

DRAFT

CONSTRUCTION WORKS AGREEMENT

between

VPI Immingham LLP

and

Smart Wind Ltd (Project 2)

relating to

Vitol Gas Pipeline and Smart Wind Power Cables

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THIS AGREEMENT is made on the _____ day of _____ 2013

BETWEEN:(1) **VPI Immingham CHP LLP, a limited liability partnership registered and incorporated in accordance with the laws of England and Wales under number OC300980 having its** registered office is at Belgrave House, 6th Floor, 76 Buckingham Palace Road, London SW1W 9QT

(2) **Smart Wind Ltd** whose address is 11th Floor, 140 London Wall, London EC2Y 5DN (the Smart Wind Ltd) and/or its contractor (##### insert address) and their Sub-contractors .**WHEREAS:**

A. Smart Wind Ltd intends to carry out works to install:-

HV Electric Transmission Power Cables (the “**Proposed Project**”).

B. In order to facilitate the Proposed Project, it would be necessary for Vitol Immingham CHP Ltd to protect the Main Natural Gas Feed to ICHP in accordance with the design agreed between **Smart Wind Ltd** to install additional protection to the Main Natural Gas Feed to ICHP based on the The Agreed Design between each party produced by Vitol Consultants and the Project Designer on the Gas Pipeline. (the “**Proposed Protective Works**”)

C. To maintain progress on the Proposed Project, SMart Wind Ltd has requested, and VPI Immingham LLP has agreed, that VPI Immingham LLP shall carry out the works set out in Schedule 1 (the Construction Works) prior to undertaking any of the Proposed Diversion Works and following the design case output agree that the Contractor for the cable construction works shall install the Proposed Protective Works.

D. SMart Wind Ltd understands and agrees that VPI Immingham LLP will at all times under this Agreement be acting as a gas transporter pursuant to the authority granted under and subject to the limitations of the Gas Act 1986 as amended and VPI Immingham LLP gas transporter’s licence, and that VPI Immingham LLP requires an uninterrupted supply of gas at all times.

E. VPI Immingham LLP agrees to undertake the Construction Works as scoped in this agreement will cover the Construction period for the Protection Works and the Costs shall also be re-emburst by the Smart Wind Ltd for the monitoring, inspection and reviews during construction.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 For the purposes of this Agreement, except as is otherwise provided or unless the context otherwise requires, the terms defined in this Clause shall have the following meanings:

“**Affiliate**” shall mean any of SMart Wind Ltd Departments, Agencies, or other body, individual or company working with the approval and authority of the SMart Wind Ltd or its Consultants, Contractors or other.

“**Business Day**” shall mean a day other than a Saturday or Sunday on which the clearing banks are open for the conduct of ordinary business in the City of London;

“**Completion Date**” in respect of the Construction Works shall mean the date 30 weeks from either the date of signature or the date VPI Immingham LLP receives payment of the first staged payment of the Estimated Sum in respect of the Construction Works, whichever is the later, and in respect of the Construction Works shall mean either:

- (a) if the first staged payment of the Estimated Sum in respect of the Construction Works is received by VPI Immingham LLP after Construction Works Establish Laydown Areas commences, the date 36 weeks from the date VPI Immingham LLP received the payment, or
- (b) if the first staged payment of the Estimated Sum in respect of the Construction Works is received by VPI Immingham LLP prior to commencement of the Construction Works.,

“**Confidential Information**” shall mean the terms of this Agreement and all commercial, financial, marketing, technical or other information, know-how, trade secrets and other information in any form or medium whether disclosed orally or in writing before or after the date of this Agreement, together with any reproductions of such information in any form or medium or any part(s) of such information;

“**Estimated Sum**” shall mean the sum of (£#####) plus VAT in respect of the Construction Works

“**Force Majeure**” shall have the meaning given to it in Clause 10.1;

“Main Natural Gas Line” shall have the meaning given to it at the date hereof in the NEXA;

