT the Grantor and the Grantee shall be entitled to institute proceedings to restrain the other from doing anything which is contrary to the terms of this Deed.

- 14.2 In the event of any dispute as to compensation payable under this Deed nothing shall prevent the Grantee from making payment to the Grantor to be held to its order on account pending resolution of such dispute.
- 14.3 In the event of a conflict between this Deed and the terms as to arbitration contained in the [Hornsea Two Offshore Wind Farm Order as may be granted by the Secretary of State for Energy and Climate Change at her discretion] the terms of this clause 14 shall prevail.

## **15. Assignment**

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- 15.1 The Grantee may assign, charge or share the whole or part or parts of the rights granted to the Grantee under this Deed to/with:
- 15.1.1 a successor to the business undertaking of the Grantee;
  - 15.1.2 National Grid plc or any Group Company of National Grid plc or any successor to the business undertaking of the same;
  - 15.1.3 any Group Company of the Grantee;
  - 15.1.4 SMart Wind Limited (company number 07107382) or any Group Company of SMart Wind Limited
  - 15.1.5 Optimus Wind Limited (company number 07883284) Breesea Limited (company number 07883217) or any Group Company of Optimus Wind Limited or Breesea Limited;
  - 15.1.6 an entity in which any shareholder of the Grantee or any Group Company thereof holds more than 25% of the voting rights in accordance with section 1159 and schedule 2 of the Companies Act 2006 and which entity has been incorporated for the purposes of developing grid assets prior to the appointment of a licensed OFTO;
  - 15.1.7 any OFTO or any successor to the business undertaking of the same;
  - 15.1.8 any third party not referred to in clauses 15.1.1 to 15.1.7 with the prior written consent of the Grantor such consent not to be unreasonably withheld or delayed.
- 15.2 Within one calendar month of any assignment of this Deed the Grantee shall give to the Grantor written notice thereof such notice to state the name and address of the assignee.

## **16. No Misrepresentations**

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This Deed incorporates the entire contract between the parties and the parties acknowledge that they have not entered into this Deed in reliance on any statements or representations made by or on behalf of one party to the other save those written statements contained in the written replies made by the Grantor's Solicitors to enquiries raised by the Grantee's Solicitors.

## **17. Rights of Third Parties**

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It is not intended that a person who is not a party to this Deed shall have any right under the Contract (Rights of Third Parties) Act 1999 to enforce the benefit of any terms of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

IN WITNESS whereof this Deed has been executed by the parties and is hereby delivered on the date first written

Signed as a deed by []

.....

In the presence of:

.....

Name

Address

Occupation

Executed as a deed by [] Limited acting by  
two directors or by one director and the company secretary

.....

Director

.....

Director/Company Secretary

In the presence of:

Name

Address

Occupation