“NEXA” shall mean the code for the Exit and Transportation agreement , as from time to time modified, pursuant to VPI Immingham LLP gas transporter’s licence;

“Construction Works” shall have the meaning work to install the Cables under the Natural Gas pipeline together with the monitoring of the works by Vitol Immingham CHP LLP

“Construction Works Price” shall mean the sum calculated in the manner set out in Schedule 2;

“Proposed Protective Works” shall have the meaning As design agreed between Smart Wind Ltd and Vitol Immingham CHP LLP

“Reasonable and Prudent Operator” shall mean a person seeking in good faith to perform its contractual obligations, and in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions, and any reference to the standard of a Reasonable and Prudent Operator shall be construed accordingly.

- 1.2 References in this Agreement to Clauses and Schedules are to the clauses of, and schedules to, this Agreement. The Schedules form part of this Agreement.
- 1.3 Any reference to statutes or statutory instruments are intended to refer to current statutes and rules as may be amended, extended or re-enacted from time to time.
- 1.4 The headings in this Agreement are for convenience only and shall not affect interpretation.

2. NO FURTHER RIGHTS/ OBLIGATIONS

2.1 VPI Immingham LLP agreement to carry out the Construction Works Supervision as provided in Clause 5.2 does not amount to any warranty, offer or commitment that it shall carry out, the Proposed Protective Works or that any pipeline or other apparatus will be constructed; and nothing in this Agreement shall impose, or be deemed to impose, any obligation on VPI Immingham LLP other than as expressly set out herein.

3. PAYMENT

3.1 The Smart Wind Ltd for Transport agrees to pay the first stage payment (£###,### plus VAT) of the Estimated Sum to VPI Immingham LLP in respect of the first two months of the Construction Works upon signature. The Smart Wind Ltd agrees to make further stage payments each of £###,### plus VAT to VPI Immingham LLP at, eight, and twenty after signature of the agreement.

3.2 In respect 3 of the Construction Works, within thirty (30) calendar days of the completion of the Construction Works or the date that VPI Immingham LLP has received final invoices from all the subcontractors, VPI Immingham LLP shall submit to Smart Wind Ltd or its appointed agent in respect of the Proposed Project a statement setting out the Construction Works Price in respect of the Construction Works. Where the Construction Works Price is greater than the Estimated Sum the statement shall be accompanied by an invoice from VPI Immingham LLP in respect of the amount by which the Construction Works Price exceeds the Estimated Sum. VPI Immingham LLP shall retain and provide access to costs included in the Construction Works Price to the Smart Wind Ltd for Transport and/or its appointed agent for verification purposes. The Smart Wind Ltd for Transport shall pay VPI Immingham LLP the difference between the Estimated Sum and the actual cost of the Construction Works and any other works required to be done within the terms of the timing of the works due to delays and agreed by the Parties to be added to the scope of work within thirty (30) calendar days of the date of receipt of evidence of such actual costs.

3.3 In respect of phase 3 of the Construction Works, where the Works Price is less than the Estimated Sum, VPI Immingham LLP shall refund within thirty (30) calendar days of the date of the statement referred to in Clause 3.2 above or the date of receiving the Smart Wind Ltd or the Smart Wind Ltd appointed agent's relevant bank details (whichever is the later) the amount by which the Estimated Sum exceeds the Construction Works Price.

- 3.4 All payments to be made under this Agreement shall be made in full without any set-off or counterclaim and without any deduction or withholding except where required by any applicable law. In the event that a deduction or withholding is required by law the sum payable shall be increased by the party making the payment so that, after making the deduction or withholding, that party shall pay to the other, and that other shall be entitled to receive and retain, on the due date for payment a net sum equal to the sum which it would have received had no such deduction or withholding been required to be, or been, made.
- 3.5 Any amounts properly incurred becoming due under this Agreement shall (without prejudice to any and all other rights and remedies) bear interest from the due date of payment until the date of actual payment at an annual rate of three per cent (3%) per annum above Barclays Bank PLC base rate in force from time to time, compounded monthly, until the date of payment. The parties agree that the provisions of this Clause 3.5 constitute a substantial remedy for late payment of any sum due under this Agreement and that the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, and any orders or regulations made pursuant thereto, as to rates of interest or credit periods shall not apply to this Agreement.
- 3.6 All amounts due under this Agreement shall, where applicable, be subject to the addition of Value Added Tax.
- 3.7 Notwithstanding any other provision of this Agreement, it is agreed that, where this Agreement provides for VPI Immingham LLP to refund to the SMart Wind Ltd or its appointed agent any monies previously paid by the SMart Wind Ltd or its appointed agent hereunder, no interest shall be payable on any such refunded amounts, save where VPI Immingham LLP fails to make payment of amounts due which shall (without prejudice to any and all other rights and remedies) bear interest from the due date of payment until the date of actual payment at an annual rate of three per cent (3%) per annum above Barclays Bank PLC base rate in force from time to time, compounded monthly, until the date of payment. The parties agree that the provisions of this Clause 3.7 constitute a substantial remedy for late payment of any sum due under this Agreement and that the provision of the Late Payment of Commercial Debts (Interest) Act 1998, and any orders or regulations made pursuant thereto, as to rates of interest or credit periods shall not apply to this Agreement. Value Added Tax shall only be added to any refunded amounts to the extent applicable in the circumstances.

4. COMPANY INFORMATION, REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

- 4.1 SMart Wind Ltd shall provide to VPI Immingham LLP:
- (a) immediately upon the execution of this Agreement all such information as is identified in Schedule 3 hereto; and
 - (b) from time to time all such further information as may reasonably be requested by VPI Immingham LLP to facilitate the proper completion of the Construction Works.
- 4.2 SMart Wind Ltd, as far as is reasonably practicable in all the circumstances, warrants that such information as he provides under Schedule 3 is and will be accurate and may be relied on by VPI Immingham LLP under or in connection with the Construction Works.
- 4.3 The information that the SMart Wind Ltd provides under this Clause 4 will be the best information available to the SMart Wind Ltd at the time of the provision thereof and may, in such terms, be relied upon by VPI Immingham LLP under or in connection with the Construction Works and the other provisions of this Agreement and shall be updated by VPI Immingham CHP LLP from time to time as soon as reasonably practicable after the VPI Immingham CHP LLP has become aware of any changes to such information.
- 4.4
- 4.5 SMart Wind Ltd shall without charge, allow VPI Immingham LLP such access or procure that VPI Immingham LLP obtains such access to the Pipeline location as VPI Immingham LLP may reasonably require on the Inspection progress of the Construction Works.
- 4.6 SMart Wind Ltd shall prior to commencement of the construction works enter into and additional formal contract to enable the recovery of the costs incurred by VPI Immingham LLP the Installation & Supervision to be recovered as Section 3.0 of this agreement.

5. OBLIGATIONS OF VPI Immingham LLP

- 5.1 VPI Immingham LLP shall use all reasonable endeavors to complete the Construction Works Inspections by the relevant Completion Date within the Construction Contractor schedule.
- 5.2 VPI Immingham LLP shall (subject to the provisions of Clause 8), for the duration of the Construction Works, use its reasonable endeavors to provide such information and discuss such matters as SMart Wind Ltd may from time to time reasonably request in relation to as the case may be, the Proposed Protective Works to facilitate the Proposed Project. It is acknowledged that VPI Immingham LLP is receiving no recompense for the provision of such information and accordingly, whilst such information shall be provided in good faith, it shall be provided without any liability whatsoever on the part of VPI Immingham LLP and no such information shall amount to any offer, representation, warranty or undertaking by or on behalf of VPI Immingham LLP.

6. OBLIGATIONS OF SMart Wind Contactors

- 6.1 Contractor/Smart Wind Ltd warrants that the Construction Works shall be undertaken to the design agreed in the design review meetings and the SofCG issues discussed and agreed to during the Preliminary stages of the works.
- 6.2 Contractor/Smart Wind Ltd shall use all reasonable endeavors to complete phase 3 of the Construction Works within the scheduled timing of the project and incur no or minimal delay to the program.
- 6.3 Contractor/Smart Wind Ltd shall ensure that the working compound areas set-up shall be where deemed necessary under the QRA and agreed procedures be constructed in accordance with those recommendations for passage over live Natural Gas mains by heavy construction machinery.
- 6.4 Any construction works carried out in the proximity to the Natural Gas pipeline shall be in accordance with the design as agreed between Vitol/Consultants and the Designers for Smart Wind Ltd and that any works compound areas, construction activities shall be constructed in accordance with the recommendations for passage over/under live mains of a Main Natural Gas Line by heavy construction machinery
- 6.5 Any Construction Works carried out in the proximity to the Main Natural Gas Line shall be in accordance with the relevant codes HSE – Gas safety (management)

Regulations 1996 and to the limitations on proximity working under the Vitol Immingham CHP LLP work practice and procedures –(See Schedule ## attachment)

- 6.6 All excavation work carried out within the vicinity of the Main Natural Gas Line shall be covered by a Permit to Work under the Vitol Immingham CHP LLP systems and Contractor systems with approval and the linking by the relevant Vitol Immingham CHP LLP Control Person at the Vitol Power Station
- 6.7 Whilst working in close proximity to the Natural Gas pipeline with either the protection works execution, temporary works or excavating close to a known pipeline location the Power Station Control Person shall be notified in a timely manner at least 2 days prior to the works on 01469 565863 immediately followed by a confirming e-mail to the Control Person of the work and the nature of that work for the risk and consequence to the Power Station.
- 6.8 In the event a delay occurs to the Project that extends the schedule of the Construction Works, this delay shall be communicated to Vitol Immingham CHP LLP in writing and e-mailed immediately on being aware of such delay and advising Vitol Immingham CHP LLP of the reason for such a delay and the anticipated duration that may require Vitol Immingham CHP LLP to extend any protective operational measures required to ensure the security of supply.
- 6.9 When works are to commence in the vicinity of the Main Natural Gas Line as described in Schedule 3 of this document and in the event of an incident to the Main Natural Gas Line itself, Smart Wind Ltd and/or its Contractor shall immediately contact the control person at Vitol Immingham CHP LLP. The Contact Details are telephone number and e-mail address for immediate contact are – Control Person telephone 01469 565863 or Emergency telephone number 01469 565888 and e-mail VPI.I.Control.Persons@vpi.i.com

7. CONFIDENTIALITY

7.1 Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other party and its Affiliates disclosed or obtained as a result of the relationship of the parties under this Agreement and shall not use or disclose the same except:

- (a) for the purposes of the proper performance of this Agreement; or
- (b) with the prior written consent of the other party; or

(c) as set out in Clause 7.3.

7.2 The obligations of confidentiality in this Clause 6 shall not extend to any information which either party can show:

(a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or

(b) was in its written records prior to the date of this Agreement and free of any duty of confidentiality; or

(c) was independently disclosed to it by a third party entitled to disclose the same free of any duty of confidentiality; or

(d) is required to be disclosed under any applicable law or by a court or governmental body or authority of competent jurisdiction (including, without limitation, the Gas and Electricity Markets Authority).

7.3 Each party to this Agreement shall be permitted to disclose Confidential Information belonging to the other disclosed or obtained as a result of the relationship of the parties under this Agreement to:

(a) that party's Affiliates, legal counsel, other professional consultants or advisers, insurers, accountants, underwriters or providers of finance or financial support, or their legal counsel and advisers, provided that:-

(i) such disclosure is solely to assist the purpose for which such person was engaged (such purpose being directly related to the matters contemplated in this Agreement); and

(ii) such persons agree to keep secret and confidential all such Confidential Information on terms no less onerous than those set out in Clauses 7.1 and 7.2;

(b) in the case of the Smart Wind Ltd , such other persons with which the Smart Wind Ltd is negotiating on a bona fide basis for the ownership and/or use of the Proposed Project and such persons' Affiliates, legal counsel, other professional consultants or advisers, insurers, accountants, underwriters or providers of finance or financial support, or their legal counsel and advisers provided that:

- (i) such disclosure is solely to assist such persons in their negotiations for the ownership and/or use of the Proposed Project; and
 - (ii) such persons agree to keep secret and confidential all such Confidential Information on terms no less onerous than those set out in Clauses 7.1 and 7.2; and
- (c) in the case of VPI Immingham LLP, such subcontractors and advisers appointed by it in accordance with the provisions of Clause 11.1 provided that:
- (i) such disclosure is solely to assist such persons in relation to their work or advice in relation to the Preliminary Works; and
 - (ii) such persons agree to keep secret and confidential all such Confidential Information on terms no less onerous than those set out in Clauses 7.1 and 7.2;

Notwithstanding the foregoing provisions of this Clause 7.3, the disclosing party shall remain responsible for, and shall be liable to the other in respect of, any breach of confidence by any persons to whom or to which Confidential Information is disclosed by such party or at its request.

7.4 This Clause 7 shall survive the termination of this Agreement by three (3) years.

8 OWNERSHIP

8.1 All consents, wayleaves and easements, and all information, data and any intellectual property including but not limited to patents, copyright, design rights, registered designs, trademarks, know-how and inventions which are the property of VPI Immingham LLP or which VPI Immingham LLP develops or acquires under or in connection with the Construction Works including, without limitation, all drawings, plans, statements, assessments, appraisals, reports and surveys prepared pursuant to the Construction Works (other than information, data and intellectual property owned and provided by the Smart Wind Ltd in accordance with Clause 4.1) shall (irrespective of whether or not the Construction Works are completed and irrespective of whether or not this Agreement is terminated prior to the completion of the Construction Works) be and remain the exclusive

property of VPI Immingham LLP at all times and the Smart Wind Ltd shall have no right therein or in respect thereof.

9 LIMITATION OF LIABILITY

9.1 Subject to the further provisions of this Clause 9, VPI Immingham LLP and the Smart Wind Ltd agree and acknowledge that Smart Wind Ltd accepts with no defence that it is liable both jointly and severally for any acts or omissions by Smart Wind Ltd and/or its Contractor and shall be liable for all and any costs and losses suffered by VPI Immingham CHP LLP as a result of the Construction Works being undertaken by Smart Wind Ltd and/or its Contractor. For the avoidance of doubt, such costs and losses shall include, without limitation, the following;

- (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;
- (iii) physical damage to the property on the Power Station Site including without limitation, the Main Natural Gas Line;
- (iv) 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;
- (v) 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 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).

(a)

9.2 Clause 9.1 is without prejudice to any other provision of this Agreement which provides for an indemnity, or which provides for Smart Wind Ltd to make payment to VPI Immingham CHP LLP

9.3 Nothing in this Agreement shall exclude or limit the liability of either VPI Immingham CHP LLP or Smart Wind Ltd for death or personal injury resulting from their negligence.

9.4 Nothing in this Clause 9 shall:

(a) prevent either VPI Immingham CHP LLP or Smart Winf Ltd from or restrict them in enforcing any obligation (including suing for a debt) owed to them under pursuant to this Agreement; or

(b) constitute a waiver by VPI Immingham CHP LLP or Smart Wind Ltd of any right or remedy it may have (other than pursuant to this Agreement) in respect of a breach by the other of any statute or statutory instrument.

9.5 Each provision of this Clause 9 shall be construed as a separate and severable contract term, and shall survive the termination of this Agreement

9.6 Each of VPI Immingham LLP and the Smart Wind Ltd for Transport agree that the provisions of this Clause 9 are fair and reasonable having regard to the circumstances at the date hereof.

10 TERMINATION

10.1 Without prejudice to any of its antecedent rights or remedies, VPI Immingham LLP may (but shall not be obliged to) terminate this Agreement:

(a) forthwith on written notice if any of the information provided pursuant to Clause 4.1 is found to be untrue or incorrect in any material respect, if any of the statements made in Clause 4.4 are found to be untrue or incorrect in any respect; or

(b) by giving 28 days' notice in writing if VPI Immingham LLP is prevented by reason of Force Majeure from performing any of its obligations under this Agreement for a period exceeding three consecutive months provided that the Force Majeure event has not ceased to apply within the 28 day notice period; or

(d) by giving 28 days' notice in writing of a material breach by the Smart Wind Ltd of this Agreement, provided that the Smart Wind Ltd fails to take substantial steps to remedy such breach within such 28 day notice period.

- 10.2 Without prejudice to any of its antecedent rights or remedies, the Smart Wind Ltd may (but shall not be obliged to) terminate this Agreement:
- (a) forthwith on written notice if VPI Immingham LLP goes into liquidation (either voluntary or compulsory) (or a petition is made to liquidate VPI Immingham LLP or if any administrator, administrative receiver or receiver shall be appointed in respect of the whole or any part of its assets; or if it shall make or offer to make any arrangement or composition for the benefit of its creditors or members generally (or if any procedure analogous to the foregoing occurs); or
 - (b) by giving 28 days' notice in writing if VPI Immingham LLP is prevented by reason of Force Majeure from performing any of its obligations under this Agreement for a period exceeding three consecutive months provided that the Force Majeure event has not ceased to apply within the 28 day notice period; or
 - (c) by giving 28 days' notice in writing of a material breach by VPI Immingham LLP of this Agreement, provided that VPI Immingham LLP fails to take substantial steps to remedy such breach within such 28 day notice period.
- 10.3 The termination of this Agreement pursuant to Clause 10.1 or Clause 10.2 is without prejudice to either party's obligation to make payment of all sums which become due under this Agreement subsequent to termination including, without limitation, the Construction Works Price (which shall remain due notwithstanding such termination).
- 10.4 If, and only if, the SMart Wind Ltd either notifies VPI Immingham LLP in writing that it is not continuing with the Proposed Project and that it accordingly wishes to terminate this Agreement or the SMart Wind Ltd notifies VPI Immingham LLP in writing that it wishes to terminate this Agreement after the completion of phase 1 & 2 of the Preliminary Works and prior to the commencement of phase 3 of the Construction Works, then this Agreement shall terminate upon such date as is notified by VPI Immingham LLP to SMart Wind Ltd (such date being not later than 28 days after receipt of notification from SMart Wind Ltd). The termination of this Agreement pursuant to this Clause 10.4 is without prejudice to all antecedent rights and remedies and to each party's obligation to make payment of all sums which may become due under this Agreement subsequent to termination including, without limitation, the Construction Works Price (which shall remain due notwithstanding such termination).

10.5 Where this Agreement is terminated pursuant to Clause 10.2(c) the provisions of Clause 10.4 shall be varied such that the Construction Works Price which SMart Wind Ltd is obliged to pay shall not include costs in respect of works undertaken in the period following the date of termination nor shall it include costs incurred by VPI Immingham LLP as a consequence of termination.

11 FORCE MAJEURE

11.1 “**Force Majeure**” means:

- (a) any event or combination of events or circumstances (other than the lack, non-receipt or unavailability of financial resources or funds) which is beyond the control of SMart Wind Ltd Construction Contractor (the Contractor) acting and having acted as a Reasonable and Prudent Contractor, and which prevents the Contractor from or causes hindrance, delay or impediment to VPI Immingham LLP in fulfilling all or any of its obligations under this Agreement; and
- (b) any failure by the Contractor to perform its obligations hereunder to the extent that such failure was caused by any change in the law or cancellation of any consent, approval or licence rendering it unlawful for the Contractor to comply with its obligations hereunder (such change or cancellation not having occurred as a consequence of an act or omission (not caused by Force Majeure) of the Contractor.

11.2 If SMart Wind Ltd is rendered unable wholly or in part by Force Majeure to carry out its obligations (other than payment of money) under this Agreement it shall as soon as reasonably practicable after becoming aware of the occurrence of the event or circumstances of Force Majeure give written notice to the VPI Immingham LLP giving full particulars of the event or circumstances constituting Force Majeure and of the obligations which cannot as a result be performed SMart Wind Ltd shall thereafter be excused from liability for non-performance of such obligations, subject to the provisions of Clause 11.3 below, to the extent and for so long as the inability to perform the obligations as a result of the event or circumstances of Force Majeure may continue. For the avoidance of doubt, the relief from liability for non-performance of any obligation under this Clause 11.2 shall not affect the existence of that obligation for the purposes of any other provision of this Agreement.

- 11.3 SMart Wind Ltd shall use all reasonable endeavours to overcome or circumvent such Force Majeure and shall on request in writing from VPI Immingham LLP give full details of the measures it is taking.

12. MISCELLANEOUS

- 12.1 SMart Wind Ltd and its Contractors shall be entitled to appoint subcontractors including, but not limited to, land agents, surveyors, civil engineers, contractors and consultants, and shall be further entitled to appoint independent professional advisers in relation to the performance of any part or all of the Construction Works.

- 12.2 Any notices (including, without limitation, invoices) sent under this Agreement must be in writing and may be served by personal delivery or by sending the notice by first class post (if within the United Kingdom) or air mail post (if sent to or from a country outside the United Kingdom) or facsimile transmission to the address or number given below or to such other address or number as the relevant party may give for the purpose of service of notices under this Agreement and every such notice shall be deemed to have been served upon delivery if served by hand, at the expiration of 2 Business Days after despatch of the same if sent by first class post, at the expiration of 5 Business Days after despatch of the same if sent by air mail post, or at 10.00 hours a.m. on the next Business Day following despatch if sent by facsimile transmission. The addresses and facsimile numbers referred to above are:

- (a) in the case of VPI Immingham LLP:

Attn; Plant Manager

Immingham Combined Heat & Power

VPI Immingham LLP

Rosper Road

Immingham

South Lincolnshire

DN40 3DZ

- (b) in the case of the SMart Wind Ltd:

11th Floor,

140 London Wall

London

EC2Y 5DN)

- 12.3 To prove service of any notice it shall be sufficient to show in the case of a notice delivered by hand that the same was duly addressed and delivered by hand and in the case of a notice served by post that the same was duly addressed prepaid and posted in the manner set out above. In the case of a notice given by facsimile transmission, it shall be sufficient to show that it was despatched in a legible and complete form to the correct telephone number (01469 565811) without any error message.
- 12.4 Except as provided herein, neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other, which consent may not unreasonably be withheld.
- 12.5 This Agreement may not be varied or amended without the prior written consent of both parties.
- 12.6 Nothing in this Agreement shall create or be deemed to create a relationship of agent and principal between the parties under or in connection with this Agreement and neither party may hold itself out as the agent of the other in any matter arising under or in connection with this Agreement.
- 12.7 No waiver by either party of any default or defaults by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character. Furthermore no waiver by either party of any provision of this Agreement shall be binding unless made in writing.
- 12.8 Nothing in this Agreement shall oblige either party to enter into any further agreements, construction or otherwise, with the other.
- 12.9 Subject to any rights which may accrue to any successor or permitted assign of the parties, no provision of this Agreement shall or may be construed as creating any right(s) enforceable by a third party and all third party rights as may be implied by law are hereby excluded to the fullest extent permitted by law from this Agreement.
- 12.10 If at any time any part of this Agreement (including any one or more of the Clauses or sub-Clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/ or enforceability of

the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

12.11 This Agreement may be entered into in the form of two counterparts, each executed by one of the parties, but taken together executed by both, and provided that both of the parties shall so enter into this Agreement, each of the executed counterparts when duly exchanged shall be deemed to be an original but, taken together, they shall constitute one instrument.

13. LAW AND DISPUTES

13.1 This Agreement and any dispute between the parties under or in connection with this Agreement shall be governed by the laws of England.

13.2 The parties submit to the exclusive jurisdiction of the English Courts.

14 ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the parties with respect to the Construction Works and shall prevail and supersede all prior agreements, undertakings, statements, representations, commitments, warranties and communications between the parties with respect to the Construction Works and neither party shall rely on or be bound by any of the foregoing not appearing in or incorporated by specific reference into this Agreement. Nothing in this Agreement shall operate to exclude either party's liability to the other for fraudulent misrepresentation.

SIGNED by the duly authorised representatives of the parties on the date of this Agreement.

SIGNED for and on behalf of
VPI Immingham LLP

SIGNED for and on behalf of
SMart Wind Ltd

Signature: Signature:

Name: Name:

Position: Position:

In the presence of: In the presence of:

Signature: Signature:

Name: Name:

Position: Position:

SCHEDULE 1**THE CONSTRUCTION WORKS****Scope of Services -**

Dependant on SMart Wind Ltd contracting structure and schedule for the build, this will determine the overall involvement of the Consultant for Vitol (Penspen) and the involvement of VPI Immingham LLP. It is provisionally confirmed subject the future DCO approval that the works will commence to the dates scheduled to be complete ## years from the start date.

The construction of protection works for the pipeline at all crossing points will be carried out by the SMart Wind Ltd contractor in accordance with the agreed design as produced following the design process and will be supervised by the Consultants for VPI Immingham LLP.

The work of the Consultants and VPI Immingham LLP will be but not limited to the below;

1. Review of the final design drawings and provide approvals in consultation with Vitol Immingham CHP LLP
2. Review of the program/schedule for the works and identify any specific HOLD points required before work is carried out.
3. Ensure with VPI Immingham that all Permits to Work and Safety Certificates are in place for the specific close working of the Natural Gas pipeline.
4. Review of all construction method for the protection of the pipeline and monitor the construction works for those protection works.
5. Review and monitor all construction works to the ditches in the vicinity of the pipeline to ensure they are constructed in accordance with the agreed designs for those areas.
6. Monitor the temporary protection works in the storage and laydown areas to ensure that adequate levels of protection have been installed.
7. Attended any relevant site progress and planning meetings that are relevant to the protection works over the pipeline.
8. Up-date VPI Immingham LLP representative on the progress advising of any deviations from the agreed design, and any variations that have been agreed if a clash occurs in the agreed design to actual site condition.

9. Produce a final report on the “as built” protection works for VPI Immingham LLP records for inclusion in the history pack for the Natural Gas Pipeline.
10. The timeline for the work will be; assuming the project commences on the planned start.
 - Commence Project – Date to be Agreed
 - Protection works commence to construction schedule – (yet to be determined)
 - Protection works completed (yet to be determined).
 - All above schedule driven and dependant on the post DCO approval Final Consultation period timing.

SCHEDULE 2

CONSTRCUTION WORKS PRICE

Phase 3 Design and Supervision £#####

SCHEDULE 3

INFORMATION

To Be Inserted Later

SCHEDULE 4

CONSTRUCTION WORKS AGREEMENT

(As attached to this agreement as a separate document